Revolutionary Illusions
or
Counter-Revolutionary Evil Bugs?

URGENT Need for Fundamental Amendments to be brought to the proposed

WORKERS RIGHTS BILL

and the

THE EMPLOYMENT RELATIONS (AMENDMENT) BILL

1. Introduction Summary

- **The Process**

  From the very outset the GWF-JNP protest against the process adopted by government leading to the presentation of the two pieces of legislation.

  A responsible government, at 5th months of the termination of its mandate, cannot then adopt a position (or used proxies) to say "*take it as it is, or leave it, because they are bosses out there 'who are not agreeable' to what is being proposed*"!

  The working people have not voted for a new government in 2014 to adopt worsened position than the previous one. The working people have voted against the previous regime for the new one to stand and defend the 450,000 people, if they are under attack by a tiny few economic oligarchs leading Business Mauritius.

- **The dynamics of the proposed new legal framework on the world of work**

  - Industrial and Labour Legislations can never be analysed without understanding that the unjust and unequal power relations between the two classes: the capitalist and working class. In this system the majority of human being, the working class are obliged to sell their labour power to the capitalist class in order to subsist. This is the harsh reality of the system, which inevitably generates conflicts of interests and power relations. Industrial and Labour Legislations are instruments trying to regulate these conflict relations, to determine the degree of exploitation in such a system and determine the share of surplus which directed towards the working people. Understanding changes in Industrial and Labour Legislation is to understand the dynamics that these changes will generate in the exploitation processes, the balance of forces between the classes and between the employer and the workers. It is certainly not an additions of single measures or can be reduced an GP students Essay, in terms of 'advantages' and 'disadvantages'

  - When we analyse the proposed Amendments of the two pieces of legislation, it primarily translates the agenda of the capitalist class:

    - *to impose and/or sneaking structural changes in the industrial and wage setting mechanism of Mauritius in order to deregulate provisions of laws and minimal work conditions;*

    - *force the gradual streamlining and replacement of laws which guaranteed minimal workers rights by news mechanisms which enable derogation of the very existing legal framework and work conditions; and*

    - *to impose a new balance of forces /power which is less favorable to the working class in the sphere of industrial relations and in the class society, thus enabling derogations of minimal workers' conditions and increase the level of exploitation.*

  - The new *Workers Rights Bills* while in appearance enhances many workers rights, concurrently introduces several **evil bugs** to nullify some of the existing rights and many of the very new rights. This is why, what is being proposed has a pernicious character and is leading to such incoherent and contradictory reactions from the trade union movement.

  - The new proposed industrial and labour legal framework pursue the **old** agenda of the economic elites to replace gradually the National Remuneration Board and Sectoral

Remuneration Orders and the legal framework governing the Annual Salary Compensation Mechanism. The new agenda is to introduce a new sets of 'rights' in the Workers Rights Bill while in parallel insert in mechanisms (the evil bugs) which will render most of the 'rights' caduque, obsolete, thus nullifying all the seemingly 'revolutionary' gains and advancements.

- **The Workers Rights introduces several major evil bugs, within :**
  - the new PRGF legal framework
  - the new proposed Redundancy Board framework
  - the application of the new Workers Rights Bill, in combination with the amendment in the Employment Relations Bill, will enable the possibility of massive 'derogation' of minimal working conditions and further consolidate the dangerous principle of *Concession Bargaining.*

- **Unacceptable regressive clauses**

  Furthermore the two pieces of legislation contain a few totally unacceptable clauses, which would stifle the rights of workers which we deal later in this Paper,

- **Undermining and weakening workers in Collective Bargaining processes**

  In Parallel many of the Amendments in Employment Relations Act will severely undermine the position of workers in front of employers in collective bargaining process and is certainly not in conformity with ILO Expert views. We will explain in details some of the dynamics and absurdities of what is being proposed.

- **Urgent Fundamental Amendments prior to enactment**

  This is why we request for urgent fundamental amendments be brought before the two proposed legislation are enacted by the National Assembly.

2. The Portable Retirement Gratuity Fund (PRGF) and its evil bugs

The GWF-JNP are amongst the first of unions having proposed and supported the idea of a portable system of severance allowance since back 1987, to cater for summary dismissal of workers, termination of employment, and proliferation of the casualisation of labour, whereby statutory payments of gratuity were rendered obsolete. Thousands of workers of this country have been victims of such a situation. So the GWF-JNP is fully in favour of a system to secure payment of a gratuity in recognition of the past years of services an employee spent with an employer.

While the GWF and the trade union movement have been in favour of a system of Portable Severance Allowance, the GWF has strongly warned against any new system which would undermine the acquired rights of any worker of the country.

It was in the above context that the GWF raised serious pertinent objections supported by the factual data and analysis, which have been acknowledged by officers of the Ministry of Labour and the SICOM representative at an official meeting held on the 30th November 2018 at the Ministry of Labour.

We regret that there has been a rupture of communication with the unions on the issue of PRGF, while information published in the media talked on parallel secretive discussions being held at the Ministry of Finance on the PRGF with employer's organisations, and a few privileged people having been accustomed to the PMO.

This rupture of the **official** consultation has led to an 'evil bug' being introduced in the Workers Rights Bill in parallel to the well intended PRGF. As it stands, the introduction of the PRGF as proposed by Government, creates a fundamental contradiction and generates its contrary dynamics: **it generates the seeds of its own destruction.**

The Government and its proxies argue that the PRGF in its present form will not be less favorable to acquired rights of workers and existing provisions on Gratuity at Retirement/Death of 15 days' remuneration per year of service, for workers of the private sector. They argue that the proposed PRGF system cannot, in any circumstances, be less favorable to the present Gratuity Regime of Gratuity on Retirement and/or at Death.

The GWF-JNP argue the contrary.

The PRGF as it stands in the Workers'Rights Bill, will **NOT** apply to any worker who is employed by an employer running a Private Pension Scheme or a worker whose retirement benefits are payable in accordance with a Private Pension Scheme. Below are the relevant sections of the proposed law.

> ***93. Contributions to Portable Retirement Gratuity Fund***
>
> (1) An employer *other than* –
>
> *(a) an employer who has a private pension scheme;*
>
> ***89. Eligibility to join the Portable Retirement Gratuity Fund***
>
> *(1) Any worker or self-employed, other than –*
>
> *(a) a job contractor;*
>
> *(b) a public officer or a local government officer; or*
>
> *(c) a worker whose retirement benefits are payable –*

(i) under the Statutory Bodies Pension Funds Act; or
(ii) in accordance with a private pension scheme; and...

What does it mean for PRGF not to be applied to workers working with '*an employer who has a Private Pension Scheme'*? They will be entitled to **only** retirement benefits as per Private Pension Scheme, **not**to any entitlement under PRGF and **not** any Gratuity which is presently a right derived in section 49 of the Employment Rights Act, which recognises the principle of gratuity of 15 Days' Remuneration per year of service in addition to any Pension Benefit under a Private Pension Scheme operated by an employer.

Retirement benefits under Private Pension Scheme (PPS) is the total amount of accrued benefits based on **Employees** plus **Employers contributions.** The share of employer's and employee's contribution varies around 6% or more, and employees contribution varies around 3% or more, depending on the age of the employees. Totaling normally 9% or more of monthly contribution of the basic salary of a worker to the Private Pension Fund. Whereas Gratuity under Section 49 of the existing law and the proposed PRGF Gratuity at Retirement or Death is payable **solely** by employers at the rate of 5.8% (15 days per year of service) based on Remuneration.

Pension Benefits under a PPS is payable after deducting the employer's share of contributions in accordance with Section 49(3)(a) and (b) of the existing Employment Rights Act. The balance is paid as follows: 25% as Lump Sum and the remaining is paid as a monthly lifetime pension. Whereas, Gratuity payment under existing regime or under PRGF is payable as a Lump Sum Payment at one go.

It is also important to understand that the proposed new legal framework under the Workers Rights Bill does not make PRGF or Private Pension Scheme **optional** where an employer operates a Private Pension Scheme. According to Section 93 (1) (a), adherence to the PRGF is at the sole discretion of the employer.

Furthermore we should note that while the PRGF system addresses the issue of balance of 15 days remuneration when an employee leaves a job, same is left attended for employees falling under a Private Pension Scheme.

The GWF-JNP spokespersons made the arguments, as from day 1 the Bill was released, that the exclusion of employees under Private Pension Scheme from the PRGF is prejudicial to them. The Minister, his technicians and some trade unionists turning themselves into blind proxies, then replied that no such prejudice will be caused. Some even went on stating that we have misread this section of the law, because there is a 'protective clause' which has been introduced to safeguard the interest of employees under Private Pension Fund Scheme.

Thus, they concluded that the new system cannot be detrimental to any worker of the country and cannot in anyway be regressive and it is even ….revolutionary! The GWF-JNP spokespersons were crucified by a section of the media, and turned into vulgar 'politicians', as in times when the reactionary oligarchs were attacking working class spokespersons, like Emmanuel Anquetil, who was a trade union leader and a political leader as well.

So let us look at the famous guarantee? It is found in a proposed amendment to be brought to the *Private Pension Schemes (Licensing and Authorisation) Rules 2012* as below:

The Private Pension Schemes (Licensing and Authorisation) Rules 2012 is amended, in regulation 5 –

(a) in paragraph (3) –

(i) by revoking subparagraph (a);

(ii) in subparagraph (b), by deleting the words “before 2 years of service”;

(iii) in subparagraph (c), by deleting the words “after 2 years of service”;

(b) by adding the following new paragraph –

(7) **Where the value of the accrued benefits with an employer is less than the amount specified in section 95 of the Workers’ Rights Act 2019, the employer shall pay the balance in favour of the workers.**

The ‘Guarantee’ is in fact part of the evil bug that has been inserted in the proposed new system.

Why?

Given that the ‘accrued benefits with an employer’ is the benefit resulting from the **<u>combined</u>** contribution of the <u>employer plus employee,</u> it will in general be less than15 days’ remuneration per year of service as specified in Section 95 of the Workers Rights Bill! Thus ***‘an employer who has a private pension scheme’* will in almost all the cases, never pay ANY balance in favour of ANY worker.** Hence, rendering the ‘guarantee’ of the amendment to the *Private Pension Schemes (Licensing and Authorisation) Rules 2012* obsolete or rather thus null and void.

In the final analysis the proposed PRGF legal framework, with its provisions on Private Pension Scheme, **ELIMINATES the provision of a Gratuity at Retirement or Death which is guaranteed in the Section 49 of the Employment Rights Act for all employees under a Private Pension Scheme.** This will cause very serious prejudices and substantial loss of benefits to the vast majority of workers presently in Private Pension Scheme, under defined contribution scheme, which is estimated at around 50,000 employees presently. A deeper analysis may in some cases, even show prejudices to Defined Pensions Benefits in Private Pension Scheme, when compared to the dual system of 15 Days Gratuity + Retirement Benefits from Private Pension Scheme. It is up to the government actuary to prove the contrary.

According to calculations based <u>on real cases</u> in which the GWF-JNP is involved, we have observed the following:

UNDER EXISTING RETIREMENT GRATUITY REGIME

Private Pension Fund (PPF) Accrued Benefits	Rs	%
Employee’s Share	155,557	31.91%
Employer’s Share	331,934	68.09%
Total	487,491	100.00%
Lumpsum payable	**121,873**	**25.00%**
Monthly Pension	3166	-
Monthly Pension as per Employer’s Share	2156	68.09%

Lumpsum payable under Employment Rights Act (ERIA)	**Rs**
One day remuneration as per section 49(5)(a)	1,056
Yearly rate of gratuity as per payslip (15 day’s)	15,835
Lumpsum under section 49(2)(a)	244,116
Deductions under ERIA as regard to Employer’s share – Section 49(3)	
Half of Lumpsum payable by PPF – Section 49(3)(a)	41,492
60 X Monthly Pension payable by PPF – Section 49(3)(b)	129,352
Lumpsum Due by Employer under ERIA	**73,272**

TOTAL LUMPSUM expected at retirement (Rs)	**195,145**
- in addition to a monthly pension (Rs)	**3,166**

As per Workers Rigjhts Bill circulated

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Employer’s Share	331,934	68.09%
Total	487,491	100.00%
Lumpsum payable	**121,873**	**25.00%**
Monthly Pension	3166	-
Monthly Pension as per Employer’s Share	N/A	N/A

	Rs
Lumpsum due by Employer as per new regulation	**0**
Lumpsum payable by PRGF	**0**

TOTAL LUMPSUM expected at retirement (Rs)	**121,873**
- in addition to a monthly pension (Rs)	**3,166**

From the data from other enterprises we reached the same conclusion:

- *An employee with 42.8 years of service entitled to Rs 660,000 of Retirement Gratuity under the existing regime (laws) will lose around Rs 295,000 of Lump Sum.*

- *An employee with 30 years of service entitled to Rs 427,000 of Retirement Gratuity under the existing regime (laws) will lose Rs 15,000*

As it is more ***'cost effective'*** from the point of view of an employer to run a Private Pension Scheme, no one needs to have a 'crystal ball' to foresee the dynamic that the new '*revolutionary*' system will be unleashing! The 50,000 workers will become easily 100,000 in one year and even 500,000 for the next five to 10 years. As it is obvious that employers would find it much cheaper to set up Private Pension Scheme than to operate under the proposed PRGF legal framework.

