

**THE TENSION BETWEEN THE RIGHT TO PROPERTY AND THE  
DEVELOPMENTAL PROJECT OF METRO EXPRESS IN MAURITIUS: A  
CRITICAL ASSESSMENT**

Dr. Roopanand MAHADEW<sup>1</sup>

<sup>1</sup>(Senior Lecturer, Department of Law, University of Mauritius, Mauritius)

---

**Abstract:** *Mauritius has embarked on arguably one of the most significant infrastructural projects in its history through the Metro Express project. Voted as a remedy to the problem of traffic congestion and an opportunity to position Mauritius as an investor-friendly nation, this project has fuelled numerous debates. Some stakeholders argue that it is a much-needed development project whereas others are critical about its impact on human lives and the environment. While a considerable proportion of its impact will only be evident in future, the way this project has changed the lives of some people has been formidable. Indeed, scores of families who had their houses and properties where the track of the locomotive is supposed to pass have been displaced and relocated, with or without compensation. With the above as background, this article focuses on the tension between the right to property of Mauritians guaranteed by the Constitution and the developmental need of the country. An assessment is conducted to see how and in what circumstances the constitutional right to property is entrenched and what impact it has on the Metro Express project. In essence, the main interrogation of this article is whether or not there is a balanced mode of development that the Constitution provides for through the lens of the right to property.*

**Keywords:** Mauritius, Right to Property, Metro Express Project, Development

**Research Area:** Social Sciences

**Paper Type:** Research Paper

---

## 1. INTRODUCTION

The Government of Mauritius announced the Metro Express Project (hereafter referred to as MEP) on the 1<sup>st</sup> of August 2017. The MEP is estimated to cost the State around 19 billion Mauritian Rupees with a 26 Km rail line from Curepipe to Port Louis.<sup>1</sup> The contract was awarded in August 2017 to the firm Larsen&Toubro, an Indian multinational based in Mumbai. The Prime Minister Pravind Jugnauth has publicly stated that he is very keen and determined to drive this project forward in view of modernizing and redefining public transport system in Mauritius as well as improving the quality of life of Mauritians. His primary focus was on the opportunities of development, primarily economic, that the country would benefit with the implementation of the MEP. He also highlighted that the MEP will address the traffic congestion problem, generate employment in the transport sector and reduce carbon emission and road accidents.<sup>2</sup> According to our Premier, the 19 stations and 6 urban terminals that also include four interchanges will be clusters of economic activity which will have significant spill-overs on its surrounding.<sup>3</sup> These stations would also provide opportunities for small and medium enterprises to do business in and around those stations. It should also be noted that the MEP is as a result of cooperation between Mauritius and India which has offered a grant to the tune of Rs 9.9 billion. The remaining amount of money for the project is being funded through a line of credit by the State Bank of Mauritius Infrastructure Development Company Limited.

While for the government, the primary focus of the MEP has been on infrastructural and economic development, there was been a different side of the story which, to some

extent, has been tagged as a human tragedy. Several families including hundreds of people have been forced to leave their houses which have been demolished by the authority to make way for infrastructural structures necessary for the MEP. For instance, the State has compulsorily acquired lands in the region of La Butte resulting in the relocation of 60 families.<sup>4</sup> An Inhabitant of Residence Barkly, Idriss aged 78, had been summoned by the State to leave a building which was allegedly built on state land. However, Idriss had stated that he was in possession of a title deed and a site plan properly drawn by a sworn land surveyor.<sup>5</sup> Azam Rajabally, residing at Rue Monseigneur Leen, La Butte, described the emotional turmoil he had gone through with his family when the authority informed him that he would have to move away from his house which he had inhabited for 37 years. In essence, several people had been forced to leave their property in the name of development to be carried out by the State.

For a balanced assessment that this article wishes to achieve, it is equally important to have an overview of the stand of the government and relevant authority on the relocation of the people concerned. The Prime Minister insisted that all the procedures have been respected and people were informed prior to the relocation. A correspondence was addressed from the Prime Minister Office to the Municipality of Quatre-Bornes whereby the following can be highlighted: ‘You are requested to ensure that land falling within the alignment of the Metro Express and land to be used as the site of works belonging to the Municipality of Quatre-Bornes should be released at latest 31st July 2017’. While one may argue that all legal procedures have been respected and that people were informed as early as 2014 about their relocation and compulsory acquisition procedures, the protest and discontent around the relocation of people can be said to be understandable on grounds other than a legal one. For instance, the Municipal Adviser of Beau-Bassin/Rose-Hill went on record to say that he was not against development but not one at the expense of human sentiments and emotions while he visited Residence Barkly.<sup>6</sup> While several rights of people as being violated had been discussed on several media platforms, there is one right which comes across as being the most debated and affected one – the right to property of those individuals who found themselves on the alignment track of the MEP. Several houses, walls, yards and other related constructions had been bulldozed off.<sup>7</sup> While there is no doubt that the law provides for the possibility of compulsory acquisition, it should be noted that this is merely an exception to the principle which remains that every individual has a right to property.

