



**The role of civil society in realising racial and social justice for the Creoles in
Mauritius through transitional justice processes**

By

Marie Rebecca Jolicoeur

u24093565

Prepared under the supervision of

Mr. Lloyd Kuveya

(Centre for Human Rights, University of Pretoria)

And

Prof Guillaume Moumouni

(University Abomey-Calavi Benin)

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Dedication

This essay marks the end of a happy year marked by many challenges, wonderful adventures and beautiful encounters. It also marks the first year in 6 years without an amazing and generous man who meant a lot to me and who I hope would be proud of me.

Dominique, I dedicate this dissertation and this blessed year to you.

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Lastly, a special thanks to all those who prayed and supported me when I was sick, distinctly my family, Fr. Gerard, Marie, ACTs Rosary team, Merv and Lu.

Abbreviations and Acronyms

ACHPR - African Charter on Human and Peoples' Rights

ACRWC - African Charter on the Rights and Welfare of the Child

AfCHPR - Protocol to the African Charter on the Establishment of an African Court on Human Peoples' Rights

CSO – Civil Society Organisation

CEDAW - Convention on the Elimination of All Forms of Discrimination against Women

CERD - International Convention on the Elimination of All Forms of Racial Discrimination

CRC - Convention on the Rights of the Child

CSR - Corporate Social Responsibility

EOA - Equal Opportunities Act

EOC - Equal Opportunities Commission

EOT - Equal Opportunities Tribunal

ICESCR - International Covenant on Economic, Social and Cultural Rights

ICCPR - International Covenant on Civil and Political Rights

ISM - Intercontinental Slavery Museum, Mauritius Ltd

MTJC - Mauritius Truth and Justice Commission

NGO - Non-Governmental Organisation

NMC - Nelson Mandela Centre for African Culture Trust Fund

NSIF- National Social Inclusion Foundation

OHCHR - Office of the United Nations High Commissioner for Human Rights

SRM - Social Register of Mauritius

UDHR - Universal Declaration of Human Rights

UNDP - United Nations Development Programme

UNESCO - United Nations Educational, Scientific and Cultural Organisation

PWD - Persons with disabilities

SDG – Sustainable Development Goal

VF - Verts Fraternelles

Abstract

In 2009, the country set up a Truth and Justice Commission to investigate the effects of slavery and colonialism on Mauritian society and aim at achieving social justice and unity. From the emancipation period till now, the Creole population has been marginalized and faced discrimination, exclusion, hate speech, and ethnic or racial stereotypes or stigma in education, economic situation, employment, health, housing, and political life. The state has failed to recognize any form of discrimination against and human rights violations of Creoles. Numerous works of literature have discussed the issue of racism and discrimination in the country, but the paper concentrates on identifying their contemporary forms, assessing their impact on Creoles' economic, social, and cultural rights, and examining the role of civil society in the realisation of transitional justice processes. The aim of this research is to firstly investigate both the positive and negative contribution of civil society in the implementation of the recommendations of the Truth and Justice Commission and measures taken to combat racism and discrimination against Creoles. In addition, the paper can serve as an advocacy tool and mobilize civil society organisations to hold the state accountable for the violation of human rights of Creoles and provide viable solutions and a monitoring framework to address discrimination in Mauritius through a victim-centered, collaborative and human rights based approach.

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Chapter 1

1.1. Brief Background

Mauritius is a multi-ethnic, linguistic, racial and ethnic¹ diversified country and stable society.² Despite being peaceful, the communities exhibit a passive aggressive behavior against each other which is often the source of racial violence which tends to be embellish in history. Throughout colonial rule namely Netherlands, British and French, the slaves faced cruel, inhumane and degrading treatment as well as high rate of sexual violence and exploitation of women, demasculisation of men, marginalisation, exclusion and discrimination.³ The impacts of slavery and colonisation have contributed to fracturing the individual and collective identities of Creoles and derived into their exclusion and marginalisation thereafter.⁴

In 2009, the government decided to establish the Mauritius Truth and Justice Commission (MTJC) to address legacy of slavery and indentured servitude and its impacts on modern Mauritius.⁵ But both the state and the MTJC have failed to include civil society participation in the transitional justice process. Despite the findings of the MTJC acknowledging that the Creoles are being marginalized and providing a plethora of recommendations to address the issue, the state has failed to recognize the presence of such human rights violations within its society.⁶

Mauritius is committed to uphold human rights and has ratified the fundamental regional and international human rights instruments including the International Convention on the Elimination of All Forms of Racial Discrimination(CERD).⁷ The constitution of Mauritius prohibits any form of discrimination based on race, caste, place of origin, political opinions,

¹ L Jeffrey ‘Creole festivals and Afro-Creole cosmopolitanisms in Mauritius’ (2010) *Journal of Social Anthropology*.

² [Committee on Elimination of Racial Discrimination considers Report of Mauritius | OHCHR](#) (accessed on 20 April 2024).

³ L Sekhu ‘Mauritius Truth and Justice Commission (2009-2011)’ (2023) *African Transitional Justice Hub* [Mauritius Truth and Justice Commission \(2009-2011\) African Transitional Justice Hub \(csvr.org.za\)](#) (accessed 25 March 2024).

⁴ Sekhu (n 3), R Croucher, M Houssart & D Michel ‘The Mauritian Truth and Justice Commission: legitimacy, political negotiation and the consequences of slavery’ (2017) 326-346 [The Mauritian Truth and Justice Commission: Legitimacy, Political Negotiation and the Consequences of Slavery | African Journal of International and Comparative Law \(eupublishing.com\)](#) (accessed on 27 April 2024).

⁵ Sekhu (n 3) and Croucher, Houssart & Michel (n 4) 326-346.

⁶ [Committee on the Elimination of Racial Discrimination examines the report of Mauritius | OHCHR](#) (accessed on 20 April 2024).

⁷ tinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=111&Lang=EN (accessed on 20 April 2024).

colour, creed or sex and Mauritians all people are entitled to human rights guaranteed under the chapter II of the constitution. However, in its section 31(2)(3)(4), the constitution classifies the population of Mauritius as comprising of 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”.⁸ The “residual community,” includes the Franco-Mauritians, the coloured persons and the Afro-Mauritians.⁹ This is the root of contemporary marginalisation of the Creoles. The constitution, supreme law of the country, which is supposed to bear the “foundations of commonalities” and forge a road to a common Mauritian identity and national unity,¹⁰ has failed to recognise all communities and therefore impair inclusiveness, representation, peace and nation-building.¹¹ This has further exacerbated the inability of Creoles to build up a collective identity and sense of belonging, fractured by slavery and all sufferings, inhumane and degrading treatment they faced under the colonial rule.¹² It has also contributed to the continuation of discrimination against the Creoles.

Furthermore, the state does not collect disaggregated data based on ethnicity in conformity with general recommendation No. 24 (1999) under article 1 of the CERD which emphasise the significance of collecting and providing accurate demographic data to combat racial discrimination effectively and therefore cannot evaluate pervasiveness and extent of inequality and discrimination in the country and provide reparation for it.¹³ There is therefore a pressing need to address the issue of discrimination and ensure that all Mauritians equally enjoy their human rights.

⁸ The constitution of Mauritius, section 31(2)(3)(4).

⁹ SS Sookrajowa ‘Legibility and the politics of ethnic classification of the population in the national census of Mauritius: A statist perspective’ (2021) 128–148 [Full article: Legibility and the Politics of Ethnic Classification of the Population in the National Census of Mauritius: A Statist Perspective \(tandfonline.com\)](#) (accessed on 20 April 2024).

¹⁰ LRB Fleiner ‘Constitution making and nation building (Scientific summary of sessions 5 and 17 based on case-studies of Cyprus, Serbia and Montenegro, South Africa and Switzerland)’ [1 \(constitutionnet.org\)](#), (accessed 27 April 2024).

¹¹ E King & C Samii ‘Diversity, violence, and recognition: how recognizing ethnic identity promotes peace’ (2020) [Diversity, Violence, and Recognition: How recognizing ethnic identity promotes peace 0197509452, 9780197509456 - DOKUMEN.PUB](#) (accessed 27 April 2024).

¹² Croucher, Houssart & Michel (n 4) 326-346.

¹³ Concluding observations on the combined 20th to 23rd periodic reports of Mauritius CERD Committee (19 September 2018) (CERD/C/MUS/20-23) 2018.

1.2. Problem Statement

13 years after the publication of the MTJC's reports, many of their recommendations are yet to be implemented. The recommendations of the commission have not been seriously considered and the Creole population are still being excluded, marginalised and facing discrimination in various sectors. Civil society organisations (CSO) including Non-Governmental Organisations (NGOs) and key institutions have been disregarded by both the MTJC and the state as main implementing partners to help the Creole population enjoy their human rights, access justice, combat discrimination, promote their socioeconomic development and help build an inclusive society with equity and equality as founding values. In addition, the participation of the slaves' descendants was not fully integrated in the process.¹⁴ Moreover, in light of the MTJC's findings, no action plan and monitoring and evaluation mechanism has been created to ensure that the commission's recommendations are implemented. Today, the Creole population continue to be discriminated against and the inequality rift keeps widening between the latter and the rest of the population while the state continues to turn a blind eye to the reality. There is a need for recognition of the marginalisation and discrimination the Creoles are facing and their impact on their ability to fully enjoy both their civil and political but also economic, social and cultural rights.

1.3. Research Questions

Main Research Question: How far has Mauritius fulfill its obligation to realise rights to truth, justice and reparation of victims of slavery, slave trade and colonialism?

The main question is supplemented by the following sub-questions:

1. How far have the recommendations of the MTJC been implemented and what has been their impact?
2. What are the contributing factors to and effects of exclusion and marginalisation on the Creole population?

¹⁴ R Boswell *Can Justice be achieved for slave descendants in Mauritius?* (2014) 146-161 *International Journal of Law, Crime and Justice* [Can justice be achieved for slave descendents in Mauritius? - ScienceDirect](#) (accessed on 27 April 2024).

3. Have civil society organisations contributed to realisation of transitional justice for Creole population?
4. What are the structural and non-structural initiatives that should be adopted to ensure Creoles have access to justice and for creation of a more inclusive and equal society?

1.4. Literature Review

Transitional justice in Mauritius is anchored in the creation of the MTJC and its effectiveness and legitimacy has been subjected to numerous debates. The main and common critics of the MTJC were that despite the milestones it represents for realisation of social justice and equality in Mauritius, it was modelled on the South African Truth and Reconciliation Commission which have an isolated legal and formal approach¹⁵ which has been transposed to the MTJC. This approach does not fit Mauritius' community based approach to social issues and has led to lack of involvement of public engagement in the process¹⁶ as well as the late establishment of the commission and the extended investigation period. Boswell discussed the challenges to achieving transitional and restorative justice for slave descendants and this was supported by Croucher and others given the fact that not all victims of slavery could be reached. The two scholars both stressed on the fundamental need to ensure participation of civil society in order to achieve transitional justice.¹⁷ The MTJC did not consider financial compensation as measures of reparation and preferred structural or symbolic measures to successfully achieve redress. Another weakness of the MTJC has been the lack of dissemination of findings of the commission and lack of support from the media. Essentially, the MTJC succeeded in producing concise findings but failed to achieve transitional justice due to failure to implement its recommendations and involve public participation.¹⁸

The country has established several measures to prevent and address discrimination. The Constitution guarantees equal rights without discrimination on the basis of race, caste, place of origin, political opinions, colour or sex and discrimination is further addressed by the Equal Opportunities Commission (EOC), the Equal Opportunities Act (EOA), and the Equal

¹⁵ Boswell (n 14) 146-161 and L Couacaud 'From plantations to ghettos: the longue durée of Mauritius's former slave population' (2023) [Full article: From plantations to ghettos: The longue durée of Mauritius's former slave population \(tandfonline.com\)](#) (accessed 30 April 2024).

¹⁶ Boswell (n 14) 146-161.

¹⁷ Croucher, Houssart & Michel (n 4) 326-346 and Boswell (n 14) 146-161.

¹⁸ Croucher, Houssart & Michel (n 4) 326-346 and Boswell (n 14) 146-161.

Opportunities Tribunal(EOT). However, the connection between marginalisation and exclusion of Creole population and slavery’s legacy have been highly discussed.¹⁹ The discussions have emphasized their struggles to build a collective identity, the transposition of stereotypes and stigmas of ancestors to new generations and poor public participation in public spheres.²⁰ Few have acknowledged discrimination against Creoles in Mauritius notably the MTJC,²¹ Jeffrey²²and Boswell²³ who explicitly qualify Mauritius as racist and denounce the various forms of discrimination which blights the Mauritian society. In its concluding observations in 2018, the Committee on the CERD acknowledges existence of “deep-rooted discrimination faced by the Creoles, including those living on Agalega and Rodrigues Islands”²⁴ and in those of 2013²⁵ against the Rastafari, a subgroup of the Creole population. It has been proved that Creoles face discrimination in both the private and public sphere including education, housing, employment and public spaces like shopping centres and the family²⁶ as well as “institutional racism, ethnic stereotyping and nepotism”²⁷

The extensive and rooted marginalisation, exclusion and discrimination against the Creole population coupled with discourse and cleavages within the Mauritian society was titled as *le malaise Créole*, a theory developed by the anthropologist Rosabelle Boswell have ignited continuous debates²⁸. Despite the facts brought forward by the scholars, the CERD and the MTJC about the existence of racial discrimination against the Creole population, the state still denies the existence of any form of racism and discrimination against the Creoles.²⁹ The NGO Affirmative Action(AA) has maintained that despite CERD’s acknowledgement of discrimination in Mauritius, MTJCs conclusions, the Creoles have faced gradual regression in

¹⁹ WFS Miles *The Creole Malaise in Mauritius* (1999) Oxford University Press on behalf of The Royal African Society [The Creole Malaise in Mauritius \(jstor.org\)](https://www.jstor.org/stable/3629282) (accessed on 30 April 2024); Croucher, Houssart & Michel (n 4) 326-346.

²⁰ Couacaud (n 16), V. Teelock ‘*The influence of slavery in the formation of Creole identity*’ (1999) *comparative studies of South Asia, Africa and the Middle East*, Croucher, Houssart & Michel (n 4) 326-346

²¹ Mauritius Truth and Justice Commission.

²² Jeffrey (n 1).

²³ Boswell (n 14) 146-161.

²⁴ CERD Committee OHCHR (n 6) and Affirmative Action *Alternative Report 2018 to the Committee for Elimination of Racial Discrimination* (2018).

²⁵ CERD Committee OHCHR (n 2).

²⁶ Boswell (n 14) 146-161.

²⁷ Jeffrey (n 1).

²⁸ Miles (n 20), Couacaud (n 16), TH Eriksen ‘*Creole culture and social change*’ (1986) *Journal of Mauritian Studies*; N Lallmahomed Aumeerally ‘*Minority rights and anti-discrimination policy in Mauritius – the case of ‘Malaise Creole’*’ (2017) 446–463 *International Journal of Cultural Policy* [Full article: Minority rights and anti-discrimination policy in Mauritius – the case of ‘Malaise Creole’ \(tandfonline.com\)](https://www.tandfonline.com/doi/full/10.1080/10717825.2017.1375000) (accessed 30 April 2024).

²⁹ CERD Committee OHCHR (n 6).

numerous spheres as is illustrated in Chapter 3.³⁰ Indeed, Miles discussed the socio-economic gap between Creoles and other ethnic groups by highlighting the high number of Creoles living in poverty.³¹ This has been worsened by geographic segregation and concentration of the Creole population in *'cités* which Couacaud described as ghettoization of the Creole population³² and “racial segregation” by AA³³ which resulted in a collective “sense of collective injustice”.³⁴

In conclusion, most studies have focused on understanding marginalisation of Creoles by focusing on establishing the link between marginalisation of Creole population and slavery and analysing MTJC’s report and outcomes. However, the effectiveness of transitional justice measures and contemporary marginalisation of Creoles have not been addressed. This study therefore addressed the gap in research by analysing contemporary marginalisation and discrimination against Creoles through an intersectional and human rights approach. The paper assessed how it affects the most vulnerable groups among them and people from different socio-economic background. Furthermore, the study analyses the measures taken by the state to implement the recommendation of the MTJC and propose possible solutions by focusing on the role of civil society in realisation of transitional justice in Mauritius.

