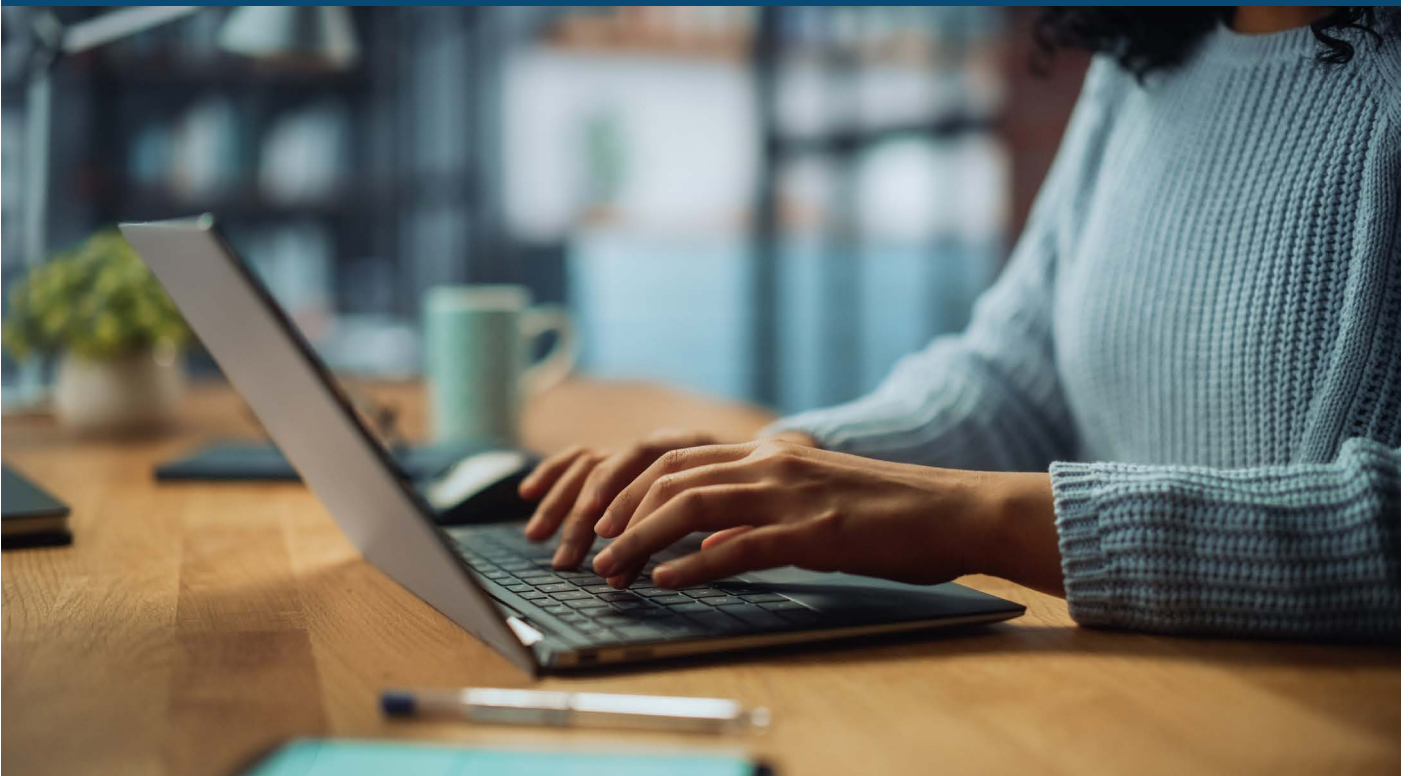




**INTERNATIONAL
LAWYERS ASSISTING
WORKERS NETWORK**

**AN ASSESSMENT OF THE TELEWORKING
LEGAL FRAMEWORK IN THE REPUBLIC OF MAURITIUS**



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ABOUT THE ILAW NETWORK

The International Lawyers Assisting Workers Network (ILAW Network) is a membership organization for union and worker rights' lawyers. The core mission of the ILAW Network is to bring together legal practitioners and scholars in an exchange of ideas and information in order to best represent the rights and interests of workers and their organizations wherever they may be.

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ABSTRACT

Legislative actions carried out across various countries following the rise of the Covid-19 pandemic led to fundamental changes in the organisation of work. Telework, working from home, working from anywhere and remote work are some of the concepts which are gaining prominence. With the rise of these trends, policymakers face challenges because of the unconventional nature of these new forms of working. Fundamental worker rights, including the right to occupational safety and health, reasonable hours of work, freedom of association and collective bargaining, non-discrimination, equitable access to training, opportunities and promotion, gender equality and freedom from violence and harassment, merit regulatory attention to ensure that rights of teleworkers are given equitable consideration.

This report aims to situate the legislative efforts of the Republic of Mauritius relating to telework. The legal instruments pertaining to telework are analyzed using a purely legal critique technique. The analysis is then empirically enriched by the views of practitioners in the labour field, namely trade unionists, human resource managers, labour lawyers and labour inspectors who brought their contribution to the discussion of the existing legislative framework in Mauritius. The loopholes uncovered through the analysis are areas in the existing domestic framework which require regulatory action.

The first part of the report conceptualizes telework and reviews its definitional aspects. This is followed by a review of international and regional labour standards applicable to the Republic of Mauritius. These standards are used as benchmarks for a critical assessment of the domestic telework framework. The report concludes with recommendations to enhance the current regulatory framework on telework to protect and promote worker rights.

Much of what is legally required to cover the rights of teleworkers do exist across several pieces of Mauritian law, but it is either scattered about or lies deep in layers of complexity, making it difficult for workers, unions and employers to understand and implement. Regulatory changes should clarify protections for workers and obligations on employers. Reforms should be developed in consultation with workers and trade unions to ensure that teleworkers have access to decent work and are able to fully exercise their labour rights.

1. INTRODUCTION

1.1 BACKGROUND TO THE RESEARCH

The Covid-19 pandemic caused significant disruption in the way companies and organisations function.¹ The global pandemic accelerated the adoption of new working trends such as teleworking, homeworking, and remote working. All these new forms of work are now at the center of management’s attention, which is continuously finding new solutions for business continuity. While telework is not a novel phenomenon, the regulation of such type of work is notoriously nascent.² There is a handful of factors which underscores such regulatory uncertainty³ if not lethargy regarding telework.

This report examines the legislative framework pertaining to telework in Mauritius with the aim of improving that framework and forming a basis for broader application in other contexts. It reviews and compares the current framework with international norms, standards, and frameworks, as well as with academic conceptualizations of telework.

Telework and similar types of work are likely to become a permanent feature of the world of work, even in a post-pandemic environment. Moreover, organizations might be keener to consider telework when it is significantly and clearly regulated.

1.2 APPROACH USED

1.2.1 Research Objectives:

The research objectives of the report are as follows:

- To examine the regulation of telework under Mauritian law
- To explore the definition of telework in Mauritian legislation
- To scrutinize the regulation of the following aspects of telework:
 - a. Voluntariness and reversibility
 - b. Hours of work and right to disconnect
 - c. Equipment and costs
 - d. Costs of maintaining office, equipment, and connection
 - e. Occupational safety and health
 - f. Freedom of association and collective bargaining
 - g. Non-discrimination, equal access to training, opportunities, and promotion
 - h. Gender equality
 - i. Gender-based violence and harassment
 - j. Role of management
 - k. Right to privacy
 - l. Data protection
- To scan the international or regional labour standards applicable to Mauritius
- To investigate other non-labour laws impacting telework
- To gather inputs from principal stakeholders, namely trade unions, human resource managers, and officials of the Ministry of Labour and Industrial Relations.

1 International Labour Organization (ILO), *TELEWORKING DURING THE COVID-19 PANDEMIC AND BEYOND: A PRACTICAL GUIDE (2020)* [hereinafter Practical Guide], https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---travail/documents/instructionalmaterial/wcms_751232.pdf.

2 Chris Diamond & George Lafferty, *Telework: Issues for Research, Policy and Regulation*, 11 *LAB. & INDUST.* 115 (2000).

3 Minna Helle, *New forms of Work in Labour Law* in *MOBILE VIRTUAL WORK* 71 (2006).

1.2.2 Research Method

This report aims to address the research objectives identified above by analysing domestic legal provisions pertaining to telework in Mauritius. This report utilises the purely legal critique method,⁴ which compares domestic legal provisions with international law, standards, and principles. This comparative analysis helps identify and address “loopholes” and problematic areas in the current domestic telework framework. The analysis was enriched by the views of practitioners in the field, namely trade unionists, human resource managers, labour lawyers, and labour inspectors, who brought their practical perspectives to the discussion of current regulations and possible proposals for improvement. A list of research questions for these interviews is available as an Appendix to this report.

2. THE CONCEPTUALIZATION OF TELEWORK

2.1 ISSUES WITH THE CONCEPTUALIZATION OF TELEWORK

The debate over the definitional aspects of telework is ongoing,⁵ despite the fact that it is a real phenomenon disrupting the organization of work around the world. Many scholars have highlighted the minimal attempts by the research community to extract a consensual meaning of telework.⁶ Instead, a growing stream of research has focused on exploring the advantages and disadvantages of telework,⁷ rather than broadening the conceptual understanding of this phenomenon. Moreover, several authors have argued that the lack of conceptual investigation has resulted in telework being characterized by confusion, inconsistency, overlapping, and ambiguity.⁸ The Practical Guide on Telework published by the International Labour Organization (“ILO”)⁹ has focused on the flexible nature of telework so as to enable enterprises to develop their own practices. While the elusiveness of the concept of telework has no doubt served the practitioners, the author of this report contends, with the scholarly community, to deplore the absence of a comprehensive definition for teleworking that would serve to inform policy and legislation for the benefit of all stakeholders.

2.2 EVOLUTIONARY CONCEPTUALIZATIONS OF TELEWORK¹⁰

Telework has sometimes been conceptualized from an evolutionary perspective or has sometimes been conceptualized using two common dimensions.

2.2.1 The evolutionary perspective of telework¹¹

The evolutionary perspective of telework describes telework as occurring as a process, moving through the three generations:

- a. First generation of telework: the home office; characterized by the remoteness and stationarity of workplaces; technology was not yet able to mobilize employees while working. This generation is marked by spatial limits.
- b. Second generation of telework: mobile office; marked by the increasing use of wireless technology,

⁴ Benjamin P. Matthews, *How to Do Legal Critique: A Primer for Research Papers at Masters Level* (2009) (unpublished manuscript), <https://core.ac.uk/download/pdf/10887457.pdf>.

⁵ Yehuda Baruch, *Teleworking: Benefits and Pitfalls as Perceived by Professionals and Managers*, 15 *NEW TECH., WORK & EMP.* 34 (2000).

⁶ Cath Sullivan, *What’s in a name? Definitions and Conceptualisations of Teleworking and Homeworking*, 18 *NEW TECH., WORK & EMP.* 158 (2003).

⁷ Itzhak Harpaz, *Advantages and Disadvantages of Telecommuting for the Individual, Organization and Society*, 51 *WORK STUDY* 74 (2002); Diane-Gabrielle Tremblay & Laurence Thomsin, *Telework and Mobile Working: Analysis of its Benefits and Drawbacks*, 1 *INT’L J. WORK INNOVATION* 100 (2012); John Campbell & Craig McDonald, *Defining a Conceptual Framework for Telework and an Agenda for Research in Accounting and Finance*, 4 *INT’L J. BUS. INFO. SYS.* 387 (2009).

⁸ Michael S. Henry, Daniel Le Roux & Douglas A. Parry, *Working in a Post Covid-19 World: Towards a Conceptual Framework for Distributed Work*, 52 *S. AFR. J. BUS. MGMT.* 2155 (2021); Raghuram, S., Hill, N.S., Gibbs, J.L. and Maruping, L.M., 2019. Virtual work: Bridging research clusters. *Academy of Management Annals*, 13(1), pp.308-341.

⁹ Practical Guide, *supra* note 1.

¹⁰ Sylvie Craipeau, *Télétravail: Le Travail Fluide*, 71 *QUADERNI* 107 (2010).

¹¹ Jon Messenger & Lutz Gschwind, *Three Generations of Telework: New ICTs and the (R)evolution from Home Office to Virtual Office* (2017) (unpublished manuscript), <http://old.adapt.it/adapt-indice-a-z/wp-content/uploads/2017/07/IL156.pdf>.

smaller and lighter devices such as laptops, tablets, notebooks and mobile phones; work is detached from physical place, is mobile, and can be performed anywhere and anytime, such as on the airplane or in hotel rooms. However, information still had to be carried everywhere.

- c. Third generation of telework: virtual office; the salient feature of the third generation of telework is the use of cloud computing and networks.

2.2.2 Commonly-used dimensions in conceptualizing telework¹²

- a. The existence of geographical distance between the employers' premises and the location where work is performed; and
- b. The utilization of technology to perform work.

It may be argued that the looseness of such conceptualizations does not provide valuable insight to guide policy-making and regulation. Older conceptualizations of telework may be said to be either too brief to be of much use or else too biased in favor of management, failing to encapsulate the perspective of workers and trade unions. Moreover, while the ILO's Practical Guide on Telework presents some interesting areas of focus for enterprises to formulate their own teleworking strategies and practices, it is generic in nature and thus does not provide an adequate foundation for telework regulation in context.

In attempting to extract the telework aspects which require regulatory attention, this report first examines some of the definitions in the literature, then proceeds with a conceptual deconstruction and interrogation of the several determinants of the definitions to elicit avenues that are used to guide an improvement in regulation and policy-making.

2.3 EXAMINING DEFINITIONS OF TELEWORK

A selection of telework definitions is given below:

- a. "A broad term used to describe a variety of arrangements that involve working away from the employer's main campus."¹³
- b. "Teleworking is defined as the use of information and communications technologies (ICTs), such as smartphones, tablets, laptops, desktop computers, for work that is performed outside the employer's premises."¹⁴
- c. "Work arrangements in which employees perform their regular work at a site other than the ordinary workplace, supported by technological connections."¹⁵
- d. "The term telework is generally used to connote a broader form of telecommuting that involves working from a variety of alternative locations outside of the central office (including full-time work from home but not necessarily limited to home-based work) and includes home-based businesses, telecentres and call centres and even work within an organization's central office between individuals who are interacting through the use of technology."¹⁶
- e. "Telework is a form of organizing and/or performing work, using information technology, in the context of an employment contract/relationship, where work which could also be performed at the employer's premises, is carried out away from those premises on a regular basis."¹⁷

¹² Sullivan, supra note 6; Peter Standen, Kevin Daniels & David Lamond, *The Home as a Workplace: Work-Family Interaction and Psychological Well-Being in Telework*, 4 J. OCCUPATIONAL HEALTH PSYCH. 368 (1999).

¹³ Valerie J. Morganson et al., *Comparing Telework Locations and Traditional Work Arrangements: Differences in Work-Life Balance Support, Job Satisfaction, and Inclusion*, 25 J. MANAGERIAL PSYCH. 578 (2010).

¹⁴ *Teleworking Arrangements During the COVID-19 Crisis and Beyond*, INTERNATIONAL LABOUR ORGANIZATION (ILO), https://www.ilo.org/global/about-the-ilo/how-the-ilo-works/multilateral-system/g20/reports/WCMS_791858/lang-en/index.htm (last visited Mar. 9, 2023).

¹⁵ Mary Molina Fitzer, *Managing From Afar: Performance and Rewards in a Telecommuting Environment*, 29 COMP. & BENEFITS REV. 65 (1997).

¹⁶ Tammy D. Allen, Timothy D. Golden & Kristen M. Shockley, *How Effective Is Telecommuting? Assessing the Status of our Scientific Findings*, 16 PSYCH. SCI. IN THE PUB. INT. 40 (2015).

¹⁷ European Trade Union Confederation (ETUC), Union of Industrial and Employers' Confederations of Europe (UNICE), Union Européenne de l'Artisanat et des Petites et Moyennes (UEAPME), European Centre of Enterprises with Public Participation (CEEP), IMPLEMENTATION OF THE EUROPEAN FRAMEWORK AGREEMENT ON TELEWORK: REPORT BY THE EUROPEAN SOCIAL PARTNERS (2006), <http://erc-online.eu/wp-content/uploads/2014/04/2006-01429-EN.pdf>.

