"Tousel nou al pli vit, **ansam** nou al pli lwin"

Mouvement d'action civique luttant contre les discriminations

LEGAL OPINION

TO THE

UN COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

ON

THE GENERAL RECOMMENDATION REGARDING REPARATIONS FOR THE HISTORICAL INJUSTICES FROM THE CHATTEL ENSLAVEMENT OF AFRICANS AND THE ENSUING HARMS AND CRIMES TO PEOPLE OF AFRICAN DESCENT

INTRODUCTION

1. We commend the UN Committee on the Elimination of Racial Discrimination (the "Committee") for its vital role in combating racial discrimination worldwide. We particularly appreciate its commitment to promoting and safeguarding the human rights and freedoms of people of African descent.

2. Affirmative Action is a local NGO dedicated to eliminating all forms of racial discrimination in the Republic of Mauritius. In 2018 and 2021, we submitted two alternative reports to the Committee to support their evaluation of the implementation of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) in Mauritius.

3. Despite the Committee's specific and detailed recommendations to the government of Mauritius, people of African descent continue to face systemic racism and structural racial discrimination in the country. This discrimination is evident in their unequal access to quality education, housing, health services, and employment. Additionally, they experience electoral disenfranchisement and face injustices within the criminal justice system, among other issues.

4. In February 2025, we commemorated the 26th anniversary of the assassination of Kaya, a beloved local Rasta artist recognized as the champion of seggae music. However, the mystery surrounding his death remains unresolved. The circumstances of Kaya's demise are still unclear, primarily because those responsible for his detention—and thus for ensuring his safety—have not been held accountable.

5. In the name of Kaya's children, this legal opinion focuses on the collection, analysis, dissemination, and publication of disaggregated data in Mauritius. The objective is to highlight how the colonial legacy continues to play a significant role in the state institutions of Mauritius today.

6. Reparative justice for people of African descent necessitates a thorough analysis of the current dynamics of structural racism as well as an acknowledgement of the historical consequences of slavery and colonisation.

THE INTERNATIONAL BACKGROUND

7. The 1960 Declaration on the Granting of Independence to Colonial Countries and Peoples (the "1960 Declaration") declares that "*all peoples have the right to self-determination; by virtue of that right they freely determine their political status and* ***freely pursue their economic, social and cultural development***".[1] [emphasis added]

8. The General Assembly holds that the right to self-determination is an integral element of basic human rights and fundamental freedoms.[2]

9. The ICERD defines racial discrimination as "*any distinction, exclusion, restriction or preference based on race, colour,* ***descent, or national or ethnic origin*** *which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life*"[3] [emphasis added]

10. The 1992, UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (the "1992 Declaration"), provides that "*States shall protect the existence and the* ***national or ethnic, cultural, religious and linguistic identity of minorities*** *within their respective territories and shall encourage conditions for the promotion of that identity*" [4] [emphasis added]

11. Promoting the identity of minority groups requires special measures to support the preservation, reproduction, and development of their cultures. Cultures are dynamic and constantly evolving; therefore, minorities should be given the opportunity to cultivate and advance their cultural practices as part of an ongoing process.

12. We contend that since the 1992 Declaration is inspired by Article 27 of the International Covenant on Civil and Political Rights (the "ICCPR"), it may be assumed that the 1992 Declaration has at least as wide a scope as that Article.

13. In the 2001 Durban Declaration and Programme of Action, States were urged to collect, compile, analyse, disseminate and publish disaggregated data. The collection of data should be through voluntary, transparent and participatory processes that empower individuals to self-report their identities.[5]

14. In 2005, the UN General Assembly adopted and proclaimed Resolution 60/147, codifying the rights of victims of human rights violations to reparations and remedies and to access justice **within domestic legal systems**.[6] [emphasis added]

15. In 2010, the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance recommended that States use disaggregated data to design anti-discrimination legislation and policies and to monitor their effectiveness.[7]

16. In 2011, the Committee recommended that States take steps to identify communities of African descent living in their territories and to carry out periodic surveys to provide a regular assessment of the realities of racial discrimination faced by people of African descent.[8]

17. In 2019, the Working Group of Experts on People of African Descent advocated for a human rights-based approach to disaggregated data collection and that States employ methods that are transparent, accountable and based on self-identification [9]

