Address delivered by
Her Honour Mrs. Deborah Thomas-Felix
President of the Industrial Court of Trinidad and Tobago
AT THE SPECIAL SITTING FOR THE OPENING OF THE 2023-2024 LAW TERM

When I assumed the Presidency of the Industrial Court in December 2011, the main issues of that year centred on the Arab Spring, the capture of Osama Bin Laden, the Fukishima nuclear accident and on a promising note, the UN declared 2011 the International Year of Forests to raise awareness of sustainable management, conservation and sustainable development of all types of forests. I highlight this simply to underscore that the more things change the more they stay the same since today, we continue to grapple with the global troubling problems of security, equity, justice and the growing realization that climate change is no longer a remote problem that we can leave for the next generation to handle but one that has in fact arrived. To add to this, we have since endured a pandemic. So yes, these continue to be extremely challenging times and we here in Trinidad and Tobago, like in many countries across the globe, are also grappling with a crime situation that continues to cause grief, distress and pain, to many citizens.

Even as I surrender to constancy of change and our ongoing challenges, I confess to wrestling with same bedeviling question each year of what topic to speak on at the Special Sitting of the Court. This year I decided to focus on people.

I will - by way of explanation - use the words of Sir John Donaldson of the English Court of Appeal and remind that:

The Industrial Court is a court, but a court with a difference. All courts exist to uphold the rule of law. So does this court. All courts are concerned with people. So is this

Court…Why, then, is this court different? It is different in its composition, in its objects and in its procedures. It is a court of law, but not a court of lawyers…[1]

In this vein, I thought it might be useful to start from the perspective of people because after all, at its most basic level, this is why we are in the business of industrial relations and why we are all committed to ensuring good governance from our respective spheres. It is about people, their security and their safety, we therefore share the common goal of creating and safeguarding human security.

Perhaps, now is an opportune time to remind that human security emphasises that the survival, livelihood and dignity of people are the fundamental basis for national and regional development and international peace and development. In that context, a key pillar of human security is economic security and of course, we cannot separate industrial relations and the labour market from economic security. I found it useful to situate our proceedings today within the context of the definition of human security which is "safety from the chronic threats such as hunger, disease, and repression as well as protection from sudden and harmful disruptions in the patterns of daily life whether in homes, jobs or communities". This a quote from the UNDP in1994 and while this concept and definition dates to 1994, it remains extremely relevant given our collective global experience from March 2020 to May 2023. Moreover, growing evidence of the accelerated impact of climate change on our lives and livelihoods has underscored the continuing relevance of this concept and its interrelated pillars of political security, community security, personal security, environmental security, health security, food security and of course as mentioned before, economic security.

Given that work gives the material means to provide for ourselves and our families, one might in fact argue that without economic security the other forms of security can quite easily be imperiled.

[1] 4 Heathons Transport (St Helens) Limited v Transport General Workers' Union and other (1973) A.C. 15

That is a substantive topic that we may need to convene a special symposium to fully explore, so today I will focus on addressing two critical and interconnected challenges to our security that our world of work faces: climate change and the critical importance of proper health and safety mechanisms. These issues are not isolated concerns, they are intrinsically linked, impacting the well-being of our planet, and the health, safety and security of every individual.

Many leading environmentalists have warned time after time that climate change should be the number one priority for government policies in this century. In fact the world has experienced several disasters and climate related changes in the first two decades of this century, and we continue to experience them in this, the third decade.

The Union Nations reported that “Climate change is one of the major challenges of our time. From shifting weather patterns that threaten food production, to rising sea levels that increase the risk of catastrophic flooding, the impact of climate change is global in scope and unprecedented”.

As you may know there have been extreme weather-related events each month for this year throughout the world, events which have affected many lives and livelihoods. Permit me to quickly recall the major weather-related events for this year.

This year, began with the sixth-warmest January on record, averaging a temperature of 35.2 degrees Fahrenheit in the United States of America.

There were also high levels of rainfall, making January 2023 the third-wettest January on record. A record number of atmospheric rivers brought unprecedented rains to California, USA, which was suffering from a drought. The state experienced 10 storms, which resulted in floods and landslides, as well as snowfall in the mountainous regions.