2.4 CONCEPTUAL DECONSTRUCTION AND INTERROGATION

From the above, it can be seen that the definitions are diverse in nature and that telework is not characterized by a single definitive understanding. The following is a conceptual deconstruction and interrogation of some of these definitions as provided in the literature, which will help uncover the aspects which require regulatory attention.

2.4.1 Spatial dimension

Central to teleworking is the existence of geographical distance between the conventional place of work (employer's premises) and the place at which telework is performed, which represents a decentralized form of work. Caution is to be exercised when interpreting work that is being performed outside the conventional place of work or away from the employer's premises; it appears that the definition of telework subsumes not only home working, but other forms of decentralized and distributed work such as working from a satellite office.¹⁸

Teleworking has also been understood as including home-based businesses, signalling the diversity of the nature of contractual relationships that may be formed under teleworking. Moreover, there is a growing consensus that telework arrangements are also inclusive of the freelance fixed-site teleworker and freelance mobile teleworker.¹⁹ The European Framework Agreement on Telework of 2002²⁰ makes reference to employment contract or relationship, suggesting the inclusion of freelancers and contractors within the definition of telework.

One of the definitions situates telework as a subset of telecommuting, a form of operationalizing types of telework that focuses on reducing consumption of non-renewable fuel.²¹

2.4.2 Temporal dimension

The definitions of telework are particularly silent on its temporal dimension.²² This is problematic for anyone trying to place parameters around working arrangements that differ from traditional schedules and arrangements. A study propounded that the temporal structure of telework incorporates both telework substitution and supplemental telework.²³ Supplemental telework can be understood as "away" from the conventional place of work on top of normal working hours. To some, it may be considered as overtime work. On the other hand, telework substitution can be simply understood as work performed at the employer's premises *replaced by* work performed at any other location other than the employer's premises.

Thus, the temporal structure of telework is marked by confusion and ambiguity. It is not clear whether the temporal dimension of telework should be contemplated on a binary scale (that is, working away from the employer's premises versus working at the employer's premises) or on a spectrum representing the working time spent away from the employer's premises in addition to the time spent on the employer's premises.

2.4.3 Use of ICTs

Technology is broadly accepted as an important element in the conceptualization of telework.²⁴ Still, it is argued that the role of ICTs in telework has not been properly defined, such that it is unclear whether ICTs assist in the operationalization of the work only or whether they create interaction, mediate coordination or establish a communication link. For instance, a publisher working from home who used to transmit his work *via* email with the use of

18 Henry, Le Roux & Parry, *supra* note 8.

19 R. Kelly Garrett & James N. Danziger, *Which Telework? Defining and Testing a Taxonomy of Technology-Mediated Work at a Distance*, 25 Soc. Sci. Comput. Rev. 27 (2007).

20 European Trade Union Confederation (ETUC), Union of Industrial and Employers' Confederations of Europe (UNICE), Union Européenne de l'Artisanat et des Petites et Moyennes (UEAPME), European Centre of Enterprises with Public Participation (CEEP), FRAMEWORK AGREEMENT ON TELEWORK (2002) [hereinafter EU Agreement], https://resourcecentre.etuc.org/sites/default/files/2020-09/Telework%202002_Framework%20Agreement%20-%20EN.pdf.

21 Somitra Saxena & Patricia L. Mokhtarian, THE IMPACT OF TELECOMMUTING ON THE ACTIVITY SPACES OF PARTICIPANTS, 29 GEOGRAPHICAL ANALYSIS 124 (1997).

22 Karsten Gareis, The Intensity of Telework in 2002 in the EU, Switzerland and the USA 3-5 (2002) (unpublished manuscript), <https://api.semanticscholar.org/CorpusID:111361771>.

23 Craipeau, *supra* note 10.

24 Sullivan, *supra* note 6.; Messenger & Gschwind, *supra* note 11.

a modem decides to instead courier his work. His experience of work is likely to be similar in both cases. However, under the traditional conceptualization of telework, that publisher is likely not to be considered as a teleworker considering that he is not making use of technology. Here too, the important consideration is whether technology should be viewed in binary terms (utilization of technology versus non-utilization of technology) or on a continuum. Moreover, the definitions do not investigate the levels and intensity of ICTs used, as well as the technological complexity.

2.5 IDENTIFICATION OF THE ASPECTS OF TELEWORK REQUIRING REGULATION

Considering the definitional problems associated with telework, the following aspects of telework were identified as requiring the need for some form of regulation:

- The definition of telework
- Spatial dimension of telework
- Temporal dimension of telework
- The use of technology

3. INTERNATIONAL TELEWORK FRAMEWORKS

3.1 EUROPEAN FRAMEWORK AGREEMENT ON TELEWORK

As part of a quest to modernize and reconfigure employment relations, the European Commission gathered its social partners to conclude the European Union Framework Agreement on Telework (the “EU Agreement”).²⁵ In the rise of teleworking, the EU Agreement is an effort worthy of praise because it not only asserts the legal existence of teleworkers, but also recalls the protection that teleworkers enjoy under the law. The EU Agreement contains salient features of employment relations, albeit in a generic form. However, this generality allows it to be contextually malleable by member states to their specific contexts. The EU Agreement has been implemented *via* various instruments across European countries, ranging from collective agreements, guides, codes of good practice to national legislation, with varying degrees of compliance and bindingness. The following list illustrates the aspects specified in the EU Agreement:

- Definition and scope of telework
- Voluntary character and reversibility of telework
- Similar employment conditions of the teleworker and the worker at the employer’s premises
- Data protection
- Privacy
- Work equipment, liability and costs
- Health and safety
- Organisation of working time
- Training
- Collective rights issues

3.2 THE INTERNATIONAL LABOUR ORGANISATION – PRACTICAL GUIDE

The purpose of the ILO’s Practical Guide to teleworking (the “Practical Guide”)²⁶ is to provide guidance to policy-makers and employers on how to implement an effective teleworking framework in the wake of the exponential growth of teleworking during the Covid-19 pandemic. The Practical Guide is not limited in scope and is applicable to teleworking under normal circumstances.

By navigating through eight aspects of teleworking comprehensively, the Practical Guide offers considerable insights for stakeholders to create, adopt, and manage an effective teleworking ecosystem while respecting the

²⁵ Framework Agreement on Telework, *supra* note 20.

²⁶ Practical Guide, *supra* note 1.

well-being of employees. It also offers actionable recommendations for employers to implement teleworking arrangements. The following list illustrates the aspects specified in the Practical Guide:

- Working time, work organization, time sovereignty
- Performance Management
- Digitalization
- Communication
- Occupational safety and health
- Legal and contractual implications (liability for assets of employers)
- Training
- Work-life balance
- Gender dimension of teleworking

3.3 TELEWORKING LAWS IN LATIN AMERICA

The enactment of teleworking laws has been on the agenda of the policymakers of Latin American countries in the wake of the Covid-19 pandemic. Countries such as Chile²⁷, Argentina,²⁸ Mexico,²⁹ and Peru,³⁰ to name a few, have demonstrated a strong commitment to regulate teleworking. It would seem that the principal motivation behind the teleworking legislative efforts of the Latin American countries is to curb the spread of the virus and thus protect both the economy and the health of the people. Hence, such teleworking legislations and regulations may be qualified as an “unplanned adaptive response”³¹ on the part of the regulators. Adaptive regulation raises certain concerns for stakeholders, specifically workers, because such type of regulation may yield suboptimal and even exploitative working conditions and arrangements. Using Mexico as an illustrative case study, we find that the aspects covered under teleworking legislations are:

- Contractual requirements
- Employer obligations
- Security and health at work
- Obligations of workers
- Voluntary character of teleworker

3.4 GUIDELINES TO REMOTE WORKING BY UNI GLOBAL UNION³²

The Guidelines offered by UNI Global Union for ensuring workers’ rights (the “UNI Global Union Guidelines”)³³ in remote work have been circulated to support stakeholders when negotiating remote working arrangements. The UNI Global Union Guidelines aim to protect labour and trade union rights and to curb the risks associated with remote work as the latter becomes entrenched in the midst of the Covid-19 crisis and most probably beyond. The UNI Global Union Guidelines stretch over 10 principles, which indicate aspects requiring attention:

- Employers must ensure freedom of association and collective bargaining for remote working workers;
- Employers should maintain employment rights and relationships with remote working workers;

27 Garrigues, *Remote Work: COVID-19 Prompts New Legislation in Latin America*, LEXOLOGY (Jan. 20, 2021), <https://www.lexology.com/library/detail.aspx?g=e8f30fe2-86de-43b4-92ab-d1e00d5a193e#:~:text=In%20Chile%20there%20was%20no,force%20on%20April%201%2C%202020.>

28 Allende & Brea, Argentina: New Teleworking Law, L&E Global (Sept. 1, 2020), <https://knowledge.leglobal.org/argentina-new-teleworking-law/>.

29 Eduardo Ramos-Gomez, Duane Morris LLP, *Telework: A New Reform in Mexican Legislation*, LEXOLOGY (Jan. 21, 2021), <https://www.lexology.com/library/detail.aspx?g=f880a65a-deed-4445-9698-28a93fa22bf0>.

30 *Remote Work: COVID-19 Prompts New Legislation in Latin America*, GARRIGUES NEWS ROOM (Jan. 20, 2021), https://www.garrigues.com/en_GB/new/remote-work-covid-19-prompts-new-legislation-latin-america.

31 Lori S. Benneer & Jonathan B. Wiener, Adaptive Regulation: Instrument Choice for Policy Learning (Feb. 12, 2019) (draft working paper), over Time <https://www.hks.harvard.edu/sites/default/files/centers/mrcbg/files/Regulation%20-%20adaptive%20reg%20-%20Benneer%20Wiener%20on%20Adaptive%20Reg%20Instrum%20Choice%202019%2002%2012%20clean.pdf>.

32 Based in Switzerland, UNI Global Union represents more than 20 million workers from over 150 countries across the world in various sectors through their Sector Global Unions. Ensuring decent work and the protection of workers’ rights are some of the mission of UNI Global Union. UNI Global Union have more than 50 Global Agreements in place with multinational companies.

33 UNI Global Union, KEY TRADE UNION PRINCIPLES FOR ENSURING WORKERS’ RIGHTS WHEN WORKING REMOTELY (2021) [hereinafter UNI Global Union Guidelines], https://uniglobalunion.org/wp-content/uploads/uni_remote_work_guidelines_report.pdf.

- The use of surveillance tools to monitor remote workers should be restricted;
- Remote work should be voluntary;
- Employers should respect regular working hours and the right to disconnect;
- Employers should remain responsible for the health and safety of workers;
- Work equipment and remote workspace costs should be the employer's responsibility;
- Remote work should be "gender neutral" and open to all;
- Remote workers should have equal access to training and career development;
- Prior to introducing or extending remote working rules, trade unions and employers should complete impact studies and produce thorough documentation.

3.5 INDUSTRIALL GLOBAL UNION'S³⁴ GUIDELINES ON INSTITUTIONAL REGULATION AND COLLECTIVE BARGAINING ON TELEWORK³⁵

IndustriALL Global Union has developed key principles, as well as practical guidelines, for social dialogue and collective bargaining on telework. The material, embodied in the following principles, intends to give trade unions the means to ensure that telework benefits workers:

- Telework should be voluntary and reversible
- Freedom of association and the right to collective bargaining (trade unions have open and safe access to communication tools and equipment)
- Equal treatment for all workers (salaries; training and career development; training for managers and supervisors; learning needs of newly-hired workers, interns, and apprentices)
- Inclusive and fair telework policies and agreements
- Protection of occupational health and safety (risk assessment, ergonomics, psychosocial risks, cyberbullying, domestic violence, accidents)
- Working time, work-life balance and the right to disconnect
- Work equipment, costs incurred by remote work and insurance
- Privacy and personal data protection and cyber security

4. LEGAL AND INSTITUTIONAL LABOUR AND INDUSTRIAL RELATIONS FRAMEWORK IN MAURITIUS

4.1 BACKGROUND OF LABOUR AND INDUSTRIAL RELATIONS IN MAURITIUS

Employment, labour and industrial relations have always been at the heart of political agendas in Mauritius. Political parties tap on the potential of employment-related issues by advocating for worker-oriented reforms. With a labour force participation rate of around 66%,³⁶ the government of Mauritius has acknowledged interest in committing to the creation of an optimal environment for decent work and industrial democracy. Employment relations, ever since independence in 1968, have been marked by a dynamic and evolving process, with laws and institutional frameworks being reformed regularly to accommodate the needs of the various social partners. While such reforms have not always been equally welcomed by all, they nevertheless form the foundation of labour and employment relations laws in Mauritius. Notwithstanding its dynamic nature, the robustness of labour and employment relations law in Mauritius is founded on the strict observance and respect for the rule of law. The following paragraphs delineate the various sources of labour and industrial relations law in Mauritius.

The laws of Mauritius are very distinctive because the island was successively colonised by the Dutch, the French, and the British. The domestic laws of Mauritius are inspired from both French and British jurisdictions, giving rise to a hybrid legal system. Consequently, the sources of labour and industrial relations law in Mauritius are diverse in nature, as well as being scattered in multiple pieces of legislation. The following section outlines the sources of employment law in Mauritius.

³⁴ Founded in 2012, IndustriALL Global Union represents 50 million workers in 140 countries especially in the mining, energy and manufacturing sector. IndustriALL Global Union fights for economic and social justice and works to build resistance to the power of multinational companies.

³⁵ *IndustriALL Principles and Guidelines on Telework*, INDUSTRIALL GLOBAL UNION (June 3, 2021), <http://www.industriall-union.org/industriall-principles-and-guidelines-on-telework>.

³⁶ Worldbank, *Mauritius: Labor Force Participation Rate from 2009 to 2019*, STATISTA (Dec. 2022), <https://www.statista.com/statistics/993872/labor-force-participation-rate-in-mauritius/>.

4.2 SOURCES OF EMPLOYMENT LAW IN MAURITIUS

4.2.1 The constitution of Mauritius

The constitution of Mauritius is the supreme law of the country and is at the top of the hierarchy of legal instruments. Chapter 2³⁷ provides for the fundamental rights of the citizens of Mauritius. This includes protections against discrimination and the right to freedom of association. These fundamental constitutional rights are of direct relevance to workplace structures and arrangements.

4.2.2 Statutory legislations

Several statutes provide for the rights of workers and regulate employment relationships. Labour and Industrial relations legislations should be dealt with caution because of frequent amendments.³⁸ The Industrial Relations Act (“IRA”) of 1973 institutionalised the regime of industrial relations. The IRA provided new mechanisms and procedures for recognizing trade unions and enabling collective bargaining and industrial action and established institutional mechanisms for dispute resolution and arbitration. It also introduced the right to strike subject to specific procedures. Thereafter, the new legislation in force since 2008 is in the form of the Workers’ Rights Act 2019.³⁹ The main legislation governing employment relations, freedom of association and collective bargaining is the Employment Relations Act of 2008,⁴⁰ as amended by the Employment Relations (Amendment) Act 2019 (“EReA 2008”).⁴¹

The Occupational Safety and Health Act 2005 (“OSHA 2005”)⁴² asserts the mandatory obligation to provide hygiene and security at the place of work. In addition, OSHA 2005 states the particular duties of the employer, drawn from common law, such as providing a safe place to work and giving clear and adequate instructions to the worker on the use of protective equipment.

In addition to the statutory legislations, there are several Remuneration Orders (“RO”) which provide for the conditions of work for workers of specific sectors or industries. Any sector not covered by an RO is covered under the EReA 2008. The National Remuneration Board promulgates orders on minimum wages and terms of employment in these sectors and periodically reviews those orders to ensure that their terms remain appropriate. Remuneration orders establish the minimum wage, and employers and workers may then bargain for better terms. Trade Unions have advocated to have additional sectors structured along the same lines, thus offering a measure of protection to workers in terms of pay and working conditions. The latest orders from 2021 covering cinema workers, fishing sector workers and tea sector workers.

