

**BRAINSTORMING SESSION WITH STAKEHOLDERS [POLITICAL PARTIES
AND NGOs] ON ISSUES RAISED IN LRC DISCUSSION PAPER “LAW AND
PRACTICE RELATING TO CRIMINAL INVESTIGATION, ARREST AND
BAIL”**

WEDNESDAY 7TH MAY 2008 AT THE HUMAN RIGHTS CENTRE

Stakeholders’ Views

Investigation

The general view expressed by stakeholders is that investigation in Mauritius lacks the required professionalism. Investigation bodies like the Police, have to develop a new culture as far as approach is concerned (that is service to the population, ethics, good manners) and in addition they should take into consideration the rights of the victims or vulnerable groups. Very often it was found that even though the law provided the necessary guarantees, police practice or the “bon vouloir” of a police officer often prevails. It was therefore suggested that-

- (a) a Proper Police School be set up with revised training programmes that would include-
 - (i) Human Rights Considerations;
 - (ii) Proper way of approaching a person (attitude) in given circumstances;
 - (iii) How to treat victims, in particular cases of rape or where children are involved;
 - (iv) How to treat accused parties who are minors or handicapped;
- (b) Investigation authorities should be given enough means to carry out their functions properly, and this would include adequate vehicles and buildings;

- (c) Investigation authorities should be protected from undue political interference, and should be allowed to carry out their functions in an independent and impartial manner;
- (d) Proper arrangements should be made in Police Stations to receive victims of rape and as far as possible there should be female police officers in charge of the enquiry. In that respect it was pointed out male police officers often put inappropriate questions trying to bring out all the sordid details, which are in fact unnecessary for the purposes of the enquiry;
- (e) Some even argued that the ICAC could be properly replaced by an efficient and professional Police force.
- (f) The creation of a “Police de Police” was canvassed, in view of the fact that the present system is not giving satisfaction, and it was considered inappropriate that the Police should investigate upon its own fault. It was also canvassed that this body should fall under the responsibility of a body other than the Police force, and should comprise investigators that have the required independence from the Police Force.
- (g) On the issue of statement recording, it was suggested that-
 - (i) whenever a person falling in the vulnerable category is being interrogated (for example a minor), this has to be done in the presence of an independent person, otherwise the statement must be treated as inadmissible by a court.
 - (ii) One participant even suggested that it has to be mandatory that a medical officer, as well as Counsel be present, irrespective if the person is a minor or not;
 - (iii) Another participant also suggested that a (blood relative) family member should be present.
- (h) In the same line, it was also suggested that a confession should not be per se admissible, unless it is supported by other independent evidence, such as DNA evidence.
- (i) It was agreed that the use of video recording or tape recording will to a great measure allay the fears that a statement has been recorded through inappropriate or illegal means.

- (j) Police as well as victims and suspects should be able to benefit from readily available legal advice, so as to ensure that an inquiry is conducted in a fair manner with due respect of the legal principles.

The general element that seems to be coming out on the discussion on this topic seems to be that there is a great need to professionalize the Police, through education, training and provision of adequate means to carry out the job. Independence and accountability of the Police force should be increased, so that the trust deficiency which the police are presently facing could be curtailed.

Arrest

Similar issues as the above were raised. In addition the following points were made-

- (a) There was a need to inform the general population of their rights, as very often people were not aware of same;
- (b) There is a need for clarity as to when an arrest is reasonable, even though allowed under the law. Not only the arrest should be legal but also reasonable in the circumstances, and this should be based on tangible evidence;
- (c) Police should not arrest a person on mere allegations, but they should ensure that there is enough prima facie evidence against a person before arresting same. It was observed that the prevailing police practice is that the moment they have an allegation recorded against a person, they arrest the person against whom the allegation has been made without in the first place ascertaining if there is sufficient evidence against that person;
- (d) The Police should benefit from legal advice, and this should be readily available at all Police HQ, in case of doubt. However, legal advice should be independent and impartial in all circumstances, and not to suit the Police.

Bail and Habeas Corpus

- (a) There was a general consensus that Bail should be as of right, but the rights of the victim and society should also be taken into consideration. The issue of a person being in jail because he or she cannot pay the “caution” was raised and it was considered inappropriate that people should be in jail just because they are poor. There was a strong appeal for the law to be reviewed on this aspect.

On the other hand there was a strong plea made in relation to “serious crimes”, (in particular drug dealers, serial killers and rapists) for them not to be released on bail, as they may be a continued threat to society.

- (b) There was a general consensus that alternative means be considered, namely electronic tagging.
- (c) There was an appeal that the police practice that arrest be made on Friday nights be stopped as it was difficult to get a Magistrate to sit during week-ends, unless provisions are made to have the Courts open during week-ends as well.
- (d) Legal assistance should be provided to a suspect, through legal aid
- (e) In case of wrongful detention, there should be compensation, be it though the provision of a special fund. It was strongly argued that one cannot stay in detention for long periods of time, only to find at the end of the day that the Director of Public Prosecutions decides not to prosecute.

Provisional Charge

There was not much discussion on this issue, except a passing reference that this should be lodged as soon as possible. The issue of delay was also raised.

Right to Counsel

Again there was not much debate on this issue, except to reemphasize the need for legal advice at all stages of the enquiry, be it for the Police, Victims or accused, and as far as possible through the legal aid system where a suspect does not have the means to retain a counsel of his choice. As regards the Police and Victims, services of lawyers may be retained by the Government.