<u>This means that the overall dynamics of the proposed PRGF new legal set up would lead to the beginning of the death of the PRGF itself, as from the day the PRGF is enacted, proclaimed and is operational!</u>

Equally alarming, is the fact that the day the PRGF proposed mechanism enters in force it will create the conditions for the ANIHILATION of the VERY RIGHT to a Gratuity at Retirement or Death as almost all employers would migrate towards a Private Pension Scheme, where 15 Days Gratuity no more exists!

The old dream of the economic oligarchs, now turning more and more into financial capital, will be fulfilled: *to take over of the whole lucrative 'pension business' creating new 'capital' from labour power and hurling the working class back into the nightmare of the old "Pansion Commarmond'!*

Thus what is presented as 'revolutionary' can also be an illusion if we do not address the evil bug perniciously sneaking into the new legal system.

The evil bug inserted into the PRGF system is only one of the various evil bugs, into the whole sets of the new legislations, which we will elaborate in the next sections of our Memorandum.

This is why the GWF -JNP are urging that two fundamental amendment be brought so that the introduction PRGF be <u>**added**</u> to the present regime of Gratuity at Retirement, not be abstracted.

Amendment Proposal 1 – Workers Rights Bill

We propose that an Amendment be brought to the Workers Right Bill to ensure that the Gratuity Right as is guaranteed in the present Sections 49 and 49A of the Employment Rights Act be included and be applied to all workers under a Pension Scheme or any provident fund or scheme set up by the employer for the benefit of the workers.

This includes the payment of a Gratuity of 15 Days Remuneration per Year of Service and the deduction of employer's share of contribution to the Pension Scheme as per existing section of 49(3)(a)(b) in the present Workers Rights Bill, with amendment to ensure that the 15 days calculations is based on the (amended, see below) provision of 95 (4) of the Workers Rights Bill, so that the Right to a Gratuity applies to all workers, including those under a Private Pension Scheme run by an employer.

We must stress that we are not at all in favour of the above guarantee be included in *The Private Pension Schemes (Licensing and Authorisation) Rules 2012*, we believe that workers rights should be found in the Workers Rights Act, not in Regulations made by the Financial Service Commission.

In addition, it follows, that the Amendment to the Private Pension Schemes (Licensing and Authorisation) Rules 2012 is amended, in regulation 5 – (7) be deleted.

Amendment Proposal 2 – Workers Rights Bill

In addition we propose that the mode of calculation of One Day Remuneration be amended so as not to cause prejudices to workers on a 40 hour week. An amendment should be brought so that in all sectors where a law or any agreement specify that a 40 hours week is in force, the calculation of a day of remuneration should be based on the total Monthly Remuneration divided by 22 days.

Amendment Proposal 3 – Workers Rights Bill

In the same vein, we propose that it is urgent and critical to amend section 18 of the Workers Rights Bill so that the calculations of Hourly Rate for any purposes, be the Monthly basic salary divided by 22 days divided by 8 Hours, for all sectors where the 40 hours working week is applicable. Leaving such an 'evil bug' in the present proposed legislation, will potentially seriously undermine the right of thousands of workers in the sugar, transport, port and other sectors who fought restless struggles to achieve this social progress.

3. Minimal Working conditions in the Workers Right Bill and its evil bugs

The second fundamental flaw, which has escaped almost all commentators who decreed the law as 'revolutionary', is the major entrenchment of the principle of derogation to enable the altering of the conditions of service of worker so as to make them less favourable than what is stipulated in the new Workers Right Bill.

These kind of derogation, named '**concession bargaining**' in industrial law, was first introduced in the legislation in 2008 in the Employment Relations Act section 57, now the new Government has wide opened the flood gate in the Workers Rights Bill. Prior to 2008, no minimal work conditions stipulated in laws were negotiable by way of any form of agreement, so as to make them become less favorable.

As it stands the Workers Rights Bill in Section 3 on Application of the Act in Section (3) (3) (d), (e), and (f):

- enables derogation of the fundamental minimal rights & work conditions found in the WRB by way of **collective agreement** to be negotiated by unions in more and more unfavorable conditions or negotiated by weak or none-representative unions.
- enables derogation of the fundamental minimal rights & work conditions in almost 85% of sectors where trade unions does not exist, by the generalisation of the mechanism of **Salary Commissioner Report**, coupled with famous individual "**Option Form'** to coerce unionised employees to sign unfavorable agreement.
- enables derogation of the fundamental minimal rights & work conditions of the weakest part of the Mauritius population, vulnerable persons, women, young workers by the introduction of **Atypical Worker** Agreement.

The Workers Rights Bill states "*This Act shall not apply to*" the three above cases, with exception for only specific clauses which have listed. This means that many 'other' existing minimal work conditions and 'beautiful' rights which has been added, can be altered by way of any one of the above 3 types of agreements!

While the present proposals undermines the mechanism of Collective Bargaining in an unfavorable manner for the worker, thus putting the worker and union in a weak position in collective bargaining process, the Workers Rights Bill is adding two totally unacceptable mechanism (Salary Commissioner Report/individual Option Form agreement and Atypical Workers Agreement) leaving workers at the mercy of unscrupulous employers.

Salary Commissioner Report/Individual Agreement

The addition of alteration by way of individual agreement, is nothing more than what was the proposal of the bosses to be able to sign agreement with 'group of employees' where unions do not exist. This was included in the amendment brought by the last government, and was removed after unions and the ...then opposition protested!

Atypical Agreement

The newly found '*Atypical Agreement*" is one of the major social regressions contained in this Bill. It should be noted that, when one reads the exact wording of the Bill, all the reasons given there are mere scams, to introduce a new type of employment which derogates substantially the existing statutory minima.

The Section in the WRB on Atypical Work curiously reads as follows

> 10. Atypical work
>
> (1) Notwithstanding this Act, a worker may, <u>where there is an agreement between him and his employer</u>, work as an atypical worker, the employment relationship of which may be different from an employment relationship which applies to any other worker.
>
> (2) The Minister may, for the purpose of this section, make such regulations as he thinks fit.
>
> (3) In this section –
>
> "worker" –
> (a) means an atypical worker; and
> (b) includes –
> (i) a homeworker;
> (ii) an online platform worker; or
> (iii) 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.

First, the definition is large enough to fit in ANY type of work.

Second, it is the Agreement between the employer and a potential employee which will define in the final analysis what is Atypical worker or not, <u>and not the law</u>. So this means that, in the unequal balance of force, when an employee, a youngster, a woman, a vulnerable person in society is seeking a job, an employer has now an immediate interest in proposing an '*Atypical Contract of Employment*" to these kind of workers or ANY worker.

4. Annual Salary Compensation can now be subjected to alteration!

In the midst of the list of statutory minimal which can be derogated the WRB has insidiously put in law a longstanding demand of the bosses: that is the possibility to legally derogate from the payment of the Additional Remuneration for the increase in the cost of living!

The Workers Rights Bill has now included the provision for the Payment of Additional Remuneration for An annual salary compensation within this Act. It is only the amount of compensation that have been left to be prescribed annually. Now, when one looks at this new insertion, it might not look suspicious in the first place. But, it is!

Now that Additional Remuneration Payment has been inserted in the Workers Rights Bill, it is opened to alteration either by way of Collective Agreement or by way of Individual Agreement. Previously, during a collective bargaining a union could easily object to a proposal for non payment or only partial payment of additional annual salary compensation on the basis that the law rendered it illegal to do so. Now this issue can be subject to alteration/derogation via Collective Agreement.

Secondly, Additional Remuneration Payment can also be altered, via a Salary Commissioner's Report lucratively paid by the employer, by imposing to an individual worker 'Agreement'. This potentially means that employers in some 85% where there is no unions, can simply eliminates or curtails the Annual Salary Compensation. All now depends on the balance of forces, not as a matter of Statutory Rights.

And almost all the new provisions, as we have seen in the case of Salary Compensation, have been inserted only to be then derogated! Woaw .… revolutionary it is ..hein!

From the explanation above, it is clear that many of the fundamental provisions protecting minimal rights and working conditions of workers, such as in the list below can be easily altered!

Below is a list of the Minimal Rights which can be altered in a less favorable manner under the proposed Workers Rights Bill.

PART III – MINIMUM AGE FOR EMPLOYMENT
13.Employment of children and young persons

PART IV – HOURS OF WORK
14.Normal working hours
15.Compressed hours
16.Flexitime
17.Shift work
18.Notional calculation of basic hourly rate
19.Overtime
20.Public holiday
21.Meal and tea breaks
22.Meal allowance

PART VI – PROTECTION OF REMUNERATION
31.Joint liability on remuneration
32.Protective order
33.Grant of protective order
34.Duration of protective order
35.Order in respect of immovable property
36.Variation and discharge of protective order
37.Wage Guarantee Fund Account
38.Particulars of Wage Guarantee Fund Account

39.Redemption of claim
40.Recovery of over payment

PART VII – OTHER CONDITIONS OF EMPLOYMENT
41.Transport of workers
42.Annual leave
43.Sick leave
44.Medical facilities
45.Maternity benefits
46.Paternity leave
47.Vacation leave
48.Special leave
49.Juror's leave
50.Leave to participate in international sport events
51.Leave to attend Court
52.End of year bonus
53.Promotion
54.Tools
55.Communication facilities

The above shows that it is in fact a major 'counter revolutions' in terms of protection of minimal workers rights and conditions of work that we might be witnessing if the Bill is enacted as it is. For sure..it cannot, in any circumstances, be described as 'Revolutionary'.

For the sake of precision, we are annexing in this document a Table highlighting which minimal working conditions or rights can be derogated in a less favorable manner and by which type of Agreements under the Section 3 (3) (d),(e) and (f). ***(See Annex 1)***

The possibility for the alteration of minimal statutory work conditions is in fact the **second major Evil Bugs** inserted in the Workers Rights Bill.

Amendments 4 to the Workers Rights Bill

This Evil Bug must by all means be removed by a fundamental amendment, if the government claims they want indeed to have a Workers **Rights** Bill '**<u>to better protect employees</u>**'as being the terms of reference of this government. Rights cannot be subject to negotiation or alteration!

The GWF-JNP therefore proposes the following amendments.

> That in the Section on Application of the Act, Section 3 (3) (d),(e) and (f) be deleted and a new section 3 (4) be added which reads as follows:
>
> > (a) Nothing in this Act shall prevent an employer from granting a worker conditions of employment more favourable than those specified in the Act, by way of any Agreement or otherwise.
> >
> > (b) Nothing in this Act shall authorise an employer of a worker in his service to alter his conditions of employment so as to make them less favourable than what is stipulated in this Act, by way of any Agreement or otherwise.
> >
> > (c) Nothing in this Act shall authorise an employer to propose to a person seeking a job to enter into individual agreement of determinate or indeterminate duration which contains provisions inconsistent and less favorable than what is stipulated in this Act.

(d) Any agreement by a worker or a union to relinquish any of the rights stipulated in the Workers Rights Act, so as to make them less favourable to the worker, shall be null and void.

(e) Any employer or trade union representative who fails to comply with any of the provisions mentioned in this section shall commit an offence and shall, on conviction, be liable to imprisonment for a term not exceeding six months and to a fine not exceeding 100,000 rupees.

3. The new Redundancy Board and its evil bugs

Since the fundamental change to introduce the bosses agenda of '*hire & fire*' reflected in the introduction of principle '*lisansie apre zistifie*" in industrial and labour laws in Mauritius by the previous government in 2008, the union movement has been fighting hard for a reversal: to re-introduce the principle of '*zistifie apre lisansie*'.

A half victory was won in the 2013, after many of us were arrested on the 12th December 2012. The then government introduced the mandatory obligation for bosses to 'consult' the unions prior to any dismissal for economic reasons, and introduced the principle of 're-instatement'. Though it was a relative advancement, it maintained the principle of '*lisansie apre zistifie*' in the law. At the time, the people in the present government, made vehement speeches in the National Assembly, when the Amendments Bills were debated and stated that we should return to principle of "*zistifie apre lisansie*' of the time of Termination of Contract of Service Board – TCSB. The Hansard of the National Assembly is here to prove it.

The promise contaminated with the Evil Bug

So the introduction of a Redundancy Board in the present Workers Rights Bill was supposed to the follow up of the speech and electoral promises of the present government. Indeed, the proposal made goes in the right direction and would re-introduce the principle of '*zistifie apre lisansie*'.
Except ..again, that Evil Bugs have stepped in to '*vir tou anba lao*'.

When one studies the whole section Redundancy Board section in the WRB one can easily understand the way the whole issue of Redundancy and in fact the whole issue of labour laws changes have been tackled by the government. Some well intended initial proposals have been deliberately **sabotaged and subverted** to produce its very contrary!

The Redundancy section starting by section 67, is powerfully crafted up to Section 5, which says the following:

> *(5) Where no agreement is reached under subsection (3) or (4), or where there has been no negotiation, an employer who takes a course of action as specified in subsection (1), shall give written notice to the Redundancy Board set up under section 68, together with a statement showing cause for the reduction or closure at least 30 days before the intended reduction or closing down, as the case may be.*

It is then clear that the 'fifth column of the Economic Oligarchs' within the present government, have stepped in to sabotage the very introduction of the Redundancy Board, thus nullifying all the pretence of introducing the principle of '*zistifie apre lisansie*', that is introducing a mechanism **prior** to any reduction of workforce.

Here are the Evil Bugs which they have inserted:

(6) An employer shall not reduce the number of workers in his employment either temporarily or permanently before the time specified in section 70(8) and (9).