18. The 2022 Report of the Secretary-General to the UN General Assembly on the Implementation of the International Decade for People of African Descent recommended that States should compile, analyse, disseminate and publish disaggregated data on communities of African descent, including data on hate crimes, on the representation of people of African descent in decision-making roles and data from health, housing, education and other social sectors.[10]

19. In October 2024, the UN General Assembly adopted a resolution entitled "Eradication of Colonialism in All Its Forms and Manifestations" to promote the full implementation of the 1960 Declaration [11]

20. Finally, in February 2025, launching the African Union theme for 2025 entitled "Justice for Africans and People of African Descent Through Reparations", President Mahama said, "*we must continue to advocate for stronger legal and institutional mechanisms… to ensure that justice for the historical trauma inflicted on global Africa is not just a conversation, but a reality*."[12].

THE CASE OF MAURITIUS

21. We have selected this key issue for the Committee's consideration because ethnic census and disaggregated data in the 'rainbow nation' of Mauritius are considered taboo. There is a prevailing belief that the underlying problems will resolve themselves over time. However, the racial riots of January 1968 and February 1999 serve as reminders that the historical injustices and legacies of slavery will not disappear "*par enchantement*".

<u>French colonisation</u>

22. In 1806, the first disaggregated data available shows that the slave community was composed of Creoles (16, 784), Malagasy (11, 030), Indians (6, 162) and Mozambicans (26, 670)[13]

23. We found that the term “Creole” was first used in the sixteenth century to identify descendants of French, Spanish or Portuguese settlers living in the West Indies and Latin America. Most historians seem to agree that the term “Creole” derives from the Portuguese word “crioulo” and the Spanish word “criollo”, meaning a slave born in the master’s house. Subsequently, the term “Creoles” was used to refer to all slaves born in the colonies, then progressively to those speaking the Creole language and subsequently to all blacks of mixed origin.[14]

24. For this legal opinion, we will use the terms "Creoles" and "people of African descent" interchangeably.

<u>British colonisation -1810 to 1968</u>

25. In 1810, as a result of the Act of Capitulation, the French ceded Mauritius and its dependencies to the UK. By Article 8 of the Act, it was agreed that the “*inhabitants shall preserve their Religion, Laws and Customs*”[15]

26. In 1833, the UK Parliament passed legislation to pay a generous compensation package to 7, 386 slave-owners for the loss of their ‘property’. A total sum of £2.112,632 (approximately £224 million using the Bank of England Inflation Calculator) was paid as compensation for the 66,343 slaves living in Mauritius.[16]

27. In addition, the slave-owners were allowed to benefit from an exploitative system of apprenticeship, which saw the “newly freed” men, women, and children continue to work for free for their masters up to 1839.

28. In 1846, during the first population census, the population was divided into 3 groups: General Population; Ex-Apprentices and Indian. The report stated that:

    “*the forms employed were prepared with a view of ascertaining* ***the number and identity of all the Indian immigrant population***” [17][emphasis added]

29. The entire slave community was simply classified as “Ex-Apprentices” and the colonial census commissioner reported that:

    “*the Ex-Apprentices are enumerated as such upon their own declaration, and therefore this class may be supposed to comprise only those who belonged to it at the expiration of the apprenticeship in February 1839, omitting those who obtained their freedom between that date and the Act of Emancipation in February 1835. The term “Indian” applies only to those who were declared as immigrants, labourers, and their families.* ***The other Indians in the colony, and a few immigrants, who, being householders of proprietors, did not declare themselves as immigrants, are classed in the general population***.[18]” [emphasis added]

30. The classification “Creoles” was simply abandoned, even though the colonial census commissioner acknowledged that in the category of the Ex-Apprentices “*exactly one-fourth are of African origin;*

*there are a few Indians in this class, **and the rest are creoles**, chiefly of Mauritius*[19]". [emphasis added]

31. However, the colonial commissioner, in his wisdom, maintained the classification "Creoles" under the heading "*insane, blind, deaf and dumb, and infirm.*"[20]

32. The 1846 composition of the population was as follows: General Population (52,852); Ex-Apprentices (42,365) and Indians (56,245)

33. In 1851: the same classification as in 1846 was maintained and the return was: General Population (54, 497), Ex-Apprentices and their families (48,330) and Indians and their families (77,996)[21].

