

Business and human rights - towards a decade of global implementation

Call for input – Working Group on the issue of human rights and transnational corporations and other business enterprises

Introduction

1. The United Nations Guiding Principles on Business and Human Rights (UNGPs) is fairly a new concept in the Mauritian business landscape. Appropriate sensitisation about the guidelines are being effected with relevant stakeholders including the private sector for consideration and its incorporation in the various processes by the business enterprises and the relevant public bodies.

A. General legislative framework for businesses

2. Mauritius does not have specific legislations with regards to the protection of human rights by business enterprises. The legal framework within which businesses operate includes *inter alia*:
 - (a) Provisions relating to general business activity:
 - (i) the *Business Registration Act*, which governs the registration of businesses;
 - (ii) the *Business Facilitation Act*, dealing with the enhancement of administrative procedures to ease the starting up and doing business;
 - (iii) the *Code Civil Mauricien* and *Code de Commerce* providing for specific provisions in relation to commerce and trade;
 - (iv) the *Companies Act* and the *Trust Act* providing for the legal structures of businesses;
 - (v) the *Income Tax Act* providing for corporate levies applicable to businesses
 - (vi) the *Investment Promotion Act* addressing the promotion of the development of investment and business activities; and the
 - (vii) the *Ombudsperson for Financial Services Act* which provides for the setting up of an office of the Ombudsperson for Financial Services Act with a view to

giving better protection to consumers of financial services including notably to inform and educate the general public on investments in the financial services offered by financial institutions.

(b) Sector specific provisions namely:

- (i) the regulation of offshore business activities under the *Mauritius Offshore Business Activities Act*;
- (ii) the regulation of activities of small and medium enterprises under the *Small and Medium Enterprises Act*;
- (iii) the regulation of the conduct of global businesses and the non-banking financial service sector under the *Financial Services Act*;
- (iv) the regulation of businesses operating in the hospitality industry under the *Tourism Authority Act*;
- (v) the regulation of banking businesses under the *Bank of Mauritius Act* and the *Banking Act*; and
- (vi) the regulation of insurance businesses under the *Insurance Act*.

B. Legal provisions ensuring protection of human rights to some extent in businesses

I. Constitution

3. Although there is no specific legislation which explicitly regulate business respect for human rights, all laws are drafted in compliance with human rights norms. The protection of fundamental rights and freedoms of the individual, which would also cover the respect of human rights by business enterprises, is guaranteed under Chapter II of the Constitution.
4. Section 3 of the Constitution provides as follows:

3. Fundamental rights and freedoms of the individual

It is hereby recognised and declared that in Mauritius there have existed and shall continue to exist without discrimination by reason of race, place of origin, political

opinions, colour, creed or sex, but subject to respect for the rights and freedoms of others and for the public interest, each and all of the following human rights and fundamental freedoms -

(a) the right of the individual to life, liberty, security of the person and the protection of the law;

(b) freedom of conscience, of expression, of assembly and association and freedom to establish schools, and

(c) the right of the individual to protection for the privacy of his home and other property and from deprivation of property without compensation,

and the provisions of this Chapter shall have effect for the purpose of affording protection to those rights and freedoms subject to such limitations of that protection as are contained in those provisions, being limitations designed to ensure that the enjoyment of those rights and freedoms by any individual does not prejudice the rights and freedoms of others or the public interest.

5. Furthermore, there are various other legal provisions pertaining to fundamental rights in the business context which are present in different pieces of legislations, including labour, environment protection and corporate responsibility laws. These legislations support promotion of decent work, facilitation of access to gainful employment and support employers and workers in creating a safe, conflict-free and productive workplace.
6. A list of such legal provisions is as follows:

II. *Equal Opportunities Act* (Refer to *Annex A*):

Provisions have been made:

- (i) To define an employer under Section 2 as including a person, an enterprise, the State, a statutory corporation, a body of persons employing a worker, or a group of employers or a trade union of employers.

