SENATE

Thursday, June 07, 2018

The Senate met at 2.00 p.m.

PRAYERS

[Madam President in the Chair]

CRIMINAL DIVISION AND DISTRICT CRIMINAL AND TRAFFIC COURTS BILL, 2018

Bill to make jurisdiction for criminal matters exercisable in a division of the High Court to be known as “the Criminal Division” and to make jurisdiction for criminal and traffic matters exercisable in a division of Summary Courts to be known as “the District Criminal and Traffic Courts” and to make provision for matters connected therewith [The Attorney General]; read the first time.

PAYMENTS INTO COURT BILL, 2018

Bill to make provision for payments into and out of Court to be made electronically and into and out of a Custodial Bank Account in the name of the Judiciary of Trinidad and Tobago and for related matters [The Attorney General]; read the first time.

MISCELLANEOUS PROVISIONS (SUPREME COURT OF JUDICATURE AND CHILDREN) BILL, 2018

Bill to amend the Interpretation Act, Chap. 3:01, the Supreme Court of Judicature Act, Chap. 4:01, the Summary Courts Act, Chap. 4:20, the Bail Act, Chap. 4:60, Administration of Justice (Deoxyribonucleic Acid) Act, Chap. 5:34, the Legal Aid and Advice Act, Chap. 7:07, the Child Rehabilitation Centre Act, Chap. 13:05, the Indictable Offences (Preliminary Enquiry) Act, Chap. 12:01, the Children Act, Chap. 46:01, the Children’s Community Residences, Foster Care and Nurseries Act, Chap. 46:04, the Children’s Authority Act, Chap. 46:10, and the
Family and Children Division Act, 2016 [The Attorney General]; read the first time.

**PAPERS LAID**

1. Report on the Operations of the National Insurance Board of Trinidad and Tobago for the financial year ended June 30, 2017. [The Minister in the Ministry of Finance (Sen. The Hon. Allyson West)]


**JOINT SELECT COMMITTEE REPORT**

Local Authorities, Services Commissions and Statutory Authorities (Including the THA) (Presentation)

Sen. Khadijah Ameen: Madam President, I have the honour to present the following report as listed on the Order Paper in my name:

ANSWERS TO QUESTIONS

The Minister of Energy and Energy Industries (Sen. The Hon. Franklin Khan): Madam President, I wish to announce that the Government will be answering questions No. 140, 142, 143 and 172.

Madam President: Sen. Mark.

Sen. Mark: Just repeat for us, 140?

Madam President: Yeah, 140, 142, 143 and 172.

Sen. Mark: Okay, thank you, Madam President.

WRITTEN ANSWER TO QUESTION

Government Assistance for Tuition Expenses Programme (Details of)

118. Sen. Taharqa Obika: Asked the hon. Minister of Education:

Having regard to the Government Assistance for Tuition Expenses Programme, can the Minister indicate the following:

i. the total amount owed by Government to local tertiary level institutions;

ii. a breakdown of the respective local tertiary level institutions and the amount of GATE funding owed to each as at February 2018, and

iii. how soon are these institutions likely to receive full payment of monies owed to them?

Vide end of sitting for written answer.

ORAL ANSWERS TO QUESTIONS

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The following questions stood on the Order Paper in the name of Sen. Wade Mark:

**Tobago Businesses**
(**Request for Financial Support**)

121. What assistance is being provided to Tobago businesses, having regard to the state of the Tobago economy and their request for financial support of approximately $750 million?

**T&T Objection to Dominica’s Fee Waiver**
(**Action Taken**)

132. In view of this country’s objection to Dominica’s request for an OAS fee waiver, can the hon. Prime Minister indicate what actions he intends to pursue against the persons deemed responsible for the embarrassment caused to this country?

*Questions, by leave, deferred.*

**Spread of Malaria**
(**Action Taken to Prevent**)

140. **Sen. Wade Mark** asked the hon. Minister of Health:

Can the Minister indicate what action is being taken to prevent the spread of malaria throughout Trinidad and Tobago?

Madam President: Leader of Government Business.

The Minister of Energy and Energy Industries (Sen. The Hon. Franklin Khan): Thank you very much, Madam President. Madam President, in order to mitigate this potential risk, several measures are being implemented to prevent the spread of malaria throughout Trinidad and Tobago. These include:

1. the proposed establishment of a travel health clinic at the Insect Vector Control Division, the (IVCD), for suspected cases to access treatment for malaria using the microscopic diagnosis. This technique is highly
recommended by the World Health Organization (WHO), and the Centre for the Disease Control and prevention, (CDC), at the gold standard for laboratory confirmation of malaria.

2. the increased surveillance with the use of 52 malaria evaluators throughout the country at various health institutions and legal ports of entry into Trinidad and Tobago, both sea port and airport, and to conduct house-to-house surveys in high-risk areas to detect and treat individuals demonstrating symptoms suggestive of malaria.

3. the recent establishment of a Cabinet-appointed Inter-Ministerial Committee to respond to the threat of malaria by providing oversight and developing policies, strategies, advice and direction for the prevention of malaria, re-establishment and strengthening capacity to respond to malaria.

4. the ongoing sensitization and consultation with key stakeholders within the health sector to—

   (i) provide and update on the threat of malaria;
   (ii) highlight key elements of malaria case management;
   (iii) formalize standards for reporting on suspect and confirmed cases of malaria;
   (iv) identify training needs for health care workers as it pertains to malaria case detection management and surveillance of malaria; and
   (v) the ongoing vector control measures include, one indoor residual spraying and ultralow volume spraying at high-risk homes, communities, and workplaces.

And finally,
5. routine perifocal work throughout the country so as to identify breeding sites of anopheles mosquitoes, and facilitate source reduction.

Sen. Mark: Through you, Madam President: Can the Minister indicate to us, which areas of Trinidad and Tobago can be described as high-risk areas for the mosquito invasion of our country as it relates to malaria?

Madam President: Minister.

