



REPUBLIC OF TRINIDAD AND TOBAGO

ADDRESS

BY

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AT THE

**NATIONAL STAKEHOLDER CONSULTATION
ON THE RECRUITING OF WORKERS ACT, CHAPTER 88:10**

HILTON TRINIDAD AND CONFERENCE CENTRE

FRIDAY JUNE 7, 2019

SALUTATIONS

- MS. NATALIE WILLIS - PERMANENT SECRETARY (AG.), - MINISTRY OF LABOUR & SMALL ENTERPRISE DEVELOPMENT;
- MS. KEVAR WILLIAMS – DEPUTY PERMANENT SECRETARY (AG.), - MINISTRY OF LABOUR & SMALL ENTERPRISE DEVELOPMENT;
- MR. LARS JOHANSEN - DEPUTY DIRECTOR, INTERNATIONAL LABOUR ORGANIZATION DECENT WORK TEAM AND OFFICE FOR THE CARIBBEAN;
- MS. SANGEETA BOONDOO – SENIOR LEGAL OFFICER, MINISTRY OF LABOUR & SMALL ENTERPRISE DEVELOPMENT
- GOVERNMENT OFFICIALS;
- ESTEEMED REPRESENTATIVES OF BUSINESS AND LABOUR;
- REPRESENTATIVES OF RECRUITMENT AGENCIES;
- STAFF FROM THE MINISTRY OF LABOUR & SMALL ENTERPRISE DEVELOPMENT
- SPECIALLY INVITED GUESTS;
- LADIES AND GENTLEMEN.

A blessed Good morning Ladies and Gentlemen. Thank you for taking the time to join us today at the Ministry's consultation on the Recruiting of Workers Act, Chapter 88:10. I know you are all very busy people, especially in the current job seeking climate, but you hold a critical role as our stakeholder in this consultative process and we need you here today to share your views and ideas.

Today, we are here to discuss the Recruiting of Workers Act, Chapter 88:10. An Act that was adopted almost four decades ago on September 1, 1939. The Act was adopted to regulate the recruiting of workers and provides for the licensing of persons who recruit workers. Prior to the Act's enactment, the Recruiting of Workers Ordinance, 1938, governed the regulation with respect to the recruiting of workers. This Ordinance was passed by the Legislative Council on December 2, 1938. A Council who possessed only an advisory role to the British Government, as Trinidad and Tobago was not yet an independent nation. It should also be noted that the provisions contained in the Act are an exact replica of those found in the Ordinance.

Before expounding on the Act itself, allow me to paint the historical landscape in Trinidad and Tobago during the time period before and at the time of the proclamation of the Act to appreciate its context. At the time of the Act's

enactment, Trinidad and Tobago was a crown colony of the British Empire, with a governor at its head and a Legislative Council. Today, we are no longer subject to British rule and the general direction and control of the government rests with the Cabinet, led by a Prime Minister and the President as our Head of State. Also during the 1930s, Trinidad and Tobago suffered severely from the effects of the worldwide depression. Living standards deteriorated rapidly, resulting in workers being laid off from the plantations. The situation was further aggravated by unjust labour practices throughout the land. Wages on the sugar estates and in the oil fields were kept low while shareholder dividends in London rose. Workers moved away from Cipriani's moderate labour policies, and the labour movement became radicalized as many other labour leaders came to the forefront. Between 1934 and 1937, there were several strikes and riots on the sugar plantations and in the oil fields throughout the Caribbean causing uncertainty in the labour landscape.

These conditions resulted in the working population seeking opportunities in other islands of the Caribbean and many migrating to the neighboring territories resulting in a labour shortage. For those who would have been present at the Employment Exchange Act Consultation on May 17, 2019, you would have been privy to several of the challenges the nation faced during that time. Though no documentation was found on the purpose of the Recruiting of Workers Act, it can

be inferred that considering the circumstances in the country, the Act was passed to allow for workers to be recruited from neighboring countries to combat the falling numbers of workers.