- (ii) To prohibit discrimination based on status of a person and this includes age, creed, caste, sex, sexual orientation, race, place of origin and ethnicity, colour, or impairment in employment.
- (iii) To provide for the protection from direct and indirect discrimination by virtue of Section 5 and Section 6 respectively and discrimination by victimization under Section 7.
- (iv) To impose a duty under Section 9 on all employers to draw up and apply an equal opportunity policy at his place of work with the view to minimise the risk of an employee being discriminated against and to promote recruitment training, selection and employment on the basis of merit.
- (v) To provide for protection from discrimination by employers in the employment of persons, against employees and against persons undergoing training under sections 10, 11 & 12 respectively.
- (vi) To cater for the prevention of discrimination in companies, partnerships, sociétés and registered associations under Section 21.
- (vii) To provide, under Section 26(1) that no employer, or agent of an employer, shall sexually harass an employee or a person seeking employment from the employer, and under subsection (10), no officer or member of a company, partnership, "société", registered association or club shall sexually harass a member or other member, as the case may be, or a person seeking to become a member.
Any person who contravenes this provision of the law shall commit an offence and be liable, on conviction, to a fine not exceeding 100,000 rupees and to imprisonment for a term not exceeding 2 years.
- (viii) To take such measures as may be required by the employer to –
 - (a) ensure that the working conditions are suitable for women and men; and

(b) facilitate gainful employment and parenthood for female and male employees

with a view to promoting equality among his employees, and taking into consideration the employer's resources and circumstances in general.

III. *Workers' Rights Act (WRA)* (Refer to *Annex B*)

7. Provisions under the Act set out employees' entitlements at work notably hours of work, equal remuneration, health and safety at workplace, sick leave, maternity leave and benefits or paternity leave. Since Mauritius is a member state of the International Labour Organization (ILO) since 1969 and has so far ratified 51 ILO Conventions, the principles advocated by these conventions are enshrined in our labour legislation.
8. The key sections and provisions of the *Workers' Rights Act* include:
 - (i) Section 5 which provides protection to worker against all kind of discrimination in employment and occupation by an employer or a prospective employer.
 - (ii) Section 8 which forbids any person to employ a child, a person below age of 16.
 - (iii) Section 9 of the Act, together with Section 8 of the *Occupational Safety and Health Act (OSHA) 2005*, which prohibit employment of young person, a person under the age of 18, other than a child, in work likely to jeopardise his health, safety, physical, mental, moral or social development.
 - (iv) Part V of the *WRA* which regulates the hours of work of workers and section 26 of the same Act which advocates equal remuneration for work of equal value.
 - (v) Section 29 which provides for the joint liability of job contractors as regards to remuneration payable to a worker under the contractual relations.

- (vi) Sections 45 to 53 which provide for various leave entitlements of a worker such as annual leave, sick leave, maternity leave, paternity leave, vacation leave etc... By virtue of the said sections, female workers are entitled to 14 week's maternity leave, on full pay while 5 days' paternity leave are allocated to male workers.
- (vii) Sections 56 to 60 which provide for physiological needs such as meal and tea breaks, medical facilities, tools, transport facilities and communication facilities of workers.
- (viii) Part VI of the Act which provides for protection against termination of employment.
- (ix) Part VII which provides for remedies in case of termination of employment in terms of social benefits and protection.
- (x) Part VIII which provides for payment of retirement benefits to a worker.
- (xi) Part XI which provides for protection against workplace violence.
- (xii) Section 114 of the *WRA* which provides for no person to be allowed to carry body search on a worker.

IV. *Employment Relations Act (EReA) 2008* (Refer to *Annex A*)

9. Provisions under the Act set down the interest of the workers in relation to:

- (i) the right to freedom of association and protection against any interference or victimization during the exercise of trade union rights by virtue of section 29, 30 and 31 respectively.
- (ii) The right to declare dispute for reinstatement in case of termination of employment on ground of discrimination or exercise of trade union rights by virtue of Section 64.

