

**COVID-19 & NEW WORKING CONDITIONS
AS THE NEW NORMAL: THE DOMINO EFFECT
-THE MAURITIAN AND AFRICAN HUMAN RIGHTS
COMPARATIVE CASE STUDY-
(TRACK 2-CONGRESS PAPER)**

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Abstract

- ▣ **Abstract.** The Covid-19 pandemic disease has an impact on, *inter alia*, workers' rights to a fair remuneration. There were also risks of unemployment and workers becoming redundant provoking gender inequality in the labour market especially when the Mauritian legislator came up with new legislations and regulations. The Mauritian government and the Mauritian legislator started to pass new legislations as from 2019 to cater for new working conditions such as work from home with a "domino effect" with infringements to the basic fundamental rights have been detected and reported on the media. Indeed, individuals started to suffer from lockdown following the curfew and its spread among the population. Most human and fundamental rights were restricted like in most countries, worldwide.
- ▣ Mardemootoo, S., Balgobin-Bhoyrul, P., Kisson, G., Guttoo, H., Tung, S. and Desai, J., 2020. The COVID-19 (Miscellaneous Provisions) Act of 2020 introduced by the Parliament of Mauritius - Amendments and their implications.

SDGs

- To achieve these SDGs, the Mauritian legislator passed *The Equal Opportunities Act 2008*, *The Employment Relations Act 2008 (Act 32/2008)* and the recent *Workers' Rights Act 2019 (Act 20/2019)* to reduce inequality, to protect all workers against victimisation and discrimination on the workplace. The new *Workers' Rights Act 2019 (Act 20/2019)* came into force and it also provides sufficient provisions to promote decent work and economic growth through sustained economic growth, higher levels of productivity and technological innovations as per the SDG 8. The Preamble of the *Equal Opportunities Act 2008* enacts that that act was passed to: “Promote equal opportunity between persons, prohibit discrimination on the ground of status and by victimisation, establish a Commission and an Equal Opportunities Tribunal and for related matters”.
- Section 31 of the *Employment Relations Act 32 (Act 32/2008)* provides for protection against discrimination and victimisation
- Part II of *The Workers' Rights Act 2019 (Act 20/2019)* (sections 4-7) provides for “Measure against discrimination in employment and occupation”.
- The Preamble of *The Workers' Rights Act 2019 (Act 20/2019)* provides that: “To provide a modern and comprehensive legislative framework for the protection of worker, and to provide for matters related thereto”.

Chapter II of the Mauritian Constitution (1968)

- ▣ Chapter II of the Mauritian Constitution (1968) provides for fundamental rights and most of these rights are inspired from the *Universal Declaration on Human Rights*, 1948 and the *European Convention on Human Rights*, 1950 and they are very useful to protect the constitutional rights of all individuals in Mauritius without exception (Table 1).
- ▣ Chapter II of the Mauritian Constitution 1968 (sections 3-16) provides for fundamental rights to all individuals in Mauritius

The Westminster Model

- Soon, trade unions were created with political parties and some federations as well. And all Mauritians enjoy a free and fair election explaining the political stability of the island, foreign investors started to invest in Mauritius coupled with foreign direct investments from India, China, South Africa, UK and other great nations of the world through the Double Taxation Avoidance Agreement (DTAA). The sugar price fell down and Sir Anerood Jugnauth started to build a new nation more focused on modern technology and the island became a republic on the 12th March 1992. It remains very active in terms of regional development and became a member of regional blocks (COMESA, SADC of the IORA) and also became a stepping stone for China and India to invest in Africa. Because of its sudden socio-economic development the Mauritian legislator started to pass Bills and Acts of Parliament, based on the Westminster Model, for the welfare of all workers in Mauritius and they saw the promulgation of the *Workmen's Compensation Act 1931*, *Labour Act 1975*, *Industrial Relations Act 1976*, *Export Processing Zone Act* or the *Industrial Expansion Act*. Some of them were repealed and replaced by new legislations to cope with a more modern island with the passing of the *Employment Rights Act 2008 (Act 38/2008)*, the *Employment Relations Act 2008 (Act 32/2008)*, *OSHA 2005* and these legislations are constantly amended to be in line with the requirements and needs of the population as Mauritius became a centre for export, import, doing business, commerce and trade attracting foreign workers to work in its industries and factories with export of textile to the USA under the African Growth and Opportunity Act (AGOA).
- The Industrial Relations Act 1976 was repealed and *The Employment Relations Act 2008* came into force.