> *[70. (8) The Board shall complete its proceedings within 30 days from the date of notification by the employer.*
>
> *70. (9) The Board may extend the period specified in subsection (8) for such longer period as may be agreed by the parties to allow the Board to complete its proceedings.]*

(7) Subject to subsection (8), a reduction of workforce or a closing down of an enterprise shall be deemed to be unjustified where the employer acts in breach of subsection (1), (5) or (6).

(8) An employer may reduce the number of workers in his employment, either temporarily or permanently, without giving to the Redundancy Board the notice specified under subsection (5), where good cause is shown.

Section (8) (the Evil Bugs] says the exact contrary of subsections (6) and (7)!

4. Amendments 5 to the Workers Rights Bill

In light of the above, the GWF-JNP proposes the following amendments:

First, we propose that Section 67 (8) be completely deleted and second that the words "*Subject to subsection (8)*" be deleted in Section 67 (7) in the Bill.

Third we propose an amendment so that Section 9 reads as follows:

(9) Subject to subsections (5) and (7), where a worker claims reinstatement or severance allowance at the rate of 3 months' remuneration per year of service, he may apply to the Board for an order directing his employer to reinstate him in his former employment with payment of remuneration from the date of the termination of his employment to the date of his reinstatement or pay the severance allowance claimed.

6. Abuse of Seasonal Labour in Sugar Industry

As stated in the meeting held with the JNP on the 12th of July 2019 with the Ministers on sugar workers issues, the amendment brought by in the legislation in 2017, to better protect sugar industry workers against abuse of seasonal/contractual labour have not be been applied, thus have not meet its objective. This is why we insisted in the meeting that a new amendment be brought in.

Please find below the new amended section that we propose to be inserted in the new Workers Rights Bill.

ENTITLEMENT OF WORKERS IN SUGAR INDUSTRY
Interpretation of Part VIII
In this Part –
"employer" means a person who owns either a sugar factory or land under sugar cane cultivation of an extent exceeding 10.5522 hectares (25 arpents) in aggregate;
"Sugar Industry Remuneration Regulations" means –
(a) the Sugar Industry (Agricultural Workers) (Remuneration Order) Regulations 1983; or

(b) the Sugar Industry (Non-Agricultural Workers) (Remuneration Order) Regulations 1985, as the case may be;
"worker" –

(a) has the same meaning as in regulation 2(1) of the Sugar Industry Remuneration Regulations; and
(b) includes a person specified in regulation 2(2) of the Sugar Industry (Non-Agricultural Workers) (Remuneration Order) Regulations 1985.

57. Continuous employment of existing workers in sugar industry
Subject to –

(a) this Act;

(b) sections 23 and 23A of the Sugar Industry Efficiency Act; and

(c) section 30 of the Mauritius Cane Industry Authority Act,
every worker in employment on ~~31 May 2001~~31July 2019shall be entitled to remain in the employment of his employer.

58. Workers employed by job contractor
(1) Where a worker is employed by a job contractor or a company for the purpose of –

(a) land preparation, growing, harvesting or processing of sugar cane and the construction, repair or maintenance of roads, bridges or water works, structures or buildings, wholly or substantially required for the purposes of the sugar industry and any other work incidental to the exploitation of land; or

(b) the transportation of canes, sugar, materials or supplies used in connection with any work specified in paragraph (a),

this Act and the Sugar Industry Remuneration Regulations and conditions of employment as specified in the collective agreement in forceshall apply to the job contractor the companyin the same manner as they apply to an employer in those enactments or the collective agreement in force.

(2) (a) Subject to paragraph (b), where an employer has recourse to one or more job contractors, or companiesthe total number of man-days performed in any crop year by –
(i) workers employed by the job contractor; and
(ii) seasonal workers employed by the employer, shall be not more than 20% of total number of man-days performed in the previous crop year.

Should the employer contemplatesto have recourse to more seasonal labour, the employer shall firstendeavour to negotiate an agreement with the recognised unionsat latest by the end of March of the year. If there is no agreement reached, either party may have recourse for arbitration before the Employment Relations Tribunal, which shall determine the matter within 60 days and determine a percentage of seasonal labour which shall not in any case be more than one third of the permanent labour force of the previous year.

(4) Every employer shall, on or before 31 January of every year, submit to the supervising officer and to the recognised unions, separate returns on agricultural workers and non-agricultural workers, showing in respect of the preceding year –

(a) the number of workers employed by job contractors under subsection (2)(a)(i) and proof of any stautory payments due to be paid by the job contractor on behalf of the workers who were employed for him.

(b) the number of seasonal workers employed by him under subsection (2)(a)(ii) and proof of any statutory payments due to be paid by the job contractor on behalf of the workers who were employed by him.

(c) the number of workers employed on permanent basis by him under section 57; and

(d) the number of man-days performed by the workers referred to in paragraphs (a), (b) and (c).

Colour Code = Yellow Deletions, Red Additions

7. Other Issues & Amendments

- We propose that Section 31 on Joint liability on remuneration, be amended to include joint liability of employer and its subcontractor for all statutory payments (e.g NPS and NSF payments) due by any employer under law.

- Section 62(3) on Disciplinary Procedure, which opens the door for any employer to unjustly sack anyone just by making, by himself or anybody, an allegation to the police. Thus based on a false allegation and unproved case, an employer can sack the employee on ground of working relations despite the latter being innocent until proven guilty by a court of first instance.

  We thus propose that present section on the issue in the Employment Rights Act be maintained.

- We also propose that the payment of 12% of interest in section 24(6) where payment of remuneration after reinstatement is ordered by the Court shall be extended to reinstatement ordered the ERT.

Though the GWF-JNP has other issues to be addressed on the proposed Workers Rights Bill, we will reserve our rights on other submission on some other critical issues, after having given further information and clarification by the government in the meeting(s) to be held with the GWF-JNP.

8. Addendum – Robbery of billions stopped by GWF-JNP?

After submitting this written memorandum to the government, the GWF-JNP raised orally a critical issue, which is tantamount to a form of robbery of all private sector employees, which have been perniciously inserted in the Workers Rights Bill on the issue of 1% employees' contribution to the Workfare Programme Fund.

While the 1% deduction in the existing law is maintained, the contribution will now NOT be transferred to the Personal Account of the employee under the Section 5B. National Savings Fund Account , where the one per cent contributions payable by the employee was credited.

In the new *Workers Rights Bill* the 1% will go directly to the supervising officer of the Ministry of Labour for credit into the Workfare Programme Fund. The Fund will continue to be used for the partial payment of the *Transition Employment Benefit* and to partially fund the famous *Wage Guarantee Fund*. Thus, the fund become a sort of 1% disguised 'tax' on labour going into a general state fund! What was the property of the worker would be expropriated and appropriated by the State!

Therefore, it is the whole of the private sector employees' 1% contribution which would support partially the payment of the Transition Unemployment Benefit and the new Wage Guarantee Fund!

And more critically, under the new law **no whatsoever balance will be paid to any employee contributing 1% of salary, at the age of retirement or at being made redundant when aged 45 or more.**

So if a worker earning a salary of Rs 15,000 now, contributes 1% of his salary for the next 40 years, and no payment was made to him/her as TUB or Wage Guarantee, this worker will loose **Rs 298,914**!

It should be pointed out that if we assume a private sector workforce of 450,000 employees contributing 1% over 40 years, the total '*expropriation*' would amount to Rs 134 billions. A sum which would have been extracted from the salary of the labour force, while under the existing law after payment for the TUB, any remaining balance of the Rs 134 billions, would have been paid to the working class, individuallly. This resembles very much as a form of robbery rather than ensuring workers security!

After the strong representation made by the GWF-JNP in the meeting, the Technicians of the Government has declared that government would '*amend the amendment*' to revert back to the existing system, whereby the personal account under NSF and any remaining balance accrued to the account of the employee would be paid back to the worker contributing the monthly 1% contribution.

What would have happened if the GWF-JNP had acted blindly to request that the Bill be put for vote by a certificate of urgency, in 'catimini' in the National Assembly without any changes, as it was decreed to be ….a revolutionary one, by one trade unionist?

THE EMPLOYMENT RELATIONS (AMENDMENT) BILL

1. Introduction

The Amendments proposed in the Employment Relations Act bear the footprints of the sugar and economic oligarchs and their lackeys within the State.

In a declaration on the occasion of the launch of the 2019 sugar cane harvest, Mr. Jacques M. d'Unienville, of Omminicane made a surprising declaration. He not only attacked one of the leaders of the GWF-JNP, but announced, like a King's decree, that the '*negotiation for collective bargaining*' will start in January year 2020. This after having systematically refused to conduct collective bargaining from the 2017 to 2019, and with the complicity of their stooge in the State, cause the rejection of some 24 Labour Disputes of the JNP in 2018 at the CCM.

The statement of Mr. Jacques M. d'Unienville, rang the bells for many of us: the sugar oligarchs have been on the move, through their economic bribery system of the State , to get what they are not getting from the unions: that is a Procedure Agreement where workers relinquish fundamental rights and accept the derogation of the provision of the law on minimum service in case of strike, accept joint submissions of Labour Dispute to the CCM, and even accept compulsory arbitration. Mr Jacques M. d'Unienville **already knew what was being cooked in the new laws !**

All the Amendments proposed by GWF-JNP on the Employment Relations Act have been rejected without any reasons. In contrast, the sugar oligarchs and capitalist interests have been taken on board!

Most of the proposed amendments of the Employment Relations Act are scurrilous, to say the least.

2. Coercing workers and their unions

- The Amendments aim at ***coercing workers and their unions*** into a disguise form of compulsory arbitration and transforming the Conciliation and Mediation body (CCM) into a kind of 'Arbitration Court', where the President become a kind of a 'semi-compulsory Arbitrator' or "Magistrate'.

3. Opens the for Labour Dispute Rejection in favour of employers

- It opens the door for more massive rejection of Labour Disputes by the new 'Magistrate' of the CCM, thus encouraging employers not to negotiate with a union, as they know Disputes will be rejected. Otherwise, it puts the burden on the workers and unions to go into costly and lengthy procedures at ERT to be able to force employers to start 'negotiation', which is mandatory under law, thus frustrating workers resilience and determination.

- It codifies the last 3-4 practices of the CCM bowing to bosses power, to interpret '*meaningful negotiations*' in their favour to reject Labour Dispute, rendering the limit 90 days of negotiations in the law 'meaningless'. The new proposal on reporting re-enforces this bosses logic to further consolidate the discretionary power of the CCM, instead of inserting objective criteria on such time and conclusion or not of an Agreement by both parties.

4. Undermining Collective Bargaining and the Right to Strike

- The new proposal intensifies an existing absurdity whereby an entitlement is attributed to only a party who reported the Labour Dispute. Thus, a Union was entitled to have recourse to strike action in furtherance of a dispute, ONLY, if the Union declared a Dispute. This is why the MSPA declared a Labour Dispute to the CCM before the JNP in 2014. Instead of addressing such absurdities, the new amendments have now attributed entitlement to 'the party reporting the dispute' to **compulsory arbitration**! Thus, under 69 (9) (b) of the Amendment, an employer being '*the party reporting the dispute*' can now "*request*' the President of the CCM to refer the dispute for voluntary arbitration, thus denying the fundamental right to strike to workers!
- Thus when coupled, with clear intended aims of amendment of letting the employer deciding in a discretionary manner, the timing of any deadlock, thus the timing of reporting a dispute, the new framework open the door for maneuvers of employers such as that of the sugar oligarch in 2014, to dictate the course of action in the CCM, and specially undermine the right to strike, by using their 'right' to impose arbitration, thus killing all attempts by workers to undertake genuine collective bargaining. Most of the amendments proposed in the Employment Relations Act, seriously violate core provisions of the ILO, Convention 87, 98, and 154.
- Furthermore the Amendment has sneaked in new 'evil bugs' to undermine the right to strike, in Section 24 (b) by adding a completely new definition of Labour Dispute, as a new eligibility criteria for the workers to exercise their right to strike. The new conditions reads as follows:

  > *(a) a collective labour dispute has been reported by a trade union under section 64 on behalf of its members <u>on an issue which concerns the whole bargaining unit</u> and no agreement has been reached;*

  So, this mean, that if the list of issues of the Unions in the Labour Dispute includes an issue which affects only one category or even several categories of workers in the bargaining unit, then workers will NOT have the right to strike!

3. Imposing Procedure Agreement in violation of the Constitution and ILO Conventions

The Amendments violating all ILO Conventions and recommendation made to Mauritius on Procedural Agreement, is now IMPOSING in DICTATORIAL manner, on workers, for them and their unions to relinquish the fundamental constitutional rights and derogates the present law on minimal service. Several clauses are c**opy and paste** from Procedure Agreement put on the table by sugar oligarchs and Business Mauritius.

One of the ignominious clause is the unbelievable amendment to FORCE workers and their unions to get the 'permission' of the bosses to exercise their fundamental right to free speech, free expression as guaranteed under the Constitution. The GWF-JNP have rejected at least 20 such Procedure Agreement proposals put forward by sugar and economic oligarchs. How can now a government reproduce such an insanity? Here is the famous clause:

Communication with media

(1) Both parties agree that any communication to the media, including the press, radio and television in respect of this Agreement or any subsequent negotiations resulting from it shall be signed and issued jointly by accredited representatives of the employer and the union.

(2) Subject to subparagraph (3), the parties agree that they may issue communiques and hold press conferences separately to address matters concerning industrial relations.