This article provides for a brief factual account of the metro express project and subsequently analyses the existence and limitation of the right to property specifically within development discourse. The right to property is analysed as provided by Section 8 of the Constitution of Mauritius in light with the exercise of limitation of rights based on human rights principles. In essence, this article aims a striking a balance between development and the right to property with the MEP as a case study.

## **2. A FACTUAL OVERVIEW OF THE METRO**

Metro is believed to enhance the public transportation system in Mauritius. This form of public transport is not alien to our island as, in 1864, the railway as a means of transport.<sup>8</sup> Railway marked the first innovative means of travelling leaving behind horses, donkeys and carts. It was introduced in the island firstly in the north, and then the second phase was built linking to the south of the island. The Mauritian Railway Network’s contribution to the socio-economic progress of the island has been commendable, ranging from transportation of sugarcane, goods and passengers.<sup>9</sup> However, in 1956 it phased out as a means of transport

prior to independence. Today to cherish memories of the old days of the railway, there are locomotives displayed in several places over the island.

## **2.1 *Reintroduction of Railway vehicles in Mauritius and the MEP***

Despite the existence of several bus lines connecting towns, villages and even the remotest area of the island, the reintroduction of railway vehicles in Mauritius had always remained a matter of great concern. The idea of reintroducing railway vehicles in Mauritius dates back to the year 1999.<sup>10</sup> In the year 2013, under the aegis of the Labour Party, the “Metro Léger” project was addressed on a more serious note and the government contracted out the task of conducting feasibility studies to know whether the same can be realised in Mauritius.<sup>11</sup> In furtherance from 1999 to 2016, approximately 886 Million MUR had already been disbursed by the government- representing payments effected to several companies including British Executive Overseas Service, Halcrow Fox, Singapore Corporate Enterprise, Grant Thornton, among others.<sup>12</sup> The most colossal expenses in relation to the “Metro Léger” were made by the government in the years 2013 and 2014, where approximately 572 Million MUR has been spent.<sup>13</sup>

However, after such huge expenses were incurred, the company SCE revealed in its report that it cannot guarantee anything as to the MEP.<sup>14</sup> Then by the end of the year 2014, the newly elected government decided to give due consideration to the MEP. Given the fact that considerable costly feasibility studies for the MEP were done by the former government, the actual government took the MEP to another phase where citizens could clearly see its gradual realisation. Firstly, in January 2017, the government effected a payment of 25 Million MUR to the company SCE to provide an updated report on the MEP.<sup>15</sup> Then, there was a call for tenders for the MEP whereby two Indian companies had shown great interest- namely Afcons and Larsen & Toubro.<sup>16</sup> On 31<sup>st</sup> July 2017, the government officially signed a contract with L&T- who obtained the contract.<sup>17</sup> Subsequently, for the smooth realisation of the MEP, the government has set up the company Metro Express Limited which is wholly-owned by the State.<sup>18</sup>

According to information gleaned, the MEP will serve over a distance of 26 km, extending from the City of Port Louis to the town of Curepipe- a track encompassing in all 19 stations and 6 urban terminals which will comprise of four interchanges.<sup>19</sup> It is important to note that the aforesaid track of 26 km was initially decided by the Labour Party which was in power at the material time and the actual government has not caused any change to be made to that effect.<sup>20</sup> The MEP does not alone mean the track and the vehicle that will be used, but encompass both the construction of stations, viaducts and bridges. There will also be the setting up of electric traction system along with an information system for both ticketing and the passengers.<sup>21</sup> The advantage of having 19 stations on the way from Port Louis to Curepipe will enable commuters to smoothly get in and off the metro.

The metro will be serviced by quality Light Rail Vehicles which will be supplied by the railway manufacturer Construcciones y Auxiliars de Ferrocarriles (CAF) of Spanish origin.<sup>22</sup> Likewise, the metro will comprise of an “18 bi-directional, low floor, air-conditioned trams with seven modules each” and the contractor L&T had signed a contract of 119 Million USD with CAF for the manufacturing and delivery of the trams. Moreover, the metro will be fitted with innovative signal systems and being a lucrative means of travelling it will provide passengers with Wi-Fi facility.<sup>23</sup> To this effect, travellers will enjoy their journey in the metro while being connected to their preferred online social network freely.

The MEP is a colossal project and to realise same, the government has contracted with a series of contractors, which include L&T, CAF, SCE, RITES Ltd, Aurecon, SMRT, Orfisa, among others. Indeed, feasibility studies, consultancy and advisory services form the backbone of a developmental project. In line with the MEP, as Mauritius has a motorway linking the north to the south, it was important for the State to have feasibility studies conducted, in order to know whether MEP will benefit the existing Mauritian road infrastructure. Briefly, L&T as the main contractor is an Indian conglomerate providing a wide range of services in the technological, manufacturing, construction and financial services fields.<sup>24</sup> The company's operations go beyond the Indian boundaries to the global sphere and in the field of metro project it has obtained the metro contracts in both Riyadh and Doha.<sup>25</sup>

Since this is a lucrative developmental project in the field of both logistics and transport infrastructure, it is important to ponder about the costs and how the financing will be done. The estimated cost of the aforesaid MEP is 18.8 Billion MUR which will be financed partly by the Indian Government by way of a grant in the sum of 9.9 Billion MUR and the remaining will be funded on credit by the SBMIDC Ltd.<sup>26</sup> Mauritius has been able to benefit from such a huge grant from the Indian Government owing to the strong bilateral relationship that exists between the two countries. As to concerning the grant by the Indian Government, there has been an initial transfer of an advance of 1.8 Billion MUR in November 2016 to the government and in September 2017 a cheque amounting to 900 Million MUR was issued.