The Prevention and Mitigation of Infectious Disease Coronavirus Regulations 2020

- ▣ However, though the Covid-19 pandemic disease is under control in Mauritius, it has, nevertheless, impacted very negatively on the workers' rights in various ways through quarantine, lockdowns, restrictions on movement, personal liberty, and freedom of expression and freedom of association and assembly just to name a few. For the first time and inadvertently workers started to discover new legislations and regulations such as *The Prevention and Mitigation of Infectious Disease Coronavirus Regulations 2020*, which imposed a curfew order of 21 days to contain the spread of the Coronavirus-19 pandemic disease in Mauritius, and any breach would entail any person to a term of imprisonment of a maximum term of 6 months and a fine (Rs 500,000).
- ▣ Sutherland, E., 2020. Coronavirus Overview of the impacts of the lockdown, Publications - Eversheds Sutherland

Act of God (*cas de force majeure*)

- At the very outset, it is important to know that the Covid-19 pandemic disease is certainly not an Act of God (*cas de force majeure*), and that there various obligations and implied duties on both an employee and an employer irrespective workers are working on their workplace or at home. Both should be of good faith, that any worker is fit to work and the employer must provide work and remuneration to them though he/she may be facing financial difficulties especially during lockdown and confinement, the Supreme Court held in the case of *Ismael v Jay Fashions Co. Ltd v 1988 SCJ 497*, where it was held that: “The issue arose as to whether an employer who claimed that he could not provide to his workers on the ground of financial difficulties leading to the closing of the company, albeit temporarily, could avail himself of this ground to justify the termination of his worker’s employment. It was held that the dismissal of workers in the above circumstances was unjustified”
- Potayya, S., 2021. An analysis of force majeure in the context of Mauritian banking law.
- Richard, N. and Ribet, A., 2020. COVID-19 and its impact on contractual performance in Mauritius - Force Majeure, DLA Piper Africa, Mauritius, Juristconsult Chambers
- Mauritius has still retained the English Common Law and its procedure also follows the English law of Evidence as *per* section 162 of the Courts Act 1945.
- Dentons.com. 2020. “Force Majeure” and Coronavirus (COVID-19) under the Laws of Mauritius –What is Force Majeure?.

Structure of the Paper and Presentation

- ▣ The author would rely on new legislations and regulations passed recently by the Mauritian legislator to demonstrate that the spreading of the Covid-19 pandemic disease has a “domino effect” on all sectors of the socio-economic development of the small island of Mauritius but the article is more focused on human right issues in a comparative approach. In order to demonstrate the same, the structure of this paper is to understand how the Republic of Mauritius reacted when new legislations and regulations were passed: after an Introduction (I), there is a literature review of the subject matter (II), Covid-19 and The New Working Conditions Under New Legislations: The Mauritian Legal and Institutional Framework (III), The Impact of The Covid-19 on The Workers’ Rights To Health and Safety Measures (IV), the Impact of The Covid-19 on The Workers’ Rights: The Socio-Economic Impact (V) and this article will close with a list of references (IV) to enhance further research in this emerging field of the law.

