

**SPECIAL SITTING OF THE INDUSTRIAL COURT OF
TRINIDAD AND TOBAGO FOR THE OPENING OF THE
2017 - 2018 LAW TERM**

Trinidad and Tobago continues to rank as the most important financial centre in the southern Caribbean and one of the Caribbean Community's strongest economies. We have however, been weathering the impacts of a contracting economy with its attendant effect on employment, provision of social services and overall quality of life for many nationals.

It is against this backdrop that the Industrial Court has continued to function in its central role of ensuring that a stable industrial relations climate prevails as a key step in supporting economic and social development. More importantly, the Court remains committed to its role as a bastion of social justice, steadfast in the belief that, as I stated in my 2014 Annual Report, there can be no development without peace and no peace without development.

A fundamental aspect of pursuing such development is equitable economic growth. In this context, perhaps one of our twin-island Republic's most daunting challenges is what the International Monetary Fund (IMF) noted in

its press release No. 17/320 on Trinidad and Tobago in August this year, to be:

“....economic challenges stemming primarily from the sharp declines in global energy prices since 2014, combined with a fall in natural gas and oil production in recent years. These, along with the prolonged economic stagnation, capital allowances, and challenges with tax administration have continued to contribute to weak revenue collections, leading to still significant fiscal deficits and rising public debt levels.

“Although preliminary data shows that the economy contracted in the first half of the year on weak energy production and spillovers to the non-energy sector, the economy may be starting to turn a corner as a result of a projected recovery in gas output, though growth may still be flat or somewhat negative for the year as a whole. The economic improvement that is now beginning is projected to continue into the medium-term, notably given a pipeline of projects that will improve the supply of natural gas to the downstream energy sector. Oil output is growing due to state-owned Petrotrin’s recent exploration efforts and refinery upgrade.

As the energy sector recovers, the non-energy sector is expected to rebound due to positive energy-related spillovers, and as implementation of the Public-Sector Investment Program picks up”.

As the country continues to grapple with the fall in energy prices and other economic challenges, the gap between the haves and the have nots is widening. This is the focus of my speech today; the vexing problem of economic inequality in Trinidad and Tobago.

President Franklin D. Roosevelt once said:

“the test of our progress is not if we add more to the abundance of those who have much; it is whether we provide enough for those who have too little”.

Economic inequality is one of the most pressing problems facing countries across the globe. Former US President, Barack Obama, described it as “*the defining challenge of our time*”.

In *The Wealth of Nations*, Adam Smith, Economist and Philosopher states, that the true measure of a nation’s wealth is not the size of its king’s treasury or the holdings of an affluent few, but rather the wages of “*the labouring poor*.” Smith declares that it is a matter of simple “equity” that:

“they who feed, clothe and lodge the whole body of the people, should have a share of the produce of their own labour as to be themselves tolerably well fed, clothed and lodged.”

Smith’s observation, though dating to 1776, still resonates today and highlights one of the most fundamental aspects of economic inequality: that it results in growing inequality of opportunity. This simply means that an increasing number of persons merely through the circumstance of their birth – their gender, the region in which they were born or the group they were born to – have more limited opportunities to lift themselves out of poverty. This restricts economic mobility, and perpetuates what Lloyd Best famously termed “persistent poverty” across generations and depresses growth.

It is important to highlight that Security, Health and Education are among the most critical issues impacted by inequality of opportunity. It is therefore no coincidence that these hot-button topics generate the most debates and continue to bedevil us in terms of the policy approaches and prescriptions to treat with them for they are the ones that have an immediate and visceral impact on our quality of life and that of our families.

Simply put, economic inequality with its attendant problems of crime, poor education and the inability to access proper healthcare is inextricably linked

to social inequality and therefore poses a threat to the medium and long-term prospects for our growth and development as a people and society.

One of the most widely studied and debated aspects of the inequality question is the link to crime. Crime and poverty have always been closely associated especially in countries like Trinidad and Tobago where, despite our gains made in development, there is a shrinking middle class and an increasing number of poor citizens, including those who can be defined as the “working poor” – those who are employed but are still living below the poverty line.