Sen. The Hon. F. Khan: Well, Madam President, high-risk areas for mosquito breeding are obviously low-lying areas where there is the accumulation of water, swampy areas, and more importantly, areas where there is a lack of proper drainage. And obviously, there is the whole individual responsibility to have on your property—do not have containers that can hold water and be the breeding ground for mosquitoes.

Sen. Ramdeen: Thank you, Madam President. Thank you for the opportunity to ask the Minister. Minister, are you aware that the Insect Vector Control Unit which is located down in Jerningham has been inoperative for over the past six months? [Desk thumping]

Sen. The Hon. F. Khan: I am not aware, but I can seek advice on that matter and respond at a later date.

Sen. Mark: Madam President, can the hon. Minister advise us who are the Members of the Cabinet Inter-Ministerial Committee appointed to deal with this whole matter of the malaria outspread or challenge?

Sen. The Hon. F. Khan: Madam President, I cannot recall that off the cuff, but I was a Member of the Cabinet who approved this committee, and that information can be provided at a later date.

Sen. Mark: Well, would you be kind enough to indicate to the President and this House whether you would be able to provide that later on in the proceedings?
Sen. The Hon. F. Khan: I cannot promise later on in the proceedings, but definitely by the next sitting.

Madam President: Next question.

Sen. Mark: Yes, Madam President, the hon. Minister talked about sensitization, could the Minister advise this Senate how many sensitization sessions the Ministry has held in this country since this threat arising out of this malaria invasion?

Sen. The Hon. F. Khan: Madam, at this point in time I am not privy to that answer. And again, this is information that once the question is posed properly, the Government can respond.

Postal Workers Union
(Widespread Industrial Action)

142. Sen. Wade Mark asked the hon. Minister of Public Utilities:

Given threats by the Postal Workers Union to embark on ‘widespread industrial action’, does the Minister intend to intervene to avert a potential mail delivery crisis?

The Minister of Public Utilities (Sen. The Hon. Robert Le Hunte): Madam President, I am not aware of any real threat by the Postal Workers Union to engage in widespread industrial actions which could precipitate a mail delivery crisis. The management of the Trinidad and Tobago Postal Corporation recognizes the importance of consultation and communication in developing and maintaining peaceful industrial relations, and has been in constant dialogue with the union. Moreover, since assuming office as Minister of Public Utilities, I have met with several of the workers’ representatives from the state agencies under my purview, including the Postal Workers Union, to promote a shared vision for the management of these entities. These discussions have been very productive and fruitful, and I have found the positions of the union to be very reasonable and responsible.
I am satisfied with the collaborative relationship which exists between TTPost and the Postal Workers Union, and the consultative arrangements in place to resolve industrial relations issues. Given the ongoing dialogue between both parties on outstanding industrial relations issues, there is no need for my intervention at this time.

**Sen. Mark:** Madam President, can the Minister indicate what are the mechanisms that are in place to address industrial relations matters involving the postal management and the Postal Workers Union? Could you share with us what are those mechanisms?

**Madam President:** Sen. Mark, I would not allow that question, but you continue to ask, you have another supplementary.

**Sen. Mark:** Oh, I see, he did mention mechanisms, and that is why I sought to clarify. Can the Minister indicate, Madam President, whether there are any outstanding industrial relations agreements that may have led to this threat of industrial action that are outstanding between the parties, management and the union?

**Sen. The Hon. R. Le Hunte:** Madam President, as I said, first to begin I am not aware that there is any major imminent threat that is being so. And, at this point in time I am not aware of any outstanding industrial relations issues or any pressing industrial relations issues. I know the management has an arrangement and they are in dialogue with the union on a number of varied issues, but none of which poses, at this point in time, an industrial threat or crisis as being put forward.

**Madam President:** Next question, Sen. Mark.

**Venezuelan Immigrants**  
(Malaria Testing)

143. **Sen. Wade Mark** asked the hon. Minister of Health:
Having regard to the recent influx of Venezuelans into Trinidad and Tobago, and reports that Venezuela has 30 percent of all malaria cases in the Americas, can the Minister indicate whether the Ministry of Health has been conducting tests on the Venezuelan immigrants that arrived in this country?

**The Minister of Energy and Energy Industries (Sen. The Hon. Franklin Khan):** Thank you very much, Madam President. Persons from endemic countries suspected of the transmission of malaria in the first instance are screened for signs and symptoms of malaria at ports of entry. When positive signs are detected, these persons are referred to the County Medical Officer of Health and/or the Insect Vector Control Division for the requisite test for malaria to be conducted in conformance with the 2005 international health regulations.

**Sen. Mark:** Madam President, in light of the fact that 30 per cent of the cases that we have discovered in the Latin America, South America area in particular, seem to be located in Venezuela, and we do have an invasion of Venezuelans here. Can the Minister indicate to us whether the Government, through the Ministry, has been able to isolate any cases of malaria coming from that South American country, through its citizenry who are coming here?

**Sen. The Hon. F. Khan:** Madam President, I am not in a position to answer supplemental question at this time, but I will seek guidance on the relevant information to respond at a later date.

**Sen. Mark:** Well, would you be kind enough—this is a very important matter, Madam President, so I will ask my hon. colleague whether he can advise you on behalf of us when he would be able to provide that information, so we will be able to clarify on this issue?

**Sen. The Hon. F. Khan:** At the next sitting of this Senate.

**Sen. Ramdeen:** Thank you, Madam President. To the Minister: Is the Minister
aware that the port at Cedros, which is the port through which almost all Venezuelans enter Trinidad and Tobago, has no facility for testing whether these people have contracted or are bringing into the country malaria or not?

**Sen. The Hon. F. Khan:** Again, Madam President, I am not in a position to answer that. Obviously, I am not the Minister of Health, but I can seek some clarification in that, and provide a written comprehensive follow-up question at the next sitting.

**Madam President:** Next question, Sen. Obika.

**Secondary School Students**  
(Recommencement of the Laptop Programme)

172. **Sen. Taharqa Obika** asked the hon. Minister of Education:

With respect to the Government’s decision to recommence the laptop programme for secondary school students in September 2018, can the Minister indicate whether all incoming Form 1 students as well as those who were not previously issued with laptops, but are currently in the secondary school system, will be provided with individual laptops?

