

Speech of

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MINISTER OF LABOUR, INDUSTRIAL RELATIONS
AND EMPLOYMENT

ON THE

*EMPLOYMENT RELATIONS BILL
&
EMPLOYMENT RIGHTS BILL*

TUESDAY 12 AUGUST 2008

Mr. Speaker, Sir,

With your permission, I beg to move that the Employment Relations Bill and Employment Rights Bill be read a second time. These two pieces of legislation will respectively replace the Industrial Relations Act and the Labour Act which date as far back as the early 1970s. The Labour Act and the Industrial Relations Act have, in their own ways, been instrumental in the economic and social development of this country but the context has now changed and our legal framework needs to adapt and respond to new challenges, particularly with the advent of globalisation.

Mr. Speaker, Sir,

Since more than two decades now, social partners have also, for a number of reasons, been calling for the review of the Industrial Relations Act 1973, which deals with collective labour rights and of the Labour Act 1975, which caters mostly for individual rights.

The main reason for the review is the obsolescence of the provisions of these laws which no longer respond to the realities of the labour market in a rapidly changing global economy. On the one hand, there is greater demand for the recognition of the fundamental rights of workers and, on the other hand, the necessity for optimal conditions for investment, to encourage potential investors to choose Mauritius for their investment and business, over other competing countries. Government, as a facilitator, has to see to it that an investment friendly, hassle free environment is created and maintained, because only new

investment can fuel economic growth and, as a consequence, the creation of additional and more productive jobs. This necessitates a whole range of measures - social, economic, fiscal, structural and also legal. The pertinence and role of existing institutions have to be revisited; new organisations and programmes set up and, last but not least, the legal framework has to be updated, hence the present review of the labour legislation.

The Budget Speech 2006-2007 heralded the beginning of a new economic era, with the decision of the Government to move towards a wage determination system which will encourage productivity and efficiency at work. The Budget Speech had set in motion a major reform process which necessitates also the reform of our labour laws. The Government policy in this area is very clear. Whilst creating the flexibility needed for new businesses to locate in our country, thrive and generate new jobs, the law should also afford the worker a measure of security and protection when he has to change jobs. This is a novel approach and testifies to our commitment as a caring Government.

Before going into the details of the two Bills before us, I would like to elaborate on some very pertinent issues. Mr. Speaker, Sir, as a Member of the International Labour Organisation, which is the only tripartite UN agency, Mauritius has to subscribe to the Decent Work Agenda, the primary goal of ILO these days. The aim of the Decent Work Agenda is to promote opportunities for women and men to obtain decent and productive work in conditions of freedom, equity, security and human dignity.

Decent work entails also a fair income, security in the workplace and social protection for families, better prospects for personal development and social integration, freedom for people to express their concerns, organize and participate in the decisions that affect their lives and equality of opportunity and treatment for all women and men. The ILO Decent Work Agenda is an agenda to which have subscribed all three constituents of the ILO, namely, governments, employers and workers organizations.

Mr. Speaker, Sir,

Workers in Mauritius enjoy complete freedom of association. For a workforce of some 550,000 persons, we have 367 trade unions representing workers in the public service, parastatal bodies, local authorities and the private sector. 85% of the workers in the private sector are covered by Remuneration Orders which prescribe minimum wages and conditions of employment in some 29 sectors of employment. Collective bargaining, which requires the active participation of trade unions, is present only in a few undertakings. The new measures in the Employment Relations Bill regarding the formation, administration, registration and recognition of trade unions and their membership and affiliation possibilities will, therefore, facilitate the emergence of stronger trade union organisations. This will, in turn, facilitate meaningful collective bargaining, which is the main thrust of this new legislation.

Mr. Speaker, Sir,

The formulation of the two Bills has necessitated lengthy consultations with stakeholders. Throughout the consultation

process, Government has consistently acted in accordance with the spirit of social dialogue. No less than 24 meetings were held with the workers' organizations since the first day, in November 2005, when discussions started on the review of the labour laws. Nearly as many meetings were held with representatives of employers. The Employment Relations Bill and the Employment Rights Bill were released to the stakeholders and the public in August 2007, that is as soon as they were made available by the State Law Office. Workers' and employers' organizations were given ample opportunity to express their views and many of the views expressed have been taken on board in the finalisation of these two pieces of legislation. The Ministry had even organized in January this year a tripartite workshop with the participation of 2 eminent ILO experts to discuss the provisions of the two Bills. All partners, that is, trade unions and employers' organisations were invited and fully participated in the workshop.

Mr. Speaker, Sir,

It is important that we differentiate between consultation and negotiation. Negotiation implies initiatives taken by parties with differing or conflicting interests with a view to reaching an agreement. The consultation process, advocated by the ILO, is intended to assist Government in taking a decision. Whilst it gives due consideration to all proposals made and opinions expressed, the Government can only be guided in its final decisions by the higher interest of workers, employers and the country at large.

Mr. Speaker, Sir,

A High Powered Committee chaired by the Deputy Prime Minister, Minister of Public Infrastructure, Land Transport & Shipping and comprising five Ministers was set up to consider proposals for the review of both the Industrial Relations Act and the Labour Act. I have to point out that the High Powered Committee acceded to the request of the trade unions for a meeting. The meeting was held on 17 April 2008 and the unions had the opportunity to raise issues regarding which there was still some concern.