Since the financial elements of the MEP are being discussed here, it is of paramount importance to highlight that for a country to progress in terms of development- bilateral relationships undoubtedly play a vital role. In this vein, the Indian Government has given a helping hand financially when it comes to the promotion and realisation of developmental projects in Mauritius. In all 12.7 Billion MUR has been given as grants by the great peninsula to our island for the financing of five major projects among which the MEP figures on the top list- ahead of the construction of the new Supreme Court building amounting to 1.1 Billion MUR, provision of tablets in primary schools costing 500 Million MUR, the construction of 1,000 social housing units programme in the sum of 700 Million MUR and lastly the building of a modernised ENT hospital for the cost of 500 Million MUR.<sup>27</sup>

## ***2.2 The MEP as an asset and its predicted advantages***

Mauritius has been experiencing a hovering problem when it comes to the issue of road congestion. Governments have toiled very hard to circumvent this problem through the construction of alternative routes and bypasses. However, the problem has only been partially solved and very often during peak hours travellers are repetitively faced with traffic jam. The MEP will address this issue in a more comprehensive way. A notable advantage of the metro is its capacity to carry several of passengers at a time and based on estimated statistics it can carry to a maximum of 400 people. According to information gleaned, the MEP will help the State to save approximately 4 Billion MUR on road congestion, an additional saving of 10 Billion MUR on the operating costs of vehicles which are causing much harm to our environment and lastly there is a forecast that the number of road accidents will decrease.<sup>28</sup> The MEP encompasses also the construction of innovative terminals- where hawkers will be allocated a modernised working environment.<sup>29</sup>

The Metro will bring about commendable advantages ranging from being quick, safe, environmentally friendly, providing better comfort to travellers and predictable as to time.<sup>30</sup> Our conventional busses besides the fact that they can only accommodate a limited number of

passengers, there is another lacuna whereby people with disabilities especially those on wheelchairs cannot travel by bus because our busses are not equipped with the adequate facilities. Thus with the MEP, people with disabilities will be able to travel easily- something which has most probably been longed by many.

Additionally, the free travelling scheme offered by the government to senior citizens and disabled persons for busses will be extended to the MEP.<sup>31</sup> As to concerning the operation time frame of the metro, it will enable people to travel till late at night as compared to busses. According to information obtained, during week days and Saturdays, the metro will operate from 5 am till 10 pm and on Sundays and Public Holidays the starting operation time will remain same but the metro will stop operating at 9 pm. As discussed above, these are the most significant advantages that the MEP as a developmental project in the field of public transport infrastructure will bring about to both the citizens and the State.

### *2.3 Negative impacts of the MEP on citizens*

It is a fact that developmental projects cannot be realised overnight- thereby requiring a very important factor which is time. The amount of time needed for the realisation of a project by a government will greatly depend on dimensions such as its nature, size and type. In almost all developmental projects by the State, when the population is officially made aware of it, information as to the expected completion time will be provided. Likewise, for the MEP the approximate completion time of the 26 km track is in early 2021 but a first segment of the route from Port Louis to Rose-Hill is expected to come into operation in September 2019.<sup>32</sup> On a critical note, besides considering the future notable positive elements of the MEP, it is of equal importance to ponder as to the extent it is having a negative impact on the lives of citizens.

In this vein, infrastructural development in the public transport sector like the MEP requires a battery of resources- land forming the underpinning ingredient. In accordance with information garnered, there are 100 plots of land which are on the aforesaid 26km track, out of which 32 are residential areas, 67 are bare lands and lastly, there is a warehouse on one.<sup>33</sup> To enable the realisation of the MEP, the government could not do otherwise than by proceeding with compulsory acquisition of immovable properties which are found on the 26km track. The 32 proprietors of the concerned residential plots of land were informed in the year 2014 that the government will compulsorily acquire their property against a compensation being paid to them, in view of the realisation of the MEP. Moreover, at the same time, the government had issued a notification for evacuation to the 32 owners.<sup>34</sup>

At this juncture, it is appropriate to underline that, shortly after the State has signed the contract with L&T there has been an upheaval in the country- due to the fact that the concerned citizens were ordered to vacate their premises. According to information obtained, the government had in the year 2014 already proceeded with the compulsory acquisition of the concerned properties and the sum of 371 Million MUR has already disbursed representing compensations to the owners.<sup>35</sup> The government has signed the contract with L&T for the MEP, however, it has an undefiled duty to provide the contractor with the construction site.<sup>36</sup> However, same was still under occupation of the owners despite having been already compulsorily acquired by the State. In spite of the formal requests made by the government to vacate the aforesaid properties and being given a deadline to do the same, families showed great reticence.

