



**SIXTH NATIONAL ASSEMBLY**

**PARLIAMENTARY**

**DEBATES**

**(HANSARD)**

**(UNREVISED)**

**FIRST SESSION**

**FRIDAY 09 AUGUST 2019**

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**MAURITIUS**

**Sixth National Assembly**

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**FIRST SESSION**

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**Debate No. 27 of 2019**

**Sitting of 09 August 2019**

The Assembly met in the Assembly House, Port Louis at 3.00 p.m.

**The National Anthem was played**

*(Madam Speaker in the Chair)*

**PAPERS LAID**

**The Prime Minister:** Madam Speaker, the Papers have been laid on the Table.

**A. Ministry of Local Government and Outer Islands  
Ministry of Gender Equality, Child Development and Family Welfare**

The District Council of Flacq (Fees for Classified Trades) Regulations 2019 (Government Notice No. 129 of 2019)

**B. Ministry of Social Security, National Solidarity, and Environment and Sustainable Development**

The Annual Report on Performance for fiscal year 2017-2018. (In Original)

**C. Ministry of Arts and Culture**

The Annual Report of the Mauritius Marathi Cultural Centre Trust for the period January 2016 to June 2017.

**D. Ministry of Industry, Commerce and Consumer Protection**

The Rodrigues Consumer Protection (Control of Price of Taxable and Non-taxable Goods) (Amendment No. 21) Regulations 2019. (Government Notice No. 128 of 2019)

**E. Ministry of Business, Enterprise and Cooperatives**

The Annual Report of the Saint Antoine Planters Cooperative Trust for the Financial year 2017/2018.

**F. Ministry of Financial Services and Good Governance**

The Annual Report 2016/2017 of the Integrity Reporting Services Agency.

## MOTION

### SUSPENSION OF S.O. 10(2)

**The Prime Minister:** Madam Speaker, I beg to move that all the business on today's Order Paper be exempted from the provisions of paragraph (2) of Standing Order 10.

**Mr Roopun rose and seconded.**

*Question put and agreed to.*

## PUBLIC BILLS

### *Second Reading*

(3.04 p.m)

*Order read for resuming adjourned debate on the Second Reading of the following Bills -*

- (a) The National Land Transport Authority Bill (No. XX of 2019)
- (b) The Light Rail Bill (No. XXI of 2019)
- (c) The Road Traffic (Amendment No. 2) Bill (No. XXII of 2019)
- (d) The Victoria Station Overhead Pedestrian Bridge (Authorised Construction) Bill (No. XXIII of 2019)

**The Prime Minister:** Madam Speaker, I am pleased to stand up and speak on the Bills before the House, today, as our country moves another step ahead towards the advent of Metro Express in our land transport landscape.

Since July 2017, when the contract for designing and constructing the Metro Express network was awarded to Larsen & Toubro, we have had several key milestones as works progress steadily along the alignment and the Metro Express Ltd prepares for the launch of the operations in September next on the Port Louis-Rose Hill segment.

To implement the Metro Express Project, we have chosen the best consultants, the best constructor, the best supplier of light rail vehicles, and Metro Express Ltd has recruited the best available and affordable operations personnel. What we needed more, and imperatively so, was the most comprehensive, modern and appropriate legal framework that would ensure the smooth functioning of the Light Rail System and its perfect integration with

the existing modes of land transport. And it was on these premises that the proposed National Land Transport Authority Bill and the Light Rail Bill were prepared, together with the two other enabling pieces of legislation. I wish here to congratulate my colleague, the Minister of Public Infrastructure and Land Transport on the good work done and that is reflected in the multiple legal requirements addressed in the Bills which are before the House today. I take note also that even some Members of the Opposition, hon. Dr. Boolell, for example, had recognised the great work that had been done in correlating the four Bills together.

Madam Speaker, I do not wish to dwell in detail on the different provisions of the Bills, as I have noted that there has not been much material disagreement on the different clauses and their objectives. However, I need to emphasise that the advent of the Light Rail System in Mauritius requires an overhaul in the legislative framework governing the land transport sector, and presently, by virtue of powers conferred upon it by the Road Traffic Act, the regulator, that is, the NTA, is empowered to monitor and regulate the road transport sector. A new institutional set-up is, therefore, needed to cater for the regulator to ensure oversight on light rail operations, and that is the aim, the purpose of the National Land Transport Authority Bill. Reckoning with the complex nature of the light rail system, arrangement is underway for the enlistment of such expertise having wide experience and international exposure in multimodal transport systems to lead the National Land Transport Authority, which will be, in fact, the regulatory body to oversee both road and railway operations.

The NLTA Bill would, upon enactment, equip the regulatory body, the NLTA, with a clear mandate and with such responsibilities as to plan and implement a seamless interface between the light rail and other modes of transport. The Light Rail Bill comprehensively and adequately confers upon the NLTA such regulatory powers that would ensure that the light rail operator adheres to strict licence conditions and delivers an optimal quality service. The Road Traffic (Amendment No. 2) Bill aims at capturing the consequential amendments that are required to the Road Traffic Act with the setting up of the new regulatory body in the context of the operationalisation of the Metro Express, and the Victoria Station Overhead Pedestrian Bridge (Authorised Construction) Bill seeks to authorise the construction of the bridge over part of the Port Louis-Plaisance M1 dual carriage way that will connect the Victoria Metro Express Station to the Victoria Urban Terminal.

Madam Speaker, having briefly highlighted the objectives of the Bills before the House, I shall now respond to some of the comments that have been made by hon. Members

of the Opposition. Hon. Dr. Boolell said this Government had made, I think, the biggest U-turn in the history of Mauritius to adopt a light rail after campaigning against the MLRT Project of the former Government. Let me show what had really happened, and let me also show to the House who has made the biggest U-turn.

Madam Speaker, it is a known fact that light rail has been on the national agenda since 1987. When Sir Anerood Jugnauth was Prime Minister, many studies have been conducted since then on the feasibility of endowing our country with the *métro léger*. We had the SOFRETU/BCEM Reports in 1989 and 1993. We also had the Halcrow Fox Report in 2001, a World Bank Report in 2002. All these reports recommended the setting up of a light rail system using the Port Louis-Curepipe old railway corridor. And, on the basis of the 2001-2002 reports, the then MSM/MMM Government approved, in principle, the LRT as an alternative mode of transport between Port Louis and Curepipe. However, no project could be pursued as elections were then forthcoming, and the then Prime Minister, hon. Bérenger, did not want to go ahead in those circumstances. I would say it could be understood because we were in a period nearing elections. Then, in 2007-2009, the Labour/PMSD Government decided to adopt a Bus Rapid Transit system, in fact, Madam Speaker, without any report recommending same. That was confirmed by the then Minister of Public Infrastructure, Land Transport and Shipping, Mr Anil Bachoo, in reply to a PNQ by the then Leader of the Opposition, hon. Bérenger, on 18 December 2009. In his reply to that PNQ, Madam Speaker, the then Minister Bachoo forcefully defended the Bus Rapid Transit. He said, and I quote –

“The bus based solution produced significantly better economic and more feasible financial results than the rail option.

We have seen in many countries that the LRT has failed. When we have compared notes, we found that LRT is almost ten times than BRT.”

They were so convinced about BRT, Madam Speaker. On the other hand, both the MSM and, I must say, the MMM were in favour of the LRT because, of course, it had so many advantages in terms of sustainable development and for economic advancement. In 2010, the MSM had made of the LRT one of its major priorities, and that was widely canvassed throughout the country. In that same year, a coalition materialised between the Labour Party and the MSM. Then for the 2010 General Elections, the MSM insisted on the LRT project being brought back on the national agenda as the party had made of LRT the linchpin of its socio-economic transformation strategy. The then Prime Minister - I can still remember very well, and hon. Bodha has been another player in this, again, when we were discussing with

the then Prime Minister - I must say, he reluctantly accepted that the LRT be mentioned in the electoral manifesto of the then *l'Alliance de l'Avenir*.

As I said, I do not want to speak lengthily on this, but I do remember, Madam Speaker, and this is a bit the style of the former Prime Minister. I had discussed the matter with him, to which he had agreed, and when we delegated - on our side, I do not want to speak for the other side - hon. Bodha and somebody else - I do not want to mention the name - to discuss with the Labour counterparts about drafting the programme, then they refused to put that into the manifesto. They said that they had got specific instructions from the then Prime Minister not to include that. There were discussions that were ongoing till, my God, late in the morning, when hon. Bodha called me and said what had happened. You said we had agreed and so I had to talk to the then Prime Minister again. Finally, he agreed, and this is how - probably, hon. Bodha can testify to that.

So, I must say, Madam Speaker, that was one other occasion - I am disappointed with hon. Dr. Boolell because he is aware of this. The new Members of the Labour Party will not be aware, of course, but hon. Dr. Boolell is aware. And I remember, we had discussed this, to ask him to try to sort it out, but I do not want to say more because he is not here, anyway. He, himself, told us of the difficulty he had in order to be able to try to meet - leave aside convince the then Prime Minister, but to meet - the Prime Minister. He said I was, maybe, in a better position at that time to meet him. Well, that is what I did and I called him, and we sorted out the matter.

Then, following the General Elections, I revived the LRT project, then, in my capacity, as Minister of Finance, and there had been a number of meetings. We found out that the cost would be around Rs16 billion. But, again, despite all the efforts to persuade the then Prime Minister to opt for the LRT project, he again came back on his word and he again opposed the LRT, saying that no, we should be going for the Bus Rapid Transit until, I must say, the time when he made an official visit to Singapore. On his return from Singapore, then he said that he has been seduced and started defending the LRT with zeal. I shall later say more about how he had been seduced in Singapore. But, in early August 2011, we, the MSM, left the Government and, in 2012-2014, the then Labour/PMSD Government was all for LRT after having, again, defended so much the Bus Rapid Transit in the previous mandate.

Now, this is why *j'ai tenu à dire ceci, Madame la présidente*. This is the biggest U-turn. Hon. Dr. Boolell is talking about the U-turn. This is the biggest U-turn. He cannot deny that. Everything I have said can be verified, of course, most of them, because it is in Hansard. For those parts where we had discussions, of course, it cannot be verified, except that I can

mention the names of those who have been party to the discussions and, if they are honest enough, they will confirm what I have said.

Madam Speaker, when, in 2014, the then Government announced that they were about to sign a contract worth Rs24.8 billion on the eve of the General Elections, we were, in fact, shocked, but I think the country also was shocked. That is why I was told, in 2010 - when I compare the work that we had done - I am not saying that it was a precise estimate of how much it would cost, but I can recall, and the papers are there, the meetings that have been held, where I chaired - that it would not cost, from Port Louis to Curepipe, more than Rs16 billion. So, when I compare that, 2010, not more than Rs16 billion or around Rs16 billion, and they were going to sign then for an amount of Rs24.8 billion, I was really, really shocked.

How could the cost have escalated to Rs24.8 billion in a mere three-year lapse of time? We could not accept that and we could certainly not accept that a Government will tie the hands of the nation for such a large amount on the eve of General Elections. That is the reason why I wrote a letter to the Prime Minister of India, Shri Narendra Modi Ji on 28 October 2014, to inform him about the situation for his consideration. And I ask - because the letter has been published in the media - those who talk, especially from the Labour Party, they keep on saying: 'I was against, I was against', go and read my letter, what I have stated in my letter addressed to Prime Minister Modi. Today, let me quote a relevant extract of that letter for the House and for the population to know what exactly I wrote to the Prime Minister of India, and I quote -

“As you are aware, the Mauritian Parliament has been dissolved on 06 October 2014. Electoral campaign is in course and General Elections are due shortly. Soon after dissolution of Parliament, the present caretaker Government has decided, in total opacity, to allocate a 24 billion Mauritian rupees contract to Afcons for a Light Rail Project and same will be signed shortly.

We appreciate how you are a staunch advocator of good governance, integrity and transparency, and how you have made of the fight against opacity, fraud and corruption your mission statement at the helm of the Republic of India.

You will agree with me and with the people of Mauritius that a caretaker and outgoing Government cannot bind our country for such a huge contract for a period spanning over almost half a century. This goes against all principles of good

governance and democracy. I believe it is my duty to inform you of the situation for your kind consideration.”

I was then Leader of the Opposition and I assumed my responsibility and, again, I said, I fail to understand the comments that have been made by hon. Dr. Boolell, whereby I embarrassed India.

There are certain things I would refrain from saying to this House. And also, that gives me an opportunity to pay tribute to Mrs Sushma Swaraj, the former Minister of Foreign Affairs who, I must say, had been a great friend of Mauritius. Why I am mentioning her name is because, precisely, she was here on an official visit at that time and there was supposed to be everything ready for a signature of this contract. I had raised the matter with her, but, of course, I shall not say more than that. Even that she is not here, today, but I do not think it would be proper for me to reveal to the House the content of our conversation. But I would ask hon. Dr. Boolell, himself having been a former Minister for Foreign Affairs, I believe he should think well before accusing me of certain things and especially saying such things that I have done to embarrass India. I think my actions will speak volumes on the contrary of embarrassing India.

But, Madam Speaker, the nation also has to be reminded that, under the former MLRT Project, the then Government had decided to borrow USD 830 m. to finance that project. I have said it before and I repeat it today; they would have put a burden of Rs37 billion on the head of each and every citizen of this country, if we add up the interests on that 15-year loan and provide for currency fluctuation. That was the crime that they were prepared to commit against the population. That is why I say they should not be pointing fingers at us.

Again, Madam Speaker, there has been no U-turn on our part. We have all the way been consistent and we said, during the 2014 electoral campaign, that Mauritius cannot afford an LRT Project that would put such a burden of Rs37 billion on the population. And when this Government came to power, of course, we decided to freeze this project, but on a question of affordability, not because we were against it. We can be for a project, but if we cannot afford it, if it is of that magnitude, then we have to be responsible. That is why this demagogical campaign against Sir Anerood Jugnauth when he was Prime Minister - he has said it, that we must undertake a project that we can afford and that we shall be able to

honour our obligations in terms of any loan that we do take. But he has never been against the project itself, against the setting up of the LRT.

And then, Madam Speaker, it is only when we were made aware in March 2016, of certain information - I shall refrain again from saying and giving details about this information, but certain information - and new elements as regards the cost of the project that then, Sir Anerood Jugnauth, as Prime Minister at that time, gave the green light for the project to be revisited. This is how we started to work again on the Metro Express Project.

As I said, I heard, in fact, some time back, the former Prime Minister saying so passionately, at a public gathering, that he brought to Mauritius a lady Rottweiler. This is the word he used. It is not my word. He said: 'I had brought a lady Rottweiler from Singapore to pilot the MLRT Project.' I was not aware about this Rottweiler; I tried to find out. I had sought information and I was made to understand the real reason why the former Prime Minister suddenly got seduced by the LRT during his visit in Singapore. And I was also told about a subsequent, I would call it, not a meeting, but I would call it a tunnel encounter, which is not far from here, between the Lion and the Rottweiler, So, we leave it at that.

Madam Speaker, there have been also other allusions that the LRT being implemented is a tram or is a tramway or, I do not know, some other terms also have been used, just to try to belittle the project, to say that, as if we are doing something small; what message is being conveyed is that we are doing something which is very different from what was envisaged by their former Government.

Again, I must say, there are really cheap attempts to diminish the importance of the Metro Express project, which, in fact, is the most modern light rail system that is currently available, and similar systems have been adopted by major cities in Europe, and recently in Australia.

In fact, with the Metro Express, we are implementing a Light Rail Mass Transit System using Urbos 100 3<sup>rd</sup> generation LRVs that have been procured from CAF, one of the world leaders in train production. And, under the former Government, the MLRT project also consisted of acquiring, but different, let us say, generation, that was the Urbos 100 trains that would have been procured, which were also light rail vehicles, Madam Speaker.

So, when the Urbos 100 trains were going to be procured under the former project, why was it not called the tram, tramway or whatever it was called? It is only now that this,

which is, in fact, a more advanced, a more modern, the last generation of the trains, now it is being as if downgraded to tram.

Madam Speaker, for those who indulge in cheap demagogy, let me inform them that a tram, because I do not know much about this, I have tried to find out from technicians whether this argument really holds, and I am told that the tram runs on the street itself at speeds often not exceeding 25 Km per hour.

A light rail system involves light rail vehicles that run along a dedicated track, hit the road at signalised intersections and have exclusive right of way. The LRVs, as the ones that we have procured from the Metro Express project, run at an average 35 Kms per hour in urban areas, and I am told they can reach a maximum speed of 80 Kms per hour in less denser areas.

In addition, the LRVs are low-floor type that is distinctively different from other forms of rail transit systems, and Metro Express also features basic signalling features, such as Automatic Vehicle Location system and Transit Signal Priority system, which do not exist in traditional tram systems.

Madam Speaker, there have also been doubts that have been expressed by the hon. Leader of the Opposition with regard to the launch date of the Metro Express. Let me inform the House and the population that the first segment of the Metro Express project between Port Louis and Rose Hill was always scheduled to be launched in September 2019. And I have tried to find out whether there is any delay because, of course, for a project of such magnitude, it is not abnormal that there can be delay. But I am told - maybe the Minister will confirm later on - that everything is on track and that the promise will be kept, and that the exact date will be communicated in due course.

Of course, as has also been the case in other parts of the world, in so many countries, it will be a soft launch. Because wherever the light rail system has come into operation, there has been a soft launch, and that period, in fact, also serves as to market it and is not only for fine-tuning, because this is the first time that it will run on our road. It requires fine-tuning, but it is also going to be used for marketing purposes, so that people become more aware, so that those who will have the opportunity of travelling initially, and by word of mouth also, I am sure, this will be the talk of the town. During the soft launch period, the duration of which, of course, will be decided by Government, commuters will be able to travel for free.

There have also been comments that free ride is being offered in view of the fact that the electronic ticketing system will not be ready. That is totally false because, again, I have enquired about this, the ticketing system is already in Mauritius. It is currently being tested, installation will start soon, and I am informed that it will be operational in September.

Another point that has been raised by the hon. Leader of the Opposition concerns the financial projection and tariffs. I wish to inform the House that year one, in the financial projection, starts at full operation along the whole alignment, that is, Port Louis to Curepipe, which is scheduled for 2021 and fare at that time, that is, in 2021, in the financial projection, is Rs37 for the whole route. An increase to Rs40 is projected in 2022 and to Rs50 in 2023. So, not in one and a half year, as has been alleged.

Madam Speaker, I join the Minister of Public Infrastructure and Land Transport to reassure the House, and especially the employees of the NTA, that with the adoption of the National Land Transport Authority Bill, there would be no incidence at all on the terms and conditions of employment of the existing officers of the NTA.

In fact, due provision is made for the officers to be transferred to the NLTA on commencement of the Act, and their period of service also would be preserved. And being purely public officers, recruitment will continue, as has been done, by the Public Service Commission.

I may also say a word for the workers of the bus industry, to reassure them that there is no question and there is no issue of losing their jobs. 19 feeder buses routes necessitating 55 buses have been finalised, I understand, after discussions with the bus companies concerned, and will be allocated accordingly, I believe, by the end of this month, but I leave that for the Minister to give detailed information thereon.

Madam Speaker, for nearly three decades now, Mauritius has been giving deep thoughts to the need for an alternative mode of public transportation. And the reasons were clear, because year in, year out, the cost of traffic jams kept on increasing.

Today, the annual cost of traffic congestion to the country is estimated at around Rs4 billion and - this is the projection by the technicians - it would increase, in 2030, to Rs10 billion if we do not do anything, if we continue and we do not act now. The fleet of private vehicles on our roads has been growing faster than we can expand our road network and the country, of course, is reaching its limits also for constructing new roads. It does not only cost money, but it takes time before a project materialises, before you have the design, before you

know exactly from which place to which place and with regard to acquisition and so on and so forth, Madam Speaker. Well, some people argue that, instead of spending Rs18.8 billion, Rs19 billion, we could have used that money maybe to construct or build a number of roads. I think it is clear that this argument is really not tenable.

Commuters, especially those travelling long distances, in fact, are spending longer and longer hours of travel every day, and we can feel the frustration of our citizens who get caught in traffic jams, who arrive, in fact, late at their places of work. Therefore, we could not let this situation continue to erode productivity any further and put a handbrake on the economic growth that is much needed to create wealth and jobs for our children.

And we should not also forget one thing, Madam Speaker, road accidents. Because this has been taking a heavy toll of human lives and, besides having a negative impact on social and economic progress as well also as on sustainable development, but how much pain it has created for so many families and so many of us also, families, friends. So, imperatively, we needed an integrated approach to sustainable transport and, at the same time, we have to protect and preserve our environmental assets, which make Mauritius so unique as an internationally acclaimed tourist destination. But, it is just as important that we do not leave future generations with an infrastructure deficit. As Prime Minister, I could not ignore the costs and potential risks of continuing with the existing public transportation system, that is, risk to public safety, risk to our economy, risk to the environment and risk to social advancement.

I could have, as I said, looked at short-term political considerations, implement some palliative measures by providing a few roads here and there, knowing full well that building of new roads is not, in itself, a solution to traffic congestion, and I could have swept the real problem under the carpet and let others, in the future, deal with it. But I could not shirk my responsibilities and instead, I believe, I had to act decisively, especially when there was urgency and when there is convincing evidence that the quality of life of our citizens was at stake.

Therefore, we could not accept the *status quo*, Madam Speaker, as an option. As an avant-garde and ambitious nation, we have to address the problems hindering progress, and we came to the conclusion that the economic and social outcomes we were aiming at will be more optimally achieved by the Metro Express option.

The Metro Express Project, as I said in my Budget Speech, in July 2016, fits into our strategy to redesign our towns, create new poles of growth around the stations and terminals, drastically reduce the commuting time for our citizens, raise productivity, eliminate the inconvenience of traffic congestion, reduce road accidents, save on our petroleum bills and cut down on pollution. And in making that choice for the Metro Express, we have focussed on the need to ensure safety to commuters, affordability for the country, affordability for the commuters, and quality of services. As I said earlier, we have not lost sight of the need to preserve the jobs of employees in the bus industry, and everything has been done in all legality and through extensive consultation in cases where families had to be displaced for the implementation of the Metro Express project.

But, once more, I wish to highlight that the implementation of the Metro Express Project could not have gone that fast had we not obtained the generous grant of nearly Rs10 billion from the Government of India. Indeed, the support of the Government of India has been a crucial determinant of the feasibility of this project. I, therefore, seize, once again, this opportunity to reiterate our thanks and appreciation to the Government of India and to the Prime Minister, Shri Narendra Modi Ji, for extending this grant to Mauritius and accompanying, once again, our country on its journey towards more progress and prosperity.

Madam Speaker, today, with the presentation and subsequent adoption of the four Bills before the House, we have reached another significant milestone for the Metro Express Project. Today starts a new chapter in the legislative history of land transport in Mauritius and, today, we make another big step to put Metro Express on track.

As I have said before, I would like to reiterate that the Metro Express is not a standalone project; it is part of a broader vision of this Government to modernise our country. Along with the Metro Express, there is an urban and rural regeneration plan. We are also developing a modern administrative city at Highlands. In the vicinity, there is the Multi-Sports Complex of Côte d'Or, which, I believe, in the future, will also be connected by a network of metro. The Airport City is unfolding and the Airport Master Plan is being reviewed to include a second terminal, which, again, I believe, in the future, will be connected with service of the metro. Our seaport is also undergoing a major transformation. There is a new quay at the Mauritius Container Terminal which is already in service. We will continue, Madam Speaker, to enhance and optimise our road network.

Furthermore, Government has invested billions of rupees to improve infrastructural facilities that impact on the day-to-day life of people across the country, in rural as well as in urban areas. The Metro Express Project is, therefore, part of an Rs100 billion three-year plan to transform and modernise the physical fabric of our country. I have chosen to endow Mauritius with the most modern infrastructure that we can afford because, I believe, that our population deserves it. Our children and their children must grow up in a country with the most modern facilities and in a clean and safe environment.

We all know the sacrifices that our forefathers have gone through to build this great nation of ours, starting as indentured labourers, as slaves, as merchants and traders, as pioneering entrepreneurs and as free men and women. One generation after another has toiled hard to build a better future for themselves and their children and grandchildren.

Like our forefathers, our generation must leave behind a legacy founded on the values of equity, and it is my deepest conviction that building modern and appropriate infrastructure is one of the most powerful ways to promote equity in our society.

The Metro Express Project must, therefore, be viewed in the broader perspective of Government's vision to lift up the quality of life for one and all and not just another mode of transport. The Port Louis-Rose Hill-Curepipe Route is but a beginning. This corridor will be the backbone of future smart and sophisticated Mauritius, and extending the Metro Express lines to the four corners of Mauritius would be the next challenge. As we put the Metro Express on track, we are setting in motion the process to turn today's dream in tomorrow's reality. Unwarranted criticisms, like those we have heard outside the House and not so much here, will not prevent this Government from pursuing the journey to make of Mauritius an avant-garde nation.

We are confident, Madam Speaker, that, in the years to come, all of us, Mauritians, will be able to live in a modern country with a higher quality of life that we have always worked hard to achieve and that is, in fact, our due.

I will conclude by quoting Nigerian business strategist, Fela-Durotoye, who said, and I quote –

“There's a place for talking and criticism. But there's also a place to let our ACTIONS do the talking.”

Thank you.

**Madam Speaker:** Hon. Bodha!

(3.53 p.m.)

**The Minister of Public Infrastructure and Land Transport, Minister of Foreign Affairs, Regional Integration and International Trade (Mr N. Bodha):** Madame la présidente, maintenant que le Premier ministre a balisé le terrain, je pense que je peux faire un *summing-up* express.

The Prime Minister has, in fact, gone through most of the criticisms, but, for a project of that magnitude, Madam Speaker, there are hundreds of questions, clarifications which have been asked and I think there are a few answers that I have to give. But let me, first of all, thank the Prime Minister and Sir Anerood Jugnauth, at the beginning, to have believed in it. I think history is testimony that we have always believed in the light rail. And when the project was revisited, it was personally taken care of by Sir Anerood Jugnauth and by the Prime Minister who met Indian Prime Minister, Narendra Modi, to be able to have this financial, the business model, to see to it that this light rail system, in fact, is costing the nation about Rs9 billion whereas, as the Prime Minister rightly said, it would have cost the nation four times that amount.

Let me also pay tribute to all those who have worked so hard so far; all the public servants, the State Law Office when it comes to drafting the omnibus legislation. I would not say it was a compressed one. I would call it an omnibus legislation for all people who have worked so hard.

Madam Speaker, this project has so many issues, technical, procedural, social, political, economical, financial, that you keep on answering questions, and people have the right to ask the right questions. Yesterday, Metro Express published what has been achieved in the papers. And it used the expression ‘on track, on time’. Removal of earth works – 658,000 tonnes which amount to 30,000 lorry loads Madam Speaker. For the utilities, we had to do the mapping of utilities which date back to 50 years, 70 years and I said it was like surgery in an old city, and we had only one incident, so sad. We had to do the mapping, we had to do the shifting and then the reinstatement of all the utilities which are new. You have cables now for the electricity along Vandermeersch, which mean that, even, during cyclones they are going to have electricity. 23km of utilities were diverted just between Rose Hill and Port Louis. The girders, you know, *ce qu’on appelle les traverses*; they are put between 10

o'clock at night and 2 o'clock in the morning. They weight each one 60 tonnes and we have moved 214 girders.

Madam Speaker, when it comes to the tracks, what we call the baluster, the baluster is where you have sleepers. In the past they were blocks of wood, now they are blocks of cement and we put the track on it. 13 kilometres have already been placed and the embedded track, that is, the track on the road, 3 kilometres have already been laid. For electrification, we had what we called the post, the cantilevers, already 500 have been placed Madam Speaker. This is the extent of work which has been done. Today, structural works that are left is only at Caudan and we have to work the intersections at Barkly, at Gool and at some other places.

The amount of work is tremendous, 3,000 workers working 24/7 on 32 different sites, Madam Speaker. And this legislative framework, in fact, is giving to this project the legal instrument that we need for the operation of the Metro. One question was asked about the National Land Transport Authority, I think it was by the hon. Leader of the Opposition. He said why don't we do what was proposed then which was the National Land Transport Authority. Yes, the National Land Transport Authority, it would include the RDA...

*(Interruptions)*

It is not the hon. Leader of the Opposition but this was raised here. It included the RDA, it included the TMRSU, it included the National Transport Authority and it included the MLRT, that is, the MLRT which was proposed by the former Government. But that would have been a monster and they wanted to put at the head of this organisation somebody who knew nothing about rail. That was what was proposed, and an office costing Rs7 m. just for furniture was opened in Ebene. A budget of Rs25 m. to Rs30 m. had already been given to a PR agency to market the project. We inherited all this.

*(Interruptions)*

**Madam Speaker:** Hon. Rutnah!

**Mr Bodha:** So, this is an example of what was supposed to be. And then the project was supposed to be a light rail linking the cities. What we are doing is exactly what the Prime Minister has said; we are reengineering the urban landscape with all the urban terminals which would bring about Rs10 billions of private investment. Today, Cabinet approved the last Clause about the lease agreement which related to the fact that the consortium at Victoria

is composed of companies which are listed on the Stock Exchange and there were certain legal provisions which had to be taken care of before we sign the lease.

