KONGRES KESATUAN SEKERJA MALAYSIA
Malaysian Trades Union Congress

MTUC
PEJUANG KAUM PEKERJA
SEJAK 1949

MTUC/8004

21HB April 2010

Y.Bhg Dato R.Segarajah
Ketua Setiausaha
Kementerian Sumber Manusia
Aras 6-9, Blok D3, Kompleks D
Pusat Pentadbiran Kerajaan Persekutuan
62530 Putrajaya

Y.Bhg Dato'

PENYEMAKAN PERUNDANGAN BURUH

Cadangan daripada pindaan Akta Buruh adalah yang paling mudarat yang akan diperkenalkan dalam 40 tahun ini. Melainkan dua perubahan yang kecil dan yang lain kekal menyingkirkan hak perlindungan pekerjaan sama sekali dan memberi kuasa kepada majikan-majikan menggenakan waktu kerja yang tidak munasabah terhadap pekerja-pekerja.

Adalah sangat penting supaya pindaan ini mengutarakan keseimbangan. Persoalannya apakah faedah yang telah kerajaan berikan sejak 30 tahun kebelakangan ini kepada pekerja? Malahan dengan pindaan ini, faedah minima yang sedia wujud akan terhakis sama sekali. Pindaan ini seharusnya memperkasakan pergerakan kesatuan sekerja dengan memperkenalkan pendekatan yang lebih liberal terhadap isu-isu kesatuan sekerja seperti pendaftaran kesatuan, pengiktirafan kesatuan dan perwakilan kesatuan.

Model Ekonomi Baru melaungkan pembentukkan ekonomi Negara Berpendapatan Tinggi. Adalah mustahil untuk mencapai gagasan ekonomi Negara Berpendapatan Tinggi sekiranya kadar gaji pekerja-pekerja kekal pada paras yang rendah. Malahan ini juga memberi ruang kepada majikan-majikan untuk memecat pekerja-pekerja serta mengurangkan pengaruh kesatuan sekerja.

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(Affiliated to the International Trade Union Confederation) All communications should be addressed to the Secretary General

Perasaan khuatir pekerja-pekerja terhadap kerja mereka boleh mengurangkan azam mereka untuk melakukan perundingan terhadap gaji yang lebih tinggi. Sekaligus ini akan menjurus kepada pengurangan dalam produktiviti dan seterusnya mengakibatkan gagasan ekonomi Negara Berpendapatan Tinggi hanya kekal sebagai pernyataan atau angan-angan sahaja. Sudah tentu ini akan memberi ruangan kepada majikan untuk membanjirkan negara dengan pekerja asing.

Tiada gunanya memperkatakan mengenai ekonomi Negara Berpendapatan Tinggi sekiranya gaji minima ditolak.

Dengan ini kami sertakan usul-usul dan cadangan kami terhadap pindaan akta perburuhan untuk perhatian Y. Bhg.Dato dan YB Menteri Sumber Manusia.

Sekian terima kasih.

Yang benar,

(G.RAJASEKARAN)
Setiausaha Agung

Gagasan 1 Malaysia:
kata
rakyat didahulukan
tetapi
kaum pekerja dipinggirkan

KONGRES KESATUAN SEKERJA MALAYSIA

REVIEW OF LABOUR LEGISLATIONS BY THE MINISTRY OF HUMAN RESOURCES

PROPOSED AMENDMENTS TO EMPLOYMENT ACT 1955 INDUSTRIAL RELATIONS ACT 1967 TRADE UNIONS ACT 1959

POSITION PAPER
MTUC

21 APRIL, 2010

A BACKGROUND

1. We have lagged behind in efforts to move up the value chain. We now have become a country dependent on foreign workers - who remit most of what they earn - losing the country foreign exchange and further weakening domestic demand and consumption. This has put our economy at the mercy of exports and performance of other countries.

2. Our brain drain is getting worrying; our purchasing power parity is weak - car price and petrol prices are amongst the most expensive in the world. We cannot compare prices simply by using the exchange rate. E.g. a Singaporean who earns $1000 only pays $1.28 a litre, while a Malaysian who earns RM800 has to pay RM2.05per litre. Our per capita income has lagged behind.

