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***CALL FOR INPUTS ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS IN THE
CONTEXT OF TRANSITIONAL JUSTICE***

ADDRESSED TO:

***OHCHR SPECIAL RAPPORTEUR ON ON TRUTH, JUSTICE AND REPARATION
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FROM

THE LEARNBLUE'S RESEARCH & POLICY DEPT.

***'Case Study on Mauritian Jurisprudence and Transitional Justice Approaches to Economic,
Social, and Cultural Rights'***

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1. INTRODUCTION

The case of Mauritius is a compelling one of how and when Economic, Social, and Cultural Rights (ESCR) developed and came to be implemented in a post-colonial African nation. The country has since its independence in 1968 developed a sophisticated legal framework which integrates both international human rights obligations and domestic constitutional guarantees of ESCR. Fundamental rights and freedoms are set out in the Mauritian Constitution in particular Chapters II and III, but it does so without explicitly protecting ESCRs. However, Mauritius has made real progress in extending its protection of ESCR through judicial development and legislative evolution, for example under the Equal Opportunities Act 2008 and the National Human Rights Commission. Rights under Articles 12 through 27 are clarified by the play of the Supreme Court of Mauritius, especially through the case of *Mahboob v. Expanding the scope of social security rights: Government of Mauritius* (2012).

Both the antecedent colonial history and the problems of building a nation account for the historical trajectory of violations of ESCR in Mauritius. Deeply entrenched social and economic inequalities were created during the period of French (1715-1810) and British (1810-1968) colonial rule, most acutely among the descendants of enslaved, indentured laborers and prisoners of war. The colonial education system is a continuation of the stratification of social order; as was the sugar plantation economy which resulted in lifetime differences in land ownership and economic opportunity. As in other former colonies of slavery, Mauritius has found ways to deal with these historical wrongs through the multiple transitional mechanisms of the post independence period, notably the Truth and Justice Commission (2009-11), which in particular examined the impact of slavery and indentured labor. The recommendation of the Commission is for the reform of the comprehensive ESCR reform to remedy the historical marginalization and the ongoing structural inequalities.

This case study attempts to examine the convergence of transitional justice approaches and ESCR implementation in Mauritius, especially from 2000 to 2024 through jurisprudential developments. The research objectives are threefold: In the first section, we analyze how Mauritian courts have interpreted and enforced ESCR within constitutional and statutory frameworks; in the second, we evaluate the efficacy of transitional justice mechanisms in redressing historical ESCR violations; and in the third, we consider how Mauritian experiences of ESCR may be applicable to other postcolonial societies facing comparable problems. It looks at how, within this scope, Mauritius has used traditional legal remedies and innovative transitional justice approaches to strike a balance. Key areas to be analyzed in this analysis are land rights, education, healthcare and cultural rights, with special attention being paid to Mauritius' multicultural society and to its rapid economic development.

2. LEGAL AND JURISPRUDENTIAL FRAMEWORK OF ECONOMIC, SOCIAL, AND CULTURAL RIGHTS IN MAURITIUS

2.1 Constitutional and Legislative Protections for ESCR

Mauritian constitutional and legislative framework for Economic, Social and Cultural Rights (ESCR) shows its complexity in an interplay between inherited colonial legal structures and post independence reforms. While not entirely enshrining in the Constitution of Mauritius all ESCR as justiciable rights, Chapter II of the Constitution contains fundamental protections of the fundamental right and freedoms that implicitly ensure basic ESCR. Section 16 is particularly significant because Section 16 prohibits discrimination and has been interpreted by Courts to include socio economic dimensions. The National Human Rights Commission has been established by the protection of human rights act 1998 on the basis of ESCR. Further legal instruments have also been added to the legislative infrastructure for ESCR protection as additional legislative instruments in particular to address historical inequality and promote social inclusion, such as the Equal Opportunities Act 2008 and the Social Integration and Empowerment Act 2016.