(3) The parties agree that neither party shall make any declaration to the media likely to adversely affect any ongoing negotiation.

(4) Both parties agree not to make any disparaging statements about each other and to act in good faith when dealing with the media.

The GWF-JNP is of the view that a Procedure Agreement should be left to the Collective Bargaining process by the ILO. In the Amendments to the Proposed Amendments, you will find the other fundamental objections that we have, and what we would have proposed in there Procedure Agreement would be negotiated under proper Collective Bargaining framework

3. Towards a decline of trade unionism, collective bargaining process and deregulation of workers rights and conditions of employment in Mauritius

The Amendments shape a new a legal framework where workers and their genuine independent unions will be severely and adversely weakened in face of the economic oligarchs, and economic elites. A responsible government cannot put its people at the mercy of ruthless and greedy profit mongers.

- The provision to lower the threshold for union's recognition to 20% can lead to a contrary dynamics. It can open the door for 'yellow' pro-employer unions.
- The new Collective Bargaining and Right to Strike mechanism violates the fundamentals which ILO Experts of the Freedom of Association Committee recommended when the new law on collective bargaining and the fundamental right to strike was being enacted.
- Coupled with provisions enabling derogation of many minimal workers conditions and rights, and the use Salary Commissioner/Individual Option and 'yellow unions' the two Bills, **if not amended will contribute to the decline of trade unionism, collective bargaining process and deregulation of workers rights and conditions of employment in Mauritius.**
- There are some improvements on issues such re-reinstatement, but again 'evil bugs' within the law will limit their effectiveness, as the right to report a labour dispute has been undermined and prohibited while a Collective Agreement is in force.

4. Amendments

- The Amendments proposed by the GWF-JNP is found in Annex 2 of this Urgent Call.

5. Conclusion Appeal

The GWF-JNP strongly urge the government to Amend the Proposed Two Amendments Bills before any enactment in the National Assembly.

We call on the government to circulate the proposed Amendment to the Unions before inserting in the National Assembly.

We call on the Government not to bow down infront of the economic oligarchs interest. Should the government bow down like the previous one, the people will be ferociously make their voices heard.

For our part, we will call for massive protests actions if the interest of the more than 500,000 workers who labour for this country are **NOT** respected. The last time, in December 2012, similar amendments were brought in the National Assembly where many of us were arrested. At the time, many of the present Ministers came in our defence and the workers – they visited us, they spoke vehemently in the public and in the National Assembly . Would the same be on the other side, to jail us now... and betrayed the 500,000 workers?

The entire working class will follow with a deep interest the decision of the government on this critical issue for lives and those of their families and relatives.

22 July 2019 (Part 1) & 25 July 2019

The Evil Bugs in the Workers Rights Bills

Clauses & Sections	Derogation from Minimal Rights			
	Collective Agreement or Salary Report	Salary Report	Atypical worker	Specific Derogation
PART I – PRELIMINARY				
1.Short title				
2.Interpretation				
3.Application of Act				
PART II – AGREEMENT				
4.Discrimination in employment and occupation				
5.Agreement				
6.Fixed term agreement				
7.Part-time work				
8.Consideration for full-time or permanent employment				
9.Transfer to part-time or full-time work				
10.Atypical work				
11.Compromise agreement				
12.Continuous employment				
PART III – MINIMUM AGE FOREMPLOYMENT				
13.Employment of children and young persons				
PART IV – HOURS OF WORK				
14.Normal working hours				
15.Compressed hours				
16.Flexitime				
17.Shift work				
18.Notional calculation of basic hourly rate				
19.Overtime				
20.Public holiday				
21.Meal and tea breaks				
22.Meal allowance				
PART V – REMUNERATION				
23.Equal remuneration for work of equal value (1)				
24.Payment of remuneration				
25.Deduction				
26.Payment of remuneration to part-timeworker				
27.Payment of remuneration in specialcircumstances				
28.Payment of remuneration due on termination of agreement				
29.Additional remuneration				
30.Payment of additional remuneration				
PART VI – PROTECTION OF REMUNERATION				
31.Joint liability on remuneration				
32.Protective order				
33.Grant of protective order				
34.Duration of protective order				
35.Order in respect of immovable property				
36.Variation and discharge of protective order				
37.Wage Guarantee Fund Account				
38.Particulars of Wage Guarantee Fund Account				

39.Redemption of claim				
40.Recovery of overpayment		82 (2)		
PART VII – OTHER CONDITIONS OF EMPLOYMENT				
41.Transport of workers				
42.Annual leave				
43.Sick leave				
44.Medical facilities				
45.Maternity benefits				
46.Paternity leave				
47.Vacation leave				
48.Special leave				
49.Juror's leave				
50.Leave to participate in international sport events				
51.Leave to attend Court				
52.End of year bonus				
53.Promotion				
54.Tools				
55.Communication facilities				
PART VIII – ENTITLEMENT OF WORKERS IN SUGAR INDUSTRY				
56.Interpretation of Part VIII4				
57.Continuous employment of existing workers in sugar industry				
58.Workers employed by job contractorh				
PART IX – TERMINATION OF AGREEMENT				
59.Termination of agreement				
60.Termination of appointment under the Constitution				
61.Notice of termination of agreement				
62.Protection against termination of agreement				
63.Notification of charge				
64.Suspension				
65.Employment following transfer of undertaking				
66.Certificate of employment				
67.Reduction of workforce				67 (8) An employer may reduce its workforce without giving Notice to the Redundancy Board
68.Redundancy Board				
69.Functions of Board				
70.Organisation and sitting of Board				
PART X – WORKFARE PROGRAMMEFUND				
71.Establishment of Workfare Programme Fund				
72.Objects of Workfare Programme Fund				
73.Payment into and out of Workfare Programme Fund				
74.Contribution to Workfare Programme Fund				
75.Transition unemployment benefit				
76.Industrial injury allowance				
77.Workfare Programme Fund Committee				
78.Functions of Workfare Programme Fund Committee				
79.Actuarial valuation of Workfare Programme Fund				
80.Financial statements of Workfare Programme Fund				
81.Recovery of overpayment				
PART XI – COMPENSATION				
82.Payment of severance allowance		82 (1)		
83.Amount of severance allowance				

84.Deductions from severance allowance				
85.Death grant				
PART XII – PORTABLE RETIREMENT GRATUITY FUND				
86.Interpretation of Part XII				PRGF is derogated If employees work with an employer under Private Pension Scheme. The Amendment brought is prejudiced to employees under PPS. Thus evil dynamics will be unleashed the day PRGF enters in force!
87.Establishment of Portable Retirement Gratuity Fund				
88.Object of Portable Retirement Gratuity Fund				
89.Eligibility to join Portable Retirement Gratuity Fund				
90.Administration of Portable Retirement Gratuity Fund				
91.Payment into and out of Portable Retirement Gratuity Fund				
92.Individual account in respect of everyworker or self-employed				
93.Contributions to Portable Retirement Gratuity Fund				
94.Contributions for past services				
95.Shortfall or surplus of contributions				
96.Joint liability of employer and jobcontractor to pay contributions				
97.Circumstances in which gratuity may begranted				
98.Payment of gratuity in case ofemployment with same employer				
99.Payment of gratuity in case of employment with one or more employers (1) (f) (2) (3) (4)				
100. Recovery of contribution by Director-General				
101. Information to be furnished to Director-General and administrator				
102. Remittance of contributions by Director-General				
103. Privilege in respect of contributions				
104. Establishment of Portable Retirement Gratuity Fund Advisory Committee				
105. Investment Committee				
106. Audited accounts of Portable Retirement Gratuity Fund				
107. Statement of account				
108. Surcharge on late contributions orlate return				
PART XIII – VIOLENCE AT WORK				
109. Violence at work				
PART XIV – ADMINISTRATION				
110. Register of employers				
111. Keeping of records				
112. Labour inspection				
113. Power to make enquiries				
114. Power to summon				
115. Complaint procedure				
116. Notice of compliance				
PART XV – MISCELLANEOUS				
117. Protection from liability				
118. Offences (1) (f) 2,34 (???)				
119. Regulations				
120. Repeal				
121. Consequential amendments				
122. Savings and transitional provisions				
123. Commencement				
FIRST SCHEDULE				

SECOND SCHEDULE				
THIRD SCHEDULE				
FOURTH SCHEDULE				
FIFTH SCHEDULE				
SIXTH SCHEDULE				
SEVENTH SCHEDULE				
EIGHTH SCHEDULE				

*** Colour Coding**

Cannot be derogated by

Can be derogated by

Amendments Needed – No provision in CA or Salary Report or in any other Agreement between a worker and an employer can be less favorable and detrimental to any worker than those provided in this Act. If such a provision exists in any agreement, such provisions shall be deemed to null and void.

GWF-JNP Annex 2

Proposals of Amendments

THE EMPLOYMENT RELATIONS (AMENDMENT) BILL (No.XIX of 2019)
Explanatory Memorandum

The main object of the Bill is to amend the Employment Relations Act with a view to consolidating and reinforcing industrial relations between workers, trade unions and employers through enhanced mechanism for collective bargaining, social dialogue and dispute resolution.

2.The Bill, inter alia –
(a) provides, with a view to encouraging collective bargaining, for the reduction in the threshold for eligibility for recognition of a trade union from 30 per cent to 20 per cent;
(b) introduces, for the purpose of collective bargaining, a standard procedure agreement which shall be binding on both a trade union and an employer;
(c) reinforces the conciliation and mediation mechanism for dispute resolution;
(d) empowers the Employment Relations Tribunal to make an award for the reinstatement of a worker whose employment has been terminated in certain cases, particularly where some of his rights have been infringed;
(e) makes provision for the setting up of a National Tripartite Council to promote social dialogue and consensus building on labour, industrial relations or socio-economic issues of national importance, and other related labour and industrial relations issues; and
(f) clarifies some provisions of the Act.

S. S. CALLICHURN
Minister of Labour, Industrial Relations, Employment and Training
12 July 2019

Colour Coding; Yellow background are the deletions, Pink additions and light green comments.

THE EMPLOYMENT RELATIONS (AMENDMENT) BILL (No. XIX of 2019)
ARRANGEMENT OF CLAUSES
Clause

A BILL

To amend the Employment Relations Act with a view to promoting harmonious industrial relations between workers, trade unions and employers

ENACTED by the Parliament of Mauritius, as follows –

1.Short title

This Act may be cited as the Employment Relations (Amendment) Act 2019.

2.Interpretation

In this Act –

“principal Act” means the Employment Relations Act. 3

3.Section 2 of principal Act amended

Section 2 of the principal Act is amended –

(a) by deleting the definitions “collective agreement”, “confederation”, “federation”, “Remuneration Regulations” and “supervising officer” and replacing them by the following definitions –

“collective agreement” means an agreement which relates to terms and conditions of employment, made between –

(a) a recognised trade union, a group of recognised trade unions or a joint negotiating panel; and

(b) an employer or a group of employers;

“confederation” means an association of federations having as one of its objects the regulation of employment relations between workers and employers;
“federation” means an association of trade unions having as one of its objects the regulation of employment relations between workers and employers;
“Remuneration Regulations” or “Wages Regulations” –
(a) means any regulations made by the Minister under section 93; and

(b) includes any Remuneration Order, made under the repealed Industrial Relations Act, which is still in operation;

“supervising officer” means the supervising officer of the Ministry;
(b) in the definition of “labour dispute”, by repealing paragraph (a) and replacing it by the following paragraph –
(a) means a dispute between a worker, a recognised trade union of workers or a joint negotiating panel, and an employer which relates wholly or mainly to –

(i) the wages, terms and conditions of employment of, promotion of, or allocation of work to, a worker or group of workers;

(ii) the reinstatement of a worker, other than a worker who is appointed by, or under delegated powers by,

the Judicial and Legal Service Commission, the Public Service Commission or the Local Government Service Commission –

(A) where the worker is suspended from employment, except where the alleged misconduct of the worker is subject to criminal proceedings; or

(B) where the employment of the worker is terminated on the grounds specified in section 64(1A);
(c) in the definition of “trade union” –
(i) in paragraph (a), by deleting the words “an association of persons, whether registered or not,” and replacing them by the words “a registered association of persons”;

(ii) in paragraph (b), by deleting the words “16(1) and (2)” and replacing them by the words “16(1), (1A), (2) and (2A)”;
(d) in the definition of “worker”, in paragraph (b), by repealing subparagraph (i) and replacing it by the following subparagraph –
(i) a part-time worker, a former worker or an atypical worker;

(e) by inserting, in the appropriate alphabetical order, the following new definitions –

“atypical worker” has the meaning assigned to it in the Workers’ Rights Act 2019;
“cluster” means a concentration of enterprises and institutions that are interrelated in a particular field of economic activity;
“part-time worker” has the same meaning as in the Workers’ Rights Act 2019;

“reinstatement”, in relation to a worker, means the reinstatement of the worker, by his employer, back to the worker’s former position prevailing before his suspension and on the same terms and conditions of employment in that former position;

4.Section 3 of principal Act amended
Section 3 of the principal Act is amended, in subsection (1), by deleting the words “subsections (2) and (3)” and replacing them by the words “subsections (2), (2A) and (3)”.

