**Special Rapporteur on contemporary forms of slavery, including its causes and consequences**

***" Role of organised criminal groups with regard to contemporary forms of slavery"***

* **Organised criminal groups and contemporary forms of slavery in Mauritius**

***(Questions 1, 2, 4 & 5)***

1. As of date, there is no record of organized criminal groups in Mauritius involved in contemporary forms of slavery. There is no such information that people are being used by organized groups to commit crimes. In reported cases of criminal activities, accused parties acted on their own volition.
2. According to the Police Department, there is no reported cases of individuals being exploited in legitimate business or of corruption and obstruction of justice and or of involvement of organised groups in contemporary forms of slavery posing additional challenges in the identification of victims.

* **Legislative framework *(Question 3)***

***Paragraph 3(a) of the Questionnaire***

*In addition to legislation relating to contemporary forms of slavery, does your country have any statutory frameworks criminalising the activities of organised criminal groups (e.g. participating, leading/directing, organising or being a member)? If so, please provide details, including statistical information on prosecutions/convictions if available.*

1. Pursuant to Section 6 of the Constitution of Mauritius, no person shall be held in slavery or servitude and no person shall be requested to force labour. Work related activities are also governed by the Employment Rights Act & Employment Relations Act. However, there is no definition for organized crime.
2. Under section 188 of the Criminal Code, any association of malefactors against the persons or property of individuals, is a crime against the public peace. Such crime exists by the mere fact of an organisation of a band, or of correspondence between such band and its chiefs or commanders, or of an agreement having as object to give an account or to make a distribution of divison of the produce of their wrongful acts (section 189). Even where such crime is not accompanied or followed by any other crime, the author or director of such association, and the chief or subordinate commanders of such band, shall be punished by penal servitude (section 190
3. Section 191 of the Criminal Code provides that any other person forming part of such band, and any person who knowingly and wilfully supplies such band or any portion thereof, with arms, ammunition, instruments of crime, lodging, or place of retreat or meeting, shall be punished by penal servitude for a term not exceeding 20 years. (Under section 11(1) of the Criminal Code, the punishment of penal servitude is imposed for life or for a minimum term of 3 years.)
4. Sections 66 and 67 of the Criminal Code criminalise the acts of plundering public property with armed band and harbouring an armed band respectively. The Criminal Code also provides that no punishment shall be pronounced against any person who, having formed part of such an armed band, but without exercising any command or filling any office or function in it, withdraws on the first intimation from any of the civil or military authorities, but he shall incur in such cases the penalties attached to the particular crimes which he may have individually committed (section 68 of the Criminal Code).
5. Under section 352 of the Criminal Code, the plundering, or damaging of provisions, goods or merchandise or any other property, committed by a body or band, and with open force, is an offence punishable by penal servitude for a term not exceeding 20 years, and by a fine not exceeding 100,000 rupees. Any person who, without lawful authority, enters or attempts to enter on any premises while in a body or band consisting of 5 or more persons shall also commit an offence and shall, on conviction, be liable to a fine not exceeding150,000 rupees and to penal servitude for a term not exceeding 20 years.
6. Section 109 of the Criminal Code (Supplementary) Act also criminalises the offence of conspiracy and provides as follows –

“*(1) Any person who agrees with one or more other persons to do an act which is unlawful, wrongful or harmful to another person, or to use unlawful means in the carrying out of an object not otherwise unlawful, shall commit an offence and shall, on conviction, be liable to penal servitude for a term not exceeding 10 years and to a fine not exceeding 100,000 rupees.*

*(2) Where the agreement is to commit murder, manslaughter, an international crime as defined in the International Criminal Court Act 2011 or an offence related to terrorism under the Prevention of Terrorism Act, the person charged shall, on conviction, be liable to the same penalty as would have been applicable to an accomplice*.”