Later in the month, the U.S. experienced both extreme cold and unusually warm temperatures. Southern California saw winter storm conditions, inhibiting travel in the region while other parts of the country saw almost spring-like temperatures.

Chile is experiencing a decade of extreme dry weather, which has led to what experts have called a “Mega draught”. Record temperature topping 104 degrees Fahrenheit, accompanied by strong winds, sparked one of the deadliest wildfires in the country’s history in February this year.

Also in February and March 2023 the world suffered the onslaught of the very intense tropical Cyclone Freddy which was one of the longest-lived tropical cyclones in human history, lasting five weeks. The countries that were severely affected were Madagascar, Mozambique, Zimbabwe, Malawi, South Africa, Zambia, and Mascarene Islands, with Malawi being the hardest hit. The total fatality of Cyclone Freddy was 1434 with at least 1216 lives lost in Malawi.

Tornadoes continued throughout the month of April in the United States, with a storm in Oklahoma that killed at least three people.

The month of April was also marked by several heat waves in Asia and the Mediterranean. Several countries in Asia, including Bangladesh, India, Laos, and Thailand, saw some of their highest temperatures to date, which, reached over 113 degrees Fahrenheit. In the Mediterranean, Spain and Morocco experienced record-breaking heat surpassing 101 degrees Fahrenheit. These heat waves have been attributed to climate change.

In the month of May, wildfires raged in Alberta, Canada, with these fires affecting the ambient air quality of the communities in adjacent districts. Environmental pollutants often do not respect boundaries and so smoke from the fires soon affected the U.S.A, with several states issuing air-quality warnings.

Also in May, Cyclone Mocha hit Myanmar and Bangladesh which lead to several deaths and hundreds of thousands were left homeless. In May, the UN estimated that over 800,000 persons were in need of emergency food aid and other assistance.

In the same month Typhoon Mawar, one of the strongest to hit Guam in recent history wreaked havoc in Guam, causing widespread power outages in the region. This is Asia, but bear in mind this could very easily be us here in the Caribbean.

Later that month, India experienced a strong heat wave that led to several power outages and nearly 170 deaths. Hospitals were over capacity and struggled with the loss of power and cooling systems.

July 3rd through July 6th were the four hottest days on record globally, the hottest of which was July 6th, when the global average temperature "climbed to an unprecedented 63.02 degrees Fahrenheit),". Various regions across the globe experienced heatwaves, including Europe, China, and parts of the U.S. The heat was magnified by El Nino and extremely warm oceans. Also in July there was intense flooding in India which left at least 100 persons dead.

In August the world continued to experience extremely high global temperatures that led to a number of devastating disasters. The Hawaiian island of Maui, for instance, experienced a devastating wildfire that killed over 110 people. Experts have attributed this destruction and those mentioned before to climate change.

California was also struck by Tropical Storm Hilary, in August the first such storm to hit the southern part of that state in 84 years.

Last week Cyclone Daniel, after devastating Greece, Bulgaria and Turkey, hit Libya causing two dams to break. This is the heaviest rainfall the country has seen in the past 40 years. More than 5000 people are presumed dead so far as the death toll continues to rise. The Red Cross has estimated that 10,000 people are missing.

Also this month, Hong Kong experienced the heaviest rain since records began 140 years ago killing two people and injuring more than 140.

Here in Trinidad and Tobago, so far for this year we have been experiencing intense heat, very heavy rainfall and unprecedented flash flooding.

The natural question I know is what is the connection between climate change and proper health and safety mechanisms on the one hand and the Industrial Court, Labour Standards and the Labour Market on the other? I will answer by reminding stakeholders, that labour is fundamental to and at the heart of social and economic development at all levels: at the level of the family, the community, the country, the region and globally. Climate change and health related disasters including pandemics affect the health and safety of employers and workers and it also affects productivity.

In Trinidad and Tobago, we know only too well the intense heat experienced when we are outdoors for work or when we dare to venture outdoors during work hours. Also there are workers who experience the intense heat and discomfort when working indoors because they work in buildings which are not properly ventilated.

I was surprised to learn of the extensive research on the effects of working in heat and heat stress. Heat stress refers to heat received in excess of that which the body can tolerate without suffering physiological impairment. The exposure to extreme heat can result in occupational illness, injuries and even death.