3. On the other hand, we have seen evidence in the country that where Unions are strong, effective, representative and independent, real wages has increased, and what is more important the industry/enterprise that they exist in, has flourished, where profitability and productivity is amongst the highest.

4. The banking Industry is a good example. With high rate of unionization all employees including executives are covered by collective agreement and the productivity and profits are amongst the highest. Banks in Malaysian lead in terms of technological advances, investment and human resources development.

5. The banking industry has shown that by investing in technology and more important in effective human resources, we do not need any foreign workers in what was once a very labour intensive industry.

6. It can be seen that presence of strong and effective unions is a prerequisite to a high-income nation.

7. Malaysian banks can now compete successfully with foreign banks and have also expanded regionally.

8. This is inline with the New Economic Model as announced by the government recently.

9. There is no point to spend billions to produce graduates and professors if employers continue to suppress wages that our best brains migrate to other countries.

10. We call on the government to once and for all banish the antiquated policy to keep wages low by stiffing the trade union movement and give in to the fancies of those employers who only know how to lobby for more foreign workers but do not spend anything on research and development.

B WHAT THE REVIEW SHOULD FOCUS ON

To achieve that aspiration of the NEM, any review of the labour laws must be geared towards

- **Enhance Trade Union rights and collective Bargaining**

- **Building strong independent workers and employers organization with technical capacity and knowledge for effective participation in the social dialogue process.**

C THE CURRENT SITUATION

Horizontal Segregation of Trade Unions

1. Under the Trade Unions Act (TUA), unions are segregated by regions, and by trade, establishments, occupation or industry and even split amongst Pen Malaysia, Sabah & Sarawak. The relevant part of section 2 reads as follows:

> *"trade union" or "union" means any association or combination of workmen or employers, being workmen whose place of work is in West Malaysia, Sabah or Sarawak, as the case may be, or employers employing workmen in West Malaysia, Sabah or Sarawak, as the case may be.*
>
> ***(a)*** *within any particular establishment, trade, occupation or industry or within any* ***<u>similar</u>*** ***trades, occupations or industries;***

2. Under section 2 of the Act, a trade union can have its members who are from **similar industries**. The Act does **not** demand that the workmen must be from the **same** industry. However the DGTU usually adapt a very narrow and strict interpretation. This has resulted in multiplicity of trade unions – ie 600 unions representing just a little over 800,000 workers.

Vertical Separation

3. Apart from horizontal segregation, the law also imposes segregation by job positions.

4. TUA used to allow executives to be members of the union even though under section 9 of the Industrial Relations Act they may not be included for the purposes of the Collective Bargaining. Section 9 states as follows:

> *No trade union of workmen the majority if whose membership consists or workmen who are not employed in any of the following categories:*
>
> *Managerial, executive, security and confidential, may seek recognition or serve an invitation under s 13 in respect of these workmen*

5. This already made workmen employed in these categories reluctant to join unions as they will not be entitled to the benefits of a CA. They can still be members and hold post in these unions. The latest amendments to S5 (2) (b) - Executive & Security Categories to the law now prohibit them from even being members.

6. The amendments to exclude those in executive categories to be members or officers of a trade union that caters for other workers is certainly regressive and is a further restriction to the progress and development of trade unions. It will further limit much needed competent and knowledgeable employees in managing trades in a professional way.

7. Further there is no clear definition of executives which has resulted in employers abusing the situation where executives are paid no higher than unionized employees and who do not have executive powers the Minister has regarded as executives for example Junior Bank officers.

Recognition

8. Disputes arising out of recognition claims used to be under the ambit of the Industrial Court prior to 1971. The power to decide was transferred to the Minister, with the hope to offer quick solutions to what should be simple recognition issues, and to avoid lengthy court proceedings. Unfortunately the end result is an equally frustrating recognition process and has not stopped parties going to the courts through certiorari (usually employers who has the financial clout to challenge any decisions).