***Paragraph 3(b) of the Questionnaire***

*Do the legislative frameworks* *on contemporary forms of slavery stipulate the involvement of organised criminal group as an aggravating factor increasing penalties?*

1. Section 4 of the Prevention of Terrorism Act (“POTA”) provides as follows –

“*Any 2 or more persons who associate for the purpose of –*

*(a) committing, or attempting to commit, an act of terrorism;*

*(b) participating as an accomplice in an act of terrorism;*

*(c) organising, or directing, any other person to commit an act of terrorism; or*

*(d) contributing to the commission of an act of terrorism by a group of persons acting with a common purpose where the contribution is made intentionally and with the aim of furthering the act of terrorism or with the knowledge of the intention of the group to commit an act of terrorism;*

*shall commit an offence and shall, on conviction, be liable to penal servitude for a term of not less than 5 years and not more than 35 years*.”

1. Section 5 of the POTA deals with terrorist meetings and provides that it is an offence for any person to –

(a) arrange, manage, or assist in arranging or managing, or participate in a meeting, or an activity, which he knows is concerned with an act of terrorism;

(b) provide logistics, equipment or facilities for a meeting, or an activity, which he knows is concerned with an act of terrorism; or

(c) attend a meeting, which he knows is to support a proscribed organisation, or to further the objectives of a proscribed organisation.

1. The POTA also criminalises the recruitment of persons in terrorist groups (section 12A POTA) as well as participation in terrorist groups (section 12B POTA).
2. Part III of the Dangerous Drugs Act sets out offences under the Act, and section 41 of the Act defines aggravating circumstances. In this regard, the fact that an offender belongs to a criminal organisation or ring is deemed to be an aggravating circumstance (section 41(1)(a)), leading to a convicted person being liable to double the penalties in respect of certain offences under the Act (section 41(2)). Furthermore, where a person is convicted of an offence under section 29(2) or 30 of the Act and it is proved that such person is a drug trafficker, he will be liable to a fine not exceeding two million rupees together with penal servitude for a term not exceeding 60 years (section 41(3)). A person is be deemed to be a drug trafficker where the street value of the drugs, the subject-matter of the offence, exceeds one million rupees or such other value as may be prescribed.
3. The legislative frameworks on contemporary forms of slavery do not specifically provide for the involvement of organised criminal groups as an aggravating factor. Though, same may be considered as an aggravating factor by the trial Court at the sentencing stage. On the hand, the involvement of groups in the commission of offences is nonetheless recognised in certain cases:

* Section 301 of the Criminal Code criminalises the offence of larceny and provides that any person who fraudulently abstracts anything not belonging to himself shall commit larceny and be liable, on conviction, to imprisonment and to a fine not exceeding 100,000rupees.
* (Note: Under section 12 of the Criminal Code, where (in any enactment) the punishment of imprisonment is provided for an offence without a term being specified, the term for which imprisonment may be imposed may exceed 10 days but shall not exceed 10 years.)
* Section 305 of the Criminal Code provides the penalties applicable in cases of larceny with aggravating circumstances and imposes the punishment of penal servitude on any person convicted of the crime of larceny where, inter alia, the larceny has been committed, or where the assault upon any person with intent to rob him, has been made by 2 or more individuals.
* Rebellion is an offence under section 144 of the Criminal Code, and different penalties are applicable depending on the number of people who have committed such offence, and whether or not they were armed.
* Section 145 of the Criminal Code (‘Rebellion by more than 20 armed persons’) provides as follows –

*“Where the rebellion is committed by more than 20 armed persons, the offenders shall be punished by penal servitude, and if they were not armed, they shall be punished by imprisonment.”*

* Section 146 of the Criminal Code (‘Rebellion by 3 but not more than 20 armed persons’) provides as follows –

*“Where the rebellion is committed by 3 or more armed persons, not exceeding 20 in number, the punishment shall be penal servitude for a term not exceeding 20 years, and if they were not armed, the punishment shall be imprisonment.”*

* Where the rebellion is committed by one or 2armed persons only, it shall be punished by imprisonment, and where it is committed without arms, by imprisonment for a term not exceeding 5 years (section 147 of the Criminal Code).

***Paragraph 3(c) of the Questionnaire***

*Does your country have legislative frameworks to promote intelligence-led law enforcement (the use of special investigative techniques such as surveillance and interception of communications) to combat contemporary* forms of slavery?

