

LORD MACKAY OF CLASHFERN (1927–2026)

A reforming mind whose reach extended to Mauritius

JAMES Peter Hymers Mackay, Baron Mackay of Clashfern, passed away peacefully at his home on 7 July 2026, at the age of 99. His funeral and memorial service was held on 23 July at St Giles' Cathedral in Edinburgh, followed by interment at Dean Cemetery. It cannot be said that his was a life cut short: in ninety-nine remarkable years, Lord Mackay lived enough for several lifetimes, and left the law immeasurably better than he found it.

Born in Edinburgh in 1927, the son of a railway signalman, Mackay's path to the law was not a direct one: he trained first as a mathematician before turning to legal studies and being called to the Scottish Bar in 1955. That logical, mathematician's brain would serve him throughout his career, making him a distinguished advocate, an incisive judge, and ultimately one of the most consequential reformers ever to hold the office of Lord Chancellor of Great Britain, which he held from 1987 to 1997 under Margaret Thatcher and John Major.

In that decade he pushed through sweeping reforms to the legal profession and the courts, often against fierce resistance from the very Bar he had once led as Dean of the Faculty of Advocates. Colleagues remembered him as a man of formidable intellect, quiet religious conviction, and unshakeable integrity: a reformer who understood that a legal system's strength lies not in tradition for its own sake, but in institutions built to serve the public without fear or favour.

What is less widely known, but deeply felt within Mauritius's legal community, is how far his influence travelled beyond Westminster. In 1998, chairing the Presidential Commission on the Structure and Operation of the Judicial System and Legal Professions of Mauritius, he examined our machinery of prosecution and concluded that the Office of the Director of Public Prosecutions could not properly discharge its constitutional role while its lawyers remained embedded within, and answerable to, the Attorney General's Office. He returned to the question in an updated report in September 2006, this time in light of the Privy Council's judgment in *Jeevan Mohit v The Director of Public Prosecutions* 2006 UKPC 20,



by **Satyajit BOOLELL**, Senior Counsel
Chairperson of the National Human Rights Commission



James Peter Hymers Mackay, Baron Mackay of Clashfern (2 July 1927–7 July 2026).

and recommended in unambiguous terms that the ODPP be established as an entirely separate office – a recommendation that would go on to reshape Mauritian constitutional practice.

It was in the years surrounding the Mohit litigation that I worked closely alongside Lord Mackay as the implications of the judgment for Mauritius's prosecutorial architecture were worked through. That early collaboration would prove formative, for me and for the institution I would later come to lead.

In 2009, the government of the day gave full effect to Lord Mackay's recommendations, formally separating the ODPP from the Attorney General's Office, following my appointment as Director of Public Prosecutions. But institutional independence, once won, is rarely secure forever.

Following the 2014 elections, the incoming government moved to erode the very separation Lord Mackay had championed, and made the ODPP a mere department of the Attorney General's Office through a Cabinet decision dated 27 Feb 2015. I was then DPP and was informed of the said decision in the most unceremonious manner by the then Attorney General. Soon after, I sought constitutional relief from the Supreme Court to challenge the Cabinet decision; a battle that would stretch on for over ten years, echoing in miniature the tension between prosecutorial autonomy and executive overreach that Lord Mackay had flagged decades earlier. It was only with the change of government that independence was finally restored in 2024.

It was during the years when attempts were made to curb my autonomy that I felt the depth of Stanley Alexander de Smith's words, who warned that the purpose of having a separate Office of the Director of Public Prosecutions was to: *"to safeguard the stream of criminal justice from being polluted by the inflow of noxious political contamination ... to segregate the process of prosecution entirely from general political considerations."*

It is a warning every generation of Mauritian lawyers has had cause to remember, and one Lord Mackay took to heart when he returned, decades later, to finish the work Stanley Alexander de Smith had begun.

Lord Mackay of Clashfern was, in every sense, a great man who did great things, not only within the courts and corridors of Westminster, but far beyond them, in a small island republic in the Indian Ocean whose institutions bear the imprint of his judgment to this day. He leaves behind a legacy not confined by geography: a body of work that reminds us that the independence of a prosecutor, wherever in the world that prosecutor sits, is not a technicality but the very foundation of justice. Mauritius mourns him as one of its own.