Being faced with a situation of deadlock which would ultimately delay the expected completion time of the first segment of the MEP, the State took a drastic measure. Though



appalling, the government reached the decision to demolish the houses which are found on the proposed track.<sup>37</sup> This triggered a situation of havoc in the island whereby the aggrieved people left no stone unturned to scout for solutions to prevent the demolition of their respective houses. The aggrieved families through their legal representatives had sought an equitable remedy before the Supreme Court. Given the situation of turmoil in the island and although the government was explaining that the MEP is one which is in the interest of all the citizens, this could in no way muzzle the press. This pandemonium was fully covered by the media where citizens were constantly being updated as to how these properties were compulsorily acquired by the State and to kick start the MEP, those concerned were forcefully evicted from their homes.

On basis of a timeline, all started on the 31<sup>st</sup> August 2017 where the aggrieved citizens caused two injunctions, the first one by the concerned families of Barkly and the second one by those of La Butte, to be filed before the Supreme Court. The Supreme Court requested the Applicants residing at Barkly to produce their lease agreements, having failed to do so this ultimately led to their applications being rejected by the Supreme Court. On 1<sup>st</sup> September 2017, several properties at Barkly were already bulldozed by the police.<sup>38</sup> On the same date, the houses of the three families at La Butte were partially destroyed and following an interim injunction granted in favour of the applicants, the police had to stop the demolition process.<sup>39</sup> Ultimately, the Court ruled against the applicants and finally, the destruction of the concerned houses was ordered.<sup>40</sup> These events initiated debates over the right to property of Mauritians and the extent to which it is protected by the law. The following section will deal with this interrogation.

### **3. THE RIGHT TO PROPERTY IN THE MAURITIAN CONSTITUTION- ABSOLUTE OR SUBJECT TO LIMITATION?**

Section 8 of the Mauritian Constitution (MC) specifically provides for ‘*compulsorily taking possession of property or compulsory acquisition of property*’ whereas Section 3 of the MC refers to ‘*deprivation of property*’. The Supreme Court states that the words deprivation of property are less precise words and are open to interpretation in the case of *Union of Campement Sites Owners & Others v Government of Mauritius*.<sup>41</sup> It further expanded the criteria required to be fulfilled by a plaintiff bring an action under Section 8 in the case of *Hawaldar v Government of Mauritius*.<sup>42</sup> The plaintiff must prove (a) that the subject matter of his plaint is property or an interest or right over the property and (b) that the property has been compulsorily taken possession of or that the interest or right has been compulsorily acquired.<sup>43</sup>

The burden then shifts to the defendant to prove that the acquisition was carried out under one of the following permissible conditions: (a) it was necessary for one of the following purposes: defence, public safety, public order, public morality, public health, town and country planning, the development or utilisation of any property in such a manner as to promote the public benefit or the social and economic well-being of the people of Mauritius (b) the causing of any hardship was justified and (c) it was done under a law which also provided for the payment of compensation and access to the Supreme Court. The mandatory condition of having judicial recourse has been highlighted in the case of *Paul v Registrar General* (1989 MR 209) in which the Supreme Court held that Section 19 of the Registration Duty Act and Section 28 of the Land (Duties and Taxes) Act were unconstitutional as they did not state what was meant by undervaluation and also did not provide for a right to judicial recourse.

The Supreme Court has also adjudicated on what is the meaning of property or interest in the property. In the case of *Hawaladar v Government of Mauritius* cited above, the Court was held that property could also include money under Section 8 of the Constitution. In the case of *Reufac v Minister of Agriculture and Natural Resources and the Environment*<sup>44</sup>, the following remark was made: It is hardly necessary to point out that, when our Constitution was framed, it was only the general human rights of liberty of the person or due process that was particularised (in sections 5 and 10). All the other rights and freedoms set out in section 3 are explained in section 4 to 16. It follows in our view that the only constitutionally entrenched right relating to deprivation of property is that of protection against any executive decision, which directly or indirectly involves the acquisition or taking of possession of the plaintiffs' property...'.

The Supreme Court also warned that the loss of business due to technological advances would not be held as constituting a deprivation of property as stated in the case of *Ramdhony v Municipal Council of Vacoas-Phoenix*<sup>45</sup> and the Privy Council in *Society United Docks v the Government of Mauritius*.<sup>46</sup> In the latter case, the Privy Council held that 'the Constitution does not afford protection against progress or provide compensation for a business which is lost as a result of technological advance...The Government did not act in order to ruin the appellants but in order to preserve an efficient sugar industry in the national interest'. In the case of *Mahboob v Government of Mauritius*<sup>47</sup>, the Supreme Court further explained what is meant by compulsory acquisition. It stated that 'unless one forces the language of the section beyond its normal meaning, there is no 'taking of possession' as contemplated by section 8. At no time does the Government take possession of the land. What the Act does is to operate a direct transfer of the property from the plaintiff to the league. It follows that if section 8 is the only provision of the Constitution which protects property rights, Mauritians hold their property only during Parliament's discretion. By legislation on lines similar to this Act, Parliament may by a simple majority divest anyone who is persona non grata of all he owns and transfer the lot to any other person who enjoys its favours; and the Court could not provide any relief to the persons so despoiled'.