1. Under the Computer Misuse and Cybercrime Act an investigatory authority (that is, the police or any other body lawfully empowered to investigate any offence) can make the relevant applications for a preservation order (section 11), for disclosure of preserved data (section 12), for a production order (section 13), for powers of access, search and seizure for purposes of investigation (section 14) and for real time collection of traffic date (section 15).

***Paragraph 3(d) of the Questionnaire***

*Given the human rights implications arising from intelligence-led law enforcement (such as the rights to privacy and a fair trial), do these legislative frameworks provide for sufficient safeguards against abuse (e.g. judicial or other approval and oversight and grievance mechanisms in case of an abuse of process)?*

1. All the applications mentioned in the above paragraph must be made before a Judge in Chambers. Section 17 of the Computer Misuse and Cybercrime Act further provides that no data obtained under sections 11 to 15 shall be used for any purpose other than that for which the data was originally sought except –

(a) in accordance with any other enactment;

(b) in compliance with an order of a Court or Judge;

(c) where such data is required for the purpose of preventing, detecting or investigating offences, apprehending or prosecuting offenders, assessing or collecting tax, duty or other monies owed or payable to the Government;

(d) for the prevention of injury or other damage to the health of a person or serious loss of or damage to property; or

(e) in the public interest.

***Paragraph 3(e) of the Questionnaire***

*Does your country have legislative frameworks on money laundering and criminal asset recovery (or confiscation of criminal proceeds)?*

1. The relevant legislative framework on money laundering and criminal asset recovery are the Financial Intelligence and Anti-Money Laundering Act and the Asset Recovery Act.

**Paragraph 3(f) of the Questionnaire**

Does your country also support civil asset recovery without criminal conviction? If so, please provide details including any safeguards in place.

1. Yes, the relevant legal provisions are found under Part IV of the Asset Recovery Act and under the Good Governance and Integrity Reporting Act
2. Under section 27 of the Asset Recovery Act, where property is reasonably believed by the Enforcement Authority to be recoverable and to be proceeds, a benefit or an instrumentality or terrorist property, the Enforcement Authority may apply to a Judge for a Restriction Order in respect of that property.
3. The above terms are defined under section 2 of the Asset Recovery Act as follows –

*“‘proceeds’ means any property or economic advantage, wherever situated, derived from or obtained, directly or indirectly, through or in connection with an offence or unlawful activity;*

*‘benefit’ —*

*(a) means an actual or a potential advantage, gain, profit, benefit or payment of any kind that a person derives or obtains or is likely to derive or obtain, or that accrues or is likely to accrue to him;*

*(b) includes the benefit that another person derives or obtains or is likely to derive or obtain, or that otherwise accrues or is likely to accrue to such other person, where the other person is under the control of, or is directed or requested by, the first person;*

*(c) includes an instrumentality;*

*‘instrumentality’ means any property used or intended to be used in any manner in connection with an offence or unlawful activity;*

*“terrorist property” has the same meaning as in the Prevention of Terrorism Act and means property which -*

*(a) has been, is being, or is likely to be used for any act of terrorism;*

*(b) has been, is being, or is likely to be used by a proscribed organisation;*

*(c) is the proceeds of an act of terrorism; or*

*(d) is gathered for the pursuit of, or in connection with, an act of terrorism.”*

1. A person who knowingly contravenes a Restriction Order by disposing of or otherwise dealing with property that is subject to the Order shall commit an offence. The Enforcement Authority may apply to a Judge for an order that any dealing with property be set aside where the property is dealt with in contravention of the Order; or the dealing was not for sufficient consideration or not in favour of a person who acted in good faith and without notice of the Order.
2. Upon such an application, the Judge may order that the disposition or dealing shall be set aside from the day on which it took place, or the disposition or dealing shall be set aside from the day on which he makes the order and declare the respective rights of every person who acquired an interest in the property on or after the day on which the disposition or dealing took place and before the day on which he makes the order (section 32).
3. Under section 34 of the Asset Recovery Act, where any property has come to the notice of the Enforcement Authority, or property is found by a law enforcement agent to be in the possession of any person, and the property is reasonably believed by the Enforcement Authority to be proceeds or a benefit derived from an offence or any unlawful activity which the Court finds to be sufficiently related to that offence, an instrumentality or terrorist property, the Enforcement Authority may make an application to the Court for the grant of a Recovery Order in respect of the property.
4. The Enforcement Authority must within 14 days of such an application, give notice to every person known to the Authority to have an interest in the property subject to the application. Such person, or any other person claiming an interest in the property may appear at the hearing of the application to oppose the making of the Order, or to apply for an order excluding his interest in that property from the operation of the Order or varying the operation of the Order in respect of that property, and to adduce evidence at the hearing of the application.
5. The Asset Recovery Act further caters for tracing of assets, and provides that where any property which constitutes proceeds, a benefit or an instrumentality or terrorist property has been disposed of since it was used or obtained in connection with the commission of an offence, it is recoverable if it is held by a person into whose hands it may be followed.
6. Section 43 of the Asset Recovery Act provides for offences related to Investigations (civil recovery investigations or confiscation investigations) as follows –

