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Committee on Economic, Social and Cultural Rights
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Consideration of reports submitted by States parties under articles 16 and 17 of the Covenant

Concluding observations of the Committee on Economic, Social and Cultural Rights

Mauritius

1. The Committee on Economic, Social and Cultural Rights considered the combined second to fourth periodic reports of Mauritius on the implementation of the International Covenant on Economic, Social and Cultural Rights (E/C.12/MUS/4) at its 9th, 10th and 11th meetings, held on 7 and 10 May 2010 (see E/C.12/2010/SR.9, 10 and 11), and adopted, at its 19th meeting, held on 17 May 2010, the following concluding observations.

A. Introduction

2. The Committee welcomes the submission of the combined second to fourth periodic reports of Mauritius and the written replies to its list of issues (E/C.12/MUS/Q/4/Add.1), although it regrets that the combined report was submitted almost 13 years late. The Committee appreciates the frank and constructive dialogue with the delegation of the State party, which included representatives with expertise on the subjects covered by the Covenant.

B. Positive aspects

3. The Committee welcomes the progress achieved by the State party in advancing the enjoyment of economic, social and cultural rights in the State party since the consideration of its initial report by the Committee.

4. The Committee notes with appreciation that the State party provides health care services and education up to the tertiary level free of charge.

5. The Committee welcomes the ratification by the State party of:

(a) Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (2008);

(b) Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (2009);

(c) Convention on the Rights of Persons with Disabilities (2010);

(d) International Labour Organization (ILO) Convention No. 182 (1999) on the Worst Forms of Child Labour (2000);

(e) Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (2005).

C. Factors and difficulties impeding the implementation of the Covenant

6. The Committee notes the absence of any significant factors or difficulties preventing the effective implementation of the Covenant in the State party.

D. Principal subjects of concerns and recommendations

7. The Committee is concerned that economic, social and cultural rights are essentially not enshrined in the Constitution, although some individual rights proclaimed therein are relevant to this category of rights. The Committee is also concerned that the Covenant provisions have not been incorporated in the domestic law and cannot be directly invoked by individuals before national courts. It notes that this situation has a restrictive impact on the scope of the competencies of the institutional guarantees of human rights, including courts, the National Human Rights Commission, and the Ombudsman's Office.

The Committee encourages the State Party to complete the planned amendment of the Constitution with a view to enshrining economic, social and cultural rights on an equal footing with other constitutional rights. The Committee also recommends that the State party accord the Covenant a legal status that would enable its provisions to be invoked directly within the domestic legal system, preferably by incorporating the Covenant provisions into the domestic law. In this regard the Committee refers to its general comment no. 9 (1998) on the domestic application of the Covenant.

8. The Committee is concerned that the draft national action plan on human rights does not specifically deal with economic, social and cultural rights. It is also concerned that this plan has been under finalization for several years.

The Committee recommends that the State party revise, finalize and adopt the draft national action plan on human rights and dedicate a section of it to economic, social and cultural rights. It also encourages the State party to consult widely with civil society, the National Human Rights Commission and the Ombudsman in the preparation of the national action plan.

9. The Committee is concerned that the National Human Rights Commission has no specific mandate to deal with economic, social and cultural rights as such, although it notes that the Commission can and does receive complaints against discriminatory treatment in relation to economic, social and cultural rights under section 16 of the Constitution.

The Committee recommends that the State party amend the Protection of Human Rights Act of 1998 in order to give the National Human Rights Commission a specific mandate to deal with economic, social and cultural rights.

10. The Committee is concerned that the State party has not adopted any policies or laws to protect refugees and asylum-seekers.

The Committee recommends that the State party enable asylum-seekers to exercise their right to seek asylum and that it ensure protection against refoulement in line with the widely recognized principle of non-refoulement. In this regard, the Committee also recommends that the State party consider ratifying the 1951 Convention relating to the Status of Refugees and its 1967 Protocol.

11. The Committee is concerned about the high level of poverty among Mauritian Creoles that largely prevents the enjoyment of human rights by those affected (art. 2, para. 2).

The Committee urges the State party to develop an effective strategy targeting poverty specifically among Mauritian Creoles, with due respect to their cultural rights.

12. The Committee is concerned that children with disabilities, children affected and/or infected by HIV/AIDS, and children from disadvantaged families often suffer under de facto discrimination (art. 2, para. 2).