1.4. Methodology

The study involves use of data collected through desktop research. Secondary data was gathered by reviewing existing literatures on transitional justice, books, journal articles, government and human rights institutions reports, reports of the Committees on CERD and International Covenant on Economic, Social and Cultural Rights (ICESCR) and mechanisms from other countries to address social injustices and racial discrimination in multicultural societies. Data collected helped identify the forms of discrimination the Creoles face, contributing factors as well as its impact of racial discrimination on their economic, social and cultural rights.

³⁰ Miles (n 20), *Affirmative Action Alternative Report 2018 to the Committee for Elimination of Racial Discrimination* (2018).

³¹ Miles (n 20).

³² Couacaud (n 16) and Miles (n 20).

³³ AA (n 31).

³⁴ R Kistnasamy *‘The Matadeen Report and Human Rights: The February 1999 Mass Riots’* (2000) *Lagazet Lalit de Klas*.

1.5. Structure

This study comprises of 5 chapters. Chapter 1 provides an overview of the problem of marginalisation and discrimination in Mauritius by focusing on the different outcomes of existing literature. Chapter two analyse the evolution of the Creole community in the Mauritian society from colonial period to date and provides an illustration of the transitional justice process in Mauritius by analysing the MTJC and the measures taken to its implement recommendations and their effectiveness. Chapter 3 focuses on an analysis of marginalisation of Creoles and identify the various forms of discrimination they are facing and contributing factors. The chapter also assesses whether discrimination bears intersectional characteristics and the impact of continued injustice on human rights of Creoles. Chapter 4 focuses on the role of civil society in realisation of transitional justice and provide some possible measures to be adopted by the state to build inclusive and equal society while Chapter 5 concludes the work and provide recommendations.

1.6. Limitations of Study

Limited access to information is the main shortcoming of this dissertation. Very few literature has dealt with transitional justice in Mauritius and have discussed the MTJC and while many literatures have addressed social justice through analysis of the Malaise Creole and some of them are not accessible. Furthermore, latest studies and reports conducted by key institutions and government are not available online and there is limited statistical data (especially disaggregated one). The study relies is secondary data only and do not involves any data collected through primary sources such as interviews and focus groups due to failure to receive ethics clearance. This might ultimately result in failure to collect sufficient data.

Chapter 2

2.1. Introduction

This chapter delves into history of the country. It illustrates the struggles, resistances and contributions of Creoles from slavery to emancipation under the colonial rule but also how they evolve individually and collectively post-independence and in today's era. In addition, it discusses the Mauritian concept of transitional justice and identify its weakness, strengths and effectiveness.

2.2. Transitional Justice: The Background

Transitional justice is all legal and non-legal initiatives taken by states to address past legacy of a wide-range conflict and human rights violations and abuses usually during transition from an authoritarian to a democratic regime. Transitional justice has played significant role in the promotion of nation building, peace, legitimacy, respect of human rights and rule of law, reparation, reconciliation and guarantees of non-occurrence of violence and human rights violations.³⁵ Transitional justice usually involves complementary judicial and non-judicial measures including institutional reform, prosecutions, provision of reparation to victims, truth commissions, and other investigation strategies to address legacies of massive human rights violations.³⁶ Over the years, transitional justice has been used extensively in Africa and has taken various forms including prosecutions or criminal trials like in Ethiopia and Sudan, use of both national, regional and international criminal justices say in Central African Republic, Rwanda, Sierra Leone, Uganda and Democratic Republic of Congo, by provision of reparations like in South Africa, Uganda and Algeria and other through truth commissions such as Morocco, Liberia, Ghana.³⁷

³⁵ [World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance | United Nations](#) (accessed on 30 April 2024) ; UN General Assembly resolution 2106 (XX) CERD 1965 [International Convention on the Elimination of All Forms of Racial Discrimination | OHCHR](#) (accessed 21 April 2024).

³⁶ [droi20060828_definition_en.pdf](#) (accessed 5 November 2024) and A Mayer-Rieckh and P De Greiff 'Transitional Justice and Development: Making Connections' (2009) 4 *Social Science Research Council New York*.

³⁷ R Duthie, 'Building Trust and Capacity: Civil Society and Transitional Justice from a Development Perspective' (2009) *International Center for Transitional Justice*.

2.2.1 Slavery in Mauritius

The Mauritius slavery system was developed to serve the economic quest of the Dutch, French and British colonial powers. In 1638, the country saw the birth of slavery under the Dutch rule. The labour system was composed of convicts from East India and slaves.³⁸ Alongside the slavery system, a powerful resistance movement known as “Maroonage” composed of slaves who fled their masters to build a community away from plantations, came into existence.³⁹ The Dutch finally left the island following two unsuccessful attempts to develop and sustain slave trade and meet their trading endeavours as a result of numerous attacks from their two commercial rivals the British and the French as well as the French pirates and maroon slaves.⁴⁰ After settling in 1710, the French were the ones who managed to develop an effective slavery system and slave trade. They divided the land among soldiers, workers and colonists and the latter were assigned slaves. Under the French rule, the working conditions of slaves were harshened and they described by Fokeer as “the darkest age of irresponsibility to law and cruelty absolutely intolerable”.⁴¹ Slavery was regulated by the Code Noir, a set of laws which commodified slaves defining them as “Chattels” so that they can be “insured and inherited” and imposed major restrictions that prevent slaves from marrying, moving, gathering, or practicing their own religion.⁴² Despite their efforts, the maroon slaves were unable to overthrow the regime due to the fierce counterattacks from the colonisers using special forces known as “Maroon detachments”.⁴³ However, a movement called ‘Les Amis des Noirs’ led by two women and comprising influential colonists, aimed to alleviate the burden of slaves.⁴⁴ The British finally took over the Island in 1810, as a product of the Treaty of Paris. Despite succeeding in abolishing slavery in 1835, the British turned a blind eye on continuous illegal slave trade to support the Franco Mauritians elites and the French Corvée system whereby private individuals’ slaves were lent to the government to carry public work was maintained.⁴⁵

³⁸ MTJC (n 36) 59.

³⁹ H Gerbeau ‘Religion et identité créole à l’île Maurice dans histoire et missions chrétiennes’ (2009) 53-71 [Religion et identité créole à l’île Maurice | Cairn.info](#) (accessed 25 March 2024), Boswell (n 14) 146-161, Sekhu (n 3), and Miles (n 20).

⁴⁰ MTJC (n 36) 59.

⁴¹ AF Fokeer ‘The Negroes in Mauritius’ (1992) 200 *The Journal of Negro History* <https://doi.org/10.2307/2713525> (accessed 25 March 2024).

⁴² Boswell (n 14) 146-161.

⁴³ MTJC (n 36) 59.

⁴⁴ Fokeer (n 39) 201.

⁴⁵ Croucher, Houssart & Michel (n 4) 326-346.

2.2.2. Exploring the Creole Community in Mauritius

Born out of colonialism, immigration and slavery, Mauritius has throughout the years turned into a kaleidoscopic population with different cultures, religions and languages.⁴⁶ The community is known to be one of the most divided in the country. This cleavage dates back to colonial rule before the abolition of slavery, where the slaves were divided into various groups based on their skills and the tasks they were assigned. Indeed, the various groups include “yard Negroes”, “house Negroes”, “Negroes of talents” and “pickaxe Negroes” and the subgroups lived separately. Post-independence and after the abolition of slavery, the community were still divided and did not share any common culture, religion or identity in comparison to the other communities.⁴⁷ The definition of Creole itself has changed throughout the years. It was firstly used to designate a white person born on an island, then it was extended to all islanders,⁴⁸ then a racial category of African and Malagasy descendent⁴⁹, then descendent of slaves.⁵⁰ The modern conceptualisation of a Creole lies in the constitution’s classification that is someone who is not from any other communities and non-white with the Gens de Couleurs inclusive.⁵¹ A Creole can be a mix of two or more other communities, with mixed origins, mostly African but also Indian, Chinese and European. Creole also defines a racial and residual community.⁵²

2.3. Malaise Créole

The Malaise Créole refers to a “social disease”⁵³ that describes the “experience of victimisation [the Creoles] through racial and cultural domination”.⁵⁴ It characterizes the disparity, misidentification⁵⁵ social exclusion and oppression of slave descendants in the Mauritian

⁴⁶ S Maurer ‘Post-Colonialism: The So-Called Malaise Creole in Mauritius’(2024) 87 *Antrocom Online Journal of Anthropology* [Post-Colonialism-The-So-Called-Malaise-Creole-in-Mauritius.pdf](#) (researchgate.net) (accessed 10 August 2024).

⁴⁷ Maurer (n 44) 91.

⁴⁸ R Boswell ‘Le Malaise Créole’ (2004) *IASS Newsletter* *IIAS Newsletter#33 Frank (accessed on 25 March 2024).

⁴⁹ R Boswell *Le Malaise Créole: Ethnic identity in Mauritius* (2006) New York-Oxford, Berghahn Books

⁵⁰ N Nlambo *Violent Conflicts, Fragile Peace* (2008) [Violent Conflicts, Fragile Peace - Norman Mlambo - Google Books](#) (accessed on 04 April 2024) and M Vaughan *Creating the Creole Island: Slavery in eighteenth-century Mauritius* (2005) [Creating the Creole Island: Slavery in Eighteenth-Century Mauritius - Megan Vaughan - Google Books](#) (accessed on 04 April 2024).

⁵¹ Vaughan (n 48).

⁵² Vaughan (n 48).

⁵³ Miles (n 20).

⁵⁴ Boswell (n 14) 146-161.

⁵⁵ N Fraser *Social justice in the age of identity politics: Redistribution, recognition and participation* in N Fraser & A Honneth (eds.) *Redistribution or recognition? A political-philosophical exchange* (2003) 7-109.

society and their marginalisation by other ethnic communities as a result of the after-effects of slavery.⁵⁶ Indeed, the roots of marginalisation of the Creole community lies in the emancipation period which marked a new chapter in the lives of ex-slaves, it marked the beginning of their lives after 112 years of slavery and 6 years of apprenticeship, a pre-requisite for ex-slaves as part of compensation to slave owners post abolition of slavery in 1835. Despite the clear claims of emancipated enslaved persons to be provided with the “minimum conditions necessary to make their freedom effective” that is free houses and land for cultivation, the ex-slaves were chased from the fields with their belongings and children with nowhere to go.

In its report, the MTJC cited Remy Ollier’s illustration of the scene on the day marking the end of the apprenticeship maintaining that:⁵⁷

“That day, they were inhumanely driven off almost all the properties they had built with their sweat. That very day, good and bad subjects alike, were seen walking towards the city, their households on their heads - the women dragging the children by the hand, not knowing where to go and asking for hospitality which they were not shown to be willing to grant.”

The newly freed men refused to continue to work for their masters given the inhumane working conditions they have been subjected to during slavery and apprenticeship period. This was further ignited by the fact that their demands for decent wages for extra service during the apprenticeship were rejected. The white political and economic elites decided to take advantage of their refusal and escape their duty towards the ex-apprentices. They launched the propaganda attributing slaves’ refusal to work to laziness, to favor their mercantilist interests through the cheap labour strategy by using indentured labourers as alternatives. The degrading and negative image painted by the colonisers still endures as Creoles are stigmatized as being lazy, they do not work in agriculture and were chased off the plantations.⁵⁸ The introduction of migrant workers was undeniably the coup de grâce for ex-slaves as it drowned their hopes to work in dignified conditions and to integrate and benefit from the colonial society. It was the ex-slave

⁵⁶ Gerbeau (n 37) 53-71; Boswell (n 13); R Boswell ‘Unravelling le malaise Créole: Hybridity and marginalisation in Mauritius’ (2005) *Identities: global studies in culture and power* 195-221.; Boswell (n 13); R Boswell ‘Unravelling le malaise Créole: Hybridity and marginalisation in Mauritius’ (2005) 195-221. *Identities: global studies in culture and power*.

⁵⁷ MTJC (n 36) 68. I translated the citation which was originally in French and stated “Ce jour-là, ils furent inhumainement chassés de presque toutes les propriétés qu’ils avaient fécondés de leur sueur. Ce jour même, bons et mauvais sujets, on les vit descendre vers la ville, leur ménage sur la tête – les femmes trainant les enfants par la main, ne sachant où aller et demandant une hospitalité que l’on ne se montrait pas disposer à leur accorder.”

⁵⁸ MTJC (n 36) 220.

owners who were compensated for the loss of their property.” This marked the beginning of the Creoles’ struggle, the Malaise Créole.⁵⁹

2.3.1. The untold Truth about the Malaise Créole: Creoles Upheaval

The Malaise Créole has been perceived as the struggle of Creoles for increased social recognition, integration and equality⁶⁰ and little has been said about its relations to the resistance and advocacy movements from the Creoles and positive impact on the society. The community is known to be “the most diverse and ... the most factionalized community in Mauritius’, one whose internal class divisions have usually outweighed ethnic solidarity”.⁶¹ However, the same malaise Creole which has torn the community away from the society is what unites them. Anne Eichmann pointed out that this lens of seeing slavery system as victims’ manufacturer and focusing on its disruptive effects, prevents us from discussing of realisations and capabilities. This echoes the voices of maroon slaves like Bellaca and Pompée who fought against the oppressive system, pressing the need to view slaves as history makers.⁶² Indeed, the malaise créole started from the ex-slaves claims, as a community, for humane condition of living and social integration after apprenticeship. The fight for a dignified life continued with the rise of the age of consciousness giving rise to leadership and intellectual elites and increasing claims of justice and reparations within Creole community. It started with the Organisation Fraternelle now Les “Verts Fraternelles(VF)”, a Creole protest movement born following the Plaine-Verte riots in 1968.⁶³ In citing Norbert Benoit, Gerbeau refers to other key moments including the 1976 inauguration of a monument in memory of victims of slavery system, 1985 marking the first official commemoration of abolition of slavery⁶⁴ and 1993 when Father Roger Cerveaux, a catholic Creole priest, denounced the marginalisation of the Creole population which was then labelled as the “Malaise Créole.” The priest denounced the Church’s inaction regarding the desperate claims of the Creoles, the former being their

⁵⁹ MTJC (n 36) 66-69.

⁶⁰ Boswell (n 14) 146-161, Fraser (n 53) and Couacaud (n 16).

⁶¹ Miles (n 20).

⁶² A Eichmann ‘From slave to Maroon: the present-centredness of Mauritian slave heritage’ (2012) 319–335 *Atlantic Studies* <https://doi.org/10.1080/14788810.2012.688627> (accessed n 15 April 2024).

⁶³ Gerbeau (n 37) 53-71.

⁶⁴ Gerbeau (n 37) 53-71.

highest port of call to address their plea.⁶⁵ Another key event was the 1999 riots which started after the death of the Rastafarian singer Kaya in police custody. The conflict illustrated long-standing and increasing feeling of resentment and alienation experienced by the Creoles and the need for redress⁶⁶

2.4. Transitional Justice in Mauritius: The Making

2.4.1. Background

Mauritius started its transitional justice journey with the establishment of the MTJC which in the then Prime Minister's words aimed at "paving the way to reconciliation, social justice and national unity through the process of re-establishing the historical truth".⁶⁷ The commission conveyed overwhelming efforts to produce its 6-volume report delving into slavery and colonial past of the country and examining its impact on the Mauritian society. Volume I provides an in-depth analysis of history of the country, slavery, slave trade and indenture and its legacies on socio-economic life in modern Mauritius with numerous recommendations to achieve social justice with a specific time frame for implementation, Volume II addresses land dispossession by emphasizing on its legal and administrative aspects, Volume III provide information on the surveys focused on modern Mauritius while Volume IV summarises literature review of archives on history, economics, anthropology and psychology. Volume V and VI contain digitalised information of testimonies of participants from public hearing and data collected during field-work and a database as reference for recommended institutions to be created respectively.⁶⁸ The commission's work showed that transitional justice in Mauritius is about moving from an elitist, fractured and racist society to an equal, equitable and united one.

2.4.2. The Truth and Justice Commission: Historical Background

The need for transitional justice was first brought forward by VF. The VF was the first organisation to regroup people of African and Malagasy descents and has highly influenced

⁶⁵ Gerbeau (n 37) 53-71.

⁶⁶ Lallahomed-Aumeerally (n 29) 446-463 and Miles (n 20).

⁶⁷ MTJC (n 36) 59.