*“(1) Where a person knows or has reason to suspect that the Enforcement Authority or the Asset Recovery Investigation Division is acting, or proposing to act, in connection with an Investigation which is being or is about to be conducted, he shall, subject to subsections (2) and (4), commit an offence where –*

*(a) he makes a disclosure which is likely to prejudice the Investigation; or*

*(b) he falsifies, conceals, destroys or otherwise disposes of, a document which is relevant to the Investigation.*

*(2) A person shall not commit an offence under subsection (1)(a) where –*

*(a) he does not know or suspect that the disclosure is likely to prejudice the Investigation;*

*(b) the disclosure is made in the exercise of a function under this Act or any other enactment relating to unlawful activity or benefit from unlawful activity or in compliance with a requirement of this Act; or*

*(c) he is a professional legal adviser and the disclosure falls within subsection (3).*

*(3) A disclosure, other than a disclosure made for a criminal purpose, falls within this subsection where it is a disclosure –*

*(a) to a client of a professional legal adviser in connection with the giving, by the adviser, of legal advice to the client; or*

*(b) by a professional legal adviser to any person in connection with legal proceedings or contemplated legal proceedings.*

*(4) A person shall not commit an offence under subsection (1)(b) where –*

*(a) he does not know or suspect that the document is relevant to the Investigation; or*

*(b) he does not intend to conceal any fact disclosed by the document from a law enforcement agent carrying out the Investigation.”*

1. The Good Governance and Integrity Reporting Act (“GGIRA”) (which is, in addition to, and not in derogation from the Asset Recovery Act) also provides for asset recovery without criminal conviction.

It is to be noted that the GGIRA does not apply to –

(a) any property acquired or having come in the possession or under the custody or control of a person more than 7 years before the commencement of the Act;

(b) unexplained wealth of less than 10 million rupees, other than to unexplained wealth of at least 2.5 million rupees in cash which has been seized by an enforcement authority during a criminal investigation.

1. Section 2 of the GGIRA defines “unexplained wealth” as including any property –

(a) under the ownership of a person to an extent which is disproportionate to his emoluments and other income;

(b) the ownership, possession, custody or control of which cannot be satisfactorily accounted for by the person who owns, possesses, has custody or control of the property; or

(c) held by a person for another person to an extent which is disproportionate to the emoluments or other income of that other person and which cannot be satisfactorily accounted for.

1. The GGIRA establishes the Integrity Reporting Services Agency (“the Agency”) and the Integrity Reporting Board (“the Board”). The Agency may request any person to explain the source of any funds which the person owns, possesses, has custody or control of, or which are believed to have been used in the acquisition of any property (section 5 of the GGIRA). If no reply is received, the Agency will apply to the Judge in Chambers for a disclosure order –

(a) to obtain information on property held by a person or by any other person on his behalf; or

(b) requiring any person to disclose the sources of funds used to acquire, possess or control any property. (section 13 of the GGIRA)

1. After conducting its enquiry, the Agency reports the matter to the Board. The Agency may, before submitting such report to the Board, inscribe a privilege in favour of Government on the property in respect of which the person is unable to give a satisfactory account of his unexplained wealth (section 12(1) of the GGIRA).

Upon receiving a report from the Agency, the Board must determine –

(a) whether an application for an Unexplained Wealth Order shall be made;

(b) what further action, if any, shall be taken in respect of the report; and

(c) whether any person deserves a reward and the quantum thereof.