**The Minister of Energy and Energy Industries (Sen. The Hon. Franklin Khan):** Thank you very much, Madam President. The laptops provided by this Government will not be given to individual students as previously obtained, but will be assigned to schools for use by students and teachers. That is the fundamental difference of policy. The laptops will remain the property of the Ministry of Education. Students will be allowed to use the laptops in their classrooms for technology integrated teaching and learning exercises. The laptops will be returned to their secured storage carts after use. Madam President, the Ministry of Education reiterates it is resolved to remain responsive to technology dynamism as it provides laptop computers for use by students and teachers in the nation’s schools.
Sen. Obika: Thank you, Madam President. Could the hon. Minister of Energy and Energy Industries indicate as to whether or not this amounts to taking the future of the children out of the school bags as the laptops are no longer in the school bags of the children?

Madam President: I would not allow that question. Next question, Sen. Hosein.

Sen. S. Hosein: Thank you very much, Madam President, for allowing me. Can the Minister indicate whether or not these secondary schools are fully equipped with Wi-Fi, because most of the laptops require Wi-Fi to access programmes and books online, and I know that this was a manifesto promise of the PNM?

Sen. The Hon. F. Khan: Madam President, I am not sure what ration of schools do have broadband Wi-Fi or any form of Wi-Fi at all. That information could be researched. But that was one of the fundamental flaws of the previous policy. Because you bought a proliferation of laptops and distributed it to every single student in secondary school, and there was no Wi-Fi access and no broadband access in most of the secondary schools. [Crosstalk]

Madam President: Sen. Obika, this is going to be the first and last time I caution Members about shouting across the floor. And to all Members, listen to what I am saying, it is the first and the last time that I will be uttering this caution. Sen. Hosein.

Sen. S. Hosein: Then, Madam President, can the Minister indicate whether or not these laptops that were purchased by this Government, are they subject to any warranties or software protections and malware protections?


Sen. Ameen: Thank you. Madam President, in light of the Minister indicating that the laptops would be kept in schools, can you indicate what programme the Ministry of Education has for special security to secure the laptops?
Sen. The Hon. F. Khan: In my answer, Madam President, I said the laptops will be returned to their secured storage carts after use, and most schools, especially secondary schools do have security on site 24/7.

Sen. Ameen: Madam President, I just want to clarify my question, if I may. I know the Minister spoke about a storage cart, a cart is something—[ Interruption]—right, but that is not a secure thing in terms of a storage area, a locked room, a properly secured room that is of a certain temperature because you cannot let it get too much heat and so on.

Madam President: Minister.

Sen. Ameen: So, it is just to clarify it for the Minister, you must have a special area to store those laptops.

Sen. The Hon. F. Khan: My understanding is that all the schools that do have laptops that will have to be secured on site do have such facilities.

LAND ADJUDICATION (AMDT.) (NO. 2) BILL, 2017
[Second Day]

Order read for resuming adjourned debate on question [Tuesday, June 5, 2018]:

That the Bill be now read a second time.

Question put and agreed to.

Madam President: Those who have spoken on this Bill are: The hon. Faris Al-Rawi, MP, Attorney General, mover of the Motion; Sen. Wade Mark; Sen. Melissa Ramkissoon; Sen. The Hon. Allyson West, Minister in the Ministry of Finance; Sen. Gerald Ramdeen; Sen. Khadijah Ameen; Sen. Obika, who was contributing when the Senate was adjourned. Sen. Obika, you have 23 minutes of speaking time remaining. [Desk thumping]

Sen. T. Obika: Thank you very much, Madam President, and I trust today
Members are fresh so they would not be disturbing me, and shouting across during my contribution.

**Madam President:** Sen. Obika.

**Sen. T. Obika:** But, I want to go straight to—

**Madam President:** Sen. Obika, take your seat, please. Please allow the Presiding Officer to maintain control of the Senate. Okay? Continue.

**Sen. T. Obika:** Thank you very much, Madam President. I respectfully and humbly and delightfully oblige. I want to turn to a document titled, *Land Law and Registration* by S. Rowton Simpson. And in Chapter 15, regarding the process of systematic adjudication, the adjudication process, and if you look at section 13 and section 12 of the Act before us, which are being amended by the Bill before us, you would see several mentions made of compensation.

And, Madam President, an integral concept to this is the process by which you set out adjudication areas, whether it be systematic, whether it be sporadic and, of course, there are key characteristics that would really be important when policymakers, and I dare say technocrats, are fulfilling their duty, and one key area is whether it is dealing with land. But I want to go to the fourth point that was made, which is where changes in land use or in patterns of land holdings are proposed. And I wish to read this very short paragraph for elucidation. For example:

“The pattern of landholdings suitable to rain-grown crops may require redesigning in order to make effective use of irrigation. To safeguard the individual, land rights must be authoritatively ascertained before re-planning is effected; or, the rights are changed or extinguished…”

And I want to use the words of the Attorney General there, “stick a pin” for a moment. I do not know if it is a safety pin, or a needle, or whatever. But, I want to stick a pin and go to an article that should be in tomorrow’s *Newsday*, if it is not
in today’s, because it was only published 15 hours ago as of printing. So it probably did not make press time, titled “Provide lands for relocation, proper compensation.” And it is a breaking story on Tobago.

**Hon. Al-Rawi:** Which part in the Bill that is?

**Sen. T. Obika:** Madam President, for the pleasure of the hon. Attorney General, I wish to remind him, when I started just a few minutes ago that I am referring to the amendments to be made to sections 13 and 12 of the parent Act, which are in the Bill before us. I welcome interjections. My career is in education, so I welcome interjections. So, Madam President—and as the hon. Minister of Trade and Industry just said, stick to economics, and I thank her for that circumscription, because really and truly I am sticking to fiscal matters regarding my contribution today.

Now, the adjudication process, and I heard the Attorney General raising 46(1), I do not know if I should sit until he raises it. But, Madam President, as I stuck a pin, and I began the article, because the Attorney General wanted some clarity, I continue on to the article, reminding the House it is regarding the parts of the Act to be amended regarding compensation. And I want to read some parts of this article, because it is very pertinent to this discussion before us today.

