

Covid-19 & New Working Conditions as The New Normal: The Domino Effect

-The Mauritian and African Human Rights Comparative Case Study-

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Professor Rajendra Parsad GUNPUTH

(*Personal Chair in International Comparative Law, and Specialises in Employment Law*)

Dean of Faculty of Law & Management

University of Mauritius

deanfilm@uom.ac.mu, rpgunput@uom.ac.mu

&

Dr Ambareen Beebeejaun, a.beebeejaun@uom.ac.mu

Department of Law, University of Mauritius

Abstract. The Covid-19 pandemic disease has an impact on, *inter alia*, the workers' rights to a fair remuneration and treatment. There were also risks of unemployment and workers becoming redundant provoking gender inequality in the labour market especially when the Mauritian legislator came up with new legislations and regulations. The Mauritian government and the Mauritian legislator started to pass new legislations as from 2019 to cater for new working conditions such as work from home (WFH) with a "domino effect" which infringes their basic fundamental rights, and have been detected and reported on the media¹. Indeed, individuals started to suffer from lockdown following the curfew and its spread among the population. Most human and fundamental rights were restricted like in most countries, worldwide.

I Introduction. This contextualised paper deals with the actual situation in the small Republic of Mauritius with its approximately 1.3 million inhabitants. It also allows to better understand the latest trend in the development of new legislations and regulations (*infra*, Table 2) to protect workers, and it has signed and ratified practically most international and regional covenants to enhance human rights of all its individuals. However, the Covid-19 pandemic disease also started to impose new conditions of live with various limitations to human rights against the will of most individuals of the island.

As an illustration, and like many countries, the small Republic of Mauritius, as a member of the United Nations Development Program (UNDP) is committed to the 17 Sustainable Development Goals (SDGs) which have been set up by the UNDP in order to "protect the planet, to eradicate poverty and ensure that all people enjoy peace and prosperity" to be achieved by 2030.

To achieve these SDGs, the Mauritian legislator passed *The Equal Opportunities Act 2008*, *The Employment Relations Act 2008 (Act 32/2008)* and the recent *Workers' Rights Act 2019 (Act 20/2019)* to reduce inequality, to protect all workers against victimisation and discrimination² on the workplace³. The new *Workers' Rights Act 2019 (Act 20/2019)*⁴ came into force and it also provides sufficient provisions to promote decent work and economic growth through sustained economic growth, higher levels of productivity and technological

¹ Mardemootoo, S., Balgobin-Bhoirul, P., Kisson, G., Guttoo, H., Tung, S. and Desai, J., 2020. The COVID-19 (Miscellaneous Provisions) Act of 2020 introduced by the Parliament of Mauritius - Amendments and their implications.

² Section 31 of the Employment Relations Act 32 (Act 32/2008) provides for protection against discrimination and victimisation

³ Part II of The Workers' Rights Act 2019 (Act 20/2019) (sections 4-7) provides for "Measure against discrimination in employment and occupation".

⁴ The Preamble of The Workers' Rights Act 2019 (Act 20/2019) provides that: "To provide a modern and comprehensive legislative framework for the protection of worker, and to provide for matters related thereto".

innovations as per the SDG 8. The Preamble of the *Equal Opportunities Act 2008* enacts that that act was passed to: “Promote equal opportunity between persons, prohibit discrimination on the ground of status and by victimisation, establish a Commission and an Equal Opportunities Tribunal and for related matters”.

Chapter II of the Mauritian Constitution⁵ (1968) provides for fundamental rights and most of these rights are inspired from the *Universal Declaration on Human Rights*, 1948 and the European Convention on Human Rights, 1950 and they are very useful to protect the constitutional rights of all individuals in Mauritius without exception (Table 1).

TABLE 1 CONSTITUTION: CHAPTER II ON FUNDAMENTAL RIGHTS (SECTIONS 3-16)

	Sections	HUMAN RIGHTS	Precedents
3	Section 3	Right to life and Right to personal liberty	
4	Section 4	Right to life	
5	Section 5	Right to personal liberty, right to be informed of the reasons for one’s arrest or detention (5(2); right, after arrest or upon being detained, to be afforded reasonable time facilities to consult a legal representative of one’s own choice (section 5(3)); right, after being arrested or detained, to be brought without undue delay before a Court of law (section 5(3))	
6	Section 6	Protection from slavery and forced labour	
7	Section 7	Protection from inhuman treatment	
8	Section 8	Protection from deprivation of property	
9	Section 9	Right to privacy of home and other property	Retreaders Ltd v Marie 1989 MR 272
10	Section 10	Right to a fair hearing (section 10(1)), right to be tried by an independent and impartial court (section 10(1)), right to be tried by a court established by law (section 10(1)), right to be considered innocent until proved guilty (section 10(2)(a)), right to be informed, as soon as reasonably practicable, in a language which he understands and in detail, of the nature of the offence(section 10(2)(b)), right to be given adequate time and facilities for the preparation of his defense (section 10(2)(c)), right of the person charged to defend himself in person (section 10(2)(d)), right to defend himself at his own expense, by a legal representative of his own choice (section 10(2)(d)), right to defend himself, where so prescribed, by a legal representative provided at the public expense (section 10(2)(d)); right to be afforded facilities to	P.Boolell v The state 2006 UKPC 46 (PC Appeal no 39 of 2005)- appeal was allowed because the accused was not tried within a reasonable time Babet v The Queen 1979 MR 222-right to a fair hearing. François v The Queen 1975 MR 236-right to be given adequate time and facilities for the preparation of his defence.