Ladies and Gentlemen, today we are faced with a similar situation whereby neighbouring countries have been arriving to our nation's shores in large numbers, making this Act pertinent and timely to it being discussed here today. This Act has eleven (11) provisions and eighteen (18) regulations, which will be tabled at your respective working groups for examination on its relevance in today's society.

Within the Act, provision is made for a licensing officer who is responsible for the grant of permission to recruit labour. Before this permission is granted to recruit workers in any area, the licensing officer is to take into consideration numerous factors such as: the possible effects of the withdrawal of adult males on the social life of the population concerned; and in particular - the density of the population, the tendency of that area to increase or decrease in population; the probable effect on the birth rate of the area as a result of the withdrawal of adult males; and the dangers to the family and morality arising from the withdrawal of adult males from within the area.

Further, the Act sets out the procedure to be adopted when recruited workers are brought into the jurisdiction. It states that recruited workers should be brought

before a Magistrate and be medically examined. The Magistrate has to be satisfied that the worker has not been subjected to pressure or is recruited by misrepresentation or mistake. In addition, the Act provides that the expenses of the journey of the recruited worker and their families to the place of employment is borne by the recruiter or the employer.

Ladies and Gentlemen, if we are to examine the provisions discussed above, as well as the Act as a whole, it is reasonable to say that the Act in its existing form has several factors within it that may not be relevant to today's realities. The procedures as set out in the Act has little feasibility and lends to its outdated nature. For instance: the Act specifies that the recruiter is to be responsible for the expenses of the journey of the recruited workers and their protection during the journey. At the time of the Act's enactment, the journey that workers endured was far lengthier and there were higher risks involved such as sickness at sea due to the conditions of travel. Today, the journey of recruited workers is much less precarious. Moreover, with the digital economy upon us, workers can be recruited and face no commute as they can opt to work at home and report via messenger, email or even via videoconference.

Additionally, the considerations in granting a license to potential recruiting officer is also antiquated as the Regulations provide that the recruiting officer is to

consider the effects of the withdrawals of adult males on the social life of the population from which the worker is being recruited. The granting of the license is also subjective and solely at the discretion of the licensing officer with no predetermined criteria. Today, factors such as these does not constitute for the comprehensive consideration in recruiting of workers process. The Act also identified that a licensing officer is to be appointed by the Minister but regrettably, the Act is silent on which Minister holds this responsibility.

It is no secret that workers are recruited daily in Trinidad and Tobago today, though it takes a different form as described within the Act. Generally, recruitment of staff is conducted utilizing three approaches: employers may engage in the hiring of staff themselves through advertisements in the newspapers or online mechanisms; private recruitment agencies act as an external Human Resources Unit on the employer's behalf; or alternatively, employers may utilise the services of the National Employment Services Division of the Ministry of Labour and Small Enterprise Development. Whilst employers must comply with the various pieces of legislation governing the industrial relations sphere such as the Industrial Relations Act of 1972 as amended, the Minimum Wages Act, and other industrial relations practices and procedures and so forth, those who function as private recruitment agencies by and large have remained unregulated to date.

Consequently, these private recruitment agencies are not mandated to comply with or adhere to any form of legislation or even ensure that workers are afforded the necessary protection when using the services of their organisation.

Therefore, Ladies and Gentlemen, this piece of legislation is critical, given the service that recruitment agencies provide to our labour force. Recruitment agencies undoubtedly play a legitimate and essential role in facilitating the supply and demand in labour markets, across geographical areas and sectors. This role is not exclusive to Trinidad and Tobago. Often times, recruitment agencies can even facilitate the movement of workers looking for job opportunities outside their home countries. However, if unregulated, abusive recruitment practices seem to flourish in all parts of the world. From research conducted, it would seem that such practices which go unregulated are closely linked with the trafficking of persons.