4.2.3 Judicial precedent

Judicial precedent plays a crucial role in Mauritian law. Judges of the Supreme Court use the principle of *stare decisis* when hearing matters. Such practice ensures consistency in the legal decisions, hence contributing to stability in the legal environment.

37 CONSTITUTION OF MAURITIUS (1968), ch. 2, <https://attorneygeneral.govmu.org/Documents/Laws%20of%20Mauritius/A-Z%20Acts/C/Co/Constitution,%20GN%2054%20of%201968.pdf>.

38 The Industrial Relations Act 1973 (repealed and replaced by the Employment Relations Act 2008); Occupational Safety Health and Welfare Act 1988 (repealed and replaced by the Occupational Safety and Health Act 2005); Labour Act 1975 (repealed and replaced by the Employment Rights Act 2008, which was then recently repealed and replaced by the Workers’ Rights Act 2019); and Employment Rights Act 2008 (repealed and replaced by the Workers’ Rights Act 2019) are some of the legislative acts which have been repealed to give way to a more integrated set of legal instruments.

39 Workers’ Rights Act 2019 [hereinafter WRA], <https://labour.govmu.org/Documents/Legislations/THE%20WORKERS%20RIGHTS%20Act%202019/Consolidated%20Version%20of%20the%20Workers%20Rights%20Act%202019%20as%20at%207%20September%202020.pdf>.

40 Employment Relations Act 2008 [hereinafter EReA 2008], <https://labour.govmu.org/Documents/Legislations/Employment%20relations%20act%202008/Employment%20Relations%20Act.pdf>.

41 Employment Relations (Amendment) Act 2019, [https://labour.govmu.org/Documents/Legislations/Employment%20relations%20act%202008/21_THE%20EMPLOYMENT%20RELATIONS%20\(AMENDMENT\)%20ACT%20%202019%20.pdf](https://labour.govmu.org/Documents/Legislations/Employment%20relations%20act%202008/21_THE%20EMPLOYMENT%20RELATIONS%20(AMENDMENT)%20ACT%20%202019%20.pdf).

42 Occupational Safety and Health Act 2005 [hereinafter OSHA 2005], <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/72927/122371/F-23629033/MUS72927%202013.pdf>.

4.2.4 Collective agreements

Collective bargaining agreements⁴³ play an important part in the labour laws in Mauritius. As mentioned above, legal reform in 2008 incorporated provisions to comply with Convention 98 of the ILO⁴⁴ and to remedy the shortcomings of the old IRA⁴⁵ in the promotion of collective bargaining. It is important to note that Mauritius has ratified ILO Convention 98⁴⁶ on the right to organize and collective bargaining. Today, the EReA 2008 sets out the conditions for the development of collective bargaining in a structured manner. It aims to protect and enhance the democratic rights of workers, including migrant workers, and trade union rights. The focus is on the principle of voluntary settlement and peaceful resolution of disputes, rather than on litigation. A further amendment in 2013 to the primary legislation (that is, the EReA 2008) governing employment relations further consolidated the process of collective bargaining, particularly the reviewed procedure for recognizing trade unions' bargaining power. For instance, one of the amendments was that the employer must consult the trade union and look into possible means of avoiding reduction where there is the intention to reduce the workforce.

The reporting of labour disputes concerning wages and conditions of employment is, however, limited in the event that a collective agreement is in force; a conciliation service is provided by the Minister upon the request of parties to a labour dispute at any time before a lawful strike takes place. Any agreement thus reached would have the effect of a collective agreement.

4.2.5 International conventions, treaties, and recommendations

Mauritian legislators often draw inspiration from international laws and norms.⁴⁷ Mauritius has ratified several conventions pertaining to labour and industrial relations. Many of the provisions of the United Nations Universal Declaration of Human Rights are contained in the Constitution of Mauritius. However, as of now, Mauritius is not party to any regional conventions, agreements, or frameworks pertaining to teleworkers' rights. International conventions are not directly applicable in Mauritius after their ratification. Those conventions have to be incorporated in Mauritius through an act of parliament. Parliament then has the prerogative to decide whether it wants to incorporate part or the whole of the convention. Hence, the resulting "hybrid" appellation of Mauritian law may be said to be of a dualist nature governed by the principle of the sovereignty of parliament. For instance, in the case of *Pierce v. Pierce*,⁴⁸ the Supreme Court of Mauritius noted the following:

Though Mauritius has acceded to [the Convention on the Civil Aspects of International Child Abduction], the provisions of the whole or part of that Convention have not been implemented in our national laws, [...] Consequently, [...], suffice it to say that that Convention is not part of our law and that this Court is not bound to give effect to its provisions.

43 Collective agreements outline the terms and conditions of employment for workers in a bargaining unit. Collective agreements often encompass matters such as wages, notice period, severance allowance, worktime amongst other matters. These collective agreements are binding on both employers and the workers in a bargaining unit.

44 *Ratifications for Mauritius, ILO: Normlex*, https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11200:0::NO::P11200_COUNTRY_ID:103106 (last visited Mar. 12, 2023).

45 The IRA (now repealed) did not address the increasing challenges of the new work environment. For instance, strike action was illegal under the IRA. Unionization was not extended to some categories of work such as security guards and firemen. The introduction of the Employment Relations Act 2008 was a laudable initiative by the Government of Mauritius as the human dimension of the work environment was recognized. Moreover, sex and racial discrimination is no longer tolerated at the workplace, which was not the case when the IRA was in force.

46 Convention (No. 98) Concerning the Application of the Principles of the Right to Organise and to Bargain Collectively, *adopted* July 1, 1949, 96 U.N.T.S. 257 [C. 98].

47 *Ratifications for Mauritius*, *supra* note 45.

48 *Pierce v. Pierce* 1998 SCJ 397.

4.3 INSTITUTIONAL FRAMEWORK OF LABOUR AND INDUSTRIAL RELATIONS IN MAURITIUS

Another tenet contributing to the efficacy of the regulatory framework in Mauritius is the robust institutional framework which upholds the rule of law. In this section, a brief description is provided on the institutional arrangements which have jurisdiction to hear matters pertaining to labour and industrial relations.

4.3.1 The Supreme Court and the Judicial Committee of the Privy Council

The Supreme Court of Mauritius, instituted under the Constitution of Mauritius, is the highest in the hierarchy of courts in Mauritius. The Supreme Court has jurisdiction to hear any matter under any domestic law. The Supreme Court also exercises powers of supervision over all district, intermediate, industrial, and other special courts. The Supreme Court is vested with powers to administer equitable justice. Litigants are required to exhaust all available legal remedies before appearing before the Supreme Court. Industrial matters appearing before the Supreme Court often concern judicial reviews and appeals from inferior courts.

The Judicial Committee of the Privy Council (“JCPC”) is the highest court of appeal for Mauritius and is often known as the court of last resort. There are two ways to access JCPC. First, the Supreme Court has to authorise the action and grant conditional leave. Second, an interested party may directly request the Law Lords of the JCPC to process the matter, called special leave. The decision of the JCPC is based on the law and not on the facts of the case. Hence, the JCPC either confirms or overturns the decision of the Supreme Court.⁴⁹

4.3.2 The Industrial Court

The Industrial Court in Mauritius was created by the Industrial Court Ordinance of 1944.⁵⁰ After Mauritius became a sovereign and independent state, the Industrial Court Ordinance was known as the Industrial Court Act of 1973.⁵¹ According to section 3 of the Industrial Court Act, the Industrial Court has exclusive civil and criminal jurisdiction to try matters arising out of certain enactments, including the Workers’ Rights Act 2019⁵² and the Occupational Safety and Health Act, among others. In essence, the Industrial Court has the jurisdiction to try matters pertaining to labour and industrial relations. The matter appearing before the Industrial Court is heard before a presiding magistrate and/or the vice president of the Industrial Court. The magistrate of the Industrial Court is endowed with informal powers and the latter may freely give his advice, help, and guidance for an out-of-court settlement. The Industrial Court is a lesser court, and there is a right to appeal matters to the Supreme Court of Mauritius.

4.3.3 The Reviewing Authority

Another institution provided under the Industrial Court Act is the Reviewing Authority. The Reviewing Authority is the Chief Justice or another judge of the Supreme Court. Any matter not being subject to appeal before a superior court may be reviewed by the Reviewing Authority. An application is made within six weeks prior to the Reviewing Authority from the day the decision of the Industrial Court magistrate was rendered. Meanwhile, there is a stay of execution of judgment pending the decision of the Reviewing Authority. The Reviewing Authority would bring any necessary amendments to the decision reached by the magistrate of the Industrial Court and the latter would amend his/her judgment accordingly. The right to appeal a decision of the Reviewing Authority to the Supreme Court is confirmed in the case of *Gaytree Textiles Ltd v. Ghoolet*.⁵³ However, if the application for review was rejected by the Reviewing Authority or if the appeal to the Supreme Court is outside the prescribed time limit, then the request to appeal will not be granted.

⁴⁹ There is no free online source where information about instances where leave was granted (or not granted) by the Supreme Court can be consulted.

⁵⁰ Industrial Court Ordinance, 1944.

⁵¹ Industrial Court Act 1973, <https://attorneygeneral.govmu.org/Documents/Laws%20of%20Mauritius/A-Z%20Acts/1/In/INDUSTRIAL%20COURT%20ACT,%20No%2068%20of%201973.pdf>

⁵² *Id.* at 18.

⁵³ *Gaytree Textiles Ltd v. Ghoolet* 1993 MR 140.

4.3.4 The Public Bodies Appeal Tribunal

The Constitution of Mauritius has been amended to implement a new section providing for the creation of the Public Bodies Appeal Tribunal (“PBAT”) in Mauritius which concerns public officers only. Section 91(1)(A) of the Constitution of Mauritius coupled with the Public Bodies Appeal Tribunal Act of 2008 regulates the functioning of the PBAT. The PBAT is not a tribunal *per se*, because there is no judge or magistrate sitting before this tribunal. Matters appearing before the PBAT are heard by the chairperson, assisted by a barrister of not less than 5 years of standing as a barrister before a court of law, and by a retired public officer, not below the status of a senior public officer. The PBAT observes no strict rules and procedures like in a court of law.

A matter before the PBAT is an appeal against a decision (such as a disciplinary measure against a public officer) reached either from the Public Services Commission or the Local Government Services Commission. The decision of the PBAT is called a determination and any public officer aggrieved by the decision of the PBAT may apply for leave for judicial review before the Supreme Court of Mauritius.

4.3.5 The Employment Relations Tribunal

The Employment Relations Tribunal (“ERT”) was established under the EReA 2008 to hear industrial disputes. The ERT is constituted by a president, 3 vice presidents, 12 conciliators/mediators and up to six members made up of workers’ representatives, employers’ representatives, and independent members appointed or nominated by the Minister of Labour and Industrial Relations, Employment and Training. The ERT solves industrial disputes primarily in two ways: (i) by giving an award; or (ii) by giving an order in case of strike or collective bargaining, amongst other issues.

4.3.6 The Commission for Conciliation and Mediation

The Commission for Conciliation and Mediation (“CCM”) is established under the EReA 2008 and replaces the Industrial Relations Commission. The primary functions of the CCM includes performing conciliating functions and providing mediation services for the resolution of labour and industrial disputes. The CCM is also empowered to investigate any labour dispute reported to it. The CCM provides assistance to parties to resolve industrial and labour disputes creatively and effectively.

4.3.7 The Redundancy Board

The Redundancy Board is a new addition to the institutional framework of labour and industrial relations in Mauritius, established by the Workers’ Rights Act of 2019. The Redundancy Board tackles matters pertaining to cases of workforce reduction and the closing of businesses for reasons such as financial constraints and structural re-engineering. The Redundancy Board makes orders in relation to matters it hears.

5. DOMESTIC TELEWORK LEGAL AND INSTITUTIONAL FRAMEWORK

After the contextualization of labour and industrial relations law in Mauritius, this section of the report examines the domestic law regulating telework and addresses the research questions.

5.1 THE REGULATION OF TELEWORK IN MAURITIUS

The main legal instruments relevant to telework in Mauritius are the Worker Rights Act 2019 (WRA),⁵⁴ Workers' Rights (Atypical Work) Regulations 2019⁵⁵ ("Atypical Work Regulations"), and the Workers' Rights (Working from Home) Regulations 2020⁵⁶ ("WFH Regulations"). The WRA was amended with new provisions relevant to telework by the COVID-19 (Miscellaneous Provisions) Act 2020 ("COVID-19 Act")⁵⁷ and the Finance (Miscellaneous Provisions) Act 2021 ("Finance Act").⁵⁸ The Atypical Work Regulations and the WFH Regulations were promulgated under the WRA. Although they are classified as subsidiary legislation, they do not present a lesser authority and are still binding.

The WRA was enacted to "provide a modern and comprehensive legislative framework for the protection of workers."⁵⁹ It sets out basic labour rights for workers, including provisions on different forms of work agreements, remuneration, work hours, leave, access to social protection, and measures to prevent workplace discrimination, among other things. Unions perceived its enactment in 2019 as a significant advancement for worker rights in Mauritius.⁶⁰

In 2019, the Minister of Labour, Industrial Relations, Employment and Training promulgated the Atypical Work Regulations under the WRA. The regulations enumerated a definition and rights for a new category of worker, an "atypical" worker. An atypical worker is not a worker on a standard employment work agreement or an independent job contract, but is rather a third category of worker, one that covers workers in non-standard forms of employment, including the 'gig' economy.⁶¹ The adoption of this third category – not a standard worker nor a job contractor – was designed to be responsive to the rise of the "gig" economy and specifically includes protections for workers for platform companies.⁶² The Atypical Work Regulations also contain some general provisions around what is termed "home work" – working from home or another alternative location – that appear to apply more broadly than just to atypical workers.

When the COVID-19 pandemic began in 2020, the WRA was amended through the COVID-19 Act, including the introduction of a new section 17A.⁶³ Section 17A allows employers to require workers to work from home. WFH Regulations, also adopted in 2020, enumerated rules on working from home or another location that apply to a broad spectrum of workers, including giving employers the expanded ability to impose telework. Trade unionists were not consulted in the development of the WFH Regulations, which were enacted in haste with an eye towards preserving business continuity. In general, trade unionists criticized these amendments as rolling back rights won under the WRA the previous year.⁶⁴

How these three major pieces of legislation interact can be challenging to discern for both legal scholars and work-

54 WRA, *supra* note 39.

55 Workers' Rights (Atypical Work) Regulations 2019, Gov't Notice No. 234 of 2019 [hereinafter Atypical Work Regulations], [https://labour.govmu.org/Documents/Legislations/THE%20WORKERS%20RIGHTS%20Act%202019/The%20Workers'%20Rights%20\(Atypical%20Work\)%20Regulations%202019.pdf](https://labour.govmu.org/Documents/Legislations/THE%20WORKERS%20RIGHTS%20Act%202019/The%20Workers'%20Rights%20(Atypical%20Work)%20Regulations%202019.pdf).

56 Workers' Rights (Working from Home) Regulations 2020, Gov't Notice No. 225 of 2020 [hereinafter WFH regulations], <https://www.mra.mu/download/GN225WRA.pdf>.

57 COVID-19 (Miscellaneous Provisions) Act 2020 [hereinafter COVID-19 Act], <https://www.mra.mu/download/COVID19Act.pdf>.

58 Finance (Miscellaneous Provisions) Act 2021 [hereinafter Finance Act], [https://mof.govmu.org/news/SitePages/THE-FINANCE-\(MISCELLANEOUS-PROVISIONS\)-ACT-2021.aspx](https://mof.govmu.org/news/SitePages/THE-FINANCE-(MISCELLANEOUS-PROVISIONS)-ACT-2021.aspx).

59 WRA, *supra* note 39.

60 *Workers' Rights Act Amendments a Victory for Mauritius Unions*, INDUSTRIALL GLOBAL UNION (Oct. 24, 2019), <https://www.industriall-union.org/workers-rights-act-amendments-a-victory-for-mauritius-unions>.

61 *Digital Labour Platforms*, INTERNATIONAL LABOUR ORGANIZATION (ILO), <https://www.ilo.org/global/topics/non-standard-employment/crowd-work/lang-en/index.htm> (last visited Mar. 12, 2023).