Mr. Speaker, Sir,

In the formulation of the two legislation which are before this House to-day, Government has been inspired by the Conventions and Recommendations of the International Labour Organisation which are recognised by all as international best practices. Mauritius has to date ratified 35 ILO Conventions, including Convention 87 on Freedom of Association and Protection of the Right to Organise, Convention 98 on Right to Organise and Collective Bargaining and also the other 6 core Conventions relating to workers rights.

Mr. Speaker, Sir,

One prominent feature of the Employment Relations Bill is the effective recognition of the right to collective bargaining which is a voluntary mechanism for regulating terms and conditions of employment. To promote collective bargaining there is need, in the first instance, to facilitate the registration of trade unions. As

rightly pointed out by the ILO, if the conditions for registration are excessive, the development of collective bargaining may be seriously impaired. Registration of trade unions is therefore being facilitated and will be granted as a matter of right, once conditions and formalities as laid down in the Bill are satisfied. The Registrar of Associations will have 30 days to decide whether to register or not to register a trade union. Any objection by any other trade union to the registration of a trade union can only be made after registration.

Mr. Speaker, Sir,

Under the Industrial Relations Act, provision exists for the formation of federations but not of confederations. A confederation will now be given a legal status under the new Act.

Mr. Speaker, Sir,

It is a fact that the interests of workers are best served by strong and effective trade unions. The possibility of forming a trade union with only 7 members, as is the case now, does not promote strong unions. Provision is therefore being made in the Bill that a trade union of workers should have a minimum of 30 members. Appropriate provision is also being made for trade unions having less than 30 members to strengthen their membership within a period of 2 years. Furthermore, the rules of a trade union will no longer be prescribed, as is the case now. The provisions of the First Schedule to this Bill regarding rules of a trade union will only serve as guidelines. This is in conformity with Article 3 of Convention No. 87 which stipulates that workers' and employers'

organizations shall have the right to draw up their constitution and rules.

Mr. Speaker, Sir,

Workers' and employers' organizations should have the right, as required by Convention No. 87, to elect their representatives and organize their administration and activities in full freedom. Contrary to the Industrial Relations Act which imposes an obligation on every trade union to hold its annual general meeting between 1 January and 31 March of every year, the Employment Relations Bill gives a trade union the possibility of choosing a closing date for its accounting period and to hold its annual general meeting within 3 months of that closing date. Furthermore, trade unions will have the freedom to decide by themselves on the conduct of ballots, except for a strike ballot. There will no longer be the requirement, as now exists in Section 26(1) of the Industrial Relations Act, for trade unions to seek the approval of the Registrar of Associations with regard to the daily newspaper in which the notice of a ballot is to be published.

Mr. Speaker, Sir,

Workers' and employers' organizations will also have greater autonomy and financial independence in the management of their affairs. There will no longer be the requirement for the Minister's approval for certain expenses. Provision is being made in the Bill for a trade union to apply its funds as it deems necessary for purposes consistent with its rules. Under the new legislation it will be much easier also for trade unions to dispose of their assets. Presently trade unions can only dispose of their

moveable and immoveable properties following the consent of a majority of all members of a trade union only. The requirements under the new legislation are as follows –

- (i) For immoveable properties, when a majority of the members present and voting at the annual general meeting has consented to the transaction; and
- (ii) For moveable properties, by the approval of the executive committee of the trade union.

However, Mr. Speaker, Sir, there will be an obligation on every trade union to submit to the Registrar, not later than 4 months after its accounting date, an annual return which shall include certified copies of the statements of receipts and payments and of the assets and liabilities. The Registrar will have the authority to carry out the necessary investigations where he has reasonable ground to believe that the trade union is contravening its rules and any provision of this Act or where he receives a complaint made by not less than 5% of the members of the trade union. The minimum requirement of 5% has been recommended by the ILO. In cases of misappropriation of funds or property of a trade union, the Registrar may refer the matter to the Police for appropriate action. The ILO has observed that there is no infringement of the right of trade unions to organize their administration if such action is taken on allegations of embezzlement.

Mr. Speaker, Sir,

It is a fact that trade unions of workers rely on the subscription payable by their members to financially sustain their activities. Presently, under the IRA, a check-off agreement is possible only where - firstly, the trade union has negotiating rights; secondly, its total membership was not less than 200 during the one year period preceding the date of the application for check-off and, thirdly, at least 10 of its members are employed by that employer. These conditions will no longer be applicable. A trade union will now be able to claim check-off as soon it is registered.

Mr. Speaker, Sir,

Trade unions cannot exist if workers are not fully protected in their right to be a member of a trade union. Part IV of the Bill deals extensively with the protection of the fundamental rights of a worker to establish or become a member of a trade union of his own choice, without previous authorisation and without distinction whatsoever or discrimination of any kind. In the Employment Relations Bill, the personnel of the Mauritius Prisons Service and of the Fire Services and any person in the service of the State who is not a public officer will also have the right to form or become a member of a trade union of their choice. This is currently not possible. We are maintaining, however, the exclusion of the Police from the right to organize for obvious reasons and this is in conformity with Article 9 of Convention No. 87. Furthermore the protection to workers against discrimination and victimization when involved in trade union activities is being consolidated in Part IV of the Bill. For

any offence in this connection, the fine is being increased from Rs 2000 to Rs75,000.