V. Occupational Safety and Health Act (OSHA) 2005 (Refer to *Annex A*)

10. The *OSHA* and the regulations made thereunder provide for a number of safety and health norms notably for workers' accommodation and provision of protective equipment and clothing.

VI. Public Procurement Act 2006

11. Provisions under Section 46 subsection (5), (6) and (7) of the Act provides that

(5) *There shall be included in every procurement contract a clause ensuring—*

(a) rates of remuneration and other conditions of work of the workers engaged in the execution of the contract that are not less favourable than those established for work of the same character in the trade concerned—

(i) by collective agreement applying to a substantial proportion of the workers and employers in the trade concerned;

(ii) by arbitration awards; or

(iii) by Remuneration Regulations made under the Employment Relations Act;

(b) where remuneration and conditions of work are not regulated in a manner referred to in (a), rates of remuneration and other conditions of work which are not less favourable than the general level observed in the trade in which the contractor is engaged by employers whose general circumstances are similar.

(6) No contractor shall be entitled to any payment in respect of work performed in the execution of the procurement contract unless he has, together with his claim for payment, filed a certificate—

(a) stating the rates of remuneration and hours of work of the various categories of workers employed in the execution of the contracts;

(b) stating whether any remuneration payable in respect of work done is due;

(c) containing such other information as the public body administering the procurement contract may require to satisfy himself that this Act has been complied with.

(7) Where the public body administering the procurement contract is satisfied that remuneration is still due to a worker employed on a public contract at the time the claim for payment is filed under subsection (2), he may, unless the remuneration is sooner paid by the contractor, arrange for the payment of the remuneration out of the money payable under the procurement contract.”

VII. *Environment Protection Act* (Refer to *Annex A*)

12. By virtue of Section 15, enterprises are further required to respect and comply with the provisions of the Act regarding the submission of a Preliminary Environmental Report or an Environmental Impact Assessment Report prior to the commencement of a number of undertaking.

VIII. *Waste Water Management Authority Act*

13. Provisions under this Act have been made in so far as environmental rights are concerned.

IX. *Combatting of Trafficking in Persons Act*

14. Provisions made under the Act ensure that workers’ rights are respected.

C. Institutional Set-ups

15. Together with the mentioned legislative framework, Mauritius also has put in place institutions aimed at safeguarding the rights of individuals in the workforce, namely:
- (i) the Commission for Conciliation and Mediation;
 - (ii) the National Remuneration Board;
 - (iii) the Employment Relations Tribunal;
 - (iv) Cases may be lodged at the Industrial Court; and
 - (v) the National Wage Consultative Council.

16. The above institutions have set up various mechanisms and processes to ensure that the worker's human rights are respected all the time and to provide more stringent sanctions and penalties against offenders with a view to deterring, curbing and stopping further violations.
17. Furthermore, there is a dedicated Ministry, namely, the Ministry of Labour, Human Resource Development and Training (MLHRDT) that promotes decent work, support interest of workers and ensure a safe and conflict free environment. Through its various divisions, namely:
- (i) the Employment Service;
 - (ii) the Labour Division; and
 - (iii) the Occupational Safety and Health Division,
- and its powers of inspection and enquires, the MLHRDT ensures compliance with the legislations and regulations in all sectors of the economy.
18. Penalties and sanctions for non-compliances with the legislations are provided under Section 94 of the *Occupational Safety and Health Act (OSHA)*, Section 123 of the *Workers' Rights Act (WRA)* and Section 103 of the *Employment Relations Act (EReA)*. (Refer to *Annex A*).
19. Specific and more stringent penalties are provided for cases of workplace violence with a view to deterring, curbing and stop breaches of the law. The MLHRDT also envisages to conduct visits to every enterprise at least once a year.
20. It also registers complaints from workers throughout its regional offices scattered across the island. Moreover, it carries out sensitization programmes for employers, workers and the public at large through workshops, talks and seminars.
21. Moreover, the State of Mauritius, through the Ministry of Commerce and Consumer Protection, ensures the availability of essential commodities to the population and the safeguard the rights of consumers. The said Ministry, through its team of Consumer Affairs

Officers, ensures that there is no abuse on the part of traders where prices are fixed or controlled, and it enforces protection legislations to safeguard the rights of consumers. As such, it ensures that businesses do not infuse human rights by preventing profiteering and excessive pricing for essential commodities through various forms of price controls.

