

*Leave of Absence*

*Tuesday, March 16, 2010*

**SENATE**

*Tuesday, March 16, 2010*

The Senate met at 1.30 p.m.

**PRAYERS**

[MR. PRESIDENT *in the Chair*]

**LEAVE OF ABSENCE**

**Mr. President:** Hon. Senators, I have granted leave of absence to Sen. Michael Annisette, who is out of the country.

**SENATOR'S APPOINTMENT**

**Mr. President:** Hon. Senators, I have received the following correspondence from His Excellency the President, Prof. George Maxwell Richards, T.C., C.M.T., Ph.D.:

“THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO

By His Excellency Professor GEORGE MAXWELL RICHARDS, T.C., C.M.T., Ph.D, President and Commander-in-Chief of the Republic of Trinidad and Tobago.

/s/ G. Richards  
President.

TO: MS. ALTHEA ROCKE

WHEREAS Senator Michael Annisette is incapable of performing his duties as a Senator by reason of his absence from Trinidad and Tobago:

NOW, THEREFORE, I, GEORGE MAXWELL RICHARDS, President as aforesaid, in exercise of the power vested in me by section 40(2)(c) and section 44 of the Constitution of the Republic of Trinidad and Tobago, do hereby appoint you, ALTHEA ROCKE, to be temporarily a member of the Senate, with effect from 15<sup>th</sup> March, 2010 and continuing during the absence from Trinidad and Tobago of the said Senator Michael Annisette.

Given under my Hand and the Seal of the President of the Republic of Trinidad and Tobago at the Office of the President, St. Ann's, this 12<sup>th</sup> day of March, 2010.”

*Oath of Allegiance*

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**OATH OF ALLEGIANCE**

*Senator Althea Rocke took and subscribed the Oath of Allegiance as required by law.*

**FINANCE BILL**

Bill to provide for variation of certain duties and taxes and to introduce provisions of a fiscal nature and for related matters, brought from the House of Representatives [*The Minister of Trade and Industry and Minister in the Ministry of Finance*]; read the first time.

**PAPERS LAID**

1. Report of the Auditor General of the Republic of Trinidad and Tobago on the financial statements of the Sport and Culture Fund for the year ended December 31, 2002. [*The Minister of Trade and Industry and Minister in the Ministry of Finance (Sen. The Hon. Mariano Browne)*]
2. Report of the Auditor General of the Republic of Trinidad and Tobago on the financial statements of the Sport and Culture Fund for the year ended December 31, 2003. [*Sen. The Hon. M. Browne*]
3. Annual audited financial statements of Estate Management and Business Development Company for the financial year ended September 30, 2008. [*Sen. The Hon. M. Browne*]
4. Annual audited financial statements of the National Infrastructure Development Company Limited for the financial year ended September 30, 2008. [*Sen. The Hon. M. Browne*]
5. Annual administrative report of the Diego Martin Regional Corporation for the period October 01, 2007 to September 30, 2008. [*The Minister of Local Government (Sen. The Hon. Hazel Manning)*]
6. Report of the Auditor General of the Republic of Trinidad and Tobago on the financial statements of the Telecommunications Authority of Trinidad and Tobago for the year ended September 30, 2006. [*Sen. The Hon. M. Browne*]
7. Report of the Auditor General of the Republic of Trinidad and Tobago on a special audit of the management and maintenance of vehicles in the Trinidad and Tobago Police Service. [*Sen. The Hon. M. Browne*]
8. Administrative report of the Ministry of the Attorney General for the fiscal period 2004 to 2005. [*The Attorney General (Sen. The Hon. John Jeremie SC)*]

## ORAL ANSWERS TO QUESTIONS

**Landate Matter  
(Findings of)**

*The following question stood on the Order Paper in the name of Sen. Michael Annisette:*

**1. Sen. Michael Annisette** asked the hon. Minister of Health:

Could the Minister inform this Senate of the findings of the Ministry's enquiry into the Landate matter?

**Mr. President:** Question No. 1 is from Sen. Annisette, but he is not here so we would have to defer that one.

*Question, by leave, deferred.*

**Crude Oil and Natural Gas  
(Details of Pricing)**

**21. Sen. Prof. Ramesh Deosaran** on behalf of Sen. Basharat Ali asked the hon. Minister of Finance:

Could the Minister advise the Senate on the following:

- (a) In accordance with section 13(3) of the Heritage and Stabilisation Fund Act, what is the eleven-year moving average price for crude oil and natural gas used for estimating petroleum revenues in the financial year October 2009 to September 2010; and
- (b) What is the estimated production and petroleum revenues for crude oil and natural gas as the aggregate of supplemental petroleum tax, petroleum profits tax and royalties for the financial year October 2009 to September 2010?

**The Minister of Trade and Industry and Minister in the Ministry of Finance (Sen. The Hon. Mariano Browne):** Thank you, Mr. President. The 11-year moving average price for crude oil and natural gas computed at the time of the preparation of the estimates of petroleum revenues for the financial year October 2009 to September 2010 was US \$70.94 per barrel and US \$7.63 per mcf Henry Hub.

However, it has been the practice of the Ministry of Finance to treat the 11-year moving average price as a ceiling price, above which the actual budget planning price used in the determination of petroleum revenues should not be set. Therefore, the budgeted planning price used by the Ministry of Finance for crude

oil and natural gas for the period October 2009 to September 2010 is US \$55 per barrel and US \$2.75 per mcf, respectively.

With respect to part (b) of the question, the estimated petroleum revenues for crude oil and natural gas as the aggregate at the supplemental petroleum profit tax and royalties for the financial year October 2009 to September 2010 is \$10,386,950,000. It should be noted that due to the complexity and difficulties associated with disaggregating the petroleum revenues as separate income streams for crude oil and natural gas, petroleum companies present their data as a single estimated revenue figure for both products.

**Brian Lara Tarouba Sporting Complex  
(Details of)**

**33. Sen. Wade Mark** asked the hon. Minister of Sport and Youth Affairs:

Could the Minister indicate to the Senate:

- (a) the total expenditure to date on the Brian Lara Tarouba Sporting Complex;
- (b) the projected date of completion of the complex; and
- (c) the estimated total expenditure anticipated for this project?

**The Minister of Energy and Energy Industries (Sen. The Hon. Conrad Enill):** Thank you, Mr. President. I enquired about this question and the answer is not now available. I expect that all things considered, two weeks should be an expectation.

**Sen. Mark:** Mr. President, I just hope, through your good self, that no disrespect will be shown to this Senate once again. My information is that the Tarouba stadium is supposed to be opened by the end of this month and I hope based on your previous ruling about NAPA that this Parliament would not be disrespected once again, when we know for a fact that information has been leaked to the media concerning this Tarouba stadium. So I just put that on the record, Sir, so that in two weeks' time, we do not have the information the public would have been—

**Sen. The Hon. C. Enill:** Mr. President, I fail to see how the issue that Sen. Mark talked about is relevant. The question asked for total expenditure, estimated expenditure and a number of questions which require some kind of aggregation of data. The Minister has indicated that the answer is not now ready and I see no ulterior motives in that. The information is not now available.

*Question, by leave, deferred.*

**COMMITTEE OF PRIVILEGES  
(SEN. WADE MARK)**

**Sen. Linus Rogers:** Mr. President, I rise under Standing Order 26 to move a matter which concerns the privileges of this Senate.

As I understand it, Mr. President, parliamentary privilege is concerned with protecting the integrity of the Senate and among the privileges of this Senate is included the power to punish for contempt. It is also my understanding that contempt includes actions or conducts which obstruct or impede the Senate in the performance of its functions or offences against its authority or dignity. This power belongs to this honourable Senate as a collective body for the protection of its Senators and the vindication of its own authority and dignity.

Mr. President, from time to time, you have advised all of us who have the distinct honour to serve in this Senate that we have the responsibility to maintain the public trust placed in us by performing our duties with honesty and integrity, respecting the institution of Parliament and exercising a duty of care towards all persons, especially those who we may injure in the exercise of our freedom to speak in this Senate.

It is well settled that making a misleading statement deliberately, will be treated as a breach of privilege and contempt of the Senate. Thus, a Senator must not knowingly mislead the Senate in statements he/she makes in this Senate. Indeed, all Senators are under an obligation to correct the parliamentary record as soon as possible when incorrect statements are made unintentionally.

Against that background, I wish to refer you to statements made by Sen. Wade Mark on March 09, 2010—

**Hon. Senator:** Again.

**Sen. L. Rogers:**—which now form part of the parliamentary record. On that day, during a debate in this honourable Senate, Sen. Wade Mark stated, and I quote:

“When I looked at where Air Transit Clearing House Limited is located, No. 83 Rivulet Road, Point Lisas, Trinidad, and I go to the list of directors of this company, I see a name called Unanan Persad, in trust for and on behalf of the Trinidad and Tobago Civil Aviation Authority. Do you know where his address is? No. 83 Rivulet Road, Point Lisas, Couva.

Where did this company get the authority to collect money? This is what I am telling you. CANAS is supposed to be collecting moneys on behalf of the Civil Aviation Authority, so now they are outsourcing and they are illegal and

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unlawful; they are not valid. You go a step further and grant to a company headed by your director called Unanan Persad and he has a private company called Air Transit Clearing House Limited. And you are coming here today to ask us to validate that? How can we?

This is criminal activity taking place here.”

**1.45 p.m.**

Mr. President, the record will show that it is not true, as Sen. Wade Mark has alleged, that Unanan Persad is a director of Air Transit Clearing House Limited. The record will reflect that the directors of Air Transit Clearing House Limited are: Saanjaay Persad of 83 Rivulet Road, Couva, and Saanjeet Persad of 128 Southern Main Road, California. Thus, authoritative and accurate information on this matter is of public record and easily accessible by all Members. I submit, therefore, that Sen. Wade Mark knew or ought to have known that his allegation that Unanan Persad was a director of Air Transit Clearing House Limited is untrue.

Mr. President, not only did Sen. Wade Mark mislead the Senate in the making of this statement, he did so wilfully, he did so intentionally. You will recall that you have been moved on other occasions to interrupt Sen. Mark in this honourable Senate, and caution him against the making of reckless statements to the Senate, but in an irresponsible manner once again, Sen. Mark failed to heed your caution and in this instance continued:

"And you are telling me that a private company headed by a director where is he living—this is the man's home; I understand he lives at this address. What is a private company collecting moneys on behalf of the people of this country doing in the home of a director? Is something not suspicious about that?"

Mr. President, this conduct by Sen. Mark cannot go unchecked. In the past, Members of this Parliament and other persons have been penalized for less serious offence. Wilfully misleading the Senate brings dishonour on all Members of this Senate, and all decent and hon. Members of this House believe it is their duty to hold Sen. Mark to account in order to restore the people's faith in Parliament.

Mr. President, in accordance with Standing Order 26(4), I raise this matter before you and move that it be referred to the Committee of Privileges of the Senate for its consideration and report.

I thank you.

**Mr. President:** Hon. Senators, I received notice of this matter just minutes before the session began. I did manage to read the brief, but I will need some time to consider my ruling on this matter, and therefore, I would give my ruling on it at the next sitting, next week Tuesday.

**PUBLIC ACCOUNTS COMMITTEE  
(Appointment to)**

**The Minister of Energy and Energy Industries (Sen. The Hon. Conrad Enill):** Mr. President, I beg to move the following Motion:

*Be it resolved* that the Senate agree to the following appointment:

Public Accounts Committee: Mr. Mervyn Assam, in lieu of Dr. Adesh Nanan.

*Question proposed.*

*Question put and agreed to.*

*Resolved:*

That this Senate agree to the following appointment on the Public Accounts Committee, Mr. Mervyn Assam, in lieu of Dr. Adesh Nanan.

**PRISONS (AMDT.) BILL**

*Order for second reading read.*

**The Minister of National Security (Sen. The Hon. Martin Joseph):** Mr. President, I beg to move,

That a Bill to amend the Prisons Act, Chap. 13:01, be now read a second time.

Mr. President, hon. Senators, before this Senate today, is an amendment to the Prisons Act, Chap. 13:01, where the Government is seeking to amend sections 8 and 17 of this Act. Members of this Senate would recall that in January, an amendment to the Prisons Rules was passed, which amended Rule 178 and Rule 233(2). The amendment to Rule 178 dealt with expanding the power of search to a wider body of officers, while the amendment to Rule 233(2) made provision for expressly prohibiting the use of cellphones, electronic devices and other equipment and components that facilitate the transmission and reception of data.

Today, this Bill serves to strengthen and support these amendments made to the Prisons Rules, by introducing harsher penalties which will now include for the first time, a three-year term of imprisonment for trafficking prohibited articles into the prisons, and widening the ambit of the powers of the Minister of National Security to make rules to effectively manage the nation's prisons. These

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amendments were arrived at, following consultation with both the Prisons Officers Association and the Executive of the Trinidad and Tobago Prison Service, and they recognized that these proposed amendments will only redound to their benefit, as well as to the benefit of citizens of Trinidad and Tobago.

Additionally, one of the key amendments we are introducing today will widen the Minister's power to make prison rules for the compulsory drug testing of prisoners for the first time in Trinidad and Tobago. This amendment will facilitate the introduction of the proposed new prisons rules which will be laid in Parliament in the near future. These new prisons rules will feature a system of compulsory drug testing of prisoners.

Mr. President, as I am on the subject of prisons rules and I glance across to my hon. colleague, Sen. Seetahal SC, much has been said about the piecemeal approach adopted by this Government in amending the Prisons Rules. I have indicated on several occasions, that the comprehensive package of the amendments to the Prisons Rules will soon be laid in Parliament. This drafting exercise has taken a considerable amount of time beginning some time in 2004. It has been a rather laborious and demanding task to assess and evaluate the usefulness and applicability of some 318 Prisons Rules found in the current rules the prison service adheres to. We needed to carefully examine the many amendments made to the rules over the years, and delete the many other rules that have fallen into disuse owing to their antiquity or the change in prison policy. We also needed to take into consideration certain aspects of the common law which had developed considerably since the rules came into effect in 1838. Another factor that necessitated that we take our time with the draft rules was the evolution in the penal philosophy, and the move from retributive to restorative justice. We wanted to ensure that when a draft was presented to Parliament, that it effectively mirrored these modern day changes.

Mr. President, I am hereby pleased to announce to this honourable Senate, that the drafting exercise has been completed and the draft Prisons Rules 2010, have been to submitted to the Crime and Justice Commission for their comments and views. The draft presently consists of 113 Rules, among which the issues of drug testing, searching, the use of force, special requirements for female prisoners, and the abolition of the harsh system of restricted diets, were all considered in detail, just to name a few. We are therefore one step closer to bringing the complete package of amendments to the Parliament.

Mr. President, the reason I took some time in elaborating on this, is because you would recall when we debated the Regulations, some participants in the

debate had indicated the fact, that some of these rules—and they had identified certain rules that were certainly outdated, and an impression was given that we were still operating under some of these rules.

Mr. President, hon. Senators, the Trinidad and Tobago Prison Service was mandated by the 2002 Cabinet-appointed Task Force Report on Prison Reform and Transformation, to provide secure custody, treatment and training. The prison service must therefore aim:

“...to prepare offenders for their return as useful law-abiding and productive citizens to the wider society.”

In light of this directive, the prison service was mandated by that Task Force Report to provide programmes to assist inmates in meeting their individual needs, in order to enhance their potential for reintegration as law-abiding citizens.

Since that Task Force Report, several programmes have been introduced within the prisons to provide for prisoners’ special needs such as educational programmes, like literacy, numeracy and CXC, life skills programmes, orientation programmes and pre-release and anger management programmes. The introduction of several drug rehabilitation programmes is of particular importance to the Bill before this Senate today.

This amendment we are introducing to deal with the Minister's powers to make rules for the compulsory drug testing of prisoners, will surely strengthen the effectiveness of these current drug treatment programmes. The Bill will also impact strongly upon the ability of the prison service to detect contraband, and will improve the security environment of the prison by reducing inmate misconduct and criminality, and minimizing the availability and accessibility to prisoners of dangerous weapons and illegal drugs.

Mr. President, hon. Senators, I would now like to take you through the five clauses of this Bill.

Clause 1 gives the short title of the Bill as the Prisons (Amdt.) Act, 2010.

Clause 2 declares that the Act shall have effect, even though inconsistent with sections 4 and 5 of the Constitution. These sections concern the protection of the fundamental human rights of our citizens.

Mr. President, section 13 of the Constitution of Trinidad and Tobago permits Parliament to pass an Act, and declare that it shall have effect, notwithstanding that it may be inconsistent with sections 4 and 5 of the Constitution, once the Act

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is shown to be reasonably justifiable in a society that has proper respect for the rights and freedoms of the individual.

Mr. President, the basis for this clause is that the entire proposed procedure of mandatory drug testing on inmates which we intend to put into operation upon the passing of the Draft Prisons Rules could be deemed to be invasive. It is envisioned that the drug testing process will involve obtaining intimate samples such as urine and blood, and non-intimate samples such as hair, saliva and oral buccal transudate from a prisoner in order to test for the presence of illegal substances.

**2.00 p.m.**

Mr. President, this Government is quite aware of the need to protect an individual's human rights, whether that individual is a free citizen or behind bars. Nevertheless, this Government firmly believes that it is essential that the current legislation is amended in order to accomplish the crucial objectives of incarceration. In this case, the objective is to create a drug free environment in the prison and to establish proper and effective treatment for inmates who use and abuse drugs.

Clause 3 simply gives an interpretation whereby any reference to the Act means the Prisons Act. This clause has been included to avoid any sort of ambiguity or confusion, as any reference to the Prisons Act must be distinguished from any other prison legislation, such as the Prison Service Act, Chap.13:02, and the Prisons Rules recently amended before this honourable House.

Clause 4 of the Bill amends section 8 of the Act by deleting the words "one thousand dollars" and substituting the words "twenty-five thousand dollars". It also imposes a term of imprisonment for three years where there was previously no such term of imprisonment. The amended section will now read as follows:

"Any person who brings in or carries out or endeavours to bring in or carry out, or knowingly allows to be brought into or carried out, of any prison any prohibited article is liable on summary conviction to a fine of twenty-five thousand dollars and imprisonment for three years."

The Trinidad and Tobago Prison Service has employed a number of security measures to assist with the detection of contraband items. Habitual and consistent searches are carried out on visitors, officers and prisoners and prison cells. Prison officers currently utilize very helpful searching apparatus such as baggage scanners, walk-through metal detectors, hand held cellphone and narcotic detectors, and body orifice and security scanners. Close circuit television systems have been installed to assist in securing the prison periphery and to detect any would-be traffickers who seek to throw contraband over the prison walls.

Additionally, as cellular phones have been expressly deemed to be a prohibited article by the recently passed amendments to the rules, steps are being taken by the prison authorities to strictly prohibit both officers and visitors from entering the prisons with cellphones. Visitors are not allowed to enter the prisons with cellphones. Prison officers and servants of the prison must lodge their cellphones at the gate before they can proceed into the prisons. A proposal is currently being developed by potential service providers to install secure pay phone systems within the prisons for use by officers which they can use in lieu of their cellphones. A similar facility with specially programmed security features will also be sourced for use by inmates. These measures have been undertaken in an effort to purge the prisons of the cellphone menace.

I previously mentioned some cellphone statistics during debate on amendments to the prisons rules that were brought earlier this year. I wish, however, to remind Members of this honourable House of the local statistics which reveal that between January 2008 and November 2009, a total of 1,143 cellphones were confiscated throughout the seven prisons as well as the Youth Training Centre in Trinidad and Tobago. The large number of cellphones within the prison walls has been harmful to national security and has proven to be a real and present threat to the lives of officers, members of staff and members of society. Gang members use these illegal cellular phones from within their cells to continue running their organizations, in order to conduct money laundering and drug transactions or to engage in the commission of other criminal acts such as kidnappings, extortion, smuggling of contraband into and out of the prisons, planning prison escapes, witness intimidation and even witness executions.

Furthermore, with regard to the number of prohibited articles in general, routine searches were conducted by prison officers in six of the nation's prisons during the month of December 2009 and the following prohibited articles were seized: 163 cellphones, 154 cellphone chargers, 166 cellphone batteries, 83 sim cards, 121 improvised weapons, \$1,980.84, 216.6 grams of cocaine and a quantity of plant like substances resembling marijuana.

The statistics clearly indicate that contraband articles continue to present a serious problem. This Government recognizes the need to introduce more stringent measures to reduce the large number of prohibited articles that enter and exit prison walls. It is believed that by increasing the present fine from \$1,000 to \$25,000 and introducing for the very first time a term of imprisonment of three years, this would prove to be a much more effective deterrent in discouraging would-be traffickers.

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Clause 5 seeks to widen the power of the Minister of National Security to make rules under section 17 of the Act. It does so by deleting the word "and" in section 17(1)(q), deleting the existing subsection (r) and inserting thereafter subsections (r), (s) and (t). Subsection (r) now authorizes the Minister to make rules relevant to:

"the conducting of searches of officers, servants of the prison and visitors;"

Presently in Trinidad and Tobago, the United Kingdom and other Commonwealth countries, rules for searching individuals are made under the Minister's power to make rules for the effective administration of this Act; for the good management and government of prisons; and the discipline and safe custody of prison.

This is what the current section 17(1)(r) of the Act states. Currently the prisons rule regarding searches is rule 234 which states that:

"All persons or vehicles entering or leaving any prison may be examined and searched and any persons suspected of bringing any prohibited article into any prison or of carrying out any prohibited article or any property belonging to a prison, shall be stopped and immediate notice shall be given to the Commissioner."

However, given the crucial security significance of searching with the modern penal system and the importance of safeguarding and protecting the fundamental rights guaranteed to all citizens under sections 4 and 5 of the Constitution, it is necessary to make precise and unambiguous stipulation of the Minister's powers to make regulations regarding searching.

In order to ensure harmonization, the proposed Draft Prison Rules would soon be laid in Parliament and will contain guidelines regarding the conduct of searches upon staff members, prisoners and members of the public.

While these recommended search procedures may be viewed by some as being potentially invasive of a person's right to security of the person and privacy, I wish to point out that these procedures are absolutely essential for the preservation and strengthening of security within the nation's prisons.

Furthermore, this is the first time that any Government would be introducing an entire new body of prison rules under the existing parent legislation, that being, the Prisons Act, Chap.13:01 which we are amending today.

When the 1838 prisons rules which we adhere to were drafted, Trinidad and Tobago did not yet have a Constitution. With the introduction of our written Constitution, this Government is mindful that great care must be taken

that any subsequent rules or laws passed, must take into account the rights and freedoms of the country's populace, be they prisoners, employees of the State or members of the public. In this regard, we have thus chosen to refer specifically to the Minister's powers in the parent legislation, to provide rules for the conduct of such searches on members of staff and the public at large.

The introduction of subsection 17(1)(s) makes provision for the Minister's power to make rules for:

"the compulsory drug testing of prisoners;"

This subsection paves the way for a critical development in this Government's approach to the search and subsequent treatment of offenders who abuse illegal drugs.

In developed countries like the Republic of Ireland, the United States and the United Kingdom, mandatory drug testing is an essential part of the prison security landscape. According to a report entitled "The Impact of Mandatory Drug Testing in Prison" commissioned by the UK Home Office in 2005, the use of mandatory drug testing among the local prison populations significantly increased the detection and with it the possibility of treatment for marijuana use among the inmate population.

In the United Kingdom, mandatory drug testing is utilized to keep track of drug taking while in custody, to deter prisoners from misusing drugs to identify those individuals in need of treatment. The 2005 study concluded that the drug prevention measures in prisons of which the mandatory drug testing was a major element, appeared to be actively discouraging drug use, particularly of marijuana.

The percentage of prisoners who had reported they had used any drugs fell from 66 per cent in the month before they were committed to prison to 25 per cent while in custody. The study showed that a quarter of the prisoners had stopped using cannabis while in prison.

The introduction of this type of drug testing in Trinidad and Tobago promises to present our prison service with a new means to help search for and curb this type of illicit type of drug use in prison. Similar successes in detection and treatment have been reported in the United States, where such testing is widely employed.

In a 2001 US report entitled, "Drug Treatment in the Criminal Justice System" prepared by the White House Office of National Drug Control Policy, it was reported that a survey conducted by the Bureau of Prisons showed that 3.3 per cent of inmates who completed the residential drug abuse programmes were likely to be rearrested in the first six months after release, compared with 12.6 per cent

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of inmates who did not receive any treatment. Similarly, the survey showed that among those who received treatment, 20.5 per cent were likely to use drugs in the first six months after release. In the group without treatment, 36.7 per cent used drugs during post release.