⁵ Chapter II of the Mauritian Constitution 1968 (sections 3-16) provides for fundamental rights to all individuals in Mauritius

		examine, in person or by his legal representative, the witnesses called by the prosecution before nay court (section 10(2)(e)); right to obtain the attendance and carry out the examination of witnesses to testify on his behalf before the court on the same conditions as those applying to witnesses called by the prosecution (section 10(2)€; right to have without payment the assistance of an interpreter if he cannot understand the language used at the trial of the offence (section 10(2)(f)); right to be present at his trial (section 10(2)); right to obtain within a reasonable time after judgment, upon payment of any reasonable fee prescribed by legislation, a copy of the court record (section 10(3)), right to be judged only in accordance with the substantive criminal law in force at the time of the offence (section 10(4)), right after a conviction or acquittal not to be tried a second time for the same offence except where a re-trial is ordered by a court of appeal or review; right not to be tried for a criminal offence where a pardon has been granted, by the competent authority, for that offence (section 10(6)); right not to be compelled to give evidence at the trial (section 10(7))	R v Boyjoo 1991 MR 84-right to defend himself
11	Section 11	Protection of freedom of conscience	
12	Section 12	Freedom of expression	Cie de Beau Vallon Ltd v Nilkomol 1979 MR 254
13	Section 13	Freedom of association and assembly	Young, James and Webster v UK 1981 IRLR 408 Wilson v UK and Palmer v UK 2002 35 EHRR 20
14	Section 14	Protection of freedom to establish schools	
15	Section 15	Protection of freedom of movement	
16	Section 16	Right not to be discriminated against a person on account of race, caste, place of origin, political opinion, colour, creed or sex	Singh v Rowntree Mackintosh 1979 IRLR 199 Kaur v Butcher & Baker Foods Ltd 1997 1304563/97

Table 1

Soon, trade unions⁶ were created with political parties and some federations as well. And all Mauritians enjoy a free and fair election explaining the political stability of the island, foreign investors started to invest in Mauritius coupled with foreign direct investments (FDI) from India, China, South Africa, UK and other great nations of the world through the Double Taxation Avoidance Agreement (DTAA). The sugar price fell down and Sir Anerood Jugnauth started to build a new nation more focused on modern technology and the island became a republic on the 12th March 1992. It remains very active in terms of regional development and became a member of regional blocks (COMESA, SADC of the IORA) and also became a stepping stone for China and India to invest in Africa. Because of its sudden socio-economic development the Mauritian legislator started to pass Bills and Acts of Parliament, based on the Westminster Model, for the welfare of all workers in Mauritius and they saw the promulgation of the *Workmen's Compensation Act 1931*, *Labour Act 1975*, *Industrial Relations Act 1976*, *Export Processing Zone Act* or the *Industrial Expansion Act*. Some of them were repealed and replaced by new legislations to cope with a more modern island with the passing of the *Employment Rights Act 2008 (Act 38/2008)*, the *Employment Relations Act 2008 (Act 32/2008)*, *OSHA 2005* and these legislations are constantly amended to be in line with the requirements and needs of the population as Mauritius became a centre for export, import, doing business, commerce and trade attracting foreign workers to work in its industries and factories with export of textile to the USA under the African Growth and Opportunity Act (AGOA).

However, though the Covid-19 pandemic disease is under control in Mauritius, it has, nevertheless, impacted very negatively on the workers' rights in various ways through quarantine, lockdowns, restrictions on movement, personal liberty, and freedom of expression and freedom of association and assembly just to name a few⁷. For the first time and inadvertently workers started to discover new legislations and regulations such as *The Prevention and Mitigation of Infectious Disease Coronavirus Regulations 2020*, which imposed a curfew order of 21 days to contain the spread of the Coronavirus-19 pandemic disease in Mauritius, and any breach would entail any person to a term of imprisonment of a maximum term of 6 months and a fine (Rs 500,000).