> “Mr. Wolwin Lovell, a resident of Bon Accord is calling on Government/Tobago House of Assembly (THA) to treat with respect and courtesy the residents whose lands there are looking to acquire to build a new airport terminal for the ANR Robinson International airport.”

He said the Government must provide developed lands for relocation and proper compensation to affected residents. He said that it is 120 residents who will be affected by the Government’s plan to acquire 84 acres of land. Now, Madam President, this strikes at the heart of this section to be amended. Because, when
you look at the comments made on page II, in Roman numerals, regarding clauses 9 and 10, it speaks to the positions of adjudication officer, demarcation officer, and the procedure for awarding compensation. So, I want at this time, and I hope that Mr. Wolwin Lovell is listening, because really and truly what the people of Tobago are crying for should be spelt out in this legislation.

**Madam President:** Sen. Obika, I am sorry to interrupt you, but the clause that you are talking about, which is clause 9, is dealing with section 12 of the Land Adjudication Bill. And there is nothing there, as far as I can see, about compulsory acquisition. It talks about damages in terms of a decision made. So, can you just either make your point so that I can understand it, or move on please. Okay?

**Sen. T. Obika:** Thank you very much, Madam President. I am very grateful for the interjection, because I could not have said it better than your good self. Because, what you said, Madam President, and it speaks to damages—now, the point that I am raising here is that the people of Tobago are raising this issue of damages regarding the compulsory acquisition. So, specifically—

**Madam President:** So, then Sen. Obika, sorry, if you read the Act, both the parent Act and the Bill that is before us, you will see that what you are raising now is not relevant to the matter at hand. Okay? So, I think you should just move on to another point, please.

**Sen. T. Obika:** I am so guided, Madam President. So, what I want to—as I focus on the issue of damages, I want to continue as I stuck the pin, I want to remove it and finish that very short paragraph that I was reading prior. It says:

> Similarly the implementation of any measure of land reform will probably entail the systematic ascertainment of existing rights, but here again it need not necessarily be accompanied by registration of title, however desirable that may be.

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So, Madam President, the people of Tobago, the people of Trinidad really and truly need to get some clarity regarding the issue of damages, regarding the adjudication zones and the process of adjudication.

2.30 p.m.

Now, another point I want to go to in the adjudication process is regarding dealing in land, which is what I started with when I rose today, where there is dealing in land. And the sentence that follows from that states:

“The more dealing there is, the greater will be the need for the registration of title, because the primary purpose of registration of title is to make dealing quick, cheap and simple…”

And the hon. Attorney General in his piloting of this Bill made mention of a cheap process, a simple process and a process that could be expedited in the public’s interest.

So this point here is very pertinent. And as we are speaking to the merits and the principles of this Bill, it begs the question, because Sen. Ramdeen raised it before me—and I am sure after I take my seat there would be Senators who would raise it again, thereafter—which is, the process must allow the poor man and woman to have access and to be able to get justice regarding adjudication. So I just want to finish that short sentence. And it also says:

“…above all, certain.”

So the process of adjudication must be certain.

“Locally devised processes of private conveyancing will inevitably result in clouded titles and all the misfortunes which flow therefrom.”

So that is the second point.

Now, Madam President, I wish to turn to an IDB document, the Inter-American Development Bank, the document is entitled:

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Now, a key question that is raised in this document is: Are public land allocation and adjudication processes clear and sufficient to meet the demands by the poor and by investors? Now, if we look to Trinidad and Tobago, and the hon. Minister of Trade and Industry, I just want to make reference to a point the hon. Minister made, but I also want to make a recommendation. If we are to be speaking to diversification of the economy, Madam President, we must ensure that the adjudication process is sufficient to meet demands of investors as well. And I heard the hon. Attorney General regarding the process of consultation and the responses of the legal fraternity, however, I have not heard any strong reference regarding the adjudication process by members of the Real Estate Association, the Association of Real Estate persons, as well as the TTMA, and the relevant Chambers of Commerce in Trinidad and Tobago.

And I raise that point to make this recommendation, Madam President. I think regarding this Bill, given all the recommended changes by Sen. Ramdeen, himself a counsel of known repute, given the fact that there may be need to make some further changes in the drafting of the legislation, I think more simple language and clear terms should be fleshed out so the business community who would be significantly affected, especially the persons who deal in this particular legislation, the real estate agents, the manufacturers and the Chambers of Commerce, they should be made to understand exactly how it impacts them and solicit from them solutions or recommendations to any challenges that may so arise from this Bill.

So I want to continue. The IDB document spoke about governance issues
and stated that there are key problems of:

“…land governance:”—regarding—“exclusionary land use regulations, corruption in public and private takings of land, expensive and inefficient processes for registration and adjudication of rights…”

Now, I made reference to aerial photography, so I would not revisit that section, and I have also spoken about compulsory acquisition. So I would not make reference to that section as well. I want to speak to operationalization and consultation, Madam President. I see the hon. Attorney General is saying, again, but I am sure when I started, nothing I said was heard at the previous sitting. [Crosstalk] So I could not continue developing any of the points. So in operationalization at the ground level is where the private owners, the citizens of Trinidad and Tobago who own land, the adverse possessors as well are going to have some issues regarding this Bill and its amendments.

Now, squatting communities also would be impacted and I would not go into that again, because that was already dealt with and persons coming after will deal with different aspects regarding local government and so on. The actions of the adjudicator could mean that a family can be out in the rain. So therefore, really and truly we believe that this Bill, in particular, not dealt with as part of an omnibus legislation, but this Bill in particular, should be taken to the public in simple language, that the average person can understand [Desk thumping] and that they can know how it will affect him or her, so that when the time comes they will know how to act.

Now, Madam President, appointment and general powers. I believe that when it comes to land, and I want to give a story because I want to refer to the contribution by the hon. Minister of Energy and Energy Industries, when the hon. Minister spoke of, I think it was “Dougla ville” or “Dougla City”,

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Hon. Senator: Dougla Village.

