



Address delivered by
Her Honour Mrs. Deborah Thomas-Felix
President of the Industrial Court of Trinidad and Tobago

SPECIAL SITTING FOR THE OPENING OF THE 2022/2023 LAW TERM
Monday 19th September, 2022 at 10:00am

Industrial Court of Trinidad and Tobago

INDUSTRIAL COURT BUILDING
CORNER QUEEN AND ST. VINCENT STREETS
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at the Special Sitting for the Opening of the 2022/2023 Law Term

These are interesting, historic times. This is the time when the Covid 19 pandemic continues to have a profound and catastrophic effect on our lives and it remains a major public health issue in every corner of the globe. It is the time when there is global inflation, which is mainly driven by increases in food and energy prices and disruptions in the supply chain. This is also the time when issues like climate change, economic inequality, poverty and broken health care systems loom large.

In addition to these troubling global interlocking issues, we continue to be plagued in Trinidad and Tobago with murders and other violent crimes especially crimes perpetrated against women.

This year our twin island State celebrates 60 years as an Independent nation, and 46 years of Republicanism. As I reflect on the Jubilee celebrations and what we have achieved so far as an independent nation, I cannot help but ponder on the words of the ILO's Declaration of Philadelphia of 1944 and that of our Independent Constitution of 1962.

The Declaration of Philadelphia is very important in the history of the world and it promotes key principles which are embodied in law in many countries across the globe.

The main principles of the Declaration which I wish to highlight are:

1. "Labour is not a commodity;

2. Freedom of expression and freedom of association are essential to sustained progress;
3. Poverty anywhere constitutes a danger to prosperity everywhere;
4. The war against want requires to be carried on with unrelenting vigour within each nation, and by continuous and concerted international effort in which the representatives of workers and employers, enjoying equal status with those of governments, join with them in free discussion and democratic decision with a view to the promotion of the common welfare;
5. All human beings irrespective of race, creed or sex, have the right to pursue both their material well-being and their spiritual development in conditions of freedom and dignity, of economic security and equal opportunity;

The attainment of the conditions in which this shall be possible must constitute the central aim of national and international policy.”

There is a marked similarity in the language of the Declaration of Philadelphia and that of our Independent Constitution. I did in my quiet moment wonder whether in 1962, the new Parliament, the new post-independence thinkers and the law makers reflected on this remarkable Declaration when drafting our Independent Constitution. Ours is Constitution which says:

“Whereas the People of Trinidad and Tobago:

1. Have affirmed that the Nation of Trinidad and Tobago is founded upon principles that acknowledge the supremacy of God, faith in fundamental human rights and freedoms, the position of the family in a society of free

men and free institutions, the dignity of the human person and the equal and inalienable rights with which all members of the human family are endowed by their Creator;

2. Respect the principles of social justice and therefore believe that the operation of the economic system should result in the material resources of the community being so distributed as to sub-serve the common good, that there should be adequate means of livelihood for all, that labour should not be exploited or forced by economic necessity to operate in inhumane conditions but that there should be opportunity for advancement on the basis of recognition of merit, ability and integrity;
3. Have asserted their belief in a democratic society in which all persons may, to the extent of their capacity, play some part in the institutions of the national life and thus develop and maintain due respect for lawfully constituted authority;
4. Recognise that men and institutions remain free only when freedom is founded upon respect for moral and spiritual values and the rule of law.”

There are very similar key words and expressions in our Constitution and that of the Declaration of Philadelphia - expressions such as freedoms, labour is not a commodity, labour is not to be exploited, social justice, common good, common welfare, dignity, and spiritual values.

Indeed, it is clear that the rule of law, equal rights and freedoms, the quest for peace, social justice and the socio-economic development of all people, with labour as the backbone are really at the root of the preamble of our Constitution and also that of the

Declaration of Philadelphia. These rights and principles promote qualities and values which are fundamental to the development and the advancement of any nation.

Today, I invite the social partners and all stakeholders to reflect on the words of our Independent Constitution, and on the achievements and advancements we have made as a nation for the past 60 years; and to also give some thought to the principles enunciated in the Declaration of Philadelphia.

Given the loss of human life worldwide, the continued public health challenges, the unprecedented impact on the supply chain and the devastating effect on the world of work of the Covid 19 pandemic; and also the public health measures which have been adopted worldwide in response to this pandemic, our country, like the rest of the world, continues to be severely impacted by the effects which those public health measures have had on the business community, on workers' health and their income security and on the labour market in general.

In the midst of all of this, can we possibly consider moving forward as a nation with our economic and social development plan, without social dialogue, particularly collective bargaining and the meeting of minds?