Madam Speaker, we have come with a National Land Transport Authority with a Chief Commissioner who will be on contract. We are working with the Indian Government to be able to have somebody who a seasoned manager as regards to rail and land transport.

I have also given the assurance, the Prime Minister has done it, as regards all the officers of the National Transport Authority today, that their functions, their career path, everything will be there as they are. On the contrary, I have talked to the Ambassador of China and the High Commission of India to expose our officers of the NTA to the rail technology and rail administration, which means that tomorrow they will be able to offer their expertise and skills, not only for road transport but also for the rail transport. But for the transition period of about two to three years, we need seasoned people because we cannot compromise on safety. That is why when we had an issue about train captains - we had meeting this - we said you cannot have new train captains with new trains on a new rail because the risk is too high. You cannot have new train captains with new trains on new rails. So, we have brought six train captains from Singapore, one from India and another one from South Africa to be able to see to it that the service is the best that we can afford as regards safety. And the law provides for this issue of safety.

The safety on the road is one thing, the safety as regards trains because we know whenever a train is derailed what happens. And our friends have always been trying, *comme-ci pour diminuer le projet*, it is a tram. This is 15 meters long. It has got 7 carriages. It is three and a half meters wide, like any train, 2.5 meter high, going at 70/80 kilometre an hour. It is a light vehicle, as the Prime Minister said rightly, with a dedicate ...

*(Interruptions)*

In Australia as well, it is called the metro.

*(Interruptions)*

Yes, in Australia, it is called the metro. You have it in Edinburgh, you have it in Australia. So, what I would like to say, Madam Speaker, is that the project, I think the Prime Minister rightly said in his conclusion, I have not been speaking about the project, I have been answering questions because the questions are legitimate. Let what is being done speak for itself! Let people see! I remember how the Deputy Prime Minister was amazed when the first girder was put across the Route M1. So, let the structure, let the project, let the train speak for

themselves. They speak for this Government; that the Government has the calibre, the capacity, the leadership and the skill to be able to see that this project is implemented in the best conditions.

We have also had some criticisms about planning, it is not being planned. But you have so many things to do at the same time, Madam Speaker. Let me give an example. Between the moment the train left, we had this function at the ports and it went to the operation centre where it had to be assembled. But once you have it assembled, you cannot do anything which you do not have the electricity. So, we had to see to it that the electricity was provided at the right time, that once it was assembled, they could verify whether the train was in order. Then, they have to move the train to the light maintenance segment of the operation centre to see whether the train is moving and everything is fine. And in two weeks, on a track of 3 kilometres, you are going to have the train running. We can go and see the train running at high speed to do all the testing of the first train while the second train has just arrived, Madam Speaker.

So, everything has to be planned, but for the planning, you have everything which is technical, which is electronic, which is electrical, which is IT technology. So, everything has been planned and the Prime Minister was right in one thing. He said we brought the right consultants, Singapore Corporation Enterprise for the design, the builder Larsen & Toubro, RITES from India to do the supervision and the Metro Express also recruited a number of people from around the world to have the best people to be able to manage it. So, about the planning, you would do planning, but a lot of things crop up at the same time and you have to address these issues as a matter of urgency.

As regards the disabled, the question was raised rightly so, but you have made all assurance because it is at a low floor. So they can access the train and we have lifts in all the stations for the disabled, so it will be friendly for all the travellers.

As regards the Mauritian workers, we would have liked our Mauritian workers working on the sites, but we had one thing, we had to recruit them, we had to train them and then put them work with the L&T, but L&T had a contract of two years to build this segment. So, in fact, we had to bring seasoned - in fact, what L&T has done, they need people, for example, for the cantilevers, so, they bring the people who are doing the cantilevers in Dubai or in India, they come here, they do cantilevers and they just go. It becomes one site. For L&T, Mauritius is one site. Dubai is another one. India is another one. So, we have been able

to have about 300 Mauritian workers and this was, I think, what we could do, but we are recruiting people as regards the train captains, as regards inspectors, as regards security, as regards other administrative posts.

For the ticketing system, the Prime Minister has answered it. ELIS has already provided the ticketing system. In fact, what we are trying to do now is to see to it that we can extend it to the feeder buses. Now, let me come to the feeder buses. We have worked thoroughly on this segment and we know that we need. In fact, 55 buses on a total of 19 routes, 10 which have been already allocated to Rose Hill Transport, 5 to UBS, 3 to the NTC, and one to Triolet Bus Service. The feeder buses, you have 55. Now, what are we going to do? We are using 55 buses which are already there. They would be allocated. Now, the NTC has some small buses which we most probably are going to use because the end result for the integration is going to be electric buses. We are now here, with the Prime Minister and the Minister of Finance, working on a credit line which has been granted by China to see how we can bring 32-seater electric buses. We have also the green fund but this takes time. And in the meantime, we are going to use the buses that are available, Madam Speaker.

Now, let me come to the workers. I had different meetings with the workers. We have always assured them that the Metro Express should not be there to jeopardise the livelihood of the workers of the bus industry. On the contrary, we believe that more people will travel by the feeder and the buses to commute with the train and we believed that with a modern integrated system, Madam Speaker, we will be able to have more ridership. And in order to be able to provide certainty and assurance to the bus companies, we have engineered 30 new routes, 30 new routes which have been engineered by the NTA. We have worked with the UBS and with the NTC and Rose Hill Transport. We have already allocated 33 bus routes; 11 to each. We have already worked on the routes and we are starting next week, the Board of the NTA is going to allocate the first 11 routes to Rose Hill Transport. They are new routes which will mean that the bus network is going to get better. We are linking villages and localities and cities which were not linked formally. So, we are going to have 11 for Rose Hill Transport, 11 for the NTC and 11 new routes for the UBS. Madam Speaker, this is to reassure the workers that what we want is to see to it that the Metro, in fact, should, I would not say save but consolidate the bus system.

Give it more, make the base stronger. I am going to give you one example, Madam Speaker. The feeder buses have a catchment area between 5, 6, 7 kilometres, and if the train comes every 6, 7, 9 minutes on a timetable, it would mean that we would need the bus for

what we call the first trip, that is, from home to the train and from the train the first mile and the last mile. Just imagine that we have a feeder bus linking the main station of Rose Hill, linking Ebene, the University and Bagatelle and just doing this every 7, 8, 10 minutes, so whenever you get out of the train, you have a bus and you take a bus, you have a train, so this is going to be one of the best feeder systems which is going to work. We are going on a pilot basis, we have tried to find how it works. I am sure that this is going to be a very successful feeder just like many of the feeders, waiting for an extension of the Metro on that direction, as the Prime Minister said Côte d'Or.

Now, there were some infrastructures, some facilities which had to be sacrificed during the advent of the Metro with the implementation of the project, one was promenade Roland Armand. We had many comments, we had many articles. So, I am not going to mention that. But we came with one principle and, again, I would like to thank the Prime Minister and Cabinet and my colleagues. We said that whatever is going to be sacrificed, we have to make do for those equipment in a better and more sophisticated manner. And each time I went to cabinet to have the budget, that is how we have the budget for the recreational park of Ebene. Now, the site is being cleared, we have requested from the Prime Minister a date. It would be at the end of the month to present to the first - he called it the planting of the foundation tree, we can call it the foundation stone - so that we are going at the end of the month to have the project. On the other side of the Ebene park, we have the bus holding area which is almost finished now, so we will do the ceremony at the same time.

Now, when it comes to Quatre Bornes, there also, we have the Avenue between Quatre Bornes and Rose Hill which have been affected, and we have, in fact, been able to find two plots of land of about 75 perches in place and one *arpent* where we are going, again, to do the parks and landscaping and the outdoor gym facilities for the people so that, at least, they have lost the avenue, but they will have these facilities. I have just asked Larsen and Toubro to tell us what is the area in metre square between Rose Hill and Port Louis to be landscaped and embellished on the whole track, because we want the whole track to be an enjoyment. It would be a nice ride, not only for us, but also for the tourists. Madam Speaker, I can tell you that it is going to be a great ride, because you have the bridge at Grand River North West, 220 metres, 80 metres high, then, you have the bridge of St Louis, then will pass on the slopes of La Butte and then, will go down to Port Louis, Madam Speaker. This is going to be a nice ride and I am going to see to it that the landscaping is done in such a manner that really it makes Mauritius more beautiful. We can ask the school children, for

example, the students - well, you have this retaining wall - they can come and do their own graffiti or artistic creation. So, this is as regards the landscaping.

Madam Speaker, let me see now whether there are some other issues. Yes, about fares, the Prime Minister explained that. In fact, the Metro is going to be completed in 2021. Now, about this fare review mechanism, you know, Madam Speaker, we have not increased the fare for the bus since 2013, this is six years. I don't think in any country in the world this has been done. It has not been increased. So, it seems, as the Prime Minister said, that even in 2021, it is only then we are going to consider. Why I proposed this review mechanism which would be an independent body? Because, today, it is a political decision, it is the Minister who comes to Cabinet to say: 'Listen, we have to increase the fares'. And then, the Leader of the Opposition will come with a motion of disallowance to say that fares which should not have been done. This is what we do, but I think that just like for the petrol mechanism, for the pricing mechanism, it is a good thing. Because in London, every 01 of January, you have an increase on inflation rate of your ticket. So, we will have an independent body which will advise Government as regards the fare, but also the paying capacity of the public, but, at the same time, what impact this can have on the company. So, this is about the fares, Madam Speaker.

There is one thing also I wanted to say is that for Quatre Bornes, in September 2019, it is Rose Hill to Port Louis in 20 minutes, but before September 2020, it will be Quatre Bornes to Rose Hill in 7 minutes, Madam Speaker. The works are already being done now. And then, in September 2021, it will be Curepipe to Port Louis. Madam Speaker. We are laying the foundation of modern Mauritius, as we have all said. And as regards the overpass at Victoria linking the Station of Victoria to the Urban Terminal of Victoria, there were some comments which were made by hon. Bhagwan. For example, as regards the sketch, we could have come with a sketch, but we want to come with the sketch which is going to be implemented. We do not want to have an artistic view of it. I will come here and we will have a sketch of what is going to be actually done. There was a comment by hon. Jahangeer regarding whether why don't we use an underpass. But I think you have the trauma of what happened during the flooding and in that place, it will cost a lot to do a tunnel and I don't think that it will be appealing and attractive. I think the best thing to do, it will be for us to see to it and to make it something which will be Pleasant, so that it would be an overpass linking the station and linking the urban terminal, Madam Speaker.

I will not talk about the business model. I think I have answered most of the queries. But I would like to say one thing, Madam Speaker, is that we have never done a project like this. In the world no light rail system of 12 km has been done in two years. It has never been done. And now, we are at 85% of it. Let us hope everything goes on well, because what is left now is not seen. You see the girders, you see everything, but what is done now is the seamless integration of what is electrical, what is electronic and what is the control system, which means that when the train is going to leave Rose Hill, everything, the programming would have been done at the hundreds of second. When it is going to stop, how the doors are going to be open, how the gates will be open at the stations, how many minutes it will take, everything. So, it has to be seamless and this is something which has to be perfect. This is what we have; we are aiming at. Today, Madam Speaker, I am very happy, and I would like to thank all those who have been working on this project. It is the biggest and most ambitious project. We need leadership, we need hard work, but we need consistency and patience. And as I always said the old lady was asking whether rail *ghari* will come, but I can assure the House today that rail *ghari* will come.

Thank you, Madam Speaker.

*Question put and agreed.*

*Bills read a second time and committed.*

### **COMMITTEE STAGE**

*(Madam Speaker in the Chair)*

*The following Bills were considered and agreed to -*

- (i) The National Land Transport Authority Bill (No. XX of 2019)*
- (ii) The Light Rail Bill (No. XXI of 2019)*
- (iii) The Road Traffic (Amendment No. 2) Bill (No. XXII of 2019)*
- (iv) The Victoria Station Overhead Pedestrian Bridge (Authorised Construction) Bill (No. XXIII of 2019)*

*On the Assembly resuming with Madam Speaker in the Chair, Madam Speaker reported accordingly.*

### *Third Reading*

*On motion made and seconded the following Bills were read a third time and passed -*

- (i) *The National Land Transport Authority Bill (No. XX of 2019)*
- (ii) *The Light Rail Bill (No. XXI of 2019)*
- (iii) *The Road Traffic (Amendment No. 2) Bill (No. XXII of 2019)*
- (iv) *The Victoria Station Overhead Pedestrian Bridge (Authorised Construction) Bill (No. XXIII of 2019)*

**Madam Speaker:** I suspend the sitting for half an hour.

*At 4.35 p.m., the sitting was suspended.*

*On resuming at 5.13 p.m. with Madam Speaker in the Chair.*

*Second Reading*

### **THE WORKERS' RIGHTS BILL**

**(NO. XXIV OF 2019)**

**&**

### **THE EMPLOYMENT RELATIONS (AMENDMENT) BILL**

**(NO. XXV OF 2019)**

*Order for Second Reading read.*

**The Minister of Labour, Industrial Relations, Employment and Training (Mr S. Callichurn):** Madam Speaker, with your permission, I move that the Workers' Rights Bill (No. XXIV of 2019) and the Employment Relations (Amendment) Bill (No. XXV of 2019) be read together a second time as they are interrelated.

Madam Speaker, today, this Government is living to its promise made to the working class in its Electoral Manifesto and Government Programme to better safeguard their interests and enhance their rights. I have the privilege as Minister of Labour, Industrial Relations, Employment and Training to present these two Bills in this august Assembly today. I am grateful to the Prime Minister for the support and trust which he has placed in me to drive ahead this challenging reform of labour legislation.

Madam Speaker, the failure of the Employment Rights Act to protect the basic rights of workers (I am here making reference to cases of non-payment of wages and job losses) and its limitations, as we have witnessed, of the Employment Relations Act to develop collective bargaining and promote social dialogue, are the main reasons for the reform of our labour legislations.

Before going into the details of the two Bills, I would like, Madam Speaker, to make some remarks. The negative impact which the Employment Rights Act has had on the workers and their families was predictable. We pulled the alarm in 2008 when the Bill was introduced in the National Assembly by the Labour Government. We drew the attention of the House, in unequivocal terms, that the Employment Rights Act would undermine the fundamental rights which workers of our country had acquired at the cost of their lives during “*les années de braises*” of the 1930’s, 1940’s and 1970’s.

We presented 32 amendments during the debates with a view to safeguarding the acquired rights of the workers. All these amendments were rejected outright.

The Labour Government, Madam Speaker, adopted a different approach to the labour market in 2008. By doing so, they put an end to the historical social contract between labour and capital which catered for a balanced economic development with social citizenship of workers. The Labour Government adopted a neo-liberal approach to the labour market with deregulated conditions of employment, thus, rendering employment relationship even more asymmetrical to the detriment of the workers.

Madam Speaker, the labour law reform brought by the Labour Government was in fact more about labour market flexibility than dignity, respect and security of employment of workers. The Employment Rights Act shifted the focus from job protection to employment protection. Employers were given the freedom to terminate the employment of workers at any time. The Employment Rights Act has provided a more flexible labour market with business benefitting from incentives of lower firing and overtime costs. Thus, the Termination of Contracts of Service Board, which protected workers against abusive economic termination of employment was abolished. The standard of 45 hours a week, provided in the Labour Act of 1975, was also altered to 90 hours a fortnight. Entitlement to remuneration for extra work was made subject to completion of 90 hours a fortnight instead of 8 hours a day.

Job security was considered by the Labour Government as a misery for workers. It was replaced by the concept of flexicurity. The workers have found, at their expense that the promised flexicurity was in fact a myth. Employability which was supposed to replace job protection, has turned out to be more speculative than effective. Figures available at my Ministry reveal that only 17% of laid-off workers opted for re-skilling or self-employment. The remaining 83% opted, for reason of subsistence, for a job placement and they were re-employed in more or less the same sector of employment.

Madam Speaker, the writings were on the walls. The Employment Rights Act did not stand the test of time.

The reform of the labour law was based on the assumption that the liberalisation of termination of employment and hours of work would create optimal conditions for investment and generate new productive jobs. A decade after its enactment, there is no evidence of any trickledown effect. The liberalisation of the conditions of employment has not produced the expected results, neither in terms of job creation nor in terms of an increase in the inflow of FDI. The promise of flexi-security has also not been realised.

Instead, Madam Speaker, there has been an increase in the number of termination of employment and non-payment of wages. According to figures available, the total number of termination of employment registered has increased by 133.9% from 4,291 in 2010 to 10,038 in 2015. Over the same period, the number of laid-off workers notified to my Ministry due to downsizing and closure for economic reason increased by 18.3%. The unemployment curve did not go down during that period but has instead increased by 0.3%.

With regard to wages, the number of cases of unpaid wages has also increased by 50.5% from 3,043 in 2012 to 4,580 in 2015. It is to be noted, Madam Speaker, that for the past 5 years, despite legal proceedings having been initiated against employers, a yearly average of 800 workers have not recovered any unpaid wages and termination indemnity in cases of insolvency.

We have witnessed so many examples over the years. The recent cases of enterprises which closed down where several thousands of workers lost their jobs without any compensation, are heart-breaking examples of such human tragedy which are still fresh in our minds.

Here again, as a responsible and caring Government, we have assumed our responsibility. Since we took office, Madam Speaker, we have adopted a more human approach to resolve the plight of the workers. The recent cases of laid-off workers, cleaners working in schools and CWA workers are vivid examples of our commitment to alleviate the sufferings of these workers. Madam Speaker, such measures taken by this Government on humanitarian ground, are unprecedented.

Madam Speaker, the Employment Rights Act has also failed to protect workers against precarious employment. According to Statistics Mauritius, the number of atypical workers is on the rise. Under the Employment Rights Act, an employer is allowed to employ

a worker on a fixed term contract of twenty-four months, although the worker works in a position which is of a permanent nature. Many employers have made an abuse of this provision: they have laid off workers before 24 months and have later re-engaged them on new contract. These workers have, therefore, been deprived of the rights and benefits associated with indeterminate contracts of employment.

Madam Speaker, On another score, it has been observed that the existing legislation has not kept pace with the evolution of the labour market and nothing has been done to reduce the gap between the public sector and the private sector.

On the one hand, the labour market is presently characterised by a declining trend of the one-job-tenure employment and a high degree of labour mobility. Presently, only 10% of the labour force works with the same employer up to retirement age. Statistics from period 2016-2017 indicate a persistent trend towards short cycle employment. For the same period under reference, 93.64% of the laid-off workers reckoned up to 10 years' service with the same employer while only 4.56% reckoned between 10 to 20 years' service and 1.81% reckoned more than 20 years' service. As a matter of fact, the average length of employment of a worker with his employer turns roughly around 33 months.

The present retirement gratuity system, which was developed in the context of the one job tenure mode, has not been adapted to the new configuration of the labour market. Presently, when a worker goes on retirement after having worked with several employers, his retirement gratuity is paid only for his length of service with his last employer. 90% of the labour force are, thus, penalised under the present system.

On the other hand, the labour market is also characterised by another imbalance caused by the gap in conditions of employment between the public and the private sector. Today, an important segment of the young generation is reluctant to join the private sector, which they consider to be less attractive and insecure. They prefer to opt for a job in the public sector with low remuneration rather than seeking higher paid jobs in the private sector which are commensurate with their competencies and skills.

Madam Speaker, I now come to the Employment Relations Act. This piece of legislation has also shown some weaknesses, among others, negotiating rights, collective bargaining, social dialogue as well as the existing wage fixing mechanism under the National Remuneration Board.

Madam Speaker, collective bargaining has remained peripheral in our industrial relations system in spite of the existing provisions of the Employment Relations Act. It has become very difficult for a trade union to satisfy the threshold of 30% representativeness to obtain negotiating rights. Consequently, collective bargaining has not progressed and the scope of collective agreement has remained limited to 7% of the labour force in the private sector. This has also impacted on the level of union density in the private sector which has remained low, around 12 % in 2018.

The NRB also has not evolved since its set-up in 1974. The mode of wage determination is still made on industry basis whilst the labour market now requires a more global and coherent approach to job classification and wage fixing.

Madam Speaker, the limits of the deregulated market model adopted by the previous Government has been exposed. The big bang on the labour market aimed at improving economic efficiency was full of promises in terms of a competitive labour market that would facilitate job creation. However, this model has failed lamentably. The conditions of employment of workers have worsened and social inequality has increased under the Labour Government. The latter has not been successful in protecting the fundamental rights of the workers.

Madam Speaker, our hon. Prime Minister, who was a Member of the Opposition during the debates on the amendments to the Employment Rights Act in 2013, rightly pointed out that Dr. Navinchandra Ramgoolam who was the Prime Minister at that time, I quote: *“portera la responsabilite devant l’histoire, comme étant celui qui a trahi la cause des travailleurs et les idéaux du Parti Travailleiste d’Anquetil, de Rozemont et d’autres tribuns travaillistes.”*

Madam Speaker, since we took office in December 2014, there has indeed been great expectation from the workers and the trade unions for a new legal framework that better protects the rights of workers in this dynamic working environment. There has also been much impatience on the side of a few trade unions, which at some point in time even doubted this Government’s intention to bring these two Bills before the end of its mandate.

Yes, Madam Speaker, we acknowledge that there has been delay in bringing these two Bills. But, the reason for the delay is due to the overarching impact of the major proposals on the labour market and the economy. For instance, one revolutionary measure which is being proposed required extensive consultations. Government had to ensure that

improvement of workers' rights and more particularly the introduction of this measure do not impede on the facilitation of doing business.

Government, therefore, set up a Ministerial Committee under the Chairpersonship of the Deputy Prime Minister, Minister of Energy and Public Utilities to examine the underlying implications of the new clauses as contained in the Workers' Rights Bill and the Employment Relations (Amendment) Bill. My Ministry also worked in close collaboration with the Ministry of Finance and Economic Development.

Madam Speaker, I have, in the spirit of social dialogue, held consultations with the social partners to enable them to express their views and submit their proposals in the preparation of these two Bills. Several meetings were held with the trade unions and the representatives of the employers.

I have also held extensive consultations with our social partners on the Portable Retirement Gratuity Fund. This consultation process, as a whole, took much time before these two Bills could be finalised.

As we all know, in view of the inherent contradiction between labour and the capital in the market economy, it is quite difficult to get full consensus when it comes to reviewing the labour legislation. It is understandable that the trade unions and the employers defend the interests of their own constituents.

Madam Speaker, let me reassure the House that I have given due consideration, as far as possible, to the representations made by both the trade unions and the employers in the preparation of these two Bills. However, in making its decision, Government stood guided by the highest interest of the country.

I would also wish to point out that, in spite of their differences, the social partners have raised to the present challenge and have all been guided by a sense of national interest. There is a common understanding that the labour market should be regulated differently. These two Bills have, therefore, been designed on the premise that labour rights and economic development are not mutually exclusive and that the protection of workers reinforces social cohesion and gives a new impetus to our economy in this era of industrial revolution 4.0.

I would like to seize this opportunity to thank the trade unions and the representatives of the employers for their productive collaboration, which augurs well for the future of social dialogue.

Madam Speaker, allow me to delve on the guiding principles of the review. Firstly, the Employment Rights Act is being revisited in line with the new development model set in Vision 2030 and in the Budget 2016-2017. In Vision 2030, Government defined the twin objectives of the economic development and the improvement of the quality of life within the 'Live, Work and Play' concept and has placed the focus on the people first. Government has also, in the same vein, heralded a new era of development for an inclusive right from the 2016-2017 Budget Speech. Job creation, poverty eradication, the improvement of quality of life and an inclusive labour market are the cornerstone of our economic policy.

Secondly, Madam Speaker, as the House is aware, Mauritius is a party to the Decent Work Country Programme. Accordingly, in the preparation of the new Bills, I stood guided by the ILO concept of Decent Work. This concept has now become a universal objective and has been included in major human rights declarations. In 2015, the United Nations has made the four pillars of Decent Work Agenda, namely, employment creation, social protection, rights at work and social dialogue, integral elements of the new 2030 Agenda for Sustainable Development.

I have also given due consideration to emerging issues such as workers' rights in the context of labour mobility and the digital economy and Artificial Intelligence (AI) revolution, which are likely to trigger the creation of new business models and is revolutionising the way people work and live.

Madam Speaker, regarding the safeguard of workers' rights in a labour market which is characterised by a high degree of labour mobility, as announced earlier, Government is coming forward with a revolutionary measure which aims at accompanying labour mobility with portable social rights. With this measure, we shall be among the few countries in the OECD and the first

country in the African continent to introduce such a progressive policy. India also intends to embark on the same path. The Prime Minister of the Republic of India, Mr Modi Ji has recently announced his intention to reform the Gratuity Act of 1972 for the benefit of a worker when he or she changes employment.

The digital revolution and AI are still unfolding. As our enterprises adapt their business models, there will be a greater use of platform economy, with easier access to a diverse pool of labour outsourced both locally and globally. Under this new business model,

the worker and the employer attachment is becoming more transient with uncertain conditions of employment. New forms of work arrangements are emerging. For example, Crowd work will turn more people into new job classifications as the demarcation line between a worker, a self-employed and a job contractor is becoming blurred.

Thus, Madam Speaker, we cannot, in the period of digital revolution, adopt a stagnating approach to employment relationship. Presently, in many countries, labour legislation has not yet been modernised to adapt to the 21<sup>st</sup> century work system. In the absence of proper updated legislation in some countries, the judiciary has tried to provide some clarity regarding the test for determining whether or not someone is a worker. For instance, in the US, the UK, Australia and Spain, the Courts have delivered a number of judgments recognising the status of workers to persons working through online platforms, such as Uber, Deliveroo, City Sprint and e-Courier.

As Minister responsible for the subject of labour, I firmly believe that the law must do more and the Courts less if we are to improve clarity, and ensure that irresponsible employers do not game the system and take advantage of it. It is with this perspective that I made, this year, the Work from Home Regulation,

for those working from home. I am introducing the concept of atypical work to include work from home as well as all forms of work that do not fall within the standard relationship. I am therefore providing for the fundamental rights of this category of workers to be safeguarded.

Madam Speaker, we are proposing a different approach to regulate the labour market. Government considers that the challenges arising from the contradictions of the old and the new systems should be addressed globally from a high perspective. We believe that the economic objectives of the modern high performance workplaces require not only flexibility but also loyalty and commitment of the workforce. Thus for flexible work arrangements to be productive, it should be accompanied with adequate labour protection and a security in transition framework. Better working conditions in the private sector will make jobs more attractive and may pull our human resources from the public sector to more productive jobs. It is also considered that the goal of productivity is also best achieved when workers are happy at their work place and where their fundamental rights are respected.

We believe that the ultimate goal of our economic development should be to increase national wealth, job creation, social welfare and improvement of quality of life. However, it should not be just about the creation of extra jobs that places workers in precarious situations.

The focus should be on phasing out of the past model of job creation associated with workers' standard of living which were either stagnating or worsening in real terms. Economic development is, in fact, about adoption of policies that lead to improve the standard of living and social welfare. This implies pushing for the development of a labour market where equity and fairness shape the working conditions.

Madam Speaker, from this perspective, Government has in March 2015, defined new parameters for the review of the labour legislation as follows –

- (a) consolidate the fundamental rights of workers, ensure better protection of workers' jobs and promote employment creation;
- (b) streamline all conditions of employment prescribed in the various Remuneration Regulations in one piece of legislation;
- (c) reinforce freedom of association and negotiating rights in line with ILO Conventions, and
- (d) reinforce the dispute settling mechanism for a timely and more effective settlement of disputes.

Madam Speaker, today is a momentous day for the workers and for the country. Together with the Employment Relations (Amendment) Bill, the Workers' Rights Bill will change the labour and industrial relations landscape of our country.

The Workers' Rights Bill has two main objectives. The first one is to restore equity and social justice at the workplace and to strike the right balance between the interests of labour and business.

The second one is to adapt our legislation to labour mobility as well as to technological changes such as the digital and AI revolution.

A new social Contract, Madam Speaker, I am proposing today, a new social contract based on a fairer balance between labour rights and equity; flexibility and efficiency, and collective bargaining and social dialogue.

As regards the individual rights of workers, the Workers' Rights Bill aims at -

- (a) protecting workers against discrimination by expanding the definition of "discrimination" to include impairment and different treatment where a worker performing the same or similar work is employed by a subsidiary company or a parent company;

- (b) protecting workers against precarious employment by restricting a fixed term contract to a work of a temporary nature and by bringing all workers in the mainstream legislation;
- (c) protecting a person performing atypical work, such as online platform work, by giving him the status of a worker;
- (d) providing for a compromise agreement to be vetted by a worker's legal representative, trade union or representative of my Ministry so as to protect workers where they are compelled to sign an agreement to their detriment;
- (e) reconciling work with family, and responds to, by providing more flexible work arrangements, such as flexitime;
- (f) providing for a recourse to a protective order to safeguard workers' remuneration and for an advance payment from a Wage Guarantee Fund where an employer fails to pay remuneration to a worker;
- (g) extending maternity benefits to a mother who adopts a child of up to 12 months old;
- (h) harmonising core conditions of employment and providing for new benefits such as bank of sick leave, Juror's leave and other special leaves;
- (i) protecting workers' jobs by the setting up of a Redundancy Board;
- (j) guaranteeing workers a gratuity on retirement which will take into account their full length of service irrespective of the number of employers for whom they may have worked for, and
- (k) widening the scope of protection of workers against violence by making an employer vicariously liable, in certain circumstances, for any wrongful act committed on a worker by a co-worker or any other person.