34. In 1861, the colonial census commissioner abolished the Ex-Apprentice category and opted for the "*absorption of the class formerly called "ex apprentices" into the bulk of the General Population as **they did not think it advisable** to endeavour to maintain the distinction which has been previously returned*". [emphasis added]

35. A new rule was also established to the effect that "*the term Indian Population was to be held as comprising not only Indians born in India, but all persons of **unmixed Indian origin** whatever their birth place or nationality, and that of **all the other inhabitants of the Island irrespective of descent, birthplace or nationality, were to be considered as belonging to the General Population***"[22]. [emphasis added]

36. The 1861 composition of the population was as follows: General Population (117,416) and Indian Population (192,634)[23].

37. Subsequently, in 1871 and 1881 the population of Mauritius was divided into those two groups as follows: in 1871: General Population (99, 784) and Indian Population (216, 258)[24] and in 1881: General Population (110, 881) and Indian Population (248, 993).[25]

38. In 1891, the Indian Population continued to benefit from the British special attention through the creation of the Indo-Mauritian group, meaning *"persons of Indian origin **born in the Colony**"* and the Other Indians group "*Indians born out of the Colony*". The composition of the population was as follows: General Population (114, 572), Indo Mauritians (156, 591) and Other Indians (99, 329).[26] [emphasis added]

39. In 1901, further special attention was paid to the Indian Population group by removing all Indians who were classed in the General Population group in 1846 and assimilating them into the Indo-Mauritian group. As a result, the composition of the population was as follows: General Population (exclusive of Indians) (112, 356), Indo Mauritians (199, 088) and Other Indians (63, 103)[27].

40. In 1911 the colonial census commissioner reported that: "*A feature of the 1911 Census – and indeed strictly speaking, of the Census before it – is the absorption of the said African class into the*

General population… the negro type is still to be found, however, ***in considerable numbers****, round the coast, but except in the case of the more ancient members of the community, it is doubtful whether the individuals bearing the African characteristics can be considered otherwise than as recurring types*" and that "***no attempt was made to enumerate them separately***."[28] [emphasis added]

41. The commissioner also confirmed that "*the classification of the population is effected principally* ***by means of the surnames****, as for obvious reasons, it cannot be made a subject of direct census inquiry*" [emphasis added].

42. The 1911 composition of the population was as follows: General population (107, 432) Indo Mauritian (222, 301) Other Indians (35, 396)[29]

43. In 1921, the colonial administrators acknowledged that the classification of the Mauritian population was far from the reality on the ground, in as much as: *"it is a matter of serious consideration whether the time has not come to revise the classification of General, Indo Mauritian, Other Indians and Chinese and substitute European, Mauritian, Indian, Chinese…* ***Mauritian referring to all those who at present are classed in the General population*** *and those whose association with the Colony and its aspirations are sufficiently developed to lead them to voluntarily insert in their Own Census schedule the classification "Mauritian"* ***whether they be from European, or Indian or Asiatic descent****…* ***some changes will be necessary in the near future as the classification by names is becoming misleading****, unless a change of name is to be considered an indication of voluntary absorption in the "Mauritian" class*"[30]. [emphasis added]

44. The 1921 composition of the population was as follows: General Population (104, 216) Indo Mauritian (248, 468) Other Indians (17, 056)

45. In 1931, the focus was again on the Indian Population in as much as "*the Other Indians class is becoming relatively unimportant and could well be blended with the Indo Mauritian into one Indian class*" and continued, "*the Indian section would then have comprised those members of the population* ***following the customs and religion of India***." The term 'Mauritian' was applied to "*those persons,* ***of whatever origin, who have become permanently settled in Mauritius*** *and who are following European customs and religion*"[31][emphasis added]

46. The 1931 composition of the population was as follows: European (645), Mauritian (115, 021), Indian (268, 649) Chinese (8923)

47. In 1944, the colonial commissioner decided to abandon the 'Mauritian' classification, to revert back to the General Population group and to merge the Chinese group into it. The return was as follows: General Population, including Chinese (153,928) Indian Population (265, 247)[32].