This country has been wrestling with the disturbingly persistent problem of crime for more than a decade. Those of us who have not experienced crime first-hand know of someone who did. The fracture, pain and chaos which citizens experience in the aftermath of crime - especially murder - is horrific and long-lasting. Crime creates instability and fosters an almost semi-permanent culture of fear among citizens. Critically, this instability and fear also permeate specific sectors, particularly the business sector as they depress the entrepreneurial spirit, incur tremendous costs in terms of security provisions, limit customer activity and purchasing power and work to generally prevent businesses from thriving, particularly small businesses.

Moreover, we hear numerous media reports of businesses which have been

repeatedly robbed and the owners brutalised. Some business owners have no choice but to close their business, exacerbating further the problem of unemployment and injecting increased uncertainty into the society and the economy.

From an industrial relations perspective, crime has a crippling effect on business and economic development, and there is a need for us as a people, as a nation, to collectively and urgently address the root causes of this crisis and devise mechanisms to protect business owners and workers from these growing incidences of crime.

These mechanisms should be carefully crafted to take into account the problems which exist in the criminal justice system, the growing number of small and medium-sized businesses and their challenges in coping with crime. In developing these mechanisms, due note should be taken of increasing unemployment and the impact of this on poverty. According to the statistics of the Central Statistical Office, there were 5,500 less persons with jobs in the second quarter of 2016 compared to 2015 and the number of persons classified as unemployed grew by 10% to 21,100 persons at the end of June, 2016, which is a little over a year ago.

I want to state categorically, that I am not saying that poverty is the

reason for crime. In fact, poverty at times creates a springboard and a path for many to achieve success. However, we cannot ignore the fact that there is a close relationship or correlation between crime and poverty.

I return to Adam Smith who underscored that:

“the allure of extreme wealth can contort human sympathies, causing the public to admire the wealthy and shun the poor”.

It is therefore an indictment of sorts that in a country that the World Bank describes as high-income with one of the highest Gross National Incomes (GNI) in Latin America and the Caribbean – US\$17,640 in 2015¹ - there are citizens who still cannot afford to send their children to school each day, cannot clothe and feed them properly and cannot begin to conceptualise anything but a life of grinding poverty. In a country where we have produced a Nobel Laureate in Literature and boasts of a high literacy rate 55 years after Independence, there are a number of young people in this country who are illiterate, uneducated and lack important social skills because some of them have not been socialised in a school environment and are not properly equipped to function at an acceptable social level. Some of them are unemployed and some turn to crime. Of course there are criminals who are

¹ Taken from <http://www.worldbank.org/en/country/trinidadandtobago/overview>

educated and gainfully employed; however, my point and focus is the large number of young, under employed and unemployed persons who are increasingly committing violent crimes.

On a personal note, when I became a Magistrate in 1990, the average age of a criminal was between 25 to 35 years and some of the very vicious and violent crimes that we experience today were unheard of. At some point those who were involved in crime became younger; it changed to about 20 to 25 years. When I left the Magistracy in 2003, teenagers were committing crime with some as young as 12 years old and I am sure you will accept that many of those who commit violent crimes today are under age 30.

All of the above highlights one of the basic problems with economic inequality which is that it is bad for everyone, the rich and the poor alike. Crime affects everyone and there is no safe haven in Trinidad and Tobago to protect you from the ravages of crime.

Another key element of growing inequity is the ability of citizens to access basic services, one of which is healthcare. There are citizens who do not have access to proper healthcare because they simply cannot afford it. While this country provides free healthcare services for all citizens, the sheer volume of those seeking to access these services makes it impossible for

the state to provide optimal service for all. As a result, many citizens seek healthcare at private clinics.

Those who are poor do not have that luxury and we hear of many tragic repercussions and heart-wrenching accounts of those who are impacted simply due to their inability to access proper medical treatment.

The same extends to the question of ensuring that our education system is accessible by all and is for all, regardless of one's economic status. We have done very well over the past few decades in terms of our educational progress, and, the impact this has had on social and economic mobility and decreasing intergenerational poverty has been profound.

Far too often and increasingly, we hear of the established links between levels of literacy, poverty and criminal behaviour. We have to continue to work assiduously to ensure that the education-skills mismatch is narrowed so that young people are better equipped to enter the labour market and secure decent work over the course of their economically active lives.

In my respectful view, we have to tackle the issue of poverty which though will not remove inequality entirely, will play an important role in reducing it. It is against this backdrop that among the United Nation's Sustainable Development Goals is SDG No. 10 which is to reduce inequality within and

among countries. There is growing consensus that economic growth is not sufficient to reduce poverty if it is not inclusive and if it does not involve the three dimensions of sustainable development, namely, economic, social and environmental. We therefore need to ensure that our economic and social policies focus on the disadvantaged and the marginalised in society.