Concerning the collective rights of workers, the Employment Relations (Amendment)

Bill aims at -

- (a) providing for the reduction of the threshold for eligibility for recognition of a trade union from 30 per cent to 20 per cent with a view to encouraging collective bargaining;

- (b) introducing, for the purpose of collective bargaining, a standard procedure agreement which shall be binding on both a trade union and an employer;
- (c) reinforcing the conciliation and mediation mechanism for dispute resolution;
- (d) empowering the Employment Relations Tribunal to make an award for the reinstatement of a worker whose employment has been terminated in certain specific cases, particularly where his fundamental rights have been infringed;
- (e) making provision for the setting up of a National Tripartite Council to promote social dialogue and consensus building on labour, industrial relations or socio-economic issues of national importance, and other related labour and industrial relations issues.

Madam Speaker, I shall now succinctly present the principal clauses of the Workers' Rights Bill and the Employment Relations (Amendment) Bill.

As regards Workers' Rights Bill, I shall first refer to the main measures, which constitute the backbone of the Bill.

The most important measure is the Portable Gratuity Retirement Fund (PRGF) which are contained in clauses 87 to 108.

The objective of the PRGF is to ensure that a worker who retires, benefits from the payment of a retirement gratuity for his length of service with any employer from the date of coming into operation of the Fund. The Fund will basically safeguard the fundamental rights of the workers in respect of social protection.

As regards the design and application of the PRGF -

- The PRGF shall be operated as a Defined Contribution Scheme with a Defined Benefit underpin.
- It shall apply to all workers other than those whose retirement benefits are administered under the Statutory Bodies Pension Funds Act or a private pension scheme administered under the Private Pension Scheme Act.
- It shall not apply to a worker drawing a monthly salary of more than Rs200 000 and also to migrant workers and non-citizens.
- The PRGF shall be administered by the Minister responsible for the subject of Social Security.

- A Tripartite Advisory Committee shall be set up to advise the Minister on the operation and investment of the PRGF.
- The Investment Committee established under the National Pensions Act shall act as the Investment Committee of the purpose of managing the fund.
- An actuarial evaluation shall be carried out every 5 years.

Regarding contributions to the PRGF -

- The Mauritius Revenue Authority (MRA) shall be responsible for the collection of contributions and enforcement of their payments.
- The MRA shall remit the employers' contributions to the National Pensions Fund which shall be credited to the respective personal account of the worker.
- Every employer shall be required to make an upfront contribution on monthly remuneration at a rate as may be prescribed.

The contribution of employers for past services of a worker shall -

- be paid on exit (termination or retirement for any stipulated reason or death), and
- not be applicable where a worker changes employment or resigns.

Defined Benefit Benchmarking -

- The benchmark for the payment of the retirement gratuity shall be a formula calculated on the basis of 15 days' remuneration per year of service on the last remuneration with an employer or on average remuneration for the last twelve months.
- The benchmarking shall be applicable to all cases, that is, termination, retirement, death, change of employment or resignation.

In case of retirement or death –

- The gratuity payable to a worker on his retirement or to his legal heirs on his death shall be accumulated contributions in the PRGF inclusive of interest accrued thereon.

- In the event that an amount is less than the benchmark, the shortfall shall be payable by the employer to the worker or his legal heirs.
- Where a worker exits from the service of an employer, his accumulated contributions inclusive of interest will stay in his individual account wherein new contributions from a new employer, if any, shall continue to accrue.
- Where a worker's employment is terminated for whatever reasons, he will still benefit from the contribution made by his employer in the Portable Retirement Gratuity Fund.
- In the event that his accumulated contributions plus interest, for the period of service with the employer, at the time of exit is less than the benchmark, the latter shall within a period of one-month credit the difference to the individual account of the worker in the Fund.

Madam Speaker, provision is also made for an employer's reserve account. In the event that the accumulated contribution inclusive of interest, for a period of service with the employer is higher than the benchmark at the time of retirement, death or other circumstances of exit, the difference shall be credited to a reserve account in the name of the employer to be treated similarly as an individual account of a worker for investment purpose.

In the event where a worker exits from the service of an employer in whatever circumstances and his accumulated contributions inclusive of interest for the period of service with the employer is less than the benchmark, the difference be paid out of his reserve account.

The worker shall in addition to any payment under a private pension scheme be entitled to the payment of a gratuity on retirement computed on the basis of 15 days' remuneration per year of service less the statutory deductions specified under the current Employment Rights Act.

Furthermore, an employer shall be required to make any adjustment where his share of contribution in a private pension scheme is less than the universal rate of contribution of 4.8% of monthly remuneration.

I shall now turn to other measures contained in this Bill. Clauses 35 to 39 provide for a Protective Order.

- Madam Speaker, we have seen hundreds of cases where employers deliberately withhold payment of wages without justification. In order to remedy the situation, it is felt necessary in the circumstances to ensure that an appropriate provision is put in place to enable recovery of dues of the workers. Hence, powers is being entrusted in the Supervising Officer of my Ministry to apply to a Judge in Chambers for a Protective Order on behalf of a worker against an employer and any bank or financial institution holding funds on behalf of the employer, where the latter has failed to pay remuneration and comply with a notice to that effect.
- Where a Judge in Chambers is satisfied that remuneration is due and the employer may dispose of his assets and the amount or value of the property is proportionate to the assets, the Judge may order that the property not be disposed of.
- The Protective Order shall remain in force for a period of 12 months.
- The order of the Judge in Chambers may include a restriction that, *inter alia*, the property shall not be mortgaged, attached or sold.

Clauses 42 and 43 provide for Wage Guarantee Fund Account.

- A Wage Guarantee Fund Account shall be set up under the Workfare Programme Fund to pay workers remuneration due up to an aggregate of Rs50,000 where an enterprise is declared insolvent by Supreme Court. This includes compulsory receivership, administration or liquidation.
- The amount payable by the Wage Guarantee Fund Account includes unpaid wages, wages in lieu of notice and end of year bonus.

Clause 27 also provides for the Court to make an order for an employer to pay interests on the amount of remuneration due.

Clause 13 provides that –

- an employer may employ a worker on a Fixed Term Contract in the following circumstances –
  - (a) for the performance and completion of a specific piece of work which is temporary and non-recurring;

- (b) in respect to any work or activity which is of temporary, seasonal or short-term nature or short-term work arrangements that are normally project related and aligned to changes in the product market;
  - (c) in replacement of another worker who is on approved leave or suspended from work;
  - (d) for the purpose of providing training to the workforce;
  - (e) for specific training contract, or
  - (f) in accordance with a specific work or training scheme set up by the Government or a statutory body for a determinate duration.
- A Fixed Term Contract shall no longer be applicable to a worker employed in a position of permanent nature.
  - With a view to preventive abuse of Fixed Term Contract where a worker is employed in a job which is of permanent nature, provision has been made for these workers to be employed on a contract of indeterminate duration.

Clause 17 introduces the concept of atypical work and includes in the definition of worker a person who does not fall under the standard form of employment relationship.

- The atypical worker shall be covered by the fundamental rights provided in this Bill, such as protection against discrimination, protection against violence at work, entitlement to the Workfare Programme and benefits of the Wage Guarantee Fund and entitlement to the Portable Retirement Gratuity Fund. The conditions of employment of an atypical worker shall be prescribed by regulations.

Clause 16 provides for a compromise agreement.

- An agreement may be made between a worker and an employer in resolution of a dispute concerning termination of employment or wages only where the worker has received advice from a qualified law practitioner or an officer of a trade union or an officer of my Ministry.

Madam Speaker, I wish to point out that clause 26 which provides for equal remuneration for equal work of equal value will be amended at Committee Stage. I will come later to this issue.

Clause 5 includes in the definition of discrimination and circumstances where workers of a subsidiary company perform work of equal value as a worker employed by another

subsidiary company of the parent company or the parent company operating in the same line of business on less favourable terms and conditions of employment.

Clause 73 provides –

- for the setting up of a Redundancy Board to deal with cases of reduction of workforce and closure of enterprises for economic, financial, structural, technological or any similar reasons.
- for an employer to notify the Board before reducing its labour force and shall not proceed to any reduction either temporarily or permanently before the determination of the Board.

Where the Board finds that the reduction is unjustified, the Board may –

- with the consent of the worker order the reinstatement of the worker.
- order the employer to pay severance allowance at the rate of 3 months per year of service.

An employer shall not be required to notify the Board in case of “force majeure”.

Part V is with regard to harmonisation of conditions of employment. Part V provides for -

- the core and common conditions of employment prescribed in various Remuneration Regulations to be harmonized in the Bill.
- Remuneration Regulations to provide only for conditions of employment which are specific to an economic sector of activity.
- Normal working hours are being harmonised to 45 hours per week for all sectors, except for those where Remuneration Regulations provide otherwise.

Madam Speaker, there is an overall apprehension from some quarters of business that overtime will be paid after eight hours work daily. I would like to emphasize that, in spite of the fact that overtime is normally computed on the basis of 8 hours work daily, provisions will be made, due to the specificity of certain sectors of the economy, for overtime to be computed as follows –

- (a) Hospitality sector and EPZ – after completion of 45 hours work a week;
- (b) Nursing Homes – after completion of 195 hours work a month, and
- (c) ICT/BPO or any other sectors as appropriate – after completion of 45 hours a week. In this regard, I am proposing to come up with new regulations.

Clause 21 provides for compressed hours in respect of piece work or task work.

- An employer may require to work on compressed hours.
- A worker working on compressed hours shall be deemed to have performed a normal day's work or a week's work, even if he or she completes the task assigned to him or her within a shorter period of time.

Clause 22 provides that both an employer and a worker may request that work be performed on Flexi time. This caters for circumstances where a worker has to meet family obligations or an employer to meet business requirements.

Clause 23 provides for night shift. Night work cannot exceed five consecutive nights a week in any sector. In addition, an employer would be required to pay a night shift allowance of 15 %.

Madam Speaker, I wish to point out that, as far as night shift work is concerned, I am proposing to come forward with appropriate regulations to address the issue of the number of hours of work to be performed in specific sectors.

Clause 52 extends maternity leave to a working woman adopting a child.

Clause 46 extends the provision regarding the bank of sick leave to all workers.

Clause 47 extends the benefits of 30 days' vacation leave with pay to be taken every five years upon continuous employment with the same employer.

Madam Speaker, I would like to avail of this opportunity, to assure the workers who are entitled to vacation leave under existing Remuneration Order Regulations that necessary amendments would be made to these Regulations to ensure that they would not be penalized after the coming into operation of the Act.

Clause 48 extends leave entitlement for a worker getting married or for the wedding of his children.

Clause 49 grants leave with pay to attend service as juror.

Clause 50 grants leave with pay to participate in international sport events.

Clause 51 grants leave to a worker to attend court in any matter in which the worker is a party or a witness but it is without pay.

Workfare Programme - Part VII provides that -

- All workers irrespective of whether or not a case of unjustified termination has been lodged in Court shall now benefit directly from the scheme.
- A Tripartite Technical Committee shall be set up to ensure transparency and efficient management of the scheme.

The Workfare Programme Fund –

- (a) shall also include the funding of social plans to the benefits of the workers, and
- (b) pay the balance of 20% of the basic wage to workers who suffer industrial injury so that the worker enjoys his full wages during the period of injury leave.

Clause 114, violence at work provides that –

- Employers be vicariously liable to any act of sexual harassment committed on a worker.
- Provides for an increase in the fine for an offence of violence at work from Rs75,000 to Rs100,000.
- Provides for a restriction to carry out a body search on a worker by an employer or his *préposé*.

Madam Speaker, as regards the Employment Relations (Amendment) Bill -

Clause 9, section 37 provides for the new provisions regarding Recognition includes for the purpose of recognition of a union, the threshold of representativeness has been brought down to 20% from 30% of workers in a bargaining unit.

Clause 11, section 38 (a) – there shall be an automatic recognition of a trade union by an employer where an enterprise or part of an enterprise is sold, leased, transferred or otherwise disposed of, where the trade union was recognized as the bargaining agent of the initial employer.

Clause 14, section 51 - Procedure Agreement - provisions have been made in this Bill for a standard procedure agreement which shall be binding on both the trade union and the employer for the purpose of facilitating collective bargaining.

Clause 11, section 38 (a) - Collective Agreement - a new employer shall be bound by a collective agreement which is in force notwithstanding any change of employer.

The concept of representational status has been introduced to give a worker, the right to be represented by the trade union of which he is a member on the defence of any of his legal rights in Clause 6, section 31(a).

Clauses 21 and 28, sections 69, 86 and 87 - Dispute Resolution at the level of the Commission for Conciliation and Mediation (CCM)

Madam Speaker, the Commission for Conciliation and Mediation, being an ISO certified institution since December 2015, inspires confidence to the nation in so much as the Commission is not only a trusted institution but one that delivers conciliatory and mediation services to a standard that meets the expectations of the employees, trade unions and employers. This is necessary as the latter expects speedy resolution to their labour disputes in a conducive environment and in an amicable way with a view to promoting national harmony, increasing productivity and consequently positively contributing to our economic development and industrial peace. With this in mind, it has and will remain a top priority of this Government to strive and uphold an environment that is coherent with the promotion of economic development and industrial harmony. As such, it becomes of paramount importance to reinforce our legislative framework with a view to providing the CCM with means to achieve this end.

Having said so, the CCM requires an intelligently crafted organisational structure supported by a President, three Vice Presidents and an effective number of Conciliators and members. This will engineer the necessary dynamics to unleash the Commission's potential to effectively manage the settlement of labour disputes with proper mediation facilities.

**Clause 22, section 70 - Reinstatement**

The Employment Relations Tribunal has been empowered to deal with cases of reinstatement where the employment is terminated on the following grounds of discrimination, where a worker is on maternity leave, where a worker is absent from work on ground of injury or sickness, on ground a worker becoming or being a member of a trade union, where a worker files a complaint against his employer or where a worker exercises any of his rights under the Employment Relations Act, any other enactment, an agreement or a collective bargaining or an award.

The scope of the definition of dispute has been broadened to that effect.

**Clause 28, sections 98 A to 98J - National Tripartite Council**

Provision has been made for the setting up of a National Tripartite Council which will replace the Labour Advisory Council to promote social dialogue at national level, and to discuss labour market and IR issues and other pertinent issues from a global perspective.

**Clause 28, section 91 - National Remuneration Board**

Wages shall be determined on the basis of job occupation instead of industry and shall be reviewed every 5 years by the National Remuneration Board. There will be a timeframe for the submission of the recommendations.

Madam Speaker, I have sought the views of ILO on the two Bills. The ILO pointed out that precarious employment and the need to protect workers are issues of concern in many countries. The ILO is interested in the measures proposed in the Bills to address these issues, including their application after adoption of the Bills.

Madam Speaker, allow me, at this juncture, to inform the House that I will bring at Committee Stage amendments to Clause 7(b), Clause 28(f) and Clause 30(c) of the Employment Relations (Amendment) Bill so as to clarify matters, and Clause 26(b) of the Workers' Rights Bill to provide that the job contractor shall ensure his workers are not paid remuneration less favourable than workers employed by the principal employer performing work of equal value, and to dispel any confusion regarding the contribution of 1% made by the worker, Clause 79(2) to provide that the contribution of the worker be credited into his account at National Savings Fund as it is the case presently instead of the Workfare Programme Fund – I was making reference to the 1% contribution mentioned earlier.

I would like also to inform the House that a typo error occurred at paragraph 3 of the Third Schedule of the Workers' Rights Bill where the word "incorrect" appears instead of the word "correct" and same will be rectified at editorial level.

Madam Speaker, I am convinced that labour protection has to go hand-in-hand with economic growth. It has always been and is one of the priorities of this Government to help create an environment of industrial peace, economic and social stability. This can only be achieved through the preservation of fundamental rights and adequate social protection and equity. I am also convinced that our labour law can benefit both the workers and the employers.

This is why, Madam Speaker, we have brought these two Bills.

I, now, commend the Bills to the House.

**Mr Sinatambou rose and seconded.**

*Question put and agreed to.*

**Madam Speaker:** Hon. Adrien Duval!

(6.17 p.m.)

**Mr A. Duval (First Member for Curepipe and Midlands):** Thank you, Madam Speaker.

Madam Speaker, this is probably the most important Bill, one of the most, that has come through this House during this mandate and it certainly has very wide implication both on those it seeks to protect and also the stakeholders that it would inevitably have an effect on.

It has to be noted, Madam Speaker, that, during the debate for the Budget speeches, the PMSD had made a plea to Government, to the hon. Prime Minister, speaking of the Tale of Two Cities, that is, the divide between the public sector and the private sector in terms of benefits and attractiveness that it should be realigned.

We are happy that this Bill, in its intention, seeks to redress that imbalance in a view to render job seeking in the private sector more attractive. Undeniably, there are many provisions in this Bill that are good, we have to say it. I will come to it later. There are many provisions, not many, but there are some provisions with a lot of importance. However, that still remains unclear and we believe having been adequately studied and the impact that it may have on the economy, on jobs also unfortunately has not been, it seems, adequately studied and this is a grey zone. I hope that, during the course of the debate – I have not heard so far many clarifications from the Minister that it would be clarified.

It is our job, of course, Madam Speaker, as Members of the Opposition, even if in principle, there are as we say many good measures to raise the ones that may have also a negative impact, be it on the economy, be it on jobs themselves. As you know, Madam Speaker, there is always a fine balance between giving more protection to workers, giving employment rights and jobs. There is this equilibrium that has to be respected. It is a very fine line.

So, therefore, Madam Speaker, there are good measures. There are measures that need to be clarified and corrected. We will make some propositions and there are a few measures which create even more confusion, Madam Speaker. I will come to it later. There are some measures that can be completely removed. It does not add much. For example, the fixed term

contract, I will come to the confusion that there is not only in the Bill, not only for Members of this House, but I think in general and this is a problem of drafting.

Let me just start, Madam Speaker, if I may take you a little to down history memory lane in terms of the rights of workers. First of all, as you know, Madam Speaker, post-independence, we had a mono crop economy which was the only economy, it was the sugar cane sector. It was a very difficult economy, very hard to work in it, very harsh conditions, not many benefits, not many rights, not much protection to workers. However, it was necessary at that time to make the country stand on its feet and we had after, in 1983 Government with Sir Anerood Jugnauth as the Prime Minister and Sir Gaëtan Duval was the Minister for Tourism among other Ministries where he launched the manufacturing sector. *La zone franche* where we diversified the economy from the monocrop economy to now new emerging sectors at the time which was *la zone franche*, some were saying *zone franche*, *zone souffrance*. Although conditions were harsh, although a lot of sweat has transpired from that era, it was necessary for the country, it was necessary for the economy. So, was the tourism industry. Some were saying it would be *la prostitution*, but it was also important, it was also necessary although at that time, if I am not incorrect, there were different Remuneration Orders, different conditions of work that would apply for the *zone franche*, for the tourism industry than the rest of the country. But it was important, Madam Speaker. Why? Because it has allowed so many workers, predominantly females, women, in the *zone franche* that used to be household employees to be empowered and now to go and work in a factory, to go and work in the *zone franche*. This allowed them a better salary, this allowed them to take a loan, to get a house eventually, to send their children to schools, to universities and so many doctors, lawyers of today, scientists, you name it, Madam Speaker, engineers came from that background and have been able today to help drive this country even further and higher. This would not be possible at that time had we not made the sacrifice and the hard work that was necessary.

Obviously, when things got better, be it in the *zone franche*, in the tourism, when the country could afford it, conditions were improved, there was COLA, the Cost of Living Allowance which Sir Gaëtan Duval brought, there was a thirteenth month allowance, what is known today as the end of year bonus.

*(Interruptions)*

Yes, again Sir Gaëtan Duval, and there were many others that came when the time was right. So, this, Madam Speaker, is the backdrop that we have to keep in mind. Thousands of families have worked hard for this country, *à la sueur de leur front* have built this country, have built this economy, have built the industries we have today, have built us today, as a middle income economy, with one of the highest rates of people having gone to school, to universities in Africa and so on. So, this is what we have achieved, but we have achieved thanks to those people. And it is absolutely right today that if we can give them back, in their names, benefits, the rights and the protection that we can give them.

So, we are all for, Madam Speaker. We are always all for, even the minimum salary, we were all for. When the minimum salary came, obviously there was the issue of quantum and the issue of: would it be a burden? Would it have a contrary effect? Rather than protecting a decent salary, it could have a contrary effect of if being too high, meaning a reduction in jobs. So, everybody loses at the end of the day. We were all for the minimum salary, right from the start of the mandate in 2014 and we are all for better protection for workers, better rights, but the point in contention today is whether we have sufficiently canvassed the opinions of the stakeholders, whether we have adequately identified the problems that may crop up, whether we are adequately prepared in terms of an economy to pay the cost that will be associated with the protections and the new measures that are coming with the Workers' Rights Bill. That is the question that I do not necessarily have the answer. But, Madam Speaker, it is not for me to have the answer. It is for the Minister. He is bringing the legislation and he, I hope, says he has as far as reasonably possible listened to stakeholders. I don't think that is correct, Madam Speaker. We should take for the tourism industry on its own which accounts for 24% with all the subdivisions of the economy, of GDP and l'AHRIM was never consulted for example. Business Mauritius is one thing, l'AHRIM is something else. When we talk about 24% on this as a pillar of the economy, l'AHRIM was not consulted.

With regard to the Portable Retirement Gratuity Fund, l'AHRIM has not been offered a seat on the table either for the Technical Committee that will be set up. So, is this as far as possible having consulted with everyone? I do not think so, Madam Speaker. For me, this is the biggest issue. As you will see throughout my speech, Madam Speaker, I will develop the grey and the not so good, you will see that we have no big issue with the Bill, no big problems. Whatever rights are being given, fair enough, we are for it, but ensure that you are

not achieving the counter effect that may be detrimental to job creation in itself, that may lead to a reduction in the incentive to promote people again through that. We will come to it.

So, Madam Speaker, let me start with the good measures. Let me just say something very important, Madam Speaker. I have not adequately set the backdrop. Madam Speaker, how many people will be affected by this legislation? I have done the research and we have to realise that we are talking about the workforce in Mauritius being 586,400 people working in the workforce and with the 600,000 yearly remuneration, the increase which is nearly 100% increase from the previous Bill, for the private sector, we are going now to substantially capture the market force in this Bill. 93% of people earn less than Rs50,000 a month. So, if you have a labour force of 586,000, you discount the 41,000 who earn more than Rs50,000, you are left with 544,766 people whose rights will be directly affected by this Bill, for the better, but still. And then, what do you have on the other side of the scale, Madam Speaker? You have something like 70,000 companies and in addition to those, you have another 190,000 people with business registration cards. So, people involved in any commercial activity, holder of the BRN. We are talking on both sides of the scales of hundreds of thousands of stakeholders involved. So, the question that begs to be asked again is: have we sufficiently made sure that whatever we are doing today is not going to upset any balance with regard to some provisions - not all of them - which will no doubt increase the cost of production and the cost associated with an employee across the board for 93% of the case? So, that is the backdrop.

Madam Speaker, the good measures is no doubt, first of all, the protection for remuneration. Now, we are going to empower, that was to give protective orders to try and secure remuneration. My question is - it applies only in the Act, it is only empowered to do so when there is reasonable belief that the company is going into liquidation and will not be able to pay the workers, whether this also will capture, in some cases, workers who have been unjustly dismissed and who, once have been dismissed, have entered an action and whose company they are suing now, can fall into receivership, whether they also will have that entitlement, cases that are currently pending before the Court as well? So, if I do not see it anywhere, it is clearly mentioned that it is solely for companies that are going into administration, receivership, liquidation, but it does not say anything about workers whose employment have been terminated, are suing the company for past wages or for severance allowance, and if the company that they are suing is going into liquidation whether they can also trigger the protection order from the Court, and it think he should include those, as well.

Second thing, Madam Speaker, with regard to the Wage Guarantee Fund, Court order on wages, that is good. With regard to the atypical work, the protection that the Minister is giving is good. He is giving, however, protection from discrimination. I will come to the point later with regard to discrimination, although we are widening the scope, we are doing nothing to now have employments in the public service, although they are not exempted from the application to harmonise the legal framework that exists and to put everything under one roof, as we have been asking for years, here in the PMSD, under the Equal Opportunity Act, still has not been done, and my plea later will be to do so. There is the Compromise Agreement which I firmly believe will help reduce cases in Industrial Court. I think now that you are formalising the agreement, both parties have to have this agreement vetted by legal advisers or officers of the Labour Office. I think it is going some way in now trying to do alternate dispute resolution. Again, it is most symbolical; it did exist before. You could have an employee, signed *une quittance* to waive his rights, past, future, present against any claim he may have and in exchange of receipt for compensation, but it did not have to be vetted by anyone, he did not have to solicit advice to make an informed opinion. Now, that he has added this requirement, I think it is a good thing, and I think it will either go some way in unclogging the system, the Industrial Court which is completely jammed with cases for dismissal, etc. So, I think it is a good thing.

Now, we have included benefits for people who adopt children less than 12 months of age and also, protection for anyone who has an handicapped child from termination. The only thing I ask the Minister, Madam Speaker, is that if you look at this Schedule for benefits, you will see that the maternity allowance benefit for someone who is going into labour or for someone who adopts is only Rs3,000 and has not been reviewed, and I think this should be reviewed. I think since we are all about giving increasing benefits, this would be one benefit that could see itself increased three-fold. Rs10,000, why not? I think Rs3,000 is not enough. If you look at the cost of living today, just to buy pampers and just to buy *couche*, etc, it costs so much more today. So, I think this is an item I would actually push on to increase, put it at Rs10,000. Same for the death, the allowance, when the employee dies that, the family earns. It could be also put on the same scale.

And then, we see, Madam Speaker, that there is a creation of three special leaves, an aggregate of 12 days' leave. There is leave for six days for civil or religious wedding; there are three days for the religious wedding or civil marriage of your child and then, three days'

leave for the death of your spouse. This also, on its own, the item is absolutely justified. There is Juror's leave, there is leave to go to Court and there are all sorts of things.

Going back to the important, Madam Speaker, with regard to the termination of the employment, I see that the Minister has redressed something that, as a lawyer, myself, I have practised in Industrial Court and having acted as Counsel for employees facing disciplinary action in a Disciplinary Committee. The only thing that is always asked is particulars of the offence and that is not always given. And now, it has become a legal requirement to justify why it is the employee facing disciplinary action under the heading, because many times, it is abused and it is done in disguise. It may be done under pretext of discrimination in disguise and they invent misconduct or whatever, or it can also be done sometimes for reduction of workforce, but again, in disguise. So, it is good now that we have to formally provide particulars. So, this, Madam Speaker, is amongst the things that, I think, were the positive aspects of the Bill, that I fully support. Also, with regard to the Workfare Programme, there is the remuneration due, this is important, to a worker where an enterprise is considered to be insolvent, you safeguard the worker's interest and you guarantee remuneration up to Rs50,000, three months' basic salary and the limit is Rs50,000. It is important, why? Because since 2015 to date, 5,000 jobs have been lost in the manufacturing sector. So, there is a case to protect these employees. And for that again, I commend the Minister, there is urgency, there is a case for it, he has done it. *Bravo!*

Madam Speaker, that is amongst the noteworthy, I will see there are others. It is not really my job, Madam Speaker, as a Member of the Opposition to go lengthily on what is good rather focus on what is bad. The main issue for what is bad, now that I am getting on this chapter is that, whether the intention was no doubt good, we have tried to capture the whole of the labour force under this Act. This is a big mistake, Madam Speaker. If you want to give benefits to the poor, people who really need it, the poor, those on the lower end of the salary scale, then you do it, you keep it, rather give to less, but give better protection, weighing the risks than trying to capture everyone. You will agree, Madam Speaker, that Rs50,000 today is basically a semi-managerial position. At a hotel a front of its manager will be earning something like Rs50,000. So, we are not just touching on workers as was defined in the previous Act, who were drawing remuneration of Rs30,000. Now, we have substantially widened the scope in terms of who is a worker in the current day and age. And therefore, the question that I hope the Minister canvasses in his reply is: why is it that he felt he should give such a high threshold for workers up to Rs50,000 of monthly salary?

Rs600,000 a year divided by 12 it is Rs50,000 of monthly salary; basic salary we are talking about which is really high, Madam Speaker. Therefore, the point is that had you focussed on those at the bottom of the ladder, you could have done even more for these workers, we are talking about maternity allowance, you could have even tripled that if you wanted, but because you are now trying to focus on pleasing everyone, on pleasing 93% of the country, you run the risk of being caught in your own game which is at the expense of affording better rise to everyone, you end up with less jobs, you end up with people not wanting to hire anymore, you end up with therefore businesses being less competitive with the economy more so suffering from it. That is the question that the Minister has to answer, because the protection cost, Madam Speaker, in this Bill, if you look, first of all, at the cap that we have imposed, the weekly cap on number of working hours used to be 90 for two weeks, now it is 45 per week. You have removed the flexibility of the industries, of the enterprises to decide themselves how they will distribute these 90 hours. Not only have you forced them now to comply with the 44 hours of normal working hours, but you have also dictated how it should be. Eight hours for the first five days, and five hours on the sixth day or nine hours for five days. Over than that, you pay extra allowance, you pay additional remuneration at a rate higher obviously. We will go to that later, but this is the first thing. So, you have taken away flexibility and there is a saying that says, you know, when the music changes, so does the dance. Let us hope that the dance does not change because it is working so far for us, but I am concerned with the fact that you have left now the framework a lot more rigid because flexibility allows you to adapt to market changes, allows to adapt to competitors outside of Mauritius. If you take the tourism industry, it allows us to adapt to whatever Maldives, Seychelles or our closest competitors are doing, and when you take out that flexibility you obviously make it more of a constraint to adapt, make it more of a constraint to evolve and to beat your competitors. So, let us think carefully of the risk associated with what he has done. On paper, at the end of the day, I have not heard a good case for changing it. 90 hours in 14 days, 45 hours in seven days, why is it that you felt that you had to impose this on the workforce in Mauritius, I have not heard the good case, the compelling case since as I told you, you are making the system more rigid.