Sen. T. Obika: Right. Now, there is a community in Point Fortin, Madam President called Ravine Ranch. And this community—I think it would benefit the hon. Minister of Public Utilities to know that they have some challenges with water, but that is not the reason why I raise that point. This community would be one of the main communities impacted by this legislation. And I think it will be a novel idea for the Government to take their consultations to these communities, given that persons in these communities may have some fear to come forward, given their position as squatters. This being a relatively unsettled squatting community, it is not as settled as ones that would have been before, in Strikers Village and so on, in Point Fortin. Going straight to these communities and really identifying the aspects of this legislation that will impact upon them and their lives and to even if it means just making them comfortable with certain clauses but also making them aware of how it can impact them. So that is the suggestion I want to give.

I also want to just make reference to this part of my contribution regarding the President’s appointment of the demarcation officers. I know persons will come after and say that, so I would not go into that. But I just want to state that the Cabinet should really and truly be careful when they go into that area. So referring to my original article, that is, *Land Law and Registration* by Rowton Simpson. And I am looking for the drafters of the—I see they are here.

And what this article states, Madam President—and I hope the drafters can hear me—is that the first requirement in the process is to decide where systematic adjudication is required. And I am saying that one formula that could be used in systematic adjudication is treating with new squatting communities as different and apart from established squatting communities, which in actual fact may look like
regular landed communities with freeholders and long-term leasers. So that is the other recommendation I want to make regarding the operationalization of this legislation. And, Madam President, could you inform me how much more time I have, respectfully?

**Madam President:** You have five minutes and about 45 seconds.

**Sen. T. Obika:** Thank you very much. I did not realize I was speaking so long. I think it was the vigour of the beginning of my session at the last sitting, really has spurred me. But I want to make two short points as I prepare to take my seat regarding the adjudication process. It states here:

“Where there is a high incidence of litigation concerning land of a nature that could be—

**Madam President:** Sen. Obika, you have five minutes now.

**Sen. T. Obika:** Thank you very much.

“Where there is a high incidence of litigation concerning land…”—regarding—“boundaries and ascertained interest.”

The adjudication process should really and truly take that into consideration when they are setting aside adjudication zones.

So, for example, there may be an area in Marabella where there was an estate. I do not know if Gopaul Lands was an estate before, but I spent some time in Marabella and I remember that people, the elder citizens referring to some sort of estate. I do not know if, maybe—the attorneys here would know obviously—if there are incidents of litigation, they could treat with that part as separate and apart from the other parts of Marabella, for example, maybe Tarouba or maybe around the Line and so on.

Now, the last point I want to make, Madam President, is:

“Where development is being held up or inhibited because of uncertainty or
insecurity. This may bring us into the field of customary tenure and the use of systematic adjudication and registration of title for the regulation of dealings, a matter which”—should be—“examined…”

So:

“where development is being held up of inhibited because of uncertainty or insecurity.”

So just to wrap up, Madam President, I wish that the drafters of the Bill who I am assuming, given my limited understanding of this aspect of lawmaking, I am assuming that they would be the persons involved in the Regulations, although from my time in the public service I know generally there are a lot of persons that are involved in contributing to Regulations, myself having contributed at one time in the public service.

I want to wrap up. Where there is dealing in land, that should be considered in the adjudication process. Where it is desired to use land as security for obtaining credit, should also be looked at. So industrial zone should be different from residential. Where there is a high incidence of litigation concerning land and bounds and interest that should be a separate consideration regarding adjudication zones. Where changes in land use or in pattern of land holdings are proposed, and the last point, where the development is being held up or inhibited because of uncertainty or insecurity. Thank you very much, Madam President. [Desk thumping]

The Minister of Agriculture, Land and Fisheries (Sen. The Hon. Clarence Rambharat): [Desk thumping] Madam President, thank you very much for allowing me the opportunity to join in this debate at this stage. And this debate is on:

“A Bill to amend the Land Adjudication Act, 2000.”

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Madam President, what we are seeking to do today, continuing on the efforts from the last day, we are seeking to make amendments to the Land Adjudication Act which was debated in Parliament in 1999 and passed but never proclaimed. And from 1999 to today this is the fifth attempt to make amendments to the original Act which remains unproclaimed. There was an attempt in 2011; that Bill lapsed. Two attempts in 2012; those two Bills lapsed. And in our own time there was a 2017 Bill which lapsed and this is the fifth attempt. And I hope that with all our efforts it would be a fifth but successful attempt.

Madam President, the original Act as we have already found out stems from a significant amount of work during the 1995 to 2000 period in relation to land law reform and it followed previous work, particularly leading to the 1981 legislation, which also was never proclaimed. But I just want to point to that particular period in 1999/2000, because you know sometimes I feel some of us think that we are overworked in the Senate; some of you may be underpaid but not necessarily overworked.

And in that Session, which gave rise to the Act we are now seeking to amend, there were 92 Bills in that Session. The Fifth Session of the Fifth Parliament of which 12 were land Bills. And I heard somebody previously thank the Attorney General and his team at that time and, you know, we have inherited in this Parliament not only outstanding people in the Parliament but successive Attorneys General have inherited outstanding legal support within that particular area. I wish to extend it across the public service, but I leave that for another day.

Madam President, I want to quickly refer to the contributions of three previous speakers before getting into the meat of the matter, as one of my colleagues said last night in the other place. The first is Sen. Obika, in summary, to say to him, squatters have nothing to fear under this Government. You do not
need to take a consultation to Point to prove that. I do not imagine there will be further consultations on this Bill. But they have nothing to fear and I will tell you why later on.

To Sen. Ramdeen, I thank you for your contribution as usual. We share views on certain things you have pointed out and I know that the AG will deal with it in his wrapping-up. I am at one with you on Pye (Oxford) v Graham. As recent as April 2018, Justice Margaret Mohammed described it as settled law in Trinidad. I think we understand that and the reason why I paid very careful attention to what you are saying is because of the way the adjudication of land has been split all over the place in Trinidad and Tobago and we are creating yet another body.