Mr. Speaker, Sir,

Recognition of a trade union is a corollary to the harmonious development of collective bargaining. The Bill puts emphasis on the voluntary grant of recognition by the employer in the first instance. There is also provided in the Bill, as advocated by the ILO, clear and objective criteria for the grant of recognition; this to avoid any opportunity for partiality or abuse. The specific criteria for recognition at both enterprise and industry level are as follows: -

- (a) support of 30% of workers in the bargaining unit – recognition is granted to the trade union;
- (b) support of more than 50% of workers in the bargaining unit – sole recognition is granted;
- (c) where there are 2 or more trade unions in an enterprise or in an industry and each of the unions has the support of 30% or more but less than 50% of the workers in the bargaining unit, joint negotiating rights are granted.

Currently under the Industrial Relations Act, when an employer refuses to recognize a registered trade union, the case is referred to the Industrial Relations Commission and ends before the Permanent Arbitration Tribunal where the employer refuses to implement the recommendation of the Commission in favour of the trade union. The process for obtention of negotiating rights is

both tedious and time consuming. This situation has become an obstacle to the promotion of collective bargaining.

Under the new legislation, when the employer refuses recognition, the trade union will make an application only to the Tribunal. If the Tribunal is satisfied that the trade union fulfills the statutory criteria, it will make an order directing the employer to recognize the trade union. The order will be binding.

Mr. Speaker, Sir,

My Ministry has also received representations concerning the decision of certain employers to revoke the recognition of trade unions without providing the trade unions with a valid reason. As the IRA does not adequately address this matter, necessary provision has therefore been made in the Employment Relations Bill for any revocation of recognition to be dealt with by the Tribunal only.

Mr. Speaker, Sir,

The next step after obtaining recognition is the drawing up and signing of a procedure agreement between the employer and the recognized trade union. A procedure agreement, a *sine qua non* for the conduct of harmonious industrial relations between the parties, has so far been a voluntary process. The new legislation will put an obligation on the parties to draw up and sign a procedure agreement within 30 days of the date of recognition or any such longer period as may be agreed by the parties themselves. A procedure agreement will be binding. Although the parties concerned will be free to include in the procedure

agreement such matters as they deem necessary, there is an obligation under the new legislation for a procedure agreement to provide for the following four issues—

- (a) First, the establishment in an enterprise of a negotiating body which shall deal with –
 - (i) matters to be bargained and decide on the levels at which bargaining shall take place;
 - (ii) arrangements for negotiating terms and conditions of employment and the circumstances in which either party can give notice of its wish to negotiate them; and
 - (iii) procedures for settling collective labour disputes;
- (b) Second, a requirement on an employer to consult a recognised trade union where a reduction of workforce, or the transfer of ownership of an enterprises, or cessation of business is contemplated;
- (c) Third, the maintenance of a minimum service;
- (d) Fourth, the prescription of the extent, duration and conditions of paid time-off taking into consideration the size of the trade union and type and volume of activities carried out by the trade union.

Mr. Speaker, Sir,

The question of time-off facilities has always given rise to controversy not conducive to smooth industrial relations. It is believed that the issue can best be addressed through negotiation. This is what the Bill provides for. The general principle of time-off, as advocated by the ILO, is that time-off

should be without loss of pay so as to allow trade union officers to carry out their functions promptly and efficiently but in a manner as not to impair the efficient operation of the undertaking concerned.

Mr. Speaker, Sir,

Another thorny issue is the question of access. Specific provision is being made in **Clause 40** of the new legislation to allow a trade union officer to enter the employer's premises to participate in collective bargaining or otherwise serve the members' interests. In **Clause 41** of the Bill, provision is also being made for either party to grant the other party access to any relevant information which may be required for the purpose of collective bargaining.

Mr. Speaker, Sir,

The new Act sets out, in a structured manner, the *sine qua non* conditions for the harmonious development of collective bargaining. In line with Article 4 of Convention No. 98 which puts emphasis on the voluntary nature of collective bargaining, the Employment Relations Bill leaves it to any one party to initiate the process of collective bargaining by giving the other party a notice. The party served with the notice has the legal obligation to start negotiations within 30 days of the date of the receipt of the notice or such longer period as may be agreed by both parties.

Where the party refuses to start negotiations within the prescribed delay, the other party may apply to the Tribunal for an order directing the party concerned to start negotiations and the

Tribunal, on hearing the two parties, shall, within 30 days of the date of receipt of the application, make such order as it thinks fit. The new legislation will also provide the necessary safeguard against unfair labour practices which could undermine the process of collective bargaining.

Mr. Speaker, Sir,

Once an agreement is reached, there will be an obligation on the parties to draw up and sign a collective agreement and this collective agreement will bind not only the two parties but also all the workers in the bargaining unit to which the agreement applies, whether they are members of the trade union or not. In other words, Mr. Speaker, Sir, a collective agreement once signed will apply also to those workers who are **not members of the trade union.**

Mr. Speaker, Sir,

Following discussions with the stakeholders and representatives of the ILO on the duration of a collective agreement, it has been decided, to the satisfaction of all parties, that a collective agreement can be renegotiated after a period of 24 months from the date of its coming into force or on such date as may be specified in the agreement. This result achieved through negotiations is a vivid example of fruitful social dialogue.