62 Par Shaffik Hamuth, *New Labour Laws: Too Good to Be True?*, DEF MEDIA.INFO (Aug. 2, 2019), <https://defmedia.info/new-labour-laws-too-good-be-true>.

63 COVID-19 Act, *supra* note 58.

64 *Mauritian Employers Use Covid-19 to Push Back Against Labour Laws*, INDUSTRIALL GLOBAL UNION (July 23, 2020), <https://www.industriall-union.org/mauritian-employers-use-covid-19-to-push-back-against-labour-laws>.

ers attempting to understand their rights under law. There is a need for greater clarity on when and how these intersecting provisions on “home workers” and “atypical workers” apply to teleworkers.

5.2 DEFINITION OF TELEWORKER

5.2.1 Workers’ Rights Act 2019 (WRA)⁶⁵

Section 3 of the WRA defines “worker” to mean

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. This includes “a part-time worker; a former worker, where appropriate; and a share worker; but does not include a job contractor or a person taking part in a training scheme.

The WRA excludes “persons” whose yearly “basic wage or salary” exceeds 600,000 rupees (approximately 13,500 USD or 12,300 Euros) from many protections under the Act, including protections related to hours, remuneration and leave under Part V of the Act.⁶⁶ Following amendments to section 3.2(d-e) of the WRA in the Finance (Miscellaneous Provisions) Act 2021, specific sections do not apply to “an atypical worker whose basic wage or salary exceeds 600,000 rupees in a year,” or “a worker who works from home and whose basic wage or salary exceeds 600,000 rupees in a year.”

The following provisions of the WRA remain applicable to both workers who work from home and atypical workers making over 600,000 rupees:

- a. Section 5: Discrimination in employment and occupation
- b. Section 26: Equal remuneration for work of equal value
- c. Section 31: Payment of remuneration due on termination of agreement
- d. Section 51A: Remuneration and leave related to Covid-19 vaccination or RTPCR Test
- e. PART VI: Termination of agreement and reduction of workforce
- f. PART VII: Workfare Programme Fund
- g. PART VIII: Portable Retirement Gratuity Fund
- h. PART XI: Violence at work
- i. PART XII: Administration
- j. PART XIII: Protection from liability and offences

A worker who works from home making over 600,000 rupees is also covered by the provisions in Part V: General conditions of employment, while atypical workers making over the threshold are excluded. Part V covers issues such as remuneration, work hours and leave. However, both home workers and atypical workers making under the threshold would appear to be covered.

⁶⁵ WRA, *supra* note 39.

⁶⁶ WRA, *supra* note 39, at § 2.

5.2.2 Workers' Rights (Working from Home) Regulations 2020 ("WFH Regulations")⁶⁷

The WFH Regulations adopted in 2020 broadly apply to homeworkers, defined as "a worker who works from home." Under section 2 "home" is defined not just as a workers' residence, but also "such other place as may be agreed upon by the worker and his employer." Work for home explicitly includes

work performed on full-time or part-time basis; work performed on permanent, temporary or occasional basis; work split between home, office or place of business of the client; work performed on an hourly rate, a weekly rate, a fortnightly rate, a monthly rate, piece rate or task basis; work performed through teleworking, online platform, any other form or nature of work, whether performed through electronic device, IT system or not.⁶⁸

Thus, these regulations would appear to cover a broad swath of workers working outside of the employers' premises, including teleworkers on any form of contract.

5.2.3 Workers' Rights (Atypical Work) Regulations 2019⁶⁹ ("Atypical Work Regulations")

The Atypical Work Regulations section 2 define an atypical worker as "a person who is aged 18 or above, who is not working under a standard agreement and, however remunerated, is paid for work performed for an employer," including a person who "performs teleworking."

⁶⁷ WFH Regulations, *supra* note 57.

⁶⁸ *Id.* at § 2.

⁶⁹ Atypical Work Regulations, *supra* note 56.

Amendments to the WRA under the Finance (Miscellaneous Provisions) Act 2021⁷⁰ changed the definition of atypical worker slightly. The contrast between the definition before and after the said amendment is made in the table below.

| Original Section 17 of WRA | 2021 Amendment to Section 17 of the WRA |
|--|--|
| <p>“...a person, other than a worker employed on a standard agreement, who performs work for, and is paid remuneration by, an employer, shall be a worker performing atypical work”</p> <p>Atypical worker includes a homeworker, an online platform worker or a worker, other than a homeworker or an online platform worker, who may work for one or more employers at the same time and who chooses when, where and how to work.</p> | <p>“...a person, other than a worker employed on a standard agreement, who performs work for, and is paid remuneration by, an employer, shall be deemed to be an atypical worker”</p> <p>Atypical worker means a person aged 16 years or more, who</p> <p>(A)</p> <ul style="list-style-type: none"> (i) is not employed under a standard agreement; (ii) works for one or more employers concurrently and is remunerated, on a time rate or piece-rate basis or otherwise, by the employer or employers, as the case may be, for the work performed; or (iii) undertakes to perform personally any work for, or who offers his services to, another party to the contract; <p>(B)</p> <ul style="list-style-type: none"> includes a person who (i) performs work brokered through an online platform or through such other similar services; (ii) performs teleworking; (iii) performs works through an information technology system; or (iv) uses his personal equipment and tools to perform work or provide services. <p>Atypical worker does not include:</p> <ul style="list-style-type: none"> (i) a self-employed <ul style="list-style-type: none"> A. who holds a business registration number issued by the relevant authorities and personally operates a business or trade on his own account; B. whose business or trade activity is his sole or main source of income; or C. who employs another person to execute his work agreement; (ii) any other person whose working status is that of a person operating his own business or trade; (iii) a job contractor. |

Section 17(a-b) of the WRA now defines an “atypical worker” as

a person aged 16 years or more, who (i) is not employed under a standard agreement; (ii) works for one or more employers concurrently and is remunerated, on a time rate or piece-rate basis or otherwise, by the employer or employers, as the case may be, for the work performed; or (iii) undertakes to perform personally any work for, or who offers his services to, another party to the contract.

This definition “includes a person who (i) performs work brokered through an online platform or through such other similar services; (ii) performs teleworking; (iii) performs works through an information technology system; or (iv) uses his personal equipment and tools to perform work or provide services.” Telework is not defined in the regulations or the WRA.

Section 17(c) states that atypical workers are not

(i) a self-employed (A) who holds a business registration number issued by the relevant authorities and personally operates a business or trade on his own account; (B) whose business or trade activity is his sole or main source of income; (C) or who employs another person to execute his work agreement; (ii) any other person whose working status is that of a person operating his own business or trade; (iii) a job

⁷⁰ Amendments brought to the Workers’ Rights Act by the Finance (Miscellaneous Provisions) Act 2021- (Act No.15 of 2021), MINISTRY OF LABOUR, HUMAN RESOURCE DEVELOPMENT AND TRAINING (Aug. 10, 2021), [https://labour.govmu.org/Documents/Legislations/THE%20WORKERS%20RIGHTS%20Act%202019/Extract%20of%20Finance%20\(Misc.%20Provisions\)%20Act%202021\(n\).pdf?csf=1&e=e1M9Ds](https://labour.govmu.org/Documents/Legislations/THE%20WORKERS%20RIGHTS%20Act%202019/Extract%20of%20Finance%20(Misc.%20Provisions)%20Act%202021(n).pdf?csf=1&e=e1M9Ds).

contractor.

As one trade unionist put it, atypical work is generally based on an assignment or task, similar to a contractor, as part of a bigger project or work.⁷¹ The striking feature of the legal definition of atypical worker (as per the Atypical Work Regulations) in Mauritius is that *there is the requirement to not be employed under a contract of service*. This implies that the employer-employee relationship and the employment contract is non-existent for atypical work. Atypical workers, per the language of the statute inclusive of teleworkers, do not enjoy the same employment rights and benefits as those employed under a contract of service, except when provided by the law,⁷² owing to the fact that an employment contract is not drawn.

Both the WFH Regulations and the Atypical Work regulations refer to teleworking. Since the two overlap, and particularly since the distinction between atypical workers and other forms of workers is new and somewhat indistinct, the precise scope of coverage for teleworkers can be confusing. While the definition of atypical worker includes workers that “perform telework,” it would appear that teleworkers on standard agreements would fall under the definition of a homemaker as defined in the WFH Regulations rather than an atypical worker. However, a person performing telework may risk being misclassified as an atypical worker since it is contained in the definition.

In fact, teleworkers have been mistakenly considered as freelancers or job contractors and those employed under a contract for services, or on an “assignment.” This potential misclassification presents an immediate implementation challenge, particularly difficult as the distinction between an atypical worker and other workers is not totally clear. Ultimately, the employment relationship determines the recognition and protection of workers working in a telework arrangement, but greater clarity is needed to ensure all workers are treated equitably and are able to understand and exercise their core labour rights.

5.3 REGULATION OF ASPECTS OF TELEWORK

5.3.1. Voluntariness

Under the WRA section 17A, as amended by the COVID-19 Act 2020, “[a]n employer may require any worker to work from home provided a notice of at least 48 hours is given to the worker.” Section 3(a) of the WFH Regulations also contains the requirement that workers comply with such a request, “where a worker is in the employment of an employer.” Section 3(b) of the WFH Regulations states that “the worker may make a request to the employer to work from home and the employer may accede to the request.” There is nothing in the WFH Regulations requiring employers to accede to teleworking requests under any circumstances. Section 6 states that an employer may “subject to the operational requirements of his business, require” a homemaker to “work at his initial place of work.” These provisions appear to give employers the unilateral ability to require workers to telework, and to reverse teleworking arrangements, at least for workers in standard employment agreements.

In contrast, the Atypical Work Regulations contains more robust provisions on voluntariness. Section 3(2) states that the employer may “request” workers to work from home “subject to the agreement of [the] worker.” Work agreements must be in writing and “provide the option to the worker ... to revert back to work in his previous post.”⁷³

Section 3(1) states that “[a] worker who is assigned work at an employer’s office or at any other site may make a request to his employer to work from home and the employer shall, unless he has reasonable business grounds, accede to the request.” Reasonable business grounds include the following⁷⁴:

- (i) The burden of additional costs for the employer;
- (ii) Inability or impracticability to review working arrangements of existing workers;
- (iii) A detrimental impact on quality of work or service;

⁷¹ It is important to note that this is not the same thing as an independent contractor as the law excludes a contractor from the definition of atypical worker.

⁷² Exceptional sections (5, 26, 31, 33, PART VI – VIII and PART XI – XIII) of the Workers’ Rights Act 2019 applicable to the atypical worker.

⁷³ Atypical Work Regulations, *supra* note 56, at § 3(4)(d).

⁷⁴ *Id.* at § 2.

- (iv) A detrimental effect on the ability to meet customers' demand;
- (v) Unsuitability of the job to homework arrangements;
- (vi) Unsuitability of the proposed working environment at the atypical worker's residence.

The interaction between the statute and the regulations is not totally clear. WRA 17A is *not* one of the sections of the WRA applied to atypical workers and homeworkers making over 600,000 rupees a year, but this may be because these workers were assumed to already be working outside the employer's premises. Section 3 of the Atypical regulations used the term "worker" instead of the "atypical worker" terminology used elsewhere in the regulation, suggesting that it was intended to be more broadly applicable. However, it was adopted before the WFH regulations and the amendments to the WRA. It would appear that the requirement to unilaterally accept teleworking upon notice from the employer, as stated under the amended WRA, applies to all workers, including explicitly those making over 600,000 rupees a year.

The language in 17A and the WFH Regulations do not make clear whether the request to work from home is intended to be a short-term measure or whether employers can demand involuntary telework on a permanent basis. The WFH Regulations and 17A were both enacted during the pandemic, when giving employers the ability to quickly shift to remote work was critical to containing the spread. Arguably, this enactment was intended to be a short-term measure, one enacted without meaningful stakeholder engagement, and the more robust protections of the Atypical Work Regulations should apply outside of the extraordinary circumstances of the pandemic.

At the level of the Ministry of Labour, the possibility exists for the worker who perceives that telework is being unilaterally decided upon by the employer, to require a Work From Home Agreement specifying the terms of the conditions of employment, especially the hours of work, which should not be less favourable than his normal working conditions and other important issues such as health and safety, expenses and reimbursements, provision of equipment, privacy and security, management rights, amongst others; the Ministry insists that a worker may have the proposed agreement examined by the Ministry before signing it. The Atypical Work Regulations and the WFH Regulations provide a template agreement to be used where a worker has entered into an agreement with his employer to work from home or an alternative location, which provides for working hours, location, work schedule, tools and equipment, safety and health, performance, data protection, amongst others, to be specified.

Even with the more robust protections in the Atypical Work Regulations, the employer holds greater power in reaching a decision on where a worker may work. As pointed out by trade unionists in interviews, the question of voluntariness is often moot because of fear of reprisal or other unpleasant repercussions, especially among those in difficult socio-economic circumstances. During the COVID-19 pandemic, the procedures to implement work from home in the public sector, determined by a Protocol set out by the Ministry of Public Service, Administrative and Institutional Reforms, were imposed on workers without consultation or dialogue. This lack of consultation was justified as necessary due to the need to maintain business continuity in the public service. No consideration was given to the constraints potentially faced by public sector teleworkers, be they technical, familial or personal in nature. In contrast, many HR practitioners in interviews predicted that the "new normal" would be characterised by mutually-agreed flexiplace arrangements based on what they termed the "hybrid" model of working from home, combining some office attendance with some days of working from home.

Currently, the precise contours of when and how workers have the right to telework only on a voluntary basis require clarification. It is particularly important to ensure that measures designed to address an urgent, emergency situation by granting employers enhanced, unilateral power do not set the stage for telework in the future, particularly given pre-existing power imbalances. Moreover, there are no legal provisions acting as a safety net for workers who refuse to work from home, other than complaints to the Ministry of Labour.

5.3.2. Reversibility

The WFH Regulations and the Atypical Work Regulations both address the issue of reversibility, although the precise scope of their application is not clear. Section 3(4) of the Atypical Work Regulations requires that agreements to work from home or another location "must be in writing" and "provide the option to the worker who was assigned duty at the office, or at any other site, to revert back to work in his previous post at the office or other site of work of the employer, as appropriate, on the same terms and conditions of employment, upon a notice

period of one month.”⁷⁵ Again, the use of the broader term “worker” rather than “atypical worker,” which is used elsewhere in the regulations, would suggest that this provision is intended to apply broadly.

However, section 6 of the WFH Regulations states only that “[w]here a worker and an employer have entered into a Working From Home Agreement, the employer may, subject to the operational requirements of his business, require the worker to work at his initial place of work.” It does not provide for the person working from home to revert to working at the premises of the employer of their own volition and does not contain any obligation on the employer to consider the request.

The more robust protections afforded by the Atypical Work Regulations would appear to be superseded by the WFH Regulations, at least for workers on standard work arrangements, but greater clarity is needed to fully understand the interaction between the two regulations.

5.3.3 Hours of work and right to disconnect

Part V of the WRA governs hours of work for most workers, outside of contractors. Homeworkers that make over 600,000 rupees are explicitly included in these provisions, while “persons” and atypical workers making over 600,000 are explicitly excluded. Where this leaves atypical workers making under 600,000 is not clear. Both the WFH Regulations and the Atypical Work Regulations also contain specific provisions around hours of work and other working conditions covered under part V of the WRA. There is no language about the regulations not applying to workers making over 600,000 rupees, so they would appear to apply to all workers.

Section 1 in the second schedule of the WFH Regulations governs “normal working hours,” and section 3 contain provisions for a “disturbance allowance for work performed during unsocial hours.” The Atypical Work Regulations first schedule section 1 likewise governs “normal working hours” for atypical workers. These would presumably apply to teleworkers excluded under the WRA and are meant to supplement protections in the WRA for teleworkers that are covered. Section 7 of the WFH Regulations states that “(1) [a] homemaker shall be governed by the terms and conditions of employment specified in the Second Schedule. (2) For the avoidance of doubt, the general conditions of employment specified in the Act shall also apply to a homemaker.”