⁶⁸ MTJC (n 36) 51.

the Creoles consciousness by consistently fighting for the communities' recognition. Their untiring commitment and advocacy led to meaningful changes including official observance of the abolition of slavery on 1 February, daily radio, and television broadcasts in Creole, designation of Le Morne Brabant as a site of memory and introduction of Creole language as medium for instruction in schools.⁶⁹ The party's main battle was for descendants of slaves to be compensated for the atrocities they faced during colonial rule. When Sylvio Michel, the party leader was elected to parliament, he successfully advocated for establishment of a committee on reparations for slavery. Despite the creation of the committee in 1999, its main objectives shifted as a result of the 1999 ethnic riots. It ultimately lost focus of the investigation into impact of slavery and failed to complete the process after concluding that the provision of compensation to slaves descendants will further exacerbate the ethnic tensions between the Hindus and Creoles.⁷⁰ In 2002 Sylvio Michel attempted to establish a special committee but he failed, whilst attempts by Alliance Sociale in 2004 did not yield anything. The commission's mandate was extended to the descendants of indentured labourers as part of the political deal.⁷¹ The need for transitional justice through investigation into slavery was further influenced by the 2001 Durban World Conference on racism and United Nations 2002 Resolution 56/266 designating slavery as a crime against humanity. The MTJC therefore became part of the political agenda of the Labour Party in 2005. This was followed by the setting up of a task force, consisting of future commissioners, in 2007 and finally the enactment of the Truth and Justice Commission bill in 2008.⁷²

2.4.3. The Mauritius Truth and Justice Commission

The MTJC was the first commission mandated to examine colonial history and assess the impact of slavery and indentured labour and its mandate extended to investigation into complaints of land dispossession or prescription.⁷³ It is also unique as it aims at covering more

⁶⁹ MTJC (n 36) 382.

⁷⁰ Croucher, Houssart & Michel (n 4) 326-346.

⁷¹ Croucher, Houssart & Michel (n 4) 326-346.

⁷² Sekhu (n 3), Croucher, Houssart & Michel (n 4) 326-346 and MTJC (n 36) 8.

⁷³ Truth and Justice Act 2008.

than 275 years of history, the longest period that any truth commissions had covered before and its scope extends to socio-economic abuses.⁷⁴

The commission's focus was on three main areas of research notably:

- i. Study of the country's history from 1723-2009 by focusing on hidden or untold history
- ii. The impact of indentured labour and slavery on Mauritian society
- iii. Identifying ways to achieve social justice⁷⁵

The commission's methodologies and strategies were to examine history thematically through numerous project teams on "Slave Trade and Slavery; the Indentured Experience; Mauritian Economic History; Culture, Ethnicity, Memory and Identity; Education; Towards a Just Society; Outer Islands; Recommendations."⁷⁶ The project teams were supplemented by workshops regrouping experts from the field mentioned above and information gathered from individuals through hearings and submissions from individuals and civil society.⁷⁷

2.4.4. The MTJC: Achievements, Challenges and Weaknesses

The Office of the United Nations High Commissioner for Human Rights (OHCHR) maintains that transitional justice processes should be:

2.4.4.1. Context-specific, Nationally owned, Participative and empowering⁷⁸

Despite the fact that the commission bears its roots in the Creoles' consciousness era, the establishment of the MTJC and its objectives have been highly politicized throughout the years. Indeed, although the initiative is laudable, the commission which initially was on its way to being the result of advocacy and long-term political negotiations by the VF, was reduced to a compromise to reach a consensus between parties which aimed at building their coalition and

⁷⁴ P Pillai 'Truth commissions and colonial atrocities: moving the needle further towards state responsibility?' (2019) *Opinio Juris Truth Commissions and Colonial Atrocities: Moving the Needle Further Towards State Responsibility?* - *Opinio Juris* (accessed 2 May 2024).

⁷⁵ MTJC (n 36) 46.

⁷⁶ MTJC (n 36) 7.

⁷⁷ Sekhu (n 3), Croucher, Houssart & Michel (n 4) 326-346 and MTJC (n 36) 8; S Slayor 'The Truth and Justice Commission of Mauritius' (2022) *The Truth and Justice Commission of Mauritius – Participedia* (accessed 2 May 2024).

⁷⁸ [About transitional justice and human rights | OHCHR](#) (accessed 2 May 2024).

fleshing out their electoral manifesto and rallying voters.⁷⁹ The common critiques on the MTJC was that despite the milestones is that the commission failed to consider victims' demands and expectations as both victims⁸⁰ and all 14 civil society groups working with the former, emphasised the need for monetary or non-monetary compensation for descendants of slaves as reparation,⁸¹ but the commission and government opted for a non-monetary compensation based reparations only.⁸² Furthermore, the government failed to fully include civil society and victims in the conception and implementation of the MTJC.⁸³ As a result, rather than being owned by the society as a whole, the project was owned by the government and the 2007 task force which determined the terms of reference, functions and powers of the commission. Despite measures taken by the commission including receiving written submissions from the public as contribution to their work,⁸⁴ the lack of participation by civil society and the victims resulted in the public illegitimacy of the commission and failure to gain trust of the population especially the Creoles.⁸⁵

2.4.4.1. Inclusive, victim centered and gender sensitive ⁸⁶

The commission managed to develop inclusive data collection methods by including oral interviews and both private and public hearings in order to be able to reach out to illiterate participants which were mostly Creoles.⁸⁷ However, the commission failed to implement a victim-centered approach as it failed to effectively include the descendants of slaves in the process due to major obstacles including failure to: communicate in simple and comprehensive language when engaging with victims, capture participants' interests in the project and during interview, reluctance to participate and trust in aims and ultimate effectiveness of the project.⁸⁸ This challenge could have been avoided by working collaboratively with the plethora of NGOs with field work experience from their outreach programmes like Caritas Ile Maurice, LoveBridge, SOS Children's Villages Mauritius and Action Familiale. In addition, the

⁷⁹ Croucher, Houssart & Michel (n 4) 326-346 and L Lallah 'The truth and justice commission debacle' (2009) *Lalit News* (lalitmauritius.org) (accessed 2 May 2024).

⁸⁰ Croucher, Houssart & Michel (n 4) 326-346.

⁸¹ MTJC (n 36) 382-389.

⁸² Croucher, Houssart & Michel (n 4) 326-346, MTJC (n 36) 8 and Slayor (n 74).

⁸³ Boswell (n 14) 146-161.

⁸⁴ MTJC (n 36) 8.

⁸⁵ Croucher, Houssart & Michel (n 4) 326-346 and MTJC (n 36) 8 and Slayor (n 74).

⁸⁶ CERD Committee OHCHR (n 6).

⁸⁷ MTJC (n 36) 10.

⁸⁸ MTJC (n 36) 5-6.

commission's mandate failed to explicitly cover sexual and gender based violence and as a result, the MTJC, had failed to effectively assess impact of slavery and slave trade on women. In addition, conflict-related sexual violence was disregarded.⁸⁹

2.5. Transitional Justice in action: Implementing MTJCs recommendations conform with the Four Pillars of Transitional Justice

The measures taken by the MTJC has been implemented in line with the main pillars of transitional justice identified by the OHCHR notably criminal prosecutions, truth seeking, reparations and guarantee of non-repetition.⁹⁰

2.5.1. MTJC's recommendations overview

The commission's mandate does not provide for criminal prosecutions and the task force initially omitted "identification of institutions and individuals responsible" as one of the projects' objectives.⁹¹ Similarly for reparations, the MTJC focused only on structural reforms rather than other compensations given the failure of financial compensation in the case of the Chagossians.⁹² Together with the structural reparations, the recommendations issued by the MTJC served as measures to ensure that the country works towards a less racist and elitist and more equal and inclusive society. The main recommendations include:⁹³

- (a) memorialising slavery and slave trade in visible and strategic locations;
- (b) a better understanding and more inclusive, Mauritian history and culture;
- (c) a better and increased protection of Mauritian heritage;
- (d) a less racist and elitist society;
- (e) a more democratic public life,
- (f) empower Mauritians of African and Malagasy origin.
- (g) measures to increase economic and social justice
- (h) Reconstituting the Mauritian Family

⁸⁹ Sekhu (n 3).

⁹⁰ P Hayner 'Transitional justice in peace processes United Nations policy and challenges in practice' (2022) *UN Peacemaker* *SG-GuidanceNote-Peace-Processes-digital.pdf (un.org) (accessed 5 May 2024).

⁹¹ MTJC (n 36) 8.

⁹² Croucher, Houssart & Michel (n 4) 326-346.

⁹³ MTJC (n 36) 19-48 ; 394-454.

- (i) A more sustainable, equitable and judicious use of the environment
- (j) Apologies from the Republic of Mauritius and other institutions bearing responsibility in slavery and slave trade perpetuation notably the Catholic Church, the Chamber of Commerce or the Mauritius Sugar Producers' Association and to seek accountability from former colonial powers regarding slave trade and its repercussions.⁹⁴

Mauritius has taken a few incentives to implement the MTJC's recommendations. However, the government has often been criticized for lack of accountability and commitment towards the implementation of the MTJC's recommendations given that most of them target slave descendants who according to politicians have low political weight and influence. Furthermore, many have questioned whether government were sincere about the implementing the adopted measures or even whether the government and civil society as a whole has grasped the objectives of the MTJC reports. The limited participation of civil society in the implementation process has also been highly criticized.⁹⁵

The year 2015 marks another turning point in transitional justice realisation in Mauritius as the state renewed its commitment towards implementation of the MTJC's recommendation through the creation of a monitoring and implementation mechanism known as the inter-ministerial Committee. The committee together with the council of ministers worked towards implementation of a few recommendations including:

3. Creation of the Land Research and Mediation Unit
4. Creation of the Intercontinental Slavery Museum, Mauritius Ltd (ISM)
5. A study on the contribution of descendants of slaves' contribution to the development of Mauritius
6. A medical and environmental study on Cité la Mivoie
7. The setting up of the Notorial Acts Database Project.⁹⁶

⁹⁴ MTJC (n 36) 11.

⁹⁵ J M St Cyr 'Rapport de la Commission Justice et Vérité: la difficile mise en oeuvre des recommandations' *Défi Média* 01 février 2016 [Rapport de la Commission Justice et vérité: la difficile mise en oeuvre des recommandations | Defimedia](#) (accessed on 30 September 2024).

⁹⁶ L'express 'Commission Justice et Vérité : Le musée de l'esclavage est en voie de concrétisation' *L'Express* 19 février 2012 [Commission Justice et Vérité : Le Musée de l'esclavage est en voie de concrétisation \(lexpress.mu\)](#) (accessed on 01 October 2024).

2.5.2. Truth seeking

The commission did remarkable work in setting up foundations for building a transformative society, by providing concise literature on the country's history. The commission's reports concluded that descendants of slaves were not aware of their history and have built their identities based on stereotypes and stigmatisation bearing their root from slavery, post-slavery, emancipation and colonial period. They asserted that the country is rampant with inequalities, racism and discrimination against slave descendants in many spheres including education, employment, health and housing. The main issues highlighted were that the majority of the Creole community lives in ethnically segregated, overcrowded and poor housing conditions and that they have poor literacy skills and low education levels. They are underrepresented in agricultural occupation, trade, and commerce, with over-concentration in manual work. They do not have adequate human rights advocates and groups to report their grievances and are poorly represented in public life and government institutions.⁹⁷ It established the link between slavery and the fact that slaves' descendants are lagging behind in the spheres mentioned above and explained how they are excluded and socially, politically and economically marginalised. Furthermore, the MTJC brought to light the psychological and socio-psychological trauma of slave trade and slavery on slaves descendants as well as institutionalised and internalised racism.⁹⁸

2.5.3. Reparation through social justice

The state has often incorporated measures to promote social justice via development of its welfare system. In 2012, the National Economic and Social Council took into consideration the MTJC's report during project planning process.⁹⁹ In 2017, the country came up with the Marshall Plan Against Poverty, a new development programme to address both relative and absolute poverty through two main mediums notably the Social Register of Mauritius (SRM), SRM and Programme Management Team of the United Nations Development

⁹⁷ MTJC (n 36) 2, 391-417, 437-439.

⁹⁸ MTJC (n 36) 226 and 288.

⁹⁹ L'Express 'L'Ex Agenda 2012 du NESC : Le rapport Commission Justice et Vérité parmi les sujets à l'étude' *L'Express* 15 décembre 2011 [Agenda 2012 du NESC : Le rapport Commission Justice et Vérité parmi les sujets à l'étude \(lexpress.mu\)](#) (accessed on 01 october 2024).

Programme(UNDP).¹⁰⁰ This plan aims at addressing the root causes of poverty and working towards inclusion and better access to essential services including health, education and social protection measures. In order to achieve social and economic empowerment of the families, social workers have assisted families to access the state’s holistic package including child care, education of children, skills development training, job hunting and internships, developing small businesses and social housing. The plan also targets outer islands notably Rodrigues which remains one of the poorest regions of the Republic. The Marshall Plan poses solid foundation for sustainable development plan and objectives of the country.¹⁰¹ The consideration of the multidimensional and intersectional character of poverty, the plan succeeded in reducing poverty in Mauritius by improving family’s family income and welfare through provision of financial assistance, school materials and child allowance.¹⁰²

2.5.4. Reconciliation through apologies

In citing Tavuchis’, McEvoy and Bryson describes the concept of apology as the ‘acknowledgment and painful embracement of our deeds, coupled with a declaration of regret’, usually involving an acknowledgement that there is no ‘excuse, defense or justification for the act’.¹⁰³ As part of reconciliation process, the MTJC requested official apologies from those bearing responsibility in the past injustices committed against slaves and indentured labourers.¹⁰⁴ In this regard, the Catholic Church through the Cardinal Jean Margéot, in 1985 acknowledged that its representatives have helped combat slavery and slave trade and in 2001, Archbishop Maurice Piat of Port-Louis apologised for the Church’s failure to stand up against slavery and that the latter has committed a sin. He asked for “forgiveness from God and from

¹⁰⁰ D Tse Kai Wai, J Narsoo, D Saraswati and Others ‘An investigation on the effectiveness of the Marshall Plan in alleviating poverty in Mauritius’ (2022) *International Journal of Social Sciences and Management Review* (ijssmr.org) (accessed on 01 October 2024).

¹⁰¹ *Mauritius Marshall Plan aims to eradicate poverty and exclusion | Africa Renewal* (un.org) (accessed on October 2024).

¹⁰² Tse Kai Wai, Narsoo, Saraswati and Others (n 98).

¹⁰³ K McEvoy & A Bryson ‘Apologies in transitional justice’ in C Lawther & L Moffett (eds.) *Edward Elgar Publishing Ltd* (2023) 1&2 <https://doi.org/10.4337/9781802202519.00029> (accessed on 10 October 2024).

¹⁰⁴ MTJC (n 36) 453

our brothers and sisters who have suffered from it."¹⁰⁵ He later reiterated the willingness of the Church to participate in a national apology together with the state and private institutions.¹⁰⁶

2.5.5. Guarantee of non-repetition through memorialisation

Memorialisation is often seen as the fifth pillar of transitional justice and Mauritius has adopted meaningful measures work towards memorialisation of slavery and human rights abuses registered during colonialism. Slavery memorialisation was at first limited to the Nelson Mandela Centre for African Culture Trust Fund Centre (NMC), which since 1986 has works towards better understanding, preserving and promoting of Creole and African culture as a whole through workshops, arts, lectures, exhibitions, seminars. It has also been mandated to conduct research on the impact of slavery in the country and internationally.¹⁰⁷ The limitations of the NMC is that its mandate has not been reviewed after the MTJC's report to have a more transformative role by adopting a more forward looking initiatives, for example having an advocacy and awareness raising mandate regarding history and inequalities or even advisory mandate to inform government policies and laws based on research conducted. Other initiatives include Open-Air Museum at Trou Chenille, the first village where emancipated slaves lived, in 2020 and integration of Le Morne to United Nations Educational, Scientific and Cultural Organisation (UNESCO) World Heritage List in 2008 and "International Slave Route Monument" becoming part of the UNESCO "Slave Route" project in 2009.¹⁰⁸

The more recent measure is the creation of the ISM in conformity with MTJCs recommendation and aims to promote study programs, scientific research, educational material production, oral tradition preservation, understanding of slavery's cultural transformations, human rights promotion, and cultural tourism in the southwest Indian Ocean through slavery heritage trails.¹⁰⁹ Museums are one of widely used transitional justice mechanism as means for

¹⁰⁵ Le Carillon 'L'Eglise demande pardon pour n'avoir pas combattu cette pratique' *Le Carillon* 02 February 2001 [L'Eglise demande pardon pour n'avoir pas combattu cette pratique – Portail catholique suisse](#) (accessed on 20 September 2024).