Mr. Speaker, Sir,

I wish at this stage to reassure the House that a collective agreement **cannot** contain any provision reducing the wages prescribed in Remuneration Order Regulations. The prescribed

wages will actually become the basis on which negotiations would start. There is also the possibility under the new legislation for a collective agreement to be extended to another employer or to the whole industry, under certain specific conditions.

To conclude on the issue of collective bargaining, Mr. Speaker, Sir, I wish to emphasize that collective bargaining can only function effectively if it is carried out in good faith by both parties. Good faith cannot be imposed by law, but can only be achieved as a result of voluntary and persistent efforts of both parties.

Mr. Speaker, Sir,

As emphasis is laid on negotiations as a privileged means of resolving disputes, a new mechanism is being put in place for dispute resolution. Contrary to the IRA, disputes will no longer be reported to me or, as appropriate, to the Minister responsible for the public service. Provision is being made in the Employment Relations Bill that any labour dispute, whether occurring in the public or private sector, shall be reported to the Commission for Conciliation and Mediation, this only after the parties have exhausted, within a reasonable timeframe, all avenues for a settlement within the enterprise. Provision is also being made for the period of negotiation within the enterprise not to exceed 90 days from the start of negotiations but the parties have the freedom to extend this period if they so choose, where a solution to the dispute appears imminent.

Mr. Speaker, Sir,

It will be therefore possible to report a dispute when no settlement has been reached at the end of the 90 days period or at any time during that period if a stage of deadlock is reached. To assist the parties in finding a solution, it is being provided in the Employment Relations Bill that any party can avail itself of the assistance of the conciliation service provided by my Ministry at any time but not later than 20 days before the expiry of the 90 days period. The ILO considers this to be, I quote "*an important innovation in order to give the parties every opportunity to negotiate before they turn to the authorities for guidance.*" The parties can also jointly and voluntarily refer the dispute to the Tribunal for arbitration or to an arbitrator appointed by them.

The House will note that throughout the whole process much emphasis is being laid on conciliation, mediation and voluntary arbitration as a peaceful means to settle labour disputes.

Mr. Speaker, Sir,

If, in spite of all the efforts made by the parties themselves and by my Ministry, the dispute is not resolved, the next step is for the dispute to be reported to the Commission which will have 30 days, or such longer period as may be agreed by the parties, to –

- (i) make proposals to the parties for the settlement of the dispute;
- (ii) conciliate the parties;
- (iii) mediate and make recommendations to the parties; or

(iv) make such investigations as it thinks fit.

The Commission will have the power to reject a dispute under specific conditions prescribed in the new legislation. Contrary to the IRA where the whole dispute is rejected if any part thereof is not an industrial dispute, the new legislation will provide for only that part of the dispute that is unacceptable to be rejected. Any rejection may be appealed against before the Tribunal.

Any agreement reached following conciliation at workplace level or at the level of the Commission shall have the effect of a collective agreement. If the Commission does not succeed in conciliating the parties, it shall submit a report to that effect to the parties and advise them to refer the dispute for voluntary arbitration. Where the parties decline to refer the dispute for voluntary arbitration, the disputant may have recourse to a strike or lock-out within 45 days of the submission of the report by the Commission.

Mr. Speaker, Sir,

The Employment Relations legislation will remove all forms of compulsory arbitration, be it at the initiative of the authorities or any one party. Currently, once a dispute is referred for conciliation or compulsory arbitration, the party reporting the dispute is denied the right to strike. In the new legislation, if conciliation and mediation fail, the disputant has the possibility of having recourse to strike action.

Mr. Speaker, Sir,

I wish to inform the House of the pre-conditions, accepted by the ILO Committee on Freedom of Association, before any party can proceed on strike. There is

- (i) the obligation to give prior notice;
- (ii) the obligation to have recourse to conciliation and mediation procedures as a prior condition to declaring a strike, provided that the proceedings are adequate, impartial and speedy and that the parties concerned can take part at every stage;
- (iii) the obligation to take strike decisions by secret ballot;
- (iv) the establishment of a minimum service in particular cases;
- (v) the guarantee, for non-strikers, of the freedom to work.

The right to strike, Mr. Speaker, Sir, is an intrinsic corollary of the right of association and has been adequately provided for in Part VII of the Employment Relations Bill, along the lines advocated by the ILO.

Mr. Speaker, Sir,

The possibility of direct administrative action by the State to put an end to a lawful strike is being removed. The Prime Minister will no longer be able to put an end to a strike when he deems that it is against the national interest to allow the strike to continue. The Prime Minister will now have to apply to the Supreme Court for an order prohibiting the continuation of a strike or lock-out, where he is of the opinion that such action

may result in a real danger to life, health or personal safety of the whole or part of the population. This provision is in conformity with the stand of the ILO Committee on Freedom of Association.

Coming to the Employment Relations Institutions, Mr. Speaker, Sir, I have to inform the House that during the many consultation sessions held with the workers' organizations, I have, on many occasions, stressed on the fact that the National Remuneration Board will be maintained. This is now evidenced in **Clause 90** of the Bill. I have to point out also that, following representation from workers' organizations, provision is being made for the Chairperson and Vice-Chairperson of the National Remuneration Board to be public officers, duly appointed by the Public Service Commission.