In many countries, recruiters and recruitment agencies charge workers fees for recruitment services that far exceed the legal limits. The indebtedness of the worker that often follows and the need to repay the debt often drives these workers to accept difficult or exploitative working conditions, making them vulnerable to trafficking in persons. The creation of these vulnerable situations bolsters a criminal underworld that I am sure none of us would want to be subjected to. The Ministry also recognises that Recruitment agencies can have some involvement throughout the recruitment, job placement, and employment process. Agencies

may take responsibility for visas, medical check-ups, travel arrangements, pre-departure orientation and training, and even contract negotiation. In some cases, the agencies also go on to manage workers at their job sites, becoming their on-site supervisor and manager. Recruitment agencies can take various forms and shapes, running the gamut from one individual recruiter or loose networks of intermediaries to small or medium-size agencies, or multinational enterprises with global operations. However, within our local legislation, there are no specified checklist that Recruitment Agencies have to guide their operations.

Although there are many ethical recruitment agencies that play a positive role in the recruitment process and aim to protect workers' rights, there are also many that engage in abusive recruitment practices. One study showed that migrant workers bound for work in IT factories in Taiwan and Malaysia frequently paid recruitment fees in excess of legal limits. Unfortunately, the actual full amount of fees is not disclosed to workers until quite late in the recruitment phase. Workers are sometimes even instructed by the Agencies to present documents to immigration authorities that do not reflect the actual amounts paid.

Additionally, the study revealed that trafficking of adolescent girls into indentured servitude in apparel manufacturing in India is commonplace, under a system known locally as the "Sumangali Scheme". These girls commonly work 12 to 15

hour shifts and sometimes are even forced to work 24-hour shifts. They are exposed to hazardous chemicals and other occupational hazards, and kept largely isolated from their families and the outside world and get short break periods as the focus by the employer is output levels and not working conditions. Ladies and Gentlemen, while we have no local empirical data, we must ensure that our citizens and those coming to our twin island state to take up employment never suffer a similar fate.

The problem seems to concern not only illegal or unlicensed recruitment agencies, but also legal recruitment agencies that often secretly use some of these illegal practices. In addition, ethical recruitment agencies may also unintentionally contribute to abuses of workers' rights, for example through selecting untrustworthy partner agencies or employers in the destination countries as proper research mechanisms are not engaged in prior to the recruitment process. It is for these reasons that the Ministry has on its agenda, the development of legislation to govern private recruitment agencies. Safeguarding employers and workers are at the forefront of this Ministry's Agenda through our thrust for Labour Legislative Reform.

Ladies and Gentlemen, I would like to take this opportunity to remind you that the Ministry plays a critical role in promoting and the advancement of decent work in

Trinidad and Tobago in our realization of the Decent Work Agenda. Decent Work is a globally accepted goal and instrument for improving the lives of people. The term was first introduced by the Director General of the International Labour Organization (ILO), Mr. Juan Somavia, in his address to the 87th International Labour Conference in 1999. Mr. Somavia defined decent work as:

“productive work in which rights are protected, which generates an adequate income with adequate social protection. It also means sufficient work in the sense that all should have access to income earning opportunities. It marks the high road to economic and social development, a road in which employment, income and social protection can be achieved without compromising workers’ rights and sound standards”.

Mr. Somavia indicated that one of the objectives of Member Countries should not only be to create jobs but to create jobs with acceptable quality. One of the Ministry’s strategic objectives is that of the promotion of the application of the principles of decent work in the workplace and all of the Ministry’s services are intended to foster decent working conditions. With Trinidad and Tobago being a member state of the ILO, who is celebrating its centenary this year, we remain committed, through this Ministry, to the decent work agenda. This commitment is one of the reasons we are here today engaged in discussion with you, our valued

stakeholders to ensure that you are part of this process and we do not contribute to the silo mentality that has plagued us as a nation and we are also deeply committed to the One Government approach.