The above summary of case law from the Supreme Court of Mauritius clearly indicates that the right to property is one which is strictly guarded by the Constitution and the Supreme Court. But it also shows that action by the government such as compulsory acquisitions of property, if carried out within the premises of the law, would be ratified by the Supreme Court. It has to be mentioned that those persons concerned with the MEP have not entered any case in the Supreme Court based on the violation of section 8 by the government as a result of the MEP. Perhaps such an endeavour will not be successful since the MEP follows the legal guidelines of compulsory acquisitions as provided by the Compulsory Acquisition Act and is also in line with the limitation of the right to property as provided by the law. At this stage, it is apposite to consider whether the MEP passes the test applicable to the exercise of limitation of the right to property as explained by international human rights laws and doctrines.

#### **4. LIMITATION OF THE RIGHT TO PROPERTY**

Section 8 of the Mauritian Constitution provides for several limitations to the right to property of Mauritians. It provides that:

*(1) No property of any description shall be compulsorily taken possession of, and no interest in or right over property of any description shall be compulsorily acquired, except where -*

*(a) the taking of possession or acquisition is necessary or expedient in the interests of the defence, public safety, public morality, public health, town and country planning, the development or utilisation of any property in such a manner as to promote the public benefit or the social and economic well-being of the people of Mauritius; and*  
*(b) there is reasonable justifications for the causing of any hardship that may result to any person having an interest in or right over the property; and*  
*(c) provision is made by a law applicable to that taking of possession or acquisition -*  
*(i) for the payment of adequate compensations; and*  
*(ii) securing to any person having an interest in or right over the property a right of access to the Supreme Court, whether direct or on appeal from any other authority, for the determination of his interest or right, the legality of the taking of possession or acquisition of the property, interest or right, and the amount of any compensation to which he is entitled, and for the purpose of obtaining payment of that compensation.*

The International Covenant on Civil and Political Rights does recognise the application of limitation of right in its Article 5 and provides that limitation are allowed but should not be to a greater degree than is provided by the Covenant. In addition, there is sufficient case law at the international level which provides for guidance for a legal and legitimate limitation of rights. For instance, in the case of *Handyside v the United Kingdom*<sup>48</sup>, the European Court on Human Rights adjudicated that limitation of the right must be prescribed by the law, necessary, legitimate and proportionate. Gardbaum further argues that a limitation to a human right must also be reasonable.<sup>49</sup>

With regard to the MEP, so far no case has been instituted before the Supreme Court of Mauritius in relation to an alleged violation of the right to property by the state. If it would have been the case, the Supreme Court would have relied on authorities cited above and doctrines of human rights law to assess the proportionality, the reasonableness, the necessity and the legitimacy of such a limitation to the right to property of the persons who have been relocated. In addition, it would have been assessed whether such a limitation is prescribed by the law. While it is easy for the Court to decide on whether the limitation is provided by the law and is reasonable, it is quite challenging for it to decide on the legitimacy and necessity of the MEP. More so since such policy decisions on development are under the realm of the executive and the Parliament to decide and not the judiciary in line with the doctrine of separation of power.<sup>50</sup>

## **5. A BALANCED MODE OF DEVELOPMENT UNDER THE CONSTITUTION**

It is contended that balancing the interest of a country benefitting from developmental projects with the human rights and personal interest of citizens of that country is probably the most difficult task to achieve. The Mauritian Government had to face a situation whereby the MEP was being advanced and hyped as a necessary development project and the materialisation of which required the relocation of individuals by limiting their right to property. To judge the success of any developmental project at its initial phase is extremely difficult. At the same time, not being involved at all and not taking such developmental initiatives would transpire as being a trademark of lack of vision and progress from any government.

A kind of development that will satisfy the interest of each and every individual of Mauritius is utopian but at the same time, it is essential to accept that any development that violates any right of even one individual is unacceptable. Sen's approach to development



warrants a model of development which puts people at the centre and takes into account the protection and promotion of human rights.<sup>51</sup>

Mahadew has summarised Sen's explanation of capabilities as follows: *Sen defines a capability as 'a person's ability to do valuable acts or reach valuable states of being; it represents the alternative combination of things a person is able to do or be'. A capability is the freedom and liberty to achieve something which an individual reflectively accepts as being valuable to him. CA is significantly contrasting compared to other ideas on how resources are to be fairly and justly distributed. Some theories about distribution are based on what an outsider would consider as being optimum in terms of the opportunities and resources to be given to an individual to achieve a desirable outcome, for instance providing education to eventually acquire skills for employment. For instance, Utilitarianism would impose that the best type of education or methods of acquiring skills would be the one which would benefit a maximum number of people at the national level.*<sup>52</sup>

A people centred approach to development is also advocated by Mahadew based on Sen's Capability Approach in the following terms: The CA opposes this method of evaluating whether people are happy, free and capable of achieving what they desire. It advocates that the individual is not to be seen as a means to achieve social stability or economic growth but as an end. What needs to be evaluated is whether people are free to make decisions that they value and have the possibility to overcome any obstacle in the path to this freedom, thus enhancing their capabilities. It is very important to highlight that while the central tenant of the CA is the individual, it is not a framework with an individualistic nature embracing libertarian notions such as self-actualization above all other goods.