At the very outset, it is important to know that the Covid-19 pandemic disease is certainly not an Act of God⁸ (*cas de force majeure*⁹), and that there various obligations and implied duties¹⁰ on both an employee and an employer irrespective workers are working on their workplace or at home. Both parties should be of good faith, that any worker is fit to work and the employer must provide work and remuneration to them though he/she may be facing financial difficulties especially during lockdown and confinement¹¹, the Supreme Court held in the case of *Ismael v Jay Fashions Co. Ltd v 1988 SCJ 497*, where it was held that: "The issue arose as to whether an employer who claimed that he could not provide to his workers on the ground of financial difficulties leading to the closing of the company, albeit temporarily, could avail himself of this ground to justify the termination of his worker's employment. It was held that the dismissal of workers in the above circumstances was unjustified"

The authors would rely on new legislations and regulations passed recently by the Mauritian legislator to demonstrate that the spreading of the Covid-19 pandemic disease has a "domino effect" on all sectors of the socio-economic development of the small island of Mauritius but the article is more focused on human right issues in a comparative approach.

⁶ The Industrial Relations Act 1976 was repealed and *The Employment Relations Act 2008* came into force.

⁷ Sutherland, E., 2020. Coronavirus Overview of the impacts of the lockdown, Publications - Eversheds Sutherland

⁸ Potayya, S., 2021. An analysis of force majeure in the context of Mauritian banking law.

⁹ Richard, N. and Ribet, A., 2020. COVID-19 and its impact on contractual performance in Mauritius - Force Majeure, DLA Piper Africa, Mauritius, Juristconsult Chambers

¹⁰ Mauritius has still retained the English Common Law and its procedure also follows the English law of Evidence as *per* section 162 of the Courts Act 1945.

¹¹ Dentons.com. 2020. "Force Majeure" and Coronavirus (COVID-19) under the Laws of Mauritius –What is Force Majeure?.

In order to demonstrate the same, the structure of this paper is to understand how the Republic of Mauritius reacted when new legislations and regulations were passed: after an Introduction (I), there is a literature review of the subject matter (II), Covid-19 and The New Working Conditions Under New Legislations: The Mauritian Legal and Institutional Framework (III), The Impact of The Covid-19 on The Workers' Rights To Health and Safety Measures (IV), the Impact of The Covid-19 on The Workers' Rights: The Socio-Economic Impact (V) and this article will close with a list of references (IV) to enhance further research in this emerging field of the law.

II Literature Review. As far as literature review is concerned on the impact of the Covid-19 on the Mauritius economy and the impact of new legislations and regulations, there are already a very wide and important data which have been reported by, *inter alia*, the Wealth Health Organization (WHO), the World Bank Household Survey Report, the Socio-Economic Impact Assessment of Covid-19 in Mauritius, the International Labour Organisation (ILO¹²) has also published its ILO Standards and Covid-19 (Coronavirus), Business Mauritius Report¹³, Afrasiabank¹⁴, KPMG¹⁵ and Rogers Capital¹⁶, and Central Statistics Mauritius, and therefore it is important to make a study to know how some legislations and covenants in the small Republic of Mauritius have played an important role in their participation by giving a legal blow to contain the Covid-19 pandemic disease. Various firms, local and international, have also published research they have undertaken to better understand the impact of the Covid-19 disease on workers' rights in small and medium enterprises, large enterprises and companies: the British firm Burges and Salmon have published the Covid-19 Burges And Salmon's Commitments to Client Service (burges-salmon.com), and in practically the same lien the University of Cambridge Press on its article on Covid-19: Resting the limits of Human Rights. However, the aims and objectives of this paper are to fulfill in some loopholes with regard to legislations and regulations, and its implementation and to what extent human rights are affected on their workplace.

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

The Mauritian Legislations and Its Adaptability on Some Human rights Issues			
1	<i>The Covid-19 (Miscellaneous</i>	16	The Government Wage Assistance

¹² International Labour Organisation. (n.d.). Retrieved from https://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_742203/lang--en/index.htm

¹³ PLCJ. 2020. COVID-19(Mauritius): Can companies suspend the payment of commercial rents ?.

¹⁴ Afrasia Bank. (2020, April 17).

¹⁵ KPMG. (2020, April 28). Retrieved from <https://home.kpmg/xx/en/home/insights/2020/04/mauritius-government-and-institution-measures-in-response-to-covid.html>

¹⁶ Rogers Capital. (n.d.). Retrieved from <https://www.rogerscapital.mu/9135/key-measures-by-the-government-to-sustain-the-mauritian-economy-amidst-covid-19>