48. In 1952, the British commissioner decided to separate the Chinese group from the General Population group and to further sub-divide the Indo Mauritian group into three groups: the Hindu Group (241,950), the Mahomedan Group (76,944) and the Christian Group (16,433). He reported

that "***in deciding of the ethnical classification to which each individual should belong****, a number of criteria were used. These were: The Name, the Religion, the Mother tongue, the Birth place and the Nationality*."[33] [emphasis added]

49. The 1952 composition of the population was as follows: General Population (148, 238), Indo Mauritian Population (335, 327), Chinese Population (17, 850)

50. The 1962 population census was allegedly carried out in accordance with the recommendations of the United Nations Handbook of Population Census Methods, i.e. "*the "population group" to which every member of the population* ***claimed to belong***" and the composition of the population was as follows: General Population (203, 652), Indo-Mauritian Population (454, 090), Chinese Population (23, 058)[34]. [emphasis added]

51. On 6 March 1968, the Mauritius Independence Order of 1968 defined the existing laws as "*any Acts of the Parliament of the United Kingdom, Orders of Her Majesty. in Council, Ordinances, rules, regulations, orders or other instruments having effect as part of the law of Mauritius immediately before the appointed day but does not include any Order revoked by this Order*"

52. The Constitution of Mauritius, which was in a Schedule to the Order provided that the National Assembly shall consist of 70 members and the First Schedule to the Constitution, established that "*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 three communities* ***shall be regarded as*** *belonging to the General Population,* ***which shall itself be regarded*** *as a fourth community.*" [emphasis added]

53. We contend that the only reason for the creation of those 4 categories was concerning the electoral process because the Order created a legal obligation on every prospective candidate in a general election to declare to which one of the four communities he/she belonged and that in the event such a declaration is not made his/her nomination shall be deemed to be invalid.

54. Based on the above, it is our contention that the British administrators were fully conscious that their 'divide and rule' practices by the manipulation of ethnic groups, would be detrimental to the Creole community. That is the reason why the 'Best Loser System' was invented providing for eight additional seats in the National Assembly "*in order to ensure a fair and adequate representation of each community*".

<u>Post-independence period - 1968 to date</u>

55. On 12 March 1968, Mauritius adopted the Independence Order as our new Constitution and the country's independence from Britain was proclaimed on the same day.

56. In 1972, the first post-independence population census was conducted, following the same flawed and racially biased classifications established by the British.[35]

57. In 1982, the newly elected government decided to abolish the question of community in the population census and voted for an amendment to the Constitution to the effect that the allocation of the additional eight seats under the Best Loser System would be made **based on the 1972 Census**. [emphasis added]

58. In 2012, following a complaint under the Optional Protocol to the ICCPR, the Human Rights Committee concluded that the imposition of a legal obligation to declare his/her community, failing which he/she would be barred from participating in a general election, violated Article 25 of the ICCPR.

59. The Human Rights Committee noted that the community affiliation had not been the subject of a census since 1972 and found that "*taking into account the State party's **failure to provide an adequate justification** in this regard and without expressing a view as to the appropriate form of the State party's or any other electoral system, that the continued maintenance of the requirement of mandatory classification of a candidate for general elections without the corresponding updated figures of the community affiliation of the population in general **would appear to be arbitrary** and therefore violates article 25 (b) of the Covenant*"[36]. [emphasis added]

60. The Human Rights Committee concluded that the State of Mauritius was under a legal obligation to provide an "***effective and enforceable remedy***" within 180 days and to "***update the 1972 census** with regard to community affiliation and to reconsider whether the community-based electoral system is still necessary. The State party is under an obligation to avoid similar violations in the future*". [emphasis added]

61. In response thereof, Parliament enacted the Constitution (Declaration of Community) (Temporary Provisions) Act 2014, which gave every prospective candidate the option not to declare his/her community to which he claimed to belong.

62. However, the above amendment was indeed temporary and was applicable only for the December 2014 General Election and since then, the 1972 racially biased census has prevailed for the 2019 and 2024 General Elections.

THE UNFINISHED BUSINESS OF DECOLONISATION

63. In September 2022, to mark the commemoration of the 30th anniversary of the 1992 Declaration, the UN Secretary-General António Guterres made the following strong statement: "*the hard truth is that – thirty years on – the world is falling short. Far short. We are not dealing with gaps – we are dealing with **outright inaction and negligence** in the protection of minority rights*"[37]. [emphasis added]

64. In February 2025, the UN Secretary-General, stated that "*decolonization, in itself, was not a panacea. Political independence did not free countries from structures based on exploitation and decades of economic, social and institutional underinvestment. It is high time for reparatory justice frameworks*".[38]

65. In the 1830s, the UK government compensated over 40,000 slave owners worldwide while leaving the enslaved Africans to fend for themselves. The UK continues to defend this policy decision by sidestepping its responsibility to address its role in crimes against humanity. Officials claim that the trade and trafficking of enslaved Africans and colonialism "*caused great suffering to many but were not, at that time, violations of international law.*"[39]

66. It is well documented that significant uprisings of enslaved Africans largely influenced the legal abolition of slavery in 1833. Key events include the Demerara Rebellion of 1823 in present-day Guyana, the rebellion in Barbados in 1816, and the Sam Sharpe Rebellion in Jamaica in 1831.