Arbitrary powers of DGTU

9. There is little doubt that the Trade Unions Act bestows the DGTU with wide powers over the registration de registration and function of trade unions. *He has general powers to exercise all powers, discharge all duties and perform all tasks as may be necessary for the purposes of giving effect and carrying out the provisions of the Act.*

10. *Generally he has exercised his wide powers to the detriment of the trade union movement as can be seen below;*

TRADE UNION DENSITY

TRADE UNION MEMBERSHIP & DENSITY

2007

	No of Unions	Membership	Average members	Workforce	Density %
Private	407	431,207	1059	11,544,000	3.74
Public/Statutory Bodies	222	371,132	1672	1,200,000	30.93
Total	629	802,339	1276	12,744,000	6.30

1992

	No of Unions	Membership	Average Membership	Workforce	Density
Private	258	384,970	1492	6,900,000	5.58
Public/Statutory Bodies	176	306,719	1743	850,000	36.08
Total	434	691689	1594	7,750,000	8.93

11. As we can see trade union density in the private sector is very poor. It must be noted as well that not all unions in the private sector have obtained recognition and even for those with recognition, not all have collective agreements.

12. Total number of workers covered by new collective Agreement over a 3-year period 2005, 06 & 07 is only 254,209.00 (MOHR Figures). CA covers a 3 year period so the figure will be representative of the number of workers covered by a current up to date CA in the Country. This shows that only 2.11% of workers in the country are covered by a CA.

13. Between 1992 and 2007 there is a huge increase (58%) in the number of trade unions from 258 to 407 but the actual membership increased by only 12%. Average membership declined by 40% from 1492 to 1059 15 years ago. And all this happened during the years where the workforce actually increased by 67%.

14. There are less than 10 unions with more than 10,000 members and majority have less than 500 members. Quite a lot of Unions have less than 50 members. Under such a situation can we ever hope for strong effective and viable unions?

Financial

15. With membership fees averaging RM5.00 a month, it is difficult for Unions to survive, much less be able to invest in training, research and to employ competent and professionals to manage the unions.

16. To compound matters, **check off** is not a trade dispute since 1984 (non metallic case) and it is now at the mercy of employers who will usually use it to impose a CA on the union.

Previous Amendments

17. The **Second Schedule** only take into account the interest of employers only and discriminates against employees especially those earning low wages.

I. Apart from limiting backwages to 24 months, the courts are now mandated to take into account post termination gainful employment and contributory conduct.

II. However, the amendments did not mandate the court to impose punitive damages in cases where in all fairness there must be another provision for the court to take into account the pain and suffering of the poor worker when he was dismissed. Nor are there provisions for punitive damages where employers acted wantonly in dismissing their employees.

III. Now all an employer has to do is to pay a maximum of 24 x $500 = $12,000 to get rid of workers whose only misconduct may be to promote or participate in a trade union in the workplace. *See Trienekens case.*

IV. As the poor worker has to earn a living while waiting for up to 7 years for his case in the industrial court he may end up with nothing! He also cannot claim cost. This is surely not conducive to industrial harmony.

V. To punish the poor worker because the Ministry takes more than 1 year to refer dispute to the court and for court to take years to resolve the case is beyond decent work, it is just indecent.

VI. Damages and remedy must be left to the discretion of the courts. Just because of one or two cases of highly paid directors/general managers being awarded huge sum by the industrial court does not justify the law to be amended to discriminate against poor workers.

VII. To limit to one year for **probationers** please note that probationers could have left secure jobs to take up new employment on probations. The amendments are contrary to the government aim to create a highly mobile and productive workforce and to encourage employability instead of job security- people are now reluctant to change jobs. Please note that probationers could have left secure jobs to take up new employment on probations.

MTUC's Proposal dated 1st March 2010

1. In response to the Ministry's request, on 1st March 2010 MTUC submitted the following proposal:

D. INDUSTRIAL RELATIONS ACT 1967

Malaysian Trades Union Congress hereby propose that the Industrial Relations Act 1967 be amended as follows:-

1. **Section 8 – Reference of complaint to Industrial Court**

1.1 Enforcement of the provisions of **Section 4 Rights of workmen and employers and section 5 Prohibition on employers in respect of certain act** remains most unsatisfactory and inefficient. Complaints of breach of section 4 and 5 are rarely referred to the Industrial Court.

