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Committee on Economic, Social and Cultural Rights

Information received from Mauritius on follow-up to the concluding observations on its fifth periodic report ****

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* The present document is being issued without formal editing.

** The annexes to the present document are available on the Committee's website.



Introduction

1. The Committee on the International Covenant on Economic, Social and Cultural Rights (ICESCR) issued its Concluding Observations on the 5th Periodic Report of Mauritius on 08 March 2019. In accordance with the procedure on follow-up to Concluding Observations adopted by the Committee, the State of Mauritius was requested to provide, within 24 months of the adoption of the present Concluding Observations, information on the implementation of the recommendations contained in paragraphs 16 (revision of the Equal Opportunities Act), 29 (minimum wage legislation) and 44 (a) and (b) (parental leave and paternity leave) therein.
2. The State of Mauritius has taken note of the Concluding Observations and is submitting, hereby, an updated status report on the follow-up to the Concluding Observations.

Follow-up information relating to paragraph 16 of the concluding observations (E/C.12/MUS/CO/5)

Non-discrimination

3. The Equal Opportunities Act already prohibits all forms of direct and indirect discrimination on the grounds of status, and discrimination by victimization. “Status” is defined under the Act as meaning: “age, caste, colour, creed, ethnic origin, impairment, marital status, place of origin, political opinion, race, sex or sexual orientation”.
4. Any person who alleges that any of his rights under the Equal Opportunities Act has been infringed may lodge a written complaint to the Equal Opportunities Commission, setting out the details of the alleged act of discrimination. The Commission may, where a complaint appears to it to be well-founded, conduct an investigation into the complaint.
5. To hear and determine complaints referred to it by the Equal Opportunities Commission; and has power to:
 - (a) To issue an interim order as a matter of urgency for the purpose of:
 - (i) Preventing serious and irreparable damage to a person or category of person;
 - (ii) Protecting the public interest; or
 - (iii) Preventing a person from taking any step that would hinder or impede a hearing before the Tribunal;
 - (b) To make:
 - (i) An order declaring the rights of the complainant and the respondent in relation to the act to which the complaint relates;
 - (ii) An order requiring the respondent to pay to the complainant, within such time as it may determine, compensation in an amount not exceeding 500,000 rupees; or
 - (iii) A recommendation that the respondent takes, within a specified period, action appearing to the Tribunal to be practicable for the purpose of obviating or reducing the adverse effect on the complainant of any act of discrimination to which the complaint relates; and
 - (c) To issue such directives as it considers necessary to ensure compliance with the Act.
6. The State of Mauritius is not proposing for the time being to widen the scope of the Equal Opportunities Act (EOA), to extend it to “any ground”. Taking such a step presently, would open the floodgates, compelling the Equal Opportunities Commission (EOC) to consider all complaints in view of the non-exhaustive nature of “any ground”. This will undermine the work of the EOC to address discrimination against persons in relation to the status already specified in the EOA. Furthermore, such an amendment will have far reaching

implications and wide consultations would be required among all stakeholders prior to a policy decision.

7. It is worth mentioning that the Workers' Rights Act already provides for measures against discrimination in employment and occupation. The attributes in relation to which discrimination is prohibited under the Act are: age, race, colour, caste, creed, sex, sexual orientation, gender, HIV status, impairment, marital or family status, pregnancy, religion, political opinion, place of origin, national extraction or social origin., The relevant extract of the Workers' Rights Act is at Annex I.

8. The State of Mauritius believes that there already exists adequate domestic legal remedies and avenues for any of its aggrieved citizens; namely:

(a) Any person where rights under Chapter II of the Constitution has been, or is being or is likely to be contravened, may apply to the Supreme Court for redress;

(b) Acts of public bodies may be challenged in Court by way of applications for judicial review on grounds of illegality, irrationality, abuse of power and procedural improperly;

(c) Actions for damages may be equally entered before the Courts of Law;

(d) Complaints may be made to the National Human Rights Commission, which is, by virtue of the Protection of Human Rights Act, empowered to ensure that effective remedies are available to victims of human rights breaches as contained under Chapter II of the Constitution. The Commission may also inform the Minister, to whom the subject of human rights is assigned, of situations of violation of human rights and advise on ways in which such situations can be ended;

(e) Complaints may also be made to the Equal Opportunities Commission which may refer a case to the Equal Opportunities Tribunal;

(f) Complaints may be made to other human rights institutions such as the Ombudsman, the Ombudsperson for Children, or the Ombudsperson for Financial Services:

(i) Under Chapter IX of the Constitution, the Ombudsman is empowered to investigate "any action taken by any officer or authority to which this section applies in the exercise of administrative functions of that officer or authority, in any case in which a member of the public claims, or appears to the Ombudsperson, to have sustained injustice in consequence of maladministration in connection with the action so taken";

(ii) Under section 5 of the Ombudsperson for Children Act, the Ombudsperson for children is empowered to (a) ensure that the rights, needs and interests of children are given full consideration by public bodies, private authorities, individuals and associations of individuals. (b) promote the rights and interests of children; (c) promote compliance with the Convention on the Rights of the Child;

(iii) Under section 3 of the Ombudsperson for Financial Services Act, the Ombudsperson for Financial Services may (i) request any financial institution to furnish, within such time and in such form and manner as he may determine, such information and data as he may require; (ii) by notice in writing to financial institutions, issue instructions and guidelines or impose such requirements as he may determine; (iii) share information and, where appropriate, enter into a memorandum of understanding, with any relevant supervisory or regulatory authority or law enforcement agency; and

(g) Minor petitions may equally be addressed to the Honourable Attorney-General.