5.Section 16 of principal Act amended
Section 16 of the principal Act is amended –
(a) by inserting, after subsection (2), the following new subsection –

(2A) A trade union may join one or more federations of its choice but, for the purpose of determining the representativeness and strength of any federation, the affiliation of the trade union to only one federation shall be taken into consideration.
(b) by inserting, after subsection (4), the following new subsection –

(4A) A federation may join one or more confederations of its choice but, for the purpose of determining the representativeness and strength of any confederation, the affiliation of the federation to only one confederation shall be taken into consideration.

6.Part IV of principal Act amended
Part IV of the principal Act is amended –
(a) in section 31(1)(b), by adding the following new subparagraph, the full stop at the end of subparagraph (ii) being deleted and replaced by a semicolon –
(iii) a worker or an accredited workplace representative on any employment issue on the ground of his trade union activities.
(b) by inserting, after Sub-part A, the following new Sub-part –

Sub-Part AA – Workers’ Rights to be Represented at Workplace

31A. Right of workers to be represented at workplace
(1) A worker shall have the right to be represented at his workplace by an officer or a negotiator of a trade union of which he is a member, to assist him in any disagreement arising between him and his employer in respect to his legal rights.

(2) Subject to prior notice as to the time and purpose of his visit, any officer or negotiator of a trade union may, following any representation from a member of the trade union, enter a workplace to represent the member in respect of his legal rights with a view to seeking compliance with the relevant legal requirements, as applicable.

7. Section 35 of principal Act amended
Section 35 of the principal Act is amended by repealing subsection (2) and replacing it by the following subsection –

(2) Any failure on the part of a person to comply with the Code of Practice may, in any proceedings before the Industrial Court, Tribunal or Commission, be invoked by the other

person to the proceedings to establish the liability or responsibility of the defaulting person in relation to the subject matter of the proceedings.

8. Section 36 of principal Act amended
Section 36 of the principal Act is amended –
(a) by repealing subsection (1) and replacing it by the following subsection –

(1) A trade union or a group of trade unions of workers acting jointly may, subject to the criteria for recognition specified in section 37(1) and (2), apply in writing to an employer for recognition as a bargaining agent, joint negotiating panel or sole bargaining agent, as the case may be, for a bargaining unit.
(b) in subsection (2), by inserting, after the words “shall be”, the words “made in the form set out in the Sixth Schedule and shall be”;

(c) in subsection (3) –

(i) by deleting the words “60 days” and replacing them by the words “45 days”;
(ii) by inserting, after the words “in writing”, the words “in the form set out in the Seventh Schedule”;
(d) by adding the following new subsections –

(4) Where an employer recognises a trade union or group of trade unions as a bargaining agent under subsection (3)(a), he shall, within 10 days of the date he issues the certificate of recognition to the trade union or group of trade unions, submit a copy of the certificate to the supervising officer.

(5) Where –
(a) an employer fails to respond to an application under subsection (3);
(b) an employer refuses to recognise a trade union or group of trade unions as a bargaining agent;
(c) an employer fails to state the reasons for refusing to recognise a trade union or group of trade unions as a bargaining agent; or
(d) a trade union or a group of trade unions is not satisfied with the reasons for refusal given under subsection (3)(b),
the applicant trade union or group of trade unions may apply to the Tribunal for an order directing the employer to recognise the trade union or group of trade unions as a bargaining agent, in accordance with the criteria specified in section 37.

9.Section 37 of principal Act amended
Section 37 of the principal Act is amended –
(a) in subsections (1) and (2) –

(i) by deleting the words “or industry” wherever they appear and replacing them by the words “, an industry or a cluster”;

(ii) by deleting the words “30 per cent” and replacing them by the words “20 per cent”;

(b) in subsection (3) –

(i) by inserting, after the words “group of trade unions”, the words “, having the support of more than 50 per cent of the workers in the bargaining unit,”;

(ii) by deleting the words “or industry” and replacing them by the words “, an industry or a cluster”;

(c) by repealing subsection (4) and replacing it by the following subsection –

(4) (a) Where a trade union is granted recognition under subsection (1), one or more new trade unions, having the support of not less than 20 per cent nor more than 50 per cent of the workers in the bargaining unit, may apply to the employer for recognition.
(b) Where an application is made under paragraph (a) –
(i) the employer shall grant recognition to the new trade unions subject to those trade unions agreeing in writing to –

(A) enter into arrangements with the existing recognised trade union to form a joint negotiating panel to conduct collective bargaining together on behalf of the workers constituting the relevant bargaining unit; and

(B) collaborate with the existing trade union to secure and maintain stable and effective collective bargaining;
(ii) the employer may grant recognition to the trade unions altogether as a joint negotiating panel of that bargaining unit;
(iii) the employer may refuse to grant recognition to any of the new trade unions which refuses to form part of a joint negotiating panel;
(iv) the employer may apply to the Tribunal for an order directing an existing trade union which refuses to form part of a joint negotiating panel to form part of the joint negotiating panel; or
(v) any of the trade unions may apply to the Tribunal to organise and supervise a secret ballot in the bargaining unit concerned to determine which trade union the workers in that bargaining unit wish to be their bargaining agent to conduct collective bargaining on their behalf. (c) Subject to section 38(18), where –
(i) one or more trade unions, having each the support of not less than 20 per cent nor more than 50 per cent of the workers in a bargaining unit is or are granted recognition as bargaining agent or a joint negotiating panel, respectively; and

(ii) a new trade union which has the support of more than 50 per cent of the workers in the bargaining unit applies to the employer for recognition as a sole bargaining agent in respect of that bargaining unit,

the employer or the new trade union may apply to the Tribunal for its determination as to which trade union shall have negotiating rights in respect of the bargaining unit and the Tribunal shall make an order accordingly.

10. Section 38 of principal Act amended
Section 38 of the principal Act is repealed and replaced by the following section –

38. Order for recognition of trade union of workers
(1) The Tribunal shall, on an application made under section 36(5), determine whether the trade union or group of trade unions, as the case may be, has the support of at least 20 per cent of the workers forming part of the bargaining unit, or where the application is for recognition as a sole bargaining agent, has the support of more than 50 per cent of the workers in the bargaining unit, or otherwise.
(2) For the purpose of an application made under section 36(5), the Tribunal may require –
(a) the applicant trade union or group of trade unions to produce evidence that it fulfills the criteria for recognition as specified in section 37;

(b) the employer to submit to the Tribunal and, where appropriate, to the applicant trade union, within 10 days of the receipt of the application –

(i) a list of the category or grade of workers in the proposed bargaining unit;

(ii) a list of the workplaces, where applicable, where the workers of the bargaining unit are posted; and

(iii) the number of workers employed in each category at each workplace.

(3) At the time of an application for recognition, any document signed by a worker of a prospective bargaining unit and submitted by an employer to show that the worker is not interested in joining the trade union or has ceased to be a member of the trade union, except where the worker has withdrawn from the trade union in accordance with its rules, shall not be admissible before the Tribunal.

(4) Where the Tribunal is satisfied that the employer has failed to comply with subsection (2)(b), the Tribunal shall order the employer to remedy the failure within such period as may be specified in the order.

(5) Where an employer fails to comply with a remedial order made under subsection (4), the Tribunal may make an order for the employer to grant recognition to the trade union provided that the trade union satisfies the criteria for recognition specified in section 37.
(6) Where a trade union and an employer agree on a bargaining unit and the trade union produces evidence that it has the support of not less than 20 per cent of the workers in the bargaining unit, the Tribunal shall make an order directing the employer to grant recognition to the trade union for the purpose of conducting collective bargaining in the bargaining unit as a bargaining agent or joint negotiating panel, as appropriate.

(7) On an application made under section 36(5), the Tribunal may organise and supervise a secret ballot in a bargaining unit in an enterprise, an industry or a cluster, in order to determine which trade union the workers in the bargaining unit wish to be their bargaining agent, where –
(a) a trade union or group of trade unions already has recognition in respect of that bargaining unit and the Tribunal is satisfied that the applicant trade union or group of trade unions has produced evidence that it is eligible for recognition in accordance with section 37;

(b) the Tribunal has evidence from a majority of workers within the bargaining unit that they do not want the

trade union or group of trade unions to conduct collective bargaining on their behalf;

(c) the Tribunal considers that the membership evidence produced by the trade union or group of trade unions may not be reliable;

(d) the Tribunal is satisfied that a secret ballot should be held in the interest of good industrial relations.

(8) Where the Tribunal decides to hold a secret ballot pursuant to subsection (7), the secret ballot shall be conducted at the workplace or workplaces, as appropriate, or such other place as the Tribunal may determine.
(9) Where a secret ballot takes place under this section, a worker shall vote for one trade union only.
(10) Where the Tribunal gives notice to an employer to organise a secret ballot, the employer shall –
(a) grant all facilities to the Tribunal to conduct and supervise the secret ballot;

(b) grant all facilities to the workers forming part of the bargaining unit to participate in the secret ballot;

(c) give the trade union, as far as reasonably practicable, access to the workplace to meet and inform the workers forming part of the bargaining unit of the object of the secret ballot;

(d) inform the Tribunal, as soon as reasonably practicable, the name of any worker who has ceased to form part of the bargaining unit;

(e) refrain from inducing any worker forming part of the bargaining unit not to attend any meeting of the trade union or group of trade unions;
(f) refrain from taking or threatening to take any action against a worker on the ground that the worker attended or took part in activities of the trade union or group of trade unions seeking recognition.
(11) Where the Tribunal is satisfied that an employer has failed, without any reasonable excuse, to comply with any of the requirements of subsection (10), and as a result of which the secret ballot is not held, the Tribunal may order the employer to take remedial action within such period as may be specified in the order.

(12) Where the Tribunal is satisfied that the employer has failed to comply with an order made under subsection (11), and as a result of which the secret ballot is not held, the Tribunal may, subject to section 37, order that the trade union be granted recognition to conduct collective bargaining on behalf of the bargaining unit.
(13) Subject to section 37, where an application is made under section 36(5) or 37(4**)**, the Tribunal shall –
(a) make an order granting recognition to the trade union as a bargaining agent, joint negotiating panel or sole bargaining agent, as the case may be;

(b) where the application is for recognition as a sole bargaining agent, make an order granting recognition to the trade union as a bargaining agent where the Tribunal finds that the applicant trade union does not have the support of more than 50 per cent of the workers in the bargaining unit but has the support of not less than 20 per cent of the workers in the bargaining unit; or
(c) set aside the application where the trade union fails to produce evidence that it fulfills the eligibility criteria for recogntion.

(14) (a) The Tribunal shall determine an application made under section 36(5) or 37(4) within 30 days of the receipt of the application.
(b) The Tribunal may, in exceptional circumstances, extend the delay specified in paragraph (a) for another period of 30 days.

(15) (a) Where the Tribunal makes an order granting recognition to a trade union, the order shall –
(i) specify the name of the employer and the trade union to which it relates;

(ii) specify the composition of the bargaining unit;

(iii) state whether the trade union shall be recognised as a bargaining agent, sole bargaining agent or joint negotiating panel, as the case may be; and

(iv) require the trade union or the joint negotiating panel and the employer concerned to meet at specified intervals or at such time and on such occasions as the circumstances may reasonably require, for the purposes of collective bargaining.

(b) The Tribunal shall submit a copy of an order made under paragraph (a) to the supervising officer for record purpose.

(16) Where a trade union is recognised as a sole bargaining agent, or a group of trade unions is recognised as a joint negotiating panel, in respect of a bargaining unit, the trade union or group of trade unions, as the case may be, shall supersede any other trade union recognised as the bargaining agent of the workers in the bargaining unit.

(17) Where recognition is granted under this section, no application for recognition or revocation or variation of recognition in the same bargaining unit shall be entertained by the Tribunal before the expiry of a period of 12 months from the date of the order granting the recognition.

(18) The Tribunal may, where the recognition of a new trade union gives rise to the revocation of the recognition of another trade union, enquire into the independence of the trade unions in relation to the employer.

(19) (a) Where an employer fails to comply with an order for recognition made by the Tribunal under this section –
(i) the trade union or group of trade unions may apply to the Tribunal for compensation and the Tribunal shall make an order for the payment of a compensation which shall not be less than 500 rupees per day so long as the order is not complied with;

(ii) the trade union may apply, on behalf of the workers forming part of the bargaining unit, to the Tribunal for an award setting out the conditions of employment of the workers as proposed by the union.

(b) Where the conditions of employment are specified in an award of the Tribunal made under paragraph (a), the conditions shall become the implied terms of the contract of employment of the workers.

(20) In circumstances other than those provided in this section, where an application is made to the Tribunal in a matter relating to the recognition of a trade union or group of trade unions, the Tribunal may organise and supervise a secret ballot in a bargaining unit in order to determine, subject to section 37, which trade union the workers in the bargaining unit wish to be their bargaining agent.

11. New section 38A inserted in principal Act
The principal Act is amended by inserting, after section 38, the following new section –

38A. Successor rights and obligations
Where an employer sells, leases, transfers or otherwise disposes of a business or where there is a business merger or a change in the name or trading name of the business –
(a) any trade union which was granted recognition by the outgoing employer as the bargaining agent for workers employed in the business shall continue to be their bargaining agent;

(b) any application made by a trade union for the recognition of the trade union in respect of the workers employed in the business before the date on which the business is sold, leased, transferred, or there has been a business merger or a change in the name or trading name of the business, and which is pending before the Tribunal shall, subject to section 37, be deemed to be an application made against the new employer and may be proceeded with before the Tribunal;

(c) any collective agreement entered into by the outgoing employer and any recognised trade unions shall bind the new employer.