The WRA part V and the Atypical Work Regulations both state that normal working hours “shall be of 45 hours of work excluding time allowed for meal and tea breaks.”⁷⁶ In contrast, the WFH Regulations appear to allow longer work hours, stating that “no employer shall, except with the written consent of a homemaker, require the worker to work for more than 45 hours in a week.”⁷⁷ Both atypical workers and home workers are entitled to an in-work rest break of one hour without pay after 4 consecutive hours of work in their respective regulations, and 11 consecutive hours of rest “after completion of [a] normal day’s work.” Under the WRA, “every worker shall be entitled to a rest of not less than 11 consecutive hours in any day.”⁷⁸

WFH Regulations require the employer to conclude a written agreement with the worker,⁷⁹ which details work hours that shall “not be less favorable than the hours of work prescribed in any Regulations or enactment or specified in an agreement, as the case may be, applicable to the trade or business in which the homemaker is in employment.” Both the Atypical Work Regulations⁸⁰ and the WFH Regulations⁸¹ explicitly include any time spent collecting work and materials, delivering completed work, waiting for maintenance and repair of equipment, waiting for work to be assigned or delivered, waiting for employer to provide work, waiting for instructions, and attending meetings with the employer or his clients for business-related purposes in working hours.

The atypical worker is given the choice to perform work on compressed hours. The completion of the 45 hours per week may be done within fewer days, so long as the atypical worker is not being required to work continuously for more than 13 hours in a day. When work is performed on piece work, task work or otherwise, the WRA and

⁷⁵ *Id.* at § 3(4)(d).

⁷⁶ WRA, *supra* note 39, at § 20(1). The WRA contains exceptions for part-time workers and “garde malade.” Atypical Work Regulations, *supra* note 56, at first schedule, § 1(1).

⁷⁷ Atypical Work Regulations, *supra* note 56, at second schedule, § 1(1).

⁷⁸ WRA, *supra* note 39, at § 20(7).

⁷⁹ WFH Regulations, *supra* note 57, § 5. The Atypical Work Regulations also contain provisions around a contract in writing, but the extent of its overlap is not clearly defined.

⁸⁰ Atypical Work Regulations, *supra* note 56, at first schedule, §§ 1-6.

⁸¹ WFH Regulations, *supra* note 57, at second schedule, § 1.

the Atypical Work Regulations state workers may complete work within a shorter period of time and still be paid wages due for the whole day or week.

Both the WRA and atypical work regulations address flexible working hours and part-time work. Work performed on flexible hours is subject to the work allocated to the worker to be performed and completed within an agreed time band with the employer, and also subject to the worker being available during agreed core hours of work for work-related communication.

The Atypical Work Regulations also sets forth the rate at which the atypical worker is remunerated when (i) the latter performs more than 45 hours in a week, (ii) when the latter is required to work on a public holiday other than a Sunday and (iii) when the latter is required to work on unsocial hours,⁸² whilst the WFH Regulations provides for disturbance allowance when the person working from home works during unsocial hours.⁸³ Both of these provisions are attempts to ensure the right to leisure and the right to disconnect, but what set of workers they apply to is not clear.

It is left to the organization's discretion regarding whether to discuss some modalities for teleworking – such as disconnection issues – with the worker or not. Human resource managers participating in the survey noted that responsible employers would set a schedule, boundaries for start and finish time, targets, and deadlines, with an eye on the productivity and “value-adding” aspects of the arrangement; that online meetings would be set in a consensual manner in order to accommodate team members' constraints and preferences, with, for instance, no meetings taking place before 8.30 a.m. or after 17.30; that meetings would be held at fixed times, respecting the lunch hours of workers; that certain slots would be kept free for everyone, such as Friday afternoon, when no online meetings can be scheduled. However in the absence of clear legal requirements, expecting all employers to recognize or enforce the right to disconnect seems unlikely.

Many trade unionists claimed that “very little” was being done by enterprises to promote work-life-balance in its true sense beyond a simplistic perception that as long as results and productivity was acceptable to the employer, it was assumed that teleworkers would be content to be at home.

5.3.4 Equipment and costs

The WRA part V, section 58 states that “[e]very employer shall provide to a worker the tools which may be required for the performance of work,” which are the property of the employer and shall be replaced “as soon as they become unserviceable.”⁸⁴ Both the Atypical Work Regulations and the WFH Regulations require written agreements, and contain model agreements with provisions outlining what tools and equipment the employer will provide to the atypical worker or home worker, respectively.

Both the Atypical Work Regulations⁸⁵ and the WFH Regulations⁸⁶ require the employer to refund the worker for work-related expenses, including “the use of electricity, water, telecommunication or such other facilities in connection with work performed at home,” “maintaining tools and equipment,” “depreciation costs on tools and equipment where the worker uses his own tools and equipment for the purpose of work,” bus fare for work-related travel and “any other costs or expenses incurred in relation to work.” The Atypical Work Regulations stipulate that the worker and employer shall “agree on the amount to be refunded” and payments should be made on a monthly basis.⁸⁷

Moreover, the template agreement provided in the second schedule of the Atypical Work Regulations specifies that it is the responsibility of the atypical worker to take all reasonable precautions to maintain the tools and equipment provided by the employer in good condition. Provision 3 of the second schedule,⁸⁸ which is the template agreement, also contains a clause pertaining to the exclusive official use of tools and equipment. Moreover, the same provision

82 Unsocial hours under Atypical Work Regulations “unsocial hours” means hours of work performed – (a) from 5 p.m. on Saturday up to 6 a.m. on Monday; or (b) on any public holiday, other than a Sunday. *Supra* note 56.

83 Unsocial hours under WFH means hours of work performed – (i) between 1 p.m. on a Saturday and 6 a.m. the ensuing Monday; and (ii) between 10 p.m. on a weekday and 6 a.m. the ensuing day; but (b) does not include the working hours of a worker in the ICT-BPO sector whose working hours correspond to the working hours in the market country served. *Supra* note 57.

84 WRA, *supra* note 39, § 58.8

85 Atypical Work Regulations, *supra* note 56, at first schedule, § 12.

86 WFH Regulations, *supra* note 57, at second schedule § 4(1).

87 Atypical Work Regulations, *supra* note 56, at second schedule, § 4(2).

88 *Id.* at second schedule § 3.

states that details pertaining to the quantity, description and identification number of working tools and equipment provided by the employer are to be recorded.

Although both sets of regulations provide that the worker is entitled to a refund of work-related expenses,⁸⁹ there is no provision specifying consequences if such resources are not made available to the worker. Therefore, these regulations ending up being more of a guideline than an implementable, legal provision.. Trade unionists have noted that, without an enforceable legal framework, this situation can lead to abuse on the part of employers who could conduct teleworking arrangements without fear of being punished for not providing all the necessary resources as mentioned above or for unilaterally deciding on insufficient amounts of such refunds. While the Ministry states that it may, on receipt of complaints, initiate legal action against the employer in case of non-compliance, the reality of workers' situations will not normally point to this recourse in practice.

5.3.5 Occupational safety and health

The main legislation governing occupational safety and health in Mauritius is the Occupational Safety and Health Act 2005⁹⁰ ("OSHA 2005"). OSHA 2005 is broadly applicable where work is performed under a contract of employment, by a self-employed person or by an outworker.⁹¹ The OSHA 2005 is applicable to all places of work and all workers. Every employer has to comply with all the relevant provisions of the OSHA 2005 enforced by the Occupational Safety and Health Division. Workers can bring complaints to the Occupational Safety and Health Division of the Ministry.⁹²

The Atypical Work Regulations⁹³ and the WFH Regulations⁹⁴ both contain provisions that state that where a worker "sustains any work-related injury out of and in the course of his employment" such an injury "shall be deemed to be an injury at work." Both also state in their respective model agreements that employers and workers must comply with the OSHA. In the Atypical Work Regulations only, the employer is required to obtain private insurance for atypical workers not covered under the National Pensions Act⁹⁵ against any injury sustained out of and in the course of the performance of his work.⁹⁶ The National Pensions Act was replaced by the Social Contribution and Social Benefit Act⁹⁷ in 2021. The requirement to offer insurance does not apply to workers under a standard agreement who are required to work from home.

Both the Atypical Work Regulations⁹⁸ and the WFH Regulations⁹⁹ provide that employers may visit a worker's residence to undertake periodic safety and health inspections, with prior notice and the consent of the worker. The WFH Regulations¹⁰⁰ state that the employer shall conduct a suitable and sufficient assessment at the proposed place of work to ensure that the performance of work at the proposed place shall not entail any risk to the safety and health of the homemaker and members of his family.

While the Ministry commits to taking action to enforce the law when complaints from workers are received regarding violation of their rights, it does not seem to have taken on any such inspections at homes or other places of work outside an employer's main place of business. As trade unionists note teleworkers are reluctant to report any such violations both because of possible procedural issues and a reluctance to have an inspector in their home.

89 WFH Regulations, *supra* note 57, at second schedule, § 4.

90 OSHA 2005, *supra* note 42.

91 "[O]utworker" in section 2 of OSHA 2005 means any person employed in manual labour or with machinery in any process for or incidental to the making, altering, repairing, ornamenting, finishing, cleaning, washing, or breaking up of any article for the purposes of gain, or by way of trade, whether directly by the occupier of any place from which work is given out, or by a contractor or person employed by such occupier or contractor. *Supra* note 42.

92 The Permanent Secretary of the Ministry is empowered by the OSHA. 2005 to make investigation, inspections, examinations and make prohibition orders. The Permanent Secretary is also mandated to conduct a prosecution under the OSHA 2005. *Supra* note 42, at § 26:

Without prejudice to the powers of the Director of Public Prosecutions, the Permanent Secretary or any officer deputed by him, may conduct a prosecution under this Act before any Court, other than the Supreme Court, and may in relation to such prosecution, appear before a Magistrate and swear an information.

93 Atypical Work Regulations, *supra* note 56, at first schedule, § 14.

94 WFH Regulations, *supra* note 57, at second schedule, § 6.

95 National Pensions Act 1976, <https://www.mra.mu/download/TheNationalPensionsAct1976.pdf>.

96 *Supra* note 56, at § 14.

97 Social Contribution and Social Benefit Act 2021, <https://www.mra.mu/download/SocialContributionAndSocialBenefitsAct2021.pdf>.

98 Atypical Work Regulations, *supra* note 56, at first schedule, § 13.

99 WFH Regulations, *supra* note 57, at second schedule, § 5.

100 *Id.* at § 4(2).

Practical implementation of labour inspection and enforcement of OSH standards, therefore, would either have to be provided for explicitly through a new legal measure or a representative of the worker would have to establish a prima facie case to declare a litigation. Unions recommend a legal obligation for employers to assess the chosen, demarcated work area which would fall under the responsibility and liability of the employer, as well as for the labour inspector, and for the enforcement of OSHA 2005 regarding the employer's obligation to provide instruction, information, and training to the worker in aspects of safety and health, among others.

The unions raised a number of possible instances of injury during teleworking, such as electrocution while connecting computing equipment or fall from an unsuitable chair while at the computer, tripping on poor flooring or wiring; headaches and dizziness due to poor ventilation; stress from household noises or distractions, on top of the well-known muscular-skeletal injuries associated with prolonged periods at an unsuitably-set up computer screen, keyboard, and working chair.

Unions also raised that employers have failed to recognize the health and safety risks associated with natural disasters that affect workers' homes. Trade unionists report that during dangerous flooding caused by heavy rain in 2022, workers who lived in areas placed under curfew were asked to continue working from home, even as those homes were being inundated with water. Under international OSH standards, including ILO Convention 155 on Occupational Safety and Health, workers have the right to refuse dangerous working conditions that they reasonably believe presents an imminent and serious threat to their safety, but the current regulations do specify how this applies in private homes.

Moreover, the provisions relating to labour and industrial relations across all labour and industrial relations legislations in Mauritius are tainted with brevity, with issues such as ergonomics for teleworkers, domestic violence, harassment, and psychosocial risks simply overlooked.

5.3.6 Freedom of association, collective bargaining, and social dialogue

Under the EReA 2008, in contrast with the WRA, it can be inferred that the definition of the term "worker" is inclusive of the teleworker, persons working from home, atypical worker, amongst others.¹⁰¹ The rights of the atypical workers to freedom of association are protected and the latter has the right to join a trade union of his choice.

There is no specific provision which provides for opportunities for communication and engagement between the teleworker and trade union representatives in the WFH Regulations or Atypical Work Regulations. Nor is there any obligation on the part of the employer to disclose who is the employer's worker, whether in a teleworking environment or not.

Trade unionists participating in this study stated that social dialogue in Mauritius was on a downward trend already, and was going to be even further weakened by the increase of not only trends in working arrangements – such as teleworking, shift working, "pink" jobs – but also because of the precarious socio-economic environment leading workers to desperately hang on to their jobs and accept any sort of employment conditions with no thought for union membership or for collective agreements, all of which were well-known to employers. There has been no consultations with social partners since the first COVID-19 confinement in March 2020. Tripartite mechanisms including the Advisory Council on Occupational Health, the Labour Advisory Board, and the National Tripartite Forum are not operational. As previously mentioned, the WFH Regulations were promulgated without consultation with trade unions. The Protocol setting out work from home arrangements was created unilaterally, and the steering committee to drive the implementation of homeworking in the public service had no representatives of workers. In the wake of the global pandemic, especially, "employers are on the offensive, using tactics to intimidate and threaten workers, and undermine their conditions. Workers are seeking union support to keep their previous working conditions."¹⁰² Currently, trade unions have in fact questioned the Ministry of Labour and have called for a tripartite meeting to look into the new legislations now required.

Additionally, collective bargaining is currently in a legal haziness as well, with the lack of explicit definition of "de-

¹⁰¹ Worker under the EReA 2008 means a person who has entered into or who works under a contract of employment, or a contract of apprenticeship with an employer, 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; (b) includes – (i) a part-time worker, a former worker or an atypical worker; (ii) a person who has accepted an offer of employment. *Supra* note 40.

¹⁰² *Mauritian Employers Use Covid-19 to Push Back Against Labour Laws*, *supra* note 65.

“financed groups of workers” and the factors to be taken in account for collective bargaining within the EReA 2008. As such, to categorize teleworkers into a bargaining unit poses a difficulty in setting up bargaining units and claiming bargaining rights for teleworkers as a group, who may be, and probably are, as diverse as the entire workforce across sectors, job types and industries.

5.3.7 Non-discrimination, equal access to training, opportunities and promotion

Under the WFH Regulations and the Atypical Work Regulations, remuneration shall not be less than the wage earned by a comparable worker who works at the employer’s premises for the same number of hours and performs similar duties.¹⁰³ This clause is suggestive of the equal status of the atypical worker/persons working from home to that of the worker performing work at the employer’s premises. The Atypical Work Regulations and the WFH Regulations protect the rights of atypical workers/persons working from home to receive remuneration.¹⁰⁴

With regards to promotion, Section 7 of the WRA¹⁰⁵ stipulates the following: “Where a vacancy arises in a higher grade, an employer shall, in the case of higher-grade promotion among monthly-paid workers, give consideration, as far as practicable, to qualifications, merit and seniority”. However this section is not applicable to atypical workers or homeworkers making over 600,000. Moreover, equal access to training, opportunities and promotion are not addressed in the WFH Regulations or the Atypical Work Regulations, which may put such category of workers at a disadvantage.

Employers are not clearly guided regarding the provision of work of equal value when considering teleworking for all, or part of their workforce. Practical implementation difficulties of teleworking of equal value to on-site working are bound to arise with isolation of the teleworking from her/his peers and supervisors, and from her/his union, possibly leading to risk of excessive discretionary powers in matters of performance appraisal, decisions on promotion, training, or allocation of assignments, which be tantamount to discrimination and denial of opportunity in some cases. And the union may not be in a position to have information regarding such matters, either, in such an environment.

Section 5 of the WRA stipulates that the employer shall not treat any worker who is in his employment in a discriminatory manner and that access to employment shall not be subject to discriminatory practices. Section 5 applies to all workers. Discrimination under the WRA is defined as

affording differential treatment to different workers attributable, wholly or mainly, to their respective description by age, race, color, caste, creed, sex, sexual orientation, HIV status, impairment, marital or family status, pregnancy, religion, political opinion, place of origin, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation.