The Committee urges the State party to adopt the necessary measures to prevent, diminish and eventually eliminate the conditions and attitudes which cause or perpetuate de facto discrimination against those groups of children, in line with the Committee's general comment no. 20 (2009) on non-discrimination in economic, social and cultural rights.

13. The Committee is concerned that, according to section 16, paragraph 4(b), of the Constitution, the non-discrimination clause in section 16, paragraph 1, of the Constitution does not apply to laws that make provisions with respect to non-nationals (art. 2).

In line with its general comment no. 20, the Committee recommends that the State party undertake to ensure the applicability of the non-discrimination clause to non-nationals.

14. The Committee is concerned that section 16, paragraph 4(c), of the Constitution exempts personal laws relating to adoption, marriage, divorce, burial or devolution of property on death from the non-discrimination clause in section 16, paragraph 1, of the Constitution, which particularly affects women (art. 3).

The Committee urges the State party to ensure that the ongoing constitutional reform and all personal laws relating to adoption, marriage, divorce, burial or devolution of property on death are governed by the principle of non-discrimination, and that it eliminate all legislation that may result in discrimination against women.

15. The Committee is concerned about the persistence of stereotypes regarding the division of responsibilities between women and men in the family, the community and in public life, where men are still considered the main source of income for the family and women are expected to be primarily responsible for household chores (art. 3).

The Committee recommends that the State party undertake measures to vigorously address gender-based prejudices and to promote the equal sharing of responsibilities in the family, community and public life. In this regard, the Committee draws the attention of the State party to its general comment no. 16 (2005) on the equal right of men and women to the enjoyment of all economic, social and cultural rights.

16. The Committee is concerned at the absence of a cross-cutting national minimum wage (art. 7).

The Committee encourages the State party to establish a cross-cutting national minimum wage, and ensure that it enables workers and their families to enjoy an adequate standard of living and that the minimum wage standard is thoroughly enforced. The Committee further encourages the State party to establish an effective

system of indexation and regular adjustment of the minimum wage to, inter alia, the cost of living.

17. The Committee is concerned about the concentration of women in the low-wage and unskilled labour sectors, the unemployment gap between women and men which reflects the disadvantageous situation of women on the labour market, the persisting wage differentials between women and men and the absence of a law requiring equal pay for work of equal value (art. 7).

The Committee recommends that efforts be made to eliminate occupational segregation in employment and the unemployment gap and wage differentials between women and men, including through the use of temporary special measures. It further recommends amending section 20 of the Employment Rights Act of 2008 with a view to ensuring equal pay for work of equal value.

18. The Committee is concerned at the persistence of sexual harassment in the workplace. While noting that section 38 of the Employment Rights Act of 2008 protects any worker who exercises any of the rights provided for in the Act against termination of employment, the Committee is concerned that many cases of sexual harassment go unreported because women are afraid of losing their jobs (art. 7).

The Committee recommends that the State party evaluate the effectiveness of the legal framework in place to combat sexual harassment in the workplace and provide a safe environment for women to report cases. It further recommends that the State party take the necessary steps to ensure that women are aware of their rights provided for in the Employment Rights Act.

19. The Committee is concerned that migrant workers face difficult living and working conditions, and are afforded little legal protection. It is further concerned at the vulnerability of migrant workers to violations of trade union rights, and that migrant workers who exercise their right to strike may be deported from the State party on the grounds of “breach of contract” (arts. 7 and 8).

The Committee recommends that the State party adopt a comprehensive legal framework for the protection of the rights of migrant workers, ensuring that the conditions of employment of all migrant workers are not less favourable than those granted to a local worker. The Committee also recommends that the State party take the necessary measures to guarantee that migrant workers may fully exercise their trade union rights both in law and in practice, and that they are protected from measures such as deportation for exercising these rights. It further recommends that the State party ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and ILO Convention No. 143 (1975) concerning Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers.

20. The Committee is concerned that, according to regulation 3 of the Social Aid Regulations of 1984, non-nationals are not entitled to social aid that is paid to poor households who do not have sufficient resources to meet their basic needs (art. 9).

The Committee recommends that the State party amend regulation 3 of the Social Aid Regulations of 1984 in order to ensure that non-national individuals and families who do not have sufficient resources to meet their basic needs are entitled to social aid.

