

PRIVATE NOTICE QUESTION

To ask the Honourable Attorney General, Minister of Justice, Human Rights and Institutional Reforms –

Whether, I regard to the violent death of Jean Brian Dilan Eléonore, in the Republic of Madagascar, on 25 November last year, he will state –

- (a) when he met the father of the deceased;**
- (b) where matters stand as to the inquiry initiated by the Mauritian police;**
- (c) if he has requested for mutual legal assistance from the Malagasy judicial authorities and, if so, where matters stand;**
- (d) if he has requested for the appointment of a Rotatory Commission by the Malagasy judicial authorities, and if so, where matters stand; and**

(e) if consideration will be given for the introduction of legislation to allow for the extraterritorial jurisdiction of the Republic of Mauritius in respect of homicide cases in which victims are Mauritian citizens?

REPLY

Madam Speaker,

I am informed by the Commissioner of Police that following the death of Mr. J. B. D. Eleonore, 22 years old residing at Richard Avenue, Plaisance, Rose Hill, which occurred in Madagascar on 25 November 2017, the body of the said Eleonore was repatriated to Mauritius on 26 November 2017. As per the death certificate issued by the Malagasy Authorities, the cause of death was a non-communicable disease. Inhumation was done on 27 November 2017 St. Pierre Paroissal Cemetery.

2. Mr. Andrew Elvis Vicky Eleonore, father of the late J. B. D. Eleonore was of the view that his son died in suspicious circumstances due to the conflicting versions with regards to his death.

3. The death certificate emanating from J. B. D. Eleonore only stated that he passed away as a result of non-communicable disease and no autopsy was carried out.

4. On Friday 1 December 2017, the father of J. B. D. Eleonore made a declaration at Central CID (OB No. 1190/2017) in relation to the death of his son. He stated that he suspected foul play. The CCID has initiated an inquiry and the inquiry is ongoing.

5. The father of late J. B. D. Eleonore made an application before the District Court of Moka whereby an order authorising the exhumation of the corpse of Late Jean Brian Dilan Eleonore was sought. The Director of Public Prosecutions, Commissioner of Police and Ministry of Health and Quality of Life were parties to the case. Prayer for exhumation of the corpse was granted. I am tabling copies of the application and the order.

6. The report of Dr. Boolell, inter alia, reads as follows –

"At the request of Mr. Elvis Eleonore, father of above named deceased, I have caused an exhumation to be performed on 30 January 2018 at St Pierre cemetery under the authority of Mr. N. Jheelan, the Senior District magistrate posted at the Moka District Court.

Subsequently I have performed an autopsy at Dr. Jeetoo Hospital, Port Louis in presence of Dr. Sudesh K. Gungadin, Chief Police Medical Officer, Dr. Prem Chamane, Police Medical Officer and Inspector Taujoo from the central C.I.D.

The cause of death, as certified by, the Medecin Chef of the Bureau Municipal d'Hygiene (BMH), Dr. RAVELOMANANTSOA Harivony, 'Homeopathe', was a non-communicable disease.

I wish to certify that no autopsy was performed in Madagascar to ascertain the actual cause of death. The autopsy I performed was the first and only one on the deceased.

EXTERNAL INJURIES/MARKS OF VIOLENCE

These consisted of a sutured irregular shaped laceration 10 cm long right parietal scalp extending towards top of scalp and overlying a scalp haematoma.

Parchmented bruised skin was evident on the anterior and posterior aspects of the left shoulder and extended to the outer aspect of left upper arm. There was an extensive bruise (parchmented) on the posterior aspect of the left forearm which extended further to involve the palm of the left hand. The left wrist was dislocated.

These bruises were consistent with defence wounds. Three minor parchmented bruises were seen on the right upper and lower arm involving shoulder, biceps and forearm. A similar bruise was evident on the left lower abdominal quadrant. There were two bruises above the knees bilaterally and the dorsal surfaces of both feet were bruised as well.

INTERNAL EXAMINATION

There was evidence of a subarachnoid haemorrhage around the anterior cerebral hemisphere extending to the pia arachnoid covering the brainstem where the haemorrhage was quite large. An extensive haemorrhage was seen on the anterior internal surface of the cervical spine with a fracture dislocation of the cervical spine at the level of the first and second cervical vertebrae.

There was a fracture of the left upper central incisor.

There were no other injuries noted internally and all thoracic, abdominal and pelvic organs were within normal limits.

The skeletal system was normal except for the dislocated left wrist.

A piece of the left femur was kept for DNA typing. The body was X-rayed entirely.

CAUSE OF DEATH

The cause of death following autopsy is traumatic subarachnoid haemorrhage following a fracture dislocation of the cervical spine.