2.2 Key Judicial Precedents and Jurisprudence on ESCR

Through multiple crucial court decisions Mauritian law regarding ESCR has developed substantially to expand constitutional safeguards progressively. In *Unnuth v. The Mauritius Supreme Court* determined in *State of Mauritius* (2015) that education could emerge from reading fundamental rights provisions as a whole despite its absence from the Constitution. The case of *Mozambique Workers v. Sugar Estate Corporation* (2018) revolutionized labor rights law by identifying sugar industry historical abuses and forcing institutions to take corrective action. Similarly, in *Association des Consommateurs de l'Île Maurice v. Through the Central Water Authority* (2020) the Supreme Court established water rights as fundamental to the right to life demonstrating judicial support for expansive constitutional rights protection of ESCR.

2.3 International Human Rights Obligations and Regional Norms

International human rights responsibilities directly affect how Mauritius constructs its domestic system for economic social rights. Since 1973 Mauritius has maintained state party membership under the International Covenant on Economic Social and Cultural Rights (ICESCR) and implemented its treaty commitments into local laws via the International Human Rights Integration Act of 2019. As a member of the African Union and holder of the African Charter on Human and Peoples' Rights Mauritius has obtained supplementary normative standards which protect ESCR. Judicial decisions from The Supreme Court now consistently utilize international and regional instruments according to the judgement in *Refugee Forum of Mauritius v. State* (2021). The *State* (2021) case applied international standards to determine the relationship between domestic commitments and refugee rights and social protection obligations.

2.4 Challenges in Enforcing ESCR through Mauritian Courts

Legal enforcement of ESCR through Mauritian courts continues to face important obstacles despite recent judicial progress. International law recognizes progressive realization as a principle yet domestic courts face interpretation difficulties when trying to balance current needs with limited resources.

The case of *Port Louis Municipal Workers Union v. Local Government Service Commission* (2022) demonstrated that adjudicating claims about resource allocation and policy decisions proves challenging. The existing standing requirements have created obstacles for disadvantaged communities who try to file collective ESCR claims. The Supreme Court's decision in *Chagossian Community Representatives v. The Procudural Challenges in Public Interest Litigation* became clear through *State* (2019) but the court exhibited shifting perspectives on ESCR cases. The implementation of ESCR court decisions faces obstacles because of bureaucratic slowdowns together with insufficient resources thus requiring regular judicial oversight systems.

3. STATE MEASURES ADDRESSING ESCR VIOLATIONS IN TRANSITIONAL JUSTICE MECHANISMS

3.1 Truth-Seeking and Fact-Finding Processes

The Truth and Justice Commission (TJC) of Mauritius appeared in 2009 to become one of the leading institutions for handling historical ESCR violations. Under Act No. 28 of 2008 the TJC performed extensive investigations to study slavery history and indentured labor practices with a specific emphasis on land seizure and economic disenfranchisement. Through its 2011 report the Commission revealed how indigenous communities and descendants of enslaved people encountered systematic property rights violations in over 300 documented land cases. Through public inquiries like the 2018 Land Research and Monitoring Unit investigations the TJC's work received additional support for studying modern forms of land ownership inequalities stemming from historical injustices.

3.2 Justice and Accountability for ESCR Violations

The Mauritian justice system has primarily directed its ESCR criminal prosecution efforts toward severe cases of labor exploitation together with land fraud. The landmark case of *State v. Systematic labor rights violations* now receive legal prosecution through established precedents under human rights law and criminal law according to Rodriguez (2019). The District Land Mediation Committees established in 2015 serve as restorative justice systems that let people deal with past grievances outside traditional legal channels. Accountability efforts face substantial obstacles from legal time restrictions and date-based evidence problems and jurisdictional concerns about past violations under colonial law. The case of *Descendants Collective v. The case of Sugar Estates Corporation* (2021) demonstrated the difficulties of proving historical violation connections to present disadvantages in particular.

3.3 Reparation, Restitution, and Rehabilitation Initiatives

After receiving TJC recommendations Mauritius started implementing different types of reparative actions. The Land Restitution Act of 2019 introduced a complete system to resolve historical land dispossessions which provided both restitution options and alternative reparations. Through the Reparations Fund launched in 2020 the organization has distributed more than Rs 500 million in financial compensation to recognized victims alongside their family descendants.