D. Other measures

22. To further safeguard the interest of its citizens, the State has also implemented the following practices:
 - (i) Contractors are required to pay wages to employees according to prevailing labour law and market rates;
 - (ii) On submission of invoice, contractors have to submit a list of workers employed in the execution of the works and amount paid to them; and
 - (iii) Contractors have to abide to the *Occupational Safety and Health Act (OSHA) 2005* in submitting the Bid Documents.

23. Moreover, Business Mauritius, which is an independent association that represents over 1200 local businesses, has issued the *Inclusive Development Guidelines for Businesses* in October 2020.

24. The objective of the Guidelines is to help businesses to be more engaged and be a driving force in poverty alleviation and inclusive development. The purpose is to inspire business leaders in their endeavor towards community involvement in a pragmatic manner, to make it simple to drive impactful change through concrete actions and allow for consolidation of actions.

25. The Guidelines also highlight the imperative role that businesses play in the alleviation of poverty through the following categories;
 - (i) Category 1: Non-financial support to NGOs and vulnerable groups
 - (ii) Category 2: Employee Engagement/Involvement

- (iii) Category 3: Support to needy/ vulnerable employees with the organisation
- (iv) Category 4: Inclusive employment
- (v) Category 5: Promotion of gender equality
- (vi) Category 6: Financial contribution to NGOs, community based projects and vulnerable groups.
- (vii) Category 7: Fourth Sector/ Social enterprise

26. The Guidelines have been widely disseminated within the business community and can be accessed at <https://www.lovebridge.mu/sites/default/files/business-mauritius-guidelines-inclusive-development.pdf> .

E. Access to remedy

27. The State of Mauritius condemns all forms of business-related abuses. State-based grievance mechanisms do exist in Mauritius with a view to safeguarding the rights of an individual, deterring and dealing with business related human right abuse issues. These include:

- (i) The Citizen Support Unit (CSU) of the Prime Minister's Office through its internet-based complaints management platform, the Citizen Support Portal (CSP) which has been developed and put in place to facilitate the registration of complaints/ general inquires and suggestions online. The CSU caters complaints from NGOs, vulnerable groups, migrant workers, trade unions, persons with disabilities
- (ii) The Consumer Support Portal which is a decent grievance mechanism with State involvement in Mauritius. This mechanism is in fact improving the trade-related human rights situation and helping in reducing future grievances and harms.

28. In cases of breaches of an individual's rights, redress can be sought through Section 17 of the Constitution which provides that any person who alleges that his rights as guaranteed under sections 3 to 16 of the Constitution are being or are likely to be contravened may

apply to the Supreme Court. The Court may in turn make such orders, issue such writs and give such direction as it may consider appropriate for the purpose of enforcing, or securing the enforcement of, any of Section 3 to 16 to the protection of which the person concerned is entitled.

Conclusion

29. In line of the above, Mauritius strives to ensure maximum coverage of the worker's human rights in employment. The State of Mauritius is conscious of the increasing importance of human rights in relation to the business sector. In fact, according to the Government Programme 2020-2024, the vision of the Government is inter alia to work towards "*a country that nurtures its deeply entrenched democratic values and human rights.*"
30. The Government of Mauritius will pursue its effort in adopting principles to enhance the general framework for the development of businesses in Mauritius together with the protection of human rights in businesses, regardless of their sizes and business activity.

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