¹⁰⁶ L'Express 'Commission Justice et Vérité : L'Evêque de Port-Louis se dit prêt à demander pardon' *L'Express* 8 décembre 2011 [Commission Justice et Vérité : L'Evêque de Port-Louis se dit prêt à demander pardon \(lexpress.mu\)](#) (accessed on 20 September 2024).

¹⁰⁷ [Mission Vision Objectives – Mandela Centre \(govmu.org\)](#) (accessed 14 May 2024).

¹⁰⁸ International Observatory Human-Rights *Submission by the International Observatory of Human Rights to the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression* (2021) [International-Observatory-Human-Rights.pdf \(ohchr.org\)](#) (accessed 14 May 2024).

¹⁰⁹ [Who We Are – Intercontinental Slavery Museum, Mauritius Ltd \(govmu.org\)](#) (accessed 14 May 2024).

memorialisation and reconciliation. The Museum of Memory and Human Rights in Santiago, Chile, in commemoration to victims,¹¹⁰ the Kigali Genocide Memorial,¹¹¹ the Memorial Museum on Young People in Post-Communist Romania for reconciliation and tolerance¹¹², the National Center for Historical Memory as peacebuilding through comprehensive reparation and historical clarification¹¹³ the US Holocaust Memorial Museum for memorialisation and prevention of reoccurrence¹¹⁴ are examples of initiatives taken by countries as peacebuilding measures and provides guarantees of non-occurrence by breaking cycles of violence and achieve political stability.¹¹⁵ Firstly, the museum will trace the history of slavery and its consequences through exhibitions, artefacts, archaeological objects and conferences. The museum will bring to light history absent from national archives like for instance the life of the Rastafari community as well as paying homage to important figures of the country's history like Ratsitane therefore promoting the Creole community and their contribution to the Mauritian society. Furthermore, the museum will help restore truth, shed light on usually un-narrated parts of history and minorities such as female slaves, black members of Mahé de Labourdonnais marshalcy to chase maroon slaves and also free black people who collaborate with slave masters. The setting up of the museum illustrate the reconciliation and peacebuilding aspirations through intercontinental dimension by seeking expertise and funding from various continents notably Africa with countries like Ghana, Mozambique, Madagascar and South Africa, North America through the United States Embassy, Europe with Great Britain and France and Asia with Japan. In addition to exhibitions and memorialisation, the museum will also create a documentation and research center, a scientific committee and will provide trainings in genealogy.¹¹⁶

¹¹⁰ L Balcells, V Palanza & E Voytas 'ESOC Working Paper 10: Do museums promote reconciliation? A field experiment on transitional justice' (2018) [ESOC Working Paper 10: Do Museums Promote Reconciliation? A Field Experiment on Transitional Justice | Empirical Studies of Conflict \(princeton.edu\)](#) (accessed on 2 September 2024) and L Balcells, V Palanza & E Voytas 'Do transitional justice museums persuade visitors? Evidence from a field experiment' (2022) <https://doi.org/10.1086/714765> (accessed on 2 September 2024).

¹¹¹ This is the Rwanda genocide memorial established after the 1994 genocide in Rwanda and it is described as a place for remembrance and learning.

¹¹² Balcells, Palanza & Voytas (n 108).

¹¹³ E Briceño-Florez & K Eccles 'Museums as platforms of resistance: The use of technology in conflict memory, transitional justice and peacebuilding' (2022) <https://doi.org/10.1080/13500775.2022.2234196> (accessed on 5 September 2024).

¹¹⁴ [Transitional Justice Tools: Truth Seeking - United States Holocaust Memorial Museum \(ushmm.org\)](#) (accessed on 5 September 2024).

¹¹⁵ L Balcells and E Voytas 'What difference do museums make?', in Jens Meierhenrich' in Alexander Laban Hinton, and Lawrence Douglas (eds) *The Oxford Handbook of Transitional Justice (online edn, Oxford Academic)* (2023) <https://doi.org/10.1093/oxfordhb/9780198704355.013.40> (accessed 14 Oct. 2024).

¹¹⁶ L'Express 'Jimmy Harmon : « Tous imprégnés de l'esprit de la commission Justice et Vérité »' *Le Mauricien* 29 Jan 2023 [Jimmy Harmon : « Tous imprégnés de l'esprit de la commission Justice et Vérité » | Le Mauricien](#) (accessed on 03 October 2024).

2.5.6. Redress through access to justice for potential victim of land dispossession

Volume 2 of the MTJC's report brought to light some serious gaps in the country's land management system notably loopholes and mal practices in legislations, non-ethical practices and conduct by legal practitioners, land surveyors and land consultants, fraudulent practices in relation to landownership in Rodrigues, successful donation, transfer or sale of land by ancestors without informing all their children, shortcomings at the Conservator of Mortgages and/or the Archives. The recommendations include change from the Deed Registration System to the parcel-based Deed Registration System, amendments to Affidavit of Prescription Legislation. The commission also receive some 88 cases of land dispossession from descendants of slaves, ex-slaves, and indentured labourers alleging lost or dispossession of land. The main recommendation was to further investigate the cases brought before the commission by creating a Land Research and Monitoring Unit and an appropriate Tribunal to address alleged cases of land dispossession recognised also by the state.¹¹⁷ In 2015, the country set up Land Research and Mediation Unit to examine cases of land dispossession from descendants of slaves including the 131 cases handed over by the MTJC. In addition, in 2020, a land division was established within the supreme court with jurisdiction over land ownership and property rights issues.¹¹⁸ One of the main challenge was that applicants had to bring their case before the supreme court which then transferred the case to the land division and this might result into judicial delay.¹¹⁹

2.6. Conclusion

Slavery, slave trade and political elites under the colonial rule has framed attitudes and stereotypes against the Creoles and the creation of an oppressive and exclusive society. A society rampant by human rights violations and abuses but amidst this dark period of history, the Creoles together with some of the elites managed to organise themselves to oppose authoritarian colonial government and fight for freedom and dignity. The MTJC succeeded in restoring historical truth and create fertile ground for creation of an equal and inclusive

¹¹⁷ MTJC *'Land Reform Legal and Administrative Aspects Volume II'* (2011) 1 & 18 and Le Mauricien *'Land Division : Des procédures qui laissent sceptiques'* *Le Mauricien* 1 Sep 2022 11h00 [Land Division : Des procédures qui laissent sceptiques | Le Mauricien](#) (accessed on 25 September 2024).

¹¹⁸ The Court's (Amendment) Act 2020 Act. 9 of 2020 Government Gazette of Mauritius No. 113 of 5 September 2020 [Act No. 9 of 2020 \(mra.mu\)](#) (accessed on 2 September 2024).

¹¹⁹ *Le Mauricien* (n 115).

Mauritius. The country has the highest scores in memorialisation and truth seeking with remarkable progress made through museums, recognition and preservation of historical sites, conduction of studies but still lags behind in providing effective guarantees of non-occurrence, reparation and justice to victims.

Chapter 3

3.1. Introduction

Mauritius has been able to ensure a smooth political transition from colonial authoritarian rule to a stable progressive democracy. Despite this political achievement, the colonial period has unfortunately been solid foundations for perpetuation of human rights violations and marginalisation of Creoles withstanding elaborated model of democracy vested in rule of law and strong institutions. Indeed, though the contribution of Creoles to the development of the country is undeniable, living a dignified life with equal access to the welfare system and other opportunities remain a major struggle. This Chapter elaborates on the legal and institutional mechanisms the country established to guarantee equality, protection from discrimination and access to justice and reparation in case of violations. In addition, it identifies loopholes in the system and analyse the type of discrimination and social injustices withstanding the protective framework, contributing factors as well as impact of abuses on human rights of Creoles.

3.2. Legal Framework against discrimination in Mauritius

3.2.1. The constitution of Mauritius

The principle of non-discrimination is enshrined in the chapter II of the Mauritian constitution which guarantees fundamental rights and freedoms of the individual. Protection from discrimination is provided in section 3 and 16(2)(3) of the constitution. In addition, section 16(1) provided that no law shall make discriminatory provisions while section 17 provides for the possibility of every citizen who has been a victim of discrimination to seek redress before the supreme court.

In section 16(3) of the constitution “discriminatory” means affording different treatment to different persons attributable wholly or mainly to their respective descriptions by race, caste, place of origin, political opinions, colour, creed or sex whereby persons of one such description are subjected to disabilities or restrictions to which persons of another such description are not made subject or are accorded privileges or advantages that are not accorded to persons of another such description.

Section 3 and 16(3) of the constitution provides a list of protected grounds limited to race, caste, place of origin, political opinions, colour, creed or sex. The exhaustive character of the list provided, leaves room for impunity of discrimination based on left out grounds including disability, sexual orientation and gender and therefore prevents victims from seeking redress.¹²⁰

This was spelled out by the supreme court in the case of *D. Matadeen and Another v. M.G.C. Pointu and Others* where the court ruled that:

“the discrimination upon which the plaintiffs relied did not fall within any of these descriptions [cited in section 16(3)]. The Supreme Court said that the weight of authority was against any application of section 16 outside the forms of discrimination mentioned in subsection (3), citing *Union of Campement Sites Owners and Lessees v. Government of Mauritius* [1984] 100 and the majority judgment in *Peerbocus v. R.* [1991] M.R. 91. But in view of their opinion on section 3, the court did not find it necessary to reach a decision on whether section 16 had been contravened.”¹²¹

In addition, this is problematic, as this law is also the source of Mauritius equal and inclusive policies and laws and the gap does not allow protection for vulnerable groups and persons and furthermore protection from intersectional discrimination. This gap stands in contrast with the country’s obligations enshrined in the human rights treaties and conventions ratified at regional and international levels to protect everyone from discrimination. Indeed, the legal and institutional framework that provides for protection from discrimination, is entrenched in Chapter 2 and 16 of the constitution and therefore the constitutional limitations have been replicated in the whole system.

3.2.2. Equal Opportunities Act and Commission

The EOA 2008 provides protection from direct and indirect discrimination on the basis of ‘age, caste, colour, creed, ethnic origin, and impairment, place of origin, political opinion, race, sex and sexual orientation’. In addition, it provides for the establishment of the EOC and the EOT. The EOC is mandated to work towards elimination of all forms of discrimination and promote equal opportunities and peaceful relations in the country by attending complaints of alleged

¹²⁰ K Nekram ‘An Assessment of the culture of equal opportunities in Mauritius. *Revue juridique de l’Océan Indien*’ (2020) 24 [An Assessment of the Culture of Equal Opportunities in Mauritius \(univ-reunion.fr\)](#) (accessed 06 September 2024).

¹²¹ *D. Matadeen and Another Appellants v M.G.C. Pointu and Others and Respondents the Minister of Education and Science and Another* Co-Respondents Privy Council Appeal No. 14 of 1997 Para 5.

victims of discrimination and through sensitisation campaigns targeting key stakeholders, public and private organisations, schools and the population as a whole. Upon completion of investigation, if evidence shows that there has been a breach of the EOA, complaints are referred to the EOT by the EOC which can issue orders for remedy, enforcing compliance with its decision and in case of dissatisfaction with the tribunal's decision, can appeal to the Supreme Court.¹²² The effectiveness of the EOC to address discrimination has been highly contested by the CERD. Protection is limited to specific grounds cited in the act and therefore the commission cannot address all forms of discrimination, on all grounds such as language hence prevent marginalised groups from the full and equal enjoyment of their rights as prescribed in general recommendation No. 32 (2009) which provide scope of special measures under the CERD and guidance on how to implement them to combat racial discrimination. The EOC also increasingly faces interference from government, it cannot investigate complaints against civil servants and the sanctions it imposed are not proportionate to the gravity of the offences as prescribed in article 4(c) of the Convention stipulating that racial discrimination should be punishable by law. Indeed, the EOT in their decisions most of the time adopt restorative justice rather than retributive rather than sanctioning people to prison sentence or fines for more serious infringement. Furthermore, despite continuous racial discrimination there are very few cases brought to court or referred to the EOT and there is no statistics on ethnic based discrimination complaints reported to the EOC as well as information on effective remedies. This lack of transparency has led to illegitimacy and a lack of public trust in the EOC.¹²³ In addition, the EOC cannot investigate cases in relation to Public Service Commission “as the latter cannot be subjected to the direction or control of any person or authority (vide section 118(4) of the Constitution of Mauritius)” but is empowered to investigate such cases and in case of tangible evidence to send the cases to before the EOT.¹²⁴ The Office for Ombudsman is responsible to look into any complaints against Ministries, Local Authorities, and the Rodrigues Regional Assembly, aiming to rectify any alleged maladministration in administrative functions.¹²⁵

¹²² Equal Opportunities Commission – Equal Opportunities Commission (05 November 2024).

¹²³ (CERD/C/MUS/20-23) (n 13).

¹²⁴ ‘Combined 14th and 15th periodic reports submitted by Mauritius under article 9 of the Convention’ CERD Committee (11 February 2022) (CERD/C/MUS/24-25) 2022.

¹²⁵ Office Of The Ombudsman - Complaint Form (govmu.org) (19 October 2024).

3.2.3. Children’s Act, 2020

The Child Protection Act, came into force in 2022, with the aim to reinforce legal framework to guarantee rights and welfare of the Mauritian child. The act aims at building a comprehensive and effective legislative framework to promote the best interests of the child, protect children’s rights and eliminate all forms of violence and discrimination against children by aligning with regional and international human rights instruments including the United Nations Convention on the Rights of the Child (CRC) and the African Charter on the Rights and Welfare of the Child. The act provides in section 11(1) for protection of children and their parents against direct and indirect discrimination based on race, caste, place of origin, political opinion, colour, creed, sex, language, religion, property or disability. Like other legal instruments, it provides an exhaustive list for protection against discrimination and is therefore restrictive and does not guarantee protection of children victim of discrimination on other grounds such as ethnicity and sexual orientation.¹²⁶

3.2.4. Worker’s Rights Act, 2019

Section 5 of the workers’ rights act prohibits discriminatory treatment by employers, encompassing differentiation based on various variables. The act marked a real advancement in discriminatory framework as it provides for protection to those victims of discrimination based on new grounds including sexual orientation, gender and HIV status. Section 5(5)(a) stipulates that:

“discrimination” includes affording different treatment to – (a) different workers attributable, wholly or mainly, to their respective description by age, race, colour, caste, creed, sex, sexual orientation, gender, HIV status, impairment, marital or family status, pregnancy, 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.”¹²⁷

¹²⁶ R Mahadew ‘The Children's Bill of Mauritius: A critical assessment of key aspects’ *Afr. hum. rights law j. [online]*. (2020) <http://dx.doi.org/10.17159/1996-2096/2020/v20n2a122> (accessed on 5 September 2024).

¹²⁷ The Worker’s Rights Act 2019 [A Consolidated Version of the Workers' Rights Act 2019 as at 27 July 2024.pdf \(govmu.org\)](#) (accessed on 10 September 2024).

3.2.5. Protection of socio-economic rights in Mauritius

Since independence, Mauritius strived to build a well-developed welfare state system. In 2022, the country was ranked 72nd out of 193 countries with Human Development Index of 0.796 classifying it therefore as in the high human development category.¹²⁸ In 2019, the country reached its highest record with HDI 0.804 and ranked 66th out of 189 countries and attain very high human development status. Today, the country provides a plethora of services ranging from free education for pre-primary to tertiary level, free transport for all students, persons with disabilities(PWD) and elderly, social aid for vulnerable groups including PWD, widows and orphans, free access to health services and universal pension benefits to the elderly. In addition, to cater for socio-economic needs of its citizens, the country introduced the Corporate Social Responsibility (CSR) through the finance Act of 2009 which binds all profit-making companies to donate 2% of their profits or invest these funds in social and environmental projects. The CSR fund is mostly distributed to at least 240 local NGOs and associations yearly by the National Social Inclusion Foundation(NSIF) to support sustainable socio-economic development in the country by focusing on poverty alleviation, educational support and training, social housing, supporting people with disabilities, health care related issues, family protection, including gender-based violence, leisure and sports, environment and sustainable development, peace and nation-building and road safety and security.¹²⁹

Furthermore, the country has set up a plethora of laws and policies to guarantee fulfilment of their socio-economic rights including the Education Act and Education Regulations of 1957 and Special Education Needs Authority(SENA) governing formal education, social security services by Social Aid Act 1983 and National Pensions Act 1976, health care services are catered for by the Public Health Act 1925 and the Private Health Institutions Act 1989 and employment-related matters are regulated by the Workers' Rights Act 2019. However, there are still some gaps in terms of laws to guarantee some socio-economic rights including right to housing which is only regulated by the State Land Act which provides for regularisation of squatters while there is no regulation providing for affordable and social housing and emergency housing policies.