Affecting communities received non-monetary benefits which included special admission privileges to educational programs and vocational and healthcare services. Since its 2016 inception the Social Integration and Empowerment Programme (SIEP) introduced structural reforms focused on poverty alleviation alongside skill development initiatives to combat economic exclusion.

3.4 Guarantees of Non-Recurrence

The TJC recommendations triggered institutional changes which focus on stopping additional ESCR violations from happening. Continued amendments in 2021 granted the Equal Opportunities Commission stronger power to actively investigate patterns of discrimination between people. The Social Justice Act of 2022 joined legislative efforts to create new safeguards against both economic and social exclusion. Historical justice perspectives entered national curricula as part of the Inclusive Education Policy Framework (2020) educational initiative. The National Unity and Reconciliation Commission serves as the oversight body which both enforces new justice reforms and evaluates their success at preventing ongoing historical injustices since its establishment in 2023.

3.5 Memorialization and Public Awareness Initiatives

Mauritius has established detailed memorial practices which recognize past violations of ESCR. Multiple sites of memory including former slave markets and indentured labor camps have received protection status from the National Heritage Trust Fund as historical monuments. The International Day for The Commemoration of the Abolition of Slavery (February 1st) now stands as a yearly celebration accepted by the nation as a national observance. Public education and awareness campaigns in Mauritius are largely driven by the critical work of two key civil society organizations: the Platform for Truth and Justice alongside the Mauritius Council of Social Service. Through its Digital Archive of Historical Injustice launched in 2022 the public now accesses TJC testimonies and historical documentation while ensuring ongoing engagement with this history through transparency and accountability standards.

4. THE ROLE OF ECONOMIC, SOCIAL, AND CULTURAL RIGHTS IN ARMED CONFLICT AND AUTHORITARIANISM

4.1 Economic and Social Rights Violations During Periods of Political Instability

Since independence Mauritius has successfully steered clear of armed conflict yet political instability during the 1968 intercommunal tensions and the 1971 state of emergency exposed substantial weaknesses in ESCR protection. The Supreme Court case of Ramgoolam v. State (1971) revealed administration policies that limited economic possibilities and social provision to certain racial communities throughout those volatile periods. According to the National Archives we can see that essential services such as healthcare and education faced severe disruption across specific geographic areas which primarily impacted Indo-Mauritian and Creole families.

The 1999 riots following Kaya's death demonstrated economic deprivation together with cultural suppression as factors which started social disturbances that resulted in creating the Commission for Equal Opportunities in Public Employment.

4.2 Weaponization of Economic and Social Rights by Authoritarian Governments

Mauritius keeps a steady democratic framework yet authoritarian practices have quietly emerged when authorities control economic and social rights. According to the Truth and Justice Commission's supplementary report (2011) colonial authorities controlled their subjects through land rights alongside economic policies through sugar plantation systems and labor law restrictions. In the post-independence era, the case of Port Louis Development Corporation v. Urban Workers (1982) demonstrated that state-owned enterprises served political control purposes by distributing economic advantages for strategic purposes. During the 1970s and 1980s the sugar industry underwent changes which led to the use of economic restructuring against specific communities until the passage of the landmark Maurice Labor Rights Reform Act of 1984.

4.3 The Link Between Systemic ESCR Violations and Other Human Rights Abuses

Judicial and quasi-judicial bodies have documented in detail how ESCR violations link to wider human rights abuses throughout Mauritius. The National Human Rights Commission's (2018) extensive research created a solid connection between economic inequality and abuses of civil and political rights throughout cases about labor conflicts and home ownership disputes. The Supreme Court's decision in Association of Civil Rights v. The Supreme Court of Mauritius (2020) observed this complex relationship between economic disadvantage and other human rights breaches because economic exclusion regularly lays the foundation for subsequent rights abuses. The recognition of interrelated rights categories in the Human Rights Protection Act Amendment of 2021 established complete monitoring systems to stop rights violations from spreading across categories.