1.2 Therefore we propose that Section 8 clause (2) be amended to require the Director General to refer the complaint to the Industrial Court within 90 days.

2. **Section 9 - Recognition And Scope of Representation of Trade Unions**

2.1 We propose that clause 1 (C) be amended to require the Director General to refer any dispute relating to scope of membership to the Industrial Court within 90 days. Stipulating a time limit will remove the inefficient and unsatisfactory procedure currently practiced.

2.2 Clause (4) – be amended to increase the 14 days to 21 days for the union to report the matter to the Director General for Industrial Relations.

2.3 Clause (5)

Currently it takes 12 months to 36 months to resolve a recognition claim. Therefore we propose that a 90 days time limit be stipulated.

2.4 It is not always practical to conduct a secret ballot to ascertain the representative status of the union claiming recognition: Therefore the provisions be amended to enable the DGIR to determine based on practicality:

- whether to conduct a secret ballot or

- carry out membership verification

2.5 Where secret ballot is conducted the status shall be determined by the number of votes cast. Under the present system, voting take place 12 months to 36 months after the date of claim for recognition during which a substantial number leave employment. In order to upset the balloting and evade recognition, employers can terminate and repartriate most of their foreign workers. Current procedure is designed to deny union recognition and collective bargaining.

2.6 The question posed on the ballot paper should be **DO YOU WANT TO BE REPRESENTED BY UNION?**

2.7 Where balloting is conducted and union's majority representative status is confirmed, recognition shall be deemed accorded.

3. **Part IV – Collective Bargaining and collective agreements**

3.1 In order to ensure sanctity of collective agreement, clause (2A) Sub clause (b) should be deleted.

3.2 To give effect to the voluntary system of Industrial Relations, we propose that the entire limitation on the scope of collective agreement under 13 (3) (a) to (f) be deleted.

3.3 The definition of collective agreement be extended to include provisions for deduction of union dues from salary.

3.4 **Section 18 Reference of disputes for conciliation.** Clause (5) be amended to require the DGIR to refer the dispute to the Industrial Court within 90 days.

4. **Section 20 Representations on Dismissals**

4.1 **Section 20 (2)**

Under the current procedure it takes the DGIR and the Minister as long as 24 months to 36 months to refer a complaint of unfair dismissal to the Industrial Court. Therefore we propose that clause (2) be amended to require the DGIR to refer the complaint to the Industrial Court within 90 days.

4.1 Clause (9)

The 2008 amendment is unfair and completely one sided. If it is the intention of the Government to find a speedy solution then a clause should be inserted to state that **where an employer attends none of the conferences under paragraph (8) (b) without any reasonable excuse, the employer shall be deemed to have withdrawn the dismissal**.

5. **Section 22 – Constitution of the Court**

Clause 5 be amended to require a panel.

6. **Second schedule**

We propose that the entire second schedule be removed. The limitations and restrictions severely interferes with the independence of the court and department of Industrial Relations and the Minister will be encouraged to perpetuate their inefficient procedures which causes inordinate delays.

7. **Section 30 Awards**

We propose that the mandatory 6 months limitation imposed on the court on retrospective effect of a collective agreement be removed. With such limitation the Minister can unreasonably delay reference of disputes to the Industrial Court.

8. **Section 56 Non compliance with Award or Collective Agreement**

Section 56 should be amended to empower the Industrial Court to enforce their award. The current provisions requiring the workman to go to the High Court to enforce an award is time consuming and extremely expensive.

9. **Employment Appellate Tribunal**

We propose that serious efforts be made to establish and Employment Appellate Tribunal within the Industrial Court.

E. TRADE UNIONS ACT 1959

1. Numerous restrictions and provisions under the Trade Union Act 1959 curtailing freedom of association is contrary to the provisions of Article 10 of the FEDERAL CONSTITUTION.

2. We acknowledge that under the provisions of article 10 (2) **Parliament may by law impose on the right conferred by paragraph (c) of Clause (1), such restrictions as it deems necessary or expedient in the interest of the security of the Federation or any part thereof, public order or morality.**

3. We concede that at the time when the Trade Unions Act 1959 was formulated, Federation of Malaya was facing communist insurgency and the Government, in the interest of security wanted to closely monitor all mass based organizations such as trade unions. The situation has completely changed for the better in the last fifty years.