In May 1963, exactly 9 months after it achieved independent status, Trinidad and Tobago ratified its first ILO Conventions. The Conventions of which I speak are the Freedom of Association and Protection of the Right to Organise Convention (Convention 87), The Right to Organise and Collective Bargaining Convention (Convention 98) and the Forced Labour Convention (Convention 29). These three conventions are among the fundamental Conventions of the ILO and they may be of more importance for us today, than they were in 1963.

It is noteworthy that in 1963, the government of the day understood the value of the right to organise and to engage in collective bargaining and those rights were subsequently included in our national laws.

Over the past few years, I have been using this forum to emphasise the importance of social dialogue (whether the dialogue is bipartite or tripartite), with emphasis on collective bargaining. Today, I wish to revisit that discussion because of the importance of this topic at this time in our history.

Permit me first to repeat what I stated last year, *“We can agree that the world of work as we knew it will not be the same, because of the social and economic impacts of this pandemic. Therefore, there may be the need for employers and workers representatives to re-examine and revise the duties and the functions of some employees, and to address the new issues which may present themselves at the workplace. This, of course, can only be done after consultation with the employees or if there is a Union, through the collective bargaining mechanism. I urge unions and employers to meet, to be open to dialogue and consensus even if the discussion may initially cause a level of unease and discomfort. Always remember that social dialogue is a very important tool in industrial relations as you try to resolve these very troubling issues of common interest.”*¹

Social dialogue as defined by the ILO includes all forms of negotiation, consultation or simply the exchange of information between, or among, representatives of government, employers and workers, on issues of common interest relating to economic and social policy.

¹ INDUSTRIAL COURT SPECIAL SITTING, 17/09/2021 14
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In Trinidad and Tobago at the level of the workplace, there is a need for genuine, continuous bilateral discussions between Trade Unions and Employers to address all issues especially those related to changes in the modalities of work since the pandemic. As expected throughout the pandemic, trade unions and employers alike sought the intervention of the Industrial Court for the resolution of issues, however some of these issues clearly could be resolved by bilateral discussions. Please remember that a major component of the grievance process is dialogue, therefore, the starting point should always be bilateral discussions with the intention to resolve the issues. There is much to be gained when parties meet and resolve their issues without a third party. The lack of genuine social dialogue about transformations and adjustments in the world of work, since the pandemic, by the key players in the country is evidenced by the large numbers of Trade Disputes, Industrial Relations Offences (IROs), and Occupational Safety and Health (OSH) cases which have been filed at the Industrial Court over the last two years.

During the year in review, which is 15 September 2021 to 14 September 2022, **1099** new cases were filed at the Industrial Court, **133** cases more than the same period in 2020/2021 which recorded **966** cases.

The Court disposed of **797** matters this year in review which was **240** less than the **1037** matters disposed of for the same period in 2020/2021.

The disposal rate in 2021/2022 is **72.5%**, which is **34.8%** percentage points lower than the period 2020/2021 when the disposal rate was **107.3%**.

The total number of disputes disposed during the year in review, are as follows: **193** Judgments, **312** cases were withdrawn, **263** matters were settled through the conciliation and bilateral process and **29** matters were dismissed.

Of the total number of disputes filed at the Court for this year, 2021/2022, Trade Disputes remain the largest number of matters filed with a total of **730** followed by **124** Retrenchment and Severance Benefits Disputes; **111** Occupational Safety and Health Disputes and **58** Industrial Relations Offences.

The total number of new cases which have been filed at the Industrial Court from March 2020, when the pandemic was announced, to 14 September 2022, is **2516** cases. This is so despite the fact that some sectors were closed due to public health measures. These figures tell a story and suggest that there is a need for more discussions and agreement at the workplace.

It can be posited, that there are two very valuable lessons which we can take away from the experience of the past two years with the continued assault of the Covid 19 virus on the world. The first lesson is that no man is an island, and the second, particularly in times of crisis, is that we need to collaborate and be our brother's keeper while we sing from the same hymn book. I therefore urge the social partners, to work together to contribute to this nation's further development. Step back from deeply entrenched positions that have born no fruit thus far and take a leap of faith to embrace genuine consultation with the persons seated on the opposite side of the table.

I will pause to give a brief account of the working of the Industrial Court for the period 15 September 2021 to 14 September 2022.

THE COURT IN THE YEAR IN REVIEW

The Court continues to build capacity. This year the Court in collaboration with the Judicial Education Institute conducted training for Judges in Judgment Writing. This training was delivered by Justice Gregory Smith, Justice of Appeal.