67. Colonial censuses around the world were extensive 'divide and rule' efforts to count populations using flawed and racially discriminatory classification systems that combined local knowledge with European biases and misunderstandings. These censuses served as a key tool of colonial domination, playing a crucial role in establishing racial hierarchies among different groups of people.[40]

68. "*Those who trudged around to get hold of household information for early censuses, and those who translated and compiled the data, **had a great impact** on the production of the census categories, not through statistical intentionality but **often through fudging the process***"[41] [emphasis added]

69. We contend that the ethnic composition of the 1.3 million Mauritians is not so complex that it presents a significant challenge for the self-identification of distinct communities.

International Law of State Responsibility

70. The international law of State Responsibility determines the consequences that ensue when a State commits an internationally wrongful act. This law is largely codified in the International Law Commission Articles on State Responsibility (the "ILC") and accepted by the UN General Assembly in 2001.[42]

71. Article 2 of the ILC defines an internationally wrongful act as conduct (an action or omission) "*attributable to the State under international law*", which conduct "*constitutes a breach of an international obligation of the State*". Article 1 insists that "*Every internationally wrongful act of a State entails the international responsibility of that State*."

72. The responsible State is under an obligation to make full reparation for "the injury caused" by the internationally wrongful act. Injury can be bodily, material and moral[43]

73. It is not necessary that any material or compensable injury actually result from the violation of an international obligation for the law of State responsibility to apply.[44] It is enough that a State has breached a primary duty for it to be obliged to cease the wrongful conduct and be required to provide guarantees of non-repetition.

74. Reparation should, insofar as possible, wipe out the consequences of the illegal act and re-establish the situation which would, in all probability, have existed if that act had not been committed[45].

75. The UN has also elaborated declarations or guidelines that indicate the required or appropriate remedies for specific kinds of human rights violations. The UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power[46] contains broad guarantees for those who suffer pecuniary losses, physical or mental harm and "*substantial impairment of their fundamental rights*" through acts or omissions, including abuse of power.

76. Abuse of power that is not criminal under national law but that violates internationally recognised norms relating to human rights should be sanctioned and remedies provided, including restitution and/or compensation and all necessary material, medical, psychological and social assistance and support.[47]

77. While the political independence of Mauritius was an important first step, the decolonisation process did not confront one pivotal dimension of the colonial legacy with regard to the ethnic composition of the population.

78. Based on the evidence presented, we argue that the British colonial rulers objective was to systematically eliminate the visibility of the people of African origin and their descendants in Mauritius, despite them being present "*in considerable numbers*". This was done by categorising them as part of the General Population, which has subsequently been labelled as a "*residual community*" by the Supreme Court of Mauritius.[48]

79. Hence our assertion that the Creole community has faced and continues to face systematic racism and structural racial discrimination when compared to the Hindu, Muslim, and Chinese communities.

THE LEGAL OBLIGATIONS OF MAURITIUS

80. There is a well-established principle under international law according to which a new state should remain responsible for the acts which took place **before its independence** because there is 'structural' and 'organic' continuity of the legal personality of the State[49]. [emphasis added]

81. All post-independence Mauritian governments have perpetuated the flawed and racially biased population classification established by British administrators, which denies Creoles their right to self-determination as a national minority.

82. The ongoing discriminatory system has been termed "scientific communalism" by some local politicians. As a result, the political class has created a "scientific formula" for the ethnic division of candidates in general elections.

83. As shown above, ever since 1921, the British commissioners have reported that "*some changes will be necessary **in the near future***". However, vested racial interests have successfully perpetuated the flawed British ethnic engineering experiment to this day. [emphasis added]

84. Today, the ICERD imposes a legal obligation on the State of Mauritius to provide "*effective protections and remedies*" against any acts of racial discrimination which violate rights and fundamental freedoms.