Let me hasten to add that it is not for me to determine what should be the government's policy on economic inequality. However, like every right thinking citizen in Trinidad and Tobago, I am deeply concerned about the widening gap between the rich and poor and the repercussions that flow from this. It is therefore no surprise that over the years my annual address has always reflected my belief that we should always remain focused on the need for inclusive growth.

I want to repeat what I said in 2014, which is that good governance and the rule of law are prerequisites for attaining equitable growth and sustainable development in any country. Our public policy must be inclusive of all groups, particularly those that are most vulnerable.

As the country continues to experience what has been described as a recession, the Private Sector can play a significant role in shaping our future economic development by innovation and job creation. This is particularly

relevant to our specific context in Trinidad and Tobago where micro, small and medium-sized enterprises are estimated to contribute 28 per cent to our gross domestic product (GDP), represent more than 20,000 enterprises, provide employment for an estimated 200,000 persons and account for 85 per cent of all registered businesses.²

Trade Unions have traditionally played a central role in shaping the employment culture and the working lives of citizens. At a time like this when the country is experiencing economic challenges, how the trade union movement responds to these challenges and opportunities over the next few years will be crucial in determining their continued relevance and overall level of influence. Among the reality the trade unions are faced with today, is the growth of the use of short-term contracts, the outsourcing by firms of non-core activities to other firms and the increased use of labour providing agencies in the energy sector. Trade Unions must now adapt to the ever-shifting landscape of the labour market. In terms of the current economic constraints which we are experiencing in Trinidad and Tobago, the unions in my view need to develop a working and comprehensive understanding of what this recession as announced by Government, entails. Accordingly,

² Taken from <http://www.molsmed.gov.tt/portals/0/mse/msedocp.pdf>

there may be need to adjust their rhetorical sails to better match prevailing economic winds and present realities. It simply cannot be business as usual. Therefore, there might be a need for unions to engage the services of experts who can clinically and thoroughly analyse financial reports which are emanating from companies where unions represent workers in order to have a more panoramic understanding of what is the financial picture of that particular company so the union can in turn provide a realistic and comprehensive report to workers of what is actually taking place and in so doing, better represent them.

I wish to suggest also that one of the factors which can contribute to the stimulation of meaningful and sustained growth in the economy is for each side, business and labour, to put aside their distrust and differences and enter into meaningful relationships.

These relationships should be aimed at developing strategies that can impact on the survival and profitability of businesses and the promotion of sustainable, equitable economic growth in Trinidad and Tobago.

This is the time for all hands to be on deck. Although at times the relationship between the unions and business may appear to be acrimonious, let us not forget that unions and business have a common purpose, and that common

purpose is for the business to be successful and profitable so that business owners can make profit and employees can earn their wages and have job security. I think we must never lose sight of that common purpose.

This is the time to foster more symbiotic labour relationships; the time to encourage discussion on issues at the workplace and it is also the time to adopt a less adversarial approach and foster a more collaborative approach toward problem-solving in the workplace. I have advocated in the past and I continue to advocate that the internal structures of a business should be less autocratic to allow employees or the employees' representatives and business owners to sit and engage in meaningful dialogue about issues at work and what serves the best interests of the company.

In this highly globalised world which is facing economic and environmental challenges, this is the time more than ever, to work together in a tripartite setting. The meetings of government, employers and unions are critical to address economic and work-related issues and to promote sustained economic growth. The industrial relations culture in Trinidad and Tobago has to develop to be a culture of dialogue and consensus rather than a culture of discord.

To this end and to assist in facilitating the proliferation of this approach, I have begun an outreach initiative across our twin-island Republic where I am attempting to bring a greater understanding of industrial relations issues and highlight the importance of a harmonious approach to tripartite relations and dialogue. I started this outreach at Mayaro, more than a week ago. I call on both the business community and labour to support this endeavour as it can redound to the mutual benefit of all parties and will, in my view, contribute to bridging the gaps in knowledge that exist with respect to the intersect between labour and business. Moreover, we can perhaps use this as an opportunity to start a much-needed conversation on developing more lasting mechanisms to support social dialogue which can be of tremendous benefit.