As reported last year, Case Management continues to be conducted virtually, however, conciliation hearings have been reverted to in person hearings, due to a number of reports of dissatisfaction from stakeholders about how impersonal the new process virtual had been and the need to be physically present at these sessions.

The Court purchased new computers and some much needed IT equipment such as servers, as we try to recover from the past two years and to update our technology.

There has been an upgrade of the facilities at the San Fernando Court and we continue to rely on the Chairman, Mr. Anthony Roberts and Staff of the San Juan, Barataria Regional Corporation to assist with the sanitizing of the Port of Spain building. My sincerest thanks to the Corporation for the kind support and service.

Her Honour Mrs. Sandra Ramparas who served as a judge at the court for more than two decades has retired and so has the Registrar, Mr. Noel Inniss. On behalf of the Vice President, Chairman of ESD, Judges, members of staff of the Court I wish to extend best wishes to them on their retirement and on their new journey in life. I wish to welcome the new Registrar Mr. Kevon Swan who joined the staff last year.

TOBAGO

Over the past two years access to justice for the people of Tobago has been very difficult. Due to the pandemic, the serving of process documents from the Court came

to a halt, litigants were impeded from travelling to Trinidad and even in case management there were connectivity challenges. This has resulted in a backlog of cases from Tobago. I hope in this new law year to have Open Court sessions in Tobago during the August vacation to clear up some of the backlog.

LOOKING TO THE FUTURE

In 1965, some fifty seven years ago, the Parliament of Trinidad and Tobago enacted legislation to provide for the compulsory recognition by employers of trade unions and organisations representative of a majority of workers and also for the establishment of the Industrial Court. The then Prime Minister Dr Eric Williams had this to say about the industrial climate of the country:

“In the last five years, 1960 to 1964 there have been 230 strikes in the country, an average of 46 a year. The number for the year 1962 was 75. The number of workers involved in these strikes in five years was 74,574, an average of about 15,000 per year.”²

We have come a long way from those days. As we look to the future, collective bargaining is the only progressive way forward to achieve sustainable development, and to arrive at consensus on the new modality of work and the future of work. It is very important that the collective bargaining process, which is mandatory under the laws of Trinidad and Tobago, takes center stage in workplace relationships as it can provide an effective means for employers and workers to tackle the new challenges in the workplace.

² House of Representatives: Thursday, 18th March, 1965
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The Covid 19 experience has shown that there is an urgent need, for the strengthening of Articles and Clauses in collective agreements to treat with existing issues of occupational safety and health at work, and to make provisions as far as possible for any future public health crisis which may occur at the workplace. In addition, the social partners may also want to re-examine and negotiate new Articles and Clauses to deal with provisions for paid leave and health care benefits in collective agreements.

There is no doubt that the continued collaboration between employers and trade unions is very important for policy making at the workplace, and that collective bargaining is key to forge an inclusive, sustainable recovery post Covid 19. Social partners should always strive to utilise the collective bargaining process as a starting point, meet in good faith, have genuine, open discussions and negotiations and where possible, attain consensus on the important workplace issues such as working conditions, pay and remuneration and productivity, among others.

Currently in Trinidad and Tobago, public sector negotiations are taking place and there is much anxiety among workers. It is noteworthy, that several new collective agreements have been finalised in the private sector over the past years. In 2019, out of a total of 40 new collective agreements registered, 38 were from the private sector, in 2020 there were 55 new agreements registered with 50 from the private sector, in 2021, 104 new collective agreements were registered with 85 from the private sector and for this year so far 90 new collective agreements were registered, 73 of which are from the private sector.

Last year, I mentioned the large number of breakdown in negotiations cases which were filed at the Court for the period 15 September 2020 to 14 September 2021, that

figure was forty two. This court year, a significantly smaller number of matters were filed for the period September 2021 to September 2022, that number is 23.

I have always held the view that collective bargaining for new collective agreements should be contemporaneous to the period under review. One wonders what value can be derived by workers and also by employers when they negotiate for new terms and conditions some seven or ten years after the period in review. Often the new negotiated terms bear little relevance to the past.

Indeed, there is nothing which prevents one of the parties engaged in collective bargaining from reporting a breakdown of negotiation to either the Minister of Labour or the Minister of Finance, while at the same time commencing fresh negotiations for a collective agreement for a new period. There is no reason to wait until the expiration of two or three terms before making the formal report of a breakdown in negotiations.

I do hope that some thought and consideration will be given by employers and trade unions both in the public and private sectors to engage in collective bargaining for new collective agreements contemporaneously.

Let us now look at Tripartism and the National Tripartite Advisory Council in Trinidad and Tobago.