85. In 2013, the Committee was concerned that "*the current political classification of the population combines in the same community of 'General Population' groups such as the Creoles and the Franco-Mauritians which **do not share the same identity** The Committee is moreover concerned that the constitutional classification, established in 1968, may no longer reflect the identities of the various groups in the State party*"[50] .The Committee also noted "*with concern that **the Creoles remain significantly disadvantaged in the enjoyment of economic, social, and cultural rights***"[51] [emphasis added]

86. In 2018, the Committee expressed its regrets about Mauritius's "*persistent position of not collecting data disaggregated by ethnicity, which in the view of the Committee impedes assessment of the enjoyment of human rights by the different ethnic groups present in the State party*"[52]. The Committee further reiterated its concern that the "*persistent constitutional classification*" of the population for the 'Best Loser System' "*does not fully reflect the identities of the various groups present in the State party*".[53]

87. Finally, the Committee was again concerned that the "*Creoles, including those living on Agaléga and Rodrigues Islands, **face de facto discrimination in all walks of life** and remain disadvantaged in the enjoyment of human rights. In particular, the Creoles are disproportionately vulnerable to poverty and have limited access to employment, housing, health care and education. The Committee is also concerned that measures taken by the State party and by the Equal Opportunities Commission have had a limited impact on improving the socioeconomic situation of the Creoles and about the lack of measures specifically targeted at improving their situation*".[54] [emphasis added]

88. Now ex facie the 24th and 25th combined periodic reports of the government of Mauritius, submitted to the Committee, the government defiantly admitted that they **will not comply** with the Committee's recommendations with regards to disaggregated data by ethnicity, because allegedly "*The Republic of Mauritius does not keep such data as it goes against National Unity. The State fosters Nation Building in a Rainbow Nation*."[55] [emphasis added]

89. In 2021, Affirmative Action submitted an alternative report to the Committee entitled "Racial Equality Matters." This report focused on the ethnic politics that have prevailed in Mauritius since our independence. Political parties and alliances have consistently structured their list of 60 candidates based on an unwritten rule of: 36 candidates from the Hindu community, 16 from the General Population group, 9 from the Muslim community, and 1 from the Sino-Mauritian community.[56]

90. Our alternative report illustrates how this ethnic 'scientific formula', combined with a deliberately designed electoral constituency delimitation, has resulted in the political marginalisation and disenfranchisement of the entire Creole community, as a national minority.

91. The 1915 joint declaration by France, Great Britain and Russia denounced "*crimes against humanity and civilisation*" and Article 6(c) of the Nuremberg Charter defined crimes against humanity as "*murder, extermination, enslavement, deportation* ***and other inhumane acts*** *committed against any civilian population, … or persecutions on political, racial or religious grounds*". [emphasis added]

92. Article 3 of the Statute of the International Tribunal for Rwanda defined the contextual threshold for a crime against humanity as "*when committed as part of a widespread or systematic attack against any civilian population on national, political, ethnic, racial of religious grounds*".[57]

93. As regards the term 'attack', it has been held that it does not require the use of armed forces, and can encompass mistreatment of the civilian population[58] and the International Criminal Court Statute and Tribunal jurisprudence indicate there must at least be multiple acts or multiple victims in order the warrant the label 'attack directed against a civilian population'[59].

94. Finally, it has been held that the law of crimes against humanity not only protects enemy nationals but also covers crimes committed by a State against its people[60]

95. At this juncture, it is apposite to cite the Truth and Justice Commission report, which concluded that some Creoles suffered from "Post Traumatic Slave Disorder". The report added that "*No attention has been given to the consequences of slavery in Mauritius previously and so little is known of PTSS. There is a growing number of people who are affected by complex sociopathologies in Mauritius, and this is because of racism and differentiation that exist in Mauritius, and many people are finding it very difficult to cope with these. The majority of those affected come from the Creole community or at least, the more impoverished communities on the island.*"[61]

96. We argue that classifying Africans, Asians, and Creoles, along with their families, as 'Ex Apprentices' amounts to a systematic attack against a civilian population."[62]

97. And finally that, under international law, the State of Mauritius has a legal obligation to immediately cease the internationally wrongful act, guarantee non-repetition, and make full reparations for the harm caused.

CONCLUSION

98. At the start of the Second International Decade for People of African Descent, it is crucial to clarify the legal obligations of States regarding reparations for historical injustices. This clarification is essential for effectively addressing the unfinished business of decolonisation in a coherent and comprehensive manner.

99. "*From rhetoric to reality: a global call for concrete action against racism, racial discrimination, xenophobia and related intolerance*" is the operative paragraph of the October 2022 resolution adopted by the Human Rights Council.[63]

100. We argue that the time has come for the government of Mauritius to acknowledge and address the colonial status quo surrounding the collection, analysis, dissemination, and publication of disaggregated data by ethnicity. By doing so, we can begin to dismantle the ongoing de facto inequality that places Creoles at the bottom of the social hierarchy.