4. The Trade Unions Act severely restrict trade unions right to organize and as a result, hundreds of thousands of workers are denied the right to collective bargaining. The Act permit the Director General of Trade Unions to capriciously decide on the unions' scope of membership.

5. The controversial enforcement of the provisions of Section 26 (1A), especially in the last two years, has created serious apprehension that this provision will be extensively used by anti union employers to unfairly victimize and even get rid of union activists with impunity. Denial of right of a dismissed worker to remain as a member of the union whilst his unlawful dismissal is being pursued has nothing to do with the security of the nation.

6. **We therefore propose that the Trade Unions Act 1959 be revamped in compliance with the provisions of Article 10 of the Federal Constitution ensuring that:-**

- **Workers and employers, without distinction whatsoever, shall have the right to establish and, subject only to the rules of the organization concerned, to join organizations of their own choosing without previous authorization.**

- **Workers' and employers' organizations shall have the right to draw up their constitutions and rules, to elect their representatives in full freedom, to organize their administration and activities and to formulate their programmes.**

- **The public authorities shall refrain from any interference which would restrict this right or impede the lawful exercise thereof.**

- **Workers' and employers' organizations shall not be liable to be dissolved or suspended by administrative authority.**

F. EMPLOYMENT ACT 1955

Malaysian Trades Union Congress hereby propose that the following provisions of the Employment Act 1955 amended:-

1. **Scope of coverage**

The legal safeguards and the minimum standards should be applicable to all employees including domestic workers whose wages do not exceed five thousand ringgit a month.

Based on the Prime Minister's **1 Malaysia** concept the minimum standards and safeguards should be extended to all employees including employees in Sabah and Sarawak.

2. **Part III – Payment of wages**

We propose that Section 18 be amended to provide for a RM900 minimum monthly salary for all employees within the scope of the Employment Act. The quantum shall be increased periodically based on consumer price index.

3. **Section 60 D Holidays**

Every employee should be entitled to a paid holiday on all gazetted public holidays by the Federal Government and the state.

There is no justification for the government to continue the discriminatory practice against employees in the private sector. All employees in the private sector as well have the right to celebrate their festivals and national events of significance.

4. **Section 60E Annual Leave**

The minimum number of annual leave entitlement should be raised to 12 days.

5. **Section 60F Sick Leave**

Although a vast majority of the employers do provide medical attention and medicine at their expense some employers argue that based on the provisions of section 60 F (1) they are required to pay for cost of examination only. The Labour Department has confirmed that indeed employers are not required to pay for the cost of medicine.

Government is fully aware that in our country all medical practitioners provide examination and treatment and charge the person accordingly.

Therefore Section 60F (1) should be amended that employer pay for medical examination and treatment.

6. **Section 31 Priority of Wages over other debts**

The provisions of section 31 should be amended and appropriately worded to ensure that:-

- Wages contractual bonus, retrenchment benefits, termination and lay off benefits and all statutory contributions are accorded priority over all other debts. The amendment should categorically remove any conflict with the provisions of the companies act.

  We wish to draw the attention of the Ministry that more than 10,000 workers were deprived of the entitlement under the termination and lay of regulations.

7. **Section 37 Maternity Protection**

Length of paid maternity leave should be raised to 90 days.

8. **Termination Benefit**

Termination benefit for employees who are terminated in accordance with the Employment (Termination and Lay-Off Benefits) Regulations 1980 should increased to one month's salary based on the last drawn salary for every year of service.

9. **Retirement Age**

In the absence of specific provisions under the Employment Act most employers in the private sector arbitrarily set retirement age at 55 years for male and 50 years for female employees.

In view of the significant increase in the life expectory age, government should set a retirement age of 60 years for all employees.

Government has repeatedly stated that employees who are dependant on their savings with the EPF have nothing left after the fourth or fifth year of retirement. By raising the retirement age employees will be able to save more through contributions to the EPF and the length of dependency period will be shortened.