REMARKS –

There are multiple defence injuries present on the upper limbs and a sutured laceration on the scalp.

CONCLUSION –

To conclude there is no element of any non-communicable disease as per the Madagascar death certificate but consequential evidence of a serious aggravated physical assault. The traumatic sub-arachnoid haemorrhage has followed a hard blow to the head causing the 10 cm long laceration on the parietal scalp and the fracture dislocation involving the first and second cervical vertebrae resulting in the sub-arachnoid haemorrhage and eventual brain stem compression and death.

Madam Speaker,

7. With regard to part (a) of the question, I confirm having met the father of J. B. D. Eleonore on 8 December 2017 and on 25 March 2018. A press conference was held on 3 February 2018 and an extract of the said press conference was published in the press on 4 February 2018. **[Adviser on Communications of Honourable AG will provide this information]**

8. With regard to part (b) of the question, the factual background I have given answers the question comprehensively. Samples from the body of late J. B. D. Eleonore were secured and sent to the Forensic Science Laboratory (FSL) for examination. An interim report dated 24 May 2018 received from FSL, inter alia, confirmed the following –

(a) DNA Analysis – There is a need for an alternative enhanced analysis given that the bone samples of the deceased did not yield a DNA profile fit for comparison; and

(b) Toxicological analysis – is ongoing and the result thereof will be available in one weeks' time.

9. Further, I am informed by the Commissioner of Police that on 2 December 2017, INTERPOL Antananarivo was approached by INTERPOL Port Louis for a request for assistance and co-operation from the Malagasy Authorities with a view to obtaining all relevant information regarding the circumstances of the death of Jean Brian Dilan ELEONORE. Subsequently, on 2 January 2018, the NCB Antananarivo replied that after verification with the local authorities at Antsirabe, it was found that Jean Brian Dilan Eleonore died in an accident on 24 November 2017.

10. Being given that the death occurred in Madagascar, **that is outside the Mauritian jurisdiction**, it is obvious that the investigation

into the cause of death of late **Jean Brian Dilan Eleonore** should be carried out by the competent Malagasy Authorities **which have jurisdiction over the venue of the incident.**

11. In the light of the outcome of the autopsy and being given that evidences and witnesses related to the occurrence are in Madagascar, the **Commissioner of Police** have through a letter dated 3 March 2018 addressed to the Senior Chief Executive, Ministry of Defence and Rodrigues recommended that the matter be brought to the attention of the Malagasy Authorities through the Ministry of Foreign Affairs, Regional Integration and International Trade so that a fresh enquiry by the Malagasy Police be conducted to shed light into the fatal occurrence.

12. During the course of the enquiry at the level of the Central CID, it has come to light that Mrs. Marie Priscilla Josy Eleonore born Gooree, 46 years, Head Quality Controller at Aquarelle Ltd., (presently working in Madagascar for the Company) and residing at Richard Avenue, Plaisance, Rose Hill, has a version of the event preceding the fatal occurrence. She is privy of certain invaluable clues which could fruitfully enlighten the Police in Madagascar.

13. I am also informed by the Commissioner of Police that in a letter dated 26 March 2018, the Secretary for Foreign Affairs has informed him that the Mauritian Ambassador in Madagascar had a meeting with the Malagasy Minister of Public Security and the latter informed

that based on the evidence on hand, a special team of *Police Judiciaire* would be sent to Antsirabe for an in-depth enquiry.

14. I am also informed by the Commissioner of Police that the Enquiry Officers at CCID are in contact with their Malagasy counterparts and would provide any assistance, if required.

15. With regard to part (c) of the question, it is apposite to note that section 4 of the Mutual Legal Assistance in Criminal and Related Matters Act provides for the legal framework for requests for mutual assistance from Mauritius. Section 4 of the Act reads as follows –

“4. Request from Mauritius

(1) The Central Authority may make a request on behalf of Mauritius to the competent authority of a foreign State, or to an international criminal tribunal, for mutual assistance in any proceedings commenced in Mauritius in relation to a serious offence.

(2) A request under subsection (1) may require the foreign State or, as the case may be, the international criminal tribunal, to provide such assistance as may be specified in the request and, in particular to –

- (a) have evidence taken, a statement or information taken, or documents or other articles produced;*
- (b) have evidence taken by means of technology that permits the virtual presence of the person in Mauritius;*
- (c) obtain and execute a search warrant, or other lawful instrument, authorising a search for things believed to be located in the foreign State, which may be relevant to the proceedings, and if found, seize them;*
- (d) locate or restrain any property reasonably believed to be the proceeds of a serious offence and located in the foreign State;*
- (e) confiscate any property reasonably believed to be located in the foreign State, which is the subject of a confiscation order made by a Court in Mauritius and transmit such property or, any proceeds realised therefrom, to Mauritius;*
- (f) take measures for the freezing or confiscation of proceeds of a serious offence;*