101. To put an end to the historical injustices faced by the Creole community and to ensure their full enjoyment of human rights and fundamental freedoms, it is essential to conduct regular surveys that assess the reality of racial discrimination against Creoles. These surveys should examine various factors, including geographical distribution, as well as the economic and social conditions of Creoles, with particular attention to gender perspectives.

102. We sincerely trust that the Committee will consider the issue of disaggregated data when elaborating on the legal obligations of State parties for reparations to Africans and people of African descent. This is important in addressing the grave violations of the past and the ongoing racial discrimination and disadvantages they face today.

103. We firmly believe that without a comprehensive national action plan to implement ICERD, the Second International Decade for People of African Descent may mirror the First Decade, where the status quo prevailed.

104. We hope this legal opinion will act as a tool to enhance visibility, identify gaps, and guide the development of policies and actions to prevent, combat, and eradicate racism and racial discrimination experienced by the Creoles in Mauritius.

105. As we celebrate the 57th anniversary of Mauritius' independence, with the theme "As One People, As One Nation," we believe that adopting a human rights-based approach to disaggregated ethnic data can significantly contribute to advancing the 2030 Agenda for Sustainable Development of leaving no one behind.

José Moïrt
Barrister at Law.
12 March 2025
jmoirt@astorlaw.mu

END NOTES

[1] General Assembly resolution 1514 (XV)

[2] https://press.un.org/en/2013/gashc4085.doc.htm

[3] UN General Assembly resolution 2106 (XX)

[4] General Assembly resolution 47/135

[5] https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_CONF.189_12.pdf

[6] GA Res. 60/147 (adopted 16 December 2005).

[7] https://docs.un.org/en/A/65/295

[8] https://www.ohchr.org/en/documents/general-comments-and-recommendations/general-recommendation-no-34-2011-racial

[9] https://docs.un.org/en/A/HRC/42/59

[10] https://www.ohchr.org/en/documents/reports/a77333-implementation-international-decade-people-african-descent-report

[11] https://docs.un.org/en/A/79/23 at page 50

[12] https://presidency.gov.gh/african-union-mahama-calls-for-collective-action-on-reparations/

[13] Milbert, *Voyage pittoresque a l'Ile de France*, Paris, 1812, pp 162-189

[14] Alain Romaine, *Religion Populaire et Pastorale Creole a Ile Maurice*,

[15] Acte de capitulation de Ile de France, 3 Dec 1810, Art 8 « Que les habitants conserveront leurs Religion, Lois et Coutumes »

[16] https://www.lemauricien.com/le-mauricien/the-compensation-paid-to-slave-owners-in-mauritius/401056/

[17] https://statsmauritius.govmu.org/Documents/Census_and_Surveys/Archive%20Census/1POPULATION%20CENSUS/REPT_0390_0001.pdf at para 11

[18] Ibid, at para 12

[19] Ibid, at para 20

[20] Ibid, at para 30

[21] https://statsmauritius.govmu.org/Documents/Census_and_Surveys/Archive%20Census/1POPULATION%20CENSUS/REPT_0391_0001.pdf

[22] https://statsmauritius.govmu.org/Documents/Census_and_Surveys/Archive%20Census/1POPULATION%20CENSUS/REPT_0392_0001.pdf at para 27

[23] https://statsmauritius.govmu.org/Documents/Census_and_Surveys/Archive%20Census/1POPULATION%20CENSUS/REPT_0395_0001.pdf at para 6

[24] https://statsmauritius.govmu.org/Documents/Census_and_Surveys/Archive%20Census/1POPULATION%20CENSUS/REPT_0392_0001.pdf

[25] https://statsmauritius.govmu.org/Documents/Census_and_Surveys/Archive%20Census/1POPULATION%20CENSUS/REPT_0393_0001.pdf

[26] https://statsmauritius.govmu.org/Documents/Census_and_Surveys/Archive%20Census/1POPULATION%20CENSUS/REPT_0394_0001.pdf at para 12

[27] https://statsmauritius.govmu.org/Documents/Census_and_Surveys/Archive%20Census/1POPULATION%20CENSUS/REPT_0395_0001.pdf at para 11

[28] https://statsmauritius.govmu.org/Documents/Census_and_Surveys/Archive%20Census/1POPULATION%20CENSUS/REPT_0396_0001.pdf