12. Section 39 of principal Act amended
Section 39 of the principal Act is amended, in subsection (1), by deleting the words “section 38(10)” and replacing them by the words “section 38(17)”.

13. Section 40 of principal Act amended
Section 40 of the principal Act is amended –

(a) by repealing subsection (1) and replacing it by the following subsection –

(1) (a) Subject to prior notice and authorisation as to the time, place and purpose of his visit and to necessary safeguards for the preservation of life and property and prevention of disruption of work, any officer or negotiator of a recognised trade union may enter an employer’s premises for purposes related to –

(i) employment issues in respect of its members; or

(ii) industrial relations issues or the trade union's business.

(b) In this subsection –
"purposes related to employment issues in respect of its members" includes –
(a) participating in collective bargaining or otherwise serving members' interests;

(b) dealing with matters concerning the health and safety of workers;
(c) ensuring compliance with this Act or any other enactment dealing with employment matters and any collective agreement;
(d) dealing, with the consent of a worker, with matters relating to the terms and conditions of employment of the worker;
"purposes related to industrial relations issues or trade union's business" includes –
(a) communicating with trade union members and holding of meetings and discussion in relation to union business;

(b) seeking to recruit new members and communicating with workers who are not trade union members about union matters;

(c) providing information to workers on the trade union's activities;

(d) organising strike ballots.

(b) by repealing subsection (2);
(c) by repealing subsection (4) and replacing it by the following subsection –
(4) Subject to necessary safeguards for the preservation of life and property and prevention of disruption of work, an officer or negotiator of a trade union may, in the exercise of his right to enter a workplace, enter the workplace at a reasonable time having regards to the normal hours of the business operations.
(d) in subsection (5), by deleting the words "A trade union" and replacing them by the words "Any trade union".

14. Section 51 of principal Act amended
Section 51 of the principal Act is amended –
(a) by repealing subsections (1), (2), (3) and (4) and replacing them by the following new subsections –

(1) Where recognition has been obtained under sections 36(3), 37(4) or 38, the relationship between a trade union or group of trade unions and an employer or a group of employers, as the case may be, shall, subject to subsection (2), be regulated by the procedure agreement set out in the Fifth Schedule, with such modifications and adaptations as may be necessary.
(2) (a) The procedure agreement referred to in subsection (1) –

(i) shall be binding on an employer and any trade union which is granted recognition by the employer; and

(ii) may, in addition to the terms of the agreement set out in the Fifth Schedule,

with such modifications and adaptions as may be necessary, contain such other terms as agreed between the employer and the recognised trade union.

(b) Notwithstanding paragraph (a), where the employer and the recognised trade union have not yet reached an agreement on the terms which are in addition to the terms of the agreement set out in the Fifth Schedule, the relationship between the parties shall, pending any agreement, be regulated by the terms of the agreement in the Fifth Schedule, with such modifications and adaptations, as may be necessary.

(3) Notwithstanding subsection (2), the procedure agreement may, without any prejudice to the commencement of any negotiation or signing of any collective agreement, be varied by both parties and where there is no agreement on the variation, any party may apply to the Tribunal for a variation order or such other order as the Tribunal may, in the circumstances, deem fit.
(4) The Tribunal shall, within 60 days of the date of receipt of the application made under subsection (3), determine the application and the parties shall comply with the order of the Tribunal within 14 days of that order.

(b) by repealing subsections (5), (6) and (7).

15. Section 57 of principal Act amended

Section 57 of the principal Act is amended –
(a) in subsection (1), by repealing paragraph (c) and replacing it by the following paragraph –

(c) sections 4, 5, 13, 23, 25, 45 and 46 and Parts IX, X, XI, XII and XIII of the Worker's Rights Act 2019;
(b) in subsection (2), by deleting the words "Remuneration Regulations" and replacing them by the words "Remuneration Regulations or Wages Regulations or such other regulations made under section 93".

16. Section 58 of principal Act amended
Section 58 of the principal Act is amended –

(a) in subsection (1), by deleting the words "may be varied" and replacing them by the words "may jointly be varied by the parties";
(b) in subsection (2) –
(i) by repealing subparagraph (a) and replacing it by the following subparagraph –
(a) Subject to subsection (1), where a party to a collective agreement which is in force refuses a variation of the agreement, any party to the agreement ~~may apply to the Tribunal for a variation of the agreement and the Tribunal, on hearing the parties, may –~~
~~(i) where it is satisfied that the variation is warranted in accordance with subsection (1), make an order for the variation; or~~

~~(ii) make such other order at it may deem fit.~~

~~(ii) by adding the following new paragraph –~~
~~(c) An order made by the Tribunal under this section shall be binding on the parties to the collective agreement.~~

notwithstanding any other sections of this Act, may report a Labour Dispute to the CCM.

~~**17. New section 62A inserted in principal Act**~~

~~The principal Act is amended by inserting, after section 62, the following new section –~~

~~**62A. Review of wages and conditions of employment by Salary Commissioner**~~
~~(1) An employer may appoint a Salary Commissioner to review the wages and other terms and conditions of employment of the workers in his enterprise and to submit his recommendations within such time as agreed between the employer and the Salary Commissioner.~~

~~(2) The recommendations of the a Salary Commissioner shall, where there is a trade union which has been granted recognition in the enterprise, be subject to collective bargaining between the employer and the recognised trade union with a view to signing a collective agreement.~~

~~(3) Where the recommendations of the Salary Commissioner are not agreed by the trade union, the trade union or the employer may report a labour dispute to the Commission for conciliation or mediation or the trade union and the employer may jointly refer the dispute to the Tribunal under section 63.~~
(
~~4) Where there is no recognised trade union in the enterprise, the employer may request the workers to exercise an option, in writing, as to whether they wish to be governed by the recommendations made in the report of the Salary Commissioner.~~

18. Section 64 of principal Act amended

Section 64 of the principal Act is amended –

(a) in subsection (1), by inserting, after the word "subsections", the words "(1A),";

(b) by inserting, after subsection (1), the following new subsection –

(1A) No dispute on the reinstatement of a worker in relation to the termination of his employment shall be reported except where the termination is effected by reason of –

(a) discrimination on grounds of a worker's race, colour, caste, national extraction, social origin, pregnancy, religion, political opinion, sex, sexual orientation, HIV status, marital status, disability or family responsibilities;

(b) a worker being on maternity leave or by reason of the worker's absence for the purpose of nursing her unweaned child;

(c) a worker's temporary absence from work because of injury sustained at work or sickness duly notified to the employer and certified by a medical practitioner;

(d) a worker becoming or being a member of a trade union, seeking or holding of trade union office, or participating in trade union activities;

(e) the worker filing in good faith of a complaint, or participating in proceedings against an employer involving alleged breach of any terms and conditions of employment;

[We propose that Section 67 of the present Act be amended so that sub section (2) and (3) be deleted, first to render effective the above good provision so that a Union can declare a Labour Dispute while a 'Collective Agreement is in force' and secondly to remove section (3) as it is a complete none sense and restrict the right to collective bargaining.]

(f) a worker's exercise of any of the rights provided for in this Act or other enactment, or in such agreement, or collective agreement or award.

(c) by repealing subsection (2) and replacing it by the following subsection –

(2) (a) No dispute shall be reported to the Commission under subsection (1) unless –

(i) ~~the procedures provided in the procedure agreement if any have been followed;~~

~~(ii) meaningful negotiations have taken place between the parties; and~~

(iii) a deadlock has been reached.

~~(b) In this section –~~

~~"meaningful negotiation" –~~

~~(a) means meeting, discussing or bargaining in good faith between parties with a view to finding mutually acceptable solutions; and~~

~~(b) includes access to information, within a reasonable time at the request of either party.~~

(d) by repealing subsections (4) and (5).

19. Section 65 of principal Act amended

Section 65 of the principal Act is amended, in subsection (1), by inserting, after paragraph (d), the following new paragraph –

(e) the dispute is in relation to a collective agreement to be concluded with the employer in an enterprise where no trade union is recognised as a sole bargaining agent and the trade union reporting the dispute has refused to form part of a joint negotiating panel;

20. Section 67 of principal Act repealed and replaced

Section 67 is repealed and replaced by the following section –

67. Limitation on report of labour disputes

(1) Where a labour dispute is reported to the President of the Commission under section 64, no party to the dispute may report –

(a) any other labour dispute between the same parties within a period of 6 months immediately following the date on which the original report was made;

(b) a labour dispute on the same issue between the same parties within a period of 24 months following the date of the determination of the dispute.

~~(2) Subject to subsection (3), while a collective agreement is in force, no party shall report a labour dispute under section 64 on matters relating to wages, and terms and conditions of employment, which –~~

~~(a) are contained in the collective agreement;~~

~~(b) have been canvassed but not agreed upon during the negotiation process leading to the collective agreement; or~~

~~(c) have not been canvassed during the negotiation process leading to the collective agreement.~~

~~(3) Nothing precludes a party to report a labour dispute under section 64 on matters relating to wages, and terms and conditions of employment, in respect of the matters which are canvassed during a period of negotiation for the renewal of the collective agreement as from any of the period or date specified in section 55(3A).~~

[The insertion of this section in the law was objected by the MSM when it was voted at the National Assembly. So the government should fullfil it commitment. These sections seriously undermines the application of the new Section 62A. We propose that Section 67 of the present Act be amended so that sub section (2) and (3) be deleted, first to render effective the new Section 62A, so that a Union can declare a Labour Dispute while a 'Collective Agreement is in force' and secondly to remove section (3) as it is a complete none sense and restrict the right to collective bargaining.]

21. Section 69 of principal Act repealed and replaced

Section 69 of the principal Act is repealed and replaced by the following section –

69. Conciliation and mediation

(1) Where a labour dispute is reported to the President of the Commission under section 64 and the report –

(a) has not been rejected by the President of the Commission under section 65; or

(b) has been rejected and the rejection has been revoked on an appeal to the Tribunal under section 66,

the Commission may, with a view to promoting a settlement of the dispute –

(i) make proposals to the parties for the settlement of the dispute;

(ii) conciliate the parties;

(iii) mediate and make written recommendations to the parties; or

(iv) make such investigation as it may, in the circumstances, deem appropriate.

(2) The Commission shall not entertain a dispute unless the conditions specified in section 64~~(2)~~ are fulfilled.

(3) The recommendations made under subsection (1) shall not be binding on the parties to the labour dispute unless the parties agree, in writing ~~or in such manner as the President of the Commission may approve –~~

(a) to confer upon the President of the Commission the power to make such recommendations as the President of the Commission may determine;

(b) on the date on which the recommendations of the President of the Commission shall become final; and

(c) to comply with the recommendations.

(4) Where the parties do not agree to confer upon the Commission the power to make written recommendations under subsection

(3) –

(a) the Commission may continue to investigate and conciliate the parties with a view to resolving the dispute; and

(b) where the labour dispute still remains unresolved, the Commission may, at the request ~~of **any**~~ of the parties,

further investigate into the matter with a view to reaching a settlement.

[The GWF-JNP do agree with sub section (b), as employer may use this provision for all sorts of abuses]

(5) (a) Where a settlement is reached between the parties following conciliation or mediation under subsection (4)(a), an agreement shall be drawn up in writing, signed by the parties and registered with the supervising officer and the Tribunal.

(b) The agreement referred to in paragraph

(a) shall have the effect of a collective agreement as specified in sections 55 and 56.

(6) The Commission shall complete its proceedings within ~~45 days~~ 30 days of the date of receipt of labour dispute under section 64.

(7) The Commission may, at the request of the parties to the labour dispute, extend the period specified in subsection (6), where the circumstances so require.

(8) Where no agreement is reached ~~and the parties have reached a deadlock~~ after the delay specified in subsection (6) or (7), as the case may be, the Commission may, ~~where it deems fit~~ , at the request of the parties to the labour dispute, within a period not exceeding15 days, explore other avenues of settlement.

To add a new Section (8) A

(8) A Where no agreement is reached under subsection (8) a trade union may opt to request the Commission to refer the Labour Dispute to the Tribunal.

(9) Where no agreement is reached under subsection (8), and the trade union do opt to request the Commission to refer the labour Dispute to the Tribunal, ~~the Commission shall declare that a deadlock has been reached and~~ the Commission shall –

(a) within 7 days of the deadlock submit a report to that effect to the parties; and

~~(b) unless the parties jointly refer the dispute for voluntary arbitration under section 63, refer the labour dispute to the Tribunal at the request of the party reporting the dispute.~~

~~(10) The request made by a party to refer a labour dispute to the Tribunal shall be made in such manner as the Commission may approve.~~

(1~~1) Notwithstanding subsection (9) –~~

~~(a) where no agreement is reached in a collective labour dispute reported by a trade union on behalf of its members on an issue which concerns the bargaining unit as a whole; and~~

~~(b) the parties to the labour dispute do not opt for voluntary arbitration under section 63 or the party~~

advise the parties to refer the the Labour Dispute for voluntary arbitration under section 63.

~~reporting the dispute does not make a request to the Commission to refer the dispute to the Tribunal,~~
~~the union may, within 45 days of the submission of the report by the Commission have, subject to sections 76 to 82, recourse to strike.~~

Subject to subsection (…..and sections 76 to 79...) where the parties decline to refer the labour dispute for voluntary arbitration, the trade union or the employer t~~he party having reported the labour dispute~~ may have recourse to strike or lock-out, as the case may be, within 45 days of the submission of the report by the President of the Commission under subsection 5(a).