	<i>Provisions) Act 2020</i>		Scheme
2	<i>The Prevention and Mitigation of Infectious Disease Coronavirus Regulations 2020</i>	17	The Self-Employed Assistance Scheme.
3	<i>The Public Health (Covid-19 Vaccines for Emergency Use) Regulations 2021</i>	18	The Additional Remuneration and Other Allowances (2019) Regulations 2019
4	<i>The Quarantine Act 2020</i>	19	Constitution of Mauritius 1968
5	<i>The Quarantine (Covid-19) Amendment Regulations 2021</i>	20	The Employment Relations Act 2008 (Act 32/2008)
6	<i>The Work from Home Regulations 2020</i>	21	The Employment Relations (Amendment) Act 2019
7	<i>The Worker's Rights (Additional Remuneration) 2021 Regulations 2021</i>	22	The Equal Opportunities Act 2008
8	<i>The Workers' Rights (Extension of Time During Covid-19 Period) Regulations 2020</i>	23	The Industrial Relations Act 1973 (repealed)
9	The Industrial Court Act 1973	24	<i>The Workers' Rights 2019 (Act 20/2019)</i>
10	<i>The Occupational Safety Health and Welfare Act 1988</i>	25	<i>The Occupational Health and Safety Act 2005</i>
11	<i>The End of Year Gratuity Act 2001.</i>	26	<i>Public Bodies Appeal Tribunal Act 2010</i>
12	Public Service Commission (PSC) Act	27	<i>The Protection of Human Rights Act</i>
13	<i>The Registration of Association Act 1979</i>	28	<i>The Workers' Rights (Payment of Special Allowance 2021) Regulations 2020</i>
14	<i>The Public Health Act 1925</i>	29	<i>The Workers' Rights (Extension of Time during Covid-19 Period) Regulations 2020</i>
15	<i>The Code Civil Mauricien, The Code de Commerce Mauricien and the Code Pénal</i>	30	<i>The Public Gathering Act</i>

Table 2

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

The Mauritian International Covenants and Its Adaptability on Some Human Rights Issues

1	<i>The Universal Declaration on Human Rights 1948</i>	4	<i>The International Covenants on Economic, Social and Cultural Rights (ICESR)</i>
2	<i>The International Covenant on Economic, Social and Political Rights (ICCPR)</i>	5	ILO Conventions
3	<i>Forced Labour Convention, 1930 (No. 29) and its 2014 Protocol</i>	6	<i>European Convention on Human Rights 1950</i>

Table 2

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

And when Mauritius has signed and ratified The International Labour Convention it has also implemented various conventions, collective agreements, Remuneration Orders and trade union law inspired from the English Employment law with various courts in case of violation of worker's rights in all its forms such that any citizen living in Mauritius may have recourse to various instances; ranging from appeals, injunctions and judicial review (based on UK injunctions and UK Order 53); with its relevant jurisdiction, such as the Industrial Court (*The Industrial Court Act 1973*), the Employment Relations Tribunal (*The Employment Relations Act 2008*) to hear industrial disputes, the Public Bodies Appeal Tribunal (*Public Bodies Appeal Tribunal Act 2010*) to hear grievances from public officers, and the Supreme Court (*The Constitution, 1968*¹⁷) as the highest court with unlimited jurisdictions in both civil and criminal proceedings. In addition, there are various boards and commissions to cater for any violation of human rights on the workplace and they comprise of, *inter alia*, the Commission for Conciliation and Mediation¹⁸(CCM), the Public Service Commission (PSC) which is empowered to impose disciplinary measures against public officers under *The Public Service Commission Act*, the National Remuneration Board¹⁹ (NRB), the Human Rights Commission (HRC) or the Equal Opportunity Commission (EOC) and they are empowered to advise, guide or protect workers and employees as per the different legislations and regulations in place in case of abuses in all its forms²⁰ and strong violations of workers' rights on the workplace.

¹⁷ Section 76 Constitution 1968 provides that the Supreme Court has unlimited jurisdiction in all civil and criminal proceeding.

¹⁸ Sections 68-71 of the *Employment Relations Act 2008 (Act 32/2008)* provides for the Commission, Conciliation and Mediation

¹⁹ Sections 90-96 *Employment Relations Act 2008 (Act 32/2008)* provides for the National Remuneration Board (NRB) in order to control employers in the private sector for all workers to have an equal remuneration with a decent salary as per the ILO Conventions.

²⁰ Section 114 of *The Workers' Rights Act 2019 (Act 20/2019)* protect workers against violence at work.

And when the *Workers' Rights Act 2019* came into force recently, the aims and objectives of the Mauritian legislator was to protect all workers and employees in Mauritius against discrimination²¹, to provide equal remuneration for equal work; protection against unjustified, wrongful, unfair, constructive dismissal²² including redundancy²³, right to be heard before a disciplinary committee²⁴, right to be represented by any legal representative of one's choice²⁵ and a member of one's trade union, right to leaves²⁶, various forms of agreements²⁷ or right to a workfare programme²⁸. All these rights are of course in string compliance with Chapter II of the Constitution 1968, which contain various provisions on fundamental rights and which have been inspired from *The Universal Declaration on Human Rights 1948*.