Literature Review

- As far as literature review is concerned on the impact of the Covid-19 on the Mauritius economy and the impact of new legislations and regulations, there are already a very wide and important data which have been reported by, *inter alia*, the World Health Organization (WHO), the World Bank Household Survey Report, the Socio-Economic Impact Assessment of Covid-19 in Mauritius, the International Labour Organisation (ILO) has also published its ILO Standards and Covid-19 (Coronavirus), Business Mauritius Report, Afrasiabank, KPMG and Rogers Capital, and Central Statistics Mauritius, and therefore it is important to make a study to know how some legislations and covenants in the small Republic of Mauritius have played an important role in their participation by giving a legal blow to contain the Covid-19 pandemic disease. Various firms, local and international, have also published research they have undertaken to better understand the impact of the Covid-19 disease on workers' rights in small and medium enterprises, large enterprises and companies: the British firm Burges and Salmon have published the Covid-19 Burges And Salmon's Commitments to Client Service (burges-salmon.com), and in practically the same line the University of Cambridge Press on its article on Covid-19: Resting the limits of Human Rights. However, the aims and objectives of this paper are to fulfill in some loopholes with regard to legislations and regulations, and its implementation and to what extent human rights are affected on their workplace. *International Labour Organisation*. (n.d.). Retrieved from https://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_742203/lang-en/index.htm
- PLCJ. 2020. *COVID-19(Mauritius): Can companies suspend the payment of commercial rents ?*.
- *Afrasia Bank*. (2020, April 17).
- *KPMG*. (2020, April 28). Retrieved from <https://home.kpmg/xx/en/home/insights/2020/04/mauritius-government-and-institution-measures-in-response-to-covid.html>
- *Rogers Capital*. (n.d.). Retrieved from <https://www.rogerscapital.mu/9135/key-measures-by-the-government-to-sustain-the-mauritian-economy-a>

Covid-19 and The New Working Conditions Under New Legislations: The Mauritian Legal and Institutional Framework.

- ▣ This paper, on the Mauritian legislations and regulations with a view to deal a legal blow against the propagation of the Covid-19 pandemic disease on the small island, reflects to what extent the Covid-19 pandemic disease had exacerbated unemployment and various forms of crisis and abuses, as explained, on the small island State when the Mauritian government passed various legislations and regulations such as, *inter alia*, *The Covid-19 (Miscellaneous Provisions) Act 2020*, *The Prevention and Mitigation of Infectious Disease Coronavirus Regulations 2020*, *The Public Health (Covid-19 Vaccines for Emergency Use) Regulations 2021*, *The Quarantine Act 2020*, *The Quarantine (Covid-19) Amendment Regulations 2021*, *The Work from Home Regulations 2020*, *The Worker's Rights (Additional Remuneration) 2021 Regulations 2021*, *The Worker's Rights (Payment of Special Allowance 2021) Regulations 2021* or *The Workers' Rights (Extension of Time During Covid-19 Period) Regulations 2020* coupled with various schemes and communiqués sent by the government in place such as *The Government Wage Assistance Scheme* or *The Self-Employed Assistance Scheme*.

The Quarantine Act 2020 and The Work from Home Regulations 2020

- In addition, the Republic of Mauritius has signed and ratified most international conventions, treaties and protocols on human rights and with a view to protect its citizens against forced labour (*Forced Labour Convention 1930*), and other international covenants such as, *inter alia*, *The Universal Declaration on Human Rights 1948*, *The International Covenants on Civil and Political Rights* or *The International Covenant on Economic, Social and Political Rights*. It is also a member of the International Labour Organisation. However, most citizens in Mauritius, just like all citizens in Africa or elsewhere found themselves face to face with a new pandemic disease and new working conditions when *The Quarantine Act 2020* and *The Work from Home Regulations 2020* were passed causing certain disruptions, chaos, frictions and disorder among workers and employees because these new conditions and modalities on working conditions were imposed suddenly to enhance health and precautionary measures on one side and socio-economic effects on the other side.

PROTECTION OF WORKERS AND EMPLOYEES

- ▣ Indeed, the Mauritian written Constitution 1968 (*supra*) is colonial law, as the supreme law of the island, which Mauritius inherited during the British colonisation (1810-1968) but it has also a very strong hybrid law with English Common Law and French Civil Law when, again, Mauritius was under French colonisation (1715-1810) where the French Code Napoléon 1804 was imposed on the inhabitants of the small island coupled with the French Code de Commerce and the French Code Pénal such that, actually, the Mauritian legislator is still borrowing and inspiration legislations and precedents from England, and France from the French *Cour de Cassation*. Therefore, in addition to legislations passed by Parliament, there are *The Workers' Rights 2019 (Act 20/2019)* and *The Employment Relations Act 2008 (Act 32/2008)* which have been inspired from English law, legislations and regulations among which important employment legislations such as *The Equal Opportunities Act 2008*, *The Occupational Safety Health and Welfare Act 1988* was repealed and replaced actually by *The Occupational Health and Safety Act 2005* or *The End of Year Gratuity Act 2001* to be inline with the government policies to combat the Covid-19 pandemic disease. *The Covid-19 (Miscellaneous Provisions) Act 2020* amended a broad array of 56 existing public health parameters in order to be line with the government policies.