Based on the above theoretical framework, it can be argued that the MEP may not necessarily be in line with Sen's Capability Approach to development. The accounts of human tragedy given in the factual overview section show that the capability of these persons - the desire to stay where they were born, spend a lifetime there and perhaps die there - may not be respected in the name of development. Relocating them would no doubt mean that they have to start afresh in life which has economic implications. This is, therefore, a model of development which is not rendering these people capable to achieve their desire and happiness. Even if one has to agree that the MEP will bring economic development to the country, the Capability Approach does not measure development merely in terms of economic progress but in terms of the enhancement of human capabilities.

However, assessed under the lens of human rights principles and doctrines, it cannot be said that the right of individuals affected by the MEP has been violated as per the law. This is so simply because Mauritian laws allow for compulsory acquisition in the national interest. While it may be argued that the MEP was necessary for the development of Mauritius even though no evident study or report has demonstrated so, perhaps the way it has been carried out was not in line with Sen's approach to development. The people concerned have not been rendered capable with the way the MEP has been carried out. One may argue that notices were already served to all people concerned with the project. However, the major interrogation here remains whether a state absolves itself from its moral responsibility by merely serving a notice of evacuation or relocation even if this is followed by compensation, no matter how handsome that is. A more humane approach certainly could have been adopted instead of bulldozers being sent and police officers using violence or threat to evacuate the people. Sen's approach to development advocates for a more compassionate approach towards people who are involved directly or indirectly and this arguably is the minimum the state could have ascertained.

Coming to the legality of the limitation of the right to property of people that found themselves on the alignment of the MEP, there is no doubt that there was no irregularity whatsoever regarding the right to property? However, this again seems to be a case where the legalistic situation is not necessarily the best possible humane outcome. A black-letter law approach may have resulted in the determination by the Supreme Court that the relocation was within the premises of law. Still, a more purposive and constructive interpretation of the right to property may have led to a judicial decision which could have been the complete opposite in the event that judicial recourse was sought by the aggrieved. While the compulsory acquisition is provided by the Constitution and relevant acts of Parliament, the way the acquisition is carried out was not in line with Sen's Capability Approach.

## 6. CONCLUSION

There is no doubt that in future, Mauritius will be facing similar critical decisions over development and upholding human rights of people. Every time a balance will need to be struck. However, a shallow discussion or debate which is based on development in the national interest on one hand and a legal and legitimate limitation of the human rights of people to justify such development will not allow the achievement of real, people-centred, all-inclusive and sustainable development. It will only allow for economic development while at the same time over-looking and undermining the importance of social development of people.

For such development to be possible, a change in approach is necessary. Policy makers must be inspired by Sen's approach to development. For this to be possible, education and sensitisation of decision makers about the Capability Approach is essential. In addition, it is critical to ensure that more legal mechanisms are available to resolve the dispute that is of a similar nature. For instance, the right to development, the right to environment and other socio-economic rights must be enshrined in the Constitution. This will allow the judiciary to adjudicate on matter pertaining to development. Another issue to be revisited is the issue of locus standi (legal standing) which is very difficult to satisfy in Mauritian courts unless one is a victim himself. Popular arguments such as being a tax-payer and therefore having interest have been rejected by the Supreme Court. There is certainly the need to at least initiate a debate on the introduction of *Actio Popularis* or public interest litigation in the Mauritian judiciary.

It is a fact that MEP has made people upset and unhappy by changing their lives completely. Some have left places where they were born and brought up with innumerable and invaluable memories to cherish. Some have found themselves in the need of starting all over again just after spending nearly a lifetime to build a house. Such painful experiences have been balanced with the potential benefit of the MEP which can go both ways. Yet, it also does not mean that the MEP should never have been considered and introduced. In the face of such uncertainty, the best way forward is to be considerate and choose the means that will affect people the least. While the Government of Mauritius has been right in endorsing this project and perfectly within the premises of the law while limiting the right to property, the only complaint that would remain is with their approach, far from the approach that sees development as freedom.

## REFERENCES

### Case Law

*Union of Campement Sites Owners & Others v Government of Mauritius* (1984 MR 100)

*Hawaladar v Government of Mauritius* (1978 MR 37)

*Reufac v Minister of Agriculture and Natural Resources and the Environment* (1980 MR 264)

*Privy Council in Society United Docks v the Government of Mauritius* (1084 UKPC 42)

*Mahboob v Government of Mauritius* (1982 MR 135)

### Books

Sen A, (1997) 'Welfare, resources and capabilities: A review of inequality reexamined' in Franck, A. *Human well-being and economic goals* Island Press, UK.