¹²⁸ UNDP *Human Development Report 2023/2024 breaking the gridlock reimagining cooperation in a polarized world* [hdr2023-24reporten.pdf \(undp.org\)](#) (accessed on 10 September 2024).

¹²⁹ (NSIF) *Impact Report 2022* [NSIF-impact-report-22nov22-revised1.pdf](#) (accessed 10 September 2024).

Socioeconomic rights are non-judicial in Mauritius. The existence of the extensive services provided by the state to fulfill socio-economic rights, has been the reason enunciated by the state for not providing for their constitutional guarantees. The country has received various critics notably from the ICESCR Committee given the poor legislative safeguards provided for socio-economic rights. Indeed, one of the main concerns expressed by the committee is that the constitution of Mauritius' Bill of Rights only provides for civil and political rights. Recommendations for stronger legal protection have been recurrent in their concluding observations with the fifth periodic report of Mauritius reiterating

“its concern on the process of amending the Constitution to enshrine the economic, social and cultural rights of the Covenant on an equal footing with other constitutional rights has not been completed”

and “that the rights contained in the Covenant have not been incorporated into the domestic legal order and thus cannot be directly invoked by individuals before national courts.” The Committee also expresses the need for the State to

“improve training for judges, lawyers and public officials on the provisions of the Covenant and their justiciability in line with its general comment No. 9 (1998) on the domestic application of the Covenant, and to paragraph 11.3 of its decision in the case of I.D.G. v. Spain (E/C.12/55/D/2/2014).”¹³⁰

There is a pressing need for providing constitutional guarantees for socio-economic rights, A.R. Mahadew explains, because acts of parliament which provide the legal framework for welfare system services can be amended by simple majority and that they are political privileges that highly depend on the economic situation in the country. Another limitation he explained is that the conservative Mauritian judiciary does not take a broad interpretation of rights enshrined in the constitution by applying implied rights doctrine.¹³¹ Furthermore, this limitation has been cascaded down to key human rights institutions like the National Human Rights Commission(NHRC). The NHRC was established in terms of the Protection of Human Rights Act 1998, the NHRC aimed at addressing any alleged violation of rights from the Bill

¹³⁰ Concluding observations on the 5th periodic report of Mauritius ICESCR Committee (05 April 2019) (E/C.12/MUS/5) 2019.

¹³¹ R Mahadew 'Economic and Social Rights as Constitutional Guarantees, Compared to Privileges under the Welfare State System: An Assessment of the Case of Mauritius' (2018) [Economic and Social Rights as Constitutional guarantees, compared to privileges under the welfare state system : an assessment of the case of Mauritius | ESR Review : Economic and Social Rights in South Africa \(journals.co.za\)](#) (accessed on 12 September 2024).

of Rights of the constitution including protection from discrimination but is also restrained to civil and political rights protection.

3.3. Mauritius, discrimination and international Human Rights Law

There is a wide gap between Mauritian anti-discrimination framework and the international human rights framework aiming to eliminate discrimination and racism and the ratification of these instruments by the country. These instruments include the International Bill of Human Rights that is the ICESCR (1966), International Covenant on Civil and Political Rights (ICCPR, 1966) and other conventions providing protection for specific groups including women, children and PWD, the CERD and Convention concerning Discrimination in Respect of Employment and Occupation, 1958. In addition, Mauritius is party to regional human rights instruments including the African Charter on Human and Peoples' Rights (ACHPR), Protocol to the African Charter on the Establishment of an African Court on Human Peoples' Rights (AfCHPR), and African Charter on the Rights and Welfare of the Child (ACRWC). Mauritius has ratified the above mentioned human rights instruments and therefore has the obligation to protect, respect and fulfill the rights enshrine in them and citizens including individuals, groups of individuals, non-governmental organisations have the right to bring complaints before competent human rights institutions and to send shadow reports regarding the human rights situation in the country, particularly issues of racial discrimination and social justice.

3.4. Mauritius, a stable but fragile multi-cultural structure

Multicultural societies includes multinational states, states with indigenous populations or states like Mauritius, whose populations have diversified due to major migration movements. Caught between the quest for stability, national unity, the process of democratisation and economic development, two things have not been taken into account or have been disregarded or underestimated in Mauritius, and that is the model of multiculturalism and the republic identity. The State's priority was to continue the political and economic ideal engendered by colonialism and the quest for stability, nation building has taken a back seat and has thus exacerbated inequality, ethnic segregation and discrimination. Mauritius has therefore created

a multi-faceted, complex, resilient but fragile multicultural model. Indeed, unlike other countries' which have adopted laws on multiculturalism for instance Canada Multiculturalism Policy in 1971, then the act in 1988 for protection of each groups culture and fight against racism and Great Britain Race Relations Act are examples of laws and policies guiding national identity, Mauritius model is not define or govern by any specific law. The multicultural approach of Mauritius has been illustrated by scholars as akin to a rainbow, fruit salad or a melting pot.¹³² This is the consequence of a liberal approach to diversity and this can be observed in the rise of inter-culturalism when it comes to the country's folklore, music and cuisines which encompass elements from countries where ancestors migrated from all this blended with a high dose of Mauricianism. This is what has become the Mauritian identity fostered by religious celebrations where one can capture sharing and cross-cultural celebrations and has helped reinforce peace and social cohesion in the country adding to the complexity of the Mauritian Multiculturalism.¹³³

Interestingly, the multiculturalism approach is perceived differently between minority and majority groups across the country. Neither of them perceived this as a means preventing assimilation of a unique national culture and identity. Indeed, while minorities considered multiculturalism frameworks as a tool to maintain their culture and climb up the social ladder, majorities consider it as a threat to their social status.¹³⁴ Despite the high sense of belonging to the national multicultural identity, the pride of being Mauritian, the sense of communalism is deeply rooted in the Mauritian society. Indeed, all communities embrace dual identity by showing strong attachment to their ethnic groups and even higher levels to their religious groups. Boswell traces ethnic segregation back to independence and maintain that the former has actually reinforce the cleavages and that this highly influence intimate relationships, health, CSOs, education, health and socialisation.¹³⁵ Ng Tseung-Wong & Verkuyten highlighted that social-psychological studies' conclusions maintaining that higher ethnic identification in many instances nourishes antagonism towards other ethnicities and therefore threaten social

¹³² C Ng Tseung-Wong & M Verkuyten 'Multiculturalism, Mauritian Style: Cultural Diversity, Belonging, and a Secular State' (2015) 685 *American Behavioral Scientist* <https://doi.org/10.1177/0002764214566498> (accessed 10 September 2024).

¹³³ Ng Tseung-Wong & Verkuyten (n 129) 683.

¹³⁴ Ng Tseung-Wong & Verkuyten (n 129) 684.

¹³⁵ R Boswell 'Challenges to Creolisation in Mauritius and Madagascar' *Diaspora: A Journal of Transnational Studies* (2008) <https://muse.jhu.edu/article/520331> (accessed 10 September 2024).

harmony.¹³⁶ Eriksen describes this dual identity as a common denominator among plural societies nation building project qualifying it as an ongoing negotiation over the relationship between homogenisation and differentiation.¹³⁷ In Mauritius this has given rise to what is termed today as the “nubannisme” which is a Creole term for communalism which is a major threat to the preservation of what Mauritius has been achieved today, “lakorite” a creole term used to describe the stable and peaceful society the country has been able to build.

3.4.1. Mauritius’ exclusionary multiculturalism

Mauritius stability has been threatened by ethnic tensions which in some instances have spiraled into inter-ethnic riots. The two most famous one being the pre-independence riot between Creoles and Muslims with some 25 people killed and 100 others injured and the second the 1999 riot as a result of the death of the singer Kaya in police custody causing deaths of 4 persons and numerous others wounded. At the heart of these conflicts is the ethnic tensions sustained among the communities, fear of domination of one community over the others, fear of losing one’s privileges and rooted “ras-le-bol” and revolt of continued social and economic injustices.¹³⁸ While western nations have announced a shift from “assimilationist turn” towards the “death of multiculturalism,” Mauritius, still holds onto its plural status and multiculturalism is what define the republic’s national and international identity¹³⁹. Mauritius is still marked by deeply rooted social cleavages but the country is still a success story in terms of nation building and peaceful multicultural society.¹⁴⁰ This success is due to numerous reasons. Shabneez Bhankaraully, Michel Goyer, Jeremy Aroles explained that this is due to the coalition government formed from parties of various ethnicities and recognition of cultural differences

¹³⁶ Ng Tseung-Wong & Verkuyten (n 129) 691 and C Ng Tseung-Wong & M Verkuyten ‘“I’d rather we be neighbours than lovers”: The two-sidedness of multiculturalism’ (2015) *Group Processes & Intergroup Relations* <https://doi.org/10.1177/1368430214546068>(accessed 10 September 2024).

¹³⁷ TH Eriksen ‘Common Denominators: Ethnicity, nationalism and the politics of compromise in Mauritius, (1998).

¹³⁸ B Carroll and T Carroll ‘Accommodating ethnic diversity in a modernizing democratic state: theory and practice in the case of Mauritius’ (2000) 122 *Ethnic and Racial Studies*.

¹³⁹ A Kundnani ‘Integrationism: the politics of anti-Muslim racism’ (2007) 24-44 *Race & Class* <https://doi.org/10.1177/0306396807077069> (accessed 10 September 2024); E Vasta ‘From ethnic minorities to ethnic majority policy: Multiculturalism and the shift to assimilationism in the Netherlands’ (2007) 30 *Ethnic and Racial Studies* <https://doi.org/10.1080/01419870701491770> (accessed 10 September 2024), Ng Tseung-Wong & Verkuyten (n 133).

¹⁴⁰ Carroll and Carroll (135) and Eriksen (n 34).

through promotion of religious traditions.¹⁴¹ Another reason is that despite claiming itself as a secular democratic state, religions plays a fundamental role in the Mauritian society as it is an “important vector of “moral values” that reinforce tolerance and peaceful coexistence.”¹⁴² This was translated into the creation of the Council of Religions, established in 2001, in response to UN’s call which aim to alleviate social conflicts by providing reliable, objective, and generous advice from respected individuals.

“Multiculturalism as an ideology argues for the recognition of group differences and offers a positive view of cultural maintenance by ethnic groups and a concomitant need to accommodate diversity in an equitable way.”¹⁴³

In the Mauritian model, marginal confinement of Creoles and Franco-Mauritians in the general population and limitation in identity and cultural recognition in “multicultural policies” not only pose a significant barrier to nation building and multiculturalism but as Kania explained it also impairs human rights protection and realisation.¹⁴⁴

Multicultural societies across the continents have in many instances adopted a clear national model and structured a rigorous legal framework and policies to build a national identity, and promote non-discrimination, equality and peace. In many countries, including Canada, Brazil, South Africa, Great Britain, Australia and the United States of America, have framed their anti-discrimination and equality system based on transitional justice processes having at the core of their mechanisms the need for redress for historical wrongs which imply institutionalised discrimination and racism of which they are the heirs. Simon explains that in those countries, discrimination is not only just an individual behavior but also systemic, involving collective responsibility with that of state predominantly. He further asserted that “this responsibility is also accompanied by a notion of debt to "minorities" who have been subjected to official discrimination, enshrined in law, or to unfavourable treatment by the State” and therefore need for accountability from both state and society as a whole leading to reparation policies and legislative measures.¹⁴⁵ These measures differs across countries for instance in all Latin American countries with the exception of El Salvador, Chile and Paraguay special

¹⁴¹ S Bhankaraully, M Goyer & J Aroles ‘Workplace discrimination against LGBT employees in Mauritius: A sociological perspective’ (2023) *Economic and Industrial Democracy* <https://doi.org/10.1177/0143831X221111822> (accessed 10 September 2024).

¹⁴² Ng Tseung-Wong & Verkuyten (n 129) 695.

¹⁴³ Ng Tseung-Wong & Verkuyten (n 129) 680.

¹⁴⁴ M Kania ‘Human Rights, principles of multiculturalism, and new paths of development in Latin America’ (2016) <https://doi.org/10.12797/AdAmericam.17.2016.17.01> (accessed on 13 September 2024).

¹⁴⁵ P Simon ‘The measurement of racial discrimination: the policy use of statistics’ (2005) *International Social Science Journal* <https://doi.org/10.1111/j.0020-8701.2005.00528.x> (accessed on 13 September 2024).

ombudspersons to combat racism have been set up¹⁴⁶ but the most common methodology adopted to combat racial discrimination and promote equality is affirmative action policies like in the US, Brazil, Columbia and South Africa.¹⁴⁷

Mauritius has introduced some measures to promote multiculturalism, ethnic differences and social cohesion. Initiatives includes observation of public holidays on religious feasts of the various ethnic groups and sub-groups, television and radio broadcasts of various religious and cultural activities, legislation guaranteeing creation of and financial support to cultural centres, language unions as well as trust funds to promote each ethnic group cultures.¹⁴⁸ All of these cultural institutions operate under the aegis of the Ministry of Arts and Cultural Heritage aiming to foster cultural values and promote and consolidate cultural pluralism through art and creativity. According to the MTJC these socio-cultural groups further widen the social chasm between citizens due to unequal funding allocations. It blames leaders of socio-cultural organisations for instrumentalising their socio-cultural groups to fulfill their political career aspirations.¹⁴⁹ Furthermore, it maintains that the state limits decision making processes regarding cultural policies to socio-cultural groups instead of extending participation to the citizens as a whole.¹⁵⁰

Furthermore, in addition to these flaws, in order to benefit from funding, socio-cultural groups must be able to demonstrate ancestral culture and language which therefore makes it unfavorable to the Creoles.¹⁵¹ As we have seen before, slaves were not able to exercise their culture and religion under colonialism and little to no efforts were made to keep record of slaves' origins, added to mixed races of Creoles, making it almost impossible for them to trace their ancestral ties, religion, language and culture unlike Hindus, Muslims and Chinese.¹⁵² Ng Tseung-Wong maintain that this therefore reinforces ethnic multiculturalism and excludes Creoles from participating in multiculturalism development processes.¹⁵³

¹⁴⁶ T K Hernández 'Affirmative action in the Americas' (2013) [Affirmative Action in the Americas – Americas Quarterly](#) (accessed on 13 September 2024).

¹⁴⁷ Hernández (n 143) and Simon (n 142).

¹⁴⁸ N Aumeerally 'The ambivalence of postcolonial Mauritius: Policy versus practice in education: A reading of official and popular multiculturalism' (2005) *International Journal of Cultural Policy*.

¹⁴⁹ MTJC (n 36) 402.

¹⁵⁰ MTJC (n 36) 404.

¹⁵¹ Ng Tseung-Wong & Verkuyten (n 129) 693 and Aumeerally (n 145).

¹⁵² R Laville 'In the politics of the rainbow: creoles and civil society in Mauritius' (2000) *Journal of Contemporary African Studies*.

¹⁵³ C Ng Tseung-Wong 'National and ethno-religious identities in multicultural mauritius: Group positions and belonging' (2021).

3.5. Discrimination in Mauritius: Between denial and contempt

“No society can claim to have ‘progressed’, if it has a significant percentage of its population either living in poverty and/or experiencing racial or other marginalisation on a daily basis.”¹⁵⁴

89 years after the abolition of slavery, 56 years after independence and 13 years after publication of the MTJC’s reports, racial discrimination is still not acknowledged by the state. The MTJC traces back the roots of what they termed as “stereotyping, racism, underdevelopment, poverty and cultural amnesia” to slavery, indenture and colonialism and them being major obstacles to social justice, political and economic liberty. Throughout the years, several scholars have attested existence of racial discrimination and to a lesser extent racism.