When the World Health Organisation (WHO) proclaimed a public international health emergency worldwide the Government of Mauritius, just like most countries of the world, imposed a lockdown period but the citizens in Mauritius had to face to several restrictions related to, *inter alia*, human rights and freedom of movement and liberty, sanitary confinement or Work From Home (WFH) but in the overall economic and employment activities on the small island got a severe legal blow with the sudden and unexpected closure of all activities and important sectors of the country (public hospitals, airports, education or the tourism sector) save to some essential services in case of a national acute crisis where Covid-19 cases were reported.

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

²¹ Section 16 of the Constitution 1968 and section 5 of *The Workers' Rights Act 2019 (Act 20/2019)* protect workers against discrimination based on colour, creed, political opinion, sex, sexual orientation, HIV Aids status

²² Constructive dismissal, wrongful dismissal, unfair dismissal, unjustified dismissal and redundancy are inspired from the English forms of dismissal.

²³ Sections 72-75 of *The Workers' Rights Act 2019 (Act 20/2019)* provide for the reduction of workforce and a Redundancy Board in order for employers not to reduce workforce without justification.

²⁴ Sections 61-68 of *The Workers' Rights Act 2019 (Act 20/2019)* protect workers from unjustified dismissal and termination of agreement.

²⁵ Section 5 and section 10 of the Constitution 1968 provides for any individual in Mauritius to enjoy a fair trial within a reasonable time.

²⁶ Sections 45-53 of *The Workers' Rights 2019 (Act 2019)* for different types of leaves ranging from annual leave, sick leave, vacation leave, special leave, juror's leave, leave to participate in international sport event and leave to attend Court.

²⁷ Sections 12-18 of *The Workers' Rights 2019 (Act 2019)* for different types of agreements ranging from deeming agreement, fixed term agreement, part-time work agreement, agreement to perform part-time or full-time work, compromise agreement, atypical agreement and void agreement.

²⁸ Part VII of *The Workers' Rights 2019 (Act 2019)* provides for a workfare programme fund where an employment may join for financial assistance and social aid from the government.

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

ILO Declarations on Fundamental Principles and Rights at Work			
1	Forced Labour Convention, 1930 (No. 29) and its 2014 Protocol	5	Abolition of Forced Labour Convention, 1957 (No.105)
2	Freedom of Association and Protection of the Right to Organise Convention, 1948 (No.87)	6	Discrimination (Employment and Occupation) Convention, 1958 (No.111)
3	Right to Organise and Collective Bargaining Convention, 1949 (No.98)	7	Minimum Age Convention, 1973 (No.138)
4	Equal Remuneration Convention, 1951 (No.100)	8	Worst Forms of Child Labour Convention, 1999 (No.182)

Table 4

In addition to legislations; which are very often amended, repealed or both; these new legislation and regulations (*supra*) were passed by the Mauritian legislation before Parliament, some loopholes were felt in our system because for any employment relationship it is crucial for a worker to enter into an agreement but the Mauritian law is not clear at all when a contract of employment is in issue, and there is no enactment about the definition of a 'contract of employment' *per se*, and our law and legislations provide for "workers" save to some few exceptions such as *The National Pensions Act 1976* and *The Occupational Health and Safety Act 2005*, which provide for the term "employee". As explained (*supra*), Mauritian is a hybrid law and based on French civil law, there is no proper definition of a contract of employment. Section 2 of *The Worker's Rights Act 2019 (Act 20/2019)* enacts that an agreement is a contract of employment which may be oral or verbal, expressed or implied, and based on French Civil law it is *un acte consensual* which may be agreed upon even orally. As a result, in the absence of any definition of a contract of employment, our courts follow relevant and pertinent definition which emanates, in fact, from the French *Cour de cassation*, and in the same line of thought, our Mauritius has retained the various forms of contract which exist in France, various forms of *fautes* which prevail in France, and English forms of dismissal.

However, as explained (*supra*), in Mauritius most of our legislations and regulations provide for "workers", and there is a distinction between workers and employees in Mauritius as per section 2 of *The Labour Act 1975* (repealed), *The Employment Right Act 2008 (Act 33/2008)* (repealed), and now recently when the Mauritian Legislator passed *The Workers' Rights Act 2019 (Act 20/2019)*. If *The Workers' Rights Act 2019 (Act 20/2019)* innovated in enacting various forms of new forms of agreements, which never existed before, there is still no definition of a contract of employment, and which has very often been deplored, in our Mauritian law, legislations and various regulations which have been passed. Very aware of this lacuna in our law, the Employment Relations Tribunal in the case of *Balakrishna Kuppan v Central Electricity Board ERT/RN 32/2019* stated that: "The employment contract does not exist in a vacuum. It is subject to the various employment laws that has been

enacted by the legislator, which have the objectives of *inter alia* safeguarding the rights of the worker and to protect the worker from any abuse by the employer”.