The Ministry recognizes that one of the main elements that aid in determining the scope of the legislation needed is the type of recruitment services carried out in Trinidad and Tobago. For example, a number of countries have set up specific legislation on temporary work agencies, while in other cases, legislation is intended to regulate the recruitment and placement of workers abroad, or others would include agencies which provide services other than placement. With all these models to consider when proposing amendments to the legislation, one thing is certain — It is important to establish clear policies, define the specific legislation needed and the implementation mechanisms utilised to ensure that employment agencies are regulated and the labour market is free from exploitative conditions. Today, at this our twenty first consultation, we begin the discussion of the best method of regulating recruitment agencies in Trinidad and Tobago.

As a result of increased globalization, CARICOM, and the modern patterns of migration, migrant workers ought to be considered in the development of legislation. Currently, Trinidad and Tobago is faced with a situation where scores of Venezuelan nationals are fleeing their homeland and seeking refuge here. They

have left a once prosperous South American country, where a political crisis and a crippling recession have left people jobless, battling poverty, and struggling with chronic shortages of food, medicine and other essentials. This Government has opened up our shores to allow them to work for one year, and this registration process is currently ongoing in three centres in North, South and Tobago. Already there have been stories about possible exploitation but nothing has been reported officially. Notwithstanding this current influx of Venezuelans, Trinidad and Tobago over the years, have seen migrant workers arriving here seeking a better standard of living from as far as China and within the region from countries such as Guyana and Grenada, St. Vincent. I am sure if we were to look at the ancestral history of many of us in this room, we can trace the lineage of our relatives to these said countries. Many of us are products of these relatives who would have left their respective countries seeking betterment in Trinidad and Tobago.

Ladies and Gentlemen, considering the current structure and legislative provisions within our current Act, its purpose and effect are no longer relevant to our country's needs. The procedures set out by the Act are highly outdated and may pose severe problems if left unattended for much longer. One such example is for recruited workers to be taken before a Magistrate and to be medically examined. Adopting such an approach would put a severe strain on the already burdened

Judiciary and our health sector. In any event, this practice is one that has ceased many decades ago.

Certainly, workers within Trinidad and Tobago are recruited on a daily basis to take up employment here and recruitment agencies play an important role in this procedure. Recruitment agencies also play a legitimate and indispensable role in the smooth and efficient operation of labour markets. With the present level of unemployment and the increasing levels of competition for limited jobs, many citizens rely on these agencies as a means to secure employment sometimes unaware of what practices are adopted by these agencies and therefore our National Employment Service offers a free employment service to citizens. The possibility exist that job seekers may be required to pay a fee to access the services or may even be required to compensate the agency with a month's salary or a portion thereof for successful placement. With this level of uncertainty and inconsistency it is imperative to put measures in place to ensure there is legislation or regulations to govern the operation of these agencies.

The conversation that we embark on today with you our critical stakeholders in Academia, Employers, Labour, Business and Recruitment Agencies, will help us in advancing the process of amending the Recruiting of Workers Act. We at the Ministry recognise that any attempt to reform the industrial relations framework in

Trinidad and Tobago must be driven by our partners, and so we have wholeheartedly embraced the task which has been set before us. At the Ministry, we are concerned about all citizens of Trinidad and Tobago and understand that a peaceful industrial relations climate is essential to the development of our economy, our citizenry, our businesses and our country. It is our hope that establishing legislation on the Recruitment of Workers will go a long way towards achieving this objective. It is our view that recruitment agencies are likely to benefit as a result of the implementation of this legislation which would present a level playing field and there would be legislation for those who do not adhere to the law.

The Ministry's Senior Legal Officer, Ms. Sangeeta Boondoo, will take you through a presentation on the key elements to consider in developing legislation to govern private recruitment agencies which will help guide the discussion at today's Consultation.

In closing, I leave you with the words of Lawrence Bossidy, the former Chief Operating Officer of General Electric, and I quote "Nothing we do is more important than hiring and developing people. At the end of the day, you bet on people, not on strategies." We as leaders must do what we can to develop the conditions of work that will produce happier employees, including removing some of the uncertainty of the recruitment and the terms and conditions of employment.

Let us continue to develop a nation that future generations are able to enjoy and prosper within.

Ladies and Gentlemen, I thank you.