It is in this context, I now turn to the work of the Industrial Court over the past year.

THE WORK OF THE COURT – 15th September 2016 to September, 2017

For the period September 2016 to September 2017, 1272 new cases were filed at the Industrial Court, 78 cases more than the same period 2015/2016 which recorded 1194 cases. Additionally, the Court disposed of 979 matters in the year in review which was lower than the 996 matters disposed of for the same period, 2015/2016. The disposal rate in 2016/2017 is 77%, which

is 6.4 percentage points lower than the period 2015/2016 when the disposal rate was 83.4%.

Of the total number of disputes disposed during the year in review, 21.9% (214 matters) were from Judgments, 36.7% (359 matters) were withdrawn, 37.1% (364 matters) were settled through the conciliation and bilateral process and 4.3% (42 matters) were dismissed for want of prosecution.

Of the total matters filed at the Court for this year, 2016/2017, Trade Disputes remain the largest number of matters filed (821) 64.5%, followed by Occupational Safety and Health matters (162) 12.7% and Retrenchment and Severance Benefits (64) 5%.

This year, 23 new matters of disputes on breakdown in negotiations have been filed at the Court compared to 2015/2016 when 7 such matters were filed.

MEET WITH THE COURT SYMPOSIUM

On Saturday 24th June, 2017, the Industrial Court held its annual ‘Meet with the Court Symposium’, the aim of which is to encourage dialogue among stakeholders on issues affecting the industrial relations landscape. This year the Court collaborated with the International Labour Organisation (ILO) to host the event and as a result of the generous support of the Trinidad and

Tobago Defence Force, the Symposium was held at the Regimental Headquarters, Garden Road, Aranguez. The theme this year “Fixed Term Contracts in the Public Sector”, generated discussions on the legal impact of short-term contracts in Trinidad and Tobago.

I take this opportunity to express my sincere thanks to our presenters Mr. Shingo Miyake, International Labour Standards and Labour Law Specialist for the International Labour Organisation (ILO) Decent Work Team and Office for the Caribbean; Dr. Leighton Jackson, Dean of the Faculty of Law of the University of the West Indies, Mona Campus, and Economist Dr. Ralph Henry.

Special thanks to the Trinidad and Tobago Defence Force for the use of their facility. I also wish to thank the staff for their hard work each year and all our stakeholders for their attendance and participation; this contributed to making yet another successful Symposium.

ACCESS TO JUSTICE IN TOBAGO

As stakeholders are aware, since August 2012, the Industrial Court has been holding sessions in Tobago each year during the Court’s vacation. This year we had no sitting in Tobago due to lack of funds, however, the Court remains committed to providing proper access to justice to all citizens.

Works have not yet started on the building which the Court has acquired in Tobago, but we have been in discussions with NIPDEC with the hope of receiving the necessary technical support for this renovation exercise to become a reality.

TRENDS IN LABOUR AND INDUSTRIAL RELATIONS BULLETIN

The Industrial Court continues to strengthen its in-house data and statistics on labour market activity, and in so doing provide the stakeholders with information on the state of the industrial relations environment in Trinidad and Tobago. I am pleased to announce that we have completed our third *Trends in Labour and Industrial Relations* Bulletin in May this year. This Bulletin has not yet been printed due to lack of funds; however, it is my hope that it will be available to stakeholders before the end of this calendar year.

THE REGISTRATION, RECOGNITION AND CERTIFICATION BOARD

I pause to make mention of the Registration, Recognition and Certification Board and its operations. Over the years, in a period which may have spanned more than a decade, the Board took an inordinately lengthy period of time to complete matters. This delay impacted on the work of the Industrial Court, and some disputes had to be adjourned generally for many years pending the ruling by the Board. I think (this is my personal view) that the

delays at the Board were primarily due to the lack of resources invested in that area. However, since Mr. Augustus Ramrekersingh assumed office as Chairman, there has been a notable increase in the disposal of matters at the Board and this has impacted in a positive way at the Court and I want to commend Mr. Ramrekersingh and the Board for the good work which they are doing.

TRAINING

There was no judicial education for judges this year due to budgetary constraints. Some members of staff did receive training; the Librarian attended the Caribbean Association of Law Library Conference in the Bahamas in July this year, where she presented a paper. Twenty one members of staff benefited from in-house training in performance management in the Public Service. Four members of staff attended a four day training in procurement.