Convention	Ratification date	Status
C2 Unemployment Convention 1919	02.12.1969	ratified
C5 Minimum Age (Industry) Convention 1919	02.12.1969	denounced on 30.07.1990
C7 Minimum Age (Sea) Convention 1920	02.12.1969	denounced on 30.07.1990
C8 Unemployment Indemnity (Shipwreck) Convention 1920	02.12.1969	ratified
C11 Right of Association (Agriculture) Convention 1921	02.12.1969	ratified
C12 Workmen’s Compensation (Agriculture) Convention, 1921	02.21.1969	ratified
C14 Weekly Rest (Industry) Convention, 1921	02.12.1969	ratified
C15 Minimum Age (Trimmers and Stockers) Convention, 1921	02.12.1969	denounced on 30.07.1990
C16 Medical Examination of Young Persons (Sea) Convention 1921	02.12.1969	ratified
C17 Workmen’s Compensation (Accidents) Convention, 1925	02.12.1969	ratified
C19 Equality of Treatment (Accident Compensation) Convention, 1925	02.12.1969	ratified
C26 Minimum Wage-Fixing Machinery Convention (Revised), 1934	02.12.1969	ratified
C42 Workmen’s Compensation (Occupational Diseases) Convention (Revised), 1934	02.12.1969	ratified
C50 Recruiting of Indigenous Workers Convention, 1976	02.12.1969	denounced on 02.03.2000
C58 Minimum Age (Sea) Convention (Revised) 1936	02.12.1969	denounced on 30.07.1990
C 59 Minimum Age (Industry) Convention (Revised), 1937		Denounced on 30.07.1990
C63 Convention concerning Statistics of wages and Hours of Work, 1939	02.12.1969	denounced on 14.06.1994
C64 Contracts of Employment (Indigenous Workers) Convention, 1939	02.12.1969	denounced on 08.07.1999
C65 Penal Sanctions (Indigenous Workers) Convention, 1939	02.12.1969	denounced on 08.07.1999
C74 Certification of Able Seamen Convention, 1946	02.12.1969	ratified
C81 Freedom of Association and Protection of the Right to Organise Convention, 1948	01.02.2005	ratified
C81 Labour Inspection Convention, 1947	02.12.1969	ratified
C86 Contracts of Employment (Indigenous Workers) Convention, 1947	02.12.1969	ratified
C87 Freedom of Association and Protection of the Right to Organise Convention, 1948	01.04.2005	ratified
C88 Employment Service Convention, 1948	03.09.2004	ratified
C94 Labour Clauses (Public Contracts) Convention, 1949	02.12.1969	ratified
C95 Protection of Wages Convention, 1949	02.12.1969	ratified
C97 Migration for Employment Convention (Revised), 1949	02.12.1969	ratified

C98 Right to Organise and Collective Bargaining Convention, 1949	02.12.1969	ratified
C99 Minimum Wage Fixing Machinery (Agriculture) Convention, 1951	02.12.1969	ratified
C100 Equal Remuneration Convention, 1951	18.12.2002	ratified
C105 Abolition of Forced Labour Convention, 1957	02.12.1969	ratified
C108 Scafarers' Identity Documents Convention, 1958	02.12.1969	ratified
C111 Discrimination (Employment and Occupation) Convention, 1958	18.03.2003	ratified
C137 Dock Work Convention, 1973	30.07.1990	ratified
C144 Tripartite Consultation (International Labour Standards) Convention, 1976	14.06.1994	ratified
C150 Labour Administration Convention, 1978	05.04.2004	ratified
C156 Workers with Family Responsibilities Convention, 1981	05.04.2004	ratified
C159 Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983	09.06.2004	ratified
C160 Labour Statistics Convention, 1985	14.06.1994	ratified
C175 Part-Time Work Convention, 1994	14.06.1994	ratified
C182 Worst Forms of Child Labour Convention, 1999	08.06.2000	ratified

Table 5

IV The Impact of The Covid-19 on The Workers' Rights To Health and Safety Measures. As soon as the Covid-19 pandemic disease started to spread on the small island of the Republic of Mauritius, the Mauritian government started to pass new legislations and regulations with scheme and various forms of communiqués (Table 2 and Table 3) in addition to international legal instruments (*supra*) which the Mauritian government has already signed and ratified (Table 4) which were also communicated to all citizens and individuals in the country but they also adversely impacted on human rights of all individuals. As explained (*supra*), since the disease is foreseeable, the Covid-19 pandemic disease is not an Act of God (*cas de force majeure*), that all obligations and implied duties on both the worker or employer are maintained. In the case of *Hosseney v Maico 1970 SCJ 163*, the Supreme Court of Mauritius stated that: "in the absence of any agreement, or of any law to the contrary, the obligation of the employer to provide work must be subject to the exception that is contained in the general principle of the Code Civil regarding force majeure".