So, therefore, the overtime remuneration has stayed the same for weekdays, but what has increased the production cost is now the public holidays. It was before, at any time during a public holiday, therefore within or outside normal working hours, the rate was paid at 200% the times of the normal wage, so, two times. Now, when you are working on a public holiday

over and above normal working hours, the rate is now 300%, three times. So, there is a 100% increase now in production cost for those who work on public holidays. The hospitality sector, ICT, BPO, and, in fact, these are the three main sectors that have pleaded the Minister to give clarification so far. And although the Minister will come after the Bill is voted with new remuneration orders, he has not clarified, in his second reading, what he is doing with regard to that. So, again, this 100% increase in terms of overtime rate is an added cost of production, what he has done as well is with regard to the shift work when it is night shift, there is a 5% increase from formally 10% of your basic salary, now it would be 15%.

And then there is this issue of Portable Retirement Gratuity Fund Contribution. It was not in the Bill, he has clarified and I thank him for that, that it would remain 4.8% as was first proposed in the Bill that was removed from second reading and replaced by this one, which means that in addition to what I have spoken of, now there would be a new contribution by the employer.

Madam Speaker, an employer pays 6% of an employee's salary to the National Pension Fund, then he pays another 2.5% to the National Savings Fund, 1.5% to the Mauritius Training Levy, and work fair when taken together, yes. So, Madam Speaker, that is, 10% of every employee's salary is given to the Government. Now with the PRGF, the Portable Retirement Gratuity Fund, there will be another 4.8% which brings the total to nearly 15%, 14.8%. So, for a worker who draws Rs50,000 of basic salary, you will have 14.8%.

So, Madam Speaker, this is about the few increases in the production cost that we have to take into consideration and that we have to make sure will not *étouffer* the private sector, the job market, job creation and all this. So, that is for me the rise in production cost when you also take into account the fact - and I will come to that later - that after every five consecutive years now, it has been revised to one month now, the worker will be entitled to one month paid leave. Fair enough, Madam Speaker! But as I said, having the threshold so high, having semi-managerial position, sometimes Managers falling into that salary scale, you have employees critical to the operation of the company. Let us say a Manager, that may well be, now that he will have this right to take a month leave paid at the expense obviously of the operation of the company when he is a critical employee. So, we should think also carefully about that. Not all employees are equal in terms of duties and responsibilities and how important they are to the organisation. When you think about there is a provision at clause 61(3) that –

“An agreement shall not be broken by a worker where he absents himself from work for not more than 5 consecutive working days without good and sufficient cause for a first time.”

That should not count then as a ground for termination when in the previous clause it was three days for the first time. And what it means, Madam Speaker? I think this is to be removed from the provisions of the Bill, I think this is giving the wrong example in terms of what comes obviously with the benefits, but with the responsibility because if you have again a worker that is critical to the operation of the company, it is wholly unacceptable. For example, for catering company, the chef who draws a salary of Rs50,000 can allow himself to be absent for five consecutive working days. So, one week of absence without any reason whatsoever to show up to work on the next Monday. Company had a huge contract for the 50 years Independence, let say, and then what, Madam Speaker? The company had a huge contract for the 50 years independence - they say - and then what, Madam Speaker? So, you have to have some sort of safeguard form abuse as well. You cannot just give to 93% and expecting that it will not bring abuses as well, and this I think should be removed. Imagine that in a small and medium enterprise of 5 employees, the critical employee just goes out AWOL (Absence Without Official Leave), five days or one week at your most critical moment in your operation for the year. For example, a restaurant for the end of the year, for New Year, let's say, and then what? You cannot even take disciplinary actions against it. So, that is not good and I think this should be removed completely from the Bill. This is one thing.

The other thing, Madam Speaker, that has to be outright removed, since we are on that topic, is Section 28. There is now, Madam Speaker, a joint liability and I fail to understand how this even forms part of this Bill. There is a joint liability on remuneration because, you know, there is now definition to a job contractor and the employer of a job contractor as well. There is a joint liability now on remuneration. Let me simplify it. I have to do some construction work. I have to build a house, for example. I look for a job contractor. Obviously, the job contractor will have his employees; he has his competency in that field. I don't want to go and hire individually masons, painters or whatever and I get the job contractor - this is how it works nowadays. So, I expect from the job contractor quality, work on time, and obviously, that the job is done without any hassle - from me as well as I am paying, I do my part. My responsibility under that service agreement is to pay on time and the rest of the responsibility is for the service provider to deal with, those are his obligations

under that service agreement. But I cannot, now, with regard to that Section 29 – Joint liability on remuneration, be made jointly and severably responsible for the employees, the *préposés* at the end of the day of the job contractor. I, as a customer, cannot be made jointly and severably responsible, liable to the same standard as the job contractor if ever the employees have not been paid for that month or have not been paid fully or have not had their meal allowance or have not had their meal break, etc., not only conditions of work, but salary as well. I mean, this is non-sense, Madam Speaker. So, then, I go and recruit 5 masons on my own, I will probably make a saving as well since at the end of the day I would be made jointly and severably liable. Which means what, that I can be sued in my own name, as that of the contractor, for a claim for salary against the contractor; I can be added to that as a party or sued myself if the contractor goes out of business or goes bankrupt. So, tomorrow, let's say, I take one big construction company, you imagine now having a thousand of workers having worked on Côte d'Or for example, will it be fair now for Côte d'Or workers, who are all workers of job contractors, to come and sue the State of Mauritius, the Côte d'Or MMIA if they have not been paid their allowances, their salaries? Is it logical? I have not seen anywhere, Madam Speaker, such an imposition of a duty, and this has to be removed. This has no justification for it at all. It will kill the industry of job contractors, Madam Speaker, because nobody will want – well, should I now ask the employee of the job contractor to bring his *fiche de paye*? Will I need to now ask every employee of the job contractor who is going to work for me, or not - it does not specify if the employer has to work for you by the way - okay, come and show me your payslip, let me see if I can afford in case he does not pay you, I will have to pay you. It does not make sense. First of all, you, as a customer, have no right to ask for the payslip of the employee of the job contractor. It is against all the principles of right to privacy. And secondly, it is absolutely not the problem of the customer whether or not these persons have been paid. I mean, this is how it works everywhere around the world. And why are we coming with this? I do not know if it is a problem with the drafting - I don't think so, because there is this imposition, vicarious liability also imposed at the end, and I will get to that later. So this is one of the things that has to be outright removed from the Bill. There is this 5-day unjustified absence, as I said. And then, there is a technical point. You will see at Section 18, Madam Speaker, there is what you call 'Void agreement'. I respect what the Minister has tried to achieve, he wants to ensure now with Section 18, that every person in a work contract now shall draw a monthly remuneration and that no contract of employment can be made with payment of salary paid later than one month, basically this is it. But there is a problem with the wording, in that it says –

“18. Void agreement

(1) No person shall enter into an agreement where remuneration is to be paid at intervals of more than one month.”

Fair enough! However -

(3) Any agreement which contains a provision inconsistent with subsection (1) - which I have just said - (...) shall, to the extent of the inconsistency, be void.”

So, today, if I have a work agreement, I employ someone and I tell him that he will now be paid every one and a half months, according to that Section 18(3), the agreement is void. What does it mean - I hope I am corrected - it means that the worker will not be afforded any protection from the Act altogether. If the agreement is void, then it is not an agreement that is recognised under the Act and, therefore, the person who has signed this contract to be paid at intervals of more than one month, would fall completely outside of the scope of the Workers’ Bill. It has to be reworded. Subsection (3) – it seems to me –

“Any agreement which contains a provision inconsistent with subsection (1) or (2) shall, to the extent of the inconsistency, be void.”

This is something, Madam Speaker, for the Minister to clarify. Another important issue that has to be either completely removed or substantially changed is the Fixed term agreement, under Section 13 of the Act.

Madam Speaker, the Fixed term agreement provides now that, you may not have now Fixed term agreements unless it is for a specific purpose, for a specific work and, therefore, it has tried to narrow down the definition of a Fixed term agreement, *un contrat à durée déterminée*, which is very common in France, for example, Madam Speaker, as work contracts. Here, in Mauritius, we are trying now, as far as possible, to do away with that. The problem, Madam Speaker, is what is *un contrat à durée déterminée*? It is a contract that, by its definition, speaks by a length of time, but we fail to provide in the Act a threshold as to what is the maximum period for *un contrat à durée déterminée*. In the previous Act, it was 24 months. In this Act, there is no limitation. But you would say, very well, it is good. Then, anyone has flexibility. The employer and the employee are free to enter into any contract à *durée déterminée*.

But unfortunately, Madam Speaker, if you have to go to transitional - it has taken me some time to look at it. You have to find it, you have to go to the transitional provisions at

section 127 where it implies that any contract, as from the application of this Act, à *durée indéterminée* which is more than 12 months in length...

*(Interruptions)*

*Déterminée*, I apologise. Any fixed term contract- *contrat à durée déterminée* for a period of more than 12 months will be as from the commencement of this Act deemed to be an indeterminate agreement *contrat à durée indéterminée* with effect from the month immediately following the twelfth month of employment. Therefore, it follows, it is not expressed in the Act, it implies from this transition of provision that we are limiting it to 12 months. Why do we have to go? The Bill, as it is, contains something like 130 pages; it has been presented to the House once, three weeks ago, withdrawn, a new one presented. I mean there is already a lot to deal with – if you just look at my post-it, Madam Speaker, you will see how many sections there are to deal with and you leave something as important as the fixed term contract - maximum threshold, *au fond complètement* in the transitional provision. The Minister again is more than welcome to clarify that, Madam Speaker.

But one thing about this fixed term that has to be said is that there is something of a total confusion with regard to its wording; as with regard to section 13 subsection 6, let me read it to you –

“a worker employed on a fixed term contract shall be deemed to be in continuous employment where there is a break not exceeding 28 days between any 2 fixed term contracts.”

This is one thing to keep in mind and then you have that requirement when you are employing someone for more than one month to send that form which is in the Schedule, that employment form to the Permanent Secretary at the Ministry of Labour to so to speak register that person. More than one month, so one month and a half, two months, three months would be enough for you to have to register that person, a mason, a painter, whatever it is within 14 days to the Permanent Secretary, I think it is unworkable on its own. In that nobody will do it, especially for manual labour but if you keep that in mind and you have that provision where, therefore, any fixed term contracts, no matter the length. So, it can be one month. I have constructed my house in the previous example; I have to paint it now. I get a painter a one month contract to paint the house. Let's say the outside and then construction is completed inside. After two weeks of ending his contract, I give him another one month contract, now to

paint inside. According to that law, he is now working for me in an indeterminate contract. I mean this is what we read from it –

“A worker employed on a fixed term contract shall be deemed to be in continuous employment where there is a break not exceeding 28 days between any 2 fixed term contracts.”

So, provided there is not more than 28 days between and because of that requirement to send that Schedule/the form if it is more than one month, you can end up with someone in full employment now with you. Full employment, provided he has done two contracts and the one has finished and the other one begun not later than 28 days. If it is different, clarify it. It is your job after all.

So, Madam Speaker, that was to me the things that have to be completely removed from this Bill. And then you have lastly, on the last core, those measures that I think will have a very serious impact on the economy and that needs either clarification or needs to be halted, pending proper quantification, identification, survey, regulatory impact assessment, all of it is done and we are certain that we know that we are doing because we are potentially playing with fire.

The first one, Madam Speaker, is the Portable Retirement Gratuity Scheme. Madam Speaker, to put it simply, to put it clearly what it is, now, as the Minister has explained, we are going to provide for a retirement scheme for cases of death, of retirement, of loss of employment or changes in job and obviously this has to be paid for. Like I said earlier, 4.8% in addition to the already high burden of 10% on each and every worker's head will have to be paid now by the employer. But where the Portable Gratuity Retirement Scheme Fund needs to be clarified, I have nothing against it, I am all for it. But where it has to be clarified, Madam Speaker, is with regard to that item of contribution. If you look at the Bill, you will see that there is a section which says that if the worker when he becomes eligible for it and his employer has contributed to the fund, has drawn a higher salary by the end of the day and his employer has contributed less than what he has to be paid, then the employer needs to pay the difference into the scheme, into the fund. How can this happen, Madam Speaker? Let's say you are employing someone. For 5 years, he has been earning Rs25,000 and then after that he obtained a promotion and he is now earning Rs50,000, your 4.8% contribution on Rs25,000 for 5 years is one thing and then your contribution has increased for the Rs50,000 for the second tranche of 5 years.

But when payment has to be done to that person, it is 15 working days' worth of salary, according to the latest salary, per year of service. But again if you have contributed 4.8% for half of the length of service on a Rs20,000 salary scale, and then for the second half, the salary has doubled, there will be a *manquement*. So, there will be hole and what hole, according to the Act, has to be replenished by the employer, as directly to the section if you want - oh my God! I think it is clear, no.

**Madam Speaker:** I will interrupt you hon. Member, I will ask the Deputy Speaker to take the Chair.

(7.10 p.m.)

*At this stage, the Deputy Speaker took the Chair.*

**The Deputy Speaker:** Please be seated! Hon. Duval, you may resume your speech.

**Mr A. Duval:** Yes, thank you. Mr Deputy Speaker. So, therefore, I was saying Mr Deputy Speaker, the Portable Retirement Gratuity Fund, I will direct you to the section, it may be clear, if it is not clear. You will see that- let me just go to it. 87. You will see, Mr Deputy Speaker, that there is provision that whenever the worker becomes eligible for payment under that fund, therefore, a fee after he goes to retirement whatever, his employer will have to pay whatever is missing in terms of contributions because it will not always add up, again. A half of his term of service is earned a sum and then after that he has been increased, there will always be a shortfall for the first half and what it says in this Act, I cannot find it but it says – I am 100% certain - that the employer will have to make a contribution to the fund. So, there is a top-up that is required on the part of the employer and that top-up, for me, is an element of uncertainty that can be fatal to a company. Think about it. Someone earns at the end of a 10-year service, Rs50,000, you have had to contribute nearly 5% of it, it makes a certain sum for 10 years and so, if someone is earning Rs50,000, by the time he goes to retirement after 10 years of service, he will be eligible to half of that Rs50,000. For one year, Rs25,000×10 years: Rs250,000. But if you paid his contribution for the first half of his length of service, not on a basis of Rs50,000 but on a basis of let say Rs20,000, then he would have paid 4.8% of Rs20,000 and not of Rs50,000. There is a huge shortfall which he would have to obviously top-up. It is clear. So, the top-up, Mr Deputy Speaker, has to be removed. It adds uncertainty. It should be a fixed payment every month. As the NPF, as the NSF, as the levy, it should be fixed without anything else. One day, when the employee leaves or retires and if by the time he leaves or if he is on the job at the time of

retirement or death whatever it is, all the circumstances that may arise is going to be eligible, then this top-up should be taken out, it should be fixed, it should be clear to everyone what am I paying, how much am I paying every month. Therefore, I appeal to the Minister just because there is already a lot of concern with this Bill with regard to the ability to pay for all the expenses that will come with it, just to add some certainty in terms of what the employer is contributing for the employee every month, I think it is fair.

That is one thing, Mr Deputy Speaker. And then, there is this famous redundancy board. This redundancy board, Mr Deputy Speaker, is basically replacing the TCSB, the Termination Contract Service Board. I have two issues with the Board, first of all, the mode of appointment, although it is the same as the TCSB, although someone to be appointed as President or Vice-President has to be qualified, he has to be qualified for appointment as a Judge. It does not mean he has to be a Judge. He has to have the level of experience in the law practice, 15 years to be qualified, eligible for qualification as a Judge. That does not mean anything. It does not say anything about the independence of the member. You will see that the redundancy board will have a huge power, it will first of all, *ça va régir*, Mr Deputy Speaker, Sir. Any company would have a turnover of Rs25 m. So, virtually most SMEs, given that the turnover - definition of SMEs is a company whose turnover does not exceed Rs50m., that is one or who employs more than 15 people. Again, most SMEs will be trapped within that Redundancy Board requirement that when you are reducing your workforce for economic or technological or whatever reason is provided, then you should seek permission of the Board. You have to make your case before the Board and if the Board agrees to it, then you would be allowed to do it, you would be allowed to close down your company or reduce your workforce. For both events, you have to seek the Board. So, it makes the case to have a Board which is impartial, it makes the case to have a Board which is independent because the decision of the Board is final. It is a quasi-tribunal in the sense that it can make decisions if it tells you, you cannot close down, then you cannot close down unless you challenge that decision. So, if you are going to have those powers, then guarantee a form of independence. Why can't you have the Public Service Commission since it is nearly as a Tribunal, something like the GLSC? Find a service commission that will be able to make appointment. I think personally it falls under the Public Service Commission because it is at the level of your Ministry. Find whatever is the right avenue to guarantee the mode of appointment is independent because that person dealing with matters which are going to be sensitive with companies closing down and all of this, you want someone who is apolitical, you want

someone who does not have any undue influence being asserted on him, you want also some sort of freedom from corruption and all of this because there is going to be, at some point, temptation on this Board. Imagine if we have to close down and the shareholders tend to lose billions of rupees, let us take a case, a big company in terms of interest, if the Board finds against them, so that is one thing, independence.

The second thing is, Mr Deputy Speaker, the crux of the matter for me for that Board, how we are repeating exactly the same mistake as for the TCSB which was notorious for taking ages to determine an application for reduction of workforce. This was the reason why mainly it was discarded, it was abolished. It was notorious for taking months on end. Are we dealing with the time limit in position sufficiently? My argument, Mr Deputy Speaker, is very simple. You put a limitation on the Board to complete the proceedings within 30 days, as from proceedings are commenced, we have 30 days but, I think, *le contentieux*, is in the second part -

“(...) for such longer period as may be agreed by the parties (...)”

Given the wide powers of the Board, quasi-judicial powers, it is very easy to foresee, Mr Deputy Speaker, Sir, that if the President of the Board ask the Parties for an extension, it has 30 days only to deal with the application for closing down or reduction of workforce, it has to have the approval of both parties. But it is easy to foresee that the President is going to ask both parties and that no one would want to contravene the President in that case and say: ‘no you have got 30 days, I don’t agree, you deal with what you have.’ Obviously, anyone would say, be it the employee, be it the employer, facing the risk of the Board finding against them, they would say: ‘well, okay, take the time that you want.’ This is how it is going to be in practice. No one is going to put their foot down and say: ‘no, there is too much at stake.’ Because if you want to close down your company, you want to safeguard whatever assets are remaining, you don’t want to have a negative answer and to have to go to appeal and all that will take time.

But the issue, Mr Deputy Speaker, Sir, of this Board is that it is time sensitive. If a company is in a dire economic situation and needs to apply to the Board for permission to reduce its workforce, it is because it is an urgent matter which is time sensitive. The reason why there is a 30 days’ limit is because again, we recognise the fact that it is time sensitive. But are we providing adequately for a time limit not to be again like in the case of a TCSB, pushed on and on, etc and we end up with a Board which is going to determine at the end of

the day, don't forget? Given that the threshold for application to that Board is so low, 15 employees or more, for Rs25 m. turnover, is going to virtually capture almost all SMEs, companies, etc. So, everybody who wants to go for a reduction of workforce will have to apply to the Board and the composition of that Board is nearly virtually the same as it was for the TCSB. In fact, the quorum for the redundancy Board is one additional member than it was for the TCSB. I have it with me, I can share it to the Minister, the composition of the TCSB Board and their provisions. I have it with me; I can share it to the Minister, the composition of the TCFB Board and the provisions. So, we understand that logic tells us that if the TCFB was notorious for taking ages on dealing with time sensitive issues and that there was a lesser requirement for quorum, and now that we are coming with a Redundancy Board and that we are widening the scope of all the companies and SMEs that will have to go through it, you are finally sitting on a very, very complicated conundrum, Mr Deputy Speaker, Sir. And how do you ensure that they will be able to deliver their decision in that time sensitive period, within the 30 days limitation, I fail to see it, and I hope that the Minister takes this point, - it is, I believe, history has shown us, the past, the TCFB, that it has not worked - makes sure that this 30 days limitation cannot be extended so easily. Because, virtually, nobody will want to upset the President of that Board if he has got an interest in that application. It is like going to court and being a party, and then, being upset at the judge if you don't get a hearing at the time you want, for example, it is never done. So that is that for the Redundancy Board.

Mr Deputy Speaker, Sir, just a few last points. The one thing I spoke about earlier is the application of this Act with regard to the discrimination provisions. There is a wide scope now under Section 5, it is welcome for discrimination. The only problem, Mr Deputy Speaker, Sir, is that it will not apply to the public sector and to service commissions' appointment or delegated powers, which those have to be challenged at the Public Bodies Appeal Tribunal, and I think it is about time that we harmonise the law; that we have under one roof all cases to be heard of discrimination. For obvious reasons, the meaning given to discrimination in Section 5 is much narrower and encompasses a lot less cases than the huge meaning given to it in the Equal Opportunities Act. Any employer/employee can challenge many things under the Equal Opportunities Act, can challenge anything in his employment to the Equal Opportunities Commission, and then to the tribunal, only for the private sector. It is about time we rectify it, we should have one tribunal to hear cases of equal opportunities and discrimination, and it cannot be, because this is maintaining the Tale of two Cities of the public-private sector divide, and I hope that he will do so. I understand that to do so, there has

to be a Constitutional amendment because the PSC, etc. are constitutional bodies and he will, I hope, obtain advice if he thinks that this has to be done, as we strongly feel.

Mr Deputy Speaker, Sir, I hope that he clarifies with regard to overtime, hours of work, shifts, etc, that he keeps his promise, he clarifies it for the ICT hospitality sector. They are awaiting this. Since the Minister has not met the hospitality sector, *l'AHRIM* for example, for consultations and, Mr Deputy Speaker, Sir, I think this is the most relevant and important measures that had to be addressed.

Let me just conclude by saying, Mr Deputy Speaker, Sir, I honestly, genuinely want to commend the Minister for the good parts of the Bill; honestly. It is a very difficult legislation and it is a Bill that will have an impact on every person. But the one thing that I do hope the Minister replies to is the question why is it that there is no date for promulgation of this Act mentioned? Why is it? Why is it that we are asking Members of the Opposition to take the difficult task, three months before a general election, with 540,000 workers at stake and 260 companies and BRN holders, we give the difficult task to Members of this Opposition to take sides or to encamp or entrench in a position, or to voice out their concerns at the risk of being taxed later, surely no doubt, by all sorts of commentaries from Members of this House, when the Minister has not done the simple task of committing himself to passing this legislation and promulgating it, making it have force of law before the general elections? Why is it? Why is it? It was so cunning of Government to bring this legislation but not to take an undertaking as to when we are bringing it. We want a firm commitment from the Minister, today, at the closure, that he is, indeed, taking this Bill, making it promulgated into law with its application before the general election. Why, because it may well be *un mirage* for the employees. It may well be *une promesse d'intention qu'on ne vote pas, et qu'après les élections, on vient et on dit : "Mais vous savez, il y avait beaucoup de problèmes. On n'a pas eu le temps de faire notre Technical Committee, on n'a pas eu le temps de voir le Portable Gratuity Retirement Fund, on n'a pas eu le temps de venir avec les Remuneration Orders pour le ICT, hospitality sector and, therefore, we need to go back to step one, consultation and, maybe, we need to review the law »*. By then, Government will be Government, in Anil Gayan's words, and will decide. So, what guarantee do we have that this Bill in this form is going to come to effect before the general election?. We want a firm commitment from the Minister. We have taken position, we have said that there are things we agree with, we have said without fear or favour that there things that we think should be

removed and we have said that we genuinely believe that this is a sensitive issue that can have wide ranging implications on the economy.

Now, we have done our part, Mr Deputy Speaker, Sir, he does his part, he stands up like a man later, tomorrow, Tuesday, and he gives us...

*(Interruptions)*

**The Deputy Speaker:** Order please!

**Mr A. Duval:** ... a firm undertaking that it will be the case. He does that and we will be happy. Thank you Mr Deputy Speaker, Sir.

**The Deputy Speaker:** Hon. Benydin!

*(Interruptions)*

Order, please!

(7.29 p.m.)

**Mr T. Benydin (First Member for La Caverne & Phoenix):** Thank you, Mr Deputy Speaker, Sir. I have the impression while listening to hon. Adrien Duval that it is Business Mauritius bis, because I think he is more concerned about *AHRIM* than the interest of all the workers of this country. And he is even computing figures right before the two legislations are adopted because we are having debate. And this Government is serious...

*(Interruptions)*

He cannot listen. He never listens to people who follow him afterwards. He excels in criticisms, but he cannot listen to others. I reckon because he started his speech with *feu* Sir Gaëtan Duval, whom I had a lot of respect, whom we know also has contributed a lot; for example, for COLA, for bonus, but we also in the Government. For example, when he was speaking about parity in the end-of-year bonus, when it becomes official, even for the public officers, civil servants, it was during the Prime-ministership of Sir Anerood Jugnauth. So, you have also to recognise that the Government, at that time, had the political will also to bring better conditions of work for workers of this country. I am sorry because hon. Adrien Duval is not here. He said that when the music changes, the dance too changes. *Est-ce que zoli mamzel envie danse avec nous?*

*(Interruptions)*

If he wants, we are prepared for the game because we have just won *les Jeux des Iles de l'Océan Indien*.

*(Interruptions)*

Yes, maybe he can beat me in dancing, there is no problem about it. But, I think, that he should understand that this Government means business. I have never seen for the four and a half years that I am here, when we adopt legislations, they are not promulgated. I think I leave it to the Minister and other Members of the Government to give their views on this issue. But elections or no elections, we will still be here next time. So, why are you worrying? You should not worry. You see that even my colleagues in the trade union movement - you just go to Constituency No. 15 and then you will make your remarks - even they themselves are very critical, I know, because I have worked with them. But still, they consider, for example if I refer to Reaz Chuttoo, because I have learned from you. You always refer to Press cuttings, so let me also refer to some Press cuttings. For example, Reaz Chuttoo, my colleague, said –

*«Ce projet vient consacrer le principe de la mobilité d'emploi. Avec un tel projet le salarié se voit largement soulager. S'il est insatisfait de ces conditions d'emplois et de salaire avec son présent employeur, il est dans une meilleure disposition pour négocier des conditions plus favorables. S'il n'est toujours pas satisfait, il peut démissionner sans contrainte et trouver de l'emploi à de meilleures conditions ailleurs sans peur de perdre son temps de service. »*

Dixit, c'est Reaz Chuttoo du CTSP. Donc, je vois que même les syndicalistes les plus chevronnés acceptent que n'importe quelle législation n'est pas 100% parfait mais ils acceptent quand même que c'est bien et c'est dans l'avantage des travailleurs du pays. Donc, il faut quand même pas aller chercher des problèmes parce qu'à un moment donné, quand on parle par exemple du *Redundancy Board*, c'est aussi un combat qui a été mené par tous les syndicats. Même que le (TCSB) *Termination of Contract Service Board* avant avec quelques défauts, quand on avait enlevé cela dans la dernière législation, *Employment Rights Act*, il n'y avait pas. Donc maintenant on propose un *Redundancy Board* pour protéger davantage des travailleurs pour qu'ils ne soient pas injustement licenciés. Donc, on voit que l'honorable Adrien Duval est en train de trouver des problèmes maintenant si c'est 30 jours ou qu'est-ce qu'on va faire si cela prend un peu plus de temps ? Même si cela prend un peu plus de temps,

quel est le problème? L'essentiel c'est de protéger les travailleurs contre les licenciements abusifs. Donc, ça c'est l'essentiel.

Mr Deputy Speaker, Sir, labour laws should not be static. As such, they should be updated to address and meet new challenges and changes to act as effective tools of good labour governance. In this endeavour, the introduction of the Workers' Rights Bill and the geared objective and drive to repeal the Employment Rights Act, together with profound amendments that will be brought to the Employment Relations (Amendment) Bill constitute a significant breakthrough and a major development in the world of work to achieve decent work for workers by promoting social dialogue, job security and a comprehensive system of legislative framework to ensure that better conditions of work are in consonance with social justice.

Mr Deputy Speaker, Sir, as a Member of the Parliamentary Gender Caucus, which is chaired by the hon. Speaker, I wish to place on record my appreciation of the fact that the two Bills which we are debating today are gender sensitive. This is also a positive step that we should acclaim. I think this is very important. As I have said, it is regretted to note that at a time when Government is coming with a new legislation to promote workers' rights, Business Mauritius is complicating matters, and has even issued a long Press communiqué with regard to competitiveness of enterprises and trying to delay the adoption of the two legislations. For some employers, it is regretted to note that profit matters most for them as they still consider labour like a commodity in contradiction with what the ILO says. Because we say that labour is not a commodity, so we should give consideration to workers.