On Tuesday 5th September, 2017, Dr. Leighton Jackson, Dean of the Faculty of Law, University of the West Indies, Mona, Jamaica conducted a one day training in Legal Research and Procedures for the staff of the Library, the Office of Economic and Industrial Research and the Legal Department. This

training is a continuation of last year's training as we continue to strengthen the Court's research capacity.

SHORTAGE OF COURT REPORTERS

When I assumed office in December 2011, there were a number of outstanding judgements to be delivered by the Court; some dated as far back as 2008. In my address to stakeholders in 2012, I indicated that my main focus was to clear the backlog and deliver judgments in a timely manner. The judges and staff have worked tirelessly to clear this backlog and by 2014 there were no reserved judgements for any period before that year. However, due to the continued and chronic shortage of staff in the Court Reporting Unit, we have not been able to deliver the number of judgments as we would like this year. As you may know the Court Reporting Unit provides support for the Court at each hearing, transcribes all the notes of evidence and submission from hearings and makes them available for Judges' use in the preparation of judgments. This unit also prepares and provides notes of evidence when requested by the practitioners in proceedings in Court.

There are 25 positions of Verbatim Reporters at the Industrial Court, 18 of those positions are without incumbents, and therefore, only 7 persons are currently employed at the Court as Reporters. It is simply impossible for

Court Reporters to accomplish their tasks with so few staff. To make matters worse, we have limited funds so we cannot employ a number of persons on contract to assist with the preparation and transcription of notes.

Despite my repeated calls over the years, the Court has not been provided with any replacement staff in that unit. This year (2016 – 2017) the Industrial Court has delivered 214 judgments; this is significantly less than the number of judgments which were delivered last year, (2015-2016) when 277 judgments were delivered. My fear is that with this chronic shortage of Court Reporters, we will revert to the same position as we were in 2011.

SPACE

In 1997, when the Industrial Court opened its new building in Port of Spain there was a total of 101 persons, this figure included the Judges and staff. In 2017, the total number of persons who work at the Port of Spain building is 160. The Industrial Court is in dire need of more space. There simply is not enough space to adequately accommodate staff and Judges. This is a chronic problem which I have addressed publicly each year for the past five years and I think that I may have become the proverbial voice in the wilderness. I implore the powers that be to urgently address this problem.

JUDGES AT THE COURT

This year, four judges ended their term with the Industrial Court: His Honour Mr. Dinesh Rambally, His Honour Mr. Robert Linton, His Honour Mr. Nizam Khan and His Honour Mr. Brian Dabideen.

The Court welcomed three new Judges, and they are, Her Honour Ms. Michelle Austin, His Honour Mr. Andrew Stroude and His Honour Mr. Azeem Mohammed.

I wish to thank the Judges and Staff of the Court for their professionalism and their continued support over the course of the past year. This support is made even more invaluable against the backdrop of the challenges and constraints we have faced as an organisation. I also wish to express my appreciation to the stakeholders for their participation in the process and I look forward to your continued engagement in the future.

CONCLUSION

As I conclude, I take the opportunity to assure that we at the Industrial Court will continue to promote inclusive growth and equality. In this context, it would be remiss of me to not reiterate that for this nation to weather these prevailing winds currently buffeting our economy and by extension, our society, this is the time for all hands to be on deck. There is an urgent need for all

stakeholders to commit to tripartism where parties – Labour, Business and Government – can engage in genuine, meaningful discussions with a view to arriving at policy prescriptions and solutions that will assist our country in realising sustainable growth and greater resilience. Key to this is that the Social Partners fully embrace Social Dialogue as a fundamental mechanism in pursuit of this objective. I am therefore heartened by the recent announcement that the Joint Trade Union Movement will return to the National Tripartite Advisory Council as this speaks to the enduring value of the tripartite approach and augurs well for the crafting of sustainable solutions to our common challenges.

I am reminded by the words of the prolific Trinbagonian composer, Dennis Franklin, The Merchant, who called on us to symbolically work together in his timeless voice, saying:

“Now, more than ever we must show,

Discipline, Tolerance and Production.

To build a strong and better nation,

I say, that is the main foundation.

So, come let us walk hand in hand,

Because this is our land;

Come my brother, come my sister,

Let us build a nation together.”

May God bless you and may God bless our nation. I thank you for listening.