Trial

On the issue of trial, the following points were raised-

- (a) There has to be time limits for entering a prosecution;
- (b) There is a need for “mobile judges”, that is decentralisation of the Justice System;
- (c) Magistrates and Judges should be made liable for their wrong decisions, and the example that was given was that the DPP decides not to prosecute a case, whilst the Magistrate or Judge has continuously refused bail to an accused party. Alternatively when a case is dismissed then the accused party should also be entitled to compensation;
- (d) Property seized for the purposes of the enquiry should be returned to the Victims, and not kept pending the completion of the trial, where very often because of passage of time and conditions of storage, the value of the property has been rendered nugatory. It was suggested that the Police should be able to take photographs of the property and these photographs be presented before the courts.

List of Participants

	Name of participant	Party/Organisation
1.	Mr. Mity Ragnuth	Conservative Party
2.	Mr. Rewah Nayeck	Mouvement Travailleurs Mauriciens
3.	Mr. Feroze Maudarbucus	Rassemblement Socialiste Mauricien
4.	Mr. Prem Dookee	Mouvement Civique de Vallée des Pretres
5.	H. Hoolash	Mouvement Solidarité Travailleur Mauricien, Rodrigues, Agalega (MSTMRA)
6.	Miss Nushrut Shaik Fareed	Comité Quartier de la Rue La Paix et des Rues Avoisnantes
7.	Mrs Mohun Marina	Majority Party
8.	Chris Ramasawmy	Mouvement Civique de la Baie du Tombeau
9.	Farouk Mohamudbucus	Muslim League
10.	R. Jootun	Association Progressive de Grand Gaube
11.	R. Joorawaon	Ministry of Education & H.R
12.	Claudette Laurent	Anti L'esclavage
13.	K. Kora Venciah	Probation Home for Girls
14.	Thodela Faugoo	Chairman of Probation Hostel for Boys
15.	Y. Ramburrun	Conservative Party
16.	Ally Lazer	Social worker, Dr. I. Goomany Treatment Centre
17.	Ramsahok Luchmeeparsad Singh	Parti Action Liberal
18.	Oozeer Swaley	Parti Socialiste

	Name of participant	Party/Organisation
19.	Mario Edouard	Mouvement Justice Nationale
20.	Daneesha Dabeesing Ramlugan	SLO (Rep. of Law Society)
21.	Latasha Bissessur	Media Watch Organiation
22.	Mahomed Hossen Mahaboob	Mouvement Democratique Mauricien (MDM)
23.	Foondun N. Yashin	Mouvement Democratique Mauricien (MDM)
24.	Mohamed Raffick Goolfee	Mouvement Liberation Militant
25.	Moonsamy Thimmadoo (Roumesh)	Mouvement Patriotique
26.	Richefond Potou	Groupe de Cinq
27.	Nisha Durgahee	
28.	Dhanalutchmee Mootyen	Mouvement Developpement et Soildarité
29.	Mr. Pramod Goonwant Sowamy	Mouvement Soicaliste Independent
30.	Dulari Jugnarain	Party Congress National
31.	Roland Rose	Mouvement Developpement et Solidarite
32.	Doger de Speville Patrice	President Bar Association
33.	Maghnand K. Ujoodha	Mouvement Travailleiste Socialiste
34.	Louis Sere Antoine	Mouvement National Mauricien

Issues calling for Discussion

(A) Circumstances of Arrest/Other Interferences with Fundamental Rights

1. Are there adequate safeguards to ensure an investigator has, in the course of an enquiry, complied with legal and ethical standards? Is there a need for new safeguards? Should the existing safeguards be strengthened in order to make them more effective?
2. Is the legal framework for arrest satisfactory?

Are there sufficient safeguards for ensuring that police and other law enforcement officials do exercise their powers of arrest in accordance with law?

Are there sufficient safeguards for ensuring the power to arrest is exercised in a reasonable manner, based on evidence in support thereof?

Are there effective mechanisms of redress against arbitrary arrests or detention?

3. Are there sufficient safeguards against arbitrary interference with privacy during a criminal investigation?

Should the law provide in what circumstances a person shall be presumed not to have consented to the search of his person or his property or the entry by others on his premises?

(B) Treatment of Arrested Persons or Detainees/Release on Bail

4. In order to better secure the rights of a person arrested, should a duty barrister scheme be put in place in all stations so that everyone arrested or detained who does not have the means to retain services of a legal representative of his own choice, is entitled to free legal advice and representation? If so, would free legal advice and representation be made available in respect of all offences or only the more serious ones?
5. Would it enhance trust in the integrity of the investigation process if there were video recordings of police interviews of suspects? Which other measures could enhance confidence in police practices and procedures?
6. The rules governing the interrogation and interviewing of suspects are designed to prevent undue compulsion on suspects to confess guilt. Are the safeguards in our legal system adequate?

Should Courts decline to convict an accused where prosecution evidence is based solely on his confession? Should confessions be treated as admissible only when supported by other corroborative evidence?

7. Are the conditions imposed under the Bail Act for release on bail satisfactory? Are they not too financial in nature? Should legislation be introduced with a view to modernizing the monitoring mechanism for bail administration?
8. Is the current framework for release of suspects during week-ends satisfactory?
9. Are the sanctions for breaches of conditions of bail adequate?

(C) Rights of Victims and Other Vulnerable Groups in respect of the Criminal Investigation Process

10. Do you consider the current legal and administrative mechanisms sufficiently protect victims of crime from abuse and intimidation as a result of their involvement in criminal proceedings?
11. Should there be a mechanism which would provide the opportunity for victims to have stolen property returned to them before any case against suspects is concluded?
12. Does the criminal justice system adequately safeguard the rights of juvenile offenders apprehended by police officers?
13. Are the rights of women, their special status and special needs, adequately safeguarded in the course of criminal investigations?
14. How can the rights of persons belonging to vulnerable groups be better safeguarded in the course of criminal investigations?