1. Where the Board determines that the Agency shall initiate action on the report, no further action for the confiscation of property shall be taken thereon by an enforcement authority. If the Board determines that the report submitted by the Agency discloses reliable evidence of underlying criminal activity, it must refer the matter to the relevant enforcement authority (section 8 of the GGIRA).
2. Where the Board has reasonable grounds to believe that a person has unexplained wealth, it shall direct the Agency to apply to a Judge in Chambers for an Unexplained Wealth Order for the confiscation of that unexplained wealth. Where such an application is made, the Agency may apply for an order prohibiting the transfer, pledging or disposal of any property (section 14 of the GGIRA).
3. Where the Judge in Chambers is satisfied that the respondent has unexplained wealth, he shall make an Unexplained Wealth Order or an order for the payment of its monetary equivalent. If the Judge in Chambers however considers that the application cannot be granted on the basis of affidavit evidence, he shall refer the matter to the Supreme Court (section 16 of the GGIRA).
4. Where an Unexplained Wealth Order is made and the order is not subject to an appeal, nor discharged, the property recovered and confiscated shall vest in the Agency. The Agency must appoint a liquidator to realise any confiscated property (section 17 of the GGIRA).
5. Any sums derived from the realisation of property under section 17 of the GGIRA are paid into the National Recovery Fund established under section 19 of the GGIRA.

**Paragraph 3 (g) of the Questionnaire**

How does your country deal with corruption and obstruction of justice committed by organised criminal groups in relation to contemporary forms of slavery?

1. The Prevention of Corruption Act provides for the prevention and punishment of corruption and fraud. An act of corruption is defined under the Act as an act which constitutes a corruption offence (as covered under Part II of the Act), and includes –

(a) any conduct whereby, in return for a gratification, a person does or neglects from doing an act in contravention of his public duties;

(b) the offer, promise, soliciting or receipt of a gratification as an inducement or reward to a person to do or not to do any act, with a corrupt intention;

(c) the abuse of a public or private office for private gain;

(d) an agreement between 2 or more persons to act or refrain from acting in violation of a person's duties in the private or public sector for profit or gain;

(e) any conduct whereby a person accepts or obtains, or agrees to accept or attempts to obtain, from any person, for himself or for any other person, any gratification for inducing a public official, by corrupt or illegal means, or by the exercise of personal influence, to do or abstain from doing an act in the exercise of his duties to show favour or disfavour to any person.

1. Perverting the course of justice is an offence under section 298A of the Criminal Code, which provides that any person who does any act, or makes any omission, intending in any way to pervert the course of justice, shall commit an offence and shall, on conviction, be liable to a fine not exceeding 100,000 rupees and to imprisonment for a term not exceeding 10years.

**Paragraph 3(h) of the Questionnaire**

What legislative and other mechanisms are in place to protect witnesses in criminal proceedings involving organised criminal groups?

1. The following legislative provisions are applicable to witnesses in criminal proceedings generally or under specified enactments and therefore also applies to criminal proceedings involving organised criminal groups.
2. Under section 161B of the Courts Act, the Court may, in its discretion and on motion made by the prosecution, allow a complainant in a sexual offence `case or any witness in relation to an offence under the Piracy and Maritime Violence Act to appear before it, and depone, through such live video or live television link system as may be approved in writing by the Chief Justice. In exercising its discretion, the Court must ensure that there is a fair hearing in the matter.
3. Under the Dangerous Drugs Act, it is an offence for any person who, in relation to a drug offence, causes threats or inducement, or persuades or influences, any witness to give false or misleading evidence in court (section 41(2)(b)). The Act also provides that any person who, whether personally or through another person and in relation to a drug offence, threatens or interferes with a witness or any other person related to the witness, shall commit an offence (section 41(3)).A person convicted of such offence is liable to a fine of not less than 10,000 rupees and not exceeding 100,000 rupees together with a term of imprisonment of not less than 2 years and not more than 10 years.
4. Under section 29 of the Prevention of Terrorism Act, a Court may, on motion by or on behalf of the Director of Public Prosecutions, order that no person shall publish –

(a) the name, address or photograph of any witness in any case tried or about to be tried before it for any offence under the Act; or

(b) any evidence or any other matter likely to lead to the identification of the witness.