We know that some matters go to the magistracy, in particular, ejection of squatters and dealing with squatters. Some go, and thankfully some go to the Supreme Court and I was just reflecting as I went through some of the cases myself in preparation. I was just reflecting on when I came into practice and it took about 15 years for a land matter to see a trial by which time you have lost files, you lost your document, you lost your instructing attorney, you lost your client, and I am still surprised sometimes to some matters with my name from 20 years ago still popping up. And I was surprised in there and I think the more recent practitioners would not have an understanding of how fortunate they are that they are dealing with litigation, particularly litigation on land within a year of filing their claim and there are so many things in the rules to prod parties along towards a solution.

But I think that we have to be very careful in dealing with this aspect of land adjudication that we get it right and we do not create the opportunity for further and further litigation. In trying to create something that takes us out of litigation, which is not as bad as it used to be, that we do not create something that leads to more conflict. And the potential for conflict in my contribution on the other Bill,
the potential for conflict where you are not dealing strictly with legal rights but you are dealing with equitable interest. The potential for conflict is real and as draftsmen we have to make sure that we provide the level of clarity that is required.

And in relation to Sen. Ramdeen’s contribution, Sen. Ramdeen referred to a matter—correspondence involving one Alana Haynes. And I feel it is in the public interest, as reluctant as I am to go into any discussion on that matter, I feel it is in the public interest that I say that I am fully aware of the matter involving Alana Haynes. It attracted my attention last year and I have overcome the hurdles that I encountered and in April, towards the end of April 2018, I submitted a report on that matter to the hon. Prime Minister.

In relation to Sen. Mark’s contribution, I had no plan to say anything until Sen. Mark went on and on about Ricky Ramcharan. And you know even as I left the Chamber on the last occasion I had no plans really of addressing the matter of Ricky Ramcharan until I read a very lavish newspaper coverage of Sen. Mark’s contribution, in which Ricky Ramcharan’s name was reported and specifically in relation to a questionable 40-acre parcel of land. And I feel, Madam President, that I must correct the record, not only for Ricky but for his family.

Let me say this to you, Madam President. Ricky Ramcharan is an outstanding young farmer in this country. He is married to a farmer; a farm in Cunupia. And I thought that Sen. Mark might have known about Ricky Ramcharan for two reasons. The first is, and I refer to this newspaper report of February 04, 2014 and I quote, it says:

At the event, two Cunupia farmers, Mr. Ricky Ramcharan and Mrs. Lelautie Gurdass were awarded for their sustainable farming practices [Crosstalk] within a wetland environment.”—Ricky—“Ramcharan had been farming for 14 years…and cultivates watermelon and pumpkin. He has built temporary mud banks to conserve the water in the wetland which is beneficial to the ecosystem.”

And on the newspaper report, Madam President, you see the then:

“Minister of State”—in the—“Ministry of the Environment and Water Resources…Ramona Ramdial”—presenting—“Cunupia farmer”—[Crosstalk]—“Mr. Ricky Ramcharan with an award for sustainable farming within a wetland environment.”

You see, Madam President—[Crosstalk]

Madam President: Minister. Please, keep the noise levels down. If you have comments to make, anybody, make it under your breath, because I am hearing all of them and they are disturbing me. Continue, Minister.

Sen. The Hon. C. Rambhatrat: You see, Madam President, for those of us who likes Bertie’s Pepper Sauce, which is one of our famous products in this country, Ricky Ramcharan is one of the leading suppliers to Bertie’s Pepper Sauce. For those of us who may go into Massy Stores and buy baigan also known as melongene, Ricky supplies that to Massy Stores. And to me he is model farmer; young man.

And there is an important point I will make. Sen. Mark is right. I met Ricky. In fact, for those of who follow my Facebook page know that I meet farmers and I meet my stakeholders on a daily basis and I also take the time to post on social media where I go, what I do and who I meet, because I have nothing to hide. And on March 02, 2018 I posted for the world to see my visit to Ricky’s
Farm in Mongelo. And I will tell you as I walked through acres upon acres over several hours with Ricky I never touched on State land. Ricky rents his land from private owners and also has a State lease for a parcel of land. I myself asked him, how could you lease a parcel of land that is under water for most of the year? And the reason I visited that farmer, Madam President, is because it is one of Sen. Mark’s colleagues in the other place who encouraged me to go and visit this farm because Ricky Ramcharan was desirous of expanding his holdings so that he could meet other contracts that he has secured to supply fruits and vegetables to the private sector. And I felt, Madam President, I should take my time so that the country could hear, and the media could hear and to understand that sometimes we could be so callous to those who are outside this House and unable to defend themselves in an era where these proceedings are broadcast, they are reported, the press, and we have a sense of responsibility [Desk thumping] for those people.

Madam President, there is a particular part of this Bill that really drew my attention, and that is the part—I would speak to six parts of the Bill. But I want to start with this part and that is the part which is contained in clause 11 of the Bill. And it is buried in one of the subclauses of clause 11, but it is a very, very, important provision. And that is the provision which accepts from the application of this Bill those areas which are declared to be a protected area or forest reserve, those areas which are declared to be an environmentally sensitive area and those areas which have been identified by the State for public purposes.

That, Madam President, is at clause 11, where clause 11 seeks to amend section 16 of the Act, and it is at (c) (7). And this is a very important provision, and let me tell you why, Madam President. I have already pointed out a few things to the AG which I believe he will address in his winding-up, but I want to say that when Sen. Obika talked about the squatters in Point Fortin, squatting in forest
reserves, environmentally sensitive areas and places identified for public purposes is rampant in this country. And two things are happening by virtue of this Bill. This Bill makes it clear that the rights which are going to be recognized and preserved and adjudicated upon are not rights in respect of any interest in land, whether that land falls in a forest reserve, an environmentally sensitive area or a parcel of land identified for a public purpose.

But Sen. Ramdeen raised it and may be other people touched on it inadvertently. The issue remains: What happens to those persons who are already in forest reserves, on environmentally sensitive areas and in places reserved for public purposes? And what we will find, Madam President, is that in several parts of this country that squatting or illegal occupation is so endemic and so entrenched that the State must continue its process of regularization in order to deal with those people who occupy the land. And that is the reality. That is the reality.