The Committee encourages the State party to consider including in its welfare system a guaranteed minimum income that promotes a human rights-based approach and brings together already existing benefits to combat poverty among disadvantaged and marginalized individuals and groups, such as the social assistance scheme and income support scheme.

21. The Committee is concerned that, according to the Employment Rights Act of 2008 section 30, women with less than 12 months' continuous employment with the same employer are not entitled to paid maternity leave. It is further concerned that, according to section 31 of the same Act, men are entitled to paid paternity leave only if they have contracted civil or religious marriage to the mother of their child (art. 10).

The Committee recommends that the State party revise the Employment Rights Act, ensuring that all working mothers be accorded paid maternity leave, and that all fathers exercising parental responsibilities are entitled to paid paternity leave, regardless of their marital status.

22. The Committee is concerned at the persistent domestic violence against women in the State party, and that domestic violence is not specifically categorized as a criminal offence and can only be prosecuted as "assault". The Committee is particularly concerned that marital rape is not criminalized (art. 10).

The Committee recommends that the State party combat violence against women by making domestic violence a specific criminal offence, effectively implementing the Protection from Domestic Violence Act of 1997 and evaluating the National Action Plan to Combat Domestic Violence launched in 2007. The Committee also recommends that the State party ensure victims' access to justice, by encouraging the reporting of crimes and ensuring that perpetrators are prosecuted and punished. The Committee calls upon the State party to ensure that marital rape constitutes a criminal offence. It further requests the State party to raise public awareness, through the media and education programmes on violence against women.

23. The Committee is concerned at the persistent problem with cases of child abuse and neglect in the State party (art. 10).

The Committee recommends that the State party take the necessary measures to combat child abuse and neglect, including explicitly prohibiting corporal punishment at home and in alternative care settings and as a disciplinary measure in the penal system.

24. The Committee is concerned at cases of sexual exploitation of children, including reports that some schoolgirls voluntarily work in conjunction with prostitution rings, while others are forced into prostitution (art. 10).

The Committee recommends that the State party take all the necessary measures, including of a legal nature, to combat the sexual exploitation of children. It further recommends that the State party ratify the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, signed by the State party in 2001, and amend its laws to be fully compliant with this Protocol.

25. The Committee is concerned that abortion is criminalized in all settings, including when the mother's life is at risk, and when the pregnancy is the result of rape. It is further concerned by the failure of the State party to provide exact information on sexual and reproductive health services and education (arts. 10 and 12).

The Committee recommends that the State party amend section 235 of the Criminal Code in order to allow for abortion in cases of therapeutic abortion and when pregnancy is result of rape or incest. It further recommends that the State party make sexual and reproductive health services widely available, and mainstream sexual and reproductive health education in schools.

26. The Committee is concerned that 10 per cent of Mauritians are estimated to be living in poverty, and, in particular, that about 40 per cent of the population on Rodrigues Island

live below the poverty level. It is further concerned that some regions are deprived of water supply and hygienic living conditions, particularly on Rodrigues Island (art. 11).

The Committee urges the State party to take immediate and effective measures to combat poverty and ensure that the population has affordable access to water supply and hygienic living conditions, particularly on Rodrigues Island, in line with its general comment No. 4 (1991) on the right to adequate housing and general comment No. 15 (2002) on the right to water and its statement on poverty and the International Covenant on Economic, Social and Cultural Rights (E/C.12/2001/10).

27. The Committee is concerned at the alarmingly high number of injecting drug users in the State party. It is further concerned at reports that the National Drug Control Master Plan 2008-2012 was never officially endorsed and is not being used by the various stakeholders concerned. The Committee is also concerned about the sharp increase in cases of HIV/AIDS, particularly concerning intravenous drug users, sex workers and prison inmates (art. 12).

The Committee recommends that the State party undertake a comprehensive approach to combat its serious drug problem. In order to achieve the progressive realization of the right to the highest attainable standard of physical and mental health for people who inject drugs and to ensure that this group may benefit from scientific progress and its applications (art. 15, para. 1(b)), the State party should implement in full the recommendations made by the World Health Organization in 2009 designed to improve the availability, accessibility and quality of harm reduction services, in particular needle and syringe exchange and opioid substitution therapy with methadone. People who use drugs should be a key partner in this initiative. As a matter of urgency, the State party should:

(a) Scale up needle and syringe programmes to all geographical areas. The Government should amend the Dangerous Drugs Act of 2000 to remove prohibitions on distributing or carrying drug paraphernalia as these impede HIV prevention services;

(b) Implement pilot prison needle and syringe exchanges and opioid substitution therapy programmes based on international best practice standards;

(c) Remove age barriers to accessing opioid substitution therapy and develop youth-friendly harm reduction services tailored to the specific needs of young people who use drugs;

(d) Remove restrictions on access to residential shelters for women who use drugs;

(e) Make hepatitis C treatment freely available to all injecting drug users;

(f) With regard to addicted persons, consider decriminalization and public health-based measures such as prescription of buprenorphine.