1. A Court may also, on motion by or on behalf of the Director of Public Prosecutions, in the interest of public safety or public order, exclude from proceedings instituted for any offence under the said Act, any person other than the parties and their legal representatives.
2. Section 49 of the Prevention of Corruption Act provides for the protection of witnesses as follows:

*“(1) Subject to subsection (6), where a person-*

*(a) discloses to a member of the Board or an officer that a person, public official, body corporate or public body is or has been involved in an act of corruption; and*

*(b) at the time he makes the disclosure, believes on reasonable grounds that the information he discloses may be true and is of such a nature as to warrant an investigation under this Act, he shall incur no civil or criminal liability as a result of such disclosure.*

*(2) Subject to subsection (6), where a public official-*

*(a) discloses to his responsible officer or to the Director-General that an act of corruption may have occurred within the public body in which he is employed; and*

*(b) believes on reasonable grounds that the information is true, he shall incur no civil or criminal liability as a result of such disclosure and no disciplinary action shall be started against him by reason only of such disclosure.*

*(3) A person who makes a disclosure under subsection (1) or (2) shall assist the Commission in any investigation which the Commission may make in relation to the matters disclosed by him.*

*(4) A person to whom a disclosure is made under subsection (1) or (2) shall not, without the consent of the person making the disclosure, divulge the identity of that person except where it is necessary to ensure that the matters to which the information relates are properly investigated.*

*(5) A person who commits an act of victimisation against a person who has made a disclosure under subsection (1) or (2) shall be guilty of an offence and shall, on conviction, be liable to pay a fine not exceeding 50,000 rupees and to imprisonment not exceeding one year.*

*(6) A person who makes a false disclosure under subsection (1) or (2) knowing it to be false shall be guilty of an offence and shall, on conviction, be liable to pay a fine not exceeding 50,000 rupees and to imprisonment not exceeding one year.*

*(7) In this section, "victimisation" means an act -*

*(a) which causes injury, damage or loss;*

*(b) of intimidation or harassment;*

*(c) of discrimination, disadvantage or adverse treatment in relation to a person's employment; or*

*(d) amounting to threats of reprisals.”*

1. Under section 13 of the Combating of Trafficking in Persons Act, any person who believes that a person is a victim of trafficking must forthwith report the matter to the police, and the identity of a person who makes such a report shall not be disclosed, unless a Judge in Chambers otherwise orders.
2. The Children’s Act has been passed on 15 December 2020, but has not yet come into force. Under section 27 of the Act, no person shall, in relation to a child witness, child victim or child offender, publish or broadcast in the media any information in any form, including a photograph, a picture, a video recording or an audio recording, which identifies or tends to identify, the child. A Court may, in order to protect the privacy of a child, order that the child be referred to by his initials or a pseudonym in any part of any legal proceedings which is made public.
3. Furthermore, no person shall, in relation to a child witness, child victim or child offender who has passed away, publish or broadcast in the media any information in any form, including a photograph, a picture, a video recording or an audio recording, which identifies, or tends to identify, the child, unless expressly authorised by –

(a) the parent of the child, where no Court proceedings have been instituted; or

(b) any Court, where the matter is pending before a Court.

1. Under section 66 of the Children’s Act, where a child is a victim of, or witness in, a serious offence, including physical or sexual abuse, or where a child is an offender, the Police, a probation officer

or an authorised officer may, where –

(a) there is a conflict of interest between the child and the parent;

(b) there is a dispute of custody or visiting rights in relation to the child; or

(c) where no parent is available or the parent is unwilling or unable to act in the best interest of the child,

make an application for the appointment of a guardian adlitem for the victim, witness or offender.

The guardian ad litem shall –

(a) advocate for the child’s best interests before a Court;

(b) monitor the child’s best interests, including any impact caused by the involvement in the justice process, throughout the investigation and the judicial proceedings on the child; and

(c) make recommendations related to the child’s best interests to the Director of Public Prosecutions, the Police and any other person or body in relation to any Court proceedings involving the child.

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