The Temporary Restriction of Movement Order

- There were several confinement, deconfinement; several lockdown and resumption of activities were allowed with new regulations imposed by the Mauritian government to restrictions of liberty of the individuals on the small island despite The Temporary Restriction of Movement Order and consequently these new legislations, regulations, communiqués and orders heavily impacted on the worker's rights; restrictions and limitations to access to workplace and information, limitations on their right to work, right to health and safety, right to entitlement to leaves, labour gender inequality, discrimination, unfair treatment, risk to redundancy without any compensation such that all these pertinent issues compromise directly on all fundamental and constitutional rights of all individuals in Mauritius when all local courts were close, legal advisors were not available due to confinement, and over and above other important rights such as , *inter alia*, right to privacy, right to the security of the individual, right to life, freedom of movement, freedom of association and assembly, right to be tried before an impartial court within a reasonable time, or right to protection from discrimination were jeopardized. Therefore, workers and employees in Mauritius found themselves in new conditions of work when *The Work from Home Regulations 2020* was passed coupled with various *communiqués* and workplace preparedness plan were both set up and passed promptly to stop the propagation of the Covid-19 pandemic disease on the island.

Human Rights

- Nevertheless, there were complaints from civil societies, front liners and other human rights fighters who advocated for the protection of workers, and that their rights should be maintained because all human beings are born free and equal in dignity and rights, and second during the curfew workers and employees became redundant especially in the tourism and airport sector despite the Republic of Mauritius has signed and ratified the ILO Conventions on workers' rights, which in turn set the ILO Declarations on Fundamental Principles and Rights at Work and which consists of eight fundamental conventions (Table 4).

The Work from Home Regulations 2020

- In Mauritius, *The Occupational Health and Safety Act 2005* provides in its section 5 that “Every employer shall. So far as is reasonably practicable, ensure the safety, health and welfare at work of all his employees”. And with a view that workers are not contaminated they were also encouraged to work from home (WFH) when the legislator passed *The Work from Home Regulations 2020*. In the absence of any relevant case as whether a worker may refuse to resume work in case of any apprehension of health and safety risk at work reference may be made to the case of *Rodgers v Leeds Laser Cutting Limited ET 1803829/2020* where the Employment Tribunal found that in case it would be reasonable for the employee to refuse that part of the work which expose him to higher risks or to raise the issue with the employer to find appropriate solutions for a safer working environment but that a mere circulation of Covid-19 virus in society is not a “good and justifiable cause” for being absent at work. In Mauritius, just like in most countries worldwide, employers are providing face masks, sanitiser and encourage social distancing on the workplace to encourage preventive measures in addition to self-isolation and enforcement of *The Quarantine Act 2020* and other legislations and regulations the workplace.

The Quarantine Act 2020

- In Mauritius, *The Quarantine Act 1954* was repealed and *The Quarantine Act 2020* came into force, and the purpose for the Act was: “to provide appropriate measures for the prevention and spread of communicable diseases in Mauritius”. However, *The Quarantine Act 2020* was much criticised as it imposes a fine of Rs 500,000 and a term of imprisonment not exceeding 5 years for criminal offenders, and its sections are also infringes most fundamental rights of the individuals in Mauritius. As an illustration, section 3 of *The Quarantine Act 2020* imposes restrictions of entry by aircrafts and ships in Mauritian borders and imposition of confinement at home and closure of business premises. Section 7 of the same Act enacts confinement of persons in Quarantine facilities and self-isolation, section 19 of the same Act imposes a duty to provide information, section 10 of the same Act provides for the duty to disclose communicable diseases and section 11 of the same Act provides for police powers to enter premises without a warrant and arrest without a warrant. *The Quarantine Act 2020* was passed to protect Mauritian citizens from the Covid-19 pandemic disease otherwise contaminated workers will jeopardise the life and health of other fellow workers and employees in a sane environment place. In contrast, many professionals; such as dentists, private medical practitioners or barristers; had no access to their workplace and it was deplored that it constitutes an abuse of access to workplace.