Globally we are all exposed to this very high temperature and the effects of climate change. The heat, apart from affecting our health slows down the productivity rate. Studies have shown that there is a direct relation between climate air pollution and workers' health, which suggests that there are cardio respiratory health issues or decreased productivity as a result of heat problems.

According to the ILO, excessive heat during work creates occupational health risks; it restricts a worker's physical functions and capabilities, work capacity and productivity. Heat stress can result in heat stroke, heat exhaustion, heat cramps or heat rashes and heat can also increase the risk of injuries of workers.

Workers who are more at risk to heat stress are those who work outdoors or those who work in buildings with poor ventilation. These include workers in hot environments such as firefighters, bakery workers, farmers, construction workers, miners, boiler room

workers, factory workers, among others. The increasing extreme weather events directly place workers who are engaged on construction sites, agriculture and in some cases the essential services within direct risk.

The social partners should therefore encourage the adoption of sound health and safety mechanisms and policies in the workplace. Adequate safety measures are paramount in protecting workers from heat-related illnesses, air quality hazards and other climate related dangers.

Heat stress has attracted the attention of the development community outside of the ILO. Indeed the UNDP has reported that “The effect of rising heat in the workplace will continue to present multifaceted challenges for many of the new global sustainable development goals. In particular, the eight goals related directly to incomes, family health and nutrition, inequalities and jobs, community sustainability and climate change.”

Continuing in this vein, the ILO has advanced that “The best ways to reduce the risk of heat-related illnesses include work practices such as allowing self-pacing of work, drinking water often, wearing appropriate clothing, making the work environment cooler through air conditioning and ventilation, providing shaded rest areas and providing for annual health check ups.”

I will add to that list that consideration should be given to the use of remote work and new modalities of work. Remote work allows workers to stay safe during disasters such as natural disasters or pandemics and minimizes disruptions to business operations. It can also lead to increase productivity during the time of an environmental or health adversity.

In addition, I also think it will be very useful for employers and Unions to incorporate clauses in Collective Agreements for the annual training of workers especially those who are at greater risk so that they can understand the danger of heat stress, and other environmental concerns which affect their health and safety and also learn of preventative measures.

You may recall at the Special Sitting for the new law term last year, I suggested that when there is collective bargaining for new collective agreements, parties should consider to include clauses, as comprehensively as possible, in these agreements to address health and safety issues at work.

Permit me to revisit a small excerpt from my speech of last year.

“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.

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.”

Climate change continues to pose complex challenges for workers, from health and safety risks to potential economic and job market shifts. Adaptation and mitigation efforts are crucial to protect the well-being of the workforce in a changing climate.

When we examine the impact of climate change on the world of work we must also consider the broader economic implication. Climate related disasters not only disrupt businesses but can alsostrain economies and tear communities apart rendering social systems ineffective at the point where we need them most. As a Small Island Developing State, this is of particular importance to us for the cost of recovery from disasters such as flooding and fires can be staggering and may lead to the government having to divert resources away from essential social services. However by the same token, the global effort to transition to a more sustainable economy offers many opportunities for innovation and for the sustainable creation of green jobs. Green jobs which are also referred to as sustainable or environmental friendly jobs can be encouraged in various sectors such as renewable energy, sustainable agriculture, waste management, environmental protection, green construction and transportation. Green jobs are used to support a low-carbon economy and play a vital role in addressing climate change and reducing greenhouse gas emissions.

The global response to climate change necessitates a workforce skilled in environmental conservation, renewable energy and sustainable practices. Therefore training, upscaling and retooling initiatives are essential in the workplace to ensure that workers navigate the effects of climate change. It is the duty and theresponsibility of all of us to prioritise the health and safety and wellbeing of the workforce.

We must actively explore measures to safeguard not only our environment, but also our health and safety for generations to come.

THE WORKING OF THE COURT

I will now turn to the working of the Court.

During the year in review, which is 15 September 2022 to 14 September 2023, 793 new cases were filed at the Industrial Court, 309 cases less than the same period in 2021/2022 which recorded 1102 cases. The Court disposed of 909 matters this year in review which was 62 more than the 847 matters disposed of for the same period in 2021/2022.