There are no provisions on discrimination based on identity in either the WFH Regulations or the Atypical Work Regulations. It may be more difficult for teleworkers to address and identify patterns of discriminatory treatment, and provisions to prevent it are critical.

One particular challenge faced by teleworkers is that they may be working from Mauritius, but employed by a company located in another country. Unions report increasing recruitment of teleworkers by companies headquartered abroad, particularly young workers, over social media. In one recent case, a worker experienced harassment while working for a company headquartered in the UK, that had no physical presence in Mauritius. Filing a complaint against an employer requires listing an address and phone number, but the only information the worker possessed was a website. This presents a serious barrier to pursuing justice in cases of discrimination and workplace harassment.

¹⁰³ WFH Regulations, *supra* note 57, second schedule, § 2(1)(b); Atypical Work Regulations, *supra* note 56, first schedule, § 5(b).

¹⁰⁴ Under the Atypical Work Regulations the atypical worker is entitled to remuneration which shall not be less than the national minimum wage. *Supra* note 56, at first schedule, § 5. Remuneration is also guaranteed under the WFH Regulations. Workers’ Rights Act 2019. *Supra* note 57, at second schedule, § 2.

¹⁰⁵ Atypical Work Regulations, *supra* note 57, at § 7.

5.3.8 Gender-Based Violence and Harassment

In July 2021, Mauritius ratified ILO Convention 190 (C190) on ending violence and harassment in the world of work.¹⁰⁶ The Finance (Miscellaneous Provisions) Act 2021 updated Part XI of the WRA¹⁰⁷ to address violence and harassment at work. This section of the Act applies to all workers. Section 114 prohibits harassment, assault, verbal abuse, threats, bullying, intimidation, and words or acts that “hinder” a worker “in the course of or as a result of” work or training.

Section 114 (3) states that an employer is “vicariously liable for violence at work, including sexual harassment, committed by a worker and any third party where the employer knew or should have known of the violence at work and failed to take any action to prevent or stop the violence.” Neither violence nor sexual harassment are specifically defined. Harassment is defined as “any unwanted conduct towards the worker, whether verbal, non-verbal, visual, psychological or physical, based on age, impairment, HIV status, domestic circumstances, sex, sexual orientation, gender, race, colour, language, religion, political, trade union or other opinion or belief, national or social origin, association with a minority, birth or other status, which occurs in circumstances where a reasonable person would consider the conduct as harassment of the worker.”¹⁰⁸ “Bullying” is defined as “a pattern of offensive, intimidating, malicious, insulting or humiliating behaviour or an abuse or misuse of power or authority which attempts to undermine an individual or group of individuals, gradually eroding their confidence and capacity which may cause them to suffer stress.”

The employer has a duty to inquire into any case of alleged violence at work and “take appropriate action to protect the rights of the worker not later than 15 days” after a case is reported or the employer becomes aware of a case.¹⁰⁹ Committing abuse or failing to address prohibited abuse results in “a fine not exceeding 100,000 rupees and to imprisonment for a term not exceeding 5 years.”

It is very positive that current laws prohibit many forms of harmful conduct and impose liability on employers for failing to act to prevent violence and harassment. However, there are critical elements of C190 that have not currently been fully domesticated that would be particularly relevant to address the heightened risks of gender-based violence and harassment, and other forms of violence and harassment, faced by teleworkers. It is a common practice to construe domestic legislation in such a manner so as to conform to international instruments to which Mauritius is a party, and therefore many of the provisions discussed below can and should be read into the provisions above, but it would be beneficial to have greater clarity.

C190 article 3 explicitly expanded protections beyond physical worksites into the whole “world of work” - covering all violence and harassment that occurs in the course of, is linked with or arises out of work. The definition enumerated several specific circumstances, including the home where it is a place of work and violence and harassment occurring through communications, enabled through ICTs. The WRA covers violence and harassment “in the course of or as a result of” work or training, which therefore should cover teleworkers, but more specificity to explicitly cover private homes and cyberbullying would be welcome.

C190 article 9 requires that governments create an affirmative duty on employers to take proactive steps to prevent violence and harassment in the world of work. While more general protections under the WRA, including the obligation to inquire into cases of violence at work and take appropriate action, should be read to incorporate this underlying duty, it would be beneficial to ensure more specific obligations. Specifically, under C190 article 9, employers are required to adopt and implement a workplace policy in consultation with workers and their representatives, and to provide all workers with training on prevention and protection measures, including where to go to report cases. Employers are required to conduct risk assessments on violence and harassment, with the participation of workers and their representatives, that specifically examine risks arising from discrimination and gender stereotypes and norms, risks arising from the organization of work, and risks arising from third parties including customers, clients and members of the public.¹¹⁰

Further, under C190 article 10, governments are required to provide access to gender-responsive, safe, effective

¹⁰⁶ Convention No. 190 Concerning the Elimination of Violence and Harassment in the World of Work, (June 21, 2019), 58 I.L.M. 1170 https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C.190 [hereinafter C190].

¹⁰⁷ WRA, *supra* 39, at § 114.

¹⁰⁸ *Id.* at § 114(7).

¹⁰⁹ *Id.* at § 114(4).

¹¹⁰ C190, *supra* note 106, at art. 9; See also ILO, VIOLENCE AND HARASSMENT RECOMMENDATION (2019) [hereinafter R. 206], ¶¶ 7-8, https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:R206.

complaint procedures, and ensure a range of victim-centric remedies, including compensation, changes to workplace policies, accommodations and access to psychosocial support. While it is positive that the law currently provides accountability for employers for failing to act, measures would be strengthened by the inclusion of remedies that acknowledge and attempt to redress the harm to the victim and promote structural changes to prevent recurrence.

Lastly, C190 requires that governments and employers both address the impact of domestic violence on the world of work.¹¹¹ This is particularly relevant for homeworkers who might have their job performance impacted by being in close proximity with their abusers, and may face greater risk of retaliation from their employer connected to their abuse. Employers should be obligated to provide reasonable accommodations to victims, including temporary or permanent changes to working locations or duties to ensure the safety of the victims and co-workers. Employers and governments should offer specialised paid leave for activities such as acquiring a restraining order or custody of children; and governments should prevent employers from firing workers for reasons related to their abuse, which is unfortunately a common occurrence.¹¹² Government regulations should ensure access to psychosocial support and offer guidance to employers on how to issue referrals to available services in their community. The employer should include training on resources available to victims of domestic violence and how to access workplace assistance.

With a heightened awareness that the home may now be considered as a “dangerous setting,” employers have the duty to respond. “If there is something that COVID-19 has shown us, it is that we need to strengthen our preparedness plan to respond to pandemics and confinements impacting on women’s safety and that of children.”¹¹³

5.3.9 Gender equality

The specific gender dimension of teleworking has been completely omitted by the domestic legislations pertaining to telework. Considering the trend of teleworking being predominantly a female phenomenon, the risk of certain forms of exploitation is felt to be real by trade unionists having observed this trend since the advent of the COVID-19 pandemic and subsequent work-from-home arrangements. Also observed is that the types of jobs easily migrating to a teleworking format are those most likely to be held by women, namely administrative jobs, office jobs, and “back office” jobs in the tertiary sector of the economy. Added to the unemployment rate of 9.2% in 2020, the pressure on employed women to accept difficult or stressful working conditions, such as those associated with teleworking is not addressed specifically in the legal provisions. Teleworking is often presented as desirable for women, so that they can have flexibility to attend to caregiving and domestic tasks. This trend reflects laws and social customs built on gender stereotypes and norms that create and reinforce the idea that women should be primarily responsible for unpaid caregiving and domestic work in the home. Without proper safeguards, teleworking risks further entrenching these discriminatory dynamics. Trade unionists felt that home-working could work in favor of any gender with home-based commitments, “if it is well-framed, with a proper legislation.” The principle of reversibility was important, as life situations changed, along with their constraints, and teleworking could work for some workers some of the time, but not for all workers all the time, so that the worker needs to maintain a right to revert to on-site work as well. The current uncertainty around when and how these protections apply should be remedied, not only to ensure clarity but also equity.

5.3.10 Right to privacy

Neither the Atypical Work Regulations nor the WFH Regulations specifically protect the workers’ right to privacy explicitly. Both do address when an employer may access a teleworker’s home for work-related purposes.

Both the Atypical Work Regulations¹¹⁴ and the WFH Regulations¹¹⁵ state that the employer may, with authorisation from the worker and subject to prior notice, have access to a residence or the place where work is performed, at a

111 C190, *supra* note 106, at art. 10(f).

112 Solidarity Center, DOMESTIC VIOLENCE IS A WORKER RIGHTS ISSUE (2022), https://www.solidaritycenter.org/wp-content/uploads/2022/02/DV-is-a-Worker-Rights-Issue-Fact-Sheet_2-2022.pdf.

113 UNDP Supports the Outreach Programme for Victims of Domestic Violence, United Nations Development Programme (UNDP) (Oct. 6, 2020), https://www.mu.undp.org/content/mauritius_and_seychelles/en/home/news-centre/news/undp-supports-the-outreach-programme-for-victims-of-domestic-vio.html.

114 Atypical Work Regulations, *supra* note 56, at § 13.

115 WFH Regulations, *supra* note 57, at second schedule, § 5.

reasonable time agreed to by the worker. Reasons to request access are to

- (a) install, repair and maintain or retrieve any working tools and equipment provided by the employer;
- (b) deliver working materials or collect finished products;
- (c) carry out any risk assessment with respect to safety and health, where appropriate; or
- (d) undertake such periodic safety and health inspections as may be required.

The template agreement in the second schedule of the Atypical Work Regulations and the first schedule of the WFH Regulations specifies that an “appropriate” procedure to monitor and assess work performance should be established and implemented. Matters such as methods of managing telework personnel, management practices, reporting, duties of management towards teleworkers are however not given consideration.

The WFH Regulations and the Atypical Work Regulations make no mention of legal parameters to be respected in relation to right to privacy, such as excessive monitoring or digital surveillance. Several unions have reported cases of workers being subject to excessive surveillance throughout the working day and even during non-working hours by supervisors and managers, with workers helpless to respond in any way but to comply with the new form of “digital presenteeism” now in place through teleworking in certain organisations.

5.3.11 Data protection

Data protection is set out very elaborately in the format of the agreement between the employer and the atypical worker/person working from home in the second schedule of the Atypical Work Regulations and first schedule of the WFH Regulations. The agreement contains a clause pertaining to confidentiality, data protection and intellectual property and the atypical worker is required to observe compliance.

The clause specifies that the atypical worker/person working from home shall not divulge, or use for any other purpose, any confidential information obtained in the course of his work, except with the consent of the employer. Moreover, the atypical worker/person working from home shall abide to the employer’s policy and the Data Protection Act¹¹⁶ in respect of security of confidential information, including but not limited to, technical data, trade data, trade secrets, know-how and confidential information relating to the businesses, finances, accounts, dealings, transactions, methods of operation, assets or affairs of the employer, obtained during the course of his employment.

The atypical worker/person working from home is also required to comply with other domestic legislation regarding the protection of intellectual property rights, including:

- (a) The Patent, Industrial Designs and Trademark Act¹¹⁷;
- (b) The Protection against Unfair Practices (Industrial Property Rights) Act¹¹⁸; and (c) the Copyright Act¹¹⁹;
- (d) Any product invention or discovery made in the course of the employment of the atypical worker/person working from home shall be deemed to be the property of the employer.

5.4 INSTITUTIONAL FRAMEWORK OF TELEWORK

Atypical work and work from home are relatively new concepts in the legal context of Mauritius. As of late 2021, no case has been tried regarding atypical work or work from home. It is unclear which institutions have jurisdiction to hear matters concerning teleworking. An atypical worker under the Workers’ Rights Act¹²⁰ may file a case before the Industrial Court which has full civil and criminal jurisdiction to try labour and industrial relations matters. In the event one of the parties involving the atypical work litigation is not satisfied with the decision rendered by the magistrate of the Industrial Court, the latter may either apply to the Reviewing Authority or make an appeal to the Supreme Court of Mauritius.

¹¹⁶ Data Protection Act 2017, https://dataprotection.govmu.org/Documents/DPA_2017_updated.pdf?csf=1&e=0rlrff.

¹¹⁷ Patent, Industrial Designs and Trademark Act 2002, <https://www.wipo.int/wipolex/en/text/189493>.

¹¹⁸ Protection against Unfair Practices (Industrial Property Rights) Act 2002, <https://foreign.govmu.org/Pages/Industrial%20Property%20Office/Legislation/PAUP-ACT.aspx>.

¹¹⁹ Copyright Act 2014, <https://www.wipo.int/wipolex/en/legislation/details/15447>.

¹²⁰ Exceptional sections (5, 26, 31, 33, PART VI – VIII and PART XI – XIII) of the Workers’ Rights Act 2019 applicable to the atypical worker. *Supra* note 39.

In the event the atypical worker cannot seek recourse to the Industrial Court, that worker would have possible avenues of recourse through the Commission for Conciliation and Mediation, the Employment Relations Tribunal, the Redundancy Board, and final appeals to the Supreme Court.

6. RECOMMENDATIONS

Following the analysis of the legal provisions within the Mauritian labour and industrial relations legislations, the following recommendations are proposed. These recommendations have come up following a comparative analysis with international frameworks regulating telework, and backed by an examination of the limitations in the implementation of the existing legal framework concerning telework.

Ensuring teleworkers can fully access their fundamental rights requires that regulations be developed in consultation with workers and unions. Currently, tripartite mechanisms – including the Advisory Council on Occupational Health, the Labour Advisory Board, and the National Tripartite Forum – are not operational. It is essential that social dialogue on this issue be meaningful and inclusive.

The recommendations proposed in this section complement existing regulations and are focused on the necessity of creating a reliable, actionable, and reasonable legal framework, whilst maintaining the key principles enshrined in the commitment to decent work. However, all of these recommendations are subject to social dialogue and debate that is based on adequate and reliable facts, figures, and insights emanating from research. Aligning law could be accomplished through revisions to the Workers Rights Act and its accompanying regulations. A code of practice could be developed, with input from workers and trade unions, to provide further guidance for aspects requiring practical input by employers and also for aspects which require rules specific to the context of the organization. It is also important to facilitate collective bargaining between employers and workers on this issue. Mauritius should also ratify and domesticate ILO Convention 177 on Home Work, and ensure the integration of all provisions of ILO Convention 190 on Violence and Harassment and other relevant ILO conventions into domestic law.

6.1 REVISING THE DEFINITION OF TELEWORKING

As it can be seen from the analysis in chapter 5, telework in Mauritius has not been defined by any legislative document. Telework can fall into both the definition of work from home and atypical work.

The definition of atypical workers currently includes people who “perform telework.” This provision should be removed, as it risks misclassifying teleworkers as atypical workers. Legal definitions for teleworking should exist in their own right and must ensure that teleworkers have access to the full range of labour protections regarding critical areas such as health and safety, wages, freedom to organize and form unions, and freedom from discrimination, violence and harassment. Such an initiative will align the domestic telework framework with the international standards and best practices reviewed earlier.

In view of the fact that atypical work under the Atypical Work Regulations already covers work under contract for services, the definition of telework could be revised to: “work performed within the framework of an employment contract or relationship, at home or at any other alternative location other than the employer’s premises, through the use of information and communication technologies.” To avoid scattered legislative documents, telework must include work from home. Moreover, the definition of worker should include telework in the Workers’ Rights Act 2019. A narrow definition of telework is promoted here, so as to avoid duplication with other forms of work already covered under law.

It is proposed that two situations of telework are envisaged. These situations should be consensually considered by both employers and employees when devising contractual arrangements, as the type of telework impacts important elements of work such as remuneration, safety, health and overall wellbeing, including work-life balance.

(i) Supplemental telework

Supplemental telework occurs when the worker works away from a conventional place of work, in addition to normal working hours. This is equivalent to overtime work and should be treated in the same manner.

(ii) Substitution telework

Substitution telework occurs when work performed at the employer's premises is replaced by work performed at any location, for a specified time as agreed consensually.