(12) In the discharge of its functions under this section, the Commission shall –

(a) in the first instance, consider the likelihood of the dispute being settled by conciliation between the parties;

(b) encourage the parties to use any appropriate procedures for negotiation;

(c) endeavour to promote industrial relations.

22. Section 70 of principal Act amended
Section 70 of the principal Act is amended –
(a) in subsection (1), by deleting the words “ or 69(7)” and replacing them by the words “or 69(9)”;

(b) by inserting, after subsection (2), the following new subsections –

(2A) (a) Where the Tribunal finds that the claim for reinstatement of a worker in relation to his suspension from work is justified, the Tribunal shall, subject to the consent of the worker, make an award for the reinstatement of the worker.

(b) The Tribunal shall not make an award for the reinstatement in relation to the suspension from work of a worker where the Tribunal, after having heard the case, is of opinion that the bond of trust between the worker and the employer may have been broken.

(2B) Subject to subsection (2A), where the Tribunal finds that the claim for reinstatement of a worker in relation to the termination of his employment on any of the grounds specified in section 64(1A) is justified, the Tribunal shall –

(a) subject to the consent of the worker; and
(b) where it has reason to believe that the relationship between the employer and the worker has not irretrievably been broken, make an award for the reinstatement of the worker and, where it deems appropriate, make an order for the payment of remuneration to the worker from the date of the termination to the date of his reinstatement.

(2C) Where the Tribunal does not give an award for the reinstatement of a worker, the worker may institute proceedings before the Court for unjustified termination of employment.

23. Section 72 of principal Act amended
Section 72 of the principal Act is amended –
(a) in subsection (2), by deleting the words “, other than an award under Part VIIIA of the Employment Rights Act,”;

(b) in subsection (5), by inserting, after the words “Remuneration Regulations”, the words “or Wages Regulations”.

24. Section 76 of principal Act amended
Section 76 of the principal Act is amended, in subsection (1) –

(a) by repealing paragraph (a) and replacing it by the following paragraph –

~~(a) a collective labour dispute has been reported by a trade union under section 64 on behalf of its members on an issue which concerns the whole bargaining unit and no agreement has been reached;~~

(b) by inserting, after paragraph (b), the following new paragraph –

(ba) the trade union referred to in paragraph (a) has not made a request to the Commission to refer the labour dispute to the Tribunal under section 69(11);

25. Section 78 of principal Act amended
Section 78 of the principal Act is amended –

(a) by repealing subsections (1), (2) and (3) and replacing them by the following subsections –

(1) Where a decision to have recourse to a strike is taken under section 69(11), the trade union of workers, party to the dispute, shall, at least 7 working days before organising a strike ballot, notify the supervising officer, the President of the Commission and the employer of its intention to hold the strike ballot and the date, time and place where the strike ballot is to take place.

(2) The vote shall be taken by secret ballot in the presence of such officer of the Commission as the President of the Commission may determine.

(3) (a) The secret ballot may be conducted at the workplace or such other place as the trade union may determine.

(b) The secret ballot shall be successful where it obtains the support of a majority of the workers in the bargaining unit concerned by the labour dispute.

(b) by inserting, after subsection (3), the following subsection –

(4) Any employer to whom a notification of a strike ballot is given under subsection (1) shall grant such facilities as may be necessary to, and collaborate with, the trade union and the officer of the Commission in the conduct of the strike ballot.

26. Section 79A of principal Act amended
Section 79A of the principal Act is amended –
(a) by repealing subsection (1) and replacing it by the following subsection –

(1) Notwithstanding the other provisions of this Act, the Minister may, at the request of any party to a labour dispute, provide a conciliation service with a view to conciliating the parties –

(a) where the dispute has remained unresolved at the level of the Commission and the dispute has not been referred to the Tribunal under section 63 or 69(11), as the case may be; or

(b) at any time before or during a lawful strike takes place.

(b) by inserting, after subsection (1), the following subsection –

(1A) Where the labour dispute referred to in subsection (1) still remains unresolved –
(a) the Minister may, with the consent of the parties, refer the dispute to the Tribunal; or

(b) the parties may elect to jointly refer the dispute to an arbitrator of their choice.

27. Part VIII of principal Act amended
Part VIII of the principal Act is amended –
(a) in section 86 –

(i) in subsection (1), by deleting the words “Employment Rights Act” and replacing them by the words “Workers’ Rights Act 2019”;

(ii) in subsection (2), by repealing paragraph (ba);

(b) in section 87 –

(i) by repealing subsection (2) and replacing it by the following subsection –
(2) The Commission shall consist of –
(a) a President and 3 Vice-presidents, to be appointed by the Minister ; and
(b) 12 conciliators or mediators who shall be public officers having experience in the field of industrial relations; and
(c) not more than 6 members, to be appointed by the Minister for such period as he may determine.
(ii) by repealing subsection (3); (c) in section 88(4)(e), by inserting, after the words “disciplinary”, the words “or dispute resolution”;
(d) in section 89, by deleting the word “Commission” wherever it appears and replacing it by the words “President of the Commission”;

(e) in section 90(2), by adding the following new paragraph, the full stop at the end of paragraph (g) being deleted and replaced by a semicolon –
(h) a representative of Statistics Mauritius.
(f) by repealing section 91 and replacing it by the following section –

91. Reference to Board
(1) The Board shall –

(a) at the request of the Minister, make recommendations on wages of workers on an occupational basis; and
(b) make recommendations for the review of the wages every 5 years.
(2) Where the Minister considers that there is no mechanism for the regulation of conditions of employment in an industry or a sector of activity, by collective agreements or otherwise, the Minister may refer the matter to the Board.
(3) Without prejudice to subsection (2), the Minister may, on request made by a joint consultative or negotiating body composed of representatives of a substantial number of workers and of employers in an industry not covered by a collective agreement, refer any matter concerning conditions of employment related to that industry to the Board.
(4) The Board shall, upon a reference under this section, submit its recommendations to the Minister.
(5) In this section –
"worker" has the same meaning as in the Workers' Rights Act 2019.

(g) in section 93 –
(i) by deleting the heading and replacing it by the following heading –

Remuneration Regulations or Wages Regulations
(ii) by inserting, after subsection (2), the following new subsection –

(2A) Where, under subsections (1)(b) or (2)(b), the Minister rejects a recommendation and makes no regulations or, makes such other regulations as he thinks fit, he shall lay a report in the National Assembly containing a statement of the reasons for his decision.
(h) in section 94, by inserting, after the words "Remuneration Regulations", wherever they appear, the words "or Wages Regulations";
(i) in section 95 –
(i) in the heading, by deleting the words "**Remuneration Regulations**" and replacing them by the words "**Remuneration Regulations or Wages Regulations**";

(ii) in subsections (1) and (1A), by inserting, after the words "Remuneration Regulations", the words "or Wages Regulations";

(iii) in subsection (2), by deleting the words "Remuneration Regulation" and replacing them by the words "Remuneration Regulations or Wages Regulations";

(iv) in subsections (5) and (6), by inserting, after the words "Remuneration Regulations", the words "or Wages Regulations";

(j) by adding the following new Sub-part –

Sub-Part F – National Tripartite Council

98A. Establishment of Council

There is established for the purposes of this Act a Council to be known as the National Tripartite Council.

98B. Objects of Council

The objects of the Council shall be to promote social dialogue and consensus building on labour, industrial relations or socio-economic issues of national importance and other related labour and industrial relations issues.

98C. Functions of Council

(1) The Council shall, at the request of the Minister or on its own initiative, make recommendations to the Government on issues relating, inter alia, to –

(a) standards, principles, policies and programmes in labour, industrial relations and health and safety issues, including the review of the operation and enforcement of the labour legislation;

(b) international relations with the International Labour Organisation, African Union and Southern African Development Community (SADC);

(c) the administration of issues concerning items on the agenda of International Labour Conferences and regarding the examination of issues pertaining to ratified or unratified labour conventions and recommendations;

(d) social and economic policies in the light of changes in the world of work;

(e) employment policies and job creation;

(f) skills training and upgrading for greater employability;

(g) productivity, competitiveness and efficiency at the workplace;

(h) decent work at the workplace and the evaluation and monitoring of the ILO Decent Work Country Programme.

(2) The Council shall, in the discharge of its functions –

(a) collect and analyse data and information on wages and related matters;
(b) conduct research on labour market and socio-economic issues for policy formulation.

98D. Composition of Council

(1) The Council shall be presided by the Minister who shall be the Chairperson and shall consist of –
(a) 2 Vice-chairpersons, to be appointed by the Minister;
(b) a representative of the Ministry;
(c) a representative of the Ministry responsible for the subject of agriculture;

(d) a representative of the Ministry responsible for the subject of business;

(e) a representative of the Ministry responsible for the subject of civil service;

(f) a representative of the Ministry responsible for the subject of finance;

(g) a representative of the Ministry responsible for the subject of industry;

(h) a representative of the Ministry responsible for the subject of tourism;

(i) 7 members representing organisations of employers, to be appointed by the Minister after consultation with the most representatives organisations of employers;

(j) 7 members representing organisations of workers, to be appointed by the Minister after consultation with the most representatives organisations of workers;

(k) one academic and one professional having wide knowledge in the field of labour market, industrial relations or economy, to be appointed by the Minister.

(2) The members referred to in subsection (1)(a), (i), (j) and (k) shall hold office for a period of 2 years and shall be eligible for reappointment for a further period of 2 years.
(3) In the absence of the Chairperson, any of the Vice-chairpersons as designated by the Chairperson may act on his behalf.
(4) In this section –
"organisations of workers" means a registered trade union, federation or confederation.

98E. Meetings of the Council
The Council shall meet at quarterly intervals or as often as the Chairperson may determine.

98F. Commissions
(1) The Council may set up such commissions as may be necessary to assist it in the discharge of its functions.

(2) The Council shall appoint a chairperson to chair each Commission.
(3) Each Commission shall consist of such number of members as the Council may determine, taking into account their expertise in the appropriate field and adequate representation of each of the different groups in the Council.
(4) The Council may co-opt any person, not member of the Council, in view of his expertise, to assist a Commission in its work and deliberation.
(5) Each Commission shall meet as often as necessary or at such intervals as the Chairperson may determine.
(6) The members of the Commissions shall hold office for a period of 12 months and may be eligible for reappointment for a further period of 12 months.
(7) Each Commission shall be subject to the direction and control of the Council.

98G. Functions of Commissions
(1) A Commission shall –

(a) undertake such studies and prepare such reports and recommendations as the Council may require;
(b) advise the Council on any matter referred to it.
(2) A Commission shall submit its report and its recommendations to the Council on any matter referred to it by the Council within such time as the Council may determine.

98H. Staff of Council
(1) The Secretary to Cabinet and Head of the Civil Service may, subject to the Public Service Commission Regulations, designate such public officers as may be necessary to assist the Council.
(2) Every officer so designated shall be under the administrative control of the Council.

98J. Annual report
The Council shall, not later than 3 months after the end of every financial year ending 30 June, submit to Cabinet its annual report.

28. Section 108 of principal Act repealed and replaced
Section 108 of the principal Act is repealed and replaced by the following section –

108. Savings and transitional provisions
(1) (a) Where a procedure agreement which is in force before the commencement of the Employment Relations (Amendment) Act 2019 does not contain any of the provisions specified in the procedure agreement set out in the Fifth Schedule, the parties to the procedure agreement shall, within 30 days of the commencement of the Employment Relations (Amendment) Act 2019, include such provisions in the procedure agreement.

(b) Where the parties fail to comply with paragraph (a), they shall, after the delay of 30 days, be bound by the procedure agreement in the Fifth Schedule.
(2) Where a trade union or a joint negotiating panel has obtained recognition from an employer before the commencement of the Employment Relations (Amendment) Act 2019 and no procedure agreement is in force, the employer and the trade union or the joint negotiating panel, as the case may be, shall be regulated in accordance with the procedure agreement set out in the Fifth Schedule.
(3) Any application relating to the making of a procedure agreement or variation of a procedure agreement which is pending before the Tribunal immediately before the commencement of the Employment Relations (Amendment) Act 2019 shall be dealt with in accordance with that Act.
(4) Any application made to an employer for recognition of a trade union or group of trade unions before the commencement of the Employment Relations (Amendment) Act 2019 and which is still pending shall be dealt with in accordance with that Act.
(5) Any application for recognition of a trade union pending before the Tribunal before the commencement of the Employment Relations (Amendment) Act 2019 shall be dealt with under section 38 as if it were an application made under that section and the Tribunal shall, notwithstanding section 38(14), determine the application within 60 days of the commencement of the Employment Relations (Amendment) Act 2019, unless the Tribunal, for exceptional circumstances, extends the delay.