In Trinidad and Tobago, the introduction of compulsory drug testing will complement and help maintain the existing programmes currently employed in our prisons to treat inmates who have in the past abused illicit drugs. These programmes consist of the Drug Information and Education Programme, the Narcotics Anonymous Programme and the Therapeutic Community Programme which essentially consists of a highly structured environment for the treatment of drug abusers and addicts, as well as for behaviour modification.

Mr. President, currently the Therapeutic Community consists of 25 inmates who live in a structured environment that caters for a code of behaviour, peer to peer confrontation and discipline and professional counselling. It is a programme that relies on interactions within the peer group to help members confront the reality of their addictions and to subsequently commit to a lifestyle change that would enable them to remain drug and crime free.

With the introduction of this compulsory drug testing, it is expected that the task of recognizing drug use among the prison population would make it easier to direct prison inmates into the most appropriate treatment programme. Once an inmate tests positive for a drug, he or she would be guided toward one of the drug treatment programmes I have already mentioned. The drug treatment programmes provided by the prison service will work hand in hand with mandatory drug testing to reduce relapse, reduce recidivism, reduce inmate misconduct, increase levels of education and employment upon inmates return to the community, improve health and mental health conditions, improve relationships and effectively treat offenders to become productive, positive and contributing members of society, upon their release. *[Interruption]*

**Sen. Seetahal SC:** If I may ask the Minister of National Security. My understanding is that only maybe three years ago that any programme in prison was introduced for drug rehab. Therefore, my first question follows. Is it that it was only then recognized that you had a serious problem in prison of drug addiction and/or usage? That is one.

**2.15 p.m.**

Secondly, you mentioned that there are programmes in the prisons that you intend to—if persons proved positive for drug use or addiction—engage in. So far, the only thing I really heard mentioned is NAA.

The therapeutic programme is really specific for 25 which is a very small number and the other is drug information. Are there any plans for expanding the treatment? Because about five years ago the Commissioner of Prisons himself said that over 60-something per cent of offenders in prison were engaged or had engaged in illegal drug usage.

My question is why did the programme's expansion take so long when this question had been raised by me numerous times and I am sure by others?

**Sen. The Hon. M. Joseph:** I am not in a position at this time to answer the last question: Why did it take so long? I will be able to provide you with some more information in terms of the additional programmes which are to be provided.

The point is, there is recognition now that there is need for something to be done as it relates to improving prisoners' ability to lick some of the habits they have and give them a good chance for reintegration. I think there is recognition of that and it is in those circumstances we are here before this honourable Senate today to get legislative cover to ensure that some of the things we need to do we would, in fact, be doing them. But I will get some more information sometime during the debate or before the end to provide you with the additional information you have requested. I hope that satisfies your three questions.

**Sen. Seetahal SC:** If I get the information before the end of the debate, it will satisfy me.

**Sen. The Hon. M. Joseph:** I will make certain that you get the information before the end of the debate, hon. Senator.

Mr. President, section 17(1)(t) was originally 17(1)(r) in the Act. This clause speaks for itself as it makes provision for the Minister to make rules "generally for the effective administration of this Act for the good management and government of prisons and the discipline and safe custody of prisoners."

It provides a comprehensive foundation for the making of rules that will ensure that the prisons are effectively managed and operative for the benefit of the prison staff, the inmates and the population as a whole. Other rules which have been made under this broad section are those of fire prevention, safety of the environment, receiving of visitors, shifts officers may work and communication. Similar all-embracing provisions can be found in various jurisdictions such as Ireland, the United Kingdom and other commonwealth jurisdictions.

Mr. President, and hon. Senators, the final amendment I wish to move is to 17(2) of the Act wherein we are deleting the words "one hundred dollars" and

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substituting the words "twenty-five hundred dollars". With this amendment, it will now read as follows:

“Rules made under this section may contain provisions for imposing on any person contravening the Rules, a fine recoverable on summary conviction of twenty-five hundred dollars.”

Mr. President, I am certain that this honourable Senate will agree that this amendment is essential and practical as the current fine of \$100 is not an effective enough deterrent in terms of the penalty imposed, and neither does it reflect an appropriate punishment especially by today's financial standards.

This Government wishes to emphasize that breach of the Prisons Rules will attract a much more substantial figure than the meager \$100 fine as these rules are important to the preservation of discipline, order and security within the prison system.

Mr. President, this amendment to the Prisons Act is essential and critical. Government's move to increase fines for breach of the Act and the Prisons Rules is to guarantee a much more effective deterrent to those persons who may wish to violate the law. The addition of a three-year term of imprisonment for the trafficking of prohibited articles is also a landmark one. It clearly indicates this Government's resolve to be tougher on those prisoners, prisons officers and visitors who insist upon trafficking in prohibited items and thereby jeopardize the lives of staff and members of the public.

These amendments also provide a means to ascertain, reduce and treat with the use and spread of illegal drugs and contraband within the prisons. It does this by making explicit reference of the Minister's powers to make rules for the conducting of searches and the introduction of compulsory drug testing. The use of compulsory drug testing has been shown to be a contemporary and valuable tool in addressing one of the most dangerous challenges affecting developed penal systems, namely, the use of illegal drugs.

These vital amendments to the Prisons Act will pave the way for the effective introduction of the Prisons Rules which I have indicated would be introduced very soon in Parliament. They will also further ensure that the proper legal framework is formed so as to enable the long-term treatment of offenders behind prison walls and with it, a possible reduction in the type of crimes that so often go hand in hand with the use of illegal drugs.

I look forward to the support of my colleagues on the other side. I am sure they recognize that these amendments are essential for the continued transformation of

the prison service, they also serve to ensure that the restorative justice philosophy is further entrenched and that the rehabilitative aspect of this philosophy be further achieved.

With this in mind, I am sure you will join with me and support this Bill. With these few words, I beg to move.

*Question proposed.*

**Sen. Verna St. Rose Greaves:** Thank you, Mr. President. I rise to speak on the Prisons (Amdt.) Bill, 2010. Before I make my contribution, however, let me say what an honour and privilege it is to be able to join the Senators here seated.

I wish to thank Mrs. Kamla Persad-Bissessar for affording me this opportunity to serve and I congratulate her on her ascendancy to the position of Political Leader of the United National Congress and more recently the Leader of the Opposition.

As I stand, I greet my community of Covigne in Diego Martin and the social work community in Trinidad and Tobago. I reiterate my commitment to the people of Trinidad and Tobago to use my skills and resources in furtherance of their well-being and for the development of my country.

I thank the staff of the Parliament for the courtesy accorded to me since my appointment, and I thank my family for their unswerving support.

Mr. President, I want to get straight to the business at hand. I had some difficulty listening to the Minister, but I think I did a fairly good job. It was difficult for me because so much of what the Minister was saying sounded like déjà vu. It was a story I knew so well. I have been hearing it for so many years for such a long time.

The Minister talked about the power of search, which should be widened; the prohibiting of the use of cellphones and other equipment. He talked about the fact that the Bill would strengthen the penalties both in terms of imprisonment and the fees, he certainly talked about the power of the Minister and I want us to remember that; the power to do, the power to act.

The Prisons Rules, he said, are to be laid in the very near future and he also spoke about the perception of these amendments being a piecemeal approach, a perception with which I agree. When will these rules that we talk about which will change the rules of 1838 be laid? The Minister also talked about a penal philosophy which moves us, or which we hope will move us from retributive to restorative justice and he spoke about human rights.

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Mr. President, the Minister said that these amendments are essential and critical. I do not remember if he said the word urgent because to me, prison is not at the top of our list of priorities in terms of urgency. I want to take the chance to tell a story because for me, telling stories is one of the best ways that I can capture my experiences in this country.

Many years ago, when we did not have fast ferries to Tobago, I would have to leave my bed very early in the morning to get to the port to pick up mothers and grandmothers who would have to leave Tobago to come to Trinidad in order to feed their children and grandchildren who would be at the Golden Grove Prison.

Mr. President, I have cried so many tears with those mothers and grandmothers because they would have spent all night on the boat, come in tired and would not even have time to have a proper wash or brushing of their teeth, would have to rush up to the Golden Grove Prison and wait for very long periods to get into the prison and then rush back down to Port of Spain to get on that evening boat to return to Tobago.

There are certain things that are urgent evidently for the Government and certainly for the Minister of National Security: Security measures for the Summit of the Americas, urgent; CHOGM, urgent; property tax, urgent; TTRA, urgent; the bail out of selected companies, extremely urgent. What is not urgent is the Children's Authority, the Children Act, the gender policy, places of safety and implementation of the Task Force Report on Prison Reform. [*Desk thumping*]

Mr. President, to this day Tobago does not have a prison to meet the growing demands of the island. Whatever is there is overcrowded and cannot hold persons for any period of time; perhaps a month, perhaps two.

In addition, there is no place to hold young people so young girls and boys have to be transported to Trinidad and make a return on the boat as often as their matters are adjourned, or else, they are kept locked up in Trinidad away from their families.

One does not have to be a rocket scientist to figure out when the less experienced offenders are mixed up with the veterans here in Port of Spain, they return to Tobago more proficient in crime than when they arrived here. This is a major concern of the people of Trinidad and Tobago and I am here demanding a statement from the Minister of National Security as to why this situation has been allowed to continue without any urgent move to address this problem. [*Desk thumping*]

Mr. President, the amendments that are before us by their very nature attend to very preliminary issues: conducting of searches of officers, servants of the prisons

and visitors, the compulsory drug testing of prisoners, and the increase in penalties. Again, I want us to note that these are amendments to the Prisons Act, 1838.

**2.30 p.m.**

To me, these amendments are vain and reactionary. They are vain because I see these amendments only as a stop-gap measure, a plaster on a pus-filled sore; a pus-filled sore which is our prison system in Trinidad and Tobago; reactionary, because I sense a measure of panic, fear, even desperation in seeking these piecemeal amendments.

The Government is no longer able to hide what the public and the prison staff have known and have been saying for a very long time, that our prisons are overrun by illicit, illegal, underground activity, inclusive of sex, cellphones, drugs and other contraband brought into the prisons and by any means necessary. The Minister himself gave us some of the statistics in terms of the cellphones, chargers, drugs, money and whatever else was found. This clearly demonstrates that there is a major security problem at the nation's prisons. Is it therefore prudent to continue to put these stop-gap measures in place? On their own, these amendments are akin to the planned erection of electronic fences to prevent prisoners from escaping but a refusal to pay attention to the reasons why they would want to escape.

Prison security has to do with stability both inside the prison and outside the prison in the wider society. It has to keep the institution secure so as to safeguard the community and the lives of the staff, inmates and visitors to the prisons, just as the Minister has said. We must pay attention to the layout, the design, the age of the prisons which is very significant here, and the level of maintenance of prisons as they have a direct impact on the level of security. Our prisons are, for the most part, as old as, or older than, the laws which govern them. The Royal Gaol in Port of Spain, built in 1812, has seen no major repairs since then. Prisoners are housed in cells not significantly changed from when it was built; dark, dank hellholes, devoid of light, natural or otherwise.

Carrera Island prison was built somewhere in 1895 and although this prison is just a few minutes by boat from the mainland, after over 100 years Carrera is still without a natural water supply. A barge delivers water once a week. For many of us a sea bath may seem attractive, but when as a prisoner, one has to bathe with a bucket of salt water for many years, it loses its attraction. For over 100 years raw faeces have been spewed into the sea around Carrera. Slop buckets are carried out to the back of the prison every morning and emptied via a hole in the wall into

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the sea. This hole is also used by the prisoners as a toilet during the day. I am no microbiologist. Maybe in 100 years we have not had an outbreak of anything, cholera or otherwise, but sometimes something may not happen in 100 years and it can happen in one day.

Permit me to read the mission of the Prison Service:

“To protect society and; reduce crime through the reduction in re-offending by facilitating the opportunities for the rehabilitation of offenders, while maintaining control under safe, secure and humane conditions.”

I want to focus on the words "reduce crime" and later on, on the words "humane conditions". Let me deal with crime.

We cannot discuss prisons without discussing the appalling crime situation in Trinidad and Tobago. Our bedrooms are crime scenes. Four members of a family in Gonzales, wiped out in one fell swoop. Eight was the intended figure. I stood in the Cathedral of the Immaculate Conception and when those four coffins were rolled past me, it rocked me to my core and if I cry, I will not apologize, because I cry for this nation, because we have ignored our responsibilities for much too long. [*Desk thumping*]

Our communities are under siege; our schools have become battlefields; the country's murder statistics have been the most jarring demonstration of ineptitude: In 2000, 120 people; in 2001, 151; 2002, 172; 2003, 229. We have seen an incremental rise to 550 in 2008 and already in 2010, in the first three months, as I stand here today we are two short of 100. I am sure by now we would have met the 100.

We have tasted the blood of our children. We have been dazed by kidnappings; we have known violation from being deprived of our property and many are paralyzed by the fear of not knowing—not knowing what could happen next; not knowing who it could be next. Victims of crime are wondering at every moment if and when the perpetrators or their friends will be coming to get them, especially if they are witnesses.

Understandably, there is much anger at those who commit crimes in Trinidad and Tobago. I, too, am angry; I am horrified; I am pained, but I am not afraid to say to the Government that you have failed. [*Desk thumping*] You have failed and have failed miserably; that you, as government, are facilitating in many ways, the commission of crime in this country by your neglect of the hospitals; by your neglect of St. Ann's; by your neglect of children's homes, of so many areas and institutions which, through lack of support, paves the way to the prison complex.

I truly understand if there is little or no sympathy on the part of the public for prisoners and for their conditions. What I cannot understand is the Government's seeming lack of concern, lack of commitment and lack of efficient follow-through in the conduct of its duty as it relates to prison reform; its relationship to crime reduction and control and its responsibility for the safety of citizens. It is counterproductive and makes little sense to bring amendments to this House by this piecemeal approach: "Chirrip, chirrip, chirrip, chirrup". It is true that "one-corn does full basket", but our basket is already overflowing, clearly demonstrated when, with 550 homicides in 2008, Trinidad and Tobago has a rate of about 55 murders per 100,000, making it the most dangerous Caribbean country and one of the most dangerous countries in the world.

The rate of assaults, robberies, kidnappings and rapes in Trinidad and Tobago is among the highest in the world. Permit me to use a quotation from President Nelson Mandela speaking to prison staff in South Africa in 1998 and, interestingly, this quotation precludes the report of the 2002 Cabinet-appointed task force on prison reform and transformation. It goes like this:

"Secure prisons are essential to making our justice system an effective weapon (in the fight) against crime. When prisoners—convicted or awaiting trial—are entrusted to your care, they must know and the public must know that they will remain there until they are legally discharged..."

It goes on to say:

"The full contribution which our prisons can make towards a permanent reduction in the country's crime-rate lies also in the way in which they treat prisoners. We cannot emphasize enough the importance of both professionalism and respect for human rights."

I find it to be instructive that the amendments before this House focus only on aspects of security which are secondary to the fundamental issues which should concern us. It is as if there is resistance to address the core issues which would allow us as a society to grasp not only the gravity of our situation, but would permit us to deal with the root of what ails us as a society.

This Bill also provides for the compulsory drug testing of prisoners using a variety of methods. Testing for drugs cannot be confined to the context of prison. We must take an honest look at the traditional treatment of the addict by our society and by the law. Drug use and drug related offences are common to almost every community in Trinidad and Tobago, whether as users, sellers, traffickers

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and, of course, the untouchables. We move through a process of arrest, prosecute, incarcerate, release, with the same persons being picked up again and the revolving door continues.

We all know that guns are the companion to the drug trade and that gun violence is an integral part of the crime culture. Drugs and guns are part of the national diet. It begs the question, therefore: Who is benefiting from this situation? Is Government serious about tackling this two-headed snake? And if so, what are they doing about it? Except to hope that perhaps we would kill out all the offenders and the problem will go away?

The prisons' mandate is the restoration of the inmates in their charge, to the society as citizens that can add to the continuous development of this nation. The reason given for drug testing has to do with direct programme planning. Yet a report done post-2004 by the National Drug Council dealing with drug abuse monitoring in the nation's prisons, where a sample of 300 offenders over seven months of data capture, using some of the methods that the Minister spoke of, proved beyond a doubt that there is a high level of drug use in prison, as high as 66 per cent. How has that information been used to date? Where are the programmes? Sen. Seetahal SC asked about that programme and really whether we are realistically prepared to deal with the situation.

Our society has lumped people with addictions: those who live on the streets; those who suffer with mental illness, as garbage, as of no use to the society. Therefore, it is easy for us to continue to ignore them. The socially excluded are treated like outcasts in this society. We describe them as "those people" as if they are not of us. Where are the intervention centres in communities for prevention? Are we waiting for people to come into prison or are we going to try to prevent people from coming into prison? Where are the centres that will support families through treatment and rehabilitation? The Government will do well to pay attention to the NGOs, New Life Ministries, the Women's Institute for Alternative Development; so many honest hard-working people who are stretching themselves with minus money.

**2.45 p.m.**

Mr. President, please permit me to return to the mission statement of the prison service, so that I can talk about humane conditions. I find it to be disconcerting yet instructive that the amendments currently before the Senate are limited again, to conducting searches of officers and compulsory drug testing of prisoners and an increase in the fines for breach.

More and more, we remark in the face of heinous crimes that these criminals have no conscience. Perhaps, we need to extend these searches to our own consciences, to our collective consciousness and to the Government's own conscience, if only to disturb our zones of comfort.

With your leave, Mr. President, and by no means with the intention of disrespecting this parliamentary Chamber, I truly believe that a discussion such as this should not be taking place here in this cold, ostentatious Chamber; this protected environment, where representatives of the people are so comfortable that they can easily forget the discomfort of those whom they serve. This should be taking place, perhaps, in the prison, the Royal Gaol or Golden Grove Remand Yard, where we could experience first-hand, why there will be no reduction in crime if the Government does not take the necessary and appropriate action to deal with prison reform. The nation should be able to view, via our cameras, the reality of the prison system; not just the public relations that is done for mothers' day and fathers' day when the children or prisoners are unnecessarily exposed to persecution and danger.

Mr. President, perhaps, the nation would understand better, issues of illiteracy, lack of comprehension, inability to communicate and the inability to secure a future. Those are national security issues; problems not only for the jailed, but for the jailer.

By the clock, I see it is 2.47 p.m. At this precise time, the prisoners would be now moving to empty their slop buckets left to bubble overnight. This stench, while it may be unbearable to you and to I—but so accustomed to them—you would probably see young men put their hands into a plastic salt beef bucket to scrub and dislodge faecal matter. You would see prisons officers with pain on their faces, because this has also become their life. These slopping out arrangements are degrading to the prisoners who have to undertake it and the staff who have to supervise it. Imagine, grown men and women held in cells without sanitary facilities, forced to defecate and urinate in the presence of their fellow prisoners without privacy, in bottles, plastic bags and on paper, to be poured into plastic buckets provided for the purpose. And we talk about human rights! We talk about urgency and we talk about restorative justice. Hmm! This unhygienic practice is further compounded through lack of running water in cells, furthering risk of disease and aggravating pre-existing medical conditions.

Think about what a prisons officer takes home to his or her family: contagious diseases, tuberculosis, scabies, gastroenteritis and outbreaks of chickenpox, amidst the absence of proper health care and proper medical treatment. Think

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about the male prisons officers who prefer to take their chances with tuberculosis, rather than take the medication, which some claim reduces their sex drive, their virility what, for many of us in this country, is a major measure of people's manhood.

Mr. President, the indignities continue. A prisoner at the Port of Spain State Prison, pleading for help stated: "We did not choose to come here, but we understand that we have committed a crime and have to do our time as punishment, but we must not be treated like dogs. This place is not fit for animals, let alone human beings. Men sleeping head-to-toe in a cell, packed in like sardines, some without mattresses and without proper bedding layered from ceilings in hammocks straight down to the floor on cardboard. The stench of human and cat urine soaked into a hundred-year old concrete floor. A visit by a loved one is reduced to a shouting match competing for space with other visitors. We hear that we are now thinking of putting in a secured pay phone. Now? We are now getting rid of pay phones on the outside and after all these years, we are now thinking of putting in a pay phone. Complaints by relatives who continue to be ripped off by the price gouging by the prison canteen, paying as much as three times the cost of the item on the outside.

It is interesting that we can find transportation to take 200 persons to Carrera for the calypso competition, but prisons officers must struggle to go to work, they risk their lives on a defective boat with no place to park their vehicles.

Voting for or against these amendments is just a formality that will see no major efficient or effective changes if it is left up to the Government. It is for the people of this country to demand an examination of and major and drastic improvements in prison conditions. There must be a total review of and drastic reform to the Prisons Rules wholesale, to be supported by the best in policy design to support it and there must be efficient implementation. Implementation must be efficient and urgent.

The Prime Minister recently expounded: "It is only the evening which can reveal the splendour of the day", or words to that effect. Not for prisoners, not for prisoners! In the evening, they must stuff their ears and their nostrils. They must put bread in a corner to deflect the cockroaches from crawling into their unguarded orifices; cockroaches so tamed that they refuse to leave my arm even in the face of violent shaking; a simple problem. What do you do when you have cockroaches in your house? It is a simple, basic problem of caring. And we say that we are a Government who cares. How much do we care?

It is in the evening that men must press their backs against the wall, afraid to sleep. Their cries and protestations can be heard as they grow faint and change with time. Homosexual relations are a taboo subject in Trinidad and Tobago and such activities are frowned upon by society at large. The gay and lesbian community in this country tend to be secretive about their sexuality out of fear of disapproval, discrimination in the extreme, or even violence. The same is true of prison society. Male on male sexual activity is acknowledged to be widespread, but has only been openly discussed in recent times. Prisoners often appear reluctant to talk about or acknowledge that homosexual activity takes place in our prisons. How does a man admit in a hostile environment, that he was raped in prison, that he has had sex with other men or that he was forced to put on a sex show for some perverted senior official? What are the implications for his life in prison? What are the implications for his life after prison? What are the implications for his family? The situation is dynamic and its mishandling by the State is skewed in so many ways and at so many levels.

Here is just one unfortunate example. In May 2003, a judge refused to send a rapist to prison, stating: "From your voice, it is clear that you have the feminine touch. You will be sexually assaulted in prison. They will rape you. The rate of HIV infection is high and can only be high because sex is going on." This was unfortunate even though many persons found it to be amusing. We have trivialized the rape of our women. A letter was supposed to appease this young girl who was raped. So many other women experience that pain. We have ascribed one's voice level as a function of homosexuality. If I should ask everybody in here to talk, who knows how many people we can say are homosexual, because of the tone of their voice.

The young man was positioned to be victimized, based on feminine qualities, yet we wonder why our women, girls and men who are seen as weaker, are victimized. His heinous crime excused rather than punished. Was anything done to prevent him from reoffending? What about the victim? Did that letter suffice? It is evident that discussion around these and similar issues must be facilitated in the interest of justice, but where is the framework for discussions of this kind? It is on hold. The long awaited gender policy disproved by one man would provide a framework for such discussions. Perhaps, it will even help us to understand the inability of one man to release his embrace of another man, even when his own future, his party and country, his very life is in jeopardy.

Mr. President, mothers of this nation "holding dey belly an bawling". Their cries are being ignored; those whose children have been killed, kidnapped,

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disappeared and harmed. Outside the prison, mothers; outside the courthouse, mothers; at the forensic science centre, mothers of victims and perpetrators consoling each other. Mothers bearing the brunt of the shame for what their children may have done, blaming themselves and asking of no one, but of everyone: What have I done? Where did I go wrong? I think it is time for the Government to ask that question. What have they done and where have they gone wrong?

At a funeral some years ago, I cringed when one mother told the other, the mother of the deceased son: "At least you know where yours is now. Your worries over. Mine now start. I have tuh fine ah lawyer and money and I have tuh go tuh de hell hole." That hell hole is the prison. All these mothers cried for help. Yet, where is the help?

We cannot divorce amendments to the Prisons Act from considerations of who the prisoners are; why they come to prison; what led them to prison; what were their lives like before the commission of crime; what happens to them in prison; and how it impacts on them and the wider society when they leave? Certainly, how do we prevent people from going to prison? How are the basic needs of their families met in their absence? What about earnings for work done while in prison and what money do they leave prison with? Those are serious questions for consideration. We need to ask and answer questions of whether in 2010, we should incarcerate certain categories of prisoners, for example, men who fail to pay maintenance. Will it not be better served if they are put to work and the money remitted to their children? We have seen at least two men in this country go into prison for maintenance and die in the prison, killed. Prison records, are they kept? If yes, how and how are they used?