9. Specific sections under the Equal Opportunities Act that allow victims to effective remedies are at Annex II.

Follow-up information relating to paragraph 29 of the concluding observations

Minimum wage

10. The national minimum wage in Mauritius is prescribed by the National Minimum Wage Regulations 2017, under the National Wage Consultative Council Act 2016 (Annex III).

11. The national minimum wage applies to every worker, including migrant workers. A worker under the Workers' Rights Act, means a person who enters into, or works under an agreement or a contract of apprenticeship, other than a contract of apprenticeship regulated under the Mauritius Institute of Training and Development Act, whether by way of casual work, manual labour, clerical work, or otherwise, and however remunerated; and includes:

- (a) A part-time worker;
- (b) A former worker, where appropriate; and
- (c) A share worker.

12. The National Minimum Wage Regulations passed on 27 December 2017 set the national minimum wage of every full time worker at Rs 8,140 per month as from 01 January 2018. As from 01 January 2020, the quantum was reviewed to Rs 9,700 per month whilst that for a worker in the export enterprise was set to Rs9,000 per month, in view of the vulnerability of the export oriented enterprise. This measure was deemed necessary with a view to preserving the sustainability of the sector in terms of both employment security and fluidity in the finance of the enterprise.

13. As from 01 January 2021, the national minimum wage has increased to Rs 10,075 and Rs 9,375 a month respectively, pursuant to the payment of Additional Remuneration 2021 in line with National Minimum Wage (Amendment) Regulations 2021. (Copy of the regulations is at Annex IV).

14. However, every full time worker is guaranteed a minimum monthly income of Rs 10,575 through the payment of the Negative Income Tax and the Special Allowance. The Negative Income Tax is a system where, instead of paying taxes, employees deriving basic salary not exceeding Rs 9,900 per month, receive financial support from Government. The Special Allowance is prescribed according to the Workers' Rights (Payment of Special Allowance 2021) Regulations 2021. Additional information on Negative Income Tax and a copy of the Regulations is at Annexes V and VI respectively.

15. The national minimum wage of every part-time worker, is calculated in the manner specified in Part I of the Schedule, of the National Minimum Wage (Amendment) Regulations 2021.

16. The next review of the national minimum wage is due in 2025 in line with the National Wage Consultative Council Act 2016.

Follow-up information relating to paragraph 44 (a) of the concluding observations

Equitable distribution of family responsibilities

17. Parental leave for fathers (Paternity leave), is governed by section 53 of the Workers' Rights Act. It provides that that a male worker is entitled to 5 days "paternity leave" subject to the production of a medical certificate that his spouse has given birth to his child together with a written statement signed by him that he is living with his spouse under a common roof. In that section, spouse means the person with whom he is civilly or religiously married. Relevant extract of the Workers' Rights Act is at Annex VII.

18. The paternity leave referred above begins within 2 weeks from the date of birth of the child.

19. A male worker who reckons less than 12 months' continuous employment with an employer shall be entitled to the leave without pay.

20. The WRA also provides for various other measures to facilitate equitable distribution of family responsibilities, as follows:

(a) All workers in the private sector having completed five years continuous service as from proclamation of the Act to have one month vacation leave with pay;

(b) Working parents to be eligible for further leave for the purpose of rearing their child. The leave may be offset against any paid yearly annual leave entitlement or be without pay but all the while keeping the continuity of his length of service;

(c) A worker to combine personal life with continued workforce participation in as much as he is eligible to make an agreement to perform part-time or full-time work;

(d) A worker to be entitled to request to work on flexitime under Section 22 of the Act; and

(e) A female worker who has been in continuous employment with the same employer for a period of 12 consecutive months to be entitled to 14 weeks' leave on full pay on the adoption of a child of less than 12 months.

21. Furthermore, the notion of Work from Home has been encapsulated in our legal framework. The new Workers' Rights (Atypical Work) Regulations 2019, which became effective in October 2019, makes provision for teleworking and flexible working roles through atypical work agreement. An atypical worker can now work from home and in a more flexible manner, allowing him/her to fulfil his/her family responsibilities, at the same time.

22. The State of Mauritius is committed to sound family welfare and to that end, it was announced in the Government Programme 2020-2024 that a one-month parental leave will be introduced, in addition to the 14 weeks maternity leave granted to a mother.

23. The objective of "Parental Leave" is to afford working parents additional free quality time to be shared between themselves with regards to the responsibilities of looking after and caring for their newly born child.

24. A drafting technical committee has been set up at the level of the Ministry of Labour, Human Resource Development and Training to analyse the Government measure and prepare a draft Regulation to be submitted to the Honourable Minister responsible for subject matter of labour for its implementation. The Drafting Technical Committee is led by the Technical Advisor of the Ministry of Labour, Human Resource Development and Training and comprises technical officers of the Research and Legislation section which is headed by an Assistant Director, Labour and Industrial Relations.

Follow-up information relating to paragraph 44 (b) of the concluding observations

Equitable distribution of family responsibilities

25. Against the backdrop of COVID-19 pandemic, the State of Mauritius does not envisage currently to extend the paternity leave to the father of a newborn child regardless of marital status. Such a policy decision requires broad consultations with all relevant stakeholders in view of its bearings on the social structure of Mauritius as well as its financial impact on enterprises.