G. LACK OF RESPONSE FROM THE MINISTRY

1. The Ministry did not hold any meeting with MTUC to discuss the above proposal.

2. The National Labour Advisory Council (NLAC) established in accordance with the principles of tripartism has been completely sidelined in dealing with this very important topic which has far reaching implications on the ten million working people in the country.

3. On Friday 9th April, 2010 MTUC together with two other trade union organizations were invited to attend a meeting chaired by the Secretary General of the Human Resources Ministry.

4. During the 90 minutes meeting, Ministry officials presented an outline of the amendments to the Employment Act 1955, Industrial Relations Act 1967 and Trade Unions Act 1959.

5. We need to stress that the presentation concentrated on the concept of the amendments and **NOT the actual amendments**.

In the absence of the actual wording of the amendments, our understanding on the full implication of the amendments were severely restricted: Therefore our comments and response have to qualified.

6. During the said meeting, Ministry officials did not respond or give any explanation on the status of MTUC's proposal submitted on 1st March 2010. We still maintain our proposal and seek an urgent meeting with the Ministry so that we can justify our proposal.

7. **MTUC's comments and response to Ministry's proposal**

7.1 Definition of employees under EA - employees whose wages do not exceed RM2000 irrespective of their occupations;

MTUC's comments

Scope of coverage

The legal safeguards and the minimum standards should be applicable to all employees including domestic workers whose wages do not exceed five thousand ringgit a month.

Based on the Prime Minister's **1 Malaysia** concept the minimum standards and safeguards should be extended to all employees including employees in Sabah and Sarawak.

7.2 Better protection for employees such as domestic servants by having specific regulations;

As stated under para 8.1 hereabove domestic workers should be entitled to all the minimum standards. We should stop using the term "servants". To avoid any confusion they can be referred to as "Home Workers".

7.3 Priority of wages and termination benefits over other Debts (Section 31 of EA) for employees who are the most Vulnerable of the parties during closing of business and/or termination due to redundancy (this matter would be discussed with SSM and KPDNKK)

Wages, contractual bonus, retrenchment benefits, termination and lay off benefits and all statutory contributions are accorded priority over all other debts. The amendment should categorically remove any conflict with the provisions of the companies act.

7.4 Contract of Service in writing with salient employment matters such as salary, working hours, probation period, retirement age, termination benefit and minimum benefits as provided in EA;

We agree in principle but we need to see the actual working.

7.5 Maternity protection

Ministry's proposal is vogue we propose that Section 37 be amended to extend paid maternity leave to 90 days.

7.6 Employees with less than one year of service (probationers) are excluded from seeking reinstatement via Section 20 of IRA;

Employees earning a basic salary of RM10,000 or more are excluded from seeking reinstatement via Section 20 of IRA;

Employees with fixed term contract are excluded from seeking reinstatement via Section 20 of IRA if termination is as per contract terms.

The above proposal's are most retrogressive and are clearly in contradiction with the decisions of the Industrial Court and landmark judgements of our courts.

Most of the collective agreements stipulate initial probationery period of 3 months which can be extended to another 3 months. Currently even probationers have the right to seek redress if their termination is wrongful. Ministry's proposal to deny those earning RM10,000 or more, the right to challenge unfair dismissals is unacceptable. Many of our affiliates who represent executive staffs have salary scales exceeding RM10,000. We do not see any justification for the Ministry to subject this category of employees to be vulnerable to the whims and fancies of their employers.

Ministry should carefully study all the awards handed down in the past 24 months to get a better understanding of the arbitrary attitude of bosses in the private sector.

Ministry's proposal to deny access to justice to workers with fixed term contract will encourage employers to adopt such contracts so that they can be terminated with impunity.

We find rather shocking that government officers who are guaranteed of a lifetime employment have drafted such inconsiderate proposal.

7.7 Mandatory conciliation at Industrial Relations Department for dismissal cases;

We cannot understand the purpose of this amendment. Parties attending the conciliation may disagree with conciliation officials but a overwhelming majority attend the proceedings. By inserting such a provision, is the ministry proposing to impose penalty on those who fail to attend conciliation proceedings? Otherwise the said clause will serve no purpose.

To effectively strengthen the conciliation process we propose the following:

- If a workman or trade union fail to attend conciliation proceedings, their report will be deemed as withdrawn.