I know we would all like to have a situation where our forest reserves and environmentally sensitive areas are cleared of illegal occupants and illegal structures, but “unrealistic” is the word I would use to describe that. It is not going to happen. And as we now set into law that there will be no protection for persons who occupy those areas, it becomes incumbent on the State to protect those areas. And we have not been doing that. And let me just illustrate the importance of what we do today, but also what we have to do in terms of regularization. And I am only going to deal with one part of Trinidad. And in relation to forest reserves, which is the area I am going to talk about, we have 34 forest reserves in this country. And I am dealing with what we call in the Ministry, the North East Conservancy.

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And it may be better understood as the municipal boundaries of the Sangre
Grande Regional Corporation. And when I looked at our forest reserves within the boundaries of the Sangre Grande Regional Corporation, I will give you three pieces of data. The first piece of data I will give you is that there are 11 areas within the forest reserves in that part of the country—there are 11 areas where we have very intense residential squatting. And the acreage impacted by that residential squatting is 2,664.4 acres. And that is just one part of Trinidad.

So, in dealing with regularization—because these people have been living there, some for as long as 40 and 50 years. Some are more recent. And I will even give you an example of a place called Pine Settlement in Sangre Grande. In 2005, when that area was first viewed, the acreage under occupation was about 87 acres. By 2015, that had reached 405 acres, five-fold over a 10-year period. Because, while we were identifying the current occupants and setting things in train for regularization, we were not curbing new squatters, and this is what we have.

And on those 2,664 acres, we have a total of 5,809 structures, many of them substantial structures. And, of those, 3,549 are residential structures. I will give you an example, Madam President. I had cause, last week Saturday, to go to one of these areas, Marcus Avenue in Valencia, and it was the first time I was seeing anywhere in this country, a solar panel, 20 feet by 14 feet, attached to one of the houses. And that house is a substantial house, built next to an equally substantial house. And in the meeting I had there, there were at least four or five persons from the military in Trinidad. So these are not criminals. These are citizens of this country who have gone and established, illegally, substantial residential structures and have established their families in those areas. And the reality is that while our Bill seeks to restrict any entitlement and the exercise of any rights, we will continue to have a problem to deal with, and the Government has set in train, has embarked, yet again, on dealing with those who are already there and to whom we
would like to convey a proper title to the land.

In closing on that point, we are talking about forest reserves, which are people who are in the Valencia Forest Reserve, the Long Stretch Reserve, which is, when you are going along the Valencia stretch, you would see some trees right on the edge, and if you go further in you would see communities. The Long Stretch Reserve, the Matura forest, the Melajo forest and some of those areas. And those are the forest reserves.

So when we talk here, when we put this clause—bury this clause in the Bill, we are really doing something that, if enforced, if addressed by the people who are outside of this House with the responsibility to enforce the law and contain, then we would have done what we could do. But there remains—and as other speakers have said, there are rights which have accrued, and even if you are not dealing with strict legal rights or equitable rights, when you go into a community and you see a family that has set themselves up in a structure that has reached a level of permanence, it is difficult to turn that back.

In relation to environmentally-sensitive areas, the Environmental Management Act provides for the EMA to declare an area as an environmentally-sensitive area, and so far we have had three areas in Trinidad declared environmentally-sensitive areas. Those are the Matura Forest Reserve—we call it the Matura National Park—the Nariva Swamp—and I do not want anybody to be fooled into thinking it is this large body of water; it is a massive agriculture and residential community, made famous some years ago by politicians who sought to remove the rice farmers from up there and found themselves in the court—and the Aripo Savannahs, which, of course, came into the headlines very recently.

But I will say something about these ESAs, a point that I made outside of this House last week and it was reported. Sometimes people believe that because
they see the word “sensitive” it means that we must put barbed wire around it and nobody must go in there. And I use the example of the Aripo Savannahs—the Aripo Savannahs, which has found itself in a matter currently before the Privy Council. The Aripo Savannahs is a sensitive area, but it is not an untouchable area. And in the history of the Savannah, the Savannah developed part of its reputation as being the site of a US base built in 1942. In fact, it is the construction of the Fort Read in the Aripo Savannahs that made a big impact to cocoa farming on the eastern coast, because the construction drew a lot of the labourers off the cocoa plantations and onto Fort Read, and many of them never returned, but drifted further west.

But if you go to the Aripo Savannahs now, you would see the bunkers and the buildings, and so on, but you will also see in the Aripo Savannahs substantial residential structures, and very few people talk about that. They talk about the birds and the lagoons and the trees, and so on, and they never talk about the families who live there and the families who seek to live there almost on a daily basis. And it may surprise you to know that the Aripo—because, you see, the Bill talks about the protected area of forest reserves, and in the next subclause, talks about environmentally-sensitive areas. Well, there are two designations for Aripo. There is a larger area called the Aripo Savannahs Protected Area, a portion of which is an environmentally-sensitive area.

And I was quite taken aback with the noise about the construction of the roadway, highway, from Cumuto to Manzanilla which happens to pass on the edge of the Aripo Savannahs. And I was quite taken aback, because I wondered why there was not any objection when that Valencia Bypass Road went through the Aripo Savannahs Protected Area? In fact, in doing an exercise now, I have made a request to the Environmental Management Authority for a copy of the CEC for the
construction of the Valencia Bypass Road, so that I could put all the information before the Cabinet in relation to a regularization exercise. But I would not be surprised to find out that no CEC was granted for that.

So on the one hand, there is a lot of noise about the Cumuto to Manzanilla section passing on the edge of the Aripo Savannahs environmentally-sensitive area, and nobody talks about the Valencia Bypass Road which is a very good road, passing through the Aripo Savannahs Protected Area, and whether, in fact, there were any environmental conditions attached to that construction.

So, again, to avoid a situation of persons going on to an ESA in Matura, Nariva, Aripo, or any other area to be declared as an ESA, the Bill before us says that no rights will accrue. But again I say, we have a situation of dealing with persons who are already there. And when you get to Nariva, for those of you who have been there, every government has been challenged, every environmentalist has been challenged, with Nariva. But the reality is that people have to live on these sites and earn their living and we have to operate in a way that people can earn their livelihoods and we can still manage sustainably.