The Permanent Arbitration Tribunal, Mr. Speaker, Sir, is being restyled as the Employment Relations Tribunal and, as I have mentioned earlier, the Industrial Relations Commission will be known as the Commission for Conciliation and Mediation.

Mr. Speaker, Sir,

Rodrigues, has not been forgotten. Provision is being made for the establishment of a Commission for Conciliation and Mediation in Rodrigues also, which will have the same functions as the Commission in Mauritius.

Mr. Speaker, Sir,

Disputes always give rise to an atmosphere of tension and affect worker-employer relations, work efficiency and may result in

confrontation and in disruption of production. Government has therefore a duty to ensure that there is a speedy resolution of disputes and, in view thereof, both the Tribunal and the Commission are being given specific time limits for the determination of matters referred to them.

Mr. Speaker, Sir,

As I have mentioned earlier, the main thrust of the Employment Relations Bill is the promotion of collective bargaining. The object of collective bargaining is an improvement in the terms and conditions of employment of workers which are generally prescribed in the Labour Act or in relevant Remuneration Orders. It will be to the detriment of the workers if collective bargaining is carried out on the basis of terms and conditions prescribed some 30 years ago. It is imperative therefore that the Labour Act be concurrently reviewed so that its provisions are updated and constitute a fair basis for any future collective bargaining.

Allow me therefore Mr. Speaker, Sir, to turn to the second Bill before this House, namely, the Employment Rights Bill which will replace the Labour Act. As the House is aware, the Labour Act was enacted in 1975 in the context of conditions prevailing at that time in the sugar industry, the tourism industry, the import substitution industries and the emerging export processing sector. In view of the numerous changes that have taken place in these sectors and in the world of work generally, including the increased participation of women in the active labour force, there is need to review the Labour Act and also provide therein matters

arising from several ILO Conventions relating to conditions of work which have been ratified by Mauritius.

Mr. Speaker, Sir,

The labour law reform process is not new. In 1997, the Government launched, in consultation with ILO, a Labour Law Reform project which targeted also the Labour Act. To replace this Act, a first draft Employment Rights Bill was prepared and vetted by the Attorney-General's Office in March 2002 to enable the Ministry to hold due consultations with stakeholders. The draft Bill was subsequently referred to the Labour Advisory Board which, in May 2004, completed tripartite discussions thereon. However the then Government decided not to proceed further with the Bill.

Mr. Speaker, Sir,

I would like to elaborate on the salient features of the new Employment Rights Bill which is before this House.

First, it is proposed that the new legislation shall apply to all workers of the private sector drawing wages not exceeding Rs30,000 per month, instead of Rs20,000 which is the current ceiling in the Labour Act. The provisions concerning workplace violence, discrimination in employment and equal remuneration for work of equal value will apply, however, to **all workers**, whether in the private or public sector, local authorities or parastatal bodies. The provisions regarding termination of employment will apply to all workers in the private sector and workers of parastatal bodies, whatever be their monthly salary.

Second, on the issue of hours of work, the main features of the legislation are the following –

- (a) a normal day's work shall consist of 8 hours' actual work and a week's work may begin on any day of the week;
- (b) a worker and an employer may agree on the number of hours of work to be performed in excess of 8 hours daily without payment of overtime but provided the total number of hours should not, in a fortnight, exceed 90 or such lesser number of hours as may already have been agreed;
- (c) Current restriction on female workers not to work between 10 p.m. and 5.00 a.m. is being removed to eliminate discrimination;
- (d) Provision is being made for every worker to have a rest period of 11 hours after he has completed a full day's work. This provision, currently applicable only to a worker in an industrial undertaking who has worked beyond 10 p.m., is now being extended to all sectors of employment irrespective of the time when the work is completed;
- (e) A worker will be entitled to a weekly rest day of at least 24 hours which shall, at least twice a month, be on a Sunday or any day as agreed by him.

I wish to point out that hours of work, as prescribed by the different Remuneration Orders, will not be affected by the provisions of the Employment Rights Bill. Only workers not covered by Remuneration Orders will be governed by the

provisions of the Bill, that is around 20% of the work force in the private sector.

Third, the following provisions are being made regarding the performance of overtime work –

- (a) overtime will be payable after completion of 90 hours of work per fortnight and a uniform rate of 1.5% of the basic hourly rate will apply.
- (b) work on public holidays, including Sundays will be paid at twice the basic rate, irrespective of the number of hours of work performed.
- (c) an employer will have to give a worker 24 hours' notice for the performance of overtime and a worker who does not wish to perform overtime will also have to notify his employer accordingly at least 24 hours in advance.
- (d) Annual leave taken on any working day will be reckoned as a normal day's work for computation of overtime.

Existing provision in the Labour Act to the effect that an agreement may continue to provide for the remuneration of a worker to include payment for work on public holidays and overtime is being maintained. The maximum number of public holidays and maximum number of hours of overtime on weekdays and on public holidays covered by the remuneration must be expressly provided for in the agreement.

Fourth, provision is being made, Mr. Speaker, Sir, that in the case of a monthly paid worker, wages should be paid on the last

working day of the month instead of the 2nd working day of the following month, as is presently the case. The situation now existing has been a cause of hardship to many workers.