When workers have better conditions of work, they have better salaries, it is the enterprise which will progress, the enterprise will become more fruitful and at the end, it is not only the workers that benefit but as well the enterprise also will benefit. So, what is wrong when we are coming forward to improve legislation to better the conditions of workers and to bring them, as the hon. Minister of Labour in his speech stated, that we are committed, Mauritius has signed the Decent Work Country Agreement. So, we have to respect workers' rights, we have to give dignity to workers. And how do we do it? Just by talking! We have to amend laws, we have to bring changes in our legislation and that is effectively what we are doing here. Therefore, efforts to implement labour standards, as I have said, have sometimes been misunderstood as being anti-business. No, it is not anti-business. And some say a disincentive to investment or a hindrance of competitiveness. But there is growing evidence,

Mr Deputy Speaker, Sir, that social labour standards often accompanies improvements in productivity and economic performance.

Mr Deputy Speaker, Sir, as a former trade unionist, I feel really honoured with a feeling of satisfaction that Government is taking positive steps to provide better opportunities to workers, to obtain decent and productive work in conditions of equity, security and dignity. The prescriptions of the two proposed legislations will ensure better protection of workers and respond to the exigencies of international labour standards and norms. These two legislations represent also a marked improvement compared to the two previous labour laws, the Employment Rights Act and the Employment Relations Act of 2008 enacted by the previous Government where it was easier for employers to hire and fire workers at their whims and caprices.

M. le président, sans syndicats, les travailleurs ne peuvent faire valoir leurs droits. C'est pourquoi nous nous réjouissons que le gouvernement veille à ce que les lois soient adéquates et correctement appliquées et à travers ces deux textes de loi, permettent les travailleurs d'accéder à un travail productif dans des conditions de liberté, d'équité, de sécurité et de dignité où les droits sont protégés, y compris la protection sociale.

Mr Deputy Speaker, Sir, in addition to the Negative Income Tax Scheme, the Minimum Wage, the provision of a Portable Retirement Gratuity Fund, whose modalities I know were entrusted to a technical committee and we have now come with a report. As such, this constitutes a fundamental element of social peace and a stronger buffer against many of the negative social effects of possible crisis in future and facilitates the transition from work to retirement. The proposed Wage Guarantee Fund guaranteeing remuneration of up to Rs50, 000 to workers who lose their jobs in case of insolvency provides also better form of relief to workers facing problems of job loss.

Mr Deputy Speaker, Sir, various provisions of these two legislations will also pave the way towards a level playing field and bring at par workers of the private sector with their colleague workers in the public sector.

For example, reconciling work with family by providing more flexible work arrangements such as flexitime and the harmonisation of conditions of employment with new benefits, such as bank of sick leave and improvement related to two months – now, it's one month's - vacation leave for workers reckoning more than five years of service and such other facilities to participate - this has been mentioned by the hon. Minister of Labour - in

international sports events. The grant of a special leave of six working days when a worker, for example, gets married; three days for his son or daughter and three working days on death of parents, father, mother and spouse, child, are also innovative measures in the field of welfare and wellness of workers.

Mr Deputy Speaker, it is also encouraging to note that the Workers' Rights Bill makes provisions in section 10 for atypical worker and empowers the Minister to make such regulations as he thinks fit for the category of worker as well as a home worker and online platform worker. We note also a series of improvements regarding normal working hours and systems for payment of overtime.

Mr Deputy Speaker, in order to put workers on the same level playing field in both private and public sectors, it is gratifying to refer to the relevant provisions contained in section 4, Discrimination in employment and occupation. Section 23, Equal remuneration for work of equal value, section 109, Violence at work and other sections, namely 114,115 and 118.

Mr Deputy Speaker, the introduction of flexitime in the private sector in the proposed legislation can be agreed also through collective bargaining, flexitime schemes and working time account schemes are innovative measures that give opportunities to workers to have a degree of control over their working hours and to enable them to combine family and work life. Flexitime is complemented by other family friendly measures relating, for example, to parental leave, maternity protection and breastfeeding. The availability of affordable childcare facilities is also a positive measure to enable both men and women to engage fully in working life. Flexible arrangement on working schedules, job sharing and teleworking are changes in work organisations that benefit both workers and employers in the process to improve performance and working conditions of workers.

Mr Deputy Speaker, it is also assuring to note that with regard to provisions related to discrimination in employment, namely HIV status, sexual orientation, impairment, social origin among others are also taken care of in the new legal provisions. Stigma and discrimination among persons are key human rights and development issues that have a direct impact at the workplace. Discrimination can result in workers being unable to access to employment, thus losing their livelihoods. I would like here to quote the ILO Declaration of Philadelphia. I quote –

“All human beings irrespective of race, creed or sex, have the right to pursue both their material wellbeing and the spiritual development in conditions of freedom and dignity, of economic security and equal opportunity.”

Social partners should therefore join hands together to ensure that the universal right to non-discrimination in employment and occupation is upheld at all times and in all circumstances.

Mr Deputy Speaker, the protective order, as enshrined in Clause 32 of the Workers' Rights Bill, constitutes a positive step for workers in case an employer fails to pay to him or her any remuneration, in that the Supervising Officer of the Ministry of Labour may apply to the Judge in Chamber for a protective order on behalf of the worker or group of workers in the amount of remuneration due against an employer and any bank or other financial institution holding funds on behalf of the employer.

Mr Deputy Speaker, another marked improvement in the Bill is the setting up of a Wage Guarantee Fund Account under the Workers Programme Fund. Gone are the days when workers would find themselves without a cent when enterprises are subject to closure as a result of insolvency and by the Supreme Court. The Wage Guarantee Fund therefore makes provision for remuneration due to a worker up to an amount of Rs50,000.

Mr Deputy Speaker, I already talked about the elimination of the Termination of the Contract Service Board by the previous legislation. This also caused a lot of difficulties and injustice to workers. Clause 68 now makes provision for the setting up of a Redundancy Board which shall deal with all cases of reduction of workforce and closure of enterprises for economic, financial, structural, technical or any other similar reasons. The Redundancy Board, therefore, acts as a safety net against abusive and monopolistic measures of employers to hire and fire workers at their ease and convenience. The provisions contained in the Bill for the payment of a Severance Allowance of a worker who has been in continuous employment for a period of not less than 12 continuous months with an employer, with reference to Clauses 82 and 83 should also be underpinned as marked improvements.

Mr Deputy Speaker, the repeated requests for more than 10 years made by trade unionists for more than 10 years in favour of a Portable Retirement Gratuity Fund was the hobby horse of trade union colleagues in the private sector, namely the *CTSP* (*Confédération des travailleurs du secteur privé*). J'ai entendu mon ami, Reaz Chuttoo, sur les ondes d'une radio privée à l'effet que des travailleurs ont passé, - c'est ce qu'il dit - je cite :

“10 ans martyr travayer secteur privé inn subir.”

So, now, when we are coming forward with this Portable Retirement Gratuity Fund, we find hon. Members on the other side trying to find all sorts of faults with this one. I think that we should not matter too much about employers. They have been complaining many times; I know, I have been a trade unionist for more than 30 years. I even worked at the International level. I know what it means. Whenever you try to increase, when there was the minimum salary also, we had the threats of closure of industries. When salary compensation also is being paid, they also complained. So, they will continue to complain, that's their business. So, let them continue to complain, but when you give satisfaction to the workers, we are sure we will see progress; we are sure that there will not be any closure of enterprises or industries in this country because we have a Government which is working. I am very proud of our Minister, a young Minister, like we have a young Prime Minister, like we had the Youth Parliament. You have seen the dynamism of these young people. So, within the Government also, you have young Ministers, a young Prime Minister. Of course, we need also the experience of the elders - because I, myself, am getting old. But we have to pay tribute and we have to thank the Minister of Labour, the Prime Minister and his Government. I see everybody keeping cool. No! I think that we should acclaim the introduction of these two legislations. This has been worked out for a long time to arrive at a consensus, although there is not so much consensus but, at least, I think the Minister has done his level best.

Everyday he is repeating, even when the Bill is being passed in the Parliament. He said: "Let's go, outside I have consultation". So, we will continue with consultation, consultation and then, it is too late. That is what some people want, that we do not pass the law, we do not adopt the two legislations, which will be in favour of the workers of this country. So, I think we should thank the hon. Minister for doing this good job.

Also, Mr Deputy Speaker, Sir, we have seen that there have been also consequential amendments in the Employment Relations (Amendment) Bill which will usher a new era of innovation in industrial matters, in that it will strengthen a culture of tripartism, social dialogue and also boost up collective bargaining to create an enabling environment, to improve workers' rights for better working conditions and social justice. Collective bargaining, in fact, helps to build trust at the workplace and is considered by the ILO as the bedrock of sound industrial relations. I heard also my friends in the public service. I know my colleague, hon. Boissézon, will speak about collective bargaining also, he is also a Minister whom I know from the colleagues of the trade unions. His door is always open, he listens to trade unionists and he likes to promote social dialogue. I am sure that he is listening to our

colleagues in the civil service and that bargaining can be like we had before. Before, we had the Central Whitley Council and Departmental Whitley Council. I think these were in the colonial days, but now we can go forward and promote dialogue through a collective bargaining mechanism. We can call it Civil Service Bargaining Council, and trade unions in the public service will be given the opportunity also to discuss problems which they have at the level of the Ministry of Civil Service. So, we do not have any problem regarding this issue.

And the setting of the National Tripartite Council also to promote social dialogue and consensus building on a wide range of subjects related to decent work, training, employment policy, fair treatment, pensions, socio-economic issues, will also no doubt provide an appropriate forum and space for the social partners to influence decisions and reinforce participatory democracy and reach broad social consensus and conduct research on labour market and socio-economic issues for policy formulation. Issues related to ILO norms and standards also, I am sure can be discussed at the level of the National Tripartite Council.

I think there has been some debate regarding percentage to recognise trade union from 30% to 20%, but I think that the trade unions are a bit divided on this issue. But, what is more important, if you give the opportunity to workers, particularly, those in the private sector to organise themselves, and that they can bargain, they can participate in collective bargaining, I think that this can help them. But Trade Union Unity, we have been used, in Mauritius, we have more than 350 trade unions, but this has never prevented trade unions from getting together. When they have to struggle for a particular issue, I think they have the trade union platform, they have their own federation, they have national confederations, whereby also all the unions can channel their views, and the leaders of the trade unions, through trade union common platform and confederations, I think, they can discuss issues relating to the welfare of workers.

So, Mr Deputy Speaker, Sir, I think, in the legislation, we want to give opportunities to more workers to be members of trade unions. This is also in conformity with the freedom of association which is an essential pillar of democracy. Even Article 2 of the Convention 87 of the ILO provides that workers and employers without distinction whatsoever shall have the right to establish and join organisations of their own choosing. In many countries, we know that there is law, which establishes the minimum number of workers. I have made some research, I have seen that even in the Philippines, for example, at least, 20% of the workers of a bargaining unit can be affiliated to trade union and enable the latter to be registered and

recognised. So, these are issues that I wanted to raise regarding freedom of association, freedom of workers to belong to a trade union of their own choosing, that this is also a good thing. Even a report of the Committee of Experts of the ILO 1994 underlines that there are some problems when you also have trade union monopoly, because this does not give the chance also to workers to belong to trade unions, which they would like. That is why the Convention 87 of the ILO gives the opportunities to workers to organise themselves and to belong to trade unions of their own choosing. So, this is very important.

There are many issues which I wanted to raise, but the hon. Minister of Labour, when he was introducing the Bill to the House, had in details mentioned the various aspects, the various positive measures contained in the Bill. Therefore, I would like maybe to end here. Before ending, I think, on the occasion, Mr Deputy Speaker, Sir, we are celebrating soon the 100<sup>th</sup> Anniversary of the International Labour Organisation. In this context, I feel that there can be no better gift to the workers of this country than bringing the profound changes and reforms that are being brought to the two legislations.

On this note, I would like to thank you and to thank all the hon. Members of the House for listening to me. Thank you.

**The Deputy Speaker:** I suspend the sitting for one hour.

*At 7.59 p.m., the sitting was suspended.*

*On resuming at 9.10 p.m. with Madam Speaker in the Chair.*

**Madam Speaker:** Please, be seated. Hon. Bérenger!

(9.10 p.m.)

**Mr P. Bérenger (Third Member for Stanley & Rose Hill):** Yes, Madam Speaker.

*Madam Speaker, we all know* que nous sommes entrés dans la dernière ligne droite vers les élections générales. C'est ce qui explique que le gouvernement s'empresse de présenter les uns après les autres les derniers *Bills*, les derniers projets de loi qui restent à être votés avant que nous arrivions à l'étape des élections générales. Et le fait que nous soyons entrés dans la dernière ligne droite explique très certainement le contenu des deux textes de loi qui sont devant la Chambre, le Workers' Rights Bill et le Employment Relations (Amendment) Bill. Le contenu s'explique par ce fait que nous sommes entrés dans la ligne droite vers les élections générales puisque ces deux textes de loi sont présentés alors que des

aspects fondamentaux des deux textes de loi n'ont pas encore été finalisés et je reviendrai là-dessus tout à l'heure, *Madam Speaker*.

So, the first Bill, the Workers' Rights Bill, means to repeal and replace the present legislation, that is, the Employment Rights Act whereas the second Bill, the Employment Relations (Amendment) Bill, as its title says, means only to amend the existing legislation, that is, the Employment Relations Act. Why the Government has chosen in one case to repeal and replace completely the existing legislation and, in the second case, only to amend existing legislation, I think the hon. Minister should let us know why Government, why the Minister has adopted that procedure. In the case of the Workers' Rights Bill, I must say that the Explanatory Memorandum is itself *un charabia*. At least, the first version of the Explanatory Memorandum to the Workers' Rights Bill has been amended and it now reads as it reads, that is –

*“The object of this Bill is to repeal the Employment Rights Act and replace it by a modern and comprehensive legislative framework with a view to addressing the shortcomings of the present legislation (...)”*

Fair enough!

*“(...) and to provide for new emerging forms of work.”*

An improvement on the first Explanatory Memorandum which was, as I said, *un véritable charabia* because it was meant to provide the emerging forms of work in the industrial revolution. The Explanatory Memorandum, *version première et version amendée*, *ne nous disent pas grand choses sur le contenu du Workers' Rights Bill*.

Nous savons, Madame la présidente, les débats avaient été renvoyés à la demande des syndicats et du secteur privé. *That is something quite rare where Government manages de faire l'unanimité syndicat et secteur privé face à des textes de loi qu'il présente*. C'est arrivé, à l'unanimité syndicat et secteur privé ont demandé un renvoi. Les deux textes de loi que nous avons votés en *First Reading* il y a quelques semaines seulement ont donc été *withdrawn* et deux nouveaux textes de loi présentés. Depuis, Madame la présidente, le secteur privé a exprimé beaucoup de craintes. Pour ne prendre qu'un exemple, ce matin même, dans le défi quotidien de ce matin, le *Chief Executive Officer* de l'AHRIM, qui est l'organisation pour les employeurs du secteur touristique, a adopté un ton très alarmiste pour parler finalement de l'impact, je le cite, L'impact du Workers' Rights Bill, son impact sera –

*« (...) un véritable coup de massue pour notre tourisme ! »*

Très alarmiste!

The private sector, therefore, has been raising the alarm for these last few days. And, on the trade union side, unfortunately, what we have seen is more division, *plus de divisions que jamais*, unfortunately, Madam Speaker.

For the workers, there are many positive things in the two new Bills that are before us today, Madam Speaker. But my point is that on the three main new proposals, *des aspects fondamentaux ont été renvoyés à plus tard. Des points fondamentaux n'ont pas été tranchés et ont été renvoyés à plus tard dans les trois cas. Et c'est dans ce sens que j'ai parlé de 'coquille vide' et je m'explique sur cette expression.*

The three main new proposals are –

- the Portable Retirement Gratuity Fund;
- the Wage Guarantee Fund Account, and
- the Redundancy Board.

*The fact is that in all three cases, des aspects fondamentaux restent à être finalisés. Des aspects fondamentaux des trois propositions ne seront réglés qu'à l'avenir. Et je commencerai par le Portable Retirement Gratuity Fund which the hon. Minister, himself, described earlier on as the most important measure in the Bill.*

These are his own words and I agree with that, the most important measure in that Bill. The Portable Retirement Gratuity Fund, we know what it means, the employees, when they lose their employment, their *temps de service* will go all the way back and not just the last employer.

C'est une bonne chose que les salariés méritent pleinement. Mais bien sûr cela coutera cher *and therefore the question which has to be answered otherwise* ce sera mort née, qui payera? Et surtout, le point clef, quelle sera la contribution des employeurs?

In the Bill, I must say I did not manage to catch completely, precisely what the Minister said on that earlier on. So, I raise the question, but, in the Bill, anyway, at page 82, it is said that the contribution which employers will have to pay will be prescribed. Today, the Minister, we tried to listen carefully to him, if we understood the Minister right, what will be prescribed is the contribution of 4.8% of salaries for the employers. I think there is need to clarify that further. Has it already been prescribed? Is it going to be prescribed or is this a reference to the figure which was mentioned sometimes back but not finalised? Therefore, that is the main point which I would wish to clarify because this Portable Retirement Gratuity

Fund, if we do not provide for its proper funding, *sera une très bonne chose mais mort-née*. And I must say that, *d'une façon plus générale*, in a more general way, I was listening very carefully to the Minister because I had before me the communiqué from Government - *le compte rendu* or weekly *compte rendu des Cabinet decisions du 18 juillet 2019*. And this is what that Cabinet communiqué says –

“Cabinet has taken note that following the introduction of the Employment Relations (Amendment) Bill and the Workers’ Rights Bill into the National Assembly, a Technical Committee has been set up to address the modalities for the implementation of the Portable Gratuity Fund. The Committee would also look into other pertinent issues raised by Business Mauritius and trade unions following the release of the two Bills.

The committee would be chaired by the Ministry of Finance and Economic Development and would comprise representatives of –

- (a) The Prime Minister’s Office;
- (b) The Ministry of Energy and Public Utilities;
- (c) The Attorney General’s Office, and
- (d) The Ministry of Civil Service and Administrative Reforms.”

And the communiqué read further –

“The committee would be assisted by Actuaries and would submit its recommendations before 30 July 2019.”

That date is already behind us. So, I expected the Minister to tell us. Has Government received the recommendations of that Technical Committee? They were to make their recommendations, they were to submit their report before 30 July 2019 and there were to have taken into consideration the advice of Actuaries. I am very surprised that there was not a word coming from the Minister on that. Is it on the basis of the work of that committee that reference was made to 4.8% contribution from the employers? Well, we are entitled - since this is indeed the most important measure proposed - to hear more from the Minister. If that committee has submitted its report, will it be made public? It should. If it is not going to be made public, will the Minister at least tell us to what conclusion that Technical Committee and their Actuaries arrived at?

I think we are entitled - I do not agree with a lot of things which the PMSD speaker before me said, but on that I agree that this must be settled before general elections. We are *dans la dernière ligne droite*. At least this question of the funding, as the Cabinet communiqué said, the implementation of the Portable Gratuity Fund *et avant tout* le funding, how it will be funded must be finalised and made public before general elections.

We shall be listening carefully to what the Minister will have to say on the funding of the Portable Retirement Gratuity Fund, more specifically on the reference which he made to 4.8% contribution from the employers and we shall be listening very carefully to know from the Minister what has happened to this Technical Committee, whether it has submitted its report or not because it was supposed to submit its recommendations before 30 July 2019.

Therefore, *un flou total*. That is why I talk of *une coquille vide* and I will come back to that on several occasions. This is, therefore, on the Portable Retirement Gratuity Fund, *le flou total, la confusion totale*. And it is very sad. It is the most important measure in the two Bills before us *et c'est une mesure importante à l'avantage des salariés qui le méritent pleinement, comme je le disais tout à l'heure*.

I would wish also to make reference to what the Prime Minister and Minister of Finance said in his Budget Speech concerning SMEs in relation to this Portable Retirement Gratuity Fund. At page 27, in his Budget Speech, the Prime Minister and Minister of Finance, after having said, I quote paragraph 155, after having said that –

“A Portable Retirement Gratuity Fund will be set up for that purpose and a technical committee will address the modalities for the implementation of the scheme.”

A long way from a scheme coming into operation. After having said that, the hon. Prime Minister and Ministry of Finance added –

“Necessary measures will be introduced to assist the SME sector.”

I did not say that. The hon. Prime Minister, Minister of Finance said that, that special measures, I repeat, when this Portable Retirement Gratuity Fund will come into operation, special necessary measures will be introduced to assist the SME sector. Therefore, I am very surprised – well, I should not be that surprised because it seems that the hon. Minister of Labour was not listening when the hon. Prime Minister, Minister of Finance said that because not only has he today made no reference to those special measures that were promised to the SME sector with the introduction of the Portable Retirement Gratuity Fund, but on Wednesday 17 July, on Radio Plus, the Minister took a stand against that, after the Prime

Minister had said in his Budget Speech that measures will be taken specifically to help the SME when this Portable Retirement Gratuity Fund would be introduced. The Minister, on 'Radio Plus', on Wednesday 17 July, disagree. I quote what the 'Defi Quotidien' reported from 'Radio Plus' -

*“Quant à l’incapacité supposée des PME à contribuer au Portable Retirement Gratuity Fund, le ministre s’est montré également intraitable :*

*Le patronat doit comprendre que leurs entreprises fonctionnent aujourd’hui grâce aux travailleurs. »*

So, which is which? I am surprised that no reference was made by the Minister to what the hon. Prime Minister, Minister of Finance had said and I would wish to know which is which. The hon. Prime Minister, Minister of Finance said there is need to offer some help to the *Petite et Moyenne Entreprise*. In that case, the Minister says 'no' on radio and here, he does not say a word. Not a word in his speech, today. The result being that this morning, Mr Amardee Appalsingh, speaking on behalf of the SMEs said in a News On Sunday which appears on Friday, that is Mauritius, I quote -

“SMEs are at risk.”

What he said –

“There are lots of allowances and schemes. We do not yet know what could be the eventual cost of all these on SMEs, but the laws - the laws before us now - are putting SMEs at risk.”

Therefore, concerning the Portable Retirement Gratuity Fund - this is why I speak of a *coquille vide - c’est le flou, c’est la confusion* and the Minister owes it to the workers in general, to the SMEs and to the House to provide us with the information that we need to understand how this is going to come into effect before the next general elections. That is in the case of the Portable Retirement Gratuity Fund.

The second of the three most important measures is the Wage Guarantee Fund Account at page 40 of the Bill before us. As the hon. Prime Minister, Minister of Finance said in his Budget Speech, this Wage Guarantee Fund Account which is being created, is being created to guarantee remuneration up to Rs50,000 to workers who lose their jobs in case of insolvency. Good thing, very good thing, but again the question is where will the money come from? It will cost money, inevitably.

Who will pay? Where will the money come from? And there, again, we have to look to the future. That's why I again speak of *coquilles vides*. It is said in the Bill at page 40 section 41 that seed capital will be prescribed, again, will be prescribed. It is not even said by whom this seed capital will be provided. We take it, it is Government, but we are entitled to know whether this is so and we are entitled to know what kind of seed capital and when will this measure come into practice. In the case of the Portable Retirement Gratuity Fund, there are fundamental questions which Government will have to answer to before it can come into operation, but in the case of the Wage Guarantee Fund Account, if the money is there, it can become operational very rapidly. Therefore, I don't think the Minister should tell us what kind of seed capital are we talking about, to be provided by whom. I take it that it is Government, but we are entitled also to be given, at least, *un ordre de grandeur* what kind of seed capital Government is going to prescribe, to provide and when, again, will be prescribed.

Same thing, but a bit more complicated in the case of the third measure, the Redundancy Board at section 72. In the first version, at a first reading, a rapid reading, we would tend to think that, yes, there is progress definitely there. Because in the first version of the Bill, it was provided that before dismissing workers, employees, the employer would have to give written notice to the Redundancy Board, at least, 30 days before the dismissal, before the redundancy occurs, there was a proviso that this clause of 30 days written notice, *30 jours de préavis*, there was a proviso that this will not apply where the employer has, I quote the words that were in the Bill where the employer has 'good cause', where there is good cause, not to give that notice, there is no need for the employer to give that notice without good cause being defined in that section of the law, in that piece of legislation. Now, this good cause has disappeared, but it has reappeared in another form. Now, what the law says a good cause proviso has gone. I forgot to say what the first version provided for was that there must be also negotiations in good faith between the employer and the trade union or trade unions concerned. There must be genuine negotiations to find all 10 solutions to avoid redundancy, to find alternative solutions. Very good! And the first version, therefore, provided that where these negotiations fail, then the employer has to give 30 days prior written notice to the Redundancy Board.

Now, as I was saying this good cause clause has gone and now, what we have in its place, is that these negotiations must take place, except - and we heard the Minister said that today, just like good cause was not defined, the law says now, and the Minister confirmed this morning that these negotiations, genuine negotiations must take place, except in cases of

*force majeure*, without again a definition of *force majeure*. Therefore, we can have the impression that this good cause has gone, but it has gone in front now. Now, there must be negotiations, except in cases of *force majeure*, then there are no negotiations, then the employer gives written notice to the Redundancy Board and the Redundancy Board will find whether what the employer is proposing is justified or unjustified. If the Redundancy Board finds that the dismissals are justified, that's it, the provisions of the law will apply, but again, what justification. I agree that we cannot have a list of all the cases, of all the instances where justification is justification, but we must have some indications. There is no definition now. The good cause reference has gone, but there is no definition of *force majeure*, the Minister referred to it. I think he owes us some more explanation.

I agree with what was said concerning the 30 days' notice. It would be tricky. In the past, we know how the termination of contract Board functioned and the problems that arose. Now, the law says that the Redundancy Board must come to a conclusion within 30 days. If it doesn't, then if it obtains the agreement of both sides, it can be postponed and postponed. I think there is need for more clarification on that and we should be very careful not to give false hope to the employers in that case. I wonder whether everybody is conscious that this part of the legislation before us, the Redundancy Board section 72 applies to small and medium enterprises employing, at least, 15 workers. Why 15? Reference has been made earlier on to the definition of SME's in the existing legislation, but I would wish there also to have clarification.

This is what I had to say, Madam Speaker, on the three main, as far as I am concerned and on the three most important measures contained in the two pieces of legislation before us. I repeat our stand, there are plenty, there are many positive things for the workers, for the employees in general, there are many positive things in those Bills for the workers, but concerning the three main measures, proposals, the Portable Retirement Gratuity Fund, the Wage Guarantee Fund Accounts and the Redundancy Board, we are dealing with *des coquilles vides*. A lot of the fundamental aspects are left in the open and, therefore, when he will sum up in his summing up speech, I hope we get from the Minister clarification on those three main proposals and on the other points raised in general.

Thank you, Madam Speaker.

(9.41 p.m.)

**The Attorney General, Minister of Justice, Human Rights and Institutional Reforms (Mr M. Gobin):** Madam Speaker, I thank you for giving me the opportunity of adding my voice to the debate tonight.

I have listened very carefully to the arguments of the hon. Members who have spoken tonight before me and I will come to those points a bit later. I wish, first of all, Madam Speaker, to express the feeling of emotion that we feel on this side of the House in bringing these two legislations before the House tonight.

Madame la Présidente, de tous les projets des lois sur lesquels j'ai eu le privilège de travailler et de collaborer, les deux projets de lois qui sont devant la Chambre suscitent bien sûr beaucoup d'émotions parce que cela concerne, à mon sens, l'un des enjeux les plus importants de notre mandat, c'est-à-dire, le sort, l'avenir et le destin des travailleurs de notre pays et sur ce je dois féliciter déjà mon collègue, le ministre du travail, pour sa détermination.

L'histoire de notre république, madame la Présidente et son succès sont intimement liés au courage et la sueur des travailleurs de notre pays et cela depuis le premier jour de la colonisation jusqu'à présent.

It does not do justice to these two pieces of legislation, Madam Speaker, if we are only to point at the specific details which, we all know, will come by way of regulations later. What we have to look at, first of all, in my humble opinion, Madam Speaker, is where were we and what are we trying to cure with the new legislation that we are bringing. My colleague, hon. Benydin, earlier quoted the words of his fellow trade unionist, Mr Chuttoo, who stated that *10 ans martyr travailler in passer*. The *10 ans martyr*, Madam Speaker, refer, of course, to the period 2008-2018. Now, we are in 2019 and we are bringing meaningful change in the legislation. It seems that, on the other side of the House, they want to brush this aside as to what had happened in 2008. Since 2008, what was the situation? Hire and fire, closure for economic reasons without any form of safety valves/safety net until now when we are bringing change to bring back a form of safety valve and we are calling it the Redundancy Board. By whatever name we call it we have to achieve a balance between the employer who may genuinely have economic reasons and the employees.

True it is, the hon. Member, who was speaking before me, mentioned that the then TCSB was functioning in a very specific manner. Yes, we all know. We have read and we can still read today the number of cases that concerned the then TCSB and the flaws that were identified. But do you throw away the baby with the bath water? Just do away with the

whole TCSB and leave the employees with an employer who says: I have economic reasons to close down and I am just closing down and you can't do anything about it. That has been the situation for the past 10 years and this is exactly what hon. Benydin was referring to earlier when he quoted his fellow trade unionist to say *10 ans martyr*.