CRIMINAL OFFENCE AND PENALTIES

- ▣ *The Prevention and Mitigation of Infectious Disease Coronavirus Regulations 2020* came into force with strict criminal penalties (*supra*) in case of breach of the regulation and any contaminated person was immediately quarantined as per *The Quarantine Act 2020*, and as highlighted, the Mauritian government priority was to ensure public health to one and all after the country has suffered one lockdown (19th March 2020 to 1st June 2020) and a second lockdown (10th March 2021 to 25th March 2021) with regular red zones in different rural and urban constituencies to avoid any risk of resurgence of the Covid-19 pandemic disease otherwise it would definitely impact on the country's health service and economy, and its socio economic developments as most keys sectors (tourism, hotels, importation and exportation of goods to the SADC countries, or foreign direct investment (FDI) was also affected) but there were very often partial lift of lockdowns in order for the country to breath economical and financially and to resume economic activities but international transport in the tourism sector remains close. As per *The Quarantine Act 2020* only 10 persons may meet at any time and 50 persons in exceptional cases (wedding or important social gatherings).

The Public Health (Covid-19 Vaccines for Emergency Use) Regulations 2021

- There were serious concerns about vaccination in Mauritius though *The Public Health (Covid-19 Vaccines for Emergency Use) Regulations 2021* was passed to circumvent the pandemic disease and there will be a vaccination program around the island. People complained that there suffer from allergies, some people died when they were vaccinated, other suffered from headache and workers need a Work Access Permit and a Vaccination Card to have access to their workplace. The media reported that some workers refused to be vaccinated because there were risks to health and safety. Therefore, questions arose to mandatory vaccination, and should it be imposed by any employer? In Mauritius, just like in the UK, Italy, vaccination is imperative and compulsory as *per* the various legislations' and regulations in force especially for front liners and people who are regularly in touch with Covid-19 pandemic patients and other healthcare workers. However, there is a pertinent legal issue as Isra Black, a law lecturer at the University of York, pointed out that : "any public authority, whether the State or individual NHS trust, that mandates vaccination will need to comply with human rights and equality law. Mandatory vaccination interferes with the right to private life protected by /article 8 of the *European Convention on Human Rights 1950*, so the relevant authorities will need to show that the interference is justified in its pursuit of a legitimate aim and its proportionality. The human rights and equality dimension of mandatory vaccination cannot be avoided byte use of health and safety law".

The Impact of The Covid-19 on The Workers' Rights: The Socio-Economic Impact.

- ▣ The ravages and havocs of the Covid-19 pandemic disease remain unprecedented in human history affecting all sectors of the socio-economic development of a country affecting furthermore to the rate of unemployment (it raised from 1.1% to 6.5% according to the International Labour Organisation with, *inter alia*, a sharp increase in poverty, inequalities, loss of labour income or infringement of human rights especially on the workplace.
- ▣ The Government of the small Republic of Mauritius reacted promptly to the Covid-19 pandemic disease with the promulgation of new legislations and regulations, to control its spread and to cater for its socio-economic development in key sectors such a textile, manufacturing sectors, food, tourism, retail, wholesale and agriculture with a direct impact of Mauritian economy and finance, and, consequently, on its GDP, which contracted by 11% in 2020 according to the International Monetary Fund.

CONCLUSION

- It can be concluded that the Covid-19 pandemic disease has a domino effect spreading on all sectors affecting by the same time the socio-economic development of a country. In addition, it also affected the most basic fundamental rights of all its citizens without any exception when new legislations and regulations were passed with a view to provide social protection relief to all households and individuals especially those workers in the private sector with the Government Wage Assistance Scheme (GWAS) and the Self-Employed Assistance Scheme (SEAS) during the Covid-19 period. Despite the Mauritian government was facing financial constraints due to the Covid-19 all workers in the public sector received the same monthly salaries without any cut except for overtime. Since Mauritius is a welfare State with free education at all level, free health care and free transport for elderly persons and tertiary students the Mauritian government immediately implemented a Government Wage Assistance Scheme (GWAS) and a Self-Employment Assistance Scheme (SEAS) during the Covid-19 to assist workers in the private sector as a wage of subsidy. And this effort was highly recommended.

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