Mr. Speaker, Sir,

The Employment Rights Bill includes some new provisions to cover –

- (i) the situation where a worker is detained in police cell pending police enquiry and later released – such period of absence will now be considered as continuous employment provided that the worker resumes work before 60 days have elapsed from the last day he worked;
- (ii) the payment of remuneration at 3 times the basic rate for work performed during cyclone warning class III or IV is in force;
- (iii) the provisions of free transport facilities or refund of the full bus fares to all workers residing at more than 3 kms from the place of work, irrespective of the time work is to be performed;
- (iv) the payment of a gratuity, equivalent to 1/12 of earnings in that year, to contract workers when their contracts come to an end before the end of December; and
- (v) the making of regulations to prescribe measures for every employer to arrange for or facilitate the medical examination of his employees by any public or private hospital or para-medical unit. This will greatly help in the early detection of diseases which could unduly threaten or shorten the life expectancy of workers. Such a measure will be beneficial

not only for the worker but also for the employer, in terms of higher productivity, and for the State which will not have to provide the extensive resources required to treat a person once the disease is far advanced. This is a revolutionary measure, the benefits of which we will see, may be not in the short term, but definitely in the medium and longer term.

As regards maternity protection, the new legislation provides that—

- (a) all female workers reckoning more than 12 months' continuous employment will be entitled to 12 weeks' maternity leave **irrespective of the number of confinements**;
- (b) even in the unfortunate event of a female worker giving birth to a stillborn child, the worker will be entitled to 12 weeks leave on full pay; this is being provided for by way of an amendment to the Bill at Committee stage;
- (c) no performance of overtime is allowed 2 months before confinement unless the worker so requests;
- (d) a female worker shall not be required to perform duties necessitating continuous standing as from the beginning of pregnancy, where there is a recommendation to that effect from a medical practitioner; and
- (e) an employer will be prohibited from giving a notice of dismissal to a worker on maternity leave or giving such notice which will expire during her maternity leave.

Besides, Mr. Speaker, Sir, I am introducing yet another revolutionary measure, and this one concerns fathers more specifically. For the first time ever, provision is being made for a paternity leave of 5 days to be granted to a male worker reckoning more than 12 months' employment, whenever his spouse gives birth to a child.

In respect of sick leave and annual leave, it is proposed that –

- the number of annual leave be increased from 14 to 20 days and that sick leave be reduced proportionately, i.e. from 21 days to 15 days;
- outstanding annual leave be refunded – this provision exists in most of the Remuneration Orders.

Provision is also being made for a bank of sick leave for each worker where all sick leave not taken will be accumulated up to a maximum of 90 days – for use in case of prolonged illness.

Mr. Speaker, Sir,

With regard to **termination of employment**, a number of measures have been provided for in the Employment Rights Bill.

It is proposed that a uniform notice of termination of 30 days shall be given for every contract of employment of indeterminate duration. This will not be applicable for contracts of determinate duration, i.e. a contract for a specified piece of work or for a specified period of time, and subject to any express provision in the employment agreement.

Presently, more than 2 consecutive days of absence without good and sufficient cause is **invariably** considered as a breach of contract committed by the worker. What is now being provided is that an employer should give a worker a written warning if, for a first time, he absents himself from work for not more than 3 consecutive days without good and sufficient cause. It is only when this occurs for **a second or subsequent time** that an employer may consider that the worker has committed a breach of his contract of employment.

Still on the issue of termination of employment, Mr. Speaker, Sir, provision is also being made to the effect that –

(i) Firstly, no employer shall terminate a worker's employment by reason of –

- (a) a worker's race, colour, place of origin, social origin, religion, political opinion, sex, sexual orientation, HIV/AIDS status, marital status or family responsibilities;
- (b) a worker's pregnancy or a reason connected with her pregnancy during her maternity leave;
- (c) a worker's temporary absence from work because of injury or sickness duly notified to the employer and certified by a medical practitioner;
- (d) a worker's membership in a trade union, or his seeking or holding of a trade union office or participation in trade union activities outside working hours or, with the consent of the employer, within working hours;

- (e) the filing in good faith of a complaint or the participation in proceedings against an employer involving alleged breach of an enactment;
- (f) the exercise by a worker of any of his rights as provided in the labour legislation or other enactment, an agreement, a collective agreement or an award.

(ii) Secondly, where the termination is for reasons related to the worker's conduct or his performance, any period of suspension in connection with this proceeding should be on full pay. In case a worker asks for a postponement to answer the charges, any extension of the delay to answer the charges shall be without pay. The provisions in the Labour Act that an employer has to afford a worker **an opportunity to answer any charges made against him** and that the worker may avail himself of the assistance of a trade union representative, an officer of the Ministry or a legal officer are being maintained.

(iii) Thirdly, provision is being made in **Clause 38(5)** to the effect that before a worker is afforded an opportunity to appear before a disciplinary committee to answer any charges, he may only give a statement on the facts of a case. Any written statement obtained at the instance of the employer wherein the worker acknowledges his guilt shall not be admissible in evidence before any authority or any court. This measure will afford the worker better protection in view of the perception that such statements acknowledging guilt are, at times, obtained under duress.