May he rest in peace.

The "gravest crime" is also a human rights issue for Mauritius

ON 25 March 2026, the United Nations General Assembly adopted a resolution that may not have received the attention it deserves in Mauritius, yet which speaks directly to our own history. Introduced by Ghana and backed by the African Union and Caribbean states, Resolution A/80/L.48 declares the transatlantic trafficking of enslaved Africans, and the racialised chattel enslavement that followed, to be the *"gravest crime against humanity"*. It passed with 123 votes in favour, including Mauritius. The USA, Israel and Argentina voted against, and 52 States abstained, among them the United Kingdom and every member of the European Union. The resolution does not call slavery a tragedy or a regrettable chapter. For the first time in this form, the community of nations has qualified it as the gravest of crimes, on account of its scale, its duration across four centuries, its systematic organisation, and the consequences that still shape economies and societies today.

Why is this a human rights question and not simply a matter of history? Because human rights law rests on the idea that certain wrongs are so serious they cannot be excused by the passage of time or by the customs of the age in which they were committed. The trade in human beings denied millions their most basic dignity as persons. It took their bodies, their names, their families and their freedom. Recognising it for what it was is the first duty of any honest human rights framework and it is the foundation on which any repair must be built.

The resolution goes further. It asks states to consider concrete measures: formal apologies, the return of looted cultural property, and dialogue on compensation and other forms of reparatory justice. These are not mere concepts. They are the practical means by which a society acknowledges a wrong and works to address the inequalities that resulted from it.

Writing in these pages on 19 April, Dr Nikhita Obeegadoo explained why the resolution matters and raised a point Mauritius cannot ignore: in moving from chattel slavery generally to the transatlantic trade in particular, the text leaves the Indian Ocean once more in the shadows. *L'express* carried the idea further in its own commentary,



by **Najah AHMED**,
Deputy Chairperson of the National Human Rights Commission

"Pousser plus loin la réflexion", arguing that Mauritius should be read not as one case among many but as a key to understanding a memory that is fragmented and often silent. That conversation is crucial and needs to be continued.

For Mauritius, despite the resolution's focus on the transatlantic route, the topic is indeed crucial. Our island was first built as a slave society during the same period. Under French and then British rule, generations of men, women and children were brought here in chains to labour the sugar cane fields. Slavery was abolished on 1 February 1835, a date we still mark each year. Le Morne, now a UNESCO World Heritage site, stands as a monument to those who resisted, to the maroons who chose freedom at all costs. The descendants of the enslaved are our neighbours, our colleagues and our fellow citizens. The disadvantages that slavery left behind for them did not disappear with abolition.

Mauritius had begun this work of honesty. Our Truth and Justice Commission, more than a decade ago, examined the legacies of both slavery and indenture, and set out how the past continues to weigh on the present. Its recommendations, however, were not fully applied. The UN resolution places the necessity for further national effort within a wider movement. It reminds us that our duty is shared by more than a hundred other nations, asking the same questions about memory, dignity and justice.

At the National Human Rights Commission, we see remembrance and rights as belonging together. A society that understands where its inequalities came from is better placed to correct them. Marking abolition, preserving the memory, and teaching the history are a start. Going further and really standing with the communities that still carry the burden is a human rights necessity. The Commission will take this discussion up at its annual symposium next Saturday, 1 August 2026, at Middlesex University Mauritius, where Reparations and Reconciliation stands as one of the two themes for debate.

The Ghana resolution is not legally binding, and it will not settle the difficult questions of reparation on its own. But it changes what can be said openly at the highest level. For a country forged by enslavement, this resolution is worth claiming as our own.

The National Human Rights Commission

In collaboration with

Middlesex University Mauritius

warmly invites you to its Annual Symposium on Human Rights

The themes this year will be

Business and Human Rights

&

Reparations and Reconciliation

Saturday, 1 August 2026

09:30 – 16:00

Middlesex University, Coastal Road, Flac-en-Flac

Programme of the Day

09:30 – 08:40
Arrival and seating of guests

08:40 – 10:40
Opening ceremony
• Welcome remarks – Middlesex University Mauritius
• Welcome remarks – National Human Rights Commission
• Address – Cynthia Robert, Head, OHCHR NERU Unit