**3.00 p.m.**

We talk about the revolving door from our own anecdotal evidence. Where is the research? It is all well and good to boast of the one or two success stories, but what about the majority? What about rehabilitation and after care? Why are under age boys housed at YTC? Why are our girls placed in the women's prison? Women who are incarcerated, what are we doing about the lack of access to their children? Children under 16 years are not allowed to visit, and it takes many months to arrange such visits.

We have to deal with access to medical treatment and the neglect and poor treatment of pregnant women and newborn babies. Why is there a natural progression from our boys from children's institutions to YTC and to maximum security prison? Mr. President, may I submit, that if the discussion on the Prisons

(Amdt.) Bill is limited only to this myopic aspect of the present amendments, we will be cheating the nation and ourselves of a wonderful opportunity to visit the underlying reasons which make these amendments necessary. Opportunities to discuss, analyze and to make important links between the prison complex and crime to what takes place inside and the implications beyond the prison walls; opportunities for so many things that are possible.

We need to take opportunities to understand the political economy of criminal justice and injustice; to examine how our prisons have become a warehouse for young able-bodied men. Why and how our women are co-opted in the spiral of crime, are forced to earn their living in unfortunate and uncomplimentary and dangerous ways as decoys and drug mules.

We must treat with the criminalization of immigrants as demonstrated by the treatment meted out to two Haitian women and so many other Caribbean citizens, to understand the Prime Minister's haste to announce in the face of the Haitian earthquake disaster that Trinidad and Tobago will not be taking any refugees. Trinidad and Tobago, on November 02, became the 140th country to sign the 1951 convention relating to the status of refugees. To date, we are still to treat with the appropriate legislation.

Mr. President, I am tired, not just from standing and not just from speaking, I am tired because I have been walking this journey for so many years. There are so many people in this country who have done this work and who understand what is happening on the ground and who would be willing to partner to make these things happen; very simple basic things that can happen to change the prison culture.

NGOs—I mean, I have an array of documents of so many people including Sen. Prof. Deosaran, Prof. Maureen Cain and a group called Women Working for Social Progress. There are so many people. We do not have to go and get anybody from outside to come and help us. The information is there and the data is there, but what we need is the political will and a government that cares enough to make it happen. [*Desk thumping*]

Mr. President, there are many areas crying for attention: victims' rights, DNA databank—Akiel Chambers is in this Chamber with me, because to date nobody has been charged or even arrested for his murder.

Mr. President, parole: How long does it take? How long will it take? Who monitors? Who evaluates? Can these incremental small-scale amendments to the prison address problems of the magnitude that Trinidad and Tobago is

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experiencing? The Minister said it himself that the gang leaders are using the cellphones and using everything that they have from the inside to run their business on the outside. So, for me, it appears that the gang leaders, perhaps, are more competent than the State and its agents, as they continue to manage their business. They give orders within the prison walls; they utilize whatever resources they can muster to coerce, intimidate, check upon, recruit, parent, get rid of rivals and wives, et cetera. Perhaps, the gang leaders have also intimidated the Government.

Mr. President, I would rest here and I want to thank you for your patience, because I know there are several persons who would want to comment. I would speak at another time.

I thank you very much. [*Desk thumping*]

**Mr. President:** I think we should commend Sen. St. Rose Greaves for her maiden contribution, certainly very spirited. [*Desk thumping*] As we continue, I would just like to remind Senators that this debate is on the prisons and not on crime. I allowed a certain latitude to the Senator since this is her first occasion, but everybody else is seasoned sufficiently to stick to the issues at hand.

**Sen. Prof. Ramesh Deosaran:** Thank you. I do not usually feel inadequate, Mr. President, especially in face of the opposite sex but, on this occasion, I do feel a sense of inadequacy, coming so soon after the last distinguished social worker and Senator representing the United National Congress. [*Desk thumping*]

It is one of the outstanding features of a civilized society that those who are in positions of power and influence should be able to speak on behalf of the voiceless, the weak and the vulnerable and, that is, in a large way, one of the major responsibilities of a representative Parliament such as this one. I believe that is what the last speaker, Sen. Verna St. Rose Greaves was attempting to do, obviously, in her own inimitable style.

[MR. VICE-PRESIDENT *in the Chair*]

Mr. Vice-President, I regret to say, I do not have the capacity as the Senator to grab the attention of my distinguished Senators on this occasion, but it was a moving speech in the sense of everyday living outside and inside the prisons. While in a sense, it might be a bit too embracing, it did bring some flesh and blood into the skeletal legislation which now faces us.

The Senator has had a long experience at the ground level and without saying too much, I think, in a sense, it is good that we should get the benefit of her long

experience. She has raised a number of issues to which I would like to respond and, so too, very briefly to the statements made by the Minister.

I have 10 points here as raised by the Minister but, I think, Sen. St. Rose Greaves gave me the capsule response in two words, and rather than reciting the 10 points raised by the Minister—moving from retribution to restorative justice; we want to reduce inmate criminality; we want to protect individual rights; reducing recidivism—the two words she used and which I would prefer to use are déjà vu. It really is.

I say so not to disrespect the Minister and his advisers, but because I have been in this Senate, and it is part of my business at the university to teach on the subject of penal reform, write about it and research about it. Perhaps, it is good for us and the country to hear a new voice that might produce better results than what others have attempted to do in this very serious matter of imprisonment, punishment and the tendency for those who enter prison to come out worse than they went in. That is a serious challenge for any democratic society. I say a democratic society because it is only so far you can go in controlling the lives, movement and the association of citizens. It is only so far you can go. I also want, finally, to congratulate the last speaker, as you have done, on her maiden speech. Thank you very much.

Why do we need a three-fifths majority? That is the first question that should have been more fully discussed by the Minister. You would find whenever the Attorney General brings up any particular legislation requiring a special majority, he takes the time to explain why, and he challenges some of us here who feel otherwise, but he produces arguments in case studies to show why we need a special majority.

Every time you enter sections 4 and 5 of the Constitution, there should be some responsible justification for doing so, not just telling us you respect the rights of human beings. For example, how would you take the blood test? Is it through needles? What kind of sampling would you use? How far into the body parts of people will you go; in what part? What is the infrastructure you have available that would ensure safety in taking the sample, especially in a prison environment?

Access would, therefore, require entering into sections 4 and 5 which guarantee privacy and other such related matters. So, that is the first issue I am interested in. I believe the prison officers themselves will want to know what kind of infrastructure you are setting up and the efficacy of such infrastructure, because

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in taking blood tests, blood samples, or to use the exact words in the legislation, "compulsory drug testing of prisoners", we must have some further elaboration on that, if only for the public benefit, and in terms of judicial review; in terms of appeals; and in terms of resistance to the programme. Both prisoners and, especially, prisons officers should feel assured that the system is going to work in the way that the Minister and the Government intend it to work.

[MR. PRESIDENT *in the Chair*]

It is interesting to know who will be in charge of administering the exercise; compulsory drug testing. Are you going to train certain prison officers? Would it be a nurse or a medical officer? Are you going to do like the breathalyzer and train police officers—a special cadre of prisons officers to do it? I think we will need to know, because the question of health does arise in compulsory drug testing for prisoners. Certainly, you do not want the drug testing to be conducted by people who, themselves, may be drug traffickers in the prisons. It is like putting Dracula in charge of the Blood Bank. So you have to take your precaution and set up the infrastructure properly.

The last speaker made several references to sexual abuse in the prisons, and what the drug culture in a prison does, even when you are taking drug test which, in itself, is a very challenging exercise—I will refer to that much more in a short while. The drugs have such economic value and they are in such heavy psychological demand that to get rid of drug abuse in the prisons is almost an impossible exercise. On that one point, I sympathize with the Minister and the prisons authorities in trying to undertake this exercise. But what does the use, the abuse and the illegal trafficking of drugs in a prison do?

### **3.15 p.m.**

It sets up an unholy triangle. At one end, there is the trafficking of drugs, the abuse of drugs and all the implications that go with it and at the other end, there is sexual abuse that accompanies the use of illegal drugs; either, in exchange for the drugs or under the influence of drugs and that is well documented. The use of illegal drugs in prison serves as a catalyst, a motivator, an energizer, for other illicit activities. Therefore, it is quite appropriate to deal with drug trafficking and drug abuse in the prisons.

It also serves as a transmission for sexually transmitted diseases, more precisely AIDS. And one of the reasons you have a relatively high proportion of AIDS in prisons all around the world is for this particular unholy triangle; drugs, sex abuse and the spread of sexually transmitted diseases.

The last speaker made a point—she did not elaborate, but it is a very fundamental point—in the causes of crime; in this case coming from the prisons. The question is how does the prison create crime? Crime is caused by several factors as we know—we know it is complex. I would not elaborate. I want to return to the issue of the prison, but briefly—some people say broken communities; homes without affection; schools where children are allowed to be indisciplined without any sanctions; poverty, some parts of it and for a number of reasons; those we can call the push factors, that drive, especially young people into crime. But there are the pull factors and the weaknesses in the administration of justice and more precisely the prison system, are what you call the pull factors. They encourage people to commit crime. For example, if they could commit a crime without being found out or prosecuted or imprisoned, once they anticipate such deficiency in the system it encourages people to commit crime. It pulls them into a life of criminality.

When you go into prison and you learn the art most scientifically you become more proficient in committing acts because of what you have heard from other seasoned criminals. Quite often, as I said earlier on, you leave a better criminal—so to speak—a more proficient criminal—so to speak—than when you first entered. That is why the Senator did make an important point, where is the data? Well, I would supply some of the specific data in terms of homosexuality and other demographics and I will tell you where the source comes from.

That is why the Minister and his ministry well know that there is about 60 per cent recidivism rate in this country. Meaning that about 60 per cent of those who went to prison come out and they commit at least one crime. Some commit five, six, seven or eight crimes, serious crimes: kidnapping, larceny, rape and robbery. Those are what the figures show. We have produced a report and the ministry has gotten the benefit of that report which started under Minister Joseph Theodore, and it continued for one or two years when the PNM Government came into power, and it was stopped, but that is another story.

But as far as we went, when you come out of prison you end up worse than when you entered about 60 per cent of the time, if you want to put it quantitative. That is a serious figure, because it would suggest: one, that imprisonment in present circumstances is ineffective, whether you call it retribution and even retribution did not work—you put in all your hopes on restorative justice without knowing, seemingly, the intricacies, the limitations of restorative justice. We teach that in the university and we refer to a book by Martinson, written in 1974 and it is still reliable in terms of fresh evidence.

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There are serious limitations in restorative justice beginning from the fact that all prisoners are not the same. Some are more amenable to change, some are more willing to compensate for their past misdeeds, some are much more contrite than others, others are just devilish, permanently and if you let them go prematurely, you are asking for trouble in a restorative society.

I posed a question here about how many prisoners who come out of prison or are on bail, what kinds of crimes have they committed afterwards as the record would show. You know, I never got an answer to that question. But if you had an answer to that question, a large part of the challenges facing the Minister and his ministry might be met in terms of policy, that is, we would have known. When a magistrate refuses bail and a judge grants him/her bail afterwards, what does that person on bail do? Do we know if he/she repeats the same crime? How many times?

Such questions I have posed and such questions have never been answered. The reason being, the Judiciary says it does not have the resources, but almost every week I see in the papers all kinds of posts being advertised for the Judiciary—technical officer here, IT specialist there, but when there is no will to do something right for the national community, that is what we are left with and that is why the last speaker could speak in such feverish tone as she has done. So the question really arises, who cares; seriously? And what does it take to get you to move in the right direction in terms of not making statements that create hope, promote optimism, public relation, but to get something done that is measurable over the years—so when the last speaker spoke about implementation, she perhaps, unwittingly forgot and we should not forget, you could implement but you must measure and evaluate what you have implemented, and then you can stand proud and make a statement about accomplishments, not about promises, because it will always take us back into *déjà vu*. That is where we are today.

So, this unholy triangle that I referred to could be backed up by a story. I too have my story, and that is what prompted my enthusiasm to speak on this particular Bill, and more so, after hearing the last speaker. As I left my car in the car park, just a week ago, a gentleman walked up to me and said he was always looking for me but I am hard to find and so on, but he found me and spoke to me for about 10 minutes. Listen to this story, Mr. President. It is relevant and it should be eye opening. His son had just come out from prison, to put it briefly, he was sexually abused regularly and his complaint was that because the boy is weak and he is frail they took advantage of him in prison and they forced him to take drugs.

Not everything a prisons officer could see, but I am not interested in blaming anybody but in pointing out the seriousness that the prison culture has in this country and imploring the authorities to do something expeditiously or that which you cannot do, find an alternative way of doing it. You know what Jamaica has done recently? Let me show you some advanced thinking in the Caribbean. They have admitted that there is homosexuality in the prison. You cannot hide it. Any Commissioner of Prison or Minister who tries to hide the prevalence of homosexuality and sexual abuse in a prison has his/her head in the clouds or is merely being defensive. Anybody!

That is the story of prison culture: drugs, sexual abuse; to the point where in Mexico—I will come back to Jamaica just now—and Brazil the prison authorities have allowed the prisoners to run the prison, form their own management system because of the difficulty in managing a prison system. You know with all of these heavily tattooed “fellas” who head the gangs, tattoos like peas all over, you cannot see their skin, it is just tattoos, maybe they would go to “lappe and matte” to express their belligerence; their masculinity in the prison, which is connected to the prevalence of sexual abuse.

So the gentleman was telling me, “what can you do”? His son has his bruises and it has the physical effects of that, but of course as we all know, even in the debate we had recently about recent complaint, people do not like to complain about being sexually abused, they suffer double jeopardy. But we should not be so much on the point of blaming, but could we just make one last appeal that something seriously be considered and done in a more timely fashion. And I would agree, what are you bringing these little pieces of legislation one week after next week while there is silent suffering in your prisons? When the recidivism rate is so high, when we do not know these prisoners who come out of prison, where they are and what they do, your monitoring system is weak. Even if it exists it is very ineffective.

In Jamaica the authorities acknowledge there are homosexual acts and sexual abuse, so they separated those who admit in writing, yes, I am, or who are found out to be so, yes, they are, put into a different area in the prison. I do not know if that would bring a complete solution, because as the story recited by the last speaker, when the frail looking young ones enter prison it is competition. That is the reality.

In section 17(1), as referred to by the Minister and its substantive clause which we are dealing with, there are 18 specific responsibilities for the Minister under affirmative resolution to provide for the admission and discharge of

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prisoners, classification of prisoners, discipline, a medical examination, the medical inspection of prisons and prisoners, the prevention of contagious diseases, the classification of prisons and prisoners, the appointment of officers responsible for the aftercare and rehabilitation of prisoners.

Now, as you said, this is 1838, a long time, this Act 27 of 1900, but where are the officers responsible for the aftercare and rehabilitation of prisoners? Are you going to take 100 years to do this? Is that why, in terms of blame and responsibility, and in my position, I like to extend the responsibility beyond the present Minister. But I am interested in section 17(c)(t), the Minister is responsible:

“generally for the effective administration of this Act, for the good management and government of prisons and the discipline and safe custody of prisoners.”

Are you safe in prison when you are sexually abused and afraid to complain because there are no proper appeal procedures in the prisons? Because you know if you complain loudly it is double jeopardy for you because the prisons officers have limited access at certain times, especially when you have three or four in a cell. So the safe custody issue is a responsibility of the Minister and he should set up the arrangement to ensure that is so. If it is not done the Minister would appear and should be proven to be irresponsible. That is where we are at today.

I would demonstrate in a short while the connection between drug abuse—possibly for the enlightening of my colleagues—drug testing, the spread of AIDS and sexual abuse.

### **3.30 p.m.**

Sen. St. Rose Greaves was correct again. A lot of people in this country have been hitting the pavements, squealing, preaching and appealing for things to be done, but we have a habit in this country of Government by exclusion. But when the trouble takes them, they would come and tell you, crime is everybody’s business and hold a press conference and tell you the public must help. But they will not relinquish one iota of their power when the opportunity comes.

If you want to rule, take the pressure when things do not go right. Why when the pressure starts you become so embracing? It might be called hypocrisy. That is what is disturbing a lot of us, as professionals, as well as the lay citizen. We have been having too much of this. We want a country well run. This is a beautiful country, economically prosperous, but the civility, the mode of the

governance, we are quite deficient in those respects and the gaps are beginning to show. There are so many gaps, and that is why the last speaker could have been so effective. The gaps are all over the place, and she could have pounced on anyone, as you rightly observed. What is the reason? When are we going to make a new start?

Let me read something from *Hansard*, Tuesday, May 28, 1991:

"Over the years, I have received a number of letters from the prisons and I can make them available to the Minister or anybody else to read. People have called me on the telephone; they have come to see me at my office at the university, and I want to bring to the Minister's attention in this formal way, that homosexuality appears to be a longstanding problem in the prisons. I believe an enquiry into that malpractice ought to begin as early as possible...

In fact, even if it is given through mutual consent in the prison, I think the question of disease transmission is a critical one."

I was on this Bench, Mr. President, on a matter concerning prisons, and because of the evidence—what you call *prima facie* evidence—coming before me as a professional, apart from a legislator, I tried to warn the Government and the Minister. But again, who cares? Who really cares? That is what is disturbing the national community.

Mr. President, just briefly, there are several important books used by the policy makers in the same countries that the Minister referred to, and the American government uses some of these documents. There is a book—I just photocopied the cover—called *Corrections: An Introduction*, by Richard Seiter, S-E-I-T-E-R, and on page 379, there is an article, *Homosexual Behaviour in Male Prisons*, and what they called a well-designed study. I would tell you what the figures for this country are. It says 30 per cent of prisoners in the American prison experience sexual abuse or direct homosexuality by different ways, and it is linked to the drug culture.

The Government, the Prime Minister, and this Minister himself, speak very conspicuously, and sometimes persuasively, about the relationship between drugs and crime. But I would tell you, there is a relationship between drugs and sexual abuse in the prisons as well, and you ought to take that as important as the one you are talking about, outside the prison.

There is another book called, *Community Corrections and Human Dignity*, and there are two related factors relating to the drug culture in prisons and related

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sex abuse—human dignity. When you rape somebody, you tend to take away the last vestige of their dignity. You leave them bruised, sometimes permanently. Yes, you have to be punished for a crime when you go to prison, but does it mean to say that you should be sexually raped, bullied, taken advantage of, without any kind of consolation recovery or justice done? In the first place it should have never happened, and this quoted—the research I mentioned earlier—Martinson in 1974. Let me quote one brief passage to help convince my colleagues, and even those who might be skeptical about the conditions we are speaking about in relation to the drug culture in the prisons, and the necessity for these amendments to root:

"Prisons have taken a beating when it comes to assessing their rehabilitative functions. Institutional rehabilitation, designed to assist offenders, has been attacked as either hopeless naiveté put into practice or as merely another guise for exercising social control over inmate populations... In many cases"—as Whitehead has shown in 2003—"it has been more rhetoric than fact..."

And it went on without belabouring the point.

Finally, a handbook on *Prisons*—this is an up-to-date research on prisons—by Yvonne Jewkes—J-E-W-K-E-S. Again, it speaks not only about homosexuality, but the connection between drugs and sexual abuse, and also the spread of HIV/AIDS with unclean needles and so on. I would leave those matters there. But I asked myself: This thing is so serious in the prisons; there is so much silent suffering in the prison and we know the problem of people having to report being sexually abused. We have made strong appeals for domestic violence here, for women who have been raped and the controversy about our recent complaints, but why are we not putting a similar emphasis or perhaps an increased emphasis on the silent suffering in the prisons with those who have been sexually abused? What is the role of the media in this? Is it that it is not sensational enough? What else do you need that would drive you into a more energetic coverage of a problem that has been long simmering within the prisons of this country?

I really have to ask myself that because it is so disturbing, people are not encouraged to come out and speak. In such cases we depend on the media, not only for the promotion of information, but for protection. If perhaps you can spare a little space from reporting on the construction corruption on this particular matter, I think you might be fulfilling what the Constitution allows you to do in terms of the protection of freedom of the press. Briefly, I am lying? Certainly not! Look at the evidence here.

There is an article by Imraj Maraj in the *Trinidad Guardian*, dated February 28, 1995. Let me quote one particular paragraph:

"Please permit me to voice my opinion on an ongoing tragedy at what is supposed to be one of society's most positive moving institutions.

In a society so AIDS ridden as ours, I would think that the authorities and administration responsible should take serious control over such a situation instead of 'turning blind eyes'."

And she went on to refer that the blind eyes are being turned to homosexuality, and its relationship to AIDS in the prisons.

I will just briefly refer to a headline, "Homosexuality still running rampant: Male prisoners who see other male inmates as women". So it is not just the publication, it is the public awareness of this rabid phenomenon. It is perpetrated without appropriate controls and they are waiting to see some specific statement or more preferably, an enquiry. That is what we need to cover some of the things the last Senator said. You need an enquiry, not a report by the Inspector of Prisons, or a report to the Minister by the Commissioner of Prisons. You need an independent enquiry, not merely to conditions, but such vulgar exploitation, sexual abuse in the prisons. The Amnesty International came in April 2004. Again, published in the *Guardian*, April 30 on page 3. Not only did they visit the prisons and speak about the conditions, but they spoke about the rampant exploitation and their hardships on prisons officers.

So when you come here today willy-nilly, with a piece of legislation, you are missing the boat in its panoramic sense. There are things that you should be seeing about in which the national community is feverishly interested, and your coverage should therefore be broader. The local co-ordinator of that branch of Amnesty International is our Sen. Verna St. Rose Greaves.

Another one, "Homosexuality in prisons". This is in the *Mirror*, dated April 30, 2004, and this is the description:

"New prisoners are seen as 'fresh meat', and given to seasoned inmates as their new girlfriends, wives or"—I cannot pronounce this one, B-I-Y-A-T-C-H-E-S—"biatches, and sampled first by homosexual prisons officers in a sick initiation prison rite. Prisoners are further dehumanized and gang-raped when they take showers together."

Now, we see this in the movies, but I am not speaking about the movies. In fact, sometimes these things are more dramatic and horrendous than what you see in the movies.

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Our own Senator, Sen. Seetahal SC, in her column in the *Sunday Guardian* dated April 25, 2004, headed: "Inquire into prison sexual abuse". For the same reason I am speaking about these things, it is for a similar reason that she has been moved to make this appeal, "Inquire into prison sexual abuse". Will we hear anything? Would anything be done now, or will we once again depend on the view that this is a society, a nine-day wonder, it will pass? That too will pass. She made a case from inciting certain matters that happened in the court, where young men were being violated severely, and when they complained, Mr. President, they were further brutalized. Is that the kind of cultivation we want? Is that what you call restorative justice? So are you going to attend to that and justify your policy and mission for restorative justice?

Now and again you have people coming—the headline: "a Former YTC inmate confirms sexual abuse reports", Saturday, April 24, 2004 in the *Newsday*. Heading: "Five prison officers face sexual assault charges". That is in the *Guardian* around the same date, April 24, 2004. This story says how the prisoner was fingered by prisons officers. They asked him to spread his leg and put his hands up. [*Mr. President makes hand gesture*] I understand the point. But it is written here, and I would not go too deeply into the subject. I am sorry, Mr. President.

Again headline: "Guards raping me", and it goes on. But the point is the public is hearing these things over and over, and we really have to make an appeal that something should be done. We have done so with great respect in the past and nothing has been happening, so I believe like the last speaker, it seems as though we have to become more dramatic to be more persuasive. That is the juncture at which we are, and the niceties that we are facing would not help push this issue further.

### **3.45 p.m.**

Mr. President, that was why the last speaker had to be so dramatic and, perhaps, embracing; we want things done. The rules must, therefore, respond to getting things done, otherwise what is the use of having a Parliament or a representative Government?

As I come to the end, what you have in prison is a 98 per cent male population, 2 per cent female in the five prisons. The fact is that 85 per cent of them are single; this is data we gathered from a research grant we got five years ago. Now 63 per cent of these single men in prison have left a number of children behind, 8,000 of them; 97 per cent of the prison inmates are from a working class background, 70 per cent of African ancestry.

My point relevant to the debate is that this is a group of young, virile men, hormone driven, having had long experiences in sexual intercourse and you are putting them in prison without any other avenue. You could imagine the challenges they face biologically. That is the premise, because that is the connection between drug abuse and sexual abuse. We need a policy on this issue. We cannot just stop at a point where they are punished for their crime, when you face a situation of sexual abuse, especially since over 50 per cent of them are between the ages of 18—30 years old.