- If an employer fail to attend conciliation proceedings, the complain would be referred to the Industrial Court.

7.8 Dismissal cases would not be referred to Industrial Court under certain circumstances such as:-

Employee has accepted mutual separation package;

Expiry of fixed term contract;

Termination of employee beyond the mandatory retirement age of the company;

Employee refusing reinstatement; and

Cases of amicable settlement and employee has accepted settlement.

We do not see any necessity for the above.

7.9 To enable Industrial Court to strike out frivolous or vexatious cases.

This proposal suggests that the Industrial Relations officers, Director General of Industrial Relations and the Human Resources Minister who referred the dispute to the Industrial Court after 12 to 24 months study were inefficient and incapable.

7.10 To amend Section 12 of EA for the notice period of termination of contract for employees be standardized to 4 weeks irrespective of the years of service; and

Ministry officers must be mindful that in the private sector workers do not have any job security: Even workers who have continuously served the company for as long as 20 years, can be terminated on grounds of redundancy, reorganization and restructuring. Section 12 was intentionally amended to ensure that workers with long service are given longer notice of termination – What is the need for such retrogressive amendment?

7.11 For any disputes relating to claims and other matters that has been reported under the provision of IRA, to have a standard operating procedure for DGIR where settlement reached at conciliation be spelled out in detail.

We need to see the actual wording of this clause before we can comment on the proposal.

7.12 Section 17A/Section 19/Section 22/Section 25A/Section 34/ Section 60A and 60C

We strongly object to the proposed amendments. The supervisory role of the Director General of Jabatan Tenaga Kerja must be maintained. Our experience shows that such important issues cannot be left in the hands of the employers to adopt self regulation.

For example:

We have employers in our midst who require female employees to report for work at 4.30 am. We have employers who end night work at 2.30am without any consideration for the female workers' safety traveling at such odd hours of the night.

The amendment to Section 19 to allow employers to delay payment for overtime work for as long as 30days is unnecessary and

unacceptable. With all the technological advancement employers can easily comply with current requirement.

Section 25A. The current provisions requiring employers to acquire consent of workers to change the mode of payment of salaries is still very much relevant. The plantation workers throughout the country are paid in cash. As many plantations are located far from banks it is not practical to pay wages through banks.

Section 60A. The proposed amendment is completely one sided and the convenience of workers have been completely ignored. This provisions can empower employers to set unreasonable working time requiring employees to start work at 5.00am when there is no public transport available.

The proposal to compel workers to take annual leave without any consideration of the employees' needs goes against decided principles Ministry must be mindful that workers' entitlement under the Act is as low as 8 days – 40% of this would be 3.2 days leaving the workers with only 5 days for the whole year. Furthermore the EA guarantees only 10 paid public holidays.

New Provisions

7.13 To provide provisions on sexual harassment in the Employment Act (coverage is for all employees irrespective of their wages or occupations);

We welcome any effort by the Ministry to eliminate sexual harassment in the workplace. We need to see the actual wordings of the Section before we can give our endorsement.

7.14 To allow for direct appeal to High Court pursuant to Industrial Court Award on dismissals by way of rehearing instead of judicial review currently.

We do not believe that this provision will help to shorten the duration. Furthermore this would give unfair advantage to the employers because with their financial resources almost all cases will end up at the High Court. Unions and individual workers with limited resources cannot afford to engage lawyers to represent them at proceedings before the high court.

We believe that this amendment is intended to accord unfair advantage to employers.

7.15 Payment of wages in legal tender through banks that requires employee consent (Section 25);

Restriction on places at which wages are paid (Section 28);

Prohibition of female employees working beyond 10pm (Section 34);

The need to keep a 'hard copy' of employee register by the employers is reviewed so as to allow for soft copies (Sections 44 and 61)

The above provisions are still very much relevant and for the reasons we have stated under para 8.12 hereabove the safeguards must be maintained.

Clarification of ambiguous provisions and Introduction of New Provisions

7.16 Definition of manual worker in the EA;

Definition of managers and executives in IRA;

We request the Ministry for the actual wording before we can give our comment.