6.2 VOLUNTARY AND REVERSIBLE TELEWORK

Telework should be a voluntary arrangement that is based on mutual consent between workers and employers. Currently, employers have the ability to unilaterally order most workers, if not all workers, to telework. This may be appropriate in cases of national emergencies related to urgent matters of public health and safety, but this provision should be modified so that limitation is clear. Employers should only be able to order workers to work from home with notice, when government officials have declared a state of emergency, and where work from home is necessary to protect public health or safety.

Current regulations should be further amended to contain clear provisions allowing workers to decline requests from employers to telework outside of national emergencies. The provisions currently contained in the Atypical Work Regulations that protect the right of a worker to request telework and have it granted unless there are reasonable business grounds for refusal, and that the worker has the right to revert back to a previous post at the employer's premises with notice, should apply clearly to all workers, including those making above the 600,000 rupee threshold, in any contractual arrangement. Refusal to engage in telework should not result in adverse effects to the worker such as termination.

It is also recommended that telework legislation in Mauritius envisages the scenario where the employer requires the teleworker to resume work at his premises. The notice provided for the transition should also be specified and be of a reasonable, humane period. Moreover, the reversibility initiated by the employer shall only be possible when telework does not form part of the initial job description of the worker.

6.3 OCCUPATIONAL SAFETY AND HEALTH

Unions recommend a legal obligation for employers to assess the chosen, demarcated work area which would fall under the responsibility and liability of the employer, as well as for the labour inspector, and for the enforcement of OSHA 2005 regarding the employer's obligation to provide instruction, information, and training to the worker in aspects of safety and health, among others.

There is a need for more specific provisions aimed at addressing the health and safety risks inherent in telework. It is critical that regulations clearly state that employers have a duty to protect the health and safety of teleworkers. Employers should develop virtual inspection processes, checklists, and other self-assessment tools and online training on health and safety issues, such as ergonomics and how to access complaint mechanisms and legal remedies regarding workplace discrimination, violence and harassment. These must be developed and implemented with union representatives, where they exist.

Provisions should require employers to conduct risk assessments, in consultation with workers and unions, that include an examination of ergonomics and psychosocial risks. Employers should be required to develop a clear, detailed occupational safety and health policy, developed in consultation with workers and unions, which details the responsibilities of the employer and internal processes for reporting and remediating health and safety issues. The development of a company-level occupational health and safety policy is encouraged to allow organisations to be innovative in the protection of the health and safety of their teleworkers, which would include the awareness, development, sense of responsibility, and empowerment of teleworkers with respect to ensuring their safety and health in their teleworking environment. To address the needs of smaller employers, the government could consider developing model policies, tools to support risk assessments, and support to employers who wish to implement innovative protection measures. Such a policy would actively promote the overall wellbeing of teleworkers.

(i) Ergonomics

Risk assessments should include ergonomics; employers should ensure that workers have suitable equipment

while teleworking. Moreover, the policy should emphasise the need for worker awareness and training on ergonomics and the proper use of equipment. Failure to provide appropriate equipment or training should result in liability for the employer.

(ii) Psychosocial risks

Isolation is one of the main risk factors associated with telework, which affects mental health and increases vulnerability to harassment and abuse. Employers should take measures to ensure the inclusion of teleworkers in the working community, such as providing opportunities to meet with other colleagues or to engage in social gatherings in person and virtually. Moreover, the employer should also devise means for communication in their occupational safety and health policy and stress the importance of connectedness, so as to decrease the risk of isolation.

Isolation increases the risk of technology-enabled violence and harassment, including cyberbullying and violence and harassment rooted in discrimination. Employers must be cognizant of these risks, and set up appropriate, gender-responsive, culturally sensitive reporting and whistleblowing mechanisms that will allow marginalised workers to exercise their rights and address abuse. Employers should ensure that they are raising awareness concerning these issues, including informing workers of where they can go to receive support and report cases.

Regulations should require that employers have appropriate measures in place to identify and mitigate risks, internal mechanisms to address and remediate cases, and appropriate psychosocial support to offer. These regulations should include protections against retaliation for reporting abusive conduct. Special attention should be given to women teleworkers and teleworkers of other marginalised identities, who face additional risks in relation to online exposure such as sextortion and cyberbullying, but also who may feel more psychologically vulnerable due to social isolation and distance from peers and from the trade union.

(iii) The right to refuse unsafe work must be fully enshrined and protected for workers both inside and outside an employers' premises.

6.4 PRIVACY

In addition to the legal provisions on access to the teleworker's place of work, the new regulation should particularise the respect of privacy of teleworkers. This must include placing restrictions on the use of monitoring and oversight systems. Oversight and monitoring systems should be developed in consultation with workers and unions, and all workers should be informed of oversight and monitoring systems. Surveillance without consent should be prohibited, and monitoring systems should only be implemented where they are necessary to achieve a legitimate objective that cannot be achieved through other, less invasive means. The new regulation should prohibit employers from using intrusive monitoring and surveillance tools. In fact, the managerial approach to be favored should be to do away with surveillance altogether, and instead focus on agreed tasks, targets, and deadlines, in a spirit of positive teamwork and collaboration.

6.5 EQUIPMENT AND TOOLS AND ASSISTANCE TO TRANSITIONING

The new regulation, in addition to existing provisions on equipment and tools, should stipulate that the onus is on the employer to ensure that teleworkers have the right tools and equipment and access to technology to allow them to work as if they were working on the employer's premises, in ergonomically-appropriate environments and using the necessary equipment and resources for a safe and productive day.

Moreover, it is proposed that the new regulation should contain a provision which provides assistance to transition from office work to telework. Such assistance may take the form of providing training opportunities to teleworkers to adapt to the use of new tools and technology and ensuring access to technical support personnel or to a help-line or helpdesk.

6.6 DATA PROTECTION

Employers must be required to safeguard teleworkers' personal data.

6.7 FREEDOM OF ASSOCIATION, COLLECTIVE BARGAINING, SOCIAL DIALOGUE AND UNIONS' ACCESS TO INFORMATION

In addition to the existing freedom of association and collective bargaining rights for teleworkers, the new regulation should ensure the creation of an enabling environment to allow teleworkers to join and form trade unions and exercise their collective rights. Employers should be required to provide sufficient opportunities for communication and engagement between trade union representatives and teleworkers, such as providing digital meeting spaces. Trade unions cannot adequately fulfil their responsibilities if they do not have access to information. As such, it is recommended that trade unions are also given the legal right to contact teleworkers and to have direct access to information.

Given that workers appear increasingly concerned about losing their jobs in the currently tough socio-economic environment prevailing, it is considered of vital importance that trade unions are supported in their efforts to organise and establish creative responses to the new reality of employment relations. Some unions are offering their assistance to workers without any formal membership arrangement or even strict fees quantum; others are organizing small-group meetings in various places; others are concentrating on educational and awareness strategies through media and social media, in effect setting up and strengthening a "solidarity chain" to show support to all workers facing the difficulties and hardships associated with COVID-19 (and beyond) trends in working. One federation reported "beyond expectations" responses regarding teleworking issues on their social media platforms. Generally, trade unions, while admitting to facing a completely new situation, are seeking participation and consultation not only to obtain clarity and transparency in the law-making and policy formulation processes but also to be in a better position to offer support, awareness and empowerment to teleworkers about the advantages and the possible risks and challenges associated with teleworking.

6.8 NON-DISCRIMINATION, EQUAL ACCESS TO TRAINING, OPPORTUNITIES AND PROMOTION

Teleworkers must enjoy all the same rights as the workers working at the employer's premises. These rights should guarantee equal treatment to workers who work at the employers' premises and protections against discrimination based on identity, which may be harder to identify and remedy when teleworking. Provisions should bestow equal access to training and career opportunities to teleworkers as workers working at the employer's premises. Appraisal policies should be equivalent for all workers, including teleworkers. Moreover, telework should not result in treating teleworkers as invisible and should provide them with objective and fair performance evaluations and valuable opportunities for career advancement and growth. The new regulation should state that in the event of promotion opportunities suiting the skills, experience, and competence of teleworkers, the latter should be considered along with the fellow workers working at the employer's premises. The employer, and the trade unions where these exist, should create awareness that, in case of infringement, any worker may report a dispute to the Ministry, Employment Relations Tribunal or to the Equal Opportunity Commission as the case may be. Employers should be required to disclose disaggregated data based on gender and other relevant categories regarding their workforce, including telework versus other arrangements.

6.9 GENDER-BASED VIOLENCE AND HARASSMENT

The new regulation should ensure that employers are obligated to take proactive measures to prevent gender-based violence and harassment, and other forms of violence and harassment, against teleworkers. This should include an affirmative obligation to conduct risk assessments, adopt policies and conduct training in consultation with workers and unions. Regulations, including the WRA and the OSHA, should require that employers have appropriate measures in place to identify and mitigate risks, internal mechanisms to address and remediate cases in a timely and effective manner, and appropriate remedies, including access to compensation, accommodations and psychosocial support. This should include protections against retaliation of any kind for reporting abusive

conduct. Special attention should be given to women teleworkers and teleworkers of other marginalised identities, who face additional risks. For small employers, governments could offer support such as a dedicated complaints procedure that could offer advice and adjudication for individual complainants, craft model policies and issue tools to conduct risk assessments.

Measures should include the impact of domestic violence in the world of work. The employer has a responsibility to provide support so that victims can retain financial independence and do not face discrimination because of their status as a victim of domestic violence. Employers should offer paid leave to victims of domestic violence; offer accommodations to allow for greater flexibility as workers seek safety ;and be prohibited from firing workers for reasons related to their abuse. Government regulations should ensure access to psychosocial support including crisis counselling and offer guidance to employers on how to issue referrals to available services in their community. The employer should include training on resources available to victims of domestic violence and how to access workplace assistance.

6.10 GENDER EQUALITY

Organisations should be more gender-responsive in their actions regarding the arrangement of teleworking so as not to perpetuate existing social and economic inequality. Employers should be required to specifically identify and mitigate risks arising from discrimination and gender stereotypes and norms, and the organization of work, and adopt policies that promote equity. Retaliation against workers for reporting cases of discrimination should be strictly prohibited, and the employers should be obligated to act on cases brought to their attention. Regulations could also provide that requirement may be exacted from organisations to set up governance procedures to demonstrate commitment to prevent exploitation. To counter entrenched inequalities and gender stereotypes, teleworking must not be assumed to be of immediate and continued attractiveness to women, and the principles of voluntariness and of reversibility must be enforced for the whole workforce. Telework to enable balance between work and family obligations should be available to all workers. The collection of publicly available disaggregated data on telework, including compensation rates and gender, as well as ongoing tripartite dialogue on how to ensure gender equality at work would support this goal and could be mandated for all employers to identify trends and potential patterns of discrimination.

6.11 RIGHT TO DISCONNECT AND WORK-LIFE BALANCE

Provisions regarding telework should stipulate that the workload and performance standards of the teleworker should be similar to the comparable worker working at the employer's premises and should protect the right to leisure and the right to disconnect. Such an initiative should be taken through social dialogue consultation with all stakeholders, including, but not limited to representatives of all categories of workers. There is a need to ensure quality management practices such as setting achievable deadlines and communicating realistic expectations. The "new normal" of performance management practices should be based on consensual arrangements and on continued dialogue and cooperation. The implementation of such a mechanism could be rendered effective through education, communication, and even incentives. Once in place, it would ensure over time that management creates the proper climate of supervision to promote trust and collaboration. It should establish critical protections, such as limits on close monitoring or employee surveillance and measures that ensure teleworkers have a certain degree of autonomy and flexibility. The creation of such a climate would also ensure that feedback is given to employees in an empathetic and considerate manner. In the same legal guideline, management would also be required to provide training, coaching, and counselling to help workers adapt to teleworking formats and to the need for establishing balance and resilience in life.

The new regulation should provide for a clear contract to be drawn up consensually at the beginning of the teleworking period, making provision for the hours of teleworking to factor in any time spent to collect work and materials, to deliver completed work, to wait for maintenance and repair of equipment to be completed, to wait for work to be assigned or delivered, to wait for work to be provided, to wait for the internet to be connected or re-connected, and others. The employer should ensure that telework is not hindering the work-life balance of teleworkers, and employers themselves should ensure that they are not making blanket assumptions regarding the attractiveness of teleworking from the worker's point of view, and instead establish clear understanding of the *modus operandi* and the implications of teleworking.

Employers must support workers with care responsibilities, with due consideration for the unique and specific sit-

uation being faced by every employee. Coupled with a quantified cost to appear in the new regulation to compensate workers for social and family costs associated with teleworking, the organization should also enact a policy regarding disconnection and hours of work for teleworkers.

In terms of the reward policy, employers should ensure that rewards are not based on the employees' choice to remain connected beyond the agreed working timeframe.

The development and implementation of a new teleworking guideline should also be an instrument and an opportunity to strengthen social dialogue among partners. Unions and the Ministry can set up a campaign to raise awareness across all stakeholder groups. They can also provide empowerment regarding legal and institutional recourses available to teleworkers to seek redress, to file complaints, and to have their voices heard in any case of discrimination, hardship, or any telework-related malpractice or illegal or unethical acts by the employer. The rise of teleworking in its various forms and formulae, with its tendency to introduce or raise risks of isolation and work-related stress, makes it even more important that teleworkers be informed of options of redress at the Ministry of Labour, the Employment Relations Tribunal, the Equal Opportunities Commission, other relevant Ministries, legal services, and so on, being as they are little known or understood by workers generally.

6.12 TELEWORK ACROSS MULTIPLE JURISDICTIONS

Unions are concerned about the rise of telework where workers in Mauritius are employed by companies headquartered elsewhere, particularly those with no physical presence in Mauritius. This has the potential to create additional barriers to workers seeking justice. This requires adequate regulatory measures, and building creative mechanisms and potentially cooperation of Mauritanian enforcement authorities with labour authorities in other countries. This should be developed in consultation with workers and unions to ensure that it meets the needs of workers and addresses barriers to justice.

7. CONCLUSION

This report set out to describe the situation with regard to the current legal framework regulating telework in Mauritius. The Atypical Work Regulations of the Workers' Rights Act 2019, although including telework as a form of atypical work, was really meant for on-and-off types of "assignments" and cannot be counted as the legal framework for teleworking as we know it today in practice. As for the Work from Home regulations of the Workers' Rights Act 2019 brought about in the midst of the COVID-19 crisis, it may be said that Mauritius was simply not prepared to deal with the reality of telework that was forced upon the country in the wake of the pandemic, ostensibly for business continuity and public safety purposes.

No proper tripartite consultations or stakeholder debates were held with trade unions on the matter of crafting a legal framework that would enshrine international principles, as well as good practices in the implementation of the provisions of the regulation. This goes against the principles of sound social dialogue and are contrary to international best practice.

Therefore, with no legal definition and no adequate legal framework for telework as confirmed by both the employer and trade union groups, a new set of amendments are now called for in both labour laws – the Workers' Right Act 2019 and the ERe Act 2008 – in order to cater for the new teleworking situation, using sound labour practices. Teleworking in all likelihood will stay, albeit in some hybrid form. This is a new situation and, beyond the *force majeure* nature of the work from home regulation, teleworking must now be adequately framed with principles and provisions that are both understandable, acceptable, and implementable. The recommendations in this report have been primarily crafted from an examination of the challenges in implementing the current legal framework in Mauritius. The majority of implementation difficulties centre around:

- Defining who is a teleworker and what rights does he enjoy, specifically in working conditions?
- Who pays for the financial implications of teleworking?
- Who ensures safety, health and wellbeing, and how is risk assessment and inspection done?
- What are the other costs of teleworking, such as social costs, mental health costs, family life costs, and who will bear these costs?
- Defining hours of work and how it will be monitored, expenses in internet and electricity, work environment, and furniture.
- What is the employer's role in implementing not only the letter, but also the spirit of the new regulation, in terms of establishing trust, fairness, and a collaborative spirit in teleworking environments?