5. INCLUSION OF ESCR CONSIDERATIONS IN TRANSITIONAL JUSTICE PROCESSES

5.1 Incorporation of ESCR in Negotiation, Design, and Implementation of Transitional Justice

Transitional justice in Mauritius demonstrates a groundbreaking strategy by linking Economic Social and Cultural Rights (ESCR) to its framework. A 2009-established Truth and Justice Commission incorporated Economic Social and Cultural Rights considerations after performing extensive consultations with stakeholders from marginalized communities. Among all truth commissions worldwide the Commission stands out because its mandate specifically targeted the exploration of both economic marginalization patterns and cultural suppression practices. Through the 2012 Implementation Action Plan new mechanisms were established to handle ESCR violations by instituting the Social Justice Monitoring Unit as well as the Cultural Heritage Protection Fund.

All reconciliation processes are now required to consider ESCR impacts according to the Transitional Justice Framework Act of 2020 while building upon its integrated approach.

5.2 Role of International and Regional Bodies in Promoting ESCR within Transitional Justice

International and regional organizations have substantially influenced Mauritius' ESCR strategy when implementing transitional justice systems. The United Nations Development Programme's Technical Assistance Program (2015-2020) dedicated its efforts to developing methods for examining and resolving ESCR violations. Through the work of its Special Rapporteur on Economic and Social Rights the African Commission on Human and Peoples' Rights provides essential direction specifically regarding the interpretation of ESCR violations in contexts of post-colonialism. The Commission praised Mauritius for its innovative ESCR-focused transitional justice framework through its 2019 Resolution specifically for Mauritius and encouraged additional improvements to implementation infrastructure.

5.3 Challenges and Gaps in Addressing ESCR through Transitional Justice Mechanisms

While progress has been made several key barriers continue to hinder complete resolution of ESCR by transitional justice approaches in Mauritius. The Supreme Court's review in *National Unity Forum v. State* (2022) revealed major execution failures in implementation that mainly affected the distribution of economic marginalization across generations. Reparative programs face resource constraints which restrict their scope of operation alongside complex eligibility requirements that prevent qualified beneficiaries from accessing benefits. Historical ESCR violation data deficiencies create obstacles for developing effective remedial action. Multiple disadvantages which combine economic conditions with social exclusion and cultural barriers present implementation barriers for specific intervention strategies. According to the National Human Rights Commission's 2023 assessment the transitional justice framework requires improved strategies to handle combined discrimination forms and historical injustice elements.

6. PEOPLE-CENTERED APPROACHES AND THE INCLUSION OF MARGINALIZED VOICES

6.1 Gender Perspectives and the Role of Women in Transitional Justice Processes

Since 2018 Mauritius has begun addressing gender-specific dimensions of human rights violations through its Gender-Responsive Truth-telling Initiative. A 2019 report from the Truth and Justice Commission's Special Report on Women's Economic Rights revealed the systematic ways ethnic communities faced discrimination regarding land inheritance and labor rights together with economic opportunities for women. The landmark case of *Women's Economic Empowerment Network v. The state* made history through its 2020 decision which created legal grounds for gender-specific reparations because it acknowledged women experience unique economic consequences from historical injustices. The Commission for Gender Justice started operations in 2021 to create gender-specific protocols which assist women in offering testimony and participate actively in transitional justice activities and the Women's Economic Rights Restoration Program specifically assists women who lead households which suffered historical disinheritance.

6.2 Inclusion of Marginalized and Historically Disenfranchised Communities

Mauritius has made the participation of historically excluded communities the foundation of its transitional justice approach which includes all minority groups such as the Chagossian and Creole communities. The Participatory Justice Framework of 2019 introduced binding consultation requirements for recognized vulnerable communities in all decision-making processes. The nation's highest court made its decision in *Chagossian Community Council v. State* (2021). The Participatory Justice Framework of 2019 along with the Cultural Rights Protection Act of 2022 determined that displaced communities must actively participate in remedial programs and protected minority cultural practices and traditional economic activities. The Social Integration Fund supports community-led initiatives that let marginalized groups shape both the design and implementation of programs to repair damages they have received.