Patterns of discrimination has been identified by various human rights treaty bodies’ committees. The ICESCR committee has reported Creoles facing systemic disadvantages (2019)¹⁵⁵ and the CERD committee documented incidents of stereotyping and stigmatisation against Creoles and hate speech on social media and by public and political figures (2018).¹⁵⁶ Both committees maintain that discrimination and marginalisation significantly disadvantaged Creoles in the enjoyment of economic, social and cultural rights.¹⁵⁷ Furthermore, other committees and NGOs has helped identify how specific groups are further marginalised and discriminated including to some extent suggest existence of intersectional and multidimensional discrimination. Examples include the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) Committee which documented of discrimination against Creole women¹⁵⁸ and AA which reported systemic discrimination against the Rastafari community, a sub-group of the Creole community, in the administration of justice due to their cultural and religious beliefs¹⁵⁹ and outer islanders including Chagossians and Agaleans.¹⁶⁰

¹⁵⁴ MTJC (n 36) 283.

¹⁵⁵ E/C.12/MUS/5 (n 127).

¹⁵⁶ (CERD/C/MUS/20-23 (n 13) 4.

¹⁵⁷ Concluding observations on the 15th to the 19th periodic reports of Mauritius CERD Committee (11 February–1 March 2013) 4&5 (CERD/C/MUS/CO/15-19) 2013; (CERD/C/MUS/20-23 (n 13) 5 and Concluding observations ICESCR Committee for Mauritius (8 June 2010) 3 E/C.12/MUS/CO/4 2010.

¹⁵⁸ Concluding observations on the 8th periodic report of Mauritius CEDAW Committee (14 November 2018) 12 CEDAW/C/MUS/CO/8 2018.

¹⁵⁹ AA (n 31).

¹⁶⁰ Affirmative Action Follow-up *Alternative Report 2020 to the Committee for Elimination of Racial Discrimination* (2020) 1 & 2 and CEDAW/C/MUS/CO/8 (n 155) 22 & 23.

Indeed, the country still needs to pave a long way until it succeeded to embrace the patterns of multicultural identity given the pervasiveness of inequality and discrimination. The presence of discrimination in Mauritius has been reported by many national and international reports from various human rights bodies.¹⁶¹ In addition, many scholars have also mentioned the cleavages and hidden discrimination and inequalities vested under the multicultural layers and postcard images of Mauritius¹⁶² and this highly hinders a smooth and humane integration.¹⁶³ Afro barometer survey of 2018 concluded that Mauritius expresses remarkable levels of tolerance for people of a different ethnicity, religion, or nationality though the country still needs to bridge the gap regarding sexual minorities and expatriates. Despite the progress made towards nation building, equality and non-discrimination, some Mauritians still maintain that they face discrimination based on their ethnicity, gender and religion and this applies mostly to Afro-Mauritians, Muslims, and women. During the survey, 47% of Afro-Mauritians attested that they face discrimination “sometimes,” “often,” or “always”. 31% Afro-Mauritians were harassed and discriminated during the previous year of which 21% experienced this “once or twice”, 6% “several times” or 4% “many times”. Regarding perceptions of unfair treatment 47% of Afro-Mauritians stated that their group is sometimes treated unfairly.¹⁶⁴ Jeffery maintains that ‘discrimination in the form of institutional racism, ethnic stereotyping and ethnic nepotism, has restricted opportunities for many Creoles and particularly Afro-Creoles in Mauritius.’¹⁶⁵ This claim is supported by ICESCR Committee in several reports which expresses concerns about the fact that Creoles including those living on Agaléga and Rodrigues Islands, and Chagossians living in Mauritius do not have effective access to adequate housing, employment, health-care services and quality inclusive education.¹⁶⁶

¹⁶¹ National Human Rights Commission of Mauritius Annual Report 2023.

¹⁶² Ng Tseung-Wong & Verkuyten (n 129) 693.

¹⁶³ Boswell (n 132).

¹⁶⁴ T Isbell and S Bhoojedhur ‘Mauritius strong – but far from perfect – on gender equality and social tolerance Afro Barometer Dispatch No 225’ (2018) (accessed on 10 September 2024).

¹⁶⁵ L Jeffery ‘Marginalisation in Mauritius in Chagos islanders in Mauritius and the UK’ (2013) 247 *Manchester, England: Manchester University Press* Available on <https://doi.org/10.7765/9781847794130.00012> (accessed on 15 September 2024).

¹⁶⁶ CERD/C/MUS/15-19 (n 154).

3.5.1. Factors responsible for discrimination

3.5.1.1. Limited possibilities of Affirmative action

Affirmative action is

‘a set of ethically driven policies aimed at providing special opportunities to a historically disadvantaged group in order to make the members of this group capable of competing with their privileged counterparts in the society.’¹⁶⁷

Affirmative Action is highly controversial and often subject to intense civic engagement and protests, both for and against. The controversy is due to the fact that affirmative action can create the opposite effects than those desired, that is ethnic preferences and reverse discrimination. Affirmative action policies have however proven to be an effective measure to advance equality and diversity. Indeed, a study conducted by the United Nations University, reviewing 194 affirmative action programmes worldwide concluded that 63% of these programmes improve access to better education and employment and significant political participation from ethnic, religious and racial minorities.¹⁶⁸

Various countries worldwide have come forward with affirmative action policies say the reservation system in India, Black Economic Empowerment Act of South Africa, New Zealand’s Māori Representation Act of 1867 and Malaysia’s New Economic Policy on behalf of Bumiputera indigenes or even racial quotas for university admissions. These policies have helped increase representation of historically disadvantaged and discriminated minorities in areas of education, political influence and employment in public and private sector. They also have an opportunity to climb up the social ladder and an equal opportunity to benefit and contribute to the country’s development process.¹⁶⁹

¹⁶⁷ S M Chowdhury, P Esteve-Gonzalez and A Mukherjee ‘Heterogeneity, Levelling the Playing Field, and Affirmative Action in Contests’ (2020) *SSRN Electronic Journal* <https://doi.org/10.2139/ssrn.3655727> (accessed on 15 September 2024).

¹⁶⁸ R Gisselquist & MJ Kim ‘Affirmative action policies to increase diversity are successful, but controversial, around the world’ (2024) *Affirmative Action Policies to Increase Diversity Are Successful, but Controversial, Around the World | United Nations University (unu.edu)* (accessed on 15 September 2024).

¹⁶⁹ Gisselquist & Kim (n 165) and S Schotte, R M Gisselquist, and T Leone ‘Does affirmative action address ethnic inequality? A systematic review of the Literature’ (2023) <https://doi.org/10.35188/UNU-WIDER/2023/322-2> (accessed 14 September 2024).

Mauritius has never implemented affirmative action policies. Nekram analyses cases of discrimination in Mauritius by referring to 3 specific cases. The first two court cases seem to be a major advancement as in *Rose v. Police 1976* and in *Jaulim v.s Director of Public Prosecution and Others 1976* the court stated that differentiation is not equivalent to discrimination. The court explains that a difference in treatment can only be considered discriminatory if it cannot be reasonably or objectively justified.¹⁷⁰ However, there was a pushback in 2002 in the case of *Tengur v. Ministry of Education 2002* where the Supreme Court ruled in favor of Mr. Tengur who contested reservation seat policy of Catholics claiming it was discriminatory against her daughter. The court claimed that reserving 50% seat for Catholics was unconstitutional and this decision was supported by the Privy Council which maintained that given that the schools are being subsidised by the state, all religions should be equally admitted.¹⁷¹

This decision closed the door for civil society organisations, corporates and other entities to implement any affirmative action policies and therefore condemn ethnically disadvantaged groups to access available opportunities in all walks of life.

Furthermore, it seems that the country has moved from a period of denial to contempt on the issue of discrimination. The state's position is highly incoherent as the same state which establishes the MTJC is the same state which contested their findings when confronted with question of discrimination and racism. Upon UN Committee on CERD's remarks on absence of possible use of positive discrimination in the EOA, the EOC claims that it is adversely affect social justice.¹⁷² Maneesh Gobin, Attorney General and Minister of Justice, Human Rights and Institutional Reforms of Mauritius, state representative, asserted firmly during the constructive dialogue with the Committed on CERD that “ Mauritius was not a racist country; perhaps elitist because those with best degrees occupied the best positions.”¹⁷³ Indeed, it is fundamental not to adopt an essentialist view to the problem of racism and discrimination and by denying its existence in the country, the state is ignoring the sufferings of a substantial number of its citizens and possibilities to access justice and

¹⁷⁰ Nekram (n 118) 24.

¹⁷¹ Ng Tseung-Wong & Verkuyten (n 129) 689-690.

¹⁷² Lallmahomed-Aumeerally (n 29) 446-463.

¹⁷³ CERD Committee OHCHR (n 6).

remedies for human rights' violations. This makes non-recognition a major barrier to introduction of affirmative action policies.

3.5.1.2. Lack of statistical ethnic data

This gives rise to another issue which is the lack of statistical data regarding ethnic composition of the country but also in various sectors of the welfare system. Data disaggregation on basis of race, sex, sexual orientation, colour, ethnicity or national origin, socio-economic status as well as representation in education, housing urban and rural region, employment, health as well as political life of ethnic groups, including Creoles and outer islanders, in order to provide it with an empirical basis to evaluate and eliminate all forms of discrimination, promote social justice and equal enjoyment of rights under the treaties, has been recommended by CERD, CEDAW, ICESCR and MTJC ¹⁷⁴

Mauritius has long claimed that ethnic census was banned to promote nation building and foster peace and national unity. However, it has not served this purpose as there is an increasing sense of discrimination, marginalisation and growing inequalities in the Mauritian society. This is a strong barrier to prevention of discrimination and promotion of equality and equity as it does not inform and guarantee representation of all of the ethnic and racial communities in the political, social and economic sectors proportional to the country's ethnic and gender disaggregation. Furthermore, it prevents identify vulnerable groups among Creoles and address discrimination.

Discrimination can take various forms that is either direct or indirect and statistical data helps identify and therefore address both visible and invisible discrimination. It helps create a more equal society as statistical data provides figures of any under or over-representation of a particular ethnic group proportionate a to percentage of the ethnic group represented in the community in various sectors. In order to guarantee equity and prevent reverse discrimination, like in the case of Canada, Australia and the US the law should provide for representation based on skills, qualifications and merits of the candidate from the disadvantaged group.

¹⁷⁴ Concluding Observations CERD Committee (27 September 1996) 3 CERD/C/304/Add.19 (1996); Concluding Observations CERD Committee (1 May 2001) 2 CERD/C/304/Add.106 (2001); CERD/C/MUS/CO/15-19 (n 154); (CERD/C/MUS/20-23 (n 13); E/C.12/MUS/CO/4 (n 154) 7 and CEDAW/C/MUS/CO/8 (n 155) 9,12 &15.

Statistical data therefore allows us to measure discrimination and promote equality through frequent monitoring of indicators of any unfavorable treatment. This can be applied to multiple sectors including employment, housing and education looking at several aspects including promotions, educational performance, salaries amongst others. This therefore informs policy and laws to address identified inequalities.¹⁷⁵

3.5.1.3. Mauritius from multiculturalism to pseudo identity politics.

Kania explains that identity politics was at the heart of “revaluing disrespected identities and changing the dominant patterns of representation and communication that marginalise certain groups.”¹⁷⁶ Mauritian political parties have always practiced identity politics which has adversely undermined the goal of establishing a multi-cultural society in which all human beings are equal in dignity by virtue of being human.

The main issue was the fact that the country, aspiring to build “one people, one nation”, decided to abolish ethnic population census without considering changing the political system, amending the Best Loser System (BLS), which was at the heart of the ethnic census. Basically, the BLS seeks to provide equal representation for all communities proportional to the share the ethnic group holds in the national population. Amending the census, not only further weakens the effectiveness of the BLS system given that it does capture the evolving demographics of the country but it also prevents equal representation of all ethnicities in parliament, which therefore weakens our democracy as some groups needs are left out of the state’s politics, decision making processes and welfare system.¹⁷⁷

The BLS is now obsolete given that it is based on the ethnic census which does not reflect the country’s new demographics. Ethnic politics however encourages the maintenance of the BLS.¹⁷⁸ In order to win elections, throughout Mauritian history Hindu-dominated parties has to enter into coalition with a minority political parties dominated by General Population, including Creoles. The political parties resort to what is termed as scientific communalism which is part of a larger system aiming to align ethnicity of candidate with that of the ethnic

¹⁷⁵ Simon (n 142).

¹⁷⁶ M Kania ‘Focus on: Latin American studies human rights, principles of multiculturalism, and new paths of development in Latin America’ (2016) 5 *Published in Journal of American Studies*.

¹⁷⁷ Ng Tseung-Wong & Verkuyten (n 129) 687.

¹⁷⁸ Boswell (n 132).

profile of the constituency increasing therefore the likelihood of being elected. This system fosters communalism, ethnic tensions and division across the country.¹⁷⁹ The Mauritius electoral system is the product of negotiations between Mauritian leaders and British colonial government which was inclined to find a political system and boundary delimitations that pleases leader of the Hindu majority given its influence on its followers and simultaneously ensuring that more radical nationalist leaders of the Labour Party do not take over the latter. Despite the presence of the BLS, the Hindus have always won an inordinate number of seats in parliament in all elections given that electoral boundaries delimitation granted Hindus majority in most constituencies. Coupled with the BLS, the ethnically delimited boundaries, de facto penalises other communities which have to share the few seats available and increases risk of underrepresentation.¹⁸⁰

3.5.1.4. Mauritius stereotyping and stigmatisation culture

Eriksen maintains that the Creoles are ‘perhaps the most stigmatised category of people in Mauritius.’¹⁸¹ Apart from religious categorisation, there is a variety of symbols and stigmatisation used to describe each community. Dr. Couacaud identified recurring characteristics related to each religious group in Mauritius which is reflected in their celebrations notably in terms of colors used: red, light blue for Catholics, green for Muslims, red for Buddhist, red or orange for Hindi-speaking Hindus and yellow for Tamils.¹⁸² However some of the stereotypes are less positive and are even degrading. Creoles have to battle with a legacy of stereotypes and stigmas from colonial period. They are labeled as lazy, and immoral individuals who lack ambition therefore their socioeconomic development and this is acknowledged by other communities in Mauritius.¹⁸³ These stigmas are rampant and are even present at the highest political position of the country as illustrated by the case of former Minister of Housing and Land, Showkutally Soodhun, who has expressed racist remarks

¹⁷⁹ Bhankaraully, Goyer & Aroles (n 138).

¹⁸⁰ L Couacaud, SS Sookrajowa & J Narsoo ‘The vicious circle that is Mauritian politics: The Legacy of Mauritius’s Electoral Boundaries’ (2020) <https://doi.org/10.1080/17449057.2020.1785201> (accessed 11 September 2024).

¹⁸¹ Eriksen (n 29).

¹⁸² L Couacaud ‘Does holiness have a color? The religious, ethnic, and political semiotics of colors in Mauritius’ (2016) [Does Holiness Have a Color? The Religious, Ethnic, and Political Semiotics of Colors in Mauritius \(uchicago.edu\)](https://www.uchicago.edu) (accessed on 18 September 2024).

¹⁸³ Ng Tseung-Wong & Verkuyten (n 133), Boswell (n 47), Eriksen (n 134).

against Creoles. The term Creole itself, is in many instances considered as pejorative including by Creoles themselves. Moreover, stigmatisation is extended to Creoles from outer islands.¹⁸⁴

3.5.2. Impact of discrimination on the human rights of Creoles

3.5.2.1. Right to adequate housing

The right to housing is one of the fundamental right and basic need which is highly impacted by the discrimination. Mauritius has been blamed for lack of housing development programme which has led to a social housing crisis in the country which culminated in evictions and house demolitions of people living in informal settlements during covid-19 lockdown. Numerous reports and studies have shown that the Creoles are the first to be affected by the social housing crisis and related housing issues. Creoles are disproportionately affected by inadequate housing poor living conditions and informal settlements. We have also witnessed creolisation of social housing estates as Creoles are the primary beneficiaries. Friedmann deplores the lack of spatial planning regarding social housing which leads to ethnic enclaves, surrounded by trendy luxury real estates¹⁸⁵ while Rambaree argues that social justice should be at the heart of sustainable development policy to guarantee social equity and inclusion of marginalised groups.¹⁸⁶ The habitants often face challenges like limited access to adequate sanitation facilities, limited spaces and privacy and other public services including transport services. These estates are referred to as ‘cité’ and are highly stigmatised given that creoles are primary beneficiaries of social housing. According to Dr. Coucaud the ghettoisation of the ‘cité’ portrayed as inferior housing crowded with entitled people where there is proliferation of many social ills including poverty, drug consumption and trafficking, teenage pregnancy, low education level and school drop-out, female-headed households amongst others. The growing ghettoization and

¹⁸⁴ R Boswell ‘Challenges to sustaining intangible cultural heritage’ (2011) <https://doi.org/10.1179/hso.2011.4.1.119> (accessed 12 September 2024).