(iv) Fourthly, a worker will be entitled to lodge a complaint at my Ministry and claim payment of severance allowance at the punitive rate of 3 months' remuneration per year of service in the following circumstances:-

- (a) where he is ill-treated by his employer;
- (b) where the employer fails to pay him remuneration due under the agreement;
- (c) where the employer fails to give him an opportunity to defend himself against any alleged charge of misconduct or poor performance;
- (d) where the reasons related to the worker's alleged misconduct or poor performance do not constitute valid reasons for the termination of employment of the worker;
- (e) where an employer terminates his employment on grounds of discrimination as earlier defined;
- (f) where an employer cannot justify the termination of employment of a worker on grounds of redundancy.

Where the Ministry considers that there is a *prima facie* case, the matter will be referred, as is the current practice, to the Industrial Court for determination.

Mr. Speaker, Sir,

The most significant measure in this Bill is the setting up of a Workfare Programme for the benefit of all laid-off workers. The aim of the Workfare Programme is for Government to support, for

a reasonable period of time, workers who are laid off, particularly for economic reasons, through the provision of job placement or self employment facilities, training for greater employability and a measure of financial assistance. The Workfare Programme has been commended by the ILO as a laudable flexicurity approach, the aim of which, as described in the European Commission Joint Employment Report 2006/2007 is, I quote “*for workers to exchange traditional security in the job for security in the market, brought about by efficient and cost effective active labour market policies and adequate levels of social protection to tide them over between jobs*” end of quote.

The Workfare Programme will be applicable to every worker whose employment has been terminated, except –

- (i) public officers, employees of parastatal bodies and of local authorities as their terms and conditions of employment are governed by the PRB Report;
- (ii) part-time workers as they are mostly domestic workers and are normally engaged in more than one jobs;
- (iii) workers employed by the sugar industry –
 - (a) having opted for Voluntary Retirement Scheme or Early Retirement Scheme under the Sugar Industry Efficiency Act; or
 - (b) who accept voluntarily that their contracts of employment be terminated with an *ex-gratia* payment in cash and in kind under the conditions specified in the Blue Print on Centralisation of Sugar Milling

Operations, (as they are entitled to higher benefits under these schemes); and

- (iv) a person reckoning less than 6 months' continuous employment with an employer as at date of termination of employment, to ensure that there is no abuse of the system.

Under the Workfare Programme, Mr. Speaker, Sir, a dismissed worker will be entitled to:

- (a) choose any of the three possibilities offered by the Workfare Programme, namely:
- job placement through the Employment Service;
 - training and re-skilling through the Human Resource Development Council; or
 - starting up of a small business with the assistance of SEHDA.
- (b) The worker will also be entitled to a Transition Unemployment Benefit during the period:
- he is waiting for placement in another job, or
 - until he sets up a small business, or
 - until he joins an on-the-job training scheme.

The Transition Unemployment Benefit will be paid during a period not exceeding 12 months at the staggered rates of -

- (i) 90% of the last basic salary drawn by the worker for the first 3 months;

- (ii) 60% for the next 3 months; and
- (iii) 30% for the remaining 6 months.

In no circumstance, will the worker draw less than Rs3,000 per month and the payment of the first month allowance will be guaranteed.

In addition, the NPF pension contribution of a laid-off worker will be paid by the Workfare Programme Fund for the one year transition period or until he gets a new job whichever is the earlier. The contribution will be paid on the basis of the same wage or salary before the termination of employment.

For the Workfare Programme to be sustained, provision is being made for its funding by the employers, the Government and, to some extent, by the workers also.

Employers laying off workers will have to pay in respect of each worker concerned a recycling fee, in lieu of severance allowance, which recycling fee will be credited to a special individual account being created at the National Solidarity Fund (NSF) for that worker. The recycling fee will be payable at the following rates for each worker dismissed:

- 12 to 36 months of continuous employment – 3 days of basic salary per year of service
- above 36 months up to 120 months continuous employment – 6 days of basic salary per year of service
- above 120 months up to 240 months continuous employment – 10 days of basic salary per year of service

- more than 240 months continuous employment – 15 days of basic salary per year of service.

The Training levy of 1% payable by employers is also being increased by 0.5% and 1% thereof will be allocated to a Workfare Programme Fund to be created and which will be managed by the National Pension Fund.

As for workers, they will be required to make a contribution of 1% of their basic salary, which contribution will be saved in their personal NSF Account. This will be their own money which will earn interest and will be payable to them on retirement. This money will also serve, if required, as part contribution towards the Transition Unemployment Benefit which is to support a worker during the period he is between jobs.

Government, Mr. Speaker, Sir, will contribute to the Workfare Programme Fund such amount as may be required for its smooth operation.

Mr. Speaker, Sir,

I wish to point out to the House that in the context of the Workfare Programme, the NSF Account of the worker will henceforth contain two items, namely:

- (a) the existing 2.5% employers' contribution which will not be affected by the reform, but which a laid off worker will be able to cash when he opts to set up a business with the assistance of SEHDA;
- (b) a second item where his 1% contribution and the recycling fee payable by the employer will be credited.