[29] Ibid, at para 13

[30] https://statsmauritius.govmu.org/Documents/Census_and_Surveys/Archive%20Census/1POPULATION%20CENSUS/REPT_0397_0001.pdf at para 21

[31] https://statsmauritius.govmu.org/Documents/Census_and_Surveys/Archive%20Census/1POPULATION%20CENSUS/REPT_0398_0001.pdf at page 7

[32] https://statsmauritius.govmu.org/Documents/Census_and_Surveys/Archive%20Census/2POPULATION%20CENSUS/REPT_0343_0001.pdf

[33] https://statsmauritius.govmu.org/Documents/Census_and_Surveys/Archive%20Census/1952%20Census/Census%201952%20of%20Mauritius%20and%20its%20Dependencies%20%E2%80%93%20Part%20I.pdf

[34] https://statsmauritius.govmu.org/Documents/Census_and_Surveys/Archive%20Census/1962%20Census/Table%20Reports/1962%20-%20Volume%20I%20-%20Population%20Census%20of%20Mauritius%20and%20its%20Dependencies.pdf

[35] https://statsmauritius.govmu.org/Documents/Census_and_Surveys/Archive%20Census/1972%20Census/Questionnaires/1972%20Population%20Census%20Questionnaires.pdf

[36] United Nations, CCPR/C/105/D/1744/2007

[37] https://www.un.org/sg/en/content/sg/speeches/2022-09-21/secretary-generals-remarks-the-high-level-meeting-the-30th-anniversary-of-the-adoption-of-the-declaration-the-rights-of-persons-belonging-national-or-ethnic-religious

[38] https://au.int/sites/default/files/speeches/44442-sp-Statement_by_Antonio_Guterres_UN_Secretary-General.pdf

[39] Foreign Commonwealth Office, UN Human Rights Council 51: UK explanation of vote on racism resolution (7 Oct. 2022

[40] The London Statistical Society, founded in 1834

[41] Kevin Walby and Michael Hann, *Caste Confusion and Census Enumeration in Colonial India, 1871 – 1921*

[42] https://legal.un.org/ilc/texts/instruments/english/draft_articles/9_6_2001.pdf

[43] See Barcelona Traction, Light 6 Power Company Ltd. (Belgium 11. Spain) (New Application: 1962), Judgment of 5 February 1970, ICJ Reports 1970,

[44] ILC Articles on State Responsibility, Article 31(2)

[45] *Factory at Chorzow*, Claim for Indemnity (Germany v. Poland) (Merits), Judgment of 13 September 1928, 1928 PCIJ Series A, No. 17, p. 47

[46] https://www.ohchr.org/en/instruments-mechanisms/instruments/declaration-basic-principles-justice-victims-crime-and-abuse

[47] Ibid. at paras. 5, 11, 14 and 19.

[48] Parvez Carrimkhan v Tin How Lew Chin & Ors. 2000 SCJ 264

[49] https://legal.un.org/ilc/texts/instruments/english/commentaries/9_6_2001.pdf

[50] https://www.refworld.org/reference/countryrep/cerd/2013/en/16928 at para 15

[51] Ibid, at papa 19

[52] file:///C:/Users/HP/Downloads/CERD_C_MUS_CO_20-23-EN.pdf at para 6

[53] Ibid, at para 12

[54] Ibid at para 26

[55] file:///C:/Users/HP/Downloads/G2225567.pdf

[56] https://www.ohchr.org/sites/default/files/documents/issues/racism/wgeapd/session35/35thsession-WGEPAD-Jose-Moirt.pdf at Annex B

[57] https://legal.un.org/avl/pdf/ha/ictr_ef.pdf

[58] *Kunarac* ICTY A. Ch. 12.6.2002 para 86; *Akayesu* ICTR T. Ch. I 2.9.1998 para 581

[59] Art 7(2)(a) of the ICC Statute, *Tadic* ICTY T. Ch. 7.5.1997 para 644; *Akayesu* ICTR T. Ch. I 2.9.1998 para 205

[60] War Crimes Commission, *History*, 193

[61] https://www.usip.org/sites/default/files/ROL/TJC_Vol1.pdf at page 296

[62] See United Nations War Crimes Commission, *History of the United Nations War Crimes Commission and the Development of the Laws of War* (London, 1948)

[63] https://docs.un.org/en/A/HRC/RES/51/32