¹⁸⁵ J Friedmann ‘Globalisation and the emerging culture of planning, progress in planning’ (2005) 220 <https://doi.org/10.1016/j.progress.2005.05.001> (accessed 15 September 2024).

¹⁸⁶ T Gooding ‘Low-income housing provision in Mauritius: Improving social justice and place quality, Habitat International’ (2016) [Low-income housing provision in Mauritius: Improving social justice and place quality - ScienceDirect](https://doi.org/10.1016/j.habitat.2016.05.001) (accessed 10 September 2024); K Rambaree ‘Social work and sustainable development: local voices from Mauritius’ (2013) <https://doi.org/10.1080/0312407X.2013.784793> (accessed 10 September 2024).

stigmatisation have antagonised the neighborhoods and many of the beneficiaries are reluctant to move to the housing estates.¹⁸⁷

3.5.2.2. Right to education

One of the main issues observed among Creoles is low education level, poor school performance and school dropouts due to several factors.¹⁸⁸ The main ones include the lack of parental support and learning culture at home, racial discrimination of Creoles students by teachers which highly affects children's self-esteem and self-confidence. Another reason identified by the CRC Committee is lack of materials in Creole and use of Creole as teaching medium in schools including vocational ones.¹⁸⁹ In addition, Creoles are concentrated in manual work and have limited access to public sector jobs. Creoles children feel that there is no reason for them to strive at school since they will not have access to jobs.

3.5.2.3. Right to development

Throughout the years, Mauritius has tried to set up many policies aiming at socio economic development and social integration. These include the 1999 Trust Fund for the Social Integration of Vulnerable Groups for poverty alleviation and National Non-Government Organisation Trust Fund which aims at providing funding to NGOs. In 2008 the SRM, a centralised database used to determine eligibility for social assistance was adopted. The Social Integration and Empowerment Act 2016 was created to strengthen the initiative towards empowerment and assistance of persons living in absolute poverty.¹⁹⁰ The country introduced the CSR managed by NSIF which directs the funds to NGOs with the aim to promote sustainable development and social inclusion in the country. Despite all these measures, many Creoles still suffer from exclusion and poverty. Creoles are considered as the only loser of the country's economic success and alienation and this is acknowledged by other ethnic

¹⁸⁷ UN Habitat *Annual Progress Report 2016 Demonstrating Results of the Strategic Plan 2014-2019* (2016) and Couacaud, Sookrajowa & Narsoo (n 177).

¹⁸⁸ MTJC (n 36) 2, Concluding observations on the combined 6th and 7th periodic reports of Mauritius CRC Committee (23 February 2023) 12 CRC/C/MUS/CO/6-7 (2023).

¹⁸⁹ Concluding observations for Mauritius CRC (17 March 2006) 11& 12 Committee CRC/C/MUS/CO/2 (2006) and Concluding observations on the combined 3rd to 5th periodic reports of Mauritius CRC Committee (27 February 2015) 14 CRC/C/MUS/CO/3-5 (2015).

¹⁹⁰ Gooding (n 183).

groups.¹⁹¹ High incidence of poverty among the Creoles has led to a sense of alienation, social exclusion and marginalisation.¹⁹² This has been considered by CRC committee which called the state to ensure that Creole families are prioritised in social protection programmes for children including financial social aids, school enrollment and retention programmes and allocation of social housing.¹⁹³

3.5.2.4. Civil and Political Rights

Identity politics, the BLS and electoral boundaries delimited along ethnic lines keep minorities like Creoles outside the political arena of the country and significant decision making processes impacting their rights especially fundamental civil and political rights including right to political participation including in government as it limits parliamentary representation of Creoles.

3.6. Conclusion

The existing legal and institutional framework and social policies are not working effectively to guarantee respect, protection and fulfillment first, second and third generation human rights of Creoles. Discrimination and marginalisation remain major obstacles for the community to fully enjoy their rights. The fact that the human rights violations observed are not addressed gives rise to other social ills which further marginalise the community and reinforces stigmatisation and gives rise to intersectional and multidimensional discrimination.

¹⁹¹ LM Hempel 'Power, wealth and common identity: access to resources and ethnic identification in a plural society' (2009) *Ethnic and Racial Studies* <https://doi.org/10.1080/01419870701722422> (accessed 05 September 2024).

¹⁹² R Kasenally 'Mauritius: The Not So Perfect Democracy' (2011) <http://dx.doi.org/10.20940/jae/2011/v10i1a2> (accessed 05 September 2024).

¹⁹³ CRC/C/MUS/CO/6-7 (n 185).

Chapter 4

4.1. Introduction

Civil society has proven to be of utmost importance in realisation of transitional justice in many countries. Their roles differ from one country to another and extend from formulation of transitional justice mechanisms such as truth commissions, collection of evidences of human rights violations, victim support and mobilisation to promotion of reconciliation and prevention of future conflicts. This chapter explores how civil society in Mauritius have helped in the development and implementation of transitional justice measures through David Backer's lens.

4.2. The Civil Society: The Missing faces of Transitional Justice in Mauritius

Civil society can play a significant role in the realisation of transitional justice.¹⁹⁴ This can be testified by the experiences of many countries worldwide including Ghana, Sierra Leone, East Timor, and Peru.¹⁹⁵ Their contributions ranges from conceptualizing, planning, implementation and follow-up process.¹⁹⁶ CSOs can contribute in many ways to truth commissions by advocating for their creation, assisting in research and investigations, reaching out to victims, monitoring and evaluating their actions, and advocating for implementation of recommendations and follow-up.¹⁹⁷ Furthermore, civil society can help elaborate reparations programmes and assist victims in formulating and documenting their claims.¹⁹⁸ They can also help in achieving successful prosecution by assisting in collecting vital information from victims and enhance victim's participation in the prosecution process. Last but not least, CSOs can also contribute in the implementation of institutional reform measures like "vetting processes to dismiss public officials or employees who committed human rights violations in the past."¹⁹⁹ However, Baker argues that civil society can only achieve this if they are consulted and

¹⁹⁴ D Backer 'Civil ssociety and ttransitional jjustice: possibilities, patterns and prospects' (2003) *Journal of Human Rights* <https://doi.org/10.1080/1475483032000132999303> (accessed on 12 October 2024), E Brahm 'Transitional jjustice, civil ssociety, and the ddevelopment of the rule of law in post-conflict societies' (2007) *International journal of not-for-profit law*.

¹⁹⁵ Duthie, R 'Building trust and ccapacity: civil ssociety and ttransitional Justice from a ddevelopment pperspective' (2009) *Microsoft Word - Civil Society (ictj.org) (accessed on 20 September 2024).

¹⁹⁶ E Brahm 'Transitional justice, civil society, and the development of the rule of law in post-conflict societies' (2007) *International journal of not-for-profit law*, N Roht-Arriaza 'Civil ssociety in processes of accountability in post-conflict jjustice' in M Cherif Bassiouni (ed.) (2002).

¹⁹⁷ OHCHR 'Rule-of-Law Tools for Post-Conflict States: Truth Commissions' (2006).

¹⁹⁸ Duthie (n 192) 302.

¹⁹⁹ OHCHR (n 194).

involve in transitional justice process,²⁰⁰ while Crocker points out limitations of civil society in terms of organisation and structure and financial dependence as potential interveners of their effective capacity to implement transitional justice.²⁰¹

Mauritius, has disregarded the voices of vibrant civil society's role in the transitional justice process has always been appreciated. One of the main limitation of the MTJC and of the government in the transitional justice process, is the fact that collaboration and cooperation with CSOs which have highly impacted community outreach and victim mobilisation. Civil society has always played key roles in post-conflict period: for instance in Sierra Leone, the Special Court Monitoring Program, an initiative developed by the Sierra Leone Court Monitoring Programme (SLCMP) works towards judicial accountability and legal empowerment by monitoring court proceedings,²⁰² in Guinea women played a vital role in reconstruction of the community together with civil society organisations and victims' associations through informal transitional justice mechanisms²⁰³ while in Sri Lanka women conducted activities such as workshops, day care services and formally asked permission from participants' spouses to increase women's participation in political, social and cultural lives of their country by adapting themselves to women schedules and family responsibilities²⁰⁴ and in Colombia, civil society organisations focus on non-judicial initiatives including community mobilisation, forensics and truth-telling.²⁰⁵ David Backer identifies six roles of civil society in transitional justice process:

1. data collection and monitoring;
2. representation and advocacy;
3. collaboration, facilitation, and consultation;
4. service delivery and intervention;
5. acknowledgement and compensation;
6. parallel or substitute authority;
7. Research and education.²⁰⁶

²⁰⁰ Backer (n 191).

²⁰¹ D Crocker 'Civil society and transitional justice in civil society, democracy, and civic renewal' in Robert Fullinwider (eds) (1999) 381-384.

²⁰² Duthie (n 192).

²⁰³ S Robins 'Pathways of innovation: Civil society advancing transitional justice' (2020) 137 [Pathways-of-Innovation-Toolkit-2.pdf \(sitesofconscience.org\)](#) (accessed on 20 September 2024).

²⁰⁴ Robins (n 200)139.

²⁰⁵ Robins (n 200) 45 & 46.

²⁰⁶ Backer (n 191) 297.

This chapter analyses the role of civil society organisations in Mauritius as per the above classification. Scholars have maintained that it is fundamental to ensure participation of civil society in order to achieve transitional justice in Mauritius and stressed on the fact that they have not been effectively included in the process.²⁰⁷ In this case, civil society is not limited to human rights organisations only but include corporates, NGOs, victims, religious groups and the media.

4.2.1. Data collection and monitoring

Crocker explains that CSOs can assist victims in documenting past and contemporary human rights abuses, and advance human rights. They can also create a database of violations by collecting testimonies of victims and provide facts and evidences to support investigations.²⁰⁸ In the case of truth commissions, CSOs can also assist in the provision of trainings, investigations with members of local communities, supporting victims taking part in public hearings and help in evaluating methodologies and impact of the commission by providing public feedbacks.²⁰⁹ In Mauritius, civil society played a vital role in data collection processes. Based on data collected through research, field work and public forums, historians, social workers, activists and political movements and NGOs brought meaningful contribution mainly by highlighting pervasive social issues and human rights violations and abuses among Creole community notably discrimination, overt racism, underrepresentation in politics and in employment in public and private sector, exclusion, identity related issues including non-recognition, poverty and low level of education. Furthermore, it helped in bringing to light human rights violations against vulnerable groups within the community such as the Rastafari community and outer islands like Agalega.²¹⁰

4.2.2. Representation and advocacy

Civil society's participation in public policy debates and design is crucial. Backer explained that contribution of CSOs can be by either supporting or contesting government proposals or

²⁰⁷ Croucher, Houssart & Michel (n 4) 326-346 and Boswell (n 14) 146-161.

²⁰⁸ Duthie (n 192) 302.

²⁰⁹ Duthie (n 192) 13.

²¹⁰ MTJC (n 36).

lobbying for implementation of their own initiatives.²¹¹ CSOs have experience in advocacy and working collaboratively with both victims' communities, governmental and institutional bodies and therefore can act as mediator. They can act as legal advocates for victims and help them draft and bring their claims before the government, truth commissions or court.²¹²

Additional innovative recommendations include study on psychosocial impact of slavery, colonialism and slave trade on slave descendants. Backer describes this as “emotional truth” –which assesses psychological and physical impact of violence and rights abuses and this process is also extended to families of victims.²¹³ One of the major gaps is the absence of a gender sensitive approach and reparation measures which provided did not consider women's rights and well-being. The tireless advocacy of the VF cannot be denied but one of the most recent and widely publicised is the 16 days' hunger strike of Clency Harmon, spokesperson for the Justice, Reparation and Restitution Association claiming justice for victims of land dispossession which led to the setting up of the land division in the supreme court.²¹⁴

4.2.3. Collaboration, facilitation, and consultation

Baker explains that CSOs can play a wide range of facilitating roles.²¹⁵ These roles include organizing logistical, financial, translation, psychological and legal support as well as mobilising victim and peoples' participation in formal and informal transitional justice processes. CSOs can also resort to transnational collaboration especially for advocacy with states, inter-governmental institutions, international NGOs to accelerate “justice cascade”. In cases where the state is weak, CSOs can help building trust in new government, increase public legitimacy in institutions and building peaceful relationship between victims and other communities.²¹⁶ AA was created in 2018 advocating for elimination of all forms of discrimination. AA is the most prominent association advocating for the rights of Creoles and for a more inclusive, equal and equitable society. They have actively denounced and addressed discrimination against Creoles through development of a national action plan with guiding

²¹¹ Backer (n 191) 297.

²¹² Roht-Arriaza (n 193).

²¹³ D A Crocker 'Truth commissions transitional justice and civil society' (2000) 3 [RotbergPaper.PDF \(cejamericas.org\)](#) (accessed on 20 September 2024).

²¹⁴ A Mohit-Saroar 'Grève de la faim : l'ultime moyen de pression' *Défi Média* 27 novembre 2022 [Grève de la faim : l'ultime moyen de pression | Defimedia](#) (accessed on 19 October 2024).

²¹⁵ Backer (n 191) 303&304.

²¹⁶ Robins (n 200)13 & 16.

principles, translation of CERD into "kreol morisien", public meetings to raise awareness about human rights and ethnic violence, private auditions for racial discrimination victims, round table with trade unions, and submission of an alternative report to the CERD. In their alternative reports, they have highlighted the findings of the MTJC and outline how minority groups are discriminated against, constitutional obligations of the Prime Minister and his cabinet to prevent, protect and address discrimination and independence of key institutions such as recruitment authorities (PSC, Disciplined Forces Service Commission, Local Government Service Commission and Public Bodies Appeal Tribunal), the NHRC, EOC and their effectiveness in eliminating racial discrimination.²¹⁷ In addition, the organisation has also collaborated with local and international NGOs notably Association Les Amis d'Agaléga, Collectif Arc en Ciel, and International Movement Against All Forms of Discrimination and Racism claiming rights of Creoles in Mauritius but also minorities such as LGBTIQ+ and peoples of Agalega.

4.2.4. Service delivery and intervention

Services, intervention and assistance can range from psychological, emotional, material, legal or financial support. Backer cited examples of Centre for the Study of Violence and Reconciliation's (CSVr) provision of counselling services through its Trauma Clinic and the Trauma Centre for Survivors of Violence and Torture and associations like KwaZulu-Natal Project for Survivors of Violence and the Khulumani Support Group which provide complementary services. The objective is to enhance post-conflict development and reconciliation.²¹⁸ The Catholic Church has been one entity which has been reforming itself internally and pleading the case of Creoles as reparation for its role in slavery and slave trade with catholic Creole priests at its source and acting as catalysers. The Creole priests has denounced identity crisis among Creoles, rampant extreme poverty across the community and church's desertion towards the community.²¹⁹ From this call the Catholic Church has brought about changes for better inclusion of the Creoles within its community namely inculturation of the liturgy by introducing Creole mass, translation of the bible into Creole and creation of

²¹⁷ AA (n 31).

²¹⁸ Backer (n 191) 304.