We have recommended a mix of legal instruments and guidelines to address this new norm and to particularize teleworking. Teleworking is here to stay. Although it is yet too difficult to generalize with insufficient hindsight, some workers appreciate the flexibility offered by teleworking. However, they also expect a better deal in terms of work-life balance and a sense of clarity and structure in agreeing on working hours, disconnection time and ability to mix and match work from home with work at the office. All stakeholders concede that the teleworking bubble shuts out human interactions that are so important to overall balance and wellbeing, as well as team productivity and innovation in what is now the new normal working life of so many workers. As we have seen in our analysis, legal instruments are often adequately couched on paper, but their implementation in practice is often fraught with difficulty, thus falling short of meeting the needs, expectations, and rights of workers. Much of what is legally required to cover the rights of teleworkers does exist across several pieces of Mauritian law, but it is either fragmented or lies deep in layers of complexity, leading to numerous grey areas for workers and employers to understand and implement. Accordingly, and from a visionary perspective, investments are now necessary in improvements in the existing provisions towards creating a proper legal framework for teleworking in Mauritius, if the latter is to represent a satisfactory "new normal" for both employer and worker.

8. APPENDICES

APPENDIX A. QUESTIONS FOR LABOUR UNIONS AND LABOUR LAWYERS

A. Definitional aspects of telework

- a. Under the regulations pertaining to telework in Mauritius, telework does not have a legal definition and is classified as “atypical work”. According to you, what are the implications of telework being classified as atypical work?
- b. Save for a few exceptions, the atypical worker (hence the teleworker) does not enjoy the status of a worker under the Workers’ Rights Act 2019; why, according to you is the teleworker not considered as a worker under the Workers’ Rights Act 2019?
- c. The Atypical Work Regulations and Work from Home Regulations make no real distinction between work from home, telework and atypical work; what are the implications of such terms being used interchangeably?
- d. Should reforms be brought to the Workers’ Rights Act 2019 to classify the teleworker as a worker? Please explain a little.

B. Aspects regulated under Mauritian law

Voluntariness

- a. In your opinion, is teleworking voluntary?
- b. Is it flexible?
- c. In the majority of cases, teleworking is at the initiative of whom?
 - Employer
 - Worker
- d. When teleworking is at the initiative of the employer, what usually happens if the worker refuses to telework?
- e. When teleworking is at the initiative of the worker, what are the responses of the employer?
- f. Under the Atypical Work Regulations, the employer may not accede to the request of the atypical worker to work from home when he has reasonable business grounds to refuse. The list of reasonable business grounds is not exhaustive. Does this confer more decision-making power to the employer to decide on whether the worker can telework or not?
- g. Does the teleworker have the ability to decide how he/she manages his/her working time? If so, in what way?
- h. How does the employer respond if/when the worker decides to manage his/her working time (for instance, through a combination of telework and office-based work)?

Hours of work and right to disconnect

a. In the rise of teleworking,

| | Strongly agree | Agree | Neither agree nor disagree | Disagree | Strongly disagree | Your reason for your response? |
|--|-----------------------|-----------------------|----------------------------|-----------------------|-----------------------|--------------------------------|
| Teleworkers are more available than before. | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | |
| Teleworkers perform more work than before. | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | |
| Teleworkers are more efficient than they are at office site. | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | |
| Teleworkers are more productive than they are at office site | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | |

b. How do workers and employers decide on disconnection time/time to receive and send emails, sms, whatsapp, or to make and receive calls?

c. Do you think that teleworkers work-life balance has improved with teleworking, as compared to office working? How so?

d. Teleworking blurs boundaries between personal and work life. What are some of the actions taken by organisations to promote a work-life balance for teleworkers, if any?

e. Generally, how would you rate the efforts of organisations to promote a work-life balance for teleworkers?

- Low
- Moderate
- High

Costs of maintaining office, equipment and connection

a. How is assistance provided by employers when transitioning from office-based to teleworking?

b. What are the reimbursement modalities in place to support teleworkers financially?

c. Does telework place an additional financial burden on workers? If so, what is the nature of this burden?

Occupational health and safety

- a. What are some of the occupational health and safety risks of teleworking?
- b. How are occupational health and safety risks of teleworking identified/assessed by employers?
- c. How do employers manage the identified occupational health and safety risks?
- d. How does teleworking impact on such aspects as rest and meal times?
- e. Is the employer obligated to provide logistics support such as desk, chairs, and IT responding to ergonomic norms?
- f. Can a teleworker claim injury leave? In what circumstances?
- g. Do you know of any incident(s) of violence at work, harassment by the employer, cyberbully, and other types of psychosocial hazards in teleworking?

Freedom of association, collective bargaining, and employment relations

- a. Has social dialogue been weakened with the rise of telework? If so, in what way?
- b. How do employers ensure that there are sufficient opportunities for communication and engagement between trade unions and teleworkers?
- c. How does your union promote Freedom of Association and Collective Bargaining in teleworking environments?
- d. What are organizations doing to promote trust between workers and management in a teleworking environment?
- e. Do you know of instances of excessive surveillance and checking/monitoring by employers towards teleworkers?

Non-discrimination, equal access to training, opportunities and promotion

- a. Does the teleworker have work considered of equal value as compared to that of colleagues working on-site, with direct contact with the supervisor?
- b. Does the teleworker benefit from equal remuneration, opportunities for training, and promotion, as colleagues who are working on-site/at-office?
- c. What may be some other forms of discrimination that teleworkers face/could face, compared to office-based workers?)
- d. How do employers ensure that teleworkers have access to training opportunities?

Gender dimension of teleworking

- a. Would you say that teleworking represents a disadvantage for women? If yes, how so?
- b. Do you know if any actions are taken at the level of the organizations to be more gender-responsive and to not disadvantage any gender in a teleworking environment?
- c. Do women represent a large portion of teleworking force?
- d. Are women more likely to be recruited or redeployed as teleworkers? If yes, why so?

APPENDIX B. QUESTIONS FOR HUMAN RESOURCE MANAGERS

A. Telework at the organization

- What is the extent of teleworking in the organization?
- Was teleworking a practice prior to the advent of the Covid19 pandemic?
- What has been the degree of challenge in implementing telework in the organization?

Extremely difficult Somewhat difficult Not very difficult

- The Atypical Work Regulations and Work from Home Regulations make no real distinction between work from home, telework and atypical work; what are the implications of such terms being used interchangeably?
- Do you think that reforms must be brought to the Workers' Rights Act 2019 to classify the teleworker as a worker? Please explain a little.

B. Aspects regulated under Mauritian law

Voluntariness

- Is teleworking voluntary at your organization?
- Is it flexible?
- In the majority of cases, teleworking is at the initiative of whom?
 - Employer
 - Worker
- When teleworking is at the initiative of the manager, what usually happens if the worker refuses to telework?
- When teleworking is at the initiative of the worker, what are the responses of your organization?
- Under the Atypical Work Regulations, the employer may not accede to the request of the atypical worker to work from home when he has reasonable business grounds to refuse. The list of reasonable business grounds is not exhaustive. Do you believe that this confers more decision-making power to the employer to decide on whether the worker can telework or not?
- Does the teleworker have the ability to decide how he/she manages his/her working time? If so, in what way?
- How does the manager respond if/when the worker decides to manage his/her working time (for instance, through a combination of telework and office-based work)?

Hours of work and right to disconnect

- In the rise of teleworking,

| | Strongly agree | Agree | Neither agree nor disagree | Disagree | Strongly disagree | Your reason for your response? |
|--|-----------------------|-----------------------|----------------------------|-----------------------|-----------------------|--------------------------------|
| Teleworkers are more available than before. | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | |
| Teleworkers perform more work than before. | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | |
| Teleworkers are more efficient than they are at office site. | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | |
| Teleworkers are more productive than they are at office site | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | |

- b. How do your employees and their managers decide on disconnection time/time to receive and send emails, SMS, WhatsApp, or to make and receive calls?
- c. Do you think that teleworkers' work-life balance has improved with teleworking, as compared to office working? How so?
- d. Teleworking blurs boundaries between personal and work life. What are some of the actions taken by your organization to promote a work-life balance for teleworkers, if any?

Costs of maintaining office, equipment and connection

- a. How is assistance provided to employees when transitioning from office-based to teleworking?
- b. What are the reimbursement modalities in place to support teleworkers financially?

Occupational health and safety

- a. How are occupational health and safety risks of teleworking identified/assessed?
- b. How do you manage the identified occupational health and safety risks?
- c. How does teleworking impact on such aspects as rest and meal times?
- d. Are you obligated to provide logistics support such as desk, chairs, and IT responding to ergonomic norms?
- e. Can a teleworker claim injury leave? If yes, in what circumstances?
- f. Have you been informed by your teleworkers of any incident(s) of violence at work, harassment by a supervisor, cyberbully, and other types of psychosocial hazards in teleworking?

Freedom of association, collective bargaining, and employment relations

- a. Has social dialogue been strengthened or weakened with the rise of telework?
In what way?
- b. How do you ensure that there are sufficient opportunities for communication and engagement between trade unions (if any) and teleworkers?
- c. How does the union (if any) promote Freedom of Association and Collective Bargaining in teleworking environments?
- d. What is the organization doing to promote trust between teleworkers workers and management in a teleworking environment?
- e. How is the organization taking care to avoid excessive surveillance and checking/monitoring by supervisors towards teleworkers?

Non-discrimination, equal access to training, opportunities and promotion

- a. Does the teleworker have work considered of equal value as compared to that of colleagues working on-site, with direct contact with the supervisor?
- b. Does the teleworker benefit from equal remuneration, opportunities for training, and promotion, as colleagues who are working on-site/at-office?
- c. What may be some other forms of discrimination that teleworkers could potentially face, compared to office-based workers?
- d. How do you ensure that teleworkers have access to training opportunities?

Gender dimension of teleworking

- a. Would you say that teleworking represents a disadvantage for women?
If yes, how so?
- b. Have you taken any actions/initiatives to be more gender-responsive and to not disadvantage any gender in a teleworking environment? If so, please share these with us.
- c. Do women represent a large portion of your teleworking force?
- d. Are women more likely to be recruited or redeployed as teleworkers? If yes, why so?

Promoting teleworking in Mauritius

Please tell us of any particular initiative that you have taken, either at organizational, sectoral or national level to share your experience of teleworking strategies and/or to improve teleworking practices:

What, in your opinion, could be done at the legal and institutional levels to make teleworking work better in Mauritius?

What may be done at the practical level by organizations?

APPENDIX C. QUESTIONS FOR MINISTRY OF LABOR

Definitional aspects of telework

- a. What are the regional conventions, agreements or frameworks signed by Mauritius pertaining to workers' rights?
- b. As part of the Second Generation of the Decent Work Programme, the Working from Home Regulations was promulgated; how is the Working from Home Regulations any different from the Atypical Work Regulations?
- c. Under the regulations pertaining to telework in Mauritius, telework is classified as "atypical work". According to you, what are the implications of telework being classified as atypical work instead of having a legal definition of its own?
- d. Why is the teleworker not considered as a worker under the Workers' Rights Act 2019?
- e. The Atypical Work Regulations and Work from Home Regulations make no real distinction between work from home, telework and atypical work; what are the implications of such terms being used interchangeably?

Voluntariness

- a. In the event that a worker feels that telework is being imposed forcefully on him/her, what are the recourses available to him/her?
- b. How does the Ministry ensure that telework is not being unilaterally implemented by the employer?

Hours of work and right to disconnect

- a. What are some of the actions taken by the Ministry to ensure that workers do not suffer from an increase in workload / work pressure / other forms of work-related hardship during teleworking?
- b. How does the Ministry ensure that safeguards are in place with respect to disconnection time/time to receive and send emails, SMS, WhatsApp, or to make and receive calls?

Costs of maintaining office, equipment and connection

- a. How does the Ministry ensure that teleworkers do not experience additional financial burden such as in bearing the cost of equipment, internet connection, setting up a working space, furniture, etc.?

Occupational health and safety

- a. How is the Ministry ensuring that the provisions of the Occupational Safety and Health Act are protected and that teleworkers are not subjected to any work which may be harmful to their health and safety?
- b. What are the mechanisms in place to ensure that occupational health and safety risks are properly mitigated by employers for teleworkers?
- c. Do employers have the right to make surprise checks at the teleworkers' place of work?
- d. Does the labour inspectorate ensure that the employee is provided with logistical support such as appropriate desk, chairs, and IT responding to ergonomic norms?
- e. Does the labour inspectorate visit the teleworker's place of work at any time?
- f. Does the labour inspectorate check that employers are ensuring work-life balance for teleworkers?
- g. Do you know of any event of violence at work, harassment by the employer, cyberbully, and other types of psychosocial hazards in teleworking?
- h. What are some actions taken by the Ministry to curb domestic violence whose increased incidence is known to be directly associated to the rise in telework?

Respect for rights

- a. How does the Ministry ensure (for instance, are there investigations) that the teleworker is not being denied of his employment rights, specifically the following?
 - i. right to freedom of association
 - ii. equal access to training
 - iii. equal treatment
 - iv. non-discrimination etc.)

What recourses are available to the teleworker who is being denied of his basic employment rights?

- b. Specifically regarding telework, how is the Ministry promoting decent work and supporting employers and workers in creating a safe, conflict-free and productive telework place?
- c. The Employment Relations Act 2008 (ERA) has revised and consolidated the law relating to trade unions, fundamental rights of workers and employers, labour disputes and related matters with a view to underpinning collective bargaining and strengthening social dialogue. Specifically, regarding teleworking environments, how is the Ministry ensuring the above?
- d. Section 30 of the ERA provides for the building of a productive employment relationship through the promotion of good faith behaviour and mutual trust in all aspects of work relations; how is this being monitored in the teleworking environment?
- e. Are inspection visits carried out by the Inspection and Enforcement Section aimed at detecting and sanctioning cases of violation of teleworkers' rights?
- f. And, as and whenever detected, are any instances stopped forthwith and action taken against offenders? How so?
- g. The Workers' Rights Act 2019 makes provision for the protection of workers against different forms of violence, harassment, abuse, harm, bullying, threatening, intimidation, contempt, disdain, hindrance, ill treatment, etc); How is the Ministry ensuring that teleworkers are thus protected?

Non-discrimination, equal access to training, opportunities and promotion

- a. Does the teleworker have work considered of equal value as compared to that of colleagues working on-site, with direct contact with the supervisor?
- b. Does the teleworker benefit from equal remuneration, opportunities for training, and promotion, as colleagues who are working on-site/at-office?
- c. What may be some other forms of discrimination that teleworkers face/could face, compared to office-based workers?)
- d. How do employers ensure that teleworkers have access to training opportunities?

Gender dimension of teleworking

- a. Would you say that teleworking represents a disadvantage for women?
If yes, how so?
- b. Do women represent a large portion of teleworking force?
- c. Do you know if any actions are taken at the level of the organisations to be more gender-responsive and to not disadvantage any gender in a teleworking environment?
- d. Are women more likely to be recruited or redeployed as teleworkers?
If yes, why so?
- e. What is being done at the level of the Ministry to ensure that telework is not being exploited to introduce or reinforce gender inequalities?
- f. Should additional reforms be brought to the Workers' Rights Act 2019, for instance to classify the teleworker as a worker, or to cater for other aspects, such as those raised in the questions above?
- g. Does the labour inspectorate ensure that the employee is provided with logistical support such as appropriate desk, chairs, and IT responding to ergonomic norms?

APPENDIX D. TABLE OF ABBREVIATIONS

| | | |
|-------|-----------------------------|---|
| i. | Atypical Regulations | Workers' Rights (Atypical Work) Regulations 2019 |
| ii. | CCM | Commission for Conciliation and Mediation |
| iii. | EReA 2008 | Employment Relations Act 2008 (Act No.32 of 2008) as amended by the Employment Relations (Amendment) Act 2019 |
| iv. | ERT | Employment Relations Tribunal |
| v. | EU Agreement | European Union Framework Agreement on Telework |
| vi. | ILO | International Labour Organization |
| vii. | IRA | Industrial Relations Act 1973 |
| viii. | JCPC | Judicial Committee of the Privy Council |
| ix. | OSHA 2005 | Occupational Safety and Health Act 2005 |
| x. | Practical Guide | ILO Practical Guide to teleworking |
| xi. | PBAT | Public Bodies Appeal Tribunal |
| xii. | RO | Remuneration Orders |
| xiii. | UNI Global Union Guidelines | Guidelines by UNI Global Union for ensuring workers' rights |
| xiv. | WFH Regulations | Workers' Rights (Working from Home) Regulations 2020 |