So, when there is someone who points a finger to the sky, one chooses whether you want to look at the sky or you want to look at the finger. We have to look at the history of our country. The colony, at some point, witnessed the most horrendous crime of humanity, the crime of slavery. Then came the era of the indentured labourers. Why am I referring to all this? It is because there is always this tug of war by whatever name you call it between the forces of the economy, if I may say so, and Government. The State has a moral duty to strike a right balance. Has there been a right balance for a number of years, for the *10 ans martyr*? This is a question of principle that should be on top of the agenda of every person who has at heart the interests of the citizens of this country. This is why I started by saying that the history of our country, the development of our country is intimately linked with the history of the fight of workers, the trade union movement, the strikes. I was expecting to have a very deep reference to those historical events of our country by the hon. Member who spoke before me, but he chose not to do so because his own party was born out of this *la lutte des travailleurs*. Even the next hon. Member who is going to speak after me comes from a party born in *la lutte des travailleurs*. It bears the name of the labour movement. Maybe my learned friend will make reference to that when he speaks after me. Why am I referring to all that because the history of this country is full of events to show how *la lutte des travailleurs* had profoundly marked the hearts and minds of our citizens.

Today, when all the trade unions – sorry, maybe one or two, but most if not all, let me say so. Most if not all the trade unions stand together with us on this side of the House for these two legislation, nobody mentioned anything about that.

*(Interruptions)*

**Madam Speaker:** Hon. Rutnah.

**Mr Gobin:** The opening words of the hon. Member, who spoke right before me, were the words of AHRIM. Of course, AHRIM, maybe, has a point but when we have such two legislations before the House and to start the arguments with the words of AHRIM I have to express my disappointment in this House tonight.

I have to express my disappointment when reference is being made only to the *flou*, only to the *coquille vide*, only to those issues which are going to be provided for by way of regulations. I will later on, maybe today or at the next sitting, listen very carefully to the hon. Deputy Prime Minister because I am sure he is going to tell us more about the history of *la lutte des travailleurs* of this country which has shaped the development and has shaped institutions in this country; that nobody wants to say anything about.

I have, Madam Speaker, to refer to what was said before as to the matters concerning the Portable Retirement Gratuity Fund, the Wage Guarantee Fund, the Redundancy Board and the questions that were put to as to why details were not provided. There was even a question as to why definition was not provided on what is good cause or what is force majeure. But I put the question now: has gross misconduct been defined at any time in the legislation be it the Labour Act of 1975 or any subsequent legislation? Has gross misconduct been defined in an Act of Parliament? Never! These come by way of cases because each case has to be decided on its own merits and no two cases are similar. No two cases are similar! How can a definition therefore be provided for something like gross misconduct and as to force majeure? We all know what force majeure is. The principles are very well and very clearly set in the numerous cases that have been decided before our Courts. So, once again by choosing to look at those minute details which will come by way of regulations later and which will come by way of decisions on a case to case basis is very unfortunate and once again I am disappointed.

What should we focus on tonight? This is what I want to contribute, Madam Speaker. I want to say that we are doing away with an injustice. The legislations that came in 2008 and 2013 have led to injustice. This is what we hear, this is what we are told regularly and this is how most, if not all the workers of this country are standing with us in bringing these two legislations before the House tonight. And why are we doing so? We are being taxed with bringing the legislation because we are nearing elections. These legislations were included in our manifesto and again included in the Government programme. We said we are going to amend the law. It took the time that it has taken because to amend these legislations, a number of consultations have had to be made between a number of stakeholders and the Ministry of Labour has consulted other colleagues. This is why it has taken the time that it has. And we are now bringing the two legislations, not because we are nearing elections or as if it is being linked purely with the fact that we are in 2019 that is in the last year of our

mandate. No reference is being made to the provisions of the Bill, to the unanimity that we have in bringing.

Now, I say once again why are we so passionate about bringing these two legislations is because we care about the workers of this country. Purely and simply, we care about the workers of this country, we hear their plight and we want to bring changes. This is why we are bringing these two legislations. And why are we so passionate about that? It is because we know the history of our country. It is a coincidence tonight and I have to say that during dinner break, Madam Speaker, my friend called me, he did not know that I was attending the sitting of Parliament. He said where are you? Come and join me. He was telling me that he was going to Caudan Arts Centre tonight and I said: what's at Caudan Arts Centre? I did not know and he told me that there was a concert of *séga engagé* and the two brothers Ram and Nitish Joganah are there tonight. Why am I referring to that? So that Hansard bears testimony who are Ram and Nitish Joganah who are performing tonight at the Caudan Arts Centre. We will all remember them for the *séga engagé* of the 70s and 80s. I say it again we know the history of our country. We know where we were, we know where our forefathers were and we know where we have come. If we are so passionate about the Workers' Rights, it is because we are the sons and daughters of workers of this country. Of course, we were personally not there but we read, we read the accounts of how workers were shot and killed and it is good that we remember that Anjalay Coopen was not alone; there were four of them in fact who died. Three on the same day and a fourth one later died of injuries. We also know history. We also know how the birth of the Labour Party was intimately linked to those events and we also know that it is the same Labour Party later, under a different leadership, which brought the 2008 and 2013 Labour legislations in this House. Is not that an irony? We know the history of this country, how the MMM was born. How the then PMSD in the 1970s in the Municipality of Beau Bassin and Rose Hill refused to recognise the trade union whose negotiator was then hon. Bérenger. These are the facts of history, well recorded in the books, written by Mauritian authors.

Some hon. Members were there. Well, I was not but I have read and we know how the labour legislations of this country evolved, how the different commissions of inquiries, be it in the colonial days or after independence, the creation of the Industrial Court. And once again I come to the 2008 and 2013 legislations, leading to the *10 ans de martyr* and tonight when we bring these two legislations, the debate is being centred on *la politique de bas étage*,

that its general election, that the Minister has to give the exact date of when the legislations will come into force.

It is a pathetic argument. All Bills, once again, I will say most, if not all, Bills come into force on a day to be fixed by proclamation. Hon. Adrein Duval, tonight, gives the impression it is the first time that he has read a Bill properly, to say: why will this Bill come into force by proclamation? Why? All, as far as I recollect, Bills in this House, have the provision that the Bill will come into force on a day to be fixed by proclamation.

Having said this scene, this is a question of principle, Madam Speaker. Now, having said so, what is this Government doing? Is it only these two legislations, the Workers' Rights Bill and the Employment Relations (Amendment) Bill? Let me remind the House, the very first legislation which this Government brought, I do not know whether it is a coincidence or it is your destiny, my good friend, hon. Callichurn, that you had to bring the first legislation, it was the Additional Remuneration and other Allowances Act 2015. It was to provide for the payment of an additional remuneration of R600 to all employees, which was passed some time, I think, on 22 December 2014. That was the first legislation which this Government brought. So, I put the question: is that all? That is not all, Madam Speaker. What is this Government doing? When you look at the sum total, is it only about workers' rights, employment relations, Redundancy Board, PRGF, pensions, minimum wage, Negative Income Tax? With the sum total...

*(Interruptions)*

Yes, my learned friend reminds me.

...and so many regulations. I, indeed, have a list. The regulations for the security guards, for the cleaners, those who were let to live on Rs1,500 per month, and even they could have faced an employer who said: 'I have economic reason and I am going to close down.' They would have had no door to knock on. I have said it a number of times here, every time I have had the opportunity of speaking in the House, we are here to bring change and meaningful change. This is exactly what we are doing tonight and it is a question of principle. It is not a question of we are nearing elections or not. We are going to do it now and we are going to do it, even after elections we are going to continue to bring meaningful change.

Let me end by noting a positive note in the speech of the hon. Member who spoke before me, I quote him, he said: 'There are plenty, many positive things for workers in the legislation'. I do take note and I do say a word of appreciation for that. So having noted there

are many and plenty positive things for workers, this entitles me to ask the question, and on which I am going to end: *Où est le flambeau de la lutte des travailleurs? Où est ce flambeau? Le flambeau est de ce côté de la Chambre, Madame la présidente?*

I thank you.

**Madam Speaker:** Hon. Shakeel Mohamed !

(10.06 p.m.)

**Mr S. Mohamed (First Member for Port Louis Maritime & Port Louis East):**

Madam Speaker, allow me, with your permission, to digress for a short while and say, today, I had the honour, in your presence, of seeing our youth in a very important event that has been organised, if I maybe call you a patron of this event, that I totally approve of, and it was, indeed, an honour to see them intervene on two days, and today, when I was here in person.

What was interesting in their discourse was the ability of the Leader of the Opposition to congratulate the other side because, as you will recall, the excellent points the Leader of the Opposition of the Youth Parliament said that Government had brought forward, and the Prime Minister of the Youth Parliament said to the Leader of the Opposition that the Opposition also had excellent points that they had brought forward. Now, if this is going to be the constructive approach of our youth in the future, when we will no longer be here, then I say that we are all wrong and the youth are right, and it was very constructive to see how they were participating in today's debate. And yes, I mean, even though we are the ones who are here, as hon. Members, we have to, at least, be humble enough to say that we can still learn and we still have to learn from the youth of this country, and it was a nice lesson in humility that I, myself, was taught today when I listened to them. So, bravo for that! And I will try to - at least, try; I know I am not very good at it, but I will try - to emulate what I saw, which was excellent today.

I have listened very carefully to the hon. Minister of Labour who is, and I am proud to say, someone whom I count as a friend of mine, and I would like to, from the very outset, congratulate him for this piece of legislation that he is bringing in. So, I think we started on the right foot, Madam Speaker. If the hon. Attorney General wants to, from the very outset, know what would be the stand, on this side of the House, on the part of the Labour Party, as far as this legislation is concerned, we will vote for it. We are for it, and congratulations for this legislation, it is an excellent piece of legislation. But permit me, not in a spirit of wanting to, in any way, make derogatory comments, not wanting to score political points, I think it is

important, if you will allow me to comment on this legislation and try to make suggestions which may be brought to the attention of the hon. Minister and Government, and if ever it can improve the legislation as we go along, it will be in the interest of workers.

Now, I, myself, was the former Minister of Labour and it is not why the actual Minister of Labour and myself get on. It is just that, I think it is important to be able to put aside emotion when one analyses law and it is important to be able to analyse it factually. Now, this is one of the things we share; the actual Minister and myself are both lawyers. So, we manage to put aside emotion and political differences and we analyse the law, and we are able to communicate as responsible people should, which is keeping things above board and not in any way hitting below the belt. And this is why I say it again, I appreciate him very much.

Now, I have heard the hon. Attorney General and the actual Minister of Labour make comments about the former, if I may be calling it because soon it is going to be the former legislation, which is the Employments Rights' Act, and how it came to see the day in 2008, and I have heard about them calling it the 10 years of martyr, as the hon. Attorney General has put it.

Now, was there a need to change the legislation? Let me say, yes, there was a need to change the legislation. It was necessary, Madam Speaker, to change the legislation. However, I think it is important to remember why the legislation came into place, first of all. I will not go into the merits of the legislation; neither will I go into the demerits of any legislation, of today's legislation. But I think it is very important to put things in context. It is very easy to criticise the legislation without really putting things into context. In 2007-2008, it is important to remember what was the situation that prevailed in the world, in those days. Let us not pretend, Madam Speaker, that, in those days, the subprime crisis did not exist.

Let us not try to pretend that, in those days, we were not facing a global financial meltdown. Let us not pretend that the banking sector and the financial services sector was all blowing up and falling apart. Let us remember that the world at large and the financial system that we knew was at the brink of its own implosion. Let not forget, but let us remember that, in 2007, there were the days when you had not only the triple shock - you would recall, the former Minister of Finance, hon. Dr. Sithanen used to refer to it. This existed; it is not something that was invented. Now, some may agree that it existed but, mostly, the world at large recognised that those facts existed. I was only, recently, reading a

document from the Bank of Mauritius that talked about the financial crises of 2007-2008 and the recommendations it was making to Government - the Bank of Mauritius. I was reading a document from the IMF, talking about the financial crises, the price of fuel skyrocketing and, obviously, the prices of commodities, food, skyrocketing in those days. Let's remember those days, and let us not forget what was happening around the world, our main trading partners, what was happening to them. They had difficulties in their own countries in maintaining, *inter alia*, jobs. There are other issues that they had to face as well. So yes, it's important to remember the context. What would have been the effect of this global financial meltdown on Mauritius? Should a responsible Government have sat down and done nothing? Posterity has answered. Precisely, the former Prime Minister, the leader of the Labour Party likes to say that the proof of pudding is in the eating, and we have seen what happened. And interestingly, because of the measures, financial and otherwise, that the former Government had taken since of this threat that was sweeping the world, and Mauritius was not to be immune to the global threat, it happened that measures had to be implemented in order to ensure that business would continue to exist and flounder. I see there are Members on the other side who are consultants themselves in that field and would understand why it was important to preserve business, because at the core of our interest, in those days of the former Government, was to ensure that jobs had to be saved and protected. I recall the former Minister of Finance talking about job protection, job protection, job protection, because let's not forget, in 2005, when we won the General Elections, we were coming out from another period of turmoil - let's not forget that - the turmoil of the disappearance of the Multi-Fibre Agreement, the disappearance of all the preferential agreements that we benefited from. Once upon a time, the days of Mauritius being able to benefit from preferential treatment from our former colonial masters, from the European Union, the advantages that we derived from such a position was something that put us in a very comfortable position and, between 2000 and 2005, the record number of people losing jobs from textile factories was a consequence of the changes that were operating on the international scene. Let us not forget, at one point, people never even wanted to think or smell the idea of going to work in a textile factory because they had lost faith in a textile factory. They thought that the textile factory represented a danger because there was no stability there, because, at any time, they could lose their jobs. How many families have not been traumatised between 2000 and 2005 by the loss of jobs? I am not here to blame any Government for that; I am just here to be factual about what happened in history.

So, coupled with all of that, we had to ensure that the economy was resilient. And I recall a very beautiful speech from a late hon. Member of Parliament, late Jayen Cuttaree. In 2008, when he made his speech in this House, he was against the Employment Rights Act of 2008 when the Bill was being debated here. I think it is important that we share this part of history. I, myself, was not in the House, but I had a pleasure of reading such people, even though we were on different sides, we never shared the same political views necessarily. But he is someone whom I enjoyed reading his interventions; he was a learned gentleman, he was someone who contributed a lot to our country, he was a Member of the MMM and stood up, as a Member of the MMM, and criticised the Employment Rights and Relations Bill. But in part of his speech, he said that it was important for Government to adapt to times, it was important for Government to come up with legislation that had to be dynamic and static. If I am not mistaken, the hon. Minister, himself, made reference to the importance of - hon. Benydin also said that. I remember I was hearing him on radio while I was driving to Parliament earlier on, and he made a very good speech besides, obviously, the remarks that he is going to make, to make some political scoring, which I totally understand and I do not blame him for. But, in essence, to get to the very important elements that he talked about, yes, he is right. I remember, when I was Minister of Labour, we travelled together to Geneva where I, myself, was happy to hear him make his speeches at the ILO, representing the trade unionists. We have been there more than twice or three times, if I am not mistaken, and I remember how he was critical of the Employment Rights Act. He has been very constant about it, but when we were in Geneva, we spoke as Mauritians and we helped one another, and he advised me on a lot of issues, which I thank him for. I thanked him for, and I thank him again. So, it is important to remember that one has to adapt to the times and the necessity, the economic realities of the day.

So, with that in mind, the Government ensured that legislation was brought in to protect existing jobs because it was important to ensure that we did not go through a cataclysm, an implosion because of a wave that was coming from other countries in the world, that was going to engulf us and blow us to cemeteries. That was the whole aim. Now, did it work? That is the question. Because, obviously, people thought that it was not right. Why wasn't it right? Because precisely, one of the fundamental issues for the trade unionists was that, by coming up with the Employment Rights Act in 2008 - and as a matter of fact, I, myself, did not participate to the debate in 2008. Yes, I did not even participate to any of the

debates on the Employment Rights and Relations Act 2008, even though I was a Member of Parliament, I was not in Parliament on those days.

One of the fundamental issues that angered - I may use that - the trade unionists, I recall, was that some of the fundamental rights were going away; for instance, they thought that The Termination of Contract Service Board, though imperfect, at least, it did not allow the employer to fire people on economic or structural reasons, but had to obtain the clearance and permission of The Termination of Contract Service Board before doing so. And that was a form of security that disappeared in 2008, and I may believe that it was important economically and strategically to do with this law because we had to protect jobs. I may not agree with trade unionists, but I understand their anger and I totally understand that this is something which they never accepted because they lost a fundamental acquired right, *entre autres*; there are other issues. I recall also one of the issues they were not happy about is that, in 2008, the Labour Act being done away with, my friends will recall that Severance Allowance was paid, if I may simplify the word Severance Allowance, compensation was paid for unjustified dismissal and the magistrate at the Industrial Court had the choice between one month and three months.

And I recall that a lot of trade unionists, a lot of workers have complained ever since 2008. They say, "Either I get 3 months per year of service or I get nothing! Since you have come up with a new law of 2008, at least, in the old days I used to get 1 month or 3 months". But the discretion was no longer as from 2008. Now the issue is, a lot of the times that the MSM, mainly the MSM because the ML did not exist in those days, but the MSM in the House, in 2013, when I presented some amendments, was very critical about the amendments that I had come with. They had to score political points, and I understand, even though consultations had started on the Employment Rights (Amendment) Bill and Relations (Amendment) Bill when the MSM and the Labour Party were in Government in 2010. So, consultations had started while we were together and then the divorce came forward, unfortunately, and then we have looked at one another in different ways and different directions and were critical of one another. But let's put the criticism aside a look at *l'essentiel*. *L'essentiel* is, I recall, there were criticisms brought against the legislation in 2013, the amendments. And what were the amendments about? I think, because the MSM has painted me - and they had been very good at that - as being the one that did away with the Termination of Contracts Service Board in 2008. I was not Minister in 2008. If only I could have been made Minister in 2005; I was not in 2008. A lot of people have the impression I

was, but no, I was not. I may have always had this big mouth, which I carry with me, I make a lot of noise but I was not Minister. I was only a backbencher in 2008. I did not participate in the Bill in 2008, and let me be very clear, the hon. Pravind Jugnauth, then in the Opposition in 2013, made allusion to the fact that I had criticised the law of 2008 and that I did not believe that the law of 2008 was a law that should remain static because I was amending it, I, myself, was against the 2008 legislation. He was not wrong. That is my view. I was not in favour of the 2008 legislation; I thought it was difficult as a decision for the Government of the day to bring it, but I thought that it was time to be able to change it. But, in 2013, I recall that there was in the legislation, and if I may be allowed to go through it very quickly, what I did in 2013 was to bring a legal framework for operation of shift work. The hon. Minister can confirm that, in the actual legislation, there is a section regarding shift work that was provided for in the Employment Rights Act. But, in 2013, when it was voted in, it was never proclaimed, precisely because there was a section of the law that said that you could proclaim it at different stages. So that particular section pertaining to shift work was never proclaimed.

Now, there was something else of utmost importance that I believe, and I am proud of having created. Madam Speaker, you will recall that, as from 2008, a lot of people, employers who wanted to terminate the jobs of workers, employees, for economic or structural reasons, they found it easy to do so. It was so easy to terminate the jobs of workers and bring up grounds of economic or infrastructural reasons. It was so simple as to send a letter to the Minister, telling him 'we are terminating on that ground', and that is all. So, I thought, as from 2010, that I should start to listen to trade unionists, which I did. We may not have been on the same wave length all the time, but I listened and I thought that it was important for me to stop the destruction of lives by simply having people fired and giving notice only to the Minister. So, the Minister ended up being a glorified letterbox. He receives a letter and could do nothing about it. So, I suggested to Government, and this was brought in the law, that we would create an Employment Promotion and Protection Division. And I would like here to pay homage to the work that has been done by the Employment Promotion and Protection Division of the Employment Relations Tribunal. We did not give them additional resources, we did not give them additional staff, but they were called upon to ensure that workers could at least benefit from an inquiry into whether or not their jobs being terminated was it justified or not, and there was a whole new list of conditions that had to be established. For instance, the Minister has come up with the same list, which I thank him for, the consultations details that he has put it, even for the Redundancy Board. Those consultations, the first time that we

have ever seen the need to have consultation, last in, first out principle, the fact of reducing recruitment, considering reskilling and retraining; the first time that it was brought in the law was in 2013, when I was Minister of Labour.

Now, there are many other things, for example, in 2008, the Recycling Fee came in. The Recycling Fee, as I said to the hon. Minister earlier on, in a conversation we had, is no longer there, and I will get to that in a few minutes. Now, I have listened to the hon. Attorney General talk about how those 10 years were very dark days, repeating what trade unionists had said. But, once again, let us not reduce the role of the Employment Relations Tribunal because I was myself verifying a very important case that happened in 2016; the case before the ERT - the Employment Relations Tribunal. I am sure the hon. Minister of Labour will remember, I am sure hon. Rutnah also must probably has read it since I am sure he reads a lot of precedence, which is totally right and entitled to do. Just to go through it, it was a very important case. You see, I am the one as Minister who brought about that law to create this particular division of employment promotion and protection. And now, when we lost Government and went back to the profession, I am the one who represented Mr Kissoon and many other applicants before the ERT against the Mauritius Shipping Corporation.

Government will recall that those workers of the Mauritius Shipping Corporation, their agreement, their employment was terminated by Government, this actual Government, on economic grounds. The Government basically had put forward the idea that those people, Mr Kissoon, Mr Bachoo, Miss Kalwatee Toolooa, Mr Deedaran, Ms Edan, Ms Raffaut, Foulell, Ujodah, Goburdhun, Shee Shah, Edouard, all those people, their agreement was terminated by this Government in 2015 on economic reasons, and they put forward the idea that the reason why it was being terminated was that the Mauritius Shipping Corporation was doing very badly and the Government needed to reduce staff in order to ensure - they had no other choice. What happened at the Employment Relations Tribunal? I appeared for the workers. The hon. Attorney General appeared - in those days, he was not Attorney General; in 2016, he appeared for the Mauritius Shipping Corporation. Yes, the hon. Attorney General, then he was not, he was Counsel and he appeared, he was Member of the Parliament, but he appeared, together with hon. Teeluckdharry, for the Mauritius Shipping Corporation. And there was another lawyer who advised the Mauritius Corporation; Counsel Trilochun advised. It was quite a fantastic combination. And what happened there is that the hon. Attorney General who was talking about how emotional he was getting today, I totally understand that he gets very emotional and I think, myself, I am getting emotional while talking about this

particular case now. He, representing the employer, Mauritius Shipping Corporation, facilitated and was in Court, in the Tribunal before the ERT saying that those people had to be fired.

Hire and fire for economic reasons, and those two Members of Parliament were so clear in their submission that the Employment Rights Act, as brought in by the Labour Government of 2008, facilitated the firing of those people, and he stood by and allowed them to be fired and fought his brief. He is totally entitled to do so as Counsel. And they lost their jobs, but I won my case, and the ERT found that I was right, that those people should not have been fired in such a way. Why? Because consultations had not taken place in line with the relevant section of the Employment Rights Act, as provided for in the amendment of 2013.

So, in 2013, when I was in this Assembly, saying that there needed to be consultations with trade unions and the workers to try to explore all other possibilities and not to jump immediately into retrenchment, hon. Bérenger rightly pointed out that it is important to go through those conditions. It is good to have those negotiations, those *pourparlers* along those lines, but not limited to those lines; but these are the guidelines. And the Employment Relations Tribunal found that the Mauritius Shipping Corporation, under this regime, was wrong because consultations did not take place properly. Workers lost their jobs and, unfortunately, they are still not employed, but it was ordered that they should be paid three months per year of service. I was so happy, not because of the fees I was going to get - but I was so happy also - because those workers were entitled to a compensation and I was even more happy, Madam Speaker, because I had amended the law in 2013 to make that possible. So, yes, when we manage to contribute to something and you see the amendment working in real life, it makes one happy. But then again, the happiness did not last very long because the Mauritius Shipping Corporation appealed against, by way of judicial review, and the matter went to the Supreme Court. And then, again, at the Supreme Court, the Mauritius Shipping Corporation was still represented by the actual Attorney General. Yes! And I won again, and I was happy again. You see it was a yo-yo feeling. You see how the emotion, happiness, elation, sadness; happiness, elation, sadness. That's life! I remember the founder of Tata said: 'you know, when life goes up and down like one of those electrocardiogram goes up and down like that, everything is great. Because the day it stops and flat lines, then you are dead'. So, we were happy, it was going up and down, up and down, that's life. But I won again. The Supreme Court decided that the hon. Attorney General did not win, and those workers won

again, but it was short-lived again because they decided to appeal to the Privy Council, and I am going to have to appear in the Privy Council in October in this matter and continue to defend those workers unless Government is to find another - I hope there are no elections before then; otherwise, I would not be able to appear, or will I. But anyway!

But then, there was another case, which I found interesting. It was the case before the Employment Relations Tribunal, again, before the same Employment Promotion and Protection Division; it was the case of Ms Simla Douraka, Ms Lavishka Makoondlall, Mrs Kabita Jang, Mr Salah and Mr Veerabadren against a case, which is very important, Wellkin Hospital. We all know Wellkin, the Medical and Surgical Centre Ltd. I appeared in that case as well. I appeared there and I won it. So, it works. The Employment Promotion and Protection Division works. And, therefore, when you look at the list of cases that went to the Employment Promotion and Protection Division, it acted as a filter in actual fact. It ensured that workers did not go without anything, if there was abuse on the part of employers; it worked. But the trade unionists were still not happy, precisely because the actual law allows that people's agreement be terminated, and there was some sort of post verification or post control, and the control did not come prior to the termination of the agreement. And this is why I understand that the trade unionists preferred that the employers did not have the ability to end an agreement without the clearance at the TCSB. That is why I congratulate the hon. Minister who has come forward with this piece of legislation because it puts the clock back, in a certain way, like it was before the TCSB, but he modernised it by ensuring that there is a timeline that has to be adhered to, not like before the TCSB where, sometimes, a final award was coming out after 12 years or 10 years. In this particular case, it has limited it just like we did before the ERT, having to come up with decision within a fixed number of days, here it is 30 days, if I am not mistaken.

But having said so, I think it is important to be very careful to ensure that the Redundancy Board has the appropriate staff, that the Redundancy Board has the appropriate qualified staff and financial resources in order to be able to meet the challenge, because the ERT did not have that but they have to be once again commended. The president of the Employment Relations Tribunal has done a fantastic job together with the assessors and the other Vice-presidents, the staff, and I would like to place on record that they have done a fantastic job with limited Resources, and I hope and I pray that the Government, this time, for the Redundancy Board, ensure that they have the appropriate resources.

Now, allow me to come very briefly, Madam Speaker, if I may, to the issue that was brought about by hon. Bérenger. But before I come this issue of *force majeure*, he was totally right and he was spot on when he identified this issue of *force majeure*. I am sure - if I may call him - my hon. friend Rutnah will speak about this in rebuttal, I hope, and for that reason, I think it was important for me to go to the Workers' Rights Bill, because it is important not to make false promises, because expectations are high. And what are the dangers? As I said, I am not making any criticism. The purpose and purport of my intervention here is only to show that, maybe, it could be improved. When one looks at the Redundancy Board - and the Redundancy Board is a very important body that is created - I totally am in agreement with the creation of that particular body. Now, yes, employees need to be protected and employees need to have some protection when it comes to termination for economic reasons or otherwise. And when one looks at section 72 of the law, Reduction of workforce and closures of enterprises. Now, clause 72 talks about the *force majeure*. I am not going to what hon. Bérenger said, rightly so, but where I agree, and I am in total agreement with him, is that the previous version of the Workers' Rights proposed legislation contained the good cause. You will recall that the Redundancy Board was created and, at the same time, there was this subsection 8, the famous subsection 8 that stated that those employers, if there was good cause, did not have to have the permission of the Redundancy Board to fire. In other words, *dans ce que le gouvernement avait proposé, la version initiale qui a été amendée, totalement révisée la semaine dernière, si je ne me trompe, il y avait une provision de loi ; une des suggestions proposées par le gouvernement, c'était que les sociétés, les employeurs pouvaient, s'il y avait une bonne raison, show good cause, donner une bonne raison, ne pas avoir à même signifier leur intention de terminer les contrats d'emploi de leurs employés s'ils avaient une bonne raison. Alors, la subsection 8 était, en d'autres mots, the poisoned chalice, if I may put it that way. It was the little part of that law that destroyed the good intention Government may have had.*

I do not believe that Government and I would not say that they left it there on purpose as a door to allow employers to terminate agreement if they showed good cause. But what really is something that is worrying when one looks at clause 72 now and it says: 'except in case of *force majeure*'. So, what it means is that an employer has the right to terminate or reduce the number of workers temporarily or permanently without negotiations with the trade unions, recognised trade unions or workers where there is no trade union and he does not even have to notify anyone if there is *force majeure*.

So, subsection 8 of the previous proposal finds itself here but, instead of say a good cause, it's now *force majeure*. This is a section which I invite Government to look at very carefully. The first person, Member of Parliament, who referred to this is hon. Bérenger and he is right, there is no definition of *force majeure*.