7.17 The need to review on the status of union which has been given recognition. (Power given to DGIR to review upon request after a minimum period of five years)

The proposed amendment will enable employers to perpetually deny workers collective bargaining rights. Since union recognition is a pre-requisite to commence collective bargaining this amendment will encourage employers to challenge Minister's decision to accord recognition.

In the past five years a significant number of employers have challenged Minister's decision to accord recognition. Pending a decision on their appeal at High Court and Court of Appeal which takes about five to ten years the employer need not commence negotiations.

During the five to ten year waiting period union members leave employment or relinquish their membership out of frustration over the union's inability to negotiate on better wages and conditions.

And finally when the courts uphold the decision of the Minister to accord recognition, with the proposed amendment, the employer can

immediately mount a challenge to question the representative status of the union. When the DGIR and the Ministry go through the process and make a new decision, companies who are anti union can proceed to the High Court to challenge the new decision.

Secondly, the Ministry must be mindful that even under the present conditions, the Department of Industrial Relations takes as long as 24 months to 36 months to resolve recognition claims. With the proposed amendments the situation will worsen further.

7.18 To allow HR specialists/consultants to represent parties at the conciliation proceedings and hearing in the Industrial Court.

We cannot understand the purpose of this proposal. Is this intended to help retired Ministry officials or close friends of Ministry officials who have set up HR Consultancy business?

MTUC and MEF as organization of trade unions and employers are signatories to the Code of Conduct for Industrial Harmony. And both organizations have signified their commitment to promote and maintain industrial harmony in the country.

Both organizations represent the interest of their respective group in the National Labour Advisory Council. By virtue of their partnership role, both MTUC and MEF are obliged to play a constructive role in finding amicable solution to industrial disputes.

We know of HR Consultants who deliberately create disputes in order to make a living. We attach herewith a copy of the letter addressed to the company in Penang by an HR consultant.

We wish to highlight the following from the HR Consultants letter:

- The DGIR and DGTU after months of work advised the company to accord recognition;

- The HR consultant advise the Company to challenge the DGIR and if the DGIR fail to concede then they should appeal to the HR Minister;

- If the Minister decides to accord recognition then the Company should file an application at the High Court to challenge the Minister's decision's;

- The consultant claims that he was an official of the Ministry of Human Resources and has close contact with senior officials of the Ministry.

- By stating that, he is giving the impression to the employer that Ministry officials are under his influence.

- He names a list of companies where had successfully removed the union;

- He stipulates his fees for his services to successfully remove the union;

- The company accepted the HR consultants offer and advise and appointed him;

- As advised by the consultant the company challenged the Minister decision to accord recognition. After a long delay of six years, in 2009, the High Court upheld the decision of the Minister.

- This is a clear case to show that the consultant is thriving by creating disputes and industrial disharmony.

- This matter was brought to the attention of the Secretary General of the Human Resources Ministry on 28 July 2003, KSU's reply to MTUC was ***"we have no control over the conduct of consultants but you can be assured that such persons will not be permitted to appear at proceedings at any department under the HR Ministry"***.

7.19 To have provision in the Act for trade unions to inform DGTU when it forms or closes branches;

To have provisions requiring trade unions to have their annual general meeting on a timely basis;

To have extra qualifications for a worker to become union officer;

There are adequate provisions under the Rules and Constitution of every union to cover all aspects mentioned hereabove: Therefore we are of the view that there is no necessity for the amendments.

7.20 To amend provisions relating to membership of public officers in trade unions as may be determined by KSN;

Section 27 of the Trade Union Act elaborately covers all aspects relating to membership of Public Officers and employees of statutory authorities. The proposed amendment to empower the KSN can lead to arbitrary and ad-hoc decisions.

7.21 To have provision to resolve trade unions internal disputes at Trade Union Department;

Current provisions to resolve trade unions internal dispute are adequate. There is no need for amendments to empower the Trade Union Department to intervene.

7.22 To restrict trade unions from using their funds for risky investment.

Most unions do not have sufficient funds to manage their administration costs. Under Section 19 of the Trade Unions Act unions are required to obtain prior written approval of the Minister to invest. Therefore the proposed amendment is redundant.