Sen, A (2009) *The Idea of Justice* Belknap Press, Massachusetts

Sen, A. (1999) *Development as Freedom* Oxford University Press, Oxford.

Storper, M. (1992) *Pathways to industrialisation and regional development* Routledge, London

### Journal Articles

Anand, P. 'Capabilities and achievements: An empirical study' (2006) *The Journal of Socio-Economics* 35 268-284

Gardhaum, S. 'Limiting constitutional rights' (2007) *UCLA Law Review* 54 789- 800

Mahadew, A. 'Using Capability Approach to development in attempting to counter human rights violations due to land grabbing in Ethiopia' (2015) *The Macrotheme Review* 4(7)

Owens, R. 'The separation of powers and Supreme Court Agenda setting' (2010) *Journal of Political Science* 54 412-427

Sen, A. 'Development as freedom' (2001) *International Journal of Epidemiology* 30 (4) 907-918

### Websites

Government of Mauritius - <http://www.govmu.org/English/News/Pages/Metro-Express-project-to-the-tune-of-Rs-18.8-billion-to-kick-start-in-September-2017-.aspx> (Accessed 16 March 2018).

L'Express 'Metro Express 'Metro Express: Drame humain a la Butte et a Barkly' 01 September 2017 available at <https://www.lexpress.mu/article/315277/metro-express-drame-humain-butte-et-barkly>

Le DefiMedia Group - <https://defimedia.info/expulsion-de-ceux-qui-vivent-sur-le-trace-du-metro-express-un-drame-humain-avec-la-date-butoir> (Accessed 18 March 2018)

**Notes:**

- <sup>1</sup> Republic of Mauritius “Metro Express News” <<http://www.govmu.org/English/News/Pages/Metro-Express-project-to-the-tune-of-Rs-18.8-billion-to-kick-start-in-September-2017-.aspx>> accessed on 10 July 2018.
- <sup>2</sup> Ibid.
- <sup>3</sup> Ibid.
- <sup>4</sup> Le DefiMedia “Protests derail Metro Express” <<https://defimedia.info/protests-derail-metro-express>> accessed on 10 July 2018.
- <sup>5</sup> Le DefiMedia “Expulsion de ceux qui vivent sur le trace du Metro Express” <<https://defimedia.info/expulsion-de-ceux-qui-vivent-sur-le-trace-du-metro-express-un-drame-humain-avec-la-date-butoir>> accessed on 10 July 2017.
- <sup>6</sup> L’Express “Metro Express ‘Metro Express: Drame humain a la Butte et a Barkly” <<https://www.lexpress.mu/article/315277/metro-express-drame-humain-butte-et-barkly>> accessed on 10 July 2017.
- <sup>7</sup> Ibid.
- <sup>8</sup> Anon “The Philatelist’s Pick: Modes of transport in Mauritius: Part 1” <<https://stampsofmauritius.org/2017/08/05/the-philatelists-pick-modes-of-transport-in-mauritius-part-1-railways/>> accessed on 20 May 2019.
- <sup>9</sup> L’Express “Mauritius and the re-introduction of the Railway Transport System: A Hallmark of Modernisation and Progress” <<https://www.lexpress.mu/idee/316297/mauritius-and-re-introduction-railway-transport-system-hallmark-modernisation-and>> accessed on 20 May 2019.
- <sup>10</sup> Le Defimedia “Private Notice Question - Métro léger: les Singapouriens de retour à Maurice” <<https://defimedia.info/private-notice-question-metro-leger-les-singapouriens-de-retour-maurice>> accessed on 22 May 2019.
- <sup>11</sup> Ibid.
- <sup>12</sup> Ibid.
- <sup>13</sup> Le Defimedia « Metro Express: Rs 572 M dépensées par l’ancien GM” <<https://motors.mega.mu/news/metro-express-rs-572-m-depensees-par-lancien-gm-20170418.html>> accessed on 8 June 2019.
- <sup>14</sup> Le Defimedia “Poornanenden Sungeelee ingénieur: Le Metro Express creusera la dette publique de notre pays” <<https://defimedia.info/poornanenden-sungeelee-ingenieur-le-metro-express-creusera-la-dette-publique-de-notre-pays>> accessed on 8 June 2019.
- <sup>15</sup> Ibid
- <sup>16</sup> L’Express “The Metro Express: The dream and the sobering facts” <<https://www.lexpress.mu/article/310861/metro-express-dream-and-sobering-facts>> accessed on 22 May 2019.
- <sup>17</sup> K Barrow, “Mauritius light rail construction contract signed” [2017] International Railway Journal.
- <sup>18</sup> Verdict Media “Metro Express Project” <<https://www.railway-technology.com/projects/metro-express-project/>> accessed on 20 May 2019.
- <sup>19</sup> Russel Publishing “Intelligent Transport. Mauritius Metro project contract awarded” <<https://www.intelligenttransport.com/transport-news/24601/mauritius-metro-express-project-contract-awarded/>> accessed on 8 June 2019.
- <sup>20</sup> Le Mauricien “Metro Express: Rien ne nous empêchera d’aller de l’avant, a déclaré le PM” <<https://www.lemauricien.com/article/metro-express-rien-ne-nous-empchera-d-aller-l-avant-declare-pm/>> accessed on 22 May 2019.