Hon. Attorney General says 'but it's well established'. He likes saying that: it is well established in our courts. The Supreme Court has explained what exactly is *force majeure*. But I have gone as far as to try to find out. Why the Supreme Court? Let us go and find out what the Privy Council says about *force majeure*. In the case of General Construction Limited versus Chue Wing & Co Ltd and another, an appeal from the Supreme Court dated 15 of October 2013, at page 5 of that judgement; there is a very important paragraph. I believe I should read. It is important for Members here to reflect on it because it talks about what exactly is *force majeure*. It explains what it is and it says here, and I read that at page 5, there we go –

'Quand le danger(...)'

*Entre autres*, this is not the only definition that is given but basically I will try to paraphrase. What it says is that if something happens that was not *prévisible*, *il y a force majeure* and it here refers to a case where the Chief Justice said at paragraph 16 of the judgement -

"When the Assemblée Plénière speaks of the double need of *prévisibilité* and *irrésistibilité*, one may need to follow what is the nature of the cumulative character of these two elements. If it is unpredictable and irresistible, there is no doubt, it is a *force majeure*. But there may occur an event which is *prévisible* yet when it strikes, it is irresistible. In that case, it would qualify as a *force majeure* (...)"

It goes on to explain, Madam Speaker –

"Quand le danger *prévisible* était *irrésistible*, il y a bien *force majeure*"

So, even if it is *prévisible*, *le danger est prévisible mais irrésistible, il y a bien force majeure*. When an event is predictable but irresistible, it amounts to *force majeure* where it can be shown that all measures taken to make the event resistible were of no avail. What the courts are looking for is whether all reasonable measures have been taken to render the predictable resistible, *exigeant des juges de fonds qu'ils recherchent si en l'espèce toutes les mesures requises pour empêcher l'évènement avaient été prises*.

Therefore, I am of the view there is an issue which deserves the urgent attention of the Government, the hon. Minister because when one reads this particular section of the law,

when one reads that particular section of the law and the definition of force majeure according to precedents that we are bound to follow, that of the Privy Council, it is here and I say it humbly without wanting to criticise the hon. Minister for that. What I'm trying here is to be constructive. This particular word here - except in case of force majeure - gives therefore an open avenue to employers to simply not notify and not have to comply with the issue of negotiations with trade unions or group of workers. They don't have to do that simply on the ground of force majeure and, therefore, I have done some further research to try to understand. In matters of employment law, what exactly would tantamount to force majeure. In matters of redundancy, what would equate to force majeure. I have come to find out very important things which I believe once again need the attention of the hon. Minister of Labour and I will read a very important document here where it says: 'The purpose of a force majeure clause, if ever it is drafted as a clause, is to relieve a party of liability for inability to discharge its contractual obligations due to circumstances beyond that party's control or beyond its reasonable control.'

Once again, it refers to several cases in Australia, the Australian Supreme Court. It refers to cases in the House of Lords. It refers to cases in the appeal courts of England and all those cases show us one simple element. From my reading of it, I will try to summarise what I have seen, Madam Speaker.

Imagine a scenario where precisely you have a factory employing a thousand workers, be it migrant workers or/and local Mauritian workers, men and women working and toiling away. What happens if tomorrow this factory that is producing for export, its supplier of raw materials stops to exist? It has to supply for export within a certain date but the supplier of raw materials cannot supply with raw materials because it has shutdown. This is force majeure. What happens if the letter of credit and the credit facilities that are given to this factory have disappeared because of financial constraints? It cannot, therefore, put the money in order to manufacture because it cannot in any way see it, it is *prévisible* but *irrésistible* and therefore it can qualify as force majeure. What happens if the aircraft that is supposed to take the goods to Europe, the cargo happens to be on strike that would be force majeure, because it did not get paid on time. Those scenarios that qualify as force majeure - I can go on and on and on, on all those simple scenarios that are *prévisibles mais irrésistibles*. It could go on to even cover situations where even if they try to find solutions, they have no solutions because even if they try to reduce the damage by trying to find alternative supply they could not.

Therefore, they would come before a Court, the Court would find that they have tried their best to reduce the problem, reduce the risk, find alternative solutions they have not therefore, *force majeure* applies and if *force majeure* applies, it does not have to consult with the trade unions. It does not have to notify. In those circumstances, I have read another document that even says let us imagine there is a strike in Mauritius because of some labour dispute. There is a labour dispute, there is revocation of a licence in another country. There is a failure to comply with certain standards for export to Europe because Europe has come up with a new standard and it has to be verified and be certified. All those are *forces majeures*.

So, therefore, Madam Speaker, I invite Government, in a spirit of good faith, and in the interest of workers in order to be constructive to ponder since clearly the debates will not finish tonight and clearly it will go on next week. Let us use this time on this particular aspect of my intervention if they could ponder on what hon. Bérenger has also said on this particular issue of *force majeure*. Maybe I invite the hon. Minister to propose to Government an amendment that would remove this uncertainty because the danger lies in the fact that we have not defined *force majeure*. If we are to define *force majeure* by statute in a legal provision then we would limit the risk. But if we do not limit it in a definition, then it is wide open and if it is wide open, it is not a simple way out for the employers who are not of good faith. It is an avenue that we are creating for them which is very, very wide for them to avoid having to comply with the legal provision of clause 72. This I believe is a very serious matter that has to be corrected.

Allow me also to talk about another important issue which is under Convention 111. When one reads Convention 111 of the International Labour Organisation, I see here it is entitled Discrimination (Employment and Occupation) Convention of 1958, Convention 111. *Et la question que sûrement mes amis ici à l'Assemblée nationale et ceux qui nous écoutent aimeraient savoir c'est quoi la convention 111.* It is a Convention of the International Labour Organisation, *du bureau international du travail et cela concerne la discrimination en relation avec l'emploi et dans ce texte, Madame la présidente, il est dit et je vais lire l'article 1 –*

« Aux fins de la présente convention, le terme discrimination comprend –

- (a) *toute distinction, exclusion ou préférence fondée sur la race, la couleur, le sexe, la religion, l'opinion politique, l'ascendance nationale ou l'origine sociale, qui a pour effet de détruire ou d'altérer l'égalité de chances ou de traitement en matière d'emploi ou de profession »*

This provision is also in our law, the Employment Rights Act actually and the hon. Minister has also imported this provision into the Workers' Rights Bill.

I am here identifying a problem which had existed at the time when I, myself, was Minister of labour but I did not note it and I must admit it is now that I see it because, in the meantime, I now lecture some students and that is why I referred earlier on to how we can learn from the youth of this country. Students of law, while I was lecturing, drew my attention to the sections of the Employment Rights Act of 2008, amended in 2013 that contained sections that were discriminatory and I asked those students what was discriminatory in our law and they said to me: 'Sir, is it not discriminatory the way migrant workers are treated?' And I said to them: 'what do you mean?' They said to me: 'but they do not have the same treatment as local workers'. I said: 'Do you mean in fact?' They say: 'no, by law'. Then I said maybe I should look into the law as is and I found that those students were totally right because they had identified what we had left alone and taken for granted. But we have to admit that we, ourselves, were wrong in 2008 and in 2013. And I am trying to ensure that the hon. Minister does not make the mistakes we made. I am duty bound to the people of this country to come and admit that we were wrong because we left discriminatory sections in the law.

Let me refer to what the hon. Minister has done, has proposed. He has not done it, he just proposed it and we are here to, at least, think together. Let us look at the section pertaining to fixed term agreement and that particular section pertaining to fixed term agreement, clause 13, subsection 5. This particular section says –

“Where a worker is employed on a fixed term contract, his terms and conditions of employment shall not be less favourable than those (...)”

But subsection 4 says that this section shall not apply to a migrant worker.

So, already here under clause 13, subsection 4, it says a worker, other than a migrant worker. It does not apply to a migrant worker. So, you have one treatment for a local worker and another treatment for a migrant worker. And we are a country that has ratified Convention 111. There is more.

Allow me to look now at another clause of the law and it is, in fact, 44 – meal allowance. Section 44, subsection 3, says here: 'shall not apply to a migrant

worker'. Why? Because normally they have a meal allowance that is sometimes of a high value which they eat and they are supposed, therefore, not to have the meal allowance. Mauritians also when they work, they have a salary and they buy their food and they eat at home for breakfast or dinner, they are still entitled to a meal allowance. Why is it therefore for a migrant worker, it is specifically provided here? This section on meal allowance shall not apply to a migrant worker. In my humble view, this puts us at risk of being in *porte à faux* with the International Labour Organisation for a violation of Convention 111 because it says you cannot discriminate based on place of origin, on race and here we are discriminating against migrant workers.

The other section that also excludes migrant workers is vacation leave, clause 47 which talks about –

“Subject to subsection (2), a worker, other than a migrant worker, who remains in continuous employment with the same employer for a period of at least 5 consecutive years shall be entitled to vacation leave of not more than 30 days.”

The question is: why is a Mauritian worker entitled to this which I am totally in agreement with and I congratulate the hon. Minister for that, but my question is why is it that a Mauritian worker is allowed but the law that the hon. Minister is proposing is importing the mistakes of the past by saying that this only applies to a local worker and not a migrant worker. So, those are issues which I believe the hon. Minister, I will be very happy, could talk about that and enlighten us on that because we do not want to be in a situation where one day, we have a migrant worker who makes a complaint to the International Labour Organisation and then we are taken to task because the International Labour Organisation experts will come and tell us: Members of Parliament of Mauritius, why is it that you are saying that these terms and conditions of employment because it is a term and condition of employment that of being entitled to vacation leave after 5 years of service. Why should it be only for a Mauritian and not for a migrant worker? Is it not therefore creating two categories of workers? There are migrant workers in Mauritius who are here for 10 years. I know migrant workers who have been here for more than 15 years. They have not applied for nationality but they are still working. There are exceptions that are made because the discretion is that either of the Prime Minister or that of the Minister of Labour do not believe that all migrant workers have to leave after four years. That is not true.

So, what I am trying to get at here is that the law in itself, you can ask a migrant worker not to come, after four years you will have to leave. But the law cannot be drafted in such a way

as to be discriminatory in its approach. This is my contention. This is discriminatory in its approach and it creates two categories of workers. But it does not stop there, it goes on even in other sections of the law pertaining to a transition employment benefit which I would like the hon. Minister to explain.

There is another issue which I would like to talk about and I was talking here about discrimination. There was another case and I am sure the hon. Minister will remember. I think he has corrected it and I will talk about this right now, the concept of reinstatement. I thank the hon. Minister for coming up with this clearly in the law. The concept of reinstatement was introduced in the definition *per se* in 2013 of labour dispute, but you will recall the case before the ERT of Mrs Hemowtee Salaye Meetoo vs. the Mauritius Broadcasting Corporation, two cases. This was the first case, it went before the Employment Relations Tribunal where Mrs Hemowtee Salaye Meetoo was asking whether she should be reinstated in her post of Programme Manager at the Mauritius Broadcasting Corporation with effect from 04 August 2015. In this particular case, she explained to the Employment Relations Tribunal how she had been working with the Mauritius Broadcasting Corporation, had obtained promotions, had given more responsibilities and she was happy working there, she had a career prospective, she had a future at the Mauritius Broadcasting Corporation, there was a change of Government in December 2014, and then she continued working, there was no issue, and then all of a sudden, without any reason whatsoever - and this was agreed by the Employment Relations Tribunal, Madam Speaker - Mrs Hemowtee Salaye Meetoo's employment was brought to an end by the Mauritius Broadcasting Corporation under this particular regime.

And then, what she wanted the Employment Relations Tribunal to do is to reinstate her in her job because she wanted to know, and what was confirmed before the ERT, she had done nothing wrong. That is important. She had done nothing wrong, she had not been charged with any misconduct, she had not been blamed for any wrong doing, she had simply been paid three months of salary as notice per year of service and total leaves.

So, through the Government of the day, Mrs Salaye was asked to leave but paid three months per year of service. The contention before the Employment Relations Tribunal was that she should be reinstated because it is not right to simply hire and fire. This is what the trade unionist also believe, it is not right to hire and fire. That is why I congratulate the hon. Minister in coming up with this legislation that makes things more and to protect workers. I am totally in agreement. However, the context is different, the days of the 2007-2008 global

financial crisis are behind us. The crisis is not global, it is local now. It is another issue right now, and closer to whom. But, the issue is reinstatement. In this particular case, *le gouvernement du jour a trouvé que c'était tout à fait acceptable de mettre un terme au contrat d'emploi de madame Salaye sans que madame Salaye ait commis une faute quelconque, sans que madame Salaye ait fauté, mais simplement parce que la MBC avait trois mois par année de service lui a offert cela et the contention of the MBC was si on te paye tu la ferme, tu n'as pas le droit de te plaindre, c'est la loi qui nous permet de le faire. L'honorable ministre, madame la présidente, est venu de l'avant avec le concept de reinstatement. I see it in his objectives. And if this law is passed, which I hope will, unfortunately it is coming too late because it would have helped Madam Salaye.*

It is interesting because the Government of the day did not come out to help Mrs Salaye and I thank the hon. Minister. But then, again, it is unfortunate that the hon. Minister – that is why I said we see eye to eye. He referred it, he ensured that it was referred to the ERT in order to help this lady, but unfortunately the management of the Mauritius Broadcasting Corporation did not see fit to reconsider their position. But I am happy that the hon. Minister, even though too late, but there will not be further victims of such decisions of the Mauritius Broadcasting Corporation who, in my view, have ended the employment of this lady on political reasons and nothing else, because it even went to the Supreme Court, we tried to find what were the good reasons, but unfortunately the law did not permit that she could be reinstated and therefore, she has lost her job.

Now, Madam Speaker, there is another reason why I recalled the members of the trade unions movement were not happy at all with the Employment Rights Bill even the 2008 one and the 2013 version. You will recall that there was a section of the law of the Employment Rights Act of 2008 which was then Section 9 (2) of the Employment Rights Act. The section 9 (2) was repealed in 2013 because it was a provision that said that a worker cannot in anyway have his contract of employment terminated if he participates for the first time in an unlawful strike. Maybe some friends would not remember, but there was a provision of the law before 2013 that said that if a worker participates in an unlawful strike for the first time, his employment cannot be terminated. This was removed because, in my view, when a strike is unlawful it cannot be encouraged. I was thinking that maybe the Government would, because it was very critical of the fact that I, as Minister then, had repealed that particular section of the law and the MSM in Opposition thought that I was wrong when I removed that particular section of the law. The MSM in Opposition thought

that Ashok Subron was totally right when he was critical of me. It is a difference of opinion, I totally respect that but I would have thought therefore that the Government of the day would have, through the Prime Minister and the good advice of my good friend, the hon. Minister of Labour, reinstated section 9 (2) or its equivalent to make it possible not to terminate someone's employment who participates in a strike for first time all be it unlawfully, but this clearly has not been the case.

Two other issues I would like to address before I end, and one of them is the recycling fee. I see that the hon. Minister has come up with a legislation, the Workers' Rights Bill and the recycling fee is no longer there. I have tried to find out, why is it that the recycling fee was not there. You will recall that the recycling fee exist today under the Employment Rights Act. What is the recycling fee for? The recycling fee goes to training *entre autres*, of a worker that needs to be retrained, reskilling of a worker who has lost his job and needs to be employable again, giving the worker new skills and paid by Government through this recycling fee. It goes towards the transition and unemployment benefit, and this is what I have tried to look for everywhere and I have come to the Workfare Programme Fund at clause 77. The object of the Workfare Programme Fund is to pay any transition unemployment benefit. But in the actual law, the Workfare Programme Fund also goes towards training, reskilling, but the whole concept has been removed from the law, there is no longer training and there is no longer reskilling. I think that is a very important aspect that needs to be addressed.

Because one needs to be able to help, not like the HRDC does or the other programmes that are set up under other Ministries. I think that why this section of the law was important under the Workfare Programme Fund and why the Recycling Fee was important is because you do not send workers who need to be retrained to general programmes that are there for all. But you have to be able to have tailor-made programmes for those who lose their jobs and have to be retained, tailor-made to the specific needs of those workers and the reality of the demand in the market. And this is where having the control under the Ministry of Labour and Training, training being the new function which is there ever since 2015, it has, therefore, to be, in my humble view, very important that training also be there and used, tailor-made training to be able to help urgently workers who require that in order that they become employable again, and this is the whole object.

Now, what is of interest also is at clause 78(1) (a) –

“(1) *There shall be paid into the Workfare Programme Fund –*

(a) *money collected by way of levy at the rates specified in the Sixth Schedule;”*

This is what I find interesting, and I go to the Sixth Schedule. The Workfare Programme is basically something that the Mauritius Labour Party created. It did not exist before; let us not forget. Before 2008, when someone was losing his job, you had *les usines qui avaient fermé et qui ne donnaient rien, où les gens qui perdaient leur travail qui ne recevaient rien*. So, what the Mauritius Labour Party did is create the Workfare Programme, and I am happy that when we say that we suffered 10 years, but not everything was bad, at least, the good thing is the hon. Minister and his Government are continuing with the Workfare Programme that did not exist before 2008. The Workfare Programme is continuing in the same way, but the previous version of the Workfare Programme, as I said, contained the element of training. In this version, it does not contain the element of training and reskilling. The previous version of the Workfare Programme, in fact, was funded by 1% contribution of the worker in the National Savings Fund Account and the Recycling Fee. You see, therefore, the Workfare Programme was funded which is the transition unemployment benefit is to be funded. In the actual law, which we brought in, it was funded the 1% contribution of the worker and the employer. But the actual Government is saying that the transition unemployment benefit is no longer going to be funded by the employer. It is only to be funded by the worker.

*So, therefore, sous le précédent régime du Parti Travailleiste, quand quelqu’un perdait son travail et il voulait bénéficier du Transition Unemployment Benefit, c’était une allocation qui l’aidait d’une certaine manière à ne pas se retrouver sans ressources financières. Cet argent, on le puisait d’un fond et ce fond, c’était les employeurs qui y contribuaient, mais non seulement les employeurs mais aussi les travailleurs. Mais, maintenant, ce que le gouvernement propose c’est que cette allocation qui peut aider les travailleurs en difficulté qui perdent leurs emplois, ce sera simplement le travailleur qui va contribuer et non pas l’employeur. Pourquoi une facilité pareille donnée aux employeurs ? Pourquoi est-ce que le travailleur, l’employé qui se retrouve sans emploi, ce citoyen qui se retrouve sans emploi, pourquoi est-ce que ça doit être lui et seulement lui, les travailleurs de l’Ile Maurice qui doivent contribuer à ce Transition Unemployment Benefit ? Pourquoi avoir enlevé la contribution qui était la contribution de l’employeur ? C’est ça la question que j’aimerais que l’honorable ministre puisse répondre, et je pense qu’il est nécessaire de comprendre pourquoi une facilité et autant de largesse avoir été donnée aux employeurs dans une situation*

pareille ? Alors, peut-être que M. le ministre me dira que c'est parce que, précisément, ils sont créés quelque chose qui est le *Portable Gratuity Retirement Fund*. Je comprends. Mais ce que je vais essayer d'expliquer maintenant c'est que *one should talk about like and like, and one should not compare like with something else*.

What I am trying to get at, I am going to explain. The Transition Unemployment Benefit is an allowance to help a worker who finds himself unemployed for a moment. Transitional Unemployment Benefit is to help him during the transition of finding a job. When we were in power, and the actual law that we brought in, it was both the employer and the worker who contributed to that, but, most importantly, the employer contributed to that. But the Portable Gratuity Retirement Fund, this has always been the employer. We should not mix issues. We have one which is Gratuity on Retirement which has always been one of the *cheval de bataille* de M. Chuttoo and Jane Rago. Initially, their request was for there to be a Portable Severance Allowance Fund, you will recall. But it is not the Portable Severance Allowance that has come in; this is also a very good suggestion, the Portable Retirement Gratuity Fund.

Alors, moi, j'aimerais comprendre pourquoi est-ce que le gouvernement a enlevé cette obligation de l'employeur à contribuer à ce fond, qui est une allocation transitoire, pendant qu'il se retrouve sans emploi, où dans le passé, sous le régime du Parti Travailleiste, c'était l'employeur qui contribuait. Mais, pourquoi maintenant avoir effacé l'employeur et fait en sorte que c'est seulement le travailleur qui va contribuer à une allocation transitoire ? C'est ça où ça fait mal.

This is the lack of logic. One cannot mix it with the Portable Gratuity Retirement Fund because gratuity, in itself, is always something that needs to have been contributed for by the employer. And then, there is one last anomaly. At the late hour, allow me to talk about the last anomaly that existed in the law, in the actual law itself, and basically, it is about Severance Allowance. I try to see whether I can find that relevant section on Severance Allowance and how it is calculated. There is a section of the law under the actual Employment Rights Act that basically says that when Severance Allowance is paid, the employer has the right to remove from the payment of Severance Allowance any gratuity paid by the employer. I have always tried to find out, under the actual law, the Employment Rights Act and under the actual proposal of the hon. Minister on the Workers' Rights Bill, it says here that the Severance Allowance, you can remove from it any gratuity paid by the employer. I tried to find out from Inspectors of Labour and from their experience what

exactly is - it is in clause 71 and this is what I would like to draw the attention of the hon. Minister to. Clause 71, deductions from Severance Allowance –

“(1) An employer may deduct from the severance allowance payable –

(a) any gratuity granted by the employer;”

What gratuity is this section referring to? You see, our law talks about gratuity on retirement. I am sure it is not about retirement that it is referring to here, because otherwise there will be no issue on Severance Allowance. What gratuity is this referring to? Is it at death? Obviously not! So, what gratuity is it referring to? If you could look into it, please, through you, Madam Speaker, I will ask the hon. Minister, because I am of the view that this section of the law is, indeed, superfluous. Because I never had a proper answer from even the Labour Inspectors and the Directors of the Ministry of Labour from all the years and even today when I asked, no one could provide me with a proper answer as to what this gratuity of clause 71 (1) is. And I believe, maybe, some spring cleaning could be done in order that this be removed.

In conclusion, let me say, hon. Adrien Duval referred to the issue about how the law will be proclaimed. Now, the hon. Attorney General tried to ridicule hon. Adrien Duval and diminish what he said by trying to say, well, it is the first time he is reading a Bill and does not understand that all Bills have to be proclaimed. No! The hon. Attorney General should also recall that before him, hon. Bérenger spoke. And hon. Bérenger clearly drew our attention, and the attention of the Government mostly importantly, because, obviously, those are constructive comments, that it is the first time, at least, from my memory, that we are asked to vote a law where we are not aware and the Bill does not contain the schedule pertaining to what will be the contribution for the Portable Gratuity Retirement Fund. When you look at the previous legislation in 2008, in 2013, you always had schedules that told you this is the contribution. There was certainty in the legislation that was being proposed and passed. There was visibility both for the employers and the employees. In this particular instance, we are asked to vote a law, but we are asked to make it law but there is no visibility when it comes to this particular contribution. What will be the figure? We may have heard figures, like 4.5% or 4.3% or whatever it be, but it is not in the law in terms of a schedule. So, there is time, today, - we have already reached a late hour - for the hon. Minister to come next week and to propose an amendment and to include in the law a schedule that will tell us that this will be the contribution, and let us sit down and vote for it, but, at least, it will give certainty and visibility.

Madam Speaker, it is trite law. But let me say that in another way, it is Parliamentary practice for us for vote on financial issues with visibility. It is not good Parliamentary practice, and I mean that for due respect to my friend and not to take it badly. It is not good practice for us to vote a law and not about financial provisions that will come later on, without knowing actually now what will be the financial provision. That we make provision in the law for a regulation for it to be changed later on, fair enough, but when we come with something as new and good as the Portable Gratuity Retirement Fund, I think there needs to be visibility there. So, I humbly request the hon. Minister of Labour, and I humbly request the hon. Prime Minister if he could please - with this good measure, as the Portable Gratuity Retirement Fund is now in the House - consider bringing in an amendment next week, so that not only will the business community who would like to know for their own reasons but, most importantly, the workers of this country who welcome it; there is consensus on this measure even between Government and the opposition, but the workers would like to know through you, Government, what would be the contribution to ensure that they are not going to be worse off than the 15 days per year of service gratuity on retirement. This is simply what I believe the request is, nothing more and nothing less. I know it is not the intention of Government to see to it that workers are there, I am not making a *procès d'intention, loin de là*. The Government has established clearly that they want to ensure that all workers obtain, at least, the 15 days per year of service. Trade unionists also want that. We support this move from Government. Therefore, if you could please bring in in some visibility in there to put in the contribution, at least, when we all vote it, we vote it clearly, unconditionally and without any cloud or darkness or lack of transparency around it. And while I believe that hon. Adrien Duval was right to draw our attention, you will see at Clause 128, there is subsection 3, which says –

“128. Commencement

(3) Different dates may be fixed for the coming into operation of different sections of the Act.”

In other words, this particular Section pertaining to the Portable Gratuity Retirement Fund, it is possible to not be proclaimed, because Clause 128(3) permits the hon. Minister not to have it proclaimed, and Government not to have that proclaimed because there are some technical issues that need to be worked out. And this is what I am sure the hon. Adrien Duval meant - and it was not in any way, I am sure – and it did not really call for any remark, *qui n'était pas*

*plaisant du tout* on the part of the Attorney General, but let us forgive him in the spirit of good faith, when we all want to work in the interest of workers.

I hope I have managed to contribute, Madam Speaker. As I said, when I started out, I apologise for having been long; I realise I have. But then, again, it is a very important piece of legislation. It is not very often that you have consensus on such a piece of legislation. I wish I had when I was a Minister; I did not, but I do realise that even it was a complicated piece of work, you have done it. There are certain issues that need to be corrected. I have humbly put it forward and request that those issues be looked into and I believe, and I hope that this good faith that I am trying to put forward will also be reciprocated by Government and that we can finally come up with a Bill that would make workers happy and you would note I did not refer to elections.

Thank you very much.

**Madam Speaker:** Hon. Rutnah!

(11.28 p.m.)

**Mr S. Rutnah (Third Member for Piton & Rivière du Rempart):** Thank you, Madam Speaker. We have just heard someone who technically has become wise after the event, and it reminds me of Romy who said –

“Yesterday I was clever, so I wanted to change the world. Today I am wise, so I am changing myself.”

This is the impression I got from the spokesperson of the Labour Party.

Madam Speaker, in relation to this Bill, we have had the opportunity to listen to the representative from the Labour Party, the historical Leader of MMM, and the main spokesperson of the Labour Party and I will come in detail later on as to how whenever a Labour and PMSD Government have been in power, how they have together legislated against the interest of the workers of this country. I will come to this later, and insofar as hon. Bérenger is concerned, I will deal with his criticism as well, in line with what he, himself, said when he took part in the debate of the 2008 Employment Relations Act and Employment Rights Act.

Madam Speaker, my learned friend the Attorney General, hon. Maneesh Gobin, was quite right to refer very briefly to the history and the working culture of our country, and I will do so as well. Madam Speaker, from around 1720 up to 1820, the law relating to workers

then, - we are talking about slavery - that is, the slaves, was regulated by the Code Noire, and since the existence of workers, be it slaves or indentured labourers and thereafter, the law relating to workers have always been at the very forefront of those who have governed this country.

In 1834, according to history, prior to 1834, other vessels apparently brought indentured labourers. But from records, we know, at least, Atlas bordered the shore of Mauritius for the first time in 1834 and brought indentured labourers and that concept of indentured labourers lasted until 1920. In those days, Madam Speaker, a worker was earning Rs5 a month, earning some flours, some cassavas, some dhotis, some clothing, rice, etc, as payments. And whenever they would be absent from work, their salary of Rs5 was being deducted.

Thereafter, Madam Speaker, after 1920, when workers started to organise themselves after the abolition of the concept of indentured labourers, the first ever force of the struggle of workers were witnessed in 1924 when Dr. Maurice Curé called for, at least, 800 workers from around the country to gather in Port Louis for a march, because there was an issue relating to water supply. And, as of then, the workers of Mauritius started to learn a bit about their rights and they decided that they would not be taken for granted. And thereafter, in 1936, Dr. Curé assembled 100,000 of people at Champs de Mars and the setting up of the Labour Party, thereafter the first Labour Day, 01 May, was celebrated in 1938.

From 1938 onwards, with the advent of the creation of the Labour Party, workers started to learn more and more about their rights and there were lots of struggle, protests and this is where the British colonial Government started to panic and they were sending missionaries from England to hold commission and to find ways and means to appease the struggle that the workers of this country was going on, or going on at the time.

Madam Speaker, up until the Labour Party was in power, pre-independence, then post-independence, we know that there was a law called the Public Order Act of 1970. The Public Order Act of 1970 was designed on the premise for the protection of security, safety. Against who? Against people, against workers who were trying to organise themselves to fight for their rights, who were struggling for their rights. And then, came 1973, still the Labour Party and the PMSD were in power, the first ever dictatorial law against workers was legislated, called the Industrial Relations Act. The Industrial Relations Act, together with the Public Order Act were used against workers, against trade unionists to zip them off. And in

those days, obviously, the MMM was born and there were lots of trade unionist activities then.

The IRA and the POA of the Labour Party and the PMSD were used against workers, against trade unionists to throw them into prison. There was a time - hon. Bérenger is not here now – when at the Port Louis harbour, the employer was refusing to recognise the Port Louis Harbour and Docks Workers’ Union, refusing to recognise hon. Bérenger, then *syndicaliste* Bérenger, to negotiate. But thanks to the intervention of *Juge* Ramphul at that time, who made an award that the trade union should be recognised. And *Juge* Ramphul went on to say that the strike that was commenced was as a direct consequence of the fault of the employers and not the employee.