(6) Subject to subsection (7), the validity of the recognition of a trade union of workers which obtained recognition before the commencement of the Employment Relations (Amendment) Act 2019 shall remain unaffected.
(7) Where 2 or more trade unions are already recognised in an enterprise or industry as bargaining agents only and the trade unions refuse to form a joint negotiating panel, the employer or any of the trade unions may make an application to the Tribunal, within 12 months of the commencement of the Employment Relations (Amendment) Act 2019, for a determination as to which trade union the workers in the bargaining unit wish to be their bargaining agent.
(8) Any labour dispute which is reported to the President of Commission before the commencement of the Employment Relations (Amendment) Act 2019 and which –

(a) has not been rejected by the President of the Commission or where it has been rejected, the rejection has been revoked on an appeal to the Tribunal under section 66; or
(b) is referred to the Tribunal,
shall be dealt with in accordance with Part VI as if sections 64, 65, 69, 70, 76, 78 and 88 have not been amended or repealed and replaced.
(9) Any labour dispute pending immediately before the commencement of the Employment Relations (Amendment) Act 2019 before the Tribunal shall be dealt with in accordance with Part VI as if the definition of labour dispute in section 2 and sections 64, 65, 69, 70, 76, 78 and 88 have not been amended or repealed and replaced.
(10) Any labour dispute reported before the commencement of the Employment Relations (Amendment) Act 2019 or an appeal made under section 66 in relation to a labour dispute reported before the commencement of the Employment Relations (Amendment) Act 2019 shall be dealt with in accordance with Part VI as if the definition of labour dispute in section 2 and sections 64, 65, 69, 70, 76, 78 and 88 have not been amended or repealed and replaced.
(11) A reference in any enactment to the repealed Remuneration Regulations shall be construed as a reference to the Remuneration Regulations or Wages Regulations or any such regulations made under section 93.
(12) Where this Act does not make provision for any saving and transition, the Minister may make such regulations as may be necessary for such saving and transition.

29. Second Schedule to principal Act amended
The Second Schedule to the principal Act is amended –
(a) in Part I –

(i) in paragraph 3(1) –
(A) by repealing sub subparagraph (aa);

(B) in sub subparagraph (b), by deleting the words "Subject to section 39A of the Employment Rights Act, each division of the Tribunal shall –" and replacing them by the words "Each Division of the Tribunal shall –";
(ii) in paragraph 6(1), by deleting the words ", except for proceedings relating to a reduction of workforce or closing down of enterprise under the Employment Rights Act,";

(b) in Part II, in paragraph 8, by adding the following new subparagraph –

(4) In the discharge of his functions, the President of the Commission may –
(a) refer a labour dispute, in the first instance, to a conciliator with a view to promoting a settlement of the dispute; or
(b) refer a labour dispute to one of its divisions for conciliation or mediation.
(c) in Part IV –

(i) in paragraph 20(3), by adding the following new sub subparagraphs, the full stop at the end of sub subparagraph (c) being deleted and replaced by a semicolon and the word "or" at the end of sub subparagraph (b) being deleted –

(d) interview any of the parties or any person at any time before, during, or after a hearing;
(e) follow whatever procedure the Commission considers appropriate.
(ii) by inserting, after paragraph 21, the following new paragraph –
21A. The President or Vice-President of the Board shall not be called upon to give evidence in any proceedings in relation to any recommendations made by the Board.

30. Fifth, Sixth and Seventh Schedules added to principal Act
The principal Act is amended by adding the Fifth, Sixth and Seventh Schedule set out in the Schedule to this Act.

31. Commencement

(1) Subject to subsection (2), this Act shall come into operation on a date to be fixed by Proclamation.

(2) Different dates may be fixed for the coming into operation of different sections of this Act.

SCHEDULE
[Section 28]
FIFTH SCHEDULE
[Section 51(1)]

PROCEDURE AGREEMENT
Preamble
The spirit and intention of this Agreement is to further consolidate relations between employers and workers represented by the recognised union or unions and to provide methods and procedures to resolve labour disputes by collective bargaining or joint consultation in relation to matters within the scope of this Agreement.

Article 1 – Recognition and scope
The employer shall negotiate with the recognised union as the bargaining agent representing the interests of the categories of workers mentioned in the bargaining unit for the purpose of collective bargaining with regard to –
(a) wages, hours of work and other conditions of employment;

(b) equal opportunity;

(c) job classification and job content;

(d) safety and health;

(e) promotion;

(f) welfare of staff;

(g) facilities for trade union office bearers in relation to trade union activities;

(h) access to workplace;

(i) access to information;

~~(j) establishment of a minimum service;~~

(k) any such other matter as may be agreed upon by parties to this Agreement.

Article 2 – Powers of the employer (Extent and Limitations)

(1) The union recognises the prerogatives of the employer to conduct its business and manage its operations, ~~including –~~ in accordance with the law

~~(a) planning, directing and controlling of the operations of the business including methods, standards and manner of working;~~

~~(b) hiring, controlling and directing the working force and determining the number of workers required;~~

~~(c) controlling and regulating the use of all equipment and other properties of the employer and determining technological improvements required;~~
~~(d) determining the time, methods, manner of working and type of work to be done;~~

~~(e) modifying, extending, curtailing or ceasing operations and determining the number of workers required;~~

~~(f) selecting, appointing, transferring, promoting and laying off workers;~~

~~(g) disciplining and terminating the employment of workers for good cause;~~

~~(h) making such rules and regulations as the employer may consider necessary and advisable for the orderly, efficient and safe conduct of the business;~~

~~(i) deciding all other matters connected with its business.~~

~~(2) The union may, where the employer makes an abuse of his prerogatives, contest any of the decisions made in connection therewith.~~

(3) (a) The employer and the union shall endeavour to ensure that the rights of the other party as specified in the labour legislation, this Agreement or any Collective Agreement are respected.

(b) The parties agree that the rights of the employer, union and the workers include democratic and other rights as protected by the Constitution and laws of Mauritius, and the ILO conventions, where applicable.

(4) (a) The employer will ensure that all relevant laws will be respected and that there are relevant consultations and negotiations with the recognised union, ~~whenever appropriate and~~ in any matter concerning reduction in workforce, substantive changes to contractual terms and conditions of employment, transfer of ownership or where cessation of business is contemplated.

(b) The employer undertakes to comply with the laws of Mauritius in operating its business. ~~and retains the right to operate his business without any interference.~~

(5) The employer shall, in his administrative and human resource policies –

(a) cater for the general welfare of workers, in particular in so far as mess room, working tools and equipment, transport facilities, health and safety at work and communication are concerned;

(b) maintain regular, formal and informal consultations with the recognised unions concerning terms and conditions of employment, with a view to promoting good industrial relations.

(6)

~~(a) The employer agree that before bringing any substantial change to the terms and conditions of employment, he will consult the workers to explain the nature and reasons of such changes.~~

(a) The employer agree that before bringing any substantial change to the terms and conditions of employment, he will inform the Unions and comply with all relevant provision of the law and joint Agreement between the Union and the Employer.

(b) The workers are free to make representations, as appropriate, through their union's or workplace representatives.

Article 3 – Union security and functions

(1) (a) The employer agrees not to discriminate against, victimise or otherwise prejudice any worker because of his union membership or union activity.

(b) The representatives of the union shall be free to express their views in good faith and in so doing the relations between the employer and the union or its representatives shall, in no manner, be adversely affected.

(2) The employer and the union agree that no worker shall be intimidated, coerced or threatened in any manner in the course of his employment.

(3) The employer and the union agree that the workers shall not engage in any union activities whilst on the employer's premises during working hours, except with the expressed permission of the employer. [Workers shal the right during their meal time to conduct union activities, in the workers mess]

(4) (a) The employer agrees to afford reasonable facilities, ~~as far as practicable~~, to the union to carry out its legitimate functions provided ~~it does not disrupt the smooth functioning of the employer's activities.~~

(b) The facilities referred to in subparagraph (a) shall include access to sites of work and time off facilities.

Article 4 – Time off facilities

(1) The employer agrees to grant to the accredited representatives of the recognised union reasonable time-off without loss of pay for the purposes of performing their trade union functions and activities, ~~subject to the exigencies of their employment and in a manner which does not impair the smooth operation of the workplace.~~

(2) ~~When deciding on~~ the extent, duration and conditions of paid time-off, t~~he employer may~~ shall take into consideration –

(a) the size of the trade union to which the accredited representatives belong and the type and volume of activities carried out by the trade union;

(b) the additional responsibilities of the accredited representatives of trade union at the level of a federation or a confederation.

(2A) The employer shall grant time for all accredited Union representatives to participate in the JNC meeting, represent employees at the Labour Office, in any institutional and judicial instances where any issues affecting the employees are being dealt.

(3) Subject to paragraph (2), an application for time-off shall be made to the employer by the accredited representatives within a reasonable time and approval by the employer shall not be unreasonably withheld.

(4) The employer agrees to grant time off facilities to the accredited representatives of the union as follows –

…………………………………………………………………………………………………….
……………………………………………………………………………………………………..........
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Article 5 – Check off

(1) The employer shall implement a check off system for deduction of the unions' fees from the salaries of its members where written authority is received from individual workers.

(2) A worker may withdraw this authority by notifying the employer in writing, with a copy of any written withdrawal being sent to the union.

(3) The deductions shall be stopped ~~2 months~~ 1 Month after the date the union has been notified.

(4) Any written authority received from the individual worker before the coming into force of the present Agreement shall continue to be valid.

Article 6 – Communication

Communication from union
The recognised union shall notify the employer, in writing, of the names of its workplace representatives, officers of its executive committee, negotiators, legal representatives, if any, and accredited representatives and update these information accordingly.

Communication from employer
(1) The employer agrees, ~~as far as is reasonable,~~ to send a copy of circular letters addressed to members of the staff concerning matters covered by this Agreement and any Collective Agreement.

(2) The employer also agrees to send to the recognised union a copy of letters exchanged with individual workers who are members of the Union subject to the written consent of the individual worker.

~~**Communication with media**~~
~~(1) Both parties agree that any communication to the media, including the press, radio and television in respect of this Agreement or any subsequent negotiations resulting from it shall be signed and issued jointly by accredited representatives of the employer and the union.~~

~~(2) Subject to subparagraph (3), the parties agree that they may issue communiques and hold press conferences separately to address matters concerning industrial relations.~~

~~(3) The parties agree that neither party shall make any declaration to the media likely to adversely affect any ongoing negotiation.~~

~~(4) Both parties agree not to make any disparaging statements about each other and to act in good faith when dealing with the media.~~

Article 7 – Collective bargaining

(1) The employer and the union both agree to conduct collective bargaining as per the law and for this purpose to set up a Staff Negotiating Committee (SNC) to discuss any matter concerning work related issues and other issues contained in this Agreement.

(2) (a) The SNC shall be composed of such number of representatives of the employer and of the recognised union, as may be agreed by both parties.

(b) The employer shall be represented by members of his management and the union by its accredited officers.

(3) Every party shall have the right to be assisted by its negotiators and counsels.

(4) The SNC shall meet once every 2 months or as often as may be required.

(5) The SNC shall meet under the chairpersonship of the General Manager or his accredited representative.

(6) The SNC shall consider any grievance and dispute, whether individual or collective and whether of right or interest, issues related to collective bargaining, enforcement of Agreements and enactments.

(7) Either party may request a meeting of the SNC by giving written notice to the other party, stating the reasons thereof and specifying the issues to be discussed at the meeting.

(8) The parties shall, within 2 weeks of receipt of the notice, mutually agree on the date and time of the meeting.

(9) The meetings of the SNC shall be held on the employer's premises and the employer shall provide suitable accommodation for that purpose.

(10) Draft minutes of proceedings shall be prepared by the employer and submitted to the union representatives at least one week after the meeting ~~prior to the next meeting~~, for approval at the subsequent meeting.

(11) Any Agreement reached at the level of the SNC shall be binding and shall be implemented without undue delay on such date as agreed between the parties, and in any way not beyond one month of the date the Agreement.

Article 8 – Procedure in case of individual grievance

Stage 1 – Immediate superior
A worker who has a grievance shall, with or without the assistance of his union, raise the matter, in the first instance, with his immediate superior who shall do his utmost to resolve the grievance within a mutually agreed period of time. 44

Stage 2 – Management

Where no settlement is reached at level of the immediate superior, the worker shall, with or without the assistance of the union, raise the matter with the line Manager/ supervising officer or the Human Resource Manager.

Stage 3 – Apprehended dispute
Where the worker is not satisfied with the decision of the Human Resource Manager, the worker may, through his union, refer the dispute to the SNC.

Article 9 – Procedure for settling of disputes
Where a dispute is not resolved at the level of the SNC, the employer ~~and~~ or the union, ~~acting jointly,~~ may –
(a) in a case of a dispute of right, refer the dispute to the Ministry of Labour, Industrial Relations, Employment and Training;

(b) in a case of a dispute of interest, acting jointly refer the dispute to the Employment Relations Tribunal or to an arbitrator appointed by them; or

~~(c) report the dispute to the President of the Commission for Conciliation and Mediation under the Act.~~

~~**Article 10 – Collective disputes during the duration of a collective agreement**~~

~~(1) A collective dispute (dispute of interest), on terms and conditions of employment, which arises during the duration of a Collective Agreement, shall not be subject to negotiation, unless both parties agree to re-open negotiations.~~
~~(2) A collective dispute which arises during the duration of a Collective Agreement, shall, in the case of a substantial change, be subject to negotiation.~~

~~**Article 11 – Strike or lockout**~~
~~No strike or lockout shall be instituted pursuant to disputes unless and until the procedures specified in this Agreement have been exhausted and the requirements of the Act are met.~~

~~**Article 12 – Minimum service**~~
~~(1) The employer and the recognised trade union agree that a minimum service shall be maintained during a strike or lock out to protect life and property.~~

~~(2) The number of workers, their occupation and their departments in respect of which a minimum service is to be maintained is hereunder set out – Number of workers~~	~~Occupation~~	~~Department~~
~~.......................~~	~~............................~~	~~............................~~
~~.......................~~	~~............................~~	~~.............................~~
~~.......................~~	~~..............................~~	~~...............................~~