10:40 – 11:30
Keynote address by the Hon. Attorney General, Gavin Glover SC

11:30 – 11:30
Tea break

11:30 – 13:00
Panel discussion: Human Rights & Business

13:00 – 14:00
Lunch

14:00 – 15:30
Panel discussion: Reparations, Reconciliation & Human Rights

15:30 – 16:00
Tea break

Follow the proceedings live on the NHRC YouTube channel
<https://www.youtube.com/@MAURITIUSNATIONALHUMANRIGHTSCC/videos>

The annual symposium will be held on 1 August at Middlesex University Mauritius, where Reparations and Reconciliation will be one of the two themes for debate. Above is a link to the livestream so readers can watch it online.

l'express

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— Dignity for all —

What if your good deeds became somebody's cage?

Reflections on Nelson Mandela International Day

ON 20 July 2026, the National Human Rights Commission commemorated Nelson Mandela International Day at La Tour Koenig. The date is not arbitrary. In 2009, the United Nations declared 18 July, Mandela's birthday, an international day in recognition of his extraordinary contribution to the values of freedom, peace, democracy and human dignity. This year's theme, chosen for reflection across the world, is: *"it is still in our hands to combat poverty and inequality."*

Mandela himself left us words that remain the clearest starting point. His speech delivered at the *"Make Poverty History"* campaign in London on 1 February 2005 is so powerful that a mere paraphrase will not do justice to:

"Like slavery and apartheid, poverty is not natural. It is man-made and it can be overcome and eradicated by the actions of human beings. And overcoming poverty is not a gesture of charity. It is an act of justice. It is the protection of a fundamental human right, the right to dignity and a decent life. While poverty persists, there is no true freedom."

The steps that are needed from the developed nations are clear. The first is ensuring trade justice. I have said before that trade justice is a truly meaningful way for the developed countries to show commitment to bringing about an end to global poverty. The second is an end to the debt crisis for the poorest countries. The third is to deliver much more aid and make sure it is of the highest quality."

But I want to dwell on a smaller word in this year's theme: *"our."* When we speak of *"our hands"* reaching out to fight poverty, we tend to mean your hands and mine – those of us fortunate enough to be writing, reading, legislating, donating. We imagine ourselves acting for others. Yet in the case of poverty, the people living it are also part of that *"our."* An effort to end poverty that excludes the poor from its own design is not truly collective. It reflects a very human tendency: the belief that we know better than our neighbour what our neighbour actually needs.

Poverty does not merely deprive people of income. It strips them of dignity and of meaningful access to their rights – the right to health, to education, to participate in the decisions that shape their own lives. This is precisely why Mandela framed its eradication as justice rather than benevolence.

Yet justice does not mean aid alone, and aid alone will never be enough. There is a quiet comfort in giving, a sense of having done good, of having discharged one's conscience. That feeling is not wrong, but it must not be mistaken for the whole solution. Aid that is not



by **Deepti THAKOOR**, barrister

accompanied by empowerment risks producing dependency rather than dignity: a population conditioned to receive rather than equipped to build. That outcome serves no one, especially those it claims to help.

"Our hands," properly understood, must mean the hands of the rich and the hands of the poor together. Empowerment cannot be something done to people; it must be something done with them. This means the poor, too, must be invited and expected to take responsibility for shaping their own futures, not as a condition imposed from above, but as a right restored: the right to be an agent in one's own life rather than an object of someone else's policy.

This is an uncomfortable message to deliver on a day devoted to solidarity, because it asks more of everyone, including of those already carrying the greatest burden. But comfort has never been the measure of justice. Mandela did not ask us to feel good about ending poverty. He asked us to end it.

So let this Mandela Day be more than a commemoration. Let it be a pause. Before the next donation, the next policy, the next well-intentioned gesture, stop and ask: have I actually asked the person I mean to help what they need or have I simply decided for them? Are my choices building someone's capacity to stand, or quietly teaching them to wait to be carried? Justice, unlike charity, does not let us look away once the gesture is made. It asks us to keep looking, to keep questioning our own assumptions, and to keep making room at the table for the very people whose lives are at stake.

Our hands cannot fight poverty by excluding the poor from the very strategies designed to end it. If it is still in our hands to end poverty and inequality, let today be the moment we reconsider what we are doing *with them* – not merely *for them*.

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