28. The Committee is concerned at the high and increasing rate of drug trafficking and related corruption in the State party (art. 12).

The Committee recommends that the State party take the necessary measures to combat drug trafficking and related corruption. At the same time, the Committee recommends that these measures fully comply with the international human rights standards, including in relation to the abolition of the death penalty.

29. The Committee is concerned about the lack of information on the effectiveness of the strategies developed to combat chronic diseases, especially diabetes, tobacco use, and obesity and overweight (art. 12).

The Committee recommends that the State party evaluate the effectiveness of its strategies to combat the above-mentioned health problems, and if necessary, undertake further measures to that end. In this regard it draws the attention of the State party to its general comment No. 14 (2000) on the right to the highest attainable standard of physical and mental health.

30. The Committee is concerned about the slow progress in education, in particular among children in some disadvantaged areas, and that one third of all children do not pass the Primary School Leaving Certificate examinations. The Committee is of the view that the use of English as the language of instruction contributes to this situation, in the light of the fact that Creole is spoken by a large majority of the population. The Committee is also concerned about the negative impact of private tuition on the universal access by children to secondary education (art. 13).

The Committee recommends that the State party increase its efforts to ensure that children in disadvantaged areas are able to complete school, including by maintaining and extending the system of Zones d'Éducation Prioritaire. It further recommends that the State party continue its experiments with the use of Creole as a medium of instruction in schools, and that it produce educational materials in Creole. The Committee also recommends that the State party eliminate the competitive system for entry to secondary schools and admit children to secondary schools near to their place of residence and not based on their performance.

The Committee recommends that the State party strengthen its efforts to eliminate situations that may be discriminatory against children with disabilities and take steps to ensure that all children with disabilities can, as appropriate, study in mainstream schools. In order to implement this approach, the State party should ensure that teachers are trained to educate children with disabilities within regular schools, in line with the Committee's general comment No. 5 (1994) on persons with disabilities.

31. The Committee is concerned that the Mauritian Cultural Centre has ceased to function (art. 15).

The Committee recommends that the State party conclude its revision of the objectives of the Mauritian Cultural Centre, re-open it and use it to consolidate national unity, as envisaged.

32. The Committee encourages the State party to consider signing and ratifying the Optional Protocol to the Covenant.

33. The Committee recommends that the State party provide, in its fifth periodic report, updated statistical data on the enjoyment of each Covenant right, disaggregated by age, gender, ethnic origin, urban/rural population and other relevant status, on an annual comparative basis over the past five years.

34. The Committee requests the State party to disseminate the present concluding observations widely among all levels of society, in particular among State officials, the judiciary and civil society organizations, to translate and publicize them as far as possible, and to inform the Committee on the steps taken to implement them in its next periodic report. It also encourages the State party to continue engaging national human rights institutions, non-governmental organizations and other members of civil society in the process of discussion at the national level prior to the submission of its next periodic report.

35. The Committee encourages the State party to consider extending an invitation to the special procedures of the Human Rights Council to visit the country with a view to enhancing the dialogue, especially with special rapporteurs in the area of economic, social and cultural rights.

36. The Committee recommends that the State party considers withdrawing its interpretative declaration concerning article 24, paragraph 2(b), of the Convention on the Rights of Persons with Disabilities in relation to the policy of inclusive education, as this affects the object and purpose of the Convention. The Committee further recommends that the State party withdraw its reservation concerning article 11 of that Convention, by which it seeks to exclude measures specified in article 11 “unless permitted by domestic legislation expressly providing for the taking of such measures”, as this goes to the substance of the provision and affects the object and purpose of the Convention.

37. The Committee requests the State party to submit its fifth periodic report in line with the revised treaty-specific reporting guidelines of the Committee (E/C.12/2008/2), by 30 June 2015.