<sup>21</sup> Russel (n 19).

<sup>22</sup> Mauritius Metro Express “Metro Express Newsletter- February 2019” <<https://www.mauritiustmetroexpress.mu/wp-content/uploads/2019/02/Newsletter-February-2019.pdf>> accessed on 8 June 2019.

<sup>23</sup> Verdict Media (n 18).

<sup>24</sup> Larsen and Toubro Ltd “It’s all about engineering” <<http://www.larsentoubro.com/>> accessed on 8 June 2019.

<sup>25</sup> The Hindu « L&T bags Mauritius metro project” <<https://www.thehindu.com/business/Industry/lt-bags-mauritius-metro-project/article19409065.ece>> accessed on 8 June 2019.

<sup>26</sup> Government of Mauritius “Metro Express project to the tune of Rs 18.8 billion to kick-start in September 2017” <<http://www.govmu.org/English/News/Pages/Metro-Express-project-to-the-tune-of-Rs-18.8-billion-to-kick-start-in-September-2017-.aspx>> accessed on 14 May 2019.

<sup>27</sup> Le Defimedia “Development projects: India offers Rs 12.7 billion grants to Mauritius” <<https://defimedia.info/development-projects-india-offers-rs-127-billion-grants-mauritius>> accessed on 22 May 2019.

<sup>28</sup> Le Mauricien “Metro Express: Rien ne nous empêchera d’aller de l’avant, a déclaré le PM » <<https://www.lemauricien.com/article/metro-express-rien-ne-nous-empchera-d-aller-l-avant-declare-pm/>> accessed on 22 May 2019.

<sup>29</sup> Ibid.

<sup>30</sup> Mauritius Metro Express (n 22).

<sup>31</sup> Government of Mauritius (n 26).

<sup>32</sup> Verdict Media (n 18).

<sup>33</sup> Parliamentary debates “Republic of Mauritius Sixth National Assembly Parliamentary Debates (Hansard)” <<http://mauritiusassembly.govmu.org/English/hansard/Documents/2017/hansard0117.pdf>> accessed on 8 June 2019.

<sup>34</sup> Mauritius Broadcasting Corporation « Metro Express: 94 parcelles de terres sont concernées » <<http://www.mbcradio.tv/article/metro-express-94-parcelles-de-terres-sont-concern%C3%A9es>> accessed on 8 June 2019.

<sup>35</sup> Le Defimedia “Protests derail Metro Express” <<https://defimedia.info/protests-derail-metro-express>> accessed on 8 June 2019.

<sup>36</sup> Le Mauricien “Metro Express, compulsory acquisition of land” <<https://www.lemauricien.com/article/metro-express-compulsory-acquisition-land-gouvernement-agira-l-interet-national-selon-etienn/>> accessed on 8 June 2019.

<sup>37</sup> Le Defimedia (n 35).

<sup>38</sup> Business Mega “Contestation De La Démolition Des Maisons À Barkly: La Demande De 10 Des 32 Contestataires Rejetée” <<https://business.mega.mu/2017/09/06/contestation-de-la-demolition-des-maisons-barkly-la-demande-de-10-des-32-contestataires-rejetee/>> accessed on 8 June 2019.

<sup>39</sup> Ibid

<sup>40</sup> Le Defimedia “La Butte: démolition des maisons se trouvant sur le trace du Metro Express ce lundi” <<https://defimedia.info/la-butte-demolition-des-maisons-se-trouvant-sur-le-trace-du-metro-express-ce-lundi>> accessed on 8 June 2019.

<sup>41</sup> Union of Campement Sites Owners & Others v Government of Mauritius (1984 MR 100).

<sup>42</sup> Hawaldar v Government of Mauritius (1978 MR 37).

<sup>43</sup> Meetarbhan M *Constitutional Law in Mauritius* (2016) 60.



<sup>44</sup> Reufac v Minister of Agriculture and Natural Resources and the Environment (1980 MR 264).

<sup>45</sup> Ramdhony v Municipal Council of Vacoas-Phoenix (1995 MR 103).

<sup>46</sup> Privy Council in Society United Docks v the Government of Mauritius (1084 UKPC 42).

<sup>47</sup> Mahboob v Government of Mauritius (1982 MR 135).

<sup>48</sup> Handyside v the United Kingdom (1976 Application No 5493/72).

<sup>49</sup> Gardhaum, S. 'Limiting constitutional rights' (2007) *UCLA Law Review* 54.

<sup>50</sup> Owens, R. 'The separation of powers and Supreme Court Agenda setting' (2010) *Journal of Political Science* 412.

<sup>51</sup> Sen, A. 'Development as freedom' (2001) *International Journal of Epidemiology* 30 (4) 907-918.

<sup>52</sup> Mahadew, A. 'Using Capability Approach to development in attempting to counter human rights violations due to land grabbing in Ethiopia' (2015) *The Macrotheme Review* 4(7).