I wish to highlight here, Mr. Speaker, Sir, a few other related issues namely:-

- (i) In any case of reduction of workforce an employer will have an obligation to notify my Ministry. There is also an obligation on the employer, in virtue of provisions in the Employment Relations Bill, to consult a recognized trade union whenever a reduction workforce is contemplated.
- (ii) Workers who are laid off for economic reasons will be allowed to opt for a package offered by the employer following negotiations in which situation the employer will not be required to pay the recycling fee and the worker will not benefit from the Workfare Programme.
- (iii) The transition unemployment benefit shall cease to be paid to a worker only when he refuses an offer for job placement for a second time.
- (iv) Given that part-time and migrant workers will not be eligible to join the Workfare Programme, provision is also being made for such workers to be paid severance allowance at the rate of $\frac{1}{4}$ month's remuneration per year of service in case of termination of employment on grounds of redundancy.

With the establishment of the Workfare Programme, the Termination of Contracts of Service Board will have no *raison d'être* and is not therefore being maintained in the new Employment Rights Bill.

However, at Committee stage, I will be proposing an amendment to **Clause 71** to include a transitional provision to allow the TCSB to continue its proceedings for a period of 6 months from the date of the commencement of this Act solely for the purpose of determining matters already referred to it.

Where a worker considers that the termination of his employment is not justified, he may opt to lodge a complaint at my Ministry instead of joining the Workfare Programme. If no settlement is reached through negotiations, the Permanent Secretary may enter proceedings before the Court if he is of the opinion that the worker has a *prima facie* case. Thereupon the worker will be entitled to be admitted to the Workfare Programme. In the event the Court finds that the workers' termination was not justified, the worker will be entitled to 3 months remuneration for every period of 12 months continuous employment. Consideration is being given to the establishment of a fast track at the Industrial Court to deal with all cases of such termination of employment.

Mr. Speaker, Sir,

The Employment Rights Bill also makes provision to the effect that –

- (i) in case of retirement on or after reaching the age of 60 years a worker will be entitled to a payment of gratuity on retirement at the rate of 15 days instead of $\frac{1}{2}$ a month, that is 13 days, per year of service;
- (ii) in case a worker retiring from his employment on medical grounds before the age of 60 when he reckons more than 10

years of service, he will be entitled to the payment of retirement gratuity at the rate of 15 days per year or service. Under the Labour Act, a worker retiring in such circumstances is not entitled to a gratuity;

(iii) in case of death of a worker, a death grant of Rs3,500 will be payable to the person who has borne the funeral expenses of a deceased worker; and

(iv) a part-time worker is being defined as meaning a worker whose hours of work are less than those of a comparable full-time worker. Presently the Labour Act defines a part-time worker as a person performing not less than 6 nor more than 24 hours weekly. Those performing more than 24 hours but less than the number of required hours of work weekly qualifying as a full time job, are not covered.

Mr. Speaker, Sir,

In order to discourage employers from contravening the provisions of the new legislation, the fines for offences as exist in the Labour Act 1975 are being maintained. However, the quantum of the fine applicable for all offences, except workplace violence, is being increased from Rs2,000 to Rs10,000. For workplace violence, however, the existing minimum threshold of Rs10,000 is being removed in line with standard practice. The fine applicable will be of a sum not exceeding Rs75,000. Imprisonment for a term not exceeding 2 years is being maintained.

Mr. Speaker, Sir,

I shall be moving a few amendments at Committee stage, both to the Employment Relations Bill and the Employment Rights Bill. The gist of these amendments is as follows:

In so far as the Employment Relations Bill is concerned, a transitional provision is being included to allow the current Chairperson and Vice-Chairperson of the National Remuneration Board to continue in office until such time that the new Chairperson and Vice-Chairperson who are to be public officers, are appointed by the PSC.

As regards the Employment Rights Bill, besides the amendment for grant of maternity leave in the event of a still birth, the other amendments proposed relate to the following:

- (i) the definition of “worker” in **Clause 2** is being amended so that the application of Section 4 (Discrimination in employment and occupation) and Section 20 (Equal remuneration for work of equal value) is extended to workers drawing wages in excess of Rs 360,000 per annum in line with the ILO Conventions No. 100 and No. 111 (Equal Remuneration Convention and Discrimination (Employment and Occupation) Convention).
- (ii) **Clause 3** relating to the application the Act has been redrafted for the sake of clarity and to avoid any misinterpretation;
- (iii) it is being provided in **Clause 63** of the Bill that where an employer fails to comply with the provision of the labour

legislation, a notice enforcing compliance be issued to the employer. In the event of failure to comply with the notice, the employer will be liable to prosecution. Presently, a recommendation is issued by the Ministry and no prosecution is possible in case of non-compliance.

- (iv) specific provision is being made in **Clause 71** to provide for the TCSB to continue in existence for a period not exceeding 6 months from the date of the coming into force of the Act, this to allow pending cases to be disposed of. Provision is also being made to empower the Minister to make regulations to provide for any other transitional arrangements as may be required.

Mr. Speaker, Sir,

To conclude, I have to point out that we have a dream where the benefits of economic growth and development in our country are shared equitably among all segments of the population. For this to happen, there must be a sound legal framework which recognizes the vulnerability of some in relation to others and which provides adequate protection for those more vulnerable. In so far as the world of work is concerned, to realize this dream we need to shift from the present adversarial stand to a partnership mode in our industrial relations system. Only then will the interest of each party, and particularly the interest of workers who are in weaker position, be adequately safeguarded. At Government level, we will extend every support necessary in this process and continue to promote meaningful tripartism and social dialogue.

With these words, Mr. Speaker, Sir, I commend both the Employment Relations Bill and the Employment Rights Bill to the House.