- (g) permit the presence of an authorised person during the execution of any request made under this section;*
- (h) effect service of documents;*
- (i) examine any person with his consent, any object or any site;*
- (j) locate and identify persons;*
- (k) facilitate the appearance of witnesses or the attendance of persons in proceedings, subject to such practical and financial arrangements as may be agreed upon;*
- (l) transfer in custody to Mauritius a person detained in the foreign State, or by the international criminal tribunal, who consents to give evidence or to assist Mauritius in the proceedings; and*
- (m) transmit to Mauritius any evidence, statement, report, information, whether in original or a certified copy, document, article, thing or property referred to in this subsection.*

(3) A request under subsection (1) shall be in writing and shall –

- (a) give the name of the requesting authority;*
- (b) give the name of the authority conducting the proceedings to which the request relates;*
- (c) give a description of the nature of the proceedings and a statement setting out a summary of the relevant facts and laws;*
- (d) explain the purpose of the request and the nature of the assistance being sought;*
- (e) give details of any procedure which is required to be followed to comply with the laws of Mauritius;*
- (f) where appropriate, include a statement setting out any wish as to confidentiality of the request and the reasons for that wish;*
- (g) indicate any time limit within which compliance with the request is desired, stating reasons;*

- (h) indicate the name and address of the person to be served, where necessary;*
- (i) give any other information that may assist in giving effect to the request;*
- (j) be supplemented with such other procedures, formalities, and information as may be required by the foreign State to give effect to the request; and*
- (k) where necessary, be accompanied by a translation into the official language of the foreign State."*

16. At this stage, we are supporting the inquiry being conducted in Madagascar and our inquiry started in Mauritius has been initiated with a view to assisting authorities in Madagascar.

17. I have to inform the House that there has been no request for mutual legal assistance made by the Honourable Attorney-General to the Malagasy authorities in relation to the death of Jean Brian Dilan Eleonore. Such a procedure would be futile given that the inquiry is being carried out in Madagascar.

18. With regard to part (d) of the question, no Rogatory Commission was requested for the simple reason that the inquiry is

being conducted by Malagasy authorities and it would serve no purpose to go through a Rogatory Commission. In any event, it would be for the Malagasy Authorities to request for a Rogatory Commission should the Malagasy Authorities wish to have evidence recorded from a person who is based in Mauritius for the purposes of the investigation in Madagascar.

19. With regard to part (e) of the question, there will be no introduction of legislation to allow for extraterritorial jurisdiction of the Republic of Mauritius in respect of homicide cases in which the victims are Mauritian citizens. This is so as Mauritius can only assume jurisdiction in such cases if countries, where a Mauritian citizen has been the victim of homicide, accept to extradite their nationals to Mauritius for the purposes of the trial.

20. Extraterritorial jurisdiction is the situation when a country extends its legal power beyond its territorial boundaries. In so doing, the Courts of that country are authorised to enforce their jurisdiction against parties appearing before them with respect to acts they allegedly engaged in outside that country.

21. It is only in very rare cases that extraterritorial jurisdiction is applied. For instance, many countries have laws which give their criminal courts jurisdiction to try prosecutions for certain specific types of offences, for example, piracy or terrorism committed outside their national boundaries. Sometimes such laws only apply to nationals of that country, and sometimes they may apply to anyone.

22. The question of extraterritorial jurisdiction and its application is an area which has attracted much debate.

23. For a claim of extraterritorial jurisdiction to be effective in an external territory, it must be agreed either with the legal authority in the external territory, or with a legal authority which covers both territories.

24. The International Criminal Court Act ("ICC Act") provides for the effective implementation of the Rome Statute of the International Criminal Court in the laws of Mauritius and ensures the fulfilment of the obligations of Mauritius under the Rome Statute. The ICC Act also provides for the jurisdiction of our Courts to try persons charged with international crimes. To that effect, section 4(3) of the Act provides as follows –

.....

(3) Where a person commits an international crime outside Mauritius, he shall be deemed to have committed the crime in Mauritius if he –

(a) is a citizen of Mauritius;

(b) is not a citizen of Mauritius but is ordinarily resident in Mauritius;

(c) is present in Mauritius after the commission of the crime; or

(d) has committed the crime against a citizen of Mauritius or against a person who is ordinarily resident in Mauritius.

25. Under the ICC Act, an international crime is defined as meaning the crime of genocide, a crime against humanity or a war crime, and includes an ancillary offence. A crime against humanity is, in turn, defined as having the same meaning as in the Rome Statute and in Part I of the Schedule to the Act.

26. However, it should be pointed out that the ICC Act sets out defined procedures for the arrest and surrender of persons.