²¹⁹ M Akung 'Discours politique et construction identitaire dans l'île Maurice postindépendance : le "malaise créole' (2014) 121& 122 [Discours politique et construction identitaire dans l'île Maurice postindépendance: le "malaise créole" \(univ-reunion.fr\)](#) (accessed on 12 October 2024).

confessional schools.²²⁰ The reason for this change, according to Gerbeau is that the Church is the anchor point of Creoles. Indeed, Christianity, mostly Catholicism is the common denominator among the Creole community. The Church has instituted a mass in memory of the abolition of slavery celebrated annually. On the day of the first official commemoration of the abolition of slavery, Bishop Jean Margeot, Bishop of Mauritius cited Blessed Father Jacques-Désiré Laval who according to Norbert Benoit have focused on conversion of emancipated slaves to Catholicism and not to contest their living conditions.²²¹

Throughout the years the Church has advocated for inclusion and the elimination of discrimination against the Creoles. The Church has continuously denounced the “Malaise Créole” in many instances the most significant one being in Bishop Maurice Piat’s Pastoral letter of 1993.²²² It fought for recognition and respect for the Kreol as the only true Mauritian language (this has been expressed through translation of the bible in Kreol),²²³ conduction of ethnic census²²⁴, the need of the slavery museum²²⁵ and a more inclusive education system which is now based on academic elitism leaving behind those with technical capacities.²²⁶ The Church is also actively engaged in contributing to: integral human development by providing trainings, conferences and awareness programmes through the Institut Cardinal Jean Margéot,²²⁷ promotion of unity through the Diocesan Committee of February 1st,²²⁸ provision of inclusive primary and secondary education through the Service Diocésain de L’Éducation Catholique, promotion of social justice, peace through the Justice and Peace Commission and addressing poverty and promote human dignity through the NGO Caritas Ile Maurice. The Diocese of Port-Louis have also advocated for challenges and struggles of people in Agalega

²²⁰ L’Express (n 104).

²²¹ Gerbeau (n 37) 53-71.

²²² [Archives de la Congrégation du Saint-Esprit \(archives-spiritains.org\)](https://archives-spiritains.org/) (20 April 2024).

²²³ H Nanoo ‘Abolition de l’esclavage | Cardinal Piat: «Le créole, seule véritable langue des Mauriciens»’ *L’Express* 2 February 2023 [Abolition de l’esclavage | Cardinal Piat: «Le créole, seule véritable langue des Mauriciens» \(lexpress.mu\)](https://www.lexpress.mu/) (accessed 18 May 2024) and F Thomas ‘Cardinal Piat : «La langue créole mérite notre respect (...) nou langaz mama sa»’ *Le Mauricien* 1 February 2023 [Cardinal Piat : «La langue créole mérite notre respect \(...\) nou langaz mama sa» | Defimedia](https://www.defimedia.org/) (accessed 18 May 2024).

²²⁴ Défi Média Le Comité diocésain 1er février en faveur d’un recensement ethnique’ *Défi Média* 24 October 2018 [Le Comité diocésain 1er février en faveur d’un recensement ethnique | Defimedia](https://www.defimedia.org/) (accessed 18 May 2024).

²²⁵ F Floch ‘Maurice : le cardinal Piat favorable à la création du musée de l’esclavage’ *France Info* 2 September 2024 [Maurice : le cardinal Piat favorable à la création du musée de l’esclavage - Réunion la 1ère \(francetvinfo.fr\)](https://www.francetvinfo.fr/) (accessed 18 May 2024).

²²⁶ Le Mauricien ‘Messe du travail : Le Cardinal Piat appelle au réveil de la jeunesse’ *Le Mauricien* 2 May 2023 [Messe du travail : Le Cardinal Piat appelle au réveil de la jeunesse | Le Mauricien](https://www.lemauricien.com/) (accessed 18 May 2024).

²²⁷ [Service Diocésain de la Formation - L’Institut Cardinal Jean Margéot \(ICJM\) - Coup de pouce a mon eglise](https://www.eglise.org/) (accessed 25 May 2024).

²²⁸ [Spiritualité | Vivre Sa Foi - Diocese de Port Louis \(dioceseportlouis.org\)](https://www.dioceseportlouis.org/) (accessed 25 May 2024).

to enjoy the same rights as on mainland notably freedom of movement, right to education, health and work.²²⁹

4.2.5. Acknowledgement and compensation

Backer explains that civil society can have key roles in provision of restorative justice and seek for accountability and reparation for recognition of harm caused to victims. CSOs can advocate for community development, equal well distribution and reconstruction.²³⁰ Compensation and reparation allows specific identification of victims and abuses they have been victim of and therefore serve as basis for reconciliation.²³¹ Numerous NGOs, institutions and public movements brought many recommendations before the commission through their submissions to the MTJC. A meaningful number of measures for reparation were recurrent in the memorandum of the 14 CSOs representatives many of which were thereafter included in the 290 recommendations of the MTJC. These measures include:

- financial compensation as reparation for slaves' descendants
- introduction of Creole language as medium of teaching in schools
- constitutional recognition of the identity of Creoles as a distinct group
- promotion and preservation of African culture, archives and historical sites
- improved access to education at all levels for Creoles
- creation of laws and policies to guarantee protection from racism and eliminate all forms of discrimination
- ensure Creoles are proportionally represented in parliament
- address social injustices by guaranteeing equal access to housing, employment, agricultural land

4.2.6. Parallel or substitute authority

In this role, CSOs extends their services in areas reserved to state. In terms of socio-economic rights realisation, the state substantially relies on CSOs. The NSIF in 2022, has 445 NGOs and

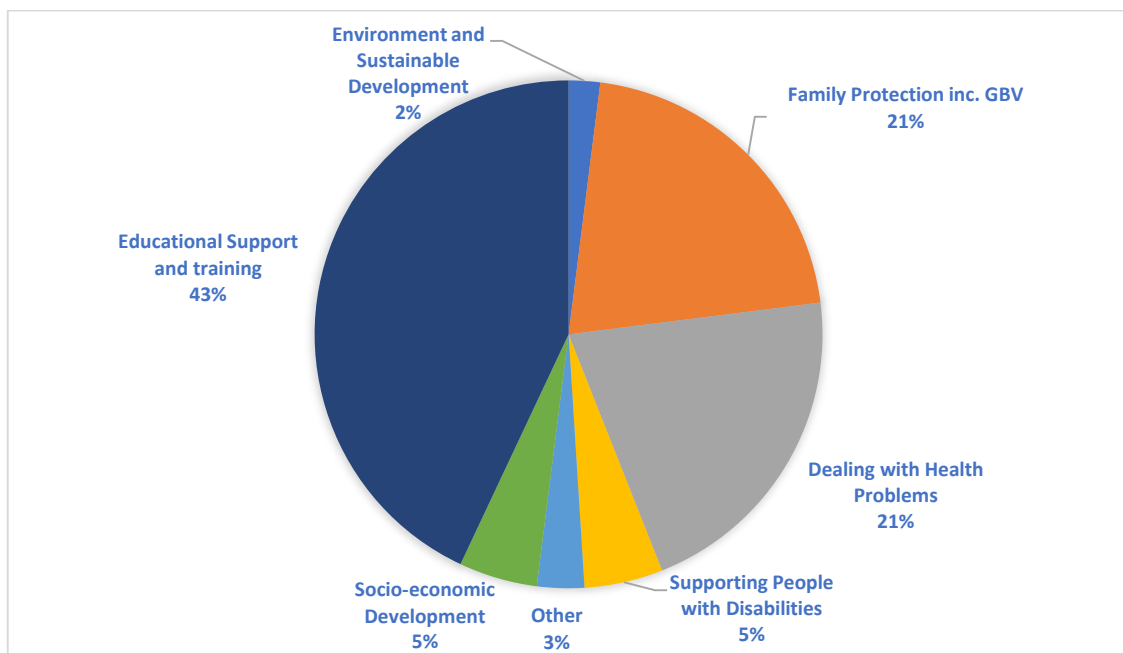
²²⁹ AA (n 31).

²³⁰ Backer (n 191) 304.

²³¹ Crocker (n 210) 3&4.

associations registered and funded in various areas including socio-economic development, education support and training, environment and sustainable development. NSIF dedicated more than 65% of public funding to realisation of socio-economic rights as shown in figure 1.²³² However, projects are directed towards the population as a whole and does not include specific reparation programmes for Creoles and therefore impact cannot be measured.

Figure 1: Funding allocation per area



Source: NSIF Report 2022

4.2.7. Research and education

Civil society, Backer argues, can bring new facts to light by evaluating and assessing impact of programmes, laws and policies.²³³ Civil society can conduct public engagements, promoting MTJC’s work and increase public trust and legitimacy. The media has played a major role in hindering implementation of transitional justice. The MTJC reported that “nation-building does not appear to be the priority of the media.” Indeed, the media has had a divisive rather than

²³² Annual Reports - National Social Inclusion Foundation (nsif.mu) (10 October 2024).

²³³ Backer (n 191) 305.

uniting role in the Mauritian society and has significantly contributed to the negative perception and attitudes against the Creoles by other communities. Through their publications and programmes, the media has favored “compartmentalisation of cultures”. They had painted a false picture of the way of living of the different ethnic groups in the country rather than stressing the efforts of the various communities to live together.²³⁴ In addition, academics have focused on victimisation and marginalisation of Creoles in their publications which make these characteristics as the main reference for Creole identity.²³⁵ In the same vein, affluent written press like *L'Express*, *Le Défi Quotidienne* and *Weekend* failed to cover the most significant public hearings of the MTJC and same attitude could be observed towards dissemination of the MTJC’s report. *Weekend* and *Le Défi Plus* coverage focused on the reported facts and that demands for cash compensation were not acceded, while *L'Express* made no publication at all. The overall work of the commission²³⁶ was not only disregarded but considered as insignificant. Post MTJC’s report, media has participated in bringing the subject in public debates and inform the public any time a new recommendation is implemented by government.

4.3. Conclusion

The participation of civil society organisation in implementation initiatives is quite limited. The process is contained at ministerial level and only few NGOs or other entities which are aware of the project have taken some steps to be either be involved in the process or bring the subject into political discussions mainly through research and advocacy and to a lesser extent reparation. Civil society has had minimum to no role in where they usually contribute the most in Mauritius that is victim mobilisation, participation, designing remedies and raising awareness.

²³⁴ MTJC (n 36) 453.

²³⁵ Boswell (n 14) 146-161.

²³⁶ Croucher, Houssart & Michel (n 4) 326-346.

Chapter 5

5.1. Conclusion

As illustrated in Chapter 2, restricting the project conceptualisation and implementation to the political leaders and bureaucrats has been a major obstacle to its realisation as it excluded the civil society and victims. This has highly prevented community mobilization and victim participation and overall implementation of the MTJC measures. In addition, the focus on legal and formal processes is incompatible with the focus on systemic racial discrimination structural reparations and socio-economic rights realisation

Indeed, as illustrated by its community-rooted welfare system, vested on community organisations and collective collaboration and efficacy by bringing together corporates, government, public and private institutions, CSOs and individuals. Chapter 3 explores legal and social framework to guarantee Creoles enjoy their human rights and fundamental freedoms in Mauritius and how they are affected by systemic discrimination and marginalisation. The findings show that there exist some forms of multidimensional and intersectional discrimination in Mauritius which affects Creoles especially minorities within the community including women, outer islanders and Rastafarians. Gaps in institutional and legal framework as well as lack of incentives to address root causes of marginalisation including absence of disaggregated data, perpetuation of stigmatisation culture and outdated political system has contributed in widening inequality gap and continued discrimination.

In Chapter 4, we have seen that when they were given the opportunity, both the civil society and the Creoles have proved to be effective contributor, whether consciously or unconsciously, to implementation of transitional justice through advocacy, research, seeking accountability and in their daily work towards the Creole community.

In a nutshell, it seems that the country has been carried away by its desire to make peace with its past and has not thought carefully about implementing the essential tenets concepts of transitional justice. the MTJC was seen as an end in itself rather than a means to an end that is to achieve transitional justice. The ultimate aim behind the creation of the commission has not

been well defined as there was no plan to achieve “ societal transformation and establish lasting peace, justice, truth and reconciliation”²³⁷ after the MTJC.

5.2. Recommendations

Mauritius transitional justice realisation proved to be a long and sometimes even stagnant project. Despite the several measures adopted by the state, social justice and racial discrimination still prevails in the Mauritian society and poses a serious threat to the country’s peace and nation building process. In this regard, this last chapter addresses gaps in implementation process and propose measures that could speed up the realisation of transitional justice, combat discrimination and promote social justice and how it can benefit the country.

Mauritius, like other African countries must develop or reinforce three innovative and successful approaches to transitional justice processes as follows: -

1. Considering the country’s specificities and reclaiming transitional justice process
2. Taking into account both violations of civil and political rights and economic, social and cultural rights, structural inequalities and sustainable development issues
3. Recognizing the gendered impact of conflicts and the crucial need for women to be participate in transitional justice process
4. in the design and implementation of TJ.

Mauritius has proposed only structural measures to enhance social justice as reparation to descendants of slaves. Addressing the causes and consequences of past and prevalent human rights violations of the Creoles can help reduce justice gap. Initiatives to speed up implementation of recommendations, combat discrimination and promote social justice can include:

5.2.1. Transitional Justice as part of 2030 Agenda

Addressing the causes and consequences of past and ongoing human rights violations of the Creoles can help reduce the justice gap. Transitional justice can help implement 2030 Agenda for Sustainable Development including Sustainable Development Goal (SDG) 16 (peaceful, just, and inclusive societies), SDG 5 (gender equality), SDG 10 (equality), and SDG 17

²³⁷ Croucher, Houssart & Michel (n 4) 326-346.

(partnerships). Implementing the remaining MTJC's recommendations can therefore contribute to sustainable development by fostering inclusion, empowerment, strong institutions and equality including gender equality as well as identifying causes of grave violations related to health, education, housing and land issues.

5.2.2. Affirmative action as a means to promote equality and combat discrimination

The country must adopt affirmative action policies and laws to guarantee representation of Creoles including vulnerable sub-groups like the Rastafarians and Creole women in the public sector with specific guarantees to avoid reverse discrimination.

5.2.3. Restore ethnic census and ensure collection of disaggregated data

The state of Mauritius still cannot understand and measure inequalities and discrimination affecting the Creole community and other ethnic groups. The state therefore cannot provide evidenced-based responses to address the problem of discrimination across all aspects of life. The country must therefore restore ethnic census and adopt a human rights based approach to data, including disaggregated data in matters related to socio-economic rights and others. This will help better understand, compare and identify new vulnerabilities of specific groups and meet their needs.

5.2.4. Adopt a gender sensitive approach to transitional justice

One of the main limitation of the transitional justice process in Mauritius, is that women's rights violations under colonialism has been poorly considered. The country must conduct a study to analyse the impact of colonialism, slavery and slave trade on women and the contribution of Creole women to the development of the country as well as their role in the fight against racial discrimination and realisation of social justice.

5.2.5. Implementation and monitoring mechanism

Create a national follow-up and monitoring body with a specified timeline to implement the recommendations of the MTJC rooted in a participatory, Creoles-centered, and human rights approach in order to build the architecture for diversity, equality and peace. The body should have allocated budget to implement recommendations as per timeline and work in coordination with civil society organisations, victims, ministries and key institutions.

5.2.6. Adopt a victim-centered and right based approach in realisation of socio-economic rights through community based platforms

The formal and legal approach of the MTJC prevented it from including victims and civil society organisations at different levels of the transitional justice process. The country can adopt community based development programmes by creating community based platforms in specified locations consisting of various civil society representatives, corporates, public officials and victims. This will allow needs based project design, improve access to the welfare system services, impactful community development plans and informed advocacy programmes. The platforms can create effective synergies to address social ills faced by the communities and develop mitigating programmes.

5.2.7. Grant-in-Aid

The government can issue call for projects that aims at socio-economic empowerment and development of Creoles and human rights education programmes that will allow them to access support services, understand and claim their rights, raise their voice towards policy makers and protect themselves from injustices and human rights violations. Funding could also come from former colonisers who throughout the years has developed fruitful collaborations with Mauritius in trade and developmental projects and this form part of reconciliation process.

5.2.8. Education

History, civic and human rights education must be made compulsory at all educational level. The actual curriculum should be reviewed by taking into consideration legacies of past injustices and safe spaces and platforms should be created for the new generations to understand their experiences as part of a more complex history. It is significant that history of outer islands and their contribution in the development of the country form an integral part of the curriculum. Together with civic education classes, young people will learn about the country's values, their rights and responsibilities as citizens and how they can contribute to peace and nation building.

5.2.9. Review of electoral boundaries

The colonial delimitation of electoral boundaries favoring Hindu majority, must be reviewed in order to accommodate new demographics of the country. This will force parties to appoint more Creole candidates and favor fair representation of Creole community in parliament.

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