The Tripartite mechanism which is embraced by countries worldwide, regardless of their legal system, is an extremely important and useful tool to assist with the resolution of the myriad issues in the world of work. Through this mechanism, representatives of workers, employers and the government each have an equal voice in decision making. Tripartism is also key to treating with the labour market and its volatility, and it will be

of great assistance in times like these when personnel of the ILO, the UN and world leaders gather to address what is called the “interlocking crises”.

Last year I said the following:

“It is public knowledge that the National Confederation of Trade Unions has withdrawn from the National Tripartite Advisory Council for what they consider to be good reason. However, this is the time in our nation’s history where there is a need for the workforce to be guided by the decisions of the tripartite leaders.

The current unprecedented challenges in the world of work which have been presented by this pandemic require strong leadership to assist and to navigate the workforce through these difficult, uncharted and myriad issues and also to assist in stabilising the labour market. The workforce needs to be reassured and comforted in the knowledge that the tripartite leaders (government, employers and trade unions) are engaged in regular discussions with a view to reaching agreement on the path to be followed in the workplace to address the issues created by the pandemic. This much needed guidance can only be achieved in a climate of mutual respect and compromise, facilitated through social dialogue.

This may be the time for the National Tripartite Advisory Council to revisit its working mechanisms and, also, for the Federation of Trade Unions to reconsider the timing of its collective stance of non-participation in the Council. Additionally, the Trade Union movement and the government may wish to iron out their differences in order to begin meaningful consultation, along with the employers, on the effects of the pandemic on the world of work and on industrial relations over the past 18 or so odd months, and

on the role of employers' and workers' organisations in forging a path of economic and social recovery for our nation during and after the pandemic."

Since that address, I have received a range of perspectives from the employers' and trade unions' representatives on the various issues which should be addressed and ironed out before the National Tripartite Advisory Council can meet and function effectively. From all accounts, it appears that trust continues to be the uninvited guest and absent at the table.

We must not ignore the value of tripartite meetings and the importance of having an effective national tripartite council. As explained earlier, it is a fundamental tenet of tripartism that each of the social partners has an equal voice when they meet to address issues related to the economy and the labour market. It is also accepted that through this considered approach, that they work together to assist in '*the promotion of the common welfare*' to coin a phrase from the Declaration of Philadelphia.

It is my sincere belief, that the problems which currently exist between the social partners who are members of the National Tripartite Advisory Council, though very troubling, are not insurmountable. Through my lenses, and I say so respectfully, what is required is an understanding of how a National Tripartite Advisory Council works, what are its functions, and the appreciation of the important role such an organisation can play in labour market development. I therefore repeat my call for constructive social dialogue between the tripartite partners with a view to strengthening the labour market and the workforce. It is imperative that the tripartite partners, who are in fact the leaders in the world of work, set aside their differences and have that preliminary meeting and the much needed discussion 'on the elephant in the room' with a view to resolve differences, to listen and understand the different perspectives and to agree to

a structure of a viable working methodology at the level of the National Tripartite Advisory Council.

There has been a growing number of protests in this country, several of which are centered on what is perceived as social ills and the lack of social amenities. In addition, there have been protests related to working conditions, job losses and negotiations for new terms and conditions at work.

We cannot get back to the era of strikes which Dr Eric Williams reported to the Parliament in 1965.

It is therefore in the national interest for the tripartite partners to meet, to have meaningful discussions and embrace their respective roles to address burning issues such as poverty alleviation, job reduction and job losses, the closure of businesses and social protection. This is not the time, for government, employers and trade union leaders to see each other as adversaries, this is that time to be partners working harmoniously together to assist in the socio-economic development of our beloved Trinidad and Tobago. The country needs your input and your guidance to shape policy and to promote the rights at work and also to strengthen dialogue on work related issues.

The way forward, as we continue to build and achieve as an independent nation and to celebrate future milestones like 75 years of Independence, should be a path paved with nuggets of effective social dialogue, (sprinkled with tripartism and bipartism along the way). A path on which the practice of good industrial relations as the means to promote social justice, inclusive economic growth, decent wages, favourable working

conditions and sustainable businesses is at the core of our sustainable development policies as we forge ahead.

This is a crucial time in our country's history and development when we are recovering from a health crisis. Let us focus on the 'common good' and on the 'common purpose' while we work towards economic recovery and sustainable development, with social dialogue firmly at the center.

I am reminded of the voices of two of our sages of calypso Black Stalin and the Merchant when they exalted us "*We can make it if we try....just a little harder*" ... "*Come my brother, come my sister, let us build a nation together.*"

Thank you and may God bless our nation.