Mr. President, 62 per cent of them are there for drug and narcotic offences and housebreaking; for drug and narcotic again, 30 per cent of them have been jailed for less than one year; 70 per cent of them are jailed for less than three years, which raises another policy issue. When you have them in jail, what do you with these drug addicts, apart from having them incarcerated? Some people have called for castration for rapists, I am not going there, and, of course, celibacy is a very challenging biological demand, as the priesthood has been showing. When you put all these demographics and propensities together, you have a recipe for sexual exploitation in the prisons, such as what we have mentioned, triggered and energized by the drug culture.

Like the last speaker, I have tried to make an appeal once again for something to be done. We need an enquiry into sexual abuse in our prisons, and other things could be dealt with corollary wise, but we need that as a priority item, because of the silent suffering it inflicts on those prisoners who enter for their just punishment.

Thank you, Mr. President.

**Sen. Lyndira Oudit:** Mr. President, while it is commendable that the Minister sought to bring this piece of legislation, subsequent to the previous Prisons Rules—you must give credit where credit is due; you are trying, Mr. Minister—however, it is very clear that enough is enough, but at this point this is certainly not enough.

Too often the Government sets things into motion, but it does not work out the details. It is for the details, Mr. Minister, too often, for the want of very simple procedures, major projects become failed operations and misfortunes.

Allow me to illustrate this point. We seem to be running on stories today, but this is a very short true story of how the details are so important. It is taken from a book, *The World's Greatest Crooks, Crimes and Corruption*. It is Hamlin Productions, a true story. It is a compilation, Bounty Books/Hamlin Productions.

It says:

"The Police in Venezuela issued a warrant for the arrest of a known criminal. Unfortunately for them, the man's house was built across the Venezuelan/Colombian border. When they came to arrest him, he ran into his bedroom, locked the door and phoned his lawyers. The bedroom was in Colombian territory."

The offence for which he was to be charged was not punishable in Colombia and the Venezuelan police could do nothing. It comes down to the details. It is very important that we understand and recognize the details that are required before you bring projects and try to implement processes. We have to work on the details. The Minister seriously has to do a lot of homework before he could get into the process of compulsory drug testing.

The Government's need to move from a retributive to a restorative model of philosophy, comes directly out of the 2002 Task Force Report on Prison Reform and Transformation. In order for you to have that process, it mandates certain basic prerequisites. You must have a successful system in place before you can actually implement a new one. I would like to suggest that there are three basic prerequisites. The first prerequisite is the willingness of the correctional staff to buy into the philosophy you are offering. You would like to move from retribution, which is based on coercion, to restorative or holistic, but your correctional staff are the components of your ethos; they are the ones that make or break and determine the success of any model. It does not matter which model you choose. They are the ones who have to implement the system that you would like to put in. So it is critical that your correctional staff buy into the philosophy you want to have.

Based on initial discussions with some of the correctional staff, they recognize the need for the measures that have been brought in this Bill; so that is a first. Unfortunately they have other issues that need to be dealt with before you can say that you have a successful transmission or transition to a restorative model.

The second prerequisite is the extent to which your existing facilities, resources and systems can cater for a change in what you want to do. The correctional orientation must accept this philosophy of restorative justice. I believe that this is one of the biggest challenges facing the Ministry at this time.

From what the stakeholders have indicated, there are a number of projects that have started off as pilot projects. Unfortunately, many of them have remained

grounded and flightless, so you have no take-off; pilot projects that simply do not get off the ground. I think the Minister has a serious challenge to get this one off the ground.

The third prerequisite has to do with the Cabinet, under the direction of the Prime Minister, having some understanding of the degenerated state of civil society. You cannot divorce what is in the prison from what exists in civil society. Two speakers who already talked on this matter, have tried in their own way to show the connection between what exists in the prison population and what are some of the limitations and challenges in civil society. If you deal with the issues under the civil society, then you may very well have an easier task in trying to bring about transformation in the prison service.

Mr. President, do you know what is absolutely critical for the Cabinet to understand? It is what the two Senators who spoke before me talked about, the failure. Children do not fail, people do not fail; it is the systems that have failed the children of our nation. You see that as evidence when you notice that the very children you are referring to are the faces of the gangsters, the faces of the killers; they are the faces of children. You have 10-, 11-, 12- and 13-year-old children. My children are of that age, but when you see them as killer—some of the most brutal killings are done by children. So we have failed as a nation to deal with the children, but other speakers talked about that. Institution after institution has failed to deal with our young offenders.

What is so ironic is that on March 03, 2010, while I was, in fact, preparing for this debate, I was reading through this particular Bill, I saw an article in the *Guardian*. In it was identified that the Prime Minister, Mr. Patrick Manning, and I am quoting:

"...yesterday chaired a meeting of the National Security Council..."—and it went on to identify—"The goal of the NSC is to intensify its efforts to ensure that every possible step is examined and taken to protect the population from undue hardship in the event of a catastrophe..."

When I saw that, I wanted to understand what the Prime Minister meant by "catastrophe", so that I might have a similar understanding. I went to the Oxford Dictionary. A catastrophe is defined as a great disaster, a denouement of a drama or the unravelling of a complicated situation.

The article went on it to say:

"The Council which is made up of government ministers, along with advisory members from the nation's protective services, engaged in an assessment of how Trinidad and Tobago would cope in the event of a natural disaster."

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I went back to the same dictionary, so I could understand what the council referred to as a "disaster". A disaster is quoted as a great misfortune or complete failure.

While I look at this Bill and I saw the meeting of this high powered council, I wondered how often this high powered council met to discuss what I call the lost souls, generations of lost children, how often did this council meet to discuss this; how often this council met to discuss the feasibility of not only compulsory drug testing in prisons alone, but compulsory drug testing at institutions throughout the country; how often has this council met to discuss the drug use among school children in our school system. I believe this council needs to wake up and smell the rot of what is really the disaster, what is the true catastrophe of this nation.

When you refer to the failed educational policies that have contributed to a nation of lost souls, to the inadequacy of social services to deal with pregnant teenaged addicts, or undernourished and ill babies born to pregnant mothers who simply have little recourse for their drug use, at which point is this Cabinet going to recognize what is truly the disaster?

Clause 5 which seeks to amend section 17 of the Act, is really a dip in the bucket. The Minister referred to the task of bringing all the rules. He tried to explain why the piecemeal approach was used.

#### **4.00 p.m.**

While we recognize, and I certainly would recognize at this point, that to bring amendments to the entire Act might have had us here for days on end, it is certainly necessary for the Minister to give the assurance that this is not just lip service because you have started other projects, you have tried to implement other areas and you have not fulfilled, so it is the hope that this is not lip service.

I would like to refer the Minister to several issues that are currently plaguing the prison service: Bullet proof vests. We have the explanation from the Minister that we have just over 200 weapons that were confiscated by prisoners. You quoted 190-plus, so you quoted homemade weapons and those are really referring to what are made not professional or mass produced, but they are homemade and a weapon is a weapon to be used. It is not made for show or display; it is made to be used.

When you are a prisons officer and facing what we consider the worst of our society—this is what we have labelled these individuals and they are making weapons not to put aside and show their children, they are making them to use.

How are we protecting our prisons and correctional staff against those prisoners who come in to make weapons? How are we producing some form of protection?

I understand the prisons officers have been begging for bullet proof vests. Why are we not with those concerns of the prison officers? This Bill refers to drug testing; my understanding is that there are only 18 welfare officers throughout the country in all the prisons and correctional facilities. There are almost 5,000 prisoners and you do not have welfare officers who cater to the needs, not only of the prisoners, but of the prison staff. We need to get things right, fix some basic things.

Mr. President, according to the world prison population which is the database which is used by the United Nations, Trinidad and Tobago is ranked as the 10<sup>th</sup> worst country in the world as far as prison population ratio is concerned. Every country with over one million has been ranked and we are 10th in the world. Our population ratio is 351 prison inmates per 100,000.

Mr. President, do you know the other nine countries; the Russian Federation has a ratio of 606; Belarus, 554; Ukraine, 415; Kazakhstan, 522; South Africa, 408; Singapore, 388. The 8th is Swaziland with 359 per 100,000 and Trinidad and Tobago is 10th in the world with 351 prison inmates per 100,000 population.

What was even more astonishing is that in the Caribbean it is the worst; it is the No. 1 worst Caribbean territory when it comes to prison population ratio per 100,000. There are 4,794 inmates as of December 2008; we do not even have the figure for 2009.

Mr. President, in reference to this, I refer you to an address by Sen. The Hon. Martin Joseph, the Minister of National Security at the Association of Caribbean Heads of Correction and Prison Services held at the Hyatt Regency Hotel on June 22, 2009 and in it was a very telling statement. He said:

"In a population of 1.3 million in Trinidad and Tobago, there are approximately 4,000 inmates. These very high and growing prison populations are worrisome and simply not sustainable."

Mr. President, these are the words of the Minister himself. Is this not a catastrophe? Is it not what the nation would see as a disaster? Is it that no one is telling this high-powered council these statistics? Or is it that nobody is listening?

The prison system is what we call a holding bay, in the English language or in grammar you have a hyphen, but this is a metaphorical hyphenation in the lives of

some people; the term "revolving door syndrome". So the prison is a hyphenation because they go in, spend time, come out, and go back in and that was spoken about by some of the other speakers. So we have a hyphenation.

Mr. President, upon examination this Bill cannot be seen as ill-intentioned or even ill-conceived; it seems to be keeping pace with the theoretical benchmark requirements by international standards because compulsory drug testing has been introduced in several countries throughout the world. So this is not something that is not required or not needed; it is needed.

In our country of 1.3 million, again 4,794 prisoners as of 2008. For every 271 persons in Trinidad and Tobago, there is one inmate and that is not even referring to the criminals who are out there, this is simply referring to the statistical number of inmates registered in the prison system.

Mr. President, reference was made earlier to Jamaica which has 2.7 million people; double the population of Trinidad and Tobago. Do you know their prison population is 4,744, less than Trinidad and Tobago's? In fact, their ratio is for every 570 persons they have one inmate in a population that is double the size of Trinidad and Tobago.

I have to ask the question: Is this the vision that was required?

**Sen. Joseph:** Just to correct your statistics; I know you quoted me indicating that at the Correction Conference the current prison population is 3,600. You are quoted at 4,000-something, but the current population but the current population is 3,600.

**Sen. L. Oudit:** Thank you very much. In fact, in the reference I did indicate that you stated as of June 2009 there were approximately 4,000 inmates, that is your statement and I did say in reference to my findings as of 2008. Certainly if there was a drop, I am happy to hear that although your information of June 2009 indicates otherwise.

Mr. President, are we setting the stage for First World status? We are 10<sup>th</sup> in the world's worst countries; maybe that is what we are aiming for, we are first in the Caribbean certainly because our figures are the highest. Is this the First World status benchmark that we are using?

You know drug use is really a coping mechanism not only for persons within the penal system, but also from outside and too often under the influence of drugs, but poor circumstances, many prisoners who leave and become ex-prisoners find themselves—again we go back to the revolving door. So we need to treat with the issues that are outside of the prison system as well.

This mandatory drug testing cannot be a singular strategy that is devoid of any cognizance of the need to address the problem across, it must be a multi-tier multi-disciplinary strategy. And while we understand the need to do it in the prison, certainly there is a need to do that, but I am hoping that there has to be some strategy that will go across the systems in our society.

Mr. President, reference was made to institutions and activities that saw a coming together of the forces and I ask the question: Where is the political will to address this real issue? If you keep plucking at the leaves of the tree you would not damage the tree; new leaves would just grow back and so you have to attack the root of the tree. I challenge the Minister here today; you need to address the supply end of the drug trade. It is only when you really address the supply side of the drug trade then you can say we are dealing with the demand for it inside or outside of prison. It does not matter where the demand is, as long as there is a demand and you have a ready supply, you have a trade.

Mr. President, you know the large-scale importation of drugs is not something done by the young boys on the street. According to the CIA World Factbooks, it says that Trinidad and Tobago is identified as a "transshipment point for South American drugs destined for the US and Europe;"

**Sen. George:** Mr. President, Standing Order No. 35(1).

**Mr. President:** I was waiting for somebody to say something because this is not a debate about crime, this is not even a debate about the prison system; it is perhaps a debate about the management of certain aspects of the prisons and speakers before you have spoken about certain aspects of the management of prisons, but it is not a debate on crime or how people find themselves in prison. We are talking about in a generic sense—while the Bill is very short and quite specific—it is perhaps I say, and I emphasize the word perhaps, about the management of prisons and I would ask you, like your predecessors to confine your comments at least to that subject.

**Sen. L. Oudit:** I will be so guided, Mr. President. So when you really talk about the need for compulsory drug testing of prisoners, if you do not have a problem, then why do you need compulsory drug testing. Therefore, if you do not have a supply of drugs, then there is no need for this legislation. It is very clear that there are root causes and we need to address them for the need for compulsory drug testing in your prisons. If you cannot get a supply, how do you have a problem? If you do not have a supply of drugs then you do not have to do

testing because it is not there. We come with all these explanations as to why we should have better management, but part of management has to do with providing the drugs within the prison system.

Mr. President, this Bill does not even speak of a format for how this implementation is going to take place, so we come here and we understand there will be regulations, but I suggest to the Minister that this Bill should have at least done some inclusion of an evaluation of sorts. An evaluation of—whether you want to refer to it as a pilot project, a pilot project which would have undertaken to work out the initial kinks that compulsory drug testing of some 5,000 prisoners or less than that, but it would have worked out the kinks.

**4.15 p.m.**

Several questions were raised by the other speakers and I have a few more. The question was already asked: is it going to be done by urine or blood samples; the needles that are to be used? My question is: What about prisoners who are on controlled medication, is it now going to be an offence? Because your drug testing does not talk about that. Is it going to be an offence for an inmate who is on controlled drugs without medical authorization—would that be an offence? How do you intend to do the testing? Is it upon admittance and randomly throughout or are you going to simply do it on a random basis throughout the sentencing? And what measures of discipline are you going to institute? Is it going to be in the form of punishment or is it going to be in the form of removal of a privilege? Those are some of the things that, in my humble opinion, a pilot project would have been able to work out and it should have been included here. Even if you say in the first six months you are going to run a pilot project, you can always come back and say, “Well, we tried it this way.”

There are implications for drug testing and the results as evidence to be used. How are you going to incorporate the test results in cases where they are brought before the court? Are they going to be used as evidence? So there is need of the prison service to adhere in the strictest sense to those very codes and regulations as they relate to confidentiality and the sustainability of evidence in court. When you bring records and you bring drug tests, how are you planning, Mr. Minister, through you, to ensure the sustainability of your evidence? You have thousands of prisoners and you are going to be doing, hopefully, their cases and you are going to be using the evidence of drug tests, positive or otherwise, and you bring them there, how are you going to refer these in your cases?

We talk about storage and we have come to this Parliament and we have spoken of rats and cocaine; we have spoken of the problems in the police service

and the ability, or the lack thereof, to store evidence. When you do drug testing, drug testing is done through a medical process, where are these tests and samples? If you are conceivably running tests over a period of time, how are you going to ensure that the storage is adequate? Are you now going to have a separate storage section? Are you going to plan additional rooms or buildings for storage of tests and test results, medical reports in relation to their drug testing? These are all questions that relate to the integrity of this process. It is important. Checks and balances are critical.

In this instance, you have prison staff. The prison staff is now going to be asked to do testing or become involved in testing as well as the conducting of searches. My question at this time is: How are the costs for this going to be underwritten? Has there been a feasibility study of the cost? And since I would imagine not, and since compulsory drug testing has already been instituted in other parts of the world, I would just like to refer you to the US Department of Justice and their understanding of actual costs. It says here that in the pre-treatment programme the cost of providing for case management, detoxification and jail space for those waiting for detoxification and additional drug tests are estimated at US \$3,248 per person. In addition, the treatment costs for providing treatment, additional drugs and supplementary services in the US were identified as US \$8,708. This is only in the pretreatment and the testing. Has there been any understanding or undertaking of the cost involved in the testing of prisoners? That is something that the Minister would have to identify.

So, we have just five clauses; a very short Bill. Clearly compulsory drug testing is needed. Certainly searches are required—

**Sen. Jeremie SC:** Are you supporting the Bill?

**Sen. L. Oudit:** I support the need for the Bill. I do. I understand it is needed in the prison service but you cannot do it—not only did you bring piecemeal, which I understand, but you cannot have the process as piecemeal. Therefore, if you are going to do this, there are too many people, not only the prisoners, but their families, the correctional staff and their own families. We have heard about the trauma of correctional staff, for example, at Carrera; prison staff at Carrera work 24-hour shifts. I understand there is a vessel that works five days and is broken for five days, so that you have prison staff who are also prisoners at Carrera Island, because they cannot leave the island. I know the President has said we are not dealing with those things, but I plead on behalf of the prison service and the prisons officers. These are the guards who are guarding, as we say, those with whom we do not want to contaminate ourselves.

So we need to really put them in a better position. We need to secure the needs of the prison staff. I really do not want our Minister of National Security to be like the Venezuelan police who left out the little detail about the border. So it is admirable that this is going to be introduced, but I believe that there are more questions than answers and as usual, in my wrapping up, I tend to like to offer a few recommendations to go along with it. You see, you cannot ever say that you did not offer and we did not know and nobody told us.

One of my first recommendations is that you need to sit together with your Minister of Education; Minister of Social Development and Ministry of Community Development and work out a holistic school-based intervention programme so that you can identify for the students, what are the biological, physiological and psychological effects of drug use on the body so they do not believe for a minute that it is some fantastic world of a high that they need to really go to. So you nip it in the bud at a very early age.

My second recommendation is that you identify a pyramid of intervention strategies. A pyramid of intervention, simply because, just like crime, you have hardened criminals and you also have those first time offenders. In drug use you have the hard core addicts and you have first time triers, so you need to be able to address each level accordingly. So you need a pyramid of intervention which involves a sequential programme of detoxification. It also requires outpatient and treatment care for ex-prisoners. Many of the repeat offenders are repeat offenders simply because they do not have coping mechanisms available to them outside of the prison system. So when they come out they cannot get jobs, many of them; they cannot access the services in the same way, simply because there is a stigma attached to the prisoners. They are former prisoners, so you need to provide a support system.

My suggestion at this point for former prisoners or ex-prisoners is a self-referral programme which they would be able to access based on their need for counselling and other services from time to time. So I say to the Minister that you have a task ahead of you. The eyes of the nation are certainly looking, because as we have indicated, there are other projects that are critically needed for the prison system to adequately deal with the requirements of this nation. You need to look at the needs of the prison staff; overcrowding. Overcrowding is at a rate of 111.1 per cent, according to the CIA facts. In your prison system your share of prison capacity filled as of 2008 is 111.9 per cent. Anything over 100 per cent means it is overcrowded. So, certainly, we have to look at overcrowding and the building of facilities.

With those few words, I would like to say that I wish the Minister well, because if you cannot get the job done, there are people who can. I support the intention of the Bill. Thank you. [*Desk thumping*]

**Mr. President:** Sen. Seetahal SC, would you like to start or would you like to start at 5.00 p.m.?

**Sen. Seetahal SC:** I would start at 5.00 p.m., please.

**Mr. President:** Very well. Well, we will suspend a little bit early for the tea break and resume at 5.00 p.m. The sitting is now suspended until 5.00 p.m.

**4.26 p.m.:** *Sitting suspended.*

[MR. VICE-PRESIDENT *in the Chair*]

**5.00 p.m.:** *Sitting resumed.*

**Sen. Dana Seetahal SC:** Thank you very much, Mr. Vice-President. The Bill before us, as I believe was indicated essentially by the Minister, deals with three issues. He spoke to five clauses, but these five clauses really deal with three matters. The first is to increase the penalty for the offence of taking and carrying a prohibited article into the prisons. That is in clause 4, which speaks to the amendment of section 8; section 8 of the parent Act deals with any person who brings or carries out, or endeavours to bring in or carry out, et cetera, et cetera, a prohibited article is liable on summary conviction to a fine of one thousand dollars.

The Minister, of course is quite correct when he indicated that the maximum penalty is a \$1,000 fine. Persons can be carrying in, as they do, cocaine, weapons and matters of that kind and the only penalty that could be given to that person would be a fine of \$1,000, unless the person were otherwise charged under the drugs legislation. The intention is to increase that maximum to \$25,000 and three years imprisonment; the maximum.

The second purpose of this Bill is to permit an amendment to section 17, to allow the Minister to make rules for additional matters. It does not amend the law allowing for the prisons to make searches or compulsory drug testing. In other words, it is only an enabling provision. It says that the Minister may make rules to permit these things. What we need to do is look at the prison rules and see whether or not the current prisons rules allow for these matters; or the intended prisons rules do.

The third, purpose of this Bill is to amend the law to permit a maximum penalty for breaches of the rules. Previously, the penalty was \$100. It is now \$2,500. Of course, the persons who would be most likely to breach those rules

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would be prisoners, so I guess \$2,500 would be a lot of money if you are in prison. Inside of the prisons there are also disciplinary measures that can take place and you do not need to put that in the parent Act. If you want to isolate someone, put him in solitary confinement or give him bread and water. Those things still exist, by the way—although bread and water in this day of drought might not be such a bad thing. Some persons suggest only bread, but there would be matters of swallowing and that could comprise cruel and unusual punishment. As the Attorney General is the guardian of the Constitution, I am sure he would not allow that to happen.

Moving right along, what I propose to do is to look at or consider the current prisons rules, which deal with searches and testing for narcotics and the proposed rules, which I happen to have a copy of, and see whether or not the amendment that we propose facilitates this.

The reason, as the Minister says, that this small Bill is to be passed by a special majority is that the conduct of searches on the person and compulsory drug testing—both these searches could be breaches of your fundamental human rights protected by sections 4 and 5 of the Constitution. Of course, compulsory drug testing, compulsory by its very nature, would be invasive and, of course, permission to search. Normally, to search someone, unless they actually commit an offence, would require a search warrant and that would be an enabling power under the legislation that police officers now have.

Having said that, let us look at the current law on searches. Regulation 234 is the law which specifies that all persons or vehicles entering or leaving any prison may be examined and searched and any person suspected of bringing any prohibited article into any prison or carrying out any prohibited article or any property belonging to a prison shall be stopped and immediate notice shall be given to the commissioner. That rule does not specifically permit search. It permits a person being stopped. What happens to them afterwards is up in the air. I imagine that the reason for the amendment is to permit agents of the prison to conduct searches of prisons officers themselves; searches of visitors to the prison, which is stated there. Therefore, in either an amendment to the current 1838 rules, or in the proposed rules, there will be provisions, I imagine, to enable wider searches. It is really an amendment to facilitate the rules, including those powers of search that we are dealing with.

One of the proposed rules that I happen to have here, is rule 72, which talks about:

“Every prisoner..., on his reception...be searched...”

At rule 73(1), it states:

“Any person or vehicle on entering or leaving a prison may be stopped, examined and searched.”

“Any person”, which would include prison officers. It merely says that the search must be carried out in a seemly manner. That is under the proposed prison rules. I do not know that there is enough in these proposed rules, which would enable what you seek to have. I think that when this amendment is passed, you need to look over your proposed rules, to see if they should be amended before you actually finalize them to bring them back to this Parliament for debate.

In the rules as well as the current rules, there is a provision in relation to drugs. It has to do with persons having prohibited articles and it deals with tobacco use, specifically at rule 235.

“1. No prisoner shall be given or allowed to have any intoxicating liquor except in pursuance of a written order of the Medical Officer specifying the quantity to be given...”

This means he can get liquor on medical recommendation. That is a wide thing. Secondly, the current rule says that:

“No prisoner shall be allowed to smoke or to have in his possession any tobacco, except in accordance with such orders as may be given by the Commissioner.”

It is not totally prohibitive that you can have cigarettes. Actually, I have been to the prison, Maximum Security Prison to name it, and I am sure there are others, to see a client and when the person emerged into the waiting room, the waft of tobacco was so strong that I felt I was smoking myself. I know that it happens. I am not sure if this was on the order of the commissioner, however. But it does happen. What is proposed now, through you, Mr. Vice-President, is that it is now intended and the Minister of Health may have had something to do with this, I do not know, that there shall be absolutely no smoking of any tobacco in prison. It states:

“68.(1) A prisoner shall not—

- (a) smoke or have in his possession any tobacco, tobacco product or device for smoking tobacco; or
- (b) consume or have in his possession any intoxicating or narcotic drug or liquor.

- (2) ...shall not have in his possession any controlled drug or medicinal product, other than...provided...prescription.”