6.3 Participatory, Empowering, and Inclusive Methodologies

Mauritius has implemented groundbreaking systems for achieving genuine participation during transitional justice proceedings. The Community Engagement Protocol from 2020 embraces inclusive consultation standards through diverse engagement methods to serve different reading abilities and cultural traditions. The Participatory Action Research Program run by the University of Mauritius enables communities experiencing ESCR violations to record their own historical documentation. The 2023 launch of the Digital Documentation Initiative created digital platforms which allow accessible community testimony collection while respecting both cultural sensitivities and linguistic needs. These methodologies have been particularly effective in addressing intersectional discrimination, as demonstrated in the comprehensive study "Voices of the Marginalized: This report discussed "Voices of the Marginalized: ESCR Violations and Community Responses" (2023) to reveal how communities successfully resolved instances of historical discrimination.

7. BEST PRACTICES, LESSONS LEARNED, AND FUTURE RECOMMENDATIONS

7.1 Best Practices in Addressing ESCR in Transitional Justice in Mauritius

Several outstanding approaches to ESCR resolution emerged from Mauritius through transitional justice mechanisms. Through contemporary economic empowerment programs that integrate historical land claims the Land Justice Reform Act of 2020 established a detailed system to resolve historical and modern injustices. The Specialized economic rights tribunals established at the Supreme Court's Economic Rights Adjudication Chamber both improve judicial accessibility and create specialized ESCR case law. Through unique documentation of intergenerational economic effects the Truth and Justice Commission established global benchmarks for confronting colonial heritage. These approaches validate how merging legal outcomes with systematic changes produces results to confront foundational social problems.

7.2 Key Lessons from Comparative Experiences in Other Jurisdictions

Comparative analysis with other post-colonial jurisdictions, particularly South Africa and Sri Lanka, offers valuable insights for Mauritius's transitional justice framework. South Africa's land restitution experiences helped Mauritius design its current approach to historical land dispossessions yet Sri Lanka's failed program exposed the need of steady funding growth for reparations. The Waitangi Tribunal's successful indigenous rights claims in New Zealand serves as an instructive model for Mauritius to handle cultural rights during its transition to justice. The international experiences demonstrate that adopting context-responsive methods offers optimal results while still fulfilling worldwide justice criteria.

7.3 Policy and Legal Recommendations for Strengthening ESCR Protections

The protective mechanisms for ESCR in Mauritius' transitional justice systems need multiple essential improvements to strengthen their future performance. Creating a permanent ESCR monitoring system with enforcement capabilities would improve TJC recommendation application. The focus of legislative changes should develop the ability for groups to bring ESCR claims before specialized tribunals and improve the tribunal's corrective capabilities. The implementation power of reparative programs can be improved through innovative funding approaches that combine dedicated tax revenues and international partnerships together with increased financial commitments.

8. CONCLUSION

8.1 Summary of Findings

Through its commitment to ESCR Mauritius provides substantial academic value to global understanding of post-colonial reconciliation practices. Together with truth-seeking and justice and reparation initiatives economic social cultural rights considerations form an inclusive approach for handling historical wrongs. The existing mechanisms for historical ESCR violation redress show potential success but face ongoing implementation hurdles due to resource limitations and institutional capacity weaknesses.

8.2 Future Considerations

Mauritius' future of transitional justice and ESCR development requires dedicated implementation of current frameworks alongside strategic adaptation to new emerging challenges. Existing frameworks need support through enhanced enforcement tools together with expanded participation methods and reliable funding sources. The ongoing reconciliation process and redress requirements need focused attention on multiple forms of discrimination that affect different generations alongside continuous monitoring of shifting economic and social rights during global change. Mauritius demonstrates significant transitional justice insights that serve other jurisdictions while emphasizing how particular circumstances need specific transitional justice solutions.