Then, what we had? Today, we hear hon. Bérenger asking: why the Minister or the Government chose to repeal the Employment Rights Act and amend the Employment Relations Act. Let me give him his answer with his own answer, and he is not here. I would have referred him to the debate that went on in this House in relation to the Employment Relations Bill of 2008 and the Employment Rights Act of 2008. And this what hon. Bérenger stated, at the time Leader of the Opposition – *“Et ce qui est profondément triste,(...) Mind you I do not speak French. “Et ce qui est profondément triste, c’est qu’après plusieurs tentatives de remplacer l’Industrial Relations Act par une loi démocratique, moderne progressiste, tous les syndicats constatent aujourd’hui qu’il y a reculé. Au lieu d’un pas en avant dans l’histoire, il y a reculé dans les deux cas. Dans le cas de l’Industrial Relations Act comme dans le cas du Labour Act de 1975, cela les syndicalistes disent à l’unanimité. »*

I do not speak French, Madam Speaker. I hope I understood it. I see hon. Ganoo smiling.

*(Interruptions)*

Madam Speaker, hon. Bérenger, I spoke earlier on about the Labour Party and the PMSD what they have done with the IRA and POA why they legislated. Now, hon. Bérenger, who himself was a victim, he was a victim of the system put in place by the PMSD and the Labour Government. But, in 1982, hon. Bérenger won 60-0. Did he change that law.

Hon. Bérenger again was in Government. He was not only Finance Minister but, at a later stage, he even became Prime Minister for two years. I understand on one occasion he asked women whether Mobile Force *pou donn biberon*. *Riot pa donn biberon*, I am told, I was not in Mauritius those days but I was...

*(Interruptions)*

Attan, you will have...

(Interruptions)

You will have the right to reply.

**Madam Speaker:** Hon. Baloomoody, you will have the opportunity to reply later, right?

(Interruptions)

But hon. Baloomoody, you will have the opportunity to take the floor later.

**Mr Rutnah:** You see Madam Speaker, I have the habit of listening to debate, assimilating what they are saying so that I can reply but they cannot extend the courtesy like hon. Baloomoody did just now. You see even we don't have the spokesperson of the PMSD because he spoke and when my hon. friend Benydin was replying, he chose not to extend the courtesy of listening to the reply and I think hon. Benydin was wrong to qualify them as *jolie mamzel* because next time, when we will be coming back - because he has already stated earlier on to hon. Callichurn that, later on, after the election he will come to say when this law will be promulgated. So, this means that he psychologically accepts that we are coming back and probably by then *jolie mamzel* will turn into *vieille fille*.

(Interruptions)

I am glad. I am glad, I just cracked the nuts. So, you see it is a question of the Westminster system, Madam Speaker, from where we develop our Parliamentary proceedings and culture, which requires that both Opposition and Government must have mutual respect. This is why we get elected, we come here. I was glad for the Youth Parliament, some Members of the Opposition were there, but I am sure that hon. Duval is not an example for those youth who come here, put an argument and he is not here...

**Madam Speaker:** It is not fair. Hon. Rutnah, please do not mix issues. Do not mix issues.

**Mr Rutnah:** No, I am not mixing issues and he is not here to listen to the criticism levelled against him and that is not a good example to the youth of this country. So, this is what I had to say and today, Madam Speaker, people like Manilal Doctor who fought for workers in this country, Maurice Curé, Guy Rozemont, Emmanuel Anquetil, Harry Parsad Ramnarain, Adolphe de Plevitz, the state honour from Nouvelle Decouverte wherever they

are, wherever their soul is, I am sure today they are proud that this Minister, hon. Callichurn, the bold man...

*(Interruptions)*

He has brought into this House one of the most revolutionised pieces of legislation that is going to revolutionise the work culture in this country - the rights of people. And I am glad that we are led by a Prime Minister who is a democrat, who understands *démocratisation de l'économie* as Prime Minister, Minister of Finance for him and to his Government and to him *démocratisation de l'économie* does not mean only for a few mistresses and for a few *copains*. It means for every citizen of this country, for every worker of this country.

So, Madam Speaker, the Employment Relations Act of 2008 brought by the then Vasant Bunwaree, I think, did away, in fact, with the termination of service contract board. Why? It was an independent body. It was an independent body where employers were supposed to go and justify why, for economic reasons, they are going to reduce workers in their factory or firm or company or whatever you call it. They had to justify, but the 2008 law got rid of it just like that and then we had the episode of the Palmeira Ltd where hundreds of workers were laid off.

*(Interruptions)*

No, I am talking about Palmeira. Palmar is different. Palmar just happened recently as a consequence of the law brought by hon. Mohamed coupled with the provision that was made by Dr. Bunwaree. That is Palmar but I am not talking about Palmar, I am talking about Palmeira. That company was close. If we had that institution in place, they would have been under an obligation to go and justify. So, without any protection, following misappropriation of funds by employers like it happened recently in Palmar Ltd., it could not have been possible but they chose to do it. When hon. Mohamed was Minister - because he said a few things about loss of jobs between 2000 and 2005 as a result of the closure of textile factories and he said Government should adapt with time and the law must be dynamic, not static which is quite right. This is a famous quote from Lord Denning that the law must be dynamic, not static. The hon. Member referred to job losses. After the 2008 amendments, when he was Minister in 2011, hon. Uteem, who was in the Opposition, asked him a question on the 10 of May of 2011.

“(No. B/298) Mr R. Uteem (Second Member for Port Louis South & Port Louis Central) asked the Minister of Labour, Industrial Relations and Employment whether,

in regard to the workers whose employment have been terminated for economic, technological, structural reasons or for reasons of similar nature, since the coming into force of the Employment Rights Act 2008, he will state the -

- (a) number thereof ;
- (b) sector of activities concerned, and
- (c) number of court proceedings initiated challenging such basis for dismissal, indicating in each case, the outcome thereof.”

I am not going to read the entire answer but the main part of it. Amongst others, hon. Mohamed replied this -

“On the basis of the notification received (...)”

That is these are notifications that have been received, meaning that there are notifications which probably were not received.

“On the basis of the notification received, the employment of 6,932 workers had been terminated since the proclamation of the Employment Rights Act 2008, and the Act was proclaimed on 02 February 2009.”

So, between 2009 to 2011, under the Labour/PMSD Government 6,932 workers lost their jobs. And then, he goes on to say –

“Since the coming into operation of the Act up to 30 April this year, the case of 369 workers laid-off for economic reasons have been lodged in the Industrial Court.”

Out of the notification received, 6,932 workers who had lost their jobs, only 369 found their way into the Industrial Court. Then, hon. Uteem asked supplementary questions and to one of the supplementary questions, amongst others, this was said –

“It is clear that certain employers have made use of the term ‘economic reason in order to make certain people redundant, and all sorts of schemes and measures are sought after and devised by certain employers, in order to make people redundant.”

And then he says elsewhere that –

“As the hon. Member is aware also, being a member of the Bar, once upon a time, when people were made redundant, once again, the Ministry used to receive a letter and then there was a Board that existed called the Termination of Contract Service Board. That was there in order to investigate and to come up with the ruling as to

whether or not the redundancy was justified. Nowadays, what happens is that this enquiry is carried out to the best of the ability by officers of my Ministry who do a formidable job by trying to look into the situation and then referring the matter to Industrial Court, if need be.”

So, when he was Minister, he was well aware of the precarious condition in which workers of this country and even migrant workers were working in.

Now, I will refer him to another question asked by a very learned man of this House, hon. Ganoo. On 08 May 2012, one year later almost, hon. Ganoo asked a virtually similar question, question No. B/38 –

“(No. B/38) Mr A. Ganoo (First Member for Savanne & Black River) asked the Minister of Labour, Industrial Relations and Employment whether, in regard to the employees, he will state –

- (a) the number thereof whose employment has been terminated since the promulgation of the Employment Rights Act to date, indicating the sectors in which they were employed, and
- (b) if Government will consider amending the law regarding the laying off of workers.”

So, this is the question and amongst others, this is the reply. We are talking about one year later from hon. Uteem’s question -

“However, ever since February 2009 the proclamation date until 31 March 2012, there has been a termination of employment of 15,538 workers and that have been registered at the level of the Ministry.”

This jogs hon. Ganoo’s memory because I see him reacting and even could not believe it now that within just that short span of time 15,538 workers lost their jobs. And then, hon. Ganoo, as he always is the man who digs for more information, asked further questions, and in the reply, amongst other things, this is what hon. Mohamed said –

“I have already gone to Cabinet with proposed amendments. We are, in fact, setting up a new institution in order to see to it that this abuse that certain employers make will no longer exist. We are also precisely making very important changes with regard to termination of employment in the Employment Rights Act.

We are also bringing some positive changes to the workfare programme that works in the advantage of laid off workers. Therefore, I can assure the hon. Member that Cabinet had already approved those changes and every single change that is being brought will precisely address this situation, which I totally agree with him, must be addressed because there are certain employers who make an abuse of the situation.”

Marvellous! It is a marvellous statement. Just like today and every time that he is on his feet, we hear good things coming out from his mouth. He already had approval from the Cabinet that was led by Dr. Ramgoolam, but when he brought the amendment in 2013, did he address these issues properly? Did he? Let me remind him what he did. In so far as the Workfare Programme which already existed for seven days, he simply extended it to mere seven more days, making it 14 days. And then, there was this concept of transition employment. The amount that was paid to this Transition Employment Scheme was not increased at all, but in his reply he said he would improve the Workfare Programme, that Cabinet has already considered his proposal. He did not do it. But today, he got the cheek as usual to talk a lot, be repetitive, hammering on points, sometimes completely out of subject, struggling to use all sorts of emotion to try to convince and persuade people out there that something absolutely wrong is going. But there is one common denominator, Madam Speaker, in the Opposition. They agree that it is a good Bill, but they are motivated to criticise this Bill because their balance tilts more towards the *patron* than the workers of this country. I remember what they were saying the other day when we were debating, that we are protecting the private sector. I forgot which Bill it was...

*(Interruptions)*

Intellectual Property Bill – I am grateful to my very able friend, the hon. Minister of Agro-Industry for reminding me. But, today, when you see the argument advanced by hon. Duval, hon. Bérenger, hon. Mohamed, who is tilting more towards the ‘*gros patron*’, it’s not us. We are trying to bring legislation to protect our people in a new era of development in order to foster a new culture of work, a new culture of relationship between workers, between employers and employees. That’s what we are trying to do to modernise every aspect of industrial relations in this country. Gone are those days when employers would treat their workers as ‘slaves’, so to say. We used to hear the words ‘*esclavage moderne*’. It should not exist. In fact, according to human resource theories, when you treat your workers well, you give them the incentives, those workers become more productive, more efficient. They are motivated to work and this is the kind of culture we want to bring so that there is no

divide between public sector work and private sector work. And I find it preposterous that, although hon. Mohamed says that he was not in favour of the 2008 legislation, yet, he did not do anything to correct those measures and, insofar as the culture of hire and fire existed since the legislation of the Labour/PMSD Government, namely, the IRA, the Labour Act, the POA, that culture continued. And talking about what were the views of the trade unionists at that time, this is what one trade unionist said, and I am here quoting from a newspaper called '*Le Mauricien*', of 14 December 2012, where a trade unionist wrote this –

“The combined dynamics of the series of proposed amendments to the Employment Relations Amendment Bill by Shakeel Mohamed, will seriously undermine the position of working people of Mauritius when negotiating with economically powerful employers. These amendments will create the conditions for employers to easily force the relinquishment of acquired rights and existing conditions of employment on workers. As it stands, the amendments are quasi removing the limited right to strike that was enacted in 2008 in the Employment Relations Act.”

So, according to the trade unionist, the 2008 Employment Relations Act provides better protection to workers for the right to strike, whereas in 2012, that right was significantly interfered with. Criticisms were levelled against the Government insofar as clause 72 of the Bill is concerned in relation to force majeure. Now, let me have a look at clause 72 the Bill. It is important that I should take everybody to this clause, especially those who are watching the debates from home tonight.

“Clause 72 – Reduction of workforce.

(1) An employer who intends to reduce the number of workers in his employment, either temporarily or permanently, or close down his enterprise, shall, except in case of force majeure, notify and negotiate with –

(a) the trade union, (...);”

Now, my learned friend, the hon. Attorney General, said, quite properly, that definition of these kinds of words are left to courts, because each case is dealt according to its own particular facts and circumstances. Hon. Mohamed referred us to quite an interesting judgement of the Privy Council and he took us to the core part of it in relation to '*étranger à la chose, imprévisibilité, irrésistibilité*'. Now, he did not read the entire judgement to ascertain how the court will construe and give meaning to the operative words 'force

majeure'. Those who appeared in this case, at the Privy Council', from a Chamber called 7 King's Bench Walk, wrote something about it, and I will quote what they said –

“The Privy Council concluded that, while French law has traditionally required proof of three separate and cumulative elements in relation to force majeure of exteriority (*étranger à la chose*), unforeseeability (*imprévisibilité*) and irresistibility (*irrésistibilité*), the correct approach and that which was in accordance with more modern doctrine was to treat irresistibility as a critical element, and unforeseeability, simply as a relevant consideration in judging whether an event was or was not irresistible.”

And the Privy Council goes on.

“Further, the Privy Council accepted the proposition that the concept of irresistibility did not require the party claiming force majeure to prove that the event or its consequences were impossible to be avoided but, rather, required that party to prove that the event or its consequences could not be avoided despite the taking of all reasonably and practicably possible measures to do so. This was a higher standard than that imposed by a duty to act reasonably in accordance with prudent practice but a lower standard than that imposed by a requirement to take every considerable precaution.”

Now, what would be a force majeure? We will not be able to define it, and if we define it, if a legislator – if this House today tries to or seeks to, or makes an effort to define force majeure, then we tie our hands. No legislator would do that. It is not prudent to do so. Now, the example which he gave was what if a supplier of raw materials cannot supply, any firm, any company operating in Mauritius or elsewhere, when there is a problem with their suppliers, that problem does not just come out of the blue, suddenly, when all their stocks have run out.

When there is a problem with the supplier, the employer is under a duty to go and find alternative supplier or suppliers, and I am sure for every single product that is produced in the world there are suppliers and alternative suppliers available to supply. It may cost a bit higher, but the cost can be differed to the customers. It is a bit like if tomorrow STC has a problem with his supplier to supply petrol, we are not going to wait for the last minute to find an alternative supplier. Hon. Soodhun will rush to Saudi Arabia or somewhere, meet some Sheik, shake hands and get some alternative supplier to supply us some petrol. This

criticism in relation to Convention 111 of the ILO, in relation to discrimination, Madam Speaker, the law relating to discrimination, firstly, features in our Constitution. Secondly, we have legislation like the Equal Opportunity Act, we have an Equal Opportunity Tribunal; we have other laws, other legislation, employment legislation dealing with discrimination. Now, there is a difference between actual discrimination and positive discrimination. The discrimination that hon. Mohamed has referred us to are what kind of discrimination, discrimination against migrant workers. Now, he referred us to a number of clauses and made it sound very sinister to the people tonight. Let me go to these clauses one by one. This is what clause 13(4), in relation to the Fixed term agreement says –

“Clause 13 – Fixed term agreement

(4) A worker, other than a migrant worker, who is employed in a position which is of permanent nature, shall not be employed on a contract of fixed duration for the performance of work relating to the fixed, recurring and permanent needs of the continuous normal business activity of the employer.”

What I don't understand is his criticism and it causes confusion. Migrant workers when they come to Mauritius, they come on a visa. They have to stay for a fixed period of time, and during that period of time, as I understand it, they have to work for a particular employer. Now, why would we not make a provision to make an exception to the rule insofar as migrant workers are concerned? Then, we were referred to clause 44, Meal allowance. The meal allowance referred to in subsection (1), shall be paid not later than on the last working day of the pay day, but what it says is that the migrant workers will not be entitled to the meal allowance, and this is simply because we all know that migrant workers, when they come to Mauritius, there is a provision in the law that, firstly, the employer has to provide them with accommodation, secondly, with meals. So, it is already included in their package. So, if it is not in the law, it must be in some regulation because when you go to fill the form, make an application at the Employment Division, you have to prove that, firstly, you have got accommodation, secondly, you will provide meals.

*(Interruptions)*

**Madam Speaker:** Hon. Shakeel Mohamed, you will have ample time to make your arguments.

**Mr Rutnah:** So, if we now provide them further meal allowance, then it will be discriminatory against our local workers. It is impossible to reconcile because, here, we have

a group of workers who are not supposed to stay in the country permanently, we are being told that they should get double whammy - it's like a combo to them - and at the prejudice of our local workers and it's not fair. It's not fair; we have to strike a balance somewhere. And this is what the law is all about, that's why we don't have to be static, we have to be dynamic, and to be dynamic we have to carry out this balancing exercise to be fair, just and reasonable. The same argument goes on even for clause 47, Positive discrimination. I will not go on and on about this.

The concept of reinstatement, well, I am not going to comment on specific cases and status of those cases in appeal, etc. because I don't think that it is ethical as a lawyer for me to talk about my own case or someone else's cases for its merits and demerits in the House. But, it is for the first time that we have a legislation here when someone has been sacked, he can go to court and ask for reinstatement ...

*(Interruptions)*

Yes, I am glad hon. Ganoo is crosstalking and I overheard him. In the Labour Act of 1975, there was this provision, but I told the House earlier on what the Labour/PMSD Government did, they made it difficult for the workers. So, after they abolished it, this is for the first time, in the modern era, that our young, dynamic - not static - Minister of Labour, Industrial Relations, Employment and Training...

*(Interruptions)*

The man who turns the lion into a meow...

*(Interruptions)*

He is the man who turns the lion into a meow. He is reinstating the position of the Labour Act in a more simplified and dynamic manner to bring back the glorious days that the workers used to enjoy, Madam Speaker. This is what he is doing and this is what this is all about, to bring back the glorious days of the workers' rights in this country.

Madam Speaker, nowadays, do you know what happens when you go to a disciplinary hearing? In fact, the employer and a few cronies have already made a decision to lay off someone, to kick him out technically. But what they do most of the time - and I can say, most of these disciplinary hearings, they are just shammed because they have already made up their mind - they will bring a so-called chairman of their own choice, they will have their legal advisers, they have already discussed it, they will tell the employee: "You go and come

along with your trade union or a barrister”. Many workers think that Ravi Rutnah will go there and will do some kind of miracle. But do whatever you want, if they have already made up their mind to kick away that employee, they just justify it and they do it. And then what?

So, what can you do, you go to the Industrial Court. The case will last for five years. What will happen? Eventually, the workers are always losing, but it is for the first time that hon. Minister Callichurn is bringing this modern piece of legislation. Now, recycling fees! I see hon. Baloomoody now enjoying the debate.

*(Interruptions)*

**Madam Speaker:** Please!

**Mr Rutnah:** I think he has spent a lot of time in opposition. Workfare Programme! He says it’s no longer there, training of workers, reskilling needs to be employable. Let’s look at what clause 76(2) is all about. But let me start with subsection (1).

“76. Establishment of Workfare Programme Fund

(1) There shall be, within the Ministry responsible for the subject of social security the Workfare Programme Fund.”

The Ministry held by my very able and learned friend, hon. Etienne Sinatambou, who scooped most of the monetary budget in his Ministry, he is the richest man of the House. And subsection (2) says this –

“(2) Subject to subsection (3), the surplus money of the Workfare Programme Fund shall, after consultation with the Workfare Programme Fund Committee, be invested in such manner as the Minister to whom responsibility for the subject of social security is assigned may approve.”

In this clause, the Minister has got wide power to invest the money in training, in development, in skilled redevelopment, etc. We just should not literally read something and pretend that we have understood it, and then, make comments which are not appropriate.

Madam Speaker, I think I have dealt with most of the criticisms levelled against these two Bills. But one thing I forgot, Madam Speaker, is the Redundancy Board, the beautiful thing called Portable Retirement Gratuity Fund. In fact, the Redundancy Board is now bringing back the same right that was protecting what they got away with in 2008, the Board which was called the Termination of Service Contract Board, where the employer has to justify, and hon. Minister Callichurn has brought it back. So, it is a way forward. And then, the Portable Retirement Gratuity Fund, if you go down the street, whether in Rivière du

Rempart, Goodlands, Flacq, Bambou, Souillac or Curepipe, you meet any worker on the street, or even in Port Louis, you ask them whether this is a good scheme or not and you will get your answer. The answer is, Madam Speaker, that all workers of this country, at the time of their retirement, will automatically earn money that were always due to them in order to shape up their future after retirement, just like those who are in the public sector get their pension at the end of the day.

Madam Speaker, to conclude, I am ever so grateful to the Minister in charge to the Prime Minister, to all those who have contributed towards the finalisation of this beautiful legislation that is taking us a step forward in designing the work culture for the future generation of this country, so that we can experience this new era of development that has kicked off since 2016 in this country.

Thank you, Madam Speaker.

**Madam Speaker:** Hon. Prime Minister!

**The Prime Minister:** Madam Speaker, I move that the debate be now adjourned.

**Mr Roopun rose and seconded.**

*Question put and agreed to.*

*Debate adjourned accordingly.*

#### ADJOURNMENT

**The Prime Minister:** Madam Speaker, I beg to move that this Assembly do now adjourn to Tuesday 13 August at 11.30 a.m.

**Mr Roopun rose and seconded.**

*Question put and agreed to.*

**Madam Speaker:** The House stands adjourned.

Hon. Baloomoody!

#### MATTERS RAISED

##### BELL VILLAGE, PONT BONNEFIN - DRAIN

**Mr V. Baloomoody (Third Member for GRNW & Port Louis West):** Thank you, Madam Speaker. I want to raise an issue regarding the RDA. I hope that one of the Ministers will pass on the message. It is with regard to the fact that, on the way to Bell

Village, on *Pont Bonnefin*, there is on the right the street of Bonnefin, two streets, one Bonnefin Street and the other one is Reserve Street. Before entering the *pont*, the road is very high and there used to be a drain on the main road. Recently, with the development, this drain has been blocked and the RDA started some work there a few months ago, but unfortunately, nothing has been done. There has been measurement done, because whenever it rains, the whole alley floods and all the houses are flooded.

#### **STEVENSON ROAD & DR. BOUR BOUNDARY – BROKEN WATER PIPES**

Madam Speaker, I have another short issue with regard to Constituency No. 18 and it concerns the Deputy Prime Minister. It looks as if the CEB has done some works, and by doing so, they have broken some pipes of the CWA. I will give the letter which can be passed on to the Deputy Prime Minister. It concerns Stevenson Road (Impasse) and Dr. Bour Boundary. The CEB is refusing to repair those pipes because it is the CWA that has broken them, so there is a conflict between the CWA. I am just putting in some pictures so that they can be passed on to the DPM to look into this issue.

Thank you.

**The Vice-Prime Minister, Minister of Local Government and Outer Islands, Minister of Gender Equality, Child Development and Family Welfare (Mrs F. Jeewa-Daureeawoo):** Madam Speaker, I take note of the issues raised and I will inform both Ministers accordingly.

**Madam Speaker:** Hon. Ameer Meea!

#### **SIR EDGAR LAURENT ROAD & JUNCTION DESFORGES & ROYAL ROADS – BAD STATE OF ROADS**

**Mr A. Ameer Meea (Second Member for Port Louis Maritime and Port Louis East):** Madam Speaker, the issue I am raising tonight is addressed to the hon. Minister of Public Infrastructure and Land Transport. It relates to the issue of the Sir Edgar Laurent Road, Port Louis, from the junction of Desforges Street to Royal Street, that is, at the end of the St Edgar Laurent Road around Sunni Razvi Awliya Masjid. This road is a very busy road, all the buses coming from the North go through this road to head to Immigration Square, and presently the road is in a very bad state with numerous pot holes and the road is uneven.

I would urge the hon. Minister, if the road can be resurfaced as soon as possible, and also, before resurfacing it, we have this problem in Port Louis, we have to remove the previous bitumen on the road so that it can be resurfaced.

Thank you.

**The Vice-Prime Minister, Minister of Local Government and Outer Islands, Minister of Gender Equality, Child Development and Family Welfare (Mrs F. Jeewa-Daureeawoo):** Madam Speaker, I will pass on the issue to the Minister.

**Madam Speaker:** Hon. Mrs Perraud!

### **LE HOCHET, RAMPERSADSSINGH LANE – STREET LIGHTING**

**Mrs A. Perraud (First Member for Port Louis North & Montagne Longue):** Madame la présidente, le problème que je vais évoquer ce soir concerne le Conseil de District de Pamplemousses. Donc, les habitants de Le Hochet, Terre Rouge, plus précisément à Rampersadsingh Lane, vivent dans la peur et dans l'insécurité parce que la ruelle où ils habitent est dépourvue de lumière.

Donc, il y a un seul lampadaire, mais le lampadaire qui s'y trouve est défectueux, et il demande aussi au conseil de district de réparer ce lampadaire, mais aussi d'installer d'autres lampadaires dans cette ruelle.

Autre problème dont font face les habitants, ce qu'il y a un terrain vague dans cette ruelle et le terrain vague n'est pas nettoyé. Donc, c'est un repère pour les bandits et les voleurs. D'ailleurs, il y a eu plusieurs cas de vols, beaucoup de familles ont été victimes de vols. Il y a même eu un vol à la tire en pleine journée. Les habitants veulent aussi savoir - dans le passé, il y avait un budget qui était alloué pour les lampadaires dans cette ruelle, donc, jusqu'à maintenant il n'y a pas eu de lampadaires - ils veulent savoir ce qui est advenu de cet argent. Et donc, voilà, je demanderai à la Vice-Premier ministre, ministre des Collectivités locales de voir si le nécessaire peut être fait au niveau du conseil de district de Pamplemousses.

**The Vice-Prime Minister, Minister of Local Government and Outer Islands, Minister of Gender Equality, Child Development and Family Welfare (Mrs F. Jeewa-Daureeawoo):** Yes, Madam Speaker, with regard to the cleaning of bare lands, well, this is a recurrent feature. I have meetings with all the District Councils on a regular basis, and this issue is being taken up each and every time. As I have said, this is a recurrent feature,

cleaning, but I will look into it. And with regard to the lighting, I will inform the District Council, accordingly.

**Madam Speaker:** Hon. Lepoigneur!

(00.33 a.m.)

### **COROMANDEL – FLYOVER**

**Mr G. Lepoigneur (Fifth Member for Beau Bassin & Petite Rivière):** Merci, madame. Ma requête s'adresse au ministre des Infrastructures publiques concernant un *flyover* qui se trouve à Coromandel, vis-à-vis de l'église Emmaüs, qui est dans un état déplorable. Les habitants de la région ne se servent plus de cela, parce que c'est dangereux ; il y a même des drogués qui jettent leurs seringues. Ils viennent se droguer à l'intérieur. Ils ont demandé si c'est possible peut-être de l'enlever et de mettre des passages cloutés pour piétons avec des feux de signalisation. Même les veilles personnes n'utilisent plus cette passerelle. Aussi, en même temps, pour la sécurité routière, il y a un flyer qui est en circulation, qui, à travers le ministère des Infrastructures publiques toujours, et je ne sais pas si la loi a changé ou que c'est une erreur, parce que, moi, ce que j'ai appris depuis ma tendre enfance, c'était de regarder à droite avant de traverser la rue, ensuite à gauche et encore à droite et puis, on traverse la rue, même si c'est sur le passage clouté, alors que, ici, c'est mentionné *geutte à gauche ek geutte à droite et encore geutte à gauche avan traverser et mem lor enn* cross here. Je pense, peut-être, ça a été fait par M. Daniel Raymond qui applique les lois de la Réunion. Donc, je pense ce serait souhaitable d'arrêter de distribuer ces *flyers*, où il y a des erreurs dessus, qui ne sont pas applicables pour Maurice. Et je vais déposer cela.

**The Vice-Prime Minister, Minister of Local Government and Outer Islands, Minister of Gender Equality, Child Development and Family Welfare (Mrs F. Jeewa-Daureeawoo):** Madam Speaker, I will inform the Minister and I do hope that necessary actions will be taken.

**Madam Speaker:** Hon. Rughoobur!

(00.35 a.m.)

### **DISTRICT COUNCIL OF RIVIÈRE DU REMPART – BULBS – SHORTAGE**

**Mr S. Rughoobur (Second Member for Grand'Baie & Poudre d'Or):** Thank you, Madam Speaker. My request is addressed to the hon. Vice-Prime Minister.

Since January this year, we have got a problem of shortage of bulbs at the District Council of Rivière du Rempart and the services that they give to those villagers in my constituency have been irregular. I would request the hon. Vice-Prime Minister to look into this issue, and try to ensure that if she could, please, look into this issue so that the services can become regular.

**The Vice-Prime Minister, Minister of Local Government and Outer Islands, Minister of Gender Equality, Child Development and Family Welfare (Mrs F. Jeewa-Daureeawoo):** Yes, Madam Speaker.

This morning itself, I have been made aware of this issue by the inhabitants. I have already contacted the District Council and I do hope that in the coming days, the necessary actions will be taken.

*At 00.36 a.m., the Assembly was, on its rising, adjourned to Tuesday 13 August 2019 at 11.30 a.m.*