In other words, there is intended to be in the new rules, a prohibition against drug possession. There is no such prohibition actually in the old rules, because in 1838, I guess people smoked opium and used cocaine in small dosages. It was not a problem, because that was a part of whatever culture. It was not talked about in the rules at all. Currently, persons who use illegal drugs in prisons can only be charged under the regular law. It can be deemed locally within the prison to be a prohibited article, but it is not specifically provided as an item that is banned.

The intention, therefore, as I see it, is that now you would no longer be allowed to have narcotics, specifically. The law in 2010, prohibits the possession of illegal narcotics. Then, presumably the prison authorities would say: We want to test for those to ensure that persons are not only imbibing narcotics illegally in prisons, but others are not bringing them in. My comment on that is it is really necessary. It has been necessary for a long time and no reasonable person can oppose that legislation.

Of course, it begs the question: Why so late? In 2002, in this Parliament, I raised it in my Budget Presentation. I am not going to say I did it, I said it; but I have. At one stage, I felt that I was the lone voice in the wilderness and people were wondering why I kept on mentioning this thing about prison. Somebody on the Government side asked me when did I become so interested in prison reform. It was not really that I was so interested in prison reform other than any other kind of reform, it was because of the nature of my occupation, I saw a lot of problems in the prison. I was facilitated, sometimes through the Minister. The Law Association was facilitated with visiting the prisons, but prior to that, I had visits externally and I have spoken to prisoners. I knew about vaulting and the other abuses in the prisons and I was able to say that the Frederick Street Prison was like the black hole of Calcutta.

The Commissioner of Prisons had made the statement in 2002/2003 that 66 per cent of the inmates in our prisons in Trinidad and Tobago were using or had used drug or their offence involved drug use. The obvious question is: Why was there no treatment in prison? I was told that it was difficult to implement programmes in the prison. I would like the Minister to tell me what has made it different how? Why is it that in 2002, 2003, 2004 and 2005 it was difficult to implement programmes in prison? It was said that prisoners must want to participate. That is the thing. A normal addict must want to change, yes. If it is

that we are putting forward or we are proposing to amend the law to allow the Minister to generate regulations to permit mandatory drug testing and that reason is to facilitate treatment of prisoners, that is one of the reasons, then is it no longer going to be necessary that they voluntarily agree to that treatment? That is something that we need to get clear, if it is going to be part of their reentry into the society. I know there are programmes now. Prior to coming out of prison, I understand you have to spend three months getting ready to re-enter and there are different systems in place. Is it going to be a mandatory thing? How do you make people want to?

I can see programmes that are put in place within the prisons, such as you have come in here and you are a user. Say 1,000 persons were in the prisons, according to Mr. Rougier, for using drugs as distinct from it being part of the offence—

**5.15 p.m.**

So, I would think that when a person is in prison, if he volunteers to take part in these drug rehabilitation programmes, then it should be a factor going towards remission of his sentences, or going towards showing that there is good behaviour and so forth. There should be things in place or in the rules to allow for this because that is the only way you can get this semi-voluntary participation. If the intention, therefore, through you Mr. Vice-President, is to get persons in the prisons involved in the rehabilitation programmes in a positive way voluntarily, there should be some benefit.

For example, in Minnesota—I can give you that country as an example because I lived there for a year—persons who have successfully completed drug rehabilitation programmes and stayed off the drugs for 12 months and then 24 months, if the sentence was very minor, it was wiped off their record. That was the reward. I am not saying that we need to go that far at this stage, but we need to have some rewards in place for this programme to work, and that is really necessary if you are talking about a successful rehabilitation programme in the prisons.

Those of us who may have some inkling of what goes on in the other rehabilitation programmes—whether it is at Mount St. Benedict, through the churches or Rebirth House—would know that once you are an addict you are always an addict, because many recovering addicts go back to drug use soon after.

Persons who are in prisons are in a contained environment. Let us say that they agree to participate and they complete the programmes and come out, there is

another problem there. They are coming out into the same environment that they left. So, even if they made it successfully for a year, what is to prevent them from going back? That is a problem we have to consider.

We are passing laws to enable the Minister to have compulsory drug testing, with a view towards reducing addiction in the prisons ultimately, and it would be in the prisons. What about the public out there? I do not have the figures with me but, previously, I had information which showed that in almost every family in this country there was somebody who was either using drugs or involved in drugs in some way—one out of every five persons had some kind of connection. In terms of users, it is growing daily. You see in the Magistrates' Court, you have persons who come back. They would have three or four little possession of marijuana and cocaine cases and so on, and then you have new ones who are coming up.

What is the success rate of our rehabilitation programmes here? That is the point. We do not know. Now, for cocaine use, a good success rate is said to be 40 per cent. So, it is all well and good to talk about rehabilitation and drug recovery, but until we know the programmes that work and do not work, then it is just pie in the sky.

The Alcoholics Anonymous Programme is said to be a successful programme. I know that from members of family who have participated in it successfully over 35 years like my father. I know about it. I have been to their conferences and I have spoken there and so on, but that is a very low-level drug; using a legal drug. When you are talking about marijuana, cocaine or heroin and other usages, it is much more difficult, because it is not only a physiological drug, but it is physical dependence. I do not know if you have seen any of those movies on what it affects in the system.

Mr. Vice-President, I think it is imperative for the Ministry of National Security to have some evaluation information; not just statistics, but something out there on the success rate of these programmes. What can you do to improve them? How aggressive are we in implementing, not programmes alone in the prisons, but for those who are coming out?

I have noted in previous budget debates that a lot of little bits of money have been given to various organizations to assist in AA and NAA programmes, but it is not state funded, as it were, and it is very difficult for persons to get into the programmes.

Several years ago, I was walking along Queen Street, and I saw somebody lying down on the street. He called out to me and it turned out that it was a witness previously in a matter that I had done. He was asking me on the street

there to get him into Marion House or somewhere like that. I mean, I really do not have any influence there. The only influence I could get sometimes for these things is if I “sweet talk” some Government Minister to assist in getting someone who is deserving, into a programme, and that is the level of my influence, as it were. There are many persons out there who want to change, but they cannot get into the programmes—there is a waiting list or you have to pay, or somebody has to support you—and there is where the State needs to intervene, otherwise we would have half of a lost generation. That is really all I need to say.

Mr. Vice-President, thank you very much. [*Desk thumping*]

**The Attorney General (Sen. The Hon. John Jeremie SC):** Mr. Vice-President, thank you. I rise to make just a few short observations on the Bill which is before us. I had not intended to speak this afternoon. The Leader of Government Business had to give me special permission to speak—

**Sen. Mark:** You! You are doing things that the Prime Minister does not even know you are doing boy!

**Sen. J. Jeremie SC:**—after Sen. Seetahal SC's contribution. Now, I just want to make three very succinct short points on the legislation which is before us and just one broad observation. Now, as is customary, when I come after Sen. Seetahal SC, and especially when the measure that we are debating is undoubtedly—as most of us in this room today recognize—in the national interest, I have a very easy task.

I want to answer specifically the question raised by Sen. Prof. Deosaran, because that is a very important question. He posed the question to the Minister: Why had we not spoken for the necessity for us to enact this legislation by virtue of a special majority? Now, the answer to that, I think, was given in part by Sen. Seetahal SC.

Every time you derogate—we pass legislation in this House which derogates from the fundamental rights and freedoms of an individual, it is the responsibility of the Government to say why that legislation is reasonably justifiable in a society that has a proper respect for the democratic principles and traditions that we have grown accustomed to. That is what the Constitution requires of us and that is our duty. Mr. Vice-President, that is my first order of business this afternoon. The answer was provided largely, but in part, by Sen. Seetahal SC.

If one looks at clause 5(c) of the legislation what it does is to provide a power. It amends section 17 of the parent statute. It says:

“(c) by inserting after subsection (1)(q), the following paragraphs:

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- ‘(r) the conducting of searches of officers, servants of the prison and visitors;
- (s) the compulsory drug testing of prisoners; and’”

Now, I would only add to—and this is what I meant when I say that the answer was provided largely but, in part, by Sen. Seetahal SC—that prisoners do not lose their fundamental rights when they enter the prisons doors.

Recently, the State has been faced with a plethora of applications of varying types by prisoners who are increasingly aware of their fundamental rights and their other rights under the law. Now, that principle was settled a long time ago in the case of *United States of America Ex Rel Gereau versus Henderson* which is reported in 526 Federal Reports at 844. What was said in that case is as follows:

“This simple hands-on attitude has been complexified by recent Supreme Court cases which have held that prisoners are not stripped of their constitutional rights, including the right to due process, when the prison gate slams shut behind them. Rather, prisoners continue to enjoy the protections of the Due Process Clause subject to restrictions imposed by the practical necessities of prison life and the legitimate aims of the correctional process.”

Mr. Vice-President, what we seek to do this afternoon is to deprive persons albeit they are prisoners, as the case law demonstrates, of their protected rights.

I have traced the case law in the United States of America, but there are several cases which are pending before the Attorney General's Office and some of which have been actually dealt with in which prisoners have asserted their rights. They are now increasingly aware of their rights in public law. So, the point is that the legislation does, in fact, require a special majority.

Now, the second thing I wish to do is to place the measures in the context of the legislation; the purposes of the Act. The wider purposes include the move away from the system of retributive justice to restorative justice. Now, Mr. Vice-President, it cannot be the case that the use of cellphones to conduct criminal activity, threats to prisons officers and families, trafficking in weapons, drugs and so on are consistent with our aims of the move towards a restorative system of justice. That in a nutshell is to place the legislation in its wider context.

What we seek to do today is to be viewed against our wider objective, that is to say, the move towards a system of restorative justice. The point was made by Sen. Prof. Deosaran that we have a 60 per cent recidivism rate, and that is what we are seeking to remedy this afternoon to some degree in the legislation which is before us.

The third and final point is the substantive point which I wish to make this afternoon and that is the legislation before us is not unique. Legislative precedents are to be found in England, Scotland and in Ireland. In fact, there is legislation in England which goes on to provide for alcohol testing in prisons and that was as early as 1997 in the United Kingdom Prisons Alcohol Testing Act of 1997. That is almost 15 years ago.

Now, having made those short points, I think I need to apologize to Sen. St. Rose Greaves whose contribution this afternoon—I congratulated her on her maiden contribution—was one of the better maiden contributions that I have heard in this Senate in the time that I have been here, which is not as long as the time that the rock across there has been here, but it is certainly—the Rock of Gibraltar. I am sorry.

**5.30 p.m.**

I withdraw unreservedly. [*Laughter*] My good friend, Sen. Wade Mark, otherwise known as the Rock of Gibraltar.

Now, the general point which I wish to make, Mr. Vice-President—and this is the problem where I am downstairs one week referring to someone as Deputy Speaker and upstairs referring to someone as Vice-President—

[MR. PRESIDENT *in the Chair*]

—now referring to you, my good friend, Mr. President, in your proper capacity as, Mr. President.

The final point that I wish to make is that the legislation before us—and this goes back to the query raised by my good friend, Sen. Prof. Deosaran on the need for the constitutional majority. The legislation is reasonably justifiable and the reason for that is two-fold. The objective is restorative and not retributive justice and the measures designed to achieve that objective are no more than are reasonably necessary in a society with a respect for democratic principles.

Mr. President, I thank you.

**Sen. Wade Mark:** Thank you very much, Mr. President. I want to be very short this afternoon—

**Hon. Senator:** “Oooh.” [*Desk thumping*]

**Sen. W. Mark:** “God boy”! I would like to begin my contribution by first putting on record my congratulations to Sen. Verna St. Rose Greaves, on her maiden contribution which you have put on record, is well appreciated, was a

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brilliant and very outstanding contribution and I want to record too my appreciation to Sen. St. Rose Greaves on her contribution.

Mr. President, there are some areas that I would like to refer to concerning the Prisons (Amdt.) Bill, 2010. I would like to look at what the hon. Attorney General referred to a short while ago in terms of what is called the recidivism, the revolving door, as it concerns persons who are repeat offenders in the system. When we look at the legislation as it concerns clause 5(s) which deals with the compulsory drug testing of prisoners, one of the issues that would concern any lawmaker, is to what extent this effort on the part of the Government is really going to bring about the kind of reduction in the abuse and the use of substances by prisoners and inmates in the system.

It is the hope of the Attorney General that this measure would in fact realize a consequential reduction in the use of substances, illegal drugs, in the prisons. But I would like to indicate to the hon. Attorney General, through you, that whilst that is a laudable objective and goal that we would like to achieve, whilst it is a strategy aimed at deterring inmates from consuming illegal substances in prison, we also have to face the cold reality, and that is, there is a serious problem of drugs in this society, and the Government, whether it wants to admit it or not may have in a very indirect way, and at times a direct way, contributed to that particular phenomena in this society. There are many young men and women who are able to use the make-work programmes in an effort to gain access to moneys, to income, in all kinds of ways that facilitate this drug trade and which result at the end of the process in some of these very young people being incarcerated, so it is like a kind of vicious cycle.

The Government is hoping that through this compulsory and mandatory drug testing mechanism or arrangement for the prisons, which of course will be done on a random basis, I would imagine, would go a long way in reducing the intake of that drug or those illegal substances. But we have to ask the Government, what measures are being taken by the regime to ensure that there is law and order as it relates to the make-work programmes? Because we know that this Government spends close to \$400 million to \$500 million a year on the URP and CEPEP programmes and on other make-work programmes, but more so, the URP programme, and you have so many ghost gangs in existence that the Government is aware of. In fact—

**Sen. George:** Mr. President, on a point of order, Standing Order 35(2).

**Mr. President:** I was in conversation with the Leader of Government Business; I really did not hear what the Senator was saying.

**Sen. W. Mark:** I am dealing with drug testing, but apparently he does not understand the link. [*Crosstalk*]

**Mr. President:** Link obvious.

**Sen. W. Mark:** Yes, he does not understand the link, Sir. I could understand the problem with my colleague; he is a junior Minister in the Ministry of Health or a Minister in the Ministry of Health.

**Sen. Browne:** Yes, and?

**Sen. W. Mark:** We are dealing with a health problem here. Not so? We are dealing with, for instance, the use of drugs in the prisons and we are saying that the Government is attempting to introduce a measure that is aimed, as far as it is concerned, at reducing the use of drugs in the prisons.

All that we are arguing on this side is that whilst it is a measure that we are hopeful, will bring the necessary results at the end of the day, we also have to advise the Government that it cannot be introducing measures, on the one hand, to reduce the consumption of illegal substances at the level of the prisons whilst on the other hand is fuelling the very consumption of illegal substances as a result of the make-work programmes that facilitate the consumption of the very drugs, and allow citizens, young men and women to enter the prison system.

Mr. President, the question that we also have to pose to the Government, is to what extent the introduction of this new policy, where we will have compulsory drug testing, impact on the size of the prisons officers in terms of that workforce. In other words, the prisons officers, right now we understand the number is just about 2,000 prisons officers. I did not hear from the hon. Minister what kind of infrastructure would be required to ensure this particular programme is effected and efficiently implemented, and therefore, we know for a fact that the Government recently approved the recruitment of some 485 prisons officers. They wanted new officers on board, but so far our information is that only 40 prisons officers have been recruited, so we still have a shortfall of close to 445 prisons officers who are still needed to be brought on board in the system.

We need to understand that if we are going to engage in drug testing at the level of the prisons, we have to upgrade the facilities, we have to upgrade the infrastructure. We understand from our research that the infirmary, which is the medical facility of service located in the prison, is very primitive and rudimentary, and many prisoners have been left unattended because of the shortages of medical personnel at these outlets or these prisons.

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We would like to really understand from the Government with this new attempt at testing prisoners, how and what system is the Government putting in place to ensure that this particular facility works and that you would not have the kind of unnecessary shortcomings and setbacks that could result, if the Government does not address the inadequacies in the system.

We know that when it comes to the issue, as identified in section (7)(t), it says:

“generally for the effective administration of this Act, for the good management and government of prisons and the discipline and safe custody of prisoners;”

That is one of the rules or regulations that the Minister is seeking to have us agree to today.

When we look at the whole question of prison administration, I want to bring to the Minister's attention and maybe the Attorney General's attention, that when we are looking at the issue of the administration of the prison system, one of the areas that we need to pay attention to in order to focus on the human rights of prisoners—because as the hon. Attorney General said a short while ago, when persons enter prison they enter with their human rights also. We know that there are limitations because of the offences they would have committed, but they do enjoy fundamental human rights. Therefore, I would like to ask the hon. Attorney General and maybe the hon. Minister of National Security, why is it that the Government of Trinidad and Tobago has failed to sign or ratify the United Nations Convention against torture? That is a convention that Amnesty International has been really campaigning to get the Government of Trinidad and Tobago to sign off. Why has that not been done, hon. Attorney General?

**5.45 p.m.**

I would also like to ask the hon. Minister of National Security, and maybe the hon. Attorney General: Why has the Inter-American Convention to Prevent and Punish Torture, not been ratified; has not been signed off? We understand that Amnesty International has been campaigning to encourage the Government of Trinidad and Tobago to have these treaties and conventions signed off.

**Sen. Jeremie SC:** Sen. Mark, I do not know if your memory is that short, I mean we are all getting older, but your government denounced the optional protocol to the Inter-American Convention. The reason was that they had a

particular view on the death penalty which the Attorney General and the Cabinet at the time disagreed with, and which we on this side agreed. If we do anything in respect of torture, we open ourselves to an argument that the imposition of the death penalty constitutes cruel and unusual punishment, and amounts to torture. So, we are not going down that route.

**Sen. W. Mark:** So, are you saying because it was done in a past regime—  
[*Interruption*]

**Sen. Jeremie SC:** No, I am not saying that. I am just saying it is the present policy of the Government to implement the death penalty.

**Sen. W. Mark:** Yes, and you said that if you proceed along that line to ratify this Convention, you would open—very interesting argument, hon. Attorney General, because you have not effected the death penalty since you have been Attorney General.

**Sen. Jeremie SC:** It is not up to me to hang people. If I had my way, I would do things a little differently. But, it so happens that we have courts, a High Court, a Court of Appeal, and persons have access to the courts. If you want to sit on that side and give me the authority after people have a certain degree of due process to say, "Let us go to Mercy Committee. Let the Mercy Committee sit; deliberate on cases on a case-by-case basis and then let the law take its course." I am sure you would find that the law would take its course and persons would be in fact facing the gallows.

**Sen. W. Mark:** I always knew you to be a dangerous man, and you have confirmed it today. [*Laughter*] You are a very dangerous person. Very dangerous man. Very dangerous Attorney General. I think the record would reveal that now. If anybody had any doubts about it, you have now confessed. I am happy about that.

**Sen. Jeremie SC:** You give me the authority.

**Sen. W. Mark:** Mr. President, the reality is that is a matter as I said, Amnesty International has been campaigning to encourage the Government of Trinidad and Tobago to sign off on those two conventions.

I would also like to indicate to the hon. Minister, when we are dealing with the whole issue of the administration of the prison system, everybody speaks to the issue of restoration as opposed to retribution, and we want to get into that restorative system of justice. But I took a cursory glance, hon. Attorney General, through you, Mr. President, to the proposed rules that the hon. Minister of

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National Security made reference to. What we are saying is that if the Government is really interested in pursuing this particular philosophical line, in terms of policy, we are not seeing it being manifested. So the Government seems to be saying it is interested in restorative justice in the country, but its practical measures, and the practical policy measures to effect such a policy are not being manifested in any serious way.

I would tell you why. What explains the fact that after so many years of talking about penal reform, prison reform and rehabilitation, we still have a 60 to 65 per cent recidivism rate in the country? Why is it as prisoners go in the prison and they come back out, they go back in the prison? Something is wrong, and it is a failure on the part of the Minister of National Security and the Government of Trinidad and Tobago. Therefore, one of the things that the Government needs to pay attention to is what we would like to call "the preservation or preserving of relationships". If we are talking about revolutionizing the prison system, bringing about meaningful penal reform, the Government needs to pay attention to the whole issue of preserving relationships. When a man goes to prison, what kind of arrangements would be put in place for his wife or his children to visit him on a regular basis?

In Trinidad and Tobago, we are talking about prison administration, prison management, safety and the security of prisoners in custody, and if we are saying that these measures are going to bring about a reduction in the consumption of drugs in the prisons, we have a challenge. I am making the point that one of the areas of administration and management of the prison service that we need to pay attention to is the preservation of relationships, and weird as it may sound to many people, there is need for the Government to look at this whole question of conjugal relations and visits.

**Sen. Jeremie SC:** You think we are in a hotel or what?

**Sen. W. Mark:** In many States in the United States—and the Attorney General is aware of it—where the prison system has been privatized—I am not advocating the privatization of the prison system in Trinidad and Tobago at this time, but I am saying we can draw examples. Because if we are talking about restorative justice, one of the things that you need to pay attention to—I am not saying that you have to deal with it immediately, but if you are dealing with restorative justice, you have to look at that. What about visits of children? Do you only have that when it is Mother's Day or Father's Day? It takes a long period of time, as Sen. St. Rose Greaves said, that the period of time is so long in terms

of making these arrangements. How do you expect a prisoner who is going through rehabilitation within the prison system, to be denied of these basic areas in terms of building relationships to get out there and be reintegrated effectively in society?

So it appears to me that the Government is talking from both sides of its mouth.

**Sen. Jeremie SC:** [*Inaudible*]

**Sen. W. Mark:** You are saying on the one hand, you want to have a reformed prisoner who can be reintegrated into the society, into the community, and the Government on the other hand is saying, they will not consider or at least examine that particular matter. Put it on the table for discussion.

**Hon. Senator:** Jail is not a hotel.

**Sen. W. Mark:** I am not saying it is a hotel. I am saying that for instance, you put it on the table for discussion.

Mr. President, I am also of the view that if the Government is serious about restorative justice in terms of the system, re administration and management of the prisons, I would like to advance to the Government, that we have to look at compensation and the earnings of prisoners in a more serious way. Instead of bringing Chinese workers here, why can we not take those prisoners? If you train them and you provide them with the necessary skillsets, why can they not build school benches, school tables? Why they cannot be involved in road construction or building construction?

Mr. President, in many jurisdictions in the United States today, prisoners have their own bank accounts, where as they earn their way out of prison, moneys are placed into their bank accounts. I am simply saying that the Government must think out of the box. This Government cannot be talking about serious reform, rehabilitation and they are still in the box. Look at revolutionary ways of dealing with this question of penal reform. I am saying one of the ways that they can be looked at it—it is not the primitive proposal I see here in their proposed Regulations. You are saying that in the proposed Regulations, you will give the people some small earnings and so on, or some small income. All I am saying to the Government, think outside the box, and try to look at the possibility of training. Not to come and tell us that every year you train, or 100 prisoners do the CXC exam, but the population is 4,000 and growing.

**Sen. Seetahal SC:** A lot of them cannot read really.

**Sen. W. Mark:** All right! Well, teach them to read. I am saying teach them to read.

Mr. President, I am saying the key thing here is that when prisoners leave the prison walls or compound, they must be able to reintegrate in the society, and therefore, if they are to be reintegrated, the Government must take very positive initiatives to lead that charge. I am also advancing that prisoners must reach the stage where they must acknowledge their crimes, and they must even go to the point of paying or making compensations to victims of crime. I am saying that is an objective that the Government ought to consider.

In fact, so much so, the former Minister of State in the Ministry of National Security made a statement before he demitted office, where he was showing the country that the whole philosophical approach of the regime that—[*Interruption*]

**Sen. Seetahal SC:** Who was that?

**Sen. W. Mark:** Mr. Hinds. He was making the point that we have to look at the victims, we have to look at the offenders and we have to look at the community, and he was making this linkage that the victims of crime must be compensated. He was saying in his statement that the prisoners must be able to work and earn their way, pay their way, and even compensate the victims of crime. That is an area I would like the Government to consider.

Mr. President, most importantly, the stigmatization that prisoners experience as a result of their reintegration into society, is one that we need to pay attention to. I want to call on the Minister of National Security to really embark on a programme of mass education, so that people could become more conscious of that particular aspect in terms of, as we seek to effectively reintegrate our inmates into society. So that is an area that I would like to also suggest to the hon. Minister of National Security.

We are talking about drug testing and mention was made of HIV/AIDS, and I wanted to ask the hon. Minister, to what extent is there compulsory—no, I do not think they have compulsory testing. But the same way you are going to test for drugs on a compulsory basis, and given all that we have been told today about the kind of activities taking place behind prison walls, would it not be a good suggestion for the Minister to consider the testing of prisoners for HIV/AIDS? Because in the prison walls or behind the prison walls, in fact, based on information reaching us, we know that there are a lot of prisoners who are suffering and experiencing this particular virus, the HIV/AIDS.