As explained (*supra*), the Mauritian Constitution 1968, in its Chapter II, provides for the most basic of fundamental rights to all its individuals without exception, and they are also in line with international covenants such as *The International Covenant on Civil and Political Rights (ICCPR)* and *The International Covenant on Economic, Social and Cultural Rights (ICESR)*. *The Employment Relations Act 2008 (Act 32/2008)* has been amended by the *Employment Relations (Amendment) Act 2019* and it provides for freedom of association and assembly and protection against discrimination and victimisation with rights a worker may enjoy in terms of trade unions and collective bargaining provided the worker is found fit to work because in the presence of the Covid-19 pandemic disease any worker may be found unfit to work.

Following French and English relevant precedents, the Supreme Court of Mauritius in the some relevant cases on unfitness to work explained in the case of *New Mauritius Docks Co. Ltd v PAS Ministry of Labour on behalf of Perrine 1974 MR 50* held that: "An employer I bound to provide work to a workman who presents himself for work and is found fit to work, and if the employer does not fulfill hi obligation on any day, the workmen is nevertheless deemed to have worked and to have earned his wages for a full day".

In Mauritius, *The Occupational Health and Safety Act 2005* provides in its section 5 that "Every employer shall. So far as is reasonably practicable, ensure the safety, health and welfare at work of all his employers". And with a view that workers are not contaminated they were also encouraged to work from home (WFH) when the legislator passed *The Work*

from *Home Regulations 2020*. In the absence of any relevant case as to whether a worker may refuse to resume work in case of any apprehension of health and safety risk at work reference may be made to the case of *Rodgers v Leeds Laser Cutting Limited ET 1803829/2020* where the Employment Tribunal found that in case it would be reasonable for the employee to refuse that part of the work which expose him to higher risks or to raise the issue with the employer to find appropriate solutions for a safer working environment but that a mere circulation of Covid-19 virus in society is not a “good and justifiable cause” for being absent at work. In Mauritius, just like in most countries worldwide, employers are providing face masks, sanitiser and encourage social distancing on the workplace to encourage preventive measures in addition to self-isolation and enforcement of *The Quarantine Act 2020* and other legislations and regulations the workplace.

True that various legislations and regulations were passed by the Mauritian legislator which took all precautionary measures to protect all its citizens provided they are compatible with Article 4(1) of the ICCPR, which provides for derogations from international human rights obligations in time of public emergency provided that these new measures do not “threatens the life of the nation to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin”. However these new measures, as to measures which were imposed by the Mauritian government, shall not affect, however, the inherent right to life (Article ICCPR), the prohibition of torture and inhumane treatment (Article 7 ICCPR), prohibition of slavery (Article 8 ICCPR), freedom of imprisonment on ground of inability to fulfill a contractual obligation (Article 11), right not to be subjected to retroactive application of criminal law (Article 15 ICCPR), right to recognition as a person before the law (Article 16 ICCPR), right to freedom of thought, conscience and religion (Article 18 ICCPR). It is trite law that no State party to the ICCPR shall not have recourse to public emergency in an abusive manner.

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

When the *Employment Rights Act 2008 (Act 33/2008)* was repealed and the *Workers' Rights Act 2019 (Act 20/2019)* came into force the main aim and objectives of the Mauritian legislator were to provide equal remuneration for equal work as a matter of fairness without gender distinction. Most provisions of the International Covenant on Economic, Social and Cultural Rights (ICESCR); which the Republic of Mauritius has signed but not ratified, are also covered by the recent came into force of *The Workers' Rights Act 2019 (Act 20/2019)*; provides for State parties to recognise the right of every individual to favourable and just condition of work, to ensure a minimum and fair and equal remuneration for equal work without gender distinction, it also provides for a safe and healthy working conditions, the need to recognise seniority and competence as benchmarks for equal opportunity for promotion at work, reasonable limitation of working hours and holidays and leisure for every worker and that State must meet certain conditions such as condition of strict necessity,

non-discrimination, international notification and of consistency with other legal obligations under international law.

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

Actually most countries; such like France, Italy, USA or China; are under the influence of Article 4 ICCPR which provides for legitimate derogations (*supra*) and limitations in case of national security and/or in case of emergency in the interest of the nation and its people. In Mauritius law and legislations, there are similar derogations which are available under the Constitution, 1968. Article 4 ICCPR is in line with section 18 of the Constitution 1968 which provides that: "the law authorizes the taking of measures that are reasonably justifiable for dealing with the situation that exists in Mauritius during that period". Section 5(g) of the Constitution 1968 enacts that: "for the purpose of preserving the spread of an infectious or contagious disease". Section 15 of the Constitution, 1968 enacts that: "No person shall be deprived of his freedom of movement", as highlighted by the Supreme Court in the case of *Coorbanally v The Queen*, where the Commissioner of Police may impose an objection to departure to any individual who may have committed or is suspected of committing a criminal offence as per section 15(3)(a) of the Constitution, 1968 imposes restrictions within Mauritius which is in the interest of defence, public safety, public order, public morality or public health or of securing compliance with any international obligation which shall not be held inconsistent with or in contravention of this section.