The total number of disputes disposed during the year in review, are as follows: 253 Judgments, 289 cases were withdrawn, 320 matters were settled through the conciliation and bilateral process and 44 matters were dismissed. Of the total number of disputes filed at the Court for this year, 2022/2023, Trade Disputes (in both the General and Essential Services Division) remain the largest number of matters filed with a total of 654 followed by 38 Retrenchment and Severance Benefits Disputes; 31 Occupational Safety and Health Disputes and 25 Industrial Relations Offences.

Persons who practice at the Industrial Court may know that several OSH cases have been adjourned pending the outcome of a Privy Council decision. The filing of these cases have reduced significantly this year.

Library

The Library continues its work on the updating of the Subject Index of the Industrial Court Judgments of 1965-1998 and hope to have a revised subject index of the Industrial Court's Judgments of 1965-2022 by August 2024.

The Library has also continued its digitizing of the Court's Judgment so far an estimated 5,760 records were edited in the Judgment database.

$894,989.85 in cash and cheques were collected by the Library this year of this figure, $454,700.00 were subscription payments, $416,000.00 represented Court fines and $24,289.85 in photocopies.

Symposium

The Court hosted its 7th Meet with the Court Symposium in 10th June 2023 of this year.

The Presenters for the Symposium were Economist Dr. Shelton Nicholls, Honourable Mr. Justice Jefferson Cumberbatch, Justice of Appeal of the Supreme Court of the Barbados, Mr. Shingo Miyake, Labour Law and International Labour Standards Specialist from the

International Labour Organization and Dr Leighton Jackson, former Dean of the Faculty of Law at the University of the West Indies, Mona Campus. On behalf of the Court I thank them for their participation and their excellent contributions.

Building Maintenance Issues

Over the years I have spoken about the lack of sufficient space for staff at the Industrial Court's Port of Spain building, this continues to be a pressing concern which at times stymies the operations of the Court. This building was commissioned in 1997. Over the years there has been a significant increase in the number staff, judges and users of the Court. I cannot over emphasise how important it is for the physical facility at the Court to be comfortable for the staff and the users and I continue to look forward for a resolution of this problem by the relevant authorities.

There are also several maintenance issues at the Port of Spain building. The most pressing of which is the leaking roof which requires urgent repair in order to prevent further damage to the building and to the Court's records.

Tobago

During the period of COVID 19 Pandemic it was not possible for citizens who live in Tobago to attend Court in Port of Spain, as a result we have a number of cases to be determine from Tobago. It is my intention to make arrangements after discussions with the learned Chief Justice to hold a session in Tobago next year to determine some of these disputes.

Finally, I wish to mention that a review of my presentations to this distinguished audience at the Special Sittings for the past ten years, reveal a recurring theme, which is the importance of Social Dialogue. I am sure that you will agree that people, - who are involved in a particular business, the workers, their representative and the business owners alike - share a common purpose and a common goal. This common goal is to make the business viable and successful so that it remains an ongoing concern.

When there is the practice of good industrial relations and the business is a success, the people who are involved in that business benefit. The owners realise a profit and the workers receive their remuneration and benefits, thereby realizing a measure of economic security.

It is important when there is collective bargaining that there should be mutual respect in the room even if there is no agreement. That is really what social dialogue is about. It is only through genuine meaningful dialogue, compromise and mutual respect we can truly say that there is collective bargaining in good faith. With all the challenges we are experiencing as a country especially after the pandemic, I urge the social partners to think long and hard on whether you wish to have continuous discord, arrogance and gamesmanship or rather do you meet in good faith to find solutions together to achieve that common goal. If there is no social dialogue and the business enterprise collapses, then you may end up losing, the bath water, the basin and even the baby. I therefore implore you to never lose focus on what is your ultimate common goal which is for the business owner to realise profits and for workers to receive their just remunerations and benefits for decent work.

The late Denise Plumber, suggested in one of her calypso that that we “stay right here, work together right here and prosper together right here,” and the late Merchant implored us, “to build a nation together”. Only with genuine discussions and ongoing meaningful social dialogue, in pursuit of common goals, can we truly build our beloved twin island nation into the country we want to bequeath to our children. Then and only then we can truly say that we are forged from the love of liberty as we stand side by side with boundless faith in our destiny.

I thank you for listening.