**6.00 p.m.**

I am calling on the Minister to let us know what is taking place, in that regard, and if he would consider looking at the issue of AIDS/HIV.

There is also a section of the legislation, 5(a), (b), (c), (d), (r) which talks about:

"the conducting of searches of officers, servants of the prison and visitors;"—  
but it is left open.

By whom? Who are the persons that are going to be searching officers, servants of the prison and visitors? Is it going to be an officer of a certain rank conducting searches of officers, servants of prison and visitors?

I would like the hon. Minister of National Security to consider the following amendment. I suggest that after the word "visitors" we add the words "by an officer of no lower than that of Superintendent of Prisons". We would like you to look at amending 5(r), so that when prison officers, visitors and servants of the prison are being searched, there must be an officer of a certain rank, or officers of a certain rank, conducting these searches. I am asking the Government to look at that in terms of tightening the legislation.

The other area I would like to bring to the attention of the hon. Minister of National Security has to deal with the administration and management of the prison service. My information is that there are no alarm systems functioning at the Maximum Security Prison. That has to do with the administration and management of the prison system and service in our country. If that is a fact, we would like the hon. Minister to address that matter with some degree of urgency.

The prisons officers have been complaining and making representation as it concerns security of their property, that is, their cars. When they park their cars outside the Royal Gaol on Frederick Street, we understand that their vehicles are subject to all kinds of vandalism, where thieves and bandits break into their vehicles and prisons officers lose their private belongings, whether cellphones or other belongings. I am calling on the Minister to deal with this issue. They have been calling for a secure place to park their vehicles over the last period, without any success coming from the Government or any kind of action being taken. I am calling on the hon. Minister of National Security to take some measures to address this situation.

My colleague made mention of the absence of a prison in Tobago. Why has it taken so long? Why have we been given so many promises by the Government,

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going into five years now, that they were going to establish a prison in Tobago and to date no prison has been constructed in Tobago? We have been promised a new prison complex on 100 acres of former Caroni lands for the last three years and no prison complex has been built. At the same time, the overcrowding continues to escalate throughout the seven prisons we have in the country. I would like to call on the Minister to deal with this issue of a prison in Tobago.

Mr. President, I also would like to bring to the hon. Minister's attention the whole matter of security for prisons officers. I think that prisons officers are exposed to too many actions by criminals, either within the prison or outside the prison. We have learned, over the past months or years, of one or two prisons officers being killed in the line of duty or on their way from duty. I believe that is an area that the Government needs to pay attention to. The prisons officers have been calling for bullet proof vests; I think the Government should look into that particular area.

As it concerns the matter of administration and management, I ask the hon. Minister of National Security what is being done about the 40-hour workweek. I understand that prisons officers are still working 44 hours a week, but they are only being paid for 40 hours in real terms. I would like the Minister to address that matter.

We also learned some time ago that leakages of examination papers have been taking place at the level of the prison service. I would like the hon. Minister to clear the air on that matter. We are dealing with the administration, management and government of the prison service. *[Interruption]*

**Sen. Gronlund-Nunez:** Mr. President, Standing Order 35(1), relevance to the Bill at hand.

**Mr. President:** Senator, I was at some pains to say, perhaps, you are dealing with management on a generic basis, but you are really stretching the point. If you make the point quickly, move on, but you are beginning to belabour, looking to add time to the speaking time, when there is no need. We know how eloquent you are; you can say what you need to very quickly.

**Sen. W. Mark:** As I said, Mr. President, I would be very short this evening. *[Laughter]* I am just calling on my colleagues to look at all these areas that I have mentioned, to see to what extent the Government could intervene and tighten those particular areas that I have identified. We think the measure the Government has brought is one worthy of consideration, but in doing so we want them to explain to us the infrastructure that they have established to give this Bill

effect. We want to know the infrastructure; we want to know the cost of this new arrangement and what kind of personnel would be required to man this particular system that you are seeking to introduce.

Mr. President, I thank you.

**Sen. Dr. Rolph Balgobin:** Mr. President, I rise to make a very short, and I mean short, contribution to the debate on this Bill. I think this is a very short piece of paper, but dealing with a very important subject, in that, we do have a serious contraband problem, we would also agree, and an update on the way we manage our prison system, particularly with regard to this matter, is long overdue, because we are operating in a rapidly changing environment.

In many respects, this changing environment is seeing something of a slow motion, unfolding tragedy occur in our prisons. Therefore, the Minister and his Ministry should be commended for moving forward with this effort.

Having said that, we recognize that it is not complete, much is left to be done, but, in a general sense, we ought to try to replicate, as much as possible, the protections and sanctions that obtain outside and inside of prison. If we are going to look at and deal objectively with the kinds of challenges that are coming up in the prison system, which admittedly could sometimes take an extreme form, when compared to what might obtain outside, they deserve no less and probably deserve more in terms of attention, more in terms of scanning, more in terms of testing and certainly more in terms of treatment.

I will not repeat the contribution of the points made by the previous speakers, but I would like to note Sen. Oudit's support for the intent of the Bill, if I understood her correctly. I share the same view. I support the intent. I think there are some very important things to consider or contemplate with this whole question of prison reform and management of the prison service.

Be that as it may, with regard to this specific piece of legislation we have in front of us, in terms of section 17(2), which is 5(d) in the Bill itself, I would advocate a larger fine than moving it from \$100 to \$500, simply because if anything, and particularly I was moved by the arguments of Sen. St. Rose Greaves, the impact of this kind of activity is exacerbated in an environment where people do not have freedom of movement and they are operating in confined spaces. It is obviously a very stressful environment to be in and, therefore, I do not think that someone should get the equivalent of the slap on the wrist. Mr. President, \$2,500 is almost what you pay if you are caught driving

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illegally on the bus route and I think it should be far more severe, simply because the impact of drug use in prisons is far more severe. That would be one small suggestion that I would put forward.

The other one would take up from Sen. Mark's point, which is that persons doing the drug tests really have to be very well trained. I think that with many organizations in Trinidad and Tobago doing drug testing now you can find—and we have to be careful that we do not inadvertently create, for example, a market for clean urine, as funny as that sounds. If people know that drug tests are going to occur, that is one of the first things you develop a demand for. Certainly, even in industrial Trinidad and Tobago, if you are going to do a drug test, it is customary for the folks from the lab to actually stand there while you produce the sample; customary yes, disconcerting absolutely. I do not know how this would work in a prison environment, but certainly we need to make sure that the persons doing the test are very properly trained and that the stock of drug testing equipment is always kept at a particular level, because one of the things that tip people off is when they see a rise in the stock level of drug testing kits, because then they know that a round of tests is coming. That is something that one would want to keep in mind.

I also support Sen. Mark's implied suggestion that someone fairly senior, not necessarily do the test, but decide when the test should be done; so that it is not just determined by the rank and file, but someone with some level of authority would make that decision, so, again, people are not tipped off and they know when to walk around with blood and urine samples and the rest of it.

I would just like to make two final broad points. I suppose the first of those might not necessarily be popular, but that would be to say, I listened to a lot of what was said here. Very often I find that when we talk about criminals, we talk about them as if they were victims.

**6.15 p.m.**

They are not victims, they are criminals; they are the perpetrators of crime, they hurt other people that is why they are in jail. Of course, that might seem as an insensitive perspective given the difficult circumstances that many of these people have come from and certainly society has to do much more to treat with that, but a person can always make a choice.

We always see and hear stories; we have even had people blessing this Senate who have come from very difficult circumstances and have made a choice. So a person can make a choice not to be a criminal in the same way another person

makes a choice to engage in criminal activity. And yes, those choices are getting harder and harder particularly with the rise in gang activity and so forth, but I would just like to bring some balance to the perspective that is being reflected here, that criminals are in some way entirely injured by the society, when in fact they can inflict very grave harm on people and that is why they end up where they are, in prison.

The victims, of course, suffer silently and very often have no voice. The media picks up on the sensational side of when the awful happens and then they move on to the next tragedy and the next tragedy, and those victims are left to suffer alone. We do not hear enough about support for them. We are talking about rehabilitation for prisoners and criminals, but for the victims of these people I think that more needs to be done and I suppose I am straining the boundaries of relevance, but I still think it is an important point to make.

Mr. President, the second broad point I would like to make is that of the measures for testing which I fully support, however, I would also want to suggest to go a little further to include prisons officers and employees of the prison. I think that searches are not enough. I would say that the prisoners are not going anywhere; they are allowed relatively free movement in an extremely confined space, whereas prisons officers are relatively ambulatory and mobile.

If one asks the question “where are all these drugs coming from?” I wonder if they just materialize somewhere in the prison. I would think not. They are coming from somewhere; someone bad is bringing these things in. Sometimes traffickers are users and I think it makes much sense if bad things are happening in our prisons, as we have been hearing all afternoon, it makes sense for us to know if there are people in authority who are participating in these kinds of things which in turn help them create an environment in which prisoners can be hurt.

I therefore also support the—maybe it is not mandatory for everybody—random testing of people who are employed in prisons. With those two broad suggestions, as well as the one on section 17 that I made earlier, I thank you for the opportunity to speak.

**Sen. June Melville:** Thank you, Mr. President, for the opportunity to make a short contribution and indeed to support the Minister of National Security, the hon. Martin Joseph on this Bill to amend the Prisons Act, Chap. 13:01 or the Prisons (Amdt.) Bill.

Mr. President, we know this Bill is basically to reduce the use of drugs in the nation's prison system and as the hon. Minister of National Security said, this Bill

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should strengthen and support the present rules; it would create harsher penalties for drug use in prisons; it will increase the fines.

**PROCEDURAL MOTION**

**The Minister of Energy and Energy Industries (Sen. The Hon. Conrad Enill):** Mr. President, in accordance with Standing Order No. 9(8), I beg to move that the Senate continue to sit until the completion of this Bill and also the Petroleum Company Bill.

*Question put and agreed to.*

**PRISONS (AMDT.) BILL**

**Sen. J. Melville:** Thank you again, Mr. President. This Bill proposes to strengthen and support the present rules. It will create harsher penalties for drug use in prison, and also increase the fines for a breach of prison rules thereby benefiting prisoners and prisons officers and the wider population.

Mr. President, last Friday I went to prison.

**Sen. Mark:** You were in prison?

**Sen. J. Melville:** I visited the prison.

**Sen. Mark:** Oh, you visited the prison.

**Sen. J. Melville:** Yes, I went to the prison in Scarborough, Tobago. For the first time I walked—and mind you, Mr. President, I went to the prison on different circumstances as compared to other persons we may or may not know and I had a conversation with some of the prisons officers. Indeed, I would have liked to see or visit one of the cells but I was told it was out of their hands, they simply could not. I would have to have permission from the Minister of National Security.

So during our discussions, I was informed that prisoners, their relatives and friends do anything possible to smuggle in cigarettes, drugs, money, whatever, even small knives they would try to smuggle in and the prisons officers were very supportive of any initiative that the Government of Trinidad and Tobago would do to assist them in managing the prison. [*Desk thumping*]

Mr. President, having listened to Sen. Verna St. Rose Greaves and her very energetic contribution this afternoon—I know she raised the point about the priorities in terms of new prisons—I would say that this Government has prison reform and the proper management of prisons as one of its priority for both Trinidad and Tobago, and it is quite obvious with the introduction of this Bill and other prison related bills.

It is simply not only in Trinidad and Tobago where there are similar laws with regard to prohibiting items from entering prison. This document is from the Internet and it reads:

"A Chicago man pleads guilty to attempting to introduce prohibited items into a prison."

And do you know the fine was US \$100,000. I believe in section 17(d)(2) of the Act, one hundred dollars will be deleted and substituted with the words "twenty-five hundred dollars". Not a lot of money at all. My personal belief is when you do the crime, you must do the time and you must not do it in any comfort whatsoever. Sure, with the basic human rights, of course, but you must do the time.

In another place in Hong Kong, the possession or introduction of prohibited articles by prison officers was emphasized and they too will be subjected to up to three years in prison. And, Mr. President, having listened again this afternoon to other Senators, usually, I enjoy Sen. Oudit's contributions—*[Interruption]* I do because it is always good to learn, even though you are speaking from the opposite side; sometimes it is good to learn how you do things, but today your contribution did not relate at all to the Bill, it simply did not relate, you missed the mark here.

Mr. President, with regard to Sen. Wade Mark, when he mentioned conjugal visits, I was wondering exactly what was he talking about. It is the prisons; you do the crime, you do the time. In fact, you were outside the box here totally because we are talking about prison here. This would be totally unacceptable to the public. And just to inform Sen. Mark, the Minister of National Security and, of course, with the Tobago House of Assembly, has located land in Tobago and—*[Interruption]*

**Sen. Mark:** *[Inaudible]*

**Sen. J. Melville:** Yes, of course, it will be built in a timely manner, it will be, just wait. I am hoping you will be still sitting there for as long as possible. *[Laughter]* *[Desk thumping]* I hope you will be seated there when we will inform you that the prison is built.

Mr. President, Sen. Dr. Balgobin said this was a very important subject and he did commend the Minister, and we should really commend the Minister in the Ministry of National Security for bringing this Bill. *[Desk thumping]* One of the most important things that Sen. Balgobin said was that prisoners are not victims. They are not victims, they are prisoners; some of the most evil people in Trinidad and Tobago and how could we want to treat them so nicely?

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Do the drug test, do everything possible to see that their lives in prison is as hard as possible. When parents are crying out—[*Interruption*] No, let me just finish, just a minute. No, I just want to keep my flow, thank you. Let them pay for the crime, so much so that they would not want to go back. They would not want to repeat the offences to go back to prison. [*Crosstalk*]

Mr. President, I always like listening to Sen. Dana Seetahal SC as well and I really applaud her contribution because she said drug tests are necessary. They are absolutely necessary and with this in mind, I am joining the hon. Minister of National Security and I request the support of the Members on the opposite side— You know many times they speak positive things about Bills, yet they still vote against them just for the sake of voting against the Bills.

So I am just hoping that this will be the second time since we have been in this Parliament that you, the Opposition, would support a Bill, and I am also asking the support of the Members on the Independent Bench.

With this contribution, Mr. President, I thank you.

**6.30 p.m.**

**Sen. Dr. Surujrattan Rambachan:** Thank you very much, Mr. President, for allowing me to join this debate. I want to begin by congratulating Sen. Verna St. Rose Greaves on a contribution that challenged the conscience, not only of the Government, but of the nation today. It was very strange for me to hear Sen. Melville complimenting her at the beginning and making very complimentary remarks, suggesting that her conscience was also challenged, but then making statements as she did, contrary, in terms of the treatment of prisoners.

This is a debate in which emotions will fly. While we debate the rights of the prisoners, this does not mean to say that any one of us on this side is not concerned or is not without compassion towards the victims of crime or the family members of victims of crime. We all have suffered one way or the other, having some family member who has been the victim of crime and we know what it is to go through that suffering and we are very compassionate. But we live in a society in which we must have respect for human life and we must be able to maintain human dignity.

It was the hon. Attorney General who, when he began his contribution, referred to the fact that someone coming into prison did not lose his or her rights and it reminded me of the words in a famous English judgment that said:

"...a convicted prisoner, in spite of his imprisonment, a convicted prisoner retains all civil rights which are not taken away expressly or by necessary implication."

In that regard, I am going to focus on the section of this Bill which seeks to create rules by the Minister, generally, for the effective administration of the Act and I want to emphasize “for the good management and government of prisons and the discipline and safe custody of prisoners”.

I have not been able to see all of the 318 rules, but I did hear the Minister say that they are going to be reducing that number of rules from 318 to 110 rules. But I would like, on this occasion, to put into the record some guidelines, some principles, which I feel should be followed in determining what those 110 rules are going to be, and I am guided in this by a very beautiful book: *Managing Prisons in a Time of Change* by Andrew Coyle, published in 2002 by the International Centre for Prison Studies in London.

The rights can be summarized under the following headings as obtains in this book—seven rights: One, maintenance of human dignity. And I hope the rules would cover these areas: The right to freedom from torture and inhumane, cruel or degrading treatment; to proper accommodation, hygiene facilities, clothing and bedding; to sufficient food and water; to sufficient exercise and fresh air.

If I were to just take that first principle or first right and look at the 2008 Human Rights Report for Trinidad and Tobago done by the Bureau of Democracy, Human Rights and Labour, 2008 Country Reports on Human Rights Practices and the section on Prison and Detention Centre Conditions, in 2007, in a prison that was supposed to accommodate 250 prisoners, there were 599 prisoners. That is almost two and a half times what it was supposed to contain. In the year before, 2006, it was 528 prisoners in that Port of Spain prison, and in the year 2009 it was 506 prisoners, to accommodate 250.

I say this to you and I emphasize that your rules should cover this area because there are certain things that happened in 2009 and 2008 that support my contention. On October 03, 2008, a High Court judge ruled in favour of convicted murderer Colin Edghill's complaint—and I heard the hon. Attorney General referring to the plethora of these kinds of human rights cases that are coming before the courts—that the conditions at the Port of Spain prison were debasing and dehumanizing to both prisoners and to prisons officers—not just prisoners, but prisons officers as well. In the ruling, the judge cited concerns about air, light, sanitation, hygiene, exercise and food, the very things that Andrew Coyle's document lists as being important in rules. Prison authorities also reported bringing charges in 2008 against 25 prisons officers for assault and battery or for poor conduct on the job, including possession of narcotics and provision of cellphones to inmates.

*Prisons (Amdt.) Bill*  
[SEN. DR. RAMBACHAN]

*Tuesday, March 16, 2010*

We on this side do not have a problem with supporting legislation that is in the interest of the citizens and the interest of the country, and it would be very difficult to fault the intent behind this Bill, I said here when I spoke for the first time last week, do not expect opposition for opposition sake. Where something needs to be done, we are, as an alternative government, going to stand up and say this is good for the country and we are going to support it, because we know that very soon we will be on that side and we will have to implement the right things in this country.

On May 30—I want to go further—Sunil Ali, who allegedly raped and murdered eight-year-old Hope Arismendez, hanged himself while in custody at the Golden Grove Prison. An official report made public on October 08 indicated that an inmate assisted Ali with his suicide; all these cases in one year. September 24, a judge ruled that prisons officers used excessive force in beating inmate Fitzroy Campo in 2006 at the Port of Spain prison and he awarded Campo financial compensation for general and exemplary damages.

There are more. But in 2008, there is another one. On October 02, 2009, a High Court judge awarded damages of \$243,848 to a former inmate who was beaten by a group of prisons officers in 2008 while serving a 30-month sentence. And the judge described the attack as depraved and inhumane treatment and stated that the conduct of the officers involved was oppressive, arbitrary and unprofessional.

So the first principle that I would like to emphasize and hope you will include in your rules would be the principle of the maintenance of human dignity.

Secondly, proper health care. We hear reports of the condition of the infirmary at the Port of Spain prison and the kinds of difficulties prisoners have and when you hear the stories from prisoners' families as to them having to supply drugs from the outside to family members in prison, you really wonder whether we are fulfilling our responsibilities as a Government under the law.

The third principle in the principle of personal safety: that the level of security should be sufficient to ensure the safety of the public but should not be oppressive; that no one in prison should be at risk of physical, sexual or mental abuse; that internal procedures for discipline and punishment should observe the tenets of natural justice.

The fourth principle by Coyle: Contact with families, friends in the outside world should be of a quantity and quality that allows the maintenance and development of proper relationships. Principle number five: Access to a range of activities.

If you talk about rehabilitation, then your rules must support rehabilitation. My colleague, Sen. Mark talked about prisoners being able to work and save and he was scoffed at when he said that. But the reality is that that is the way of modern prisons. You cannot talk about rehabilitation without giving a hope for the future and a chance for the future and a vision for the future. That is what Sen. Mark was, in fact, elucidating in his contribution.

So we talk about access to a range of activities: work, education, cultural activities, physical exercise; observance of religion. It is good that you have Mother's Day and Father's Day and so on and so forth; that is good and that must be complimented, but I have a difficulty when I see the faces of the children of those prisoners on the television and I know the extent of what they face when they go back to school and they hear, "Your father is a jailbird and your mother is a jailbird" and so on. Mr. Minister, I think those children should be protected from that. I honestly and sincerely think that they should be protected from that in the school system. They should not be allowed to do that. The sins of the parents should not be allowed to stick on the children. They are individuals in their own rights and they have their own human dignity.

So there should be access to a range of activities, which is observance of religion. We have had cases in the prison where Rastafarians have had their hair cut. We have had that. We are dealing with human beings. But I hope that you include it in your rules.

Principle six: Access to necessary legal representation for those who are awaiting trial, sentence or appeal and for those who have legitimate complaints about their treatment. And, finally, principle number seven, which I hope will be incorporated in your rules: Respecting the needs of special categories of prisoners, such as women, juveniles and other minority groups.

This afternoon Sen. St. Rose Greaves spoke about the fact that at the Golden Grove Prison, for example, there is no female youth facility and some under-age female prisoners are placed at Golden Grove Women's Prison or they may be placed at St. Jude's. That is good, if that is happening.

As I said, we cannot fault the intent of the Bill; we cannot do that. The intent is good. The matter of drug trafficking has to be tackled not only in the prisons, but outside of the prisons also. I think we need to do it with more determination and resolve, because this is a society where, unless there are stiff penalties and consequences for deviant behaviour and for breaking the law, criminals and would-be criminals would not be deterred.

*Prisons (Amdt.) Bill*  
[SEN. DR. RAMBACHAN]

*Tuesday, March 16, 2010*

In this regard, I wish to state here today that I want to compliment the magistrates in the Magistrates' Courts who are unrelenting in the quantum of fines that they are imposing on people who have been caught in the breathalyzer trap and for drunk driving in this country. The magistrates are acting without fear and favour and they must be complimented for carrying out the law. Consequences in this society are necessary in order to ensure that the lawlessness that is now pervasive in the society is checked.

Mandatory drug testing is called compulsory drug testing; some societies call it MDT. While in the first instance it is intended to identify prisoners who are coming into the prison and who are using drugs, I think we have established here today without a doubt, that the effectiveness of mandatory drug testing will be greater if it is linked to programmes of rehabilitation.

I was reading somewhere in relation to another country that the majority of those tested and found to be using drugs were, in fact, arrested for burglaries. What I am saying here is that we talk today about 65 per cent of offenders being re-offenders and coming back into prisons, and what I am saying here today is that one of the crimes that they commit is burglary. If you look at the number of burglaries in terms of crimes in this country, and you probably do a correlation, you would see it has to do with drug addicts who need money to buy their drugs to feed their habit and they go back into burglaries.

It would be interesting, therefore, if some research could be done in Trinidad and Tobago to see the relationship between the kinds of crimes committed by those who are tested for drugs and found to be using drugs and the kinds of crimes they are committing. You know, in 2002, 37 per cent of the prisoners in the Port of Spain prison were in for drug related crimes. It will be interesting to see what the statistics are for those who are at the Youth Training Centre and the kinds of crimes that they have committed and for what reasons they go in there.

**6.45 p.m.**

Mr. President, I want to ask the question: How really prepared are our prisons for drug rehabilitation of prisoners? The Minister said that there are 25 prisoners undergoing treatment. Sen. Seetahal SC asked the question: What is so difficult about establishing rehabilitation programmes and why only now? Is it that we do not have personnel? Is it that we do not have the facilities? Are we engaging once more, in a situation where we are talking big about this and we are not prepared to walk the talk?

I had the opportunity to read several sections of the report of the Cabinet-appointed Task Force on Prison Reform and Transformation 2002. It is about 480 pages. We do not need to reinvent the wheel. We need to go back to that document. That is classic work; extremely good work; the work of professionals; the work that this country is paying foreigners millions of dollars to do but may not have paid one-third of what they are paying foreigners to do. We need to go back to that document and utilize that document in order to frame our rehabilitation and restorative programmes in this country.

Having said that, with respect to testing, how are we going to test? Are we going to test every prisoner? Are we going to test every prisoner every week, every day, every month, semi-annually or annually? How are we going to do this testing? I am concerned about that, because testing is a very expensive thing. Are we going to set up a lab in the prisons to do that? Are we going to use private labs? How are we going to transport specimen from the prisons to the labs? How are we going to ensure the authenticity and maintain the integrity of the samples that have been taken and carried there? This is a good idea. I have no problem with this idea; it is a good idea, but a lot of good ideas fail, due to the lack of passion for implementation. Therefore, what we need is an entire culture change, as we talk about mandatory drug testing for prisoners. Too often legislation is passed and it takes years to become effective due to poor logistical management. Very often, as a government we play the politics for the headline news. We want to look good on the 7 o'clock news, but we need more and more in this society to walk the talk. That was an essential point that Sen. St. Rose Greaves made today.