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

V The Impact of The Covid-19 on The Workers' Rights: The Socio-Economic Impact. The ravages and havocs of the Covid-19 pandemic disease remain unprecedented in human history affecting all sectors of the socio-economic development of a country affecting ,furthermore, to the rate of unemployment (it raised from 1.1% to 6.5% according to the

International Labour Organisation with, *inter alia*, a sharp increase in poverty, inequalities, loss of labour income or infringement of human rights especially on the workplace.

The Government of the small Republic of Mauritius reacted promptly to the Covid-19 pandemic disease with the promulgation of new legislations and regulations (*supra*), as explained, to control its spread and to cater for its socio-economic development in key sectors such as textile, manufacturing sectors, food, tourism, retail, wholesale and agriculture with a direct impact on Mauritian economy and finance, and, consequently, on its GDP, which contracted by 11% in 2020 according to the International Monetary Fund.

However, these new government policies have a direct bearing and impact on the life of its citizens with tourism and closure of borders, trade across border and closure of most local businesses, production, supply chains, movement and freedom of citizens have been suddenly disrupted during curfew, quarantine, imposition of red zones which were prevailing at a time provoking, unfortunately, loss of jobs and an increase of unemployment rate coupled with infringement of most fundamental human rights including freedom of movement, freedom of expression and speech including the workers' rights in terms of unemployment and other social crisis but which no other country was ready to such unexpected impact on inequality, discrimination, dismissal and other abuses.

The psychological and philosophical impact had finally a last say because most Mauritians believe that they will have to live under the "new normal" that is, henceforth, they will have to live with the Covid-19 pandemic disease. Indeed, the Covid-19 pandemic disease came and infringed the right to life and the right to health with repercussions on various human rights, *inter alia*, right to vaccination, right to access to workplace, freedom of expression and speech, freedom of association and assembly in a democratic country like the Republic of Mauritius where courts were close and disputes were delayed until deconfinement but *justice delayed is justice denied*.

Therefore, it is important to know and understand how the legislator is operating in other African countries in passing relevant legislations and regulations with a view to contain the pandemic disease to spread, and how people find them as a threat to their freedom to life and dignity. To prevent any redundancy, the Mauritian government implemented several measures to prevent massive redundancy especially among low-skilled workers and those working in small and medium enterprises due to the lockdown.

Section 72 A (1) of the *Workers' Rights Act 2019 (Act 20/2019)* was amended so that an employer cannot during the prescribed period starting "1st June 2021 and ending on 31 December 2020 (was extended to 30 June 2021) reduce the number of workers in his employment either temporarily or permanently or terminate the employment of any of his worker", but save and except in cases where an agreement has been reached in relation to the termination of employment for economic, financial, structural, and technological or any other similar reasons, an employer is not allowed to reduce its workforce during the prescribed period. In the case of *Les Frais de l'Artigiano Ltd RB/RN/38/2020*, and the Redundancy Board found that the employer did not comply with the relevant section (Section 72 A (1) of the *Workers' Rights Act 2019 (Act 20/2019)*) and the termination of the workers' employment on ground of redundancy was unjustified. Relying on the precedent of *H.Nunkoo Mauritius Biscuit Making Company Ltd 2015 IND 54*, the Industrial Court Magistrate stated that: "It is not enough for an employer to claim that his business is facing economic or financial downturn. He has to adduce sufficient objective proof of economic difficulties to such an extent that it could no longer keep a particular employee or employees without affecting its competitiveness. Therefore, statement of accounts and expert evidence has to be adduced. The mere fact that the plaintiff has conceded that the company was facing economic difficulties is not in itself sufficient proof that it was facing economic difficulties is not in itself sufficient proof that it was facing economic difficulties that the post occupied by the plaintiff should be made redundant".

VI Conclusion and Recommendations. It can be concluded that the Covid-19 pandemic disease has a domino effect spreading on all sectors affecting by the same time the socio-economic development of a country. In addition, it also affected the most basic fundamental

rights of all its citizens without any exception when new legislations and regulations were passed with a view to provide social protection relief to all households and individuals especially those workers in the private sector with the Government Wage Assistance Scheme (GWAS) and the Self-Employed Assistance Scheme (SEAS) during the Covid-19 period. Despite the Mauritian government was facing financial constraints due to the Covid-19 all workers in the public sector received the same monthly salaries without any cut except for overtime. Since Mauritius is a welfare State with free education at all level, free health care and free transport for elderly persons and tertiary students the Mauritian government immediately implemented a Government Wage Assistance Scheme (GWAS) and a Self-Employment Assistance Scheme (SEAS) during the Covid-19 to assist workers in the private sector as a wage of subsidy. And this effort was highly recommended.

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