The research is showing the effectiveness of mandatory drug testing. England and Wales, in a study done in 2001/2002—I believe I heard the Minister quote this study—by the Office for National Statistics, indicated that 66 per cent of the prisoners were reported using drugs in the month before coming to prison, compared to 25 per cent while in custody. In other words, mandatory drug testing does have an impact. We ought to, in fact, have mandatory drug testing in our prisons.

Sen. Prof. Deosaran made an interesting point. He said that 50 per cent of the prisoners are between the ages of 18—30 years. It would be interesting to see how much of the 65 per cent is also between the ages of 18—30 years. I make that point because, to talk about mandatory drug testing in the prison is after the fact. They are already on drugs. We have a bigger responsibility to fight the drug culture among youths in this country. I am sure you too are worried about where the inspiration to try drugs is coming from.

We are beginning to see in nearby Barbados and Jamaica what they are doing with dancehall music. They are trying to stop the dancehall music, because they have realized that it is influencing the minds of young people to try drugs and to do all other kinds of thing.

There was a study done in 2007, by the Global School-based Student Health Survey, as it was called, in Trinidad and Tobago, in which students from Forms 1 to 4 were surveyed. In fact, 1,692 students participated in this survey and they were asked: Percentage of students who have had at least one drink containing alcohol on more than one or more days during the past 30 days? The stunning figure was 40.6 per cent; 39 per cent boys and 42 per cent girls. The question was: Percentage of students who drank so much alcohol that they were really drunk one or more times during their life? The result was 28 per cent. I am making a connection between the need to attack the drug problem at source, rather than when it becomes a costly programme for us in the prisons. They then come back out and they are not properly rehabilitated and there is a 65 per cent repeat. The per cent average of students who use drugs one or more times during their life is 12.7 per cent. I do not know the statistics for today. I tried to get it for the Youth Training Centre. As at November 20, 2002, of 158 inmates at the Youth Training Centre, 16 were there for possession of marijuana and 6 per cent were there for possession of cocaine, which is about 14 per cent, which correlates with this 12.7 per cent of people who were tested for drugs.

Mr. President, why do prisoners want to use drugs in prison? Why do people use drugs at all? Is it to cope with life, with circumstances, or to drown their sorrows? Why do prisoners and their families risk being caught and prosecuted for trafficking in drugs? Why do they bribe police officers when they are downstairs the San Fernando Magistrates' Court, in the station or other police stations, so that they can get contraband items to their family? I want to suggest that it has to do with prison conditions. If we are concerned about, as we said, section 17 of the Bill which we are amending for good governance, management of the prison, discipline, safety and custody of prisoners, then I want to refer you to a speech that was made by the then Chief Justice of Trinidad and Tobago, Mr. Satnarine Sharma, when he addressed the 2004/2005 Law Term. That is what he had to say:

“The conditions...”

I am quoting the remand section, because the remand section is also an important section.

“The conditions of the Remand Section of the Port of Spain Prison are reportedly appalling. An average cell measures approximately eight feet by twelve feet and although originally intended to be occupied by two prisoners, now accommodates on an average seven to nine men...Further reports are that very little fresh air gets into cells. Infestation of the cell by vermin is said to be commonplace. Sanitary facilities are reported to be abysmal. In short, the picture painted is one of decidedly sub-human conditions.”

What are we doing? We are talking rehabilitation. What are we doing with these people? In the prisons, what kind of person is going to go back out there, unless we correct the conditions under which they live in the prisons? That relates directly to this clause:

“The effective administration of this Act...

Rules for good government, management...” and what have you.

I would like to suggest a couple of things about the remand yard. We have heard all about it. I would like the Government, the Minister of National Security and the Attorney General to explore the possibility of creating a remand court in close vicinity to the remand yard. If somebody is arrested way down in Siparia or Point Fortin and they do not get bail, they are brought up to the remand yard and every 10 days they have to go back. We are clogging the courts by taking them back. We are paying money to the people who are transporting these prisoners, because they are charging us per prisoner. If we set up a remand court, we can probably put some efficiency in the system. It is something that I really and truly hope that the Government will pay some attention to, in terms of how this can work for the benefit of the country.

We talked about prisoners. We also have to talk about prisons officers. There are 2,341 officers, by the way, in the country. [*Interruption*]

**Sen. Joseph:** I did not hear you.

**Sen. Dr. S. Rambachan:** There are 2,341 prisons officers in the country, but it is very interesting that in the Cabinet-appointed Task Force document, given what they recommended, and I think they are very good recommendations, they propose a total of 3,811 prisons officers that will be required in order to carry out that. I say that to you, because while your intention is very good of wanting to carry out this programme of rehabilitation and restoration, are you prepared to go through the process of hiring 3,811 prisons officers of different rank, in order to make this feasible?

Mr. President, with those few words, I thank you for giving me the opportunity to contribute to this debate this afternoon.

**Sen. Annette Nicholson-Alfred:** Thank you very much, Mr. President. I stand this evening, not in any way to disagree with measures being suggested, with respect to the amendments to the Prisons Act, Chap 13:01, 2010, but to add that in my Tobago, we have our great concerns. I would not allow Sen. Verna St. Rose Greaves to do it all for me, although I thank her for what she has said, because she understands the case.

There is need for other considerations, while we talk about additional rules, in relation to searches and compulsory drug testing, et cetera. I agree to all of that, but I strongly object to the piecemeal way, as so many other people have said, in which the amendments are brought, according to Sen. St. Rose Greaves, “chirrup-chirrup”. For those who do not understand “chirrup-chirrup”, it means little bit, little bit, piece, piece. I strongly object to that. It is time that we get the rules and regulations and whatever is necessary in place; we should sit and fight over them until the matter is resolved. We cannot be coming here every month or two, just to do one little point and another little point, no. That is wasting time.

I want to state that in Tobago, our prison is in a state. The building itself, forget that one. I am a usual visitor to the prison, so I know. When you visit, there is no table nor chair where you can sit and talk to anybody. The prison was made for 29 persons; it now houses over three times that number. This is no joke, people fight for space to sleep. Who gets there first or who is the bigger “bad” in the prison will sleep lying down; others stand and sleep. Because of the size of the prison also, we have a number of diseases; outbreak of diseases. Just as Sen. Dr. Rambachan said, there are all sorts of diseases. It is not only among the inmates of the prison; the prisons officers also. When you go there, because you have to be so close to everything, it is possible to catch whatever is going around. The last time there was an outbreak of chickenpox. Of course, everybody was down with chickenpox. Some of them could not even go to the courts when it was necessary.

I say that to come to the point that we in Tobago have been promised a new prison over five years or maybe more than that. To date, I have not seen any sign of the prison coming around. I do not know where we are going to put the people who do wrong. There is no new prison. Our women have to be brought to Trinidad from time to time and brought back to Tobago. Our young people, especially are being brought to Trinidad as there is nowhere to keep them in Tobago. In their case it is terrible, in that first offenders have to lie down and match up with some hardened criminals. By the time the youths get back to Tobago, they learn what it is to do bad, bad, bad, bad, things. In that space, we do not have anywhere we can try to reform or rehabilitate them. We do not have anything like that. Consideration must be made before we think of—

**7.00 p.m.**

Another point is, when we Tobagonians come to Trinidad to visit our relatives—on many occasions the money is scarce and you know the cost of coming to Trinidad as much as I do. You have to pay the boat passage, taxi fare, and so on, and many times you cannot get to see your relatives and you have to return another time. These are measures that should be looked into.

There is a situation where youngsters were being brought to Trinidad—I am not putting any blame on anybody. The blame will lie where it should lie—and when they come they make friends. What we are observing in Tobago now is that crime is spiralling. Our youngsters are learning how to do it very well, and I have no qualms about saying that. They learn it when they come to the prisons in Trinidad. There is no accommodation; no form of rehabilitation and no form of training. It is very hard for Tobagonians who must come to Trinidad, just because there is no adequate accommodation in Tobago.

The story of homosexual acts being committed is not strange in the Tobago scenario. I know people, and they have told me what happens there. What are we doing about that kind of behaviour? Just bringing the notes, piece by piece, we cannot get it done; we cannot get it over. It is time we do something about this. I agree that we do things all over, but Tobago must get its consideration. We must try to correct what is happening now, before we move into other kinds of reforms.

It is time that the Government bring all the regulations so that we can discuss them in detail and settle the matter once and for all. Let us deal with the prevention of drug and alcohol use; let us deal with reform centres which can help former inmates to be rehabilitated; let us prevent the trafficking of drugs by the “big bards” so that the ordinary man would not be able to get it as easily. I ask the Minister that consideration be given to improving the status of the prison in Tobago. I know by improving the status of the prison in Tobago, the prisoners’ status will also be improved, and we will be able to return to a better Tobago.

I thank you. [*Desk thumping*]

**The Minister of National Security (Sen. The Hon. Martin Joseph):** Mr. President, thank you very much. Let me first of all start by thanking the 10 Senators who participated in this debate today. As was said by one contributor, a debate of this type will have a certain amount of emotion.

I want to also join with other Senators and compliment Sen. Verna St. Rose Greaves on her maiden contribution which was very passionate and moving.

Let me start with the last Senator first, and just to indicate, Sen. Nicholson-Alfred, I think my colleague, Sen. Melville, indicated that things are looking better as it relates to Tobago. Part of the challenge we faced, as it relates to the Tobago prison, was finding a location. We cannot build until we find a location. Even as we waited to find a location, we did everything humanly possible to improve the facilities of the existing prison. I am sure that you would have noticed, given the limitation of space, every effort was made to improve the conditions of the existing prison in Tobago. We recognize that it is not ideal but, as I said, in the absence of being able to find a location—one of the things I will not do is to bring to the attention here the challenges that we had in terms of finding a location. Mr. President, it is the same thing. We talk about choices and the question of whether or not a prison was supposed to be given priority in light of the whole question of space and other things to be provided.

**Sen. Nicholson-Alfred:** Mr. Minister, could you tell me if you have found a location and where for the structure?

**Sen. The Hon. M. Joseph:** The Tobago House of Assembly has indicated to us a facility that can now be made available for the construction of the prison. I do not want to say whether it is Friendship or what. I cannot remember where the location is, but a location has now been identified.

Sen. Dr. Rambachan talked about the task force, and it is the result of the task force that is driving the transformation of the prison reform. Now, you also indicated whether or not we had the willingness to bring on board the number of persons required. Cabinet approved all the staff the task force identified that is needed and which should be implemented over a five-year period. So, we already have Cabinet's approval for that.

Let me deal with Sen. Mark at the same time. He talked about 40 officers that were being recruited. In fact, it was 192 officers who recently passed out. The service is currently in the process of recruiting more persons. The number 40, perhaps, Sen. Mark mixed it up with the 40 officers who were just promoted to Prisons Officer II. So, the question of recruitment of prisons officers is well on the way.

**Sen. Dr. Rambachan:** Is it that you have a high turnover of prisons officers? There are 2,341 officers now, and you said that you recruited 175, and by doing some rough calculations, it seems like many prisons officers are leaving the service. Is it that you have a high turnover of officers?

**Sen. The Hon. M. Joseph:** I am not aware of a high turnover of officers. I think part of the challenge is the question of recruiting suitably qualified persons to be prisons officers. That is the challenge.

Mr. President, I am moving backwards. Sen. Dr. Balgobin spoke about the question of the conducting of the drug test, and whether or not persons are properly trained in order for the test to be properly administered. Those points have been taken.

Again, the question about the rules: When the Prisons Rules come to the Senate—I think Sen. Seetahal SC outlined it so nicely. It is the Prisons Rules that would indicate all the details with respect to how these measures are going to be put in place. I appreciate the point made by Sen. Dr. Rambachan. He identified what the Prisons Rules should contain, and we are going to have an opportunity to debate those Prisons Rules.

Hon. Senators talked about the fact “chirrup, chirrup” that everything should come. I indicated in piloting the Bill that it has taken us some time, because we are talking about 130-something rules and these rules have been in existence since 1838. We recognize that a number of changes have taken place with respect to penal prison reform—how you treat with prisoners, et cetera—and we are also guided by that very same task force report. Yes, we would have liked them to be here quicker, but it has taken sometime, and the next time we come to discuss prison matters, it would not be “chirrup, chirrup”. You say that you are ready to stay as long as we want to stay and we are talking about 130-something Prisons Rules.

Sen. St. Rose Greaves raised the question about Carrera. Just to indicate, as I listened, it reminded me—I made a little note here—whether were we talking about *Papillion*? I was hearing some prison conditions being described and I wondered: Are we talking about what currently exist? For example, let me just indicate this. I am advised that the prisoners at Carrera do not bathe with salt water. There is a normal water supply which they all use. There are five tanks on the island and water is shipped by a barge. It adequately meets the needs of all those on the island.

Toilet facilities: Toilet facilities at the Remand Yard, the Port of Spain Prisons and the women prisons, yes, they use pail. At Golden Grove, YTC and MSP, there are in-cell and in-dormitory toilet facilities. At Carrera, inmates spend most of the day outside and there are toilet facilities available for their use. However, at nights, they have to use slop-pails in their cells.

**Sen. St. Rose Greaves:** With respect to the toilet facilities at Carrera, where does the waste go? What kinds of facilities are there? There are no proper toilet facilities there. Over 100 years, the raw waste goes into the sea. There is a hole there where they empty the buckets. This is what the prisoners use during the day as a latrine, and the waste goes straight into the sea.

**Sen. The Hon. M. Joseph:** Your point is noted. All I am saying is that an impression was given, as it relates to the facilities they have to use. You are now talking about a larger issue with respect to the septic system and some of which are the larger things.

With respect to the question of overcrowding, conditions have improved. There is still a level of overcrowding, but not as bad and chronic as it was. What has contributed to the reduction in the over-crowding is the Maximum Security Prison accepting more prisoners.

**Sen. Seetahal SC:** I was wondering, about five years ago, we were told that only about half of the prison was inhabited. We want to know why it is taking so long to move those prisoners from either Remand or Carrera to the MSP. Was it not the intention to get rid of Carrera eventually?

**Sen. The Hon. M. Joseph:** In terms of why it has taken a while for the Maximum Security Prison to be fully operational, my understanding is that they had some electronic issues with respect to the automatic closing and opening of the gates, and I think they have addressed that matter. There were also some issues with respect to the sewer system and its ability to process the number of prisoners. My understanding is that progress has been made. I am not in a position to tell you to what capacity the MSP is at this point in time, but it has now increased its capacity to accept more prisoners, and as we have done that, we have reduced the question of overcrowding at the other facilities.

**Sen. Seetahal SC:** Minister, since you are not sure about these matters, could you at some point clarify—all of us seem to be interested in this matter as to whether Carrera is, in fact, to be abolished. Secondly, the matter of the effluence that we heard about, if it is true and it is out there in the sea and fishes are eating it and we are eating those fishes, then clearly we need to know that.

In terms of the Maximum Security Prison, whether the matters have been attended to and prisoners are still being moved from the Port of Spain prison to there. Perhaps we can get some kind of release at some point, or when you have another graduation or something to let us know.

**7. 15 p.m.**

**Sen. Dr. Rambachan:** The 2009 Human Rights Report for Trinidad and Tobago said that the Maximum Security Prison can accommodate 2,453 inmates, but at the end of 2009 there were only 1,273 inmates, which means that only 50 per cent of the capacity is being used.

**Sen. The Hon. M. Joseph:** Mr. President, the points made as they relate to some of the questions raised, I am going to get some more information and provide responses to Senators.

Sen. St. Rose Greaves, talked about the two-headed snake, about drugs and guns, and what is the Government doing as it relates to stemming the inflow of drugs and guns? The Government has invested heavily in terms of providing the Coast Guard with the means of increasing our patrolling of our borders. We just acquired six fast patrol vessels, we have just provided the Coast Guard with 14 inceptors, and the reason for the purchasing of the three offshore vessels are all designed to stem the inflow of the drugs and guns coming into the country.

Steps are being taken to deal with that. The question now about improving law enforcement capacity, that is also being done. We have passed the appropriate legislation, we have now improved the training academy, we have brought on board a provost, so that other steps are being taken to increase law enforcement capacity to deal with some of the challenges that we face.

But, many of the points made by hon. Senators, none of them have been dismissed, all point to what the rules should reflect. Again, as I said earlier on, an opportunity is going to lend itself for us to see the rules and see how the rules apply in such a way so that some of the concerns raised by the Senators would be addressed.

With these few words, Mr. President, I beg to move.

*Question put and agreed to.*

*Bill accordingly read a second time.*

*Bill committed to a committee of the whole Senate.*

*Senate in committee.*

*Clauses 1 to 4 ordered to stand part of the Bill.*

*Clause 5.*

*Question proposed, That clause 5 stand part of the Bill.*

**Sen. Mark:** Mr. Chairman, I suggested to the hon. Minister, if he could look at amending (r) the question of searches of officers, servants of the prison and visitors by an officer of no lower than the rank of Superintendent of Prisons.

**Sen. Joseph:** We amended rules recently that now allow searches to be conducted only by persons from that very same rank for which you are talking about.

**Sen. Mark:** Okay.

*Question put and agreed to.*

*Clause 5 ordered to stand part of the Bill.*

*Preamble approved.*

*Question put and agreed to, That the Bill be reported to the Senate.*

*Senate resumed.*

*Bill reported, without amendment.*

*Question put, That the Bill be now read the third time.*

*The Senate voted: Ayes 28*

AYES

Enill, Hon. C.

Jeremie SC, Hon. J.

Saith, Hon. Dr. L.

Browne, Hon. M.

Joseph, Hon. M.

Manning, Hon. H.

Piggott, Hon. A.

Narace, Hon. J.

Dick-Forde, Hon. Dr. E.

Gronlund-Nunez, Hon. T.

Hadeed, G.

George, W.

Rogers, L.

Lezama, Miss L.

Melville, Miss J.

Rambachan, Dr. S.

Mark, W.

Oudit, Mrs. L.  
 Assam, M.  
 St Rose Greaves, Mrs. V.  
 Seetahal SC, Miss D.  
 Ramkhelawan, S.  
 Baptiste-Mc Knight, Mrs. C.  
 Nicholson-Alfred, Mrs. A.  
 Drayton, Mrs. H.  
 Merhair, Miss G.  
 Balgobin, Dr. R.  
 Rocke, Miss A.

*Question agreed to.*

*Bill accordingly read the third time and passed*

#### **PETROTRIN PENSIONS BILL**

*Order for second reading read.*

**The Minister of Trade and Industry and Minister in the Ministry of Finance (Sen. The Hon. Mariano Browne):** Mr. President, I beg to move,

That a Bill to restructure the pension arrangements of the Petroleum Company of Trinidad and Tobago Limited, be now read a second time.

The Bill seeks to effect a merger of seven pension plans currently administered by the Petroleum Company of Trinidad and Tobago Limited. The seven pension plans are the result of mergers and acquisitions of different companies over the years to form what is now known as Petrotrin. The Petroleum Company of Trinidad and Tobago (Petrotrin) was incorporated in 1993 by Act No. 27 also known as the Petrotrin Vesting Act to take over the core operations of the Trinidad and Tobago Oil Company Limited (Trintoc) and the Trinidad and Tobago Petroleum Company Limited (Trintopec). The company Petrotrin assumed all obligations of the predecessor companies including eight pension plans for its employees.

Accordingly, Petrotrin continued to administer the following eight pension plans:

(a) The Trintoc non-contributory pension plan;

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- (b) The Trintoc contributory pension fund;
- (c) The Trintoc employees benefit plan;
- (d) The Trintoc staff retirement plan;
- (e) The Trintopec employees pension plan;
- (f) The Trinmar Limited employees benefit plan; and
- (g) The Trintopec staff pension plan.

These plans together have approximately 5,500 pensioners and 5,000 active members and deferred pensioners.

The Trintoc non-contributory pension fund is an approved plan as defined under section 27 of the Income Tax Act, Chap. 75:01. The plan was approved under the pre-1963 legislation and is not an improved pension fund plan within the meaning of the current provisions of section 28 of the Income Tax Act.

[MR. VICE-PRESIDENT *in the Chair*]

The Trintoc non-contributory pension fund was closed to new members in 1963. Its current membership comprises of 125 pensioners. In other words, there are no contributing members and the plan is closed. The other seven plans were approved under section 28 of the Income Tax Act. Over the years Petrotrin has taken steps in the interest of both its employees and pensioners to enhance the administrative efficiency and maximize the potential benefits available to employees under these plans.

Accordingly, Petrotrin and the Oilfield Workers Trade Union (OWTU) entered into agreements in 1998 and 2003 in an effort to harmonize the benefits of the seven pension plans for which the OWTU is the recognized union. In this regard, in 1998 the OWTU submitted a proposal relating to the harmonization of Petrotrin's pension plans; the harmonization agreement which incorporated the following:

1. Benefit improvements;
2. Harmonization of the administrative provisions of Petrotrin's pension plan; and
3. Harmonization of the amendment power under each plan.

Petrotrin and OWTU agreed to these proposals. The changes agreed under this agreement were made with effect from July 01, 1998, and the rationale behind the

harmonization was to facilitate a common benefit formula across a different pension plan and by extension to provide common benefits for all members.

On December 17, 2003 Petrotrin signed a memorandum of agreement with OWTU that provided for a number of further benefit improvements and a merger of the pension plans. The cost related to the improvements and integrations of these plans would be borne from the surpluses of these plans. And I might say, Mr. Vice-President, that all the plans were in surplus.

**7.30 p.m.**

As a result of the memorandum of agreement, the following benefit improvements were implemented in 2003. First, an increase on pensions in payment related to the retail price index calculated at 4 per cent per annum, and retroactively applied from October 01, 2002; secondly, that the surviving spouse pensions of 50 per cent for death after retirement, also known as the survivorship benefit; and thirdly, a minimum pension increase of \$200 per month for pensioners.

Additionally, the memorandum of agreement with the OWTU provided that the following three other improvements were to be implemented post the merger of these plans: an increase in the accrual rate to 2.15 per cent; an increase in the commutation factor to 223.3718 per cent; and improvements in the death in service benefit. I might add that these improvements make this plan one of the best plans that is available in the country.

Petrotrin engaged Freshfields, Bruckhaus, Deringer also known as Freshfields for short, a United Kingdom-based lawyer firm to provide advice on the proposed merger of its pension plans amongst other related issues. Freshfields advised that the proposed merger of the pension plan could be accomplished in one or two ways:

1. By an application to the court; and
2. By legislation.

After consideration of the processes under each of these options, Petrotrin recommended that the merger be carried out by way of an Act of Parliament, similar to the manner in which Petrotrin was formed. The legislative was assessed as being simpler and less demanding in terms of process time, as well as administrative effort. This approach was accordingly regarded as being more expeditious in concluding the matters contemplated in a 2003 memorandum of agreement with OWTU.

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Further to Petrotrin's recommendations, Cabinet agreed to the merger of the seven pension plans of the company by way of the vesting Act. The Trintopex staff pension plan has been excluded from the merger as they are not represented by the OWTU. Petrotrin has advised that discussions are currently under way with the National Petroleum Staff Association, the recognized representatives for members of that plan regarding their inclusion in the new merged pension plan.

Mr. Vice-President, Petrotrin appointed Mercer, a Canadian-based Consultancy Actuarial firm to perform an independent valuation of the pension plans, and to determine the long-term financial implications of the merger, and this is in accordance with prudence. The key findings of Mercer's evaluation included: First, post-merger, the benefit improvements are not expected to result in increased contributions from either the employees or Petrotrin; and secondly, that the merged plan is projected to be in a healthy surplus position. This is, of course, because the underlying plans are in surplus.

This Bill seeks only to establish the plan. In other words, the merged plan will not have recourse to Parliament for any changes. It does not seek to legislate the terms and conditions that governed the pension arrangement for the plan's members. It deals simply with the establishment of a new plan. That is all.

The merger will be executed by transferring the assets of the seven pension plans to the new pension plan established under statute. All liabilities of the members of the transferring pension plans will be honoured. The Bills also provide for the winding up of these seven plans on transference of assets and liabilities. The Bill anticipates that as with any other pension plan, the plan's terms, conditions and operations will be governed by a trust deed and rules.

In this regard, Mr. Vice-President, the trust deed and the rules have been completed, and the trust deed has been executed with a trustee and will therefore be in effect at the time that the Act comes into force. I now take the opportunity to go through the specific clauses of the Bill. It is a short Bill.

Clause 1 of the Bill sets out the short title.

Clause 2 of the Bill will speak to the commencement of the Act for which this is the Bill.

Clause 3 of the Bill would provide for the interpretation of certain words and phrases.

Clause 4 of the Bill would establish a new pension plan that will be governed by a trust deed in effect at the time that the Act comes into force.

Clause 5 of the Bill would transfer rights and obligations in respect of the seven transferring plans to the new plan in particular:

1. Participants of an existing plan, together with their pension rights from that plan would be transferred to the new plan;
2. All correspondence assets held by trustees of existing plans will be transferred to the trustee of the new plan;
3. Any liabilities of trustees of existing plans will be transferred to the trustees of the new plan; and
4. Any liabilities of the employer under or in relation to an existing plan will also be transferred to the new plan.

Clause 6 of the Bill would provide for the winding up of the existing plans by the trustees and for the discharge of those trustees.

Clause 7 of the Bill would provide for the non-application of the Stamp Duty Act, Chap. 76:01, to the transfer and vesting of assets of the existing plans in the new plan.

The merger of these pension plans would allow for a stronger plan with greater long term financial stability, and the reduced likelihood of deficits or increased contribution requirements. The proposed merger has paved the way for significantly improved benefits for both current, as well as retired members. In addition, benefits for all members will be evenly funded, and pension administration cost will be reduced through the elimination of duplicate functions. For example, the merger will allow for a single trustee instead of several trustees; for one management committee instead of several management committees; and fewer investment managers.

In closing, I wish to add that Petrotrin has confirmed that the merger has been discussed and agreed with the members' representatives, and as I have indicated, the OWTU is in agreement with this plan. I may also add, Mr. Vice-President, that we received a letter dated March 15 from the OWTU, making certain comments with respect to the plan. Their concern is that in as much as the plan deals with members' rights, that it is possible that section 4 of the Constitution could be violated, and in those circumstances, out of an abundance of caution, they would like to see the Act passed with a special majority. I now advise that out of an abundance of caution, we will take the advice of the OWTU and seek to have the Bill passed with a special majority.

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In accordance with the second page of the letter, they have also requested that to avoid any doubt as to the applicability of the trust deed and rules and that there should be no recourse to the Parliament, should there be any doubt, that a new provision should be included into subclause (4) as follows:

"That the trust deed and rules may be amended in accordance with the provision of the trust deed and rules."

After discussion with the Attorney General and all concerned, the Government has agreed to the adoption of these two amendments, and those amendments will be circulated if the OWTU has not yet written or circulated this letter to all Members on both the Independent Bench and the Opposition.

With that, Mr. Vice-President, I beg to move. [*Desk thumping*]

*Question proposed.*

**Sen. Mervyn Assam:** Thank you, Mr. Vice-President. I rise to make a contribution on the Bill before us, a Bill to restructure the pension arrangements of the Petroleum Company of Trinidad and Tobago Limited. I must say that we are very pleased that this particular arrangement between the employer, Petrotrin, and the union, OWTU, has come to a successful fruition after a number of years of negotiation, and that the union and the other companies that were involved in other plans are entirely satisfied with the new arrangement.

There is one sore point that the union complained about, and that is, they had not been consulted on the draft legislation. I thought this was an unfortunate omission on the part of the Government because the OWTU is a very important trade union in this country, representing not only the oil industry, but other industries, and that a piece of legislation like this demanded in my opinion consultation. I think the Government would in my opinion have come out even more magnanimous, not only in terms of piloting this Bill, but in terms of having consulted with them on this matter.

Of course, the other issue is that the length of time it took for the Government to bring this piece of legislation to the Parliament, recognizing that the MOU was signed since December 2003 between the OWTU and Petrotrin, and therefore, 6 to 7 years had elapsed before this piece of legislation has in fact come to the attention of the Parliament. But I suppose the hon. Minister would say better late than never seeing that he has a facility in the Spanish language, and better late than never obviously is a good thing particularly because of the enhancement of the terms and conditions of the new pension arrangements, and the removal of a

lot of bureaucracy and investment managers, trustees and all the other things associated with a pension plan. There was some measure of efficiency effected in all of these negotiations and arrangements coming to a very satisfactory conclusion.

With respect to the two matters that the Minister alluded to as a result of OWTU's letter to the Minister of Energy and Energy Industries requesting the inclusion of two clauses in the legislation—well really not two clauses, but requesting that the legislation be passed with a special majority. And the second one, the inclusion of an additional subclause in clause 4 with respect to the trust deed and rules may be amended in accordance with the provisions of the trust deed and rules, seem to be eminently reasonable and logical, and I am sure that we on this side would have no difficulty in supporting the proposal of the OWTU and their acceptance by the Government.

Mr. Vice-President, pension is something that is very critical in the life of a human being, because people are not only interested in their present income, but also in their future income when they are no longer employed. I think the Government as such should be looking at the whole question of pension reform in the broadest sense possible, in order to ensure that people who are employed in Trinidad and Tobago, whether in the public or private sectors, upon retirement, have a decent income upon which to conduct their lives, particularly in the winter of their lives.

**7.45 p.m.**

Mr. Vice-President, I know from time to time the Government brings legislation and the word "piecemeal" has been introduced into the lexicon of this Parliament; piecemeal legislation. I remember they brought legislation about revising the pension of former Presidents and some other areas. I think, at this point in time, when you consider that the revenue stream of this Government, and any government, seems to be diminishing, and that we have to depend on the Consolidated Fund to pay annually the pensions of public servants and others who are entitled to a pension, the Government needs to introduce some broad policy framework with respect to how they intend to deal with this serious liability of pensions, as a whole, in Trinidad and Tobago, whether it is the question of old age pension, which has been renamed "Senior Citizens Grant", or public officers' pensions in the public service or in statutory corporations and so on.

I make the point because I feel it is well overdue. These matters have been discussed over and over, and we have not seen any movement in this regard. This is a very salutary development in terms of the merging of these eight pension

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plans of the employees in the oil industry, not only of the existing employees but those who have retired. Obviously it would impact on those who are going to retire in the future.

The Minister has assured us, and we thank him for the historical monograph that he gave us of all these pension plans, all of the companies involved and of the intervention of the union and the interaction of union and employer over the period of years and that they have been able to come to this very successful conclusion.

I am not going to keep us very long, because I think we are in agreement with the measure; it is overdue. I implore the Minister again to look at the whole question of pension as a whole in terms of Government policy.

With these few words, I thank you.

**Sen. Subhas Ramkhelawan:** Thank you, Mr. Vice-President, for giving me the opportunity to speak on this particular Bill in respect of pension arrangements of the Petroleum Company of Trinidad and Tobago Limited.

Clearly the matters that would have been of concern to the representative union, the Oilfield Workers Trade Union (OWTU), appeared to have been satisfied by the Government's position, in particular, the special majority for this Bill.

My colleague Sen. Assam seemed to have sounded a note of support for the Bill and, therefore, there is not much to be added in terms of the deliberations of this particular Bill. I would, however, put on record just a couple of matters relating to this Bill and the whole aspect of pensions in general in Trinidad and Tobago.

I think it is a matter of public knowledge that international best practice, as far as pensions are concerned, has moved towards the separation of the trustee and the investment managers. I would not have seen the trust deed or the rules which have been put into this special pension arrangement, but I think what is necessary and clear as we go forward in terms of our own pension arrangements, is the need, in Government's prospective reexamination of pension matters and pension plans, for the separation of the trustee from the investment manager. I do not know if this is the case in this particular trust arrangement.

Let me say, however, in terms of the separation of the trustee from the investment manager, that we have seen historically in our system, a comingling of the role of investment with the role of custodian, and going forward, that is not necessarily a good thing, because if the investment management aspect of that

conjoined arrangement is weak, members of a pension plan are effectively stuck with the joined product of the trustee being also the investment manager. This is inefficient and is not in accordance with best practice internationally.

I suggest to those who have oversight for this particular plan, which I expect would be by far the largest pension plan to set the bar high in terms of standards and separating those two areas, rather than having them in a joined way, which has produced certain levels of inefficiency and complacency in terms of the management of the funds of members which after all is part of the life savings of those members and upon which they will depend as they get into retirement. That is the first point.

My second point is that international best practice now calls for the investment committee or the pension plan committee to be comprised of what is now being called "fit and proper persons"; that they must have a clear level of understanding and comprehension of the issues and be able to make a clear and reasoned judgment, having had a background in an area that is related to the matter of investment.

What we have had historically is a popular vote for members of the pension plan committee, some coming from the employer side and some coming from the employee side. It has not been necessary or determined that those persons who comprise the committee would all be persons who are fit and proper. We are moving to legislation, whether it be in the Financial Institutions Act, whether it be in the Securities Act or whether it be in the credit union draft legislation, that persons who handle moneys of other persons, in a fiduciary relationship, they must be fit and proper. They must not be the most popular, but they must be the most effective in the role that they have to play. Therefore, these are my only cautions, if you will, as we go forward in areas that we are blindsided in, because we are not party to what is in the trust deed, neither are we party to the composition and credentials of the bona fides of those members of the pension committee, neither are we party to matters related to who would be the investment managers of the life savings and retirement benefits of a very large component of our society, one of the largest companies by employment, in the country.

On another note, Mr. Vice-President, I recall that the hon. Minister of Trade and Industry, in his hat as Minister in the Ministry of Finance, sometime ago put on record that the pension fund of those parts making up the public sector was at the end of 2008, something unfunded in the order of \$30 billion. I stand to be corrected.

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I endorse the comments made by my hon. colleague, Sen. Assam, that we need to move expeditiously to ensure that gap is filled, in order to assure the long-term benefits of persons who are now serving in the public sector to make sure that those assets are there and those investments are available for the benefits of those persons, so that they may not be surprised down the road, if the circumstances of the Treasury and the national coffers are such that they may be hard-pressed in due course to make good these benefits from recurrent revenues.

Those are some of the comments that I would like to put on the table. I support also the need for long-term pension plans that are compulsory in nature for persons all over this country, because the benefits that would be generated, let us say by the National Insurance Board, may not be sufficient as we go forward into the future, and what is necessary would be clear and cogent plans to ensure that as we retire we can retire with some modicum of dignity and with sufficient flows to ensure that our lifestyle, as we go forward into retirement, can be maintained to a certain level, and that we do not have the situation which now exists for some of our pensioners in the public service, where the pension is of such a nature that it is inadequate to support even some of the basic needs for those persons who may have retired more than 20 or 25 years ago.

In conclusion, I express my support for this Bill, even though, as has been said, the Bill has been late in coming. What is new, what is new with regard to some of these Bills?

I thank you, Mr. Vice-President.

**Sen. Wade Mark:** Mr. Vice-President, I too would like to join with my colleague, Sen. Assam, in supporting this measure.

We know for a fact that it has been long in coming and we really compliment both the union and the workers, and also the Government, because the workers have been preparing for this particular merger of the various pension plans for several years. In fact, as the hon. Minister indicated, since 1998 this discussion had commenced, then back in December of 2003, through a memorandum of agreement, we had this particular arrangement beginning to take effect.

Even though it has taken a little time, a few years, we are happy that the oil workers, in their various pension plans, were able to persuade the Government and drive this process virtually into this merged pension plan. We do understand that over the period, some seven pension plans were involved and the measure that we have before us today would realize the emergence of one single pension plan.

As the hon. Minister said, we have 5,000 workers or thereabouts who have retired and there are another 5,500 who are working today, so this is a very important development for these pensioners.

**8.00 p.m.**

I know for a fact that many of these pensioners in the oil industry have been demonstrating, agitating over the years for this particular moment where, when we look at the combined merger of these plans, the surplus that was derived therefrom would bring about an enhanced pension for all the workers involved in this very important industry. And I would like again to compliment the Government, the workers, and the OWTU for remaining on course.

Like the hon. Minister, we would hope just how the workers have sacrificed over the years to bring these pension plans up to a certain level, the company, Petrotrin would also continue to live up to its commitments. Of course, we have some concerns about this particular giant and where it is going and some of the challenges the company faces in the future, but we would hope that with some degree of revival at the level of the industry and better management that Petrotrin would be able to maintain its obligation to this particular single plan in the future.

We also are aware that the Government, after several years has circulated for public debate, not to all the stakeholders, but we are aware the Opposition is yet to be involved but we are very fortunate to have received proposals for the establishment of an Occupational Pension Plan Bill which is the road my colleague said we ought to travel where, for instance, in Trinidad and Tobago we can have a Bill or an Act dealing with all the pensions in Trinidad and Tobago.

Sen. Assam, this is a document that has been produced on a preliminary basis by the Central Bank involving a number of stakeholders and we would expect in the not-too-distant future the Government will table this Occupational Pension Plan Bill in the Parliament so we can engage for the first time one pension scheme in one piece of legislation rather than several pieces of legislation for the workers of this country.

I would also like the hon. Minister to tell us where we are with this Mercer plan. I know that about a year or two ago he spent some time explaining to us the importance of bringing together all the unfunded public service plans so we can have for instance a new contributory pension scheme for the public service and in a period—as my friend said—where the revenue stream seems to be drying up, the Government has a responsibility to move with some haste in getting this new pension plan for the public service of Trinidad and Tobago and this would cover

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not only civil servants but teachers, police officers, fire fighters and prisons officers, among others, so the Government would be able to invest in a very serious way in this new venture which to my mind is something we would welcome.

So this is a very important period for the workers in the oil industry, and the union and we support fully this measure and we hope that at the end of the day these retirees in particular who have been looking forward to this day would be able to enjoy a more handsome pension to improve their quality of life. As Sen. Assam said, pension is deferred wages and salaries of workers. They save for the rainy day and, therefore, when you have surplus in a pension plan it must be distributed to the workers of that pension plan. And, therefore, we hope given what the Minister has said, that this plan which seems to be very rich and lucrative in terms of its surplusses would redound to the interest and benefit of the retirees and those who are to be retired in the years to come.

So we would like to join with our colleague in complimenting the thousands of OWTU workers who will benefit from this scheme and join with the Government in making this legislation airtight, and as he said, they require a special majority. Based on the advice offered we will support that special majority as well as the matter that was raised re the amendment.

Mr. President, we would like to join with you and our colleagues in voting together with the Government on this very important measure and let us make sure that the workers of the OWTU and the oil workers benefit from this scheme.

Thank you very much.

**The Minister of Trade and Industry and Minister in the Ministry of Finance (Sen. The Hon. Mariano Browne):** Thank you, Mr. President, I must thank the Opposition and Independent Bench and those who contributed to this debate on this Bill for their support and the spirit of bipartisanship which has been demonstrated here today, on two occasions in one day, it is indeed a historic day in the life of this Senate.

With respect to some simple points, I believe that there was and has always been consultation with the OWTU though it may be possible that part of the current administration of the OWTU was not consulted with respect to the development of this Bill. My information is that they have always been consulted throughout.

With respect to the point which was made by Sen. Ramkhelawan, I am certain this is an area in which the market has to grow and develop. One of the specific difficulties that is common to small countries and those with narrow bands of

resources is that there will always be the potential for a large conflict of interest. It has been the practice, certainly in the recent past, for trustees to also act as custodians and investment managers and that is because there were a limited number of practitioners who were involved in this area.

Best practice has it that there should be a complete separation between the trustee, the custodian and the investment manager. Indeed, the difficulty was, as has been evident in even more developed markets where one would have expected that these separations of duties and responsibilities would have been well developed, in fact created a difficulty in the financial services market that required practice guidelines to be issued by the SEC requiring separation within very specific investment banks/firms.

It is not simply a difficulty which exists in our market, but one that exists in even the most developed of markets, so suffice it to say that this is certainly a development requirement and we are trending in that direction and there is a greater understanding of the requirements of investment guidelines. Suffice it to say that the trustees and the management committee are mindful of that requirement, but the difficulty of course, is that there are limited numbers of participants and players in the marketplace, so there will be some level of overlap in the short run.

With respect to the issue of pension fund and the development of a pension fund market, there is need, of course, for governing legislation outside the ambit of the Insurance Act to ensure that this very specific area is treated in the fashion it deserves and legislation will be brought and is currently being designed that will deal with that particular matter.

With regard to the specifics of the Government Pension Plan, it is a very knotty issue indeed, and when I last commented on this, I think I read from the *Financial Times* the difficulty the UK government was experiencing in revising their own government pension plans. Suffice it to say that the Government plans at the moment are unfunded liabilities which are a charge on the Exchequer or the Consolidated Fund and at the last valuation which Mercer had done the checks in terms of what would be required to fund the outstanding liabilities, the conservative valuation was \$20 billion and the more aggressive valuation depending on the assumptions used was \$25 billion. These are issues which have to be addressed.

There was one design which had been commented on and in retrospect when we revisited the arrangements which had been put on the table, that design proved to be inadequate so that the consultants had been asked to reconsider another

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design. And, as you know, if you make those kinds of decisions in haste, you have a lot of time to repent at leisure. The difficulty is that you will be gone, and those who inherit your difficulties will have to take a little while to sort them out. So there is always a certain gradualness in terms of how these decisions are made.

Wearing another hat I could also indicate that in accordance with the original mandate of the National Insurance Act which was established in 1971, it set out to be a universal benefit programme. In its initial life—it is now approximately 39 going on 40 years old—it sought to deal with the primary benefits for those who were in the employed sector. As we speak, there is an attempt to move that original design of the National Insurance Act to encapsulate, to encompass and take into consideration those who are currently self-employed.

It was expected that the start-up date for that plan and for the inclusion starting with registration of the self-employed would take place during the course of this year and as we speak, the ILO actuaries are here conducting another triennial valuation of the National Insurance benefits and plans to determine the best way forward in that regard.

So there is a clear interest, a clear will on the part of the Government to improve the pension fund legislation and capacity of the country as we move forward. Though I do expect and understand the criticism that with respect to government employees in terms of establishing a segregated fund, that it is taking a while. But I submit that the difficulties associated with making that move are in fact substantial and involve a number of questions with regard to how it would be funded as we move forward into the future and given a certain sensitivity in terms of public employees, that is certainly one that one would want to approach with a certain degree of caution. So in the fullness of time when those plans are finalized, certainly they will be disclosed in this House.

Mr. President, once again I would like to thank all those who contributed to this Bill, and I certainly would like to thank those on the Independent and Opposition Benches for the spirit of bipartisanship in supporting this Bill.

Thank you.

*Question put and agreed to.*

*Bill accordingly read a second time.*

*Bill committed to a committee of the whole Senate.*

*Senate in committee.*

**8.15 p.m.**

*Clause 1 ordered to stand part of the Bill.*

*Clause 2.*

*Question proposed, That clause 2 stand part of the Bill.*

**Sen. Jeremie SC:** Mr. Chairman, we would like to propose an amendment. Consistent with the undertaking that we have given, we would need to insert after clause 1 a new clause 2 which says: "This Act shall have effect even though inconsistent with sections 4 and 5 of the Constitution", and renumber the clauses accordingly.

**Mr. Chairman:** That is a new clause so that we will deal with that after we have completed the Bill. We will come back and insert it after as it is a new clause. Okay?

**Sen. Jeremie SC:** Sure.

*Question put and agreed to.*

*Clause 2 ordered to stand part of the Bill.*

*Clause 3 ordered to stand part of the Bill.*

*Clause 4.*

*Question proposed, That clause 4 stand part of the Bill.*

**Sen. Browne:** We have an amendment to clause 4.

Insert into clause 4 a new subclause (4) which would state:

"The trust deed and rules may be amended in accordance with the provisions of the trust deed and rules."

**Mr. Chairman:** So it is as circulated?

**Sen. Browne:** Yes, as circulated.

**Mr. Chairman:** So new subclause (4) as circulated reads:

"The trust deed and rules may be amended in accordance with the provisions of the trust deed and rules."

*Question put and agreed to.*

*Clause 4, as amended, ordered to stand part of the Bill.*

*Clauses 5 to 7 ordered to stand part of the Bill.*

*New clause 2.*

**Sen. Jeremie SC:** Mr. Chairman, I propose a new clause 2 which reads as follows:

"This Act shall have effect even though inconsistent with sections 4 and 5 of the Constitution."

*New clause 2 read the first time.*

*Question proposed, That the new clause be read a second time.*

*Question put and agreed to.*

*Question proposed, That the new clause be added to the Bill.*

*Question put and agreed to.*

*New clause 2 added to the Bill.*

*Preamble.*

*Question proposed, That the Preamble be approved.*

**Sen. Jeremie SC:** We have an amendment to the Preamble.

**Mr. Chairman:** You are adding this to the end or is this a second paragraph?

**Sen. Jeremie SC:** This is a second, just before "enacted by the Parliament"; the enactment clause.

**Mr. Chairman:** This is the third paragraph, right.

**Sen. Jeremie SC:** It reads as follows:

"Whereas it is enacted *inter alia* by subsection (1) of section 13 of the Constitution that an Act to which that section applies may expressly declare that it shall have effect even though inconsistent with sections 4 and 5 of the Constitution and, if any such Act does so declare, it shall have effect accordingly:

And whereas it is provided by subsection (2) of the said section 13 of the Constitution that an Act to which this section applies is one the Bill for which has been passed by both Houses of Parliament and at the final vote thereon in each House has been supported by the votes of not less than three-fifths of all the members of that House:

And whereas it is necessary and expedient that the provisions of this Act shall have effect though inconsistent with sections 4 and 5 of the Constitution:"

**Mr. Chairman:** Senators, for ease of reference, it is exactly the same Preamble that is on the Prisons (Amdt.) Bill. So is everyone familiar with that?

**Sen. Oudit:** The clauses have to be renumbered if you insert a new clause 2.

**Mr. Chairman:** It does not have any effect because we are referring only to sections of the Constitution.

**Sen. Ramkhelawan:** Chair, did we not include a new clause 2?

**Mr. Chairman:** We do not have to do anything about the renumbering. It is consequential.

**Sen. Jeremie SC:** This is the Preamble to the Constitution.

**Sen. Ramkhelawan:** No, I am not talking about the Preamble; I am talking about the clause 2 that we put in.

**Mr. Chairman:** No, we are referring to subsection (2) of section 13 of the Constitution. We are only referring to the Constitution. So if that is clear, I will put the question.

*Question put and agreed to.*

*Preamble, as amended, approved.*

**Sen. Ramkhelawan:** Chair, maybe just for my clarification, we put in a new clause 2: "The Act shall have effect even though inconsistent with sections 4 and 5 of the Constitution." I was just wondering whether that meant that everything afterwards in this legislation would have to be renumbered. I was not clear on the answer.

**Sen. Jeremie SC:** Yes. We said we will put in a new clause 2 and make the consequential amendments to the numbers.

**Mr. Chairman:** The rest of it is consequential and the drafters would just—as it is printed it is—

*Question put and agreed to, That the Bill, as amended, be reported to the Senate.*

*Senate resumed.*

*Bill reported, with amendment.*

*Question put, That the Bill be now read the third time.*

*The Senate voted:*       Ayes 24

AYES

Enill, Hon. C.

Saith, Hon. Dr. L.

Jeremie SC, Hon. J.

Browne, Hon. M.

Joseph, Hon. M.

Manning, Hon. H.

Narace, Hon. J.

Dick-Forde, Hon. Dr. E.

Gronlund-Nunez, Hon. T.

Hadeed, G.

George, W.

Rogers, L.

Lezama, Miss L.

Melville, Miss J.

Rambachan, Dr. S.

Mark, W.

Oudit, Mrs. L.

Assam, M.

St. Rose Greaves, Mrs. V.

Ramkhelawan, S.

Baptiste-Mc Knight, Mrs. C.

Nicholson-Alfred, Mrs. A.

Merhair, Miss G.

Rocke, Miss A.

*Question agreed to.*

*Bill accordingly read the third time and passed.*

*Adjournment*

*Tuesday, March 16, 2010*

**ADJOURNMENT**

**The Minister of Energy and Energy Industries (Sen. The Hon. Conrad Enill):** Mr. President, may I, on behalf of the Government say thank you to all my friends who engaged in an activity this afternoon that in my view represents what we are about—[*Desk thumping*]*—*which is basically passing good legislation for the people of Trinidad and Tobago.

Mr. President, next week is the fourth Tuesday, which is Private Members' Day and we propose that we would deal with Motion No. 1 under "Private Business" and time permitting, I am told, Motion No. 4. I also wish to advise that I propose to return on Monday the 29th at 1.30 to begin the debate on the TTRA legislation.

*Question put and agreed to.*

*Senate adjourned accordingly.*

*Adjourned at 8.31 p.m.*