And when we come to the last area, which is for a public purpose, well, many of you would be surprised to know that if a parcel of land is identified for a public purpose, how could anybody squat on it? Well, we recently, as a Government, took a decision to proceed with the construction of a headquarters for CARPHA and the Chemistry, Food and Drug Division of the Ministry of Health. We took that decision in 2017. It is a project supported by the United Nations, 2017. And that is being constructed in close proximity to the former Valsayn Teachers’ College, now under the UTT brand. And it is being constructed on the corner right there, off the Southern Main Road and the road going to the Teachers’ College. And you would be surprised to know that in 1979 that site was acquired
through compulsory acquisition from the state from Caroni Limited. At the time Caroni Limited was not a state enterprise and the Government of the day had to acquire that site, and from 1979 to today, no construction has taken place on it. At that time it was acquired for the purpose of establishing some workshop facilities for the Ministry of Health.

So you will find in our country that we acquire land for a public purpose but we take a while to use the land and somebody may go on it and establish themselves, and what this Bill seeks to do is to continue to protect the interest of the public so that site may be preserved for the public purpose for which it was acquired, or for which it was designated.

I thought that I should spend some time dealing with those areas, because I think it is very important in this Bill, in other Bills that we may consider, and it is very important, as we have heard since the property tax and the valuation Bill, and we have heard in the Bill which we dealt with before this one, the recurring question and the recurring issue of squatting in Trinidad, and I thought I should say, very clearly, that this, if properly administered going forward, will protect some of our lands which require protection. But we remain with issues which have to be dealt with.

And in relation to something that the AG may address, I want to just say that we have four particular designations here: Forest Reserves, environmentally-sensitive areas, protected areas and land reserved for a public purpose. But I want to say that yesterday I was extremely pleased, on behalf of all of you, to receive a report which is titled the National Protected Area System Plan for Trinidad and Tobago. And this work has been undertaken through financing from the European Union, the FAO and counterpart funding and resources from the Government of Trinidad and Tobago. I received it yesterday—and I would not tell you what I was
doing. I received it yesterday and read it because I thought I wanted to share, very quickly, some of it. But what this proposes, it reflects on at least three major attempts in our country’s history to deal with environmentally-sensitive areas, protected areas, forest reserves and all those things. And it once again gives us a plan, a legislative agenda, a way forward and I really hope that we could get it done.

But one of the things that comes out of this is a longstanding discussion on, not just having environmentally-sensitive areas, protected areas and forest reserves, but having other types of designations so that we can cover all the issues. And I will give you an example. Madam President, when we talk—you know I always have a story to tell. When we talk about squatting, I will give you a story.

On Good Friday, which happened to be Good Friday and Spiritual Shouter Baptist Liberation Day, I thought I should go up to Fort George, which is a site of the Ministry of Agriculture, Land and Fisheries. I thought I should go up there and see what was happening. And I went up there and I spent some time with members of the public who were there, and I looked at the site and I made observations, and as I was leaving, by the security booth that greets you as you enter the site, I noticed a satellite receiver on the security booth, one of the small ones. I do not know how we call that. [Interruption] How do we call that? A transmitter. It caught my attention because at that time I was dealing with an Internet bill that surprised me in the Ministry, a request from an Internet provider to pay arrears of $1.4 million, and I wondered where in the Ministry people could be using Internet services and not realizing that we are running up a bill. It turns out to be something I inherited. So it caught my attention that we may be running up satellite dish charges, and so on. And as I went to the booth, I noticed the—

Madam President: Minister, you have five more minutes.
Sen. The Hon. C. Rambhart: Thank you very much. I noticed someone asleep, horizontally, on a bed, a television, a stove, a fridge, and it shocked me. And I immediately requested of the Conservator of Forests, a report on it, which I subsequently got. And it turned out, under the full watch of people paid to protect the public interest, somebody had established residence in that place. And it occurred to me, in preparing for this debate, that if that is not an ESA, a protected area, a forest reserve, or a place for public purpose, somebody may accrue rights over a period of time.

And I am saying that to say, that in the proposed designations we would separate out things like the San Fernando Hill, which will be designated a national landmark. It will not be environmentally sensitive or protected because those things require permits to enter. Something like Fort George may be declared a national heritage site or something like that, or a national park. And every designation will carry with it rules in relation to who can access, whether permits are required and the behaviour on that. And maybe on another occasion we will be dealing with a further amendment which allows us to cover all the categories of designations which deal with some of our sensitive lands and sites and so on, in this country.

Madam President, that is my contribution. I thought I should focus on that particular area. I said there were six areas that I wanted to draw attention to. Those were clauses 3 and 4, where I wanted to draw attention to the requirement for the surveyors who go on private land, to have permission of the owner. I thought I should draw attention—people may miss it—in clause 10, where the surveyors who prepare the demarcation plan are not required to strictly comply with the rules of the Land Surveyors Act, and that means being able to produce a plan in a quicker time with less bureaucracy. I made the point in relation to clause

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11, that what we are doing here by creating all these fancy titles, we are, in fact, expanding the public service. And I raised my usual caution of dealing with new positions, but also those who implement this must deal with existing positions so we do not end up with somebody new doing a job that somebody old was paid to do, and we have somebody still in the system with a title, a salary and no work to do.

And lastly, I wanted to point out clause 17 that deals, not only with adjudication matters, but post-adjudication matters. I thank you very much, Madam President. [Desk thumping]

Madam President: Sen. Hosein. [Desk thumping]

Sen. Saddam Hosein: Thank you very much, Madam President. It gives me great pleasure to rise on this debate on a Bill to amend the Land Adjudication Act, 2000. And, Madam President, as most speakers would have indicated, that it took us 18 years to reach this position in which we are now attempting to reform the land system in Trinidad and Tobago.

And with respect to some of the points raised by Sen. Rambharat, with regard to the forested areas and the preserved areas and those areas acquired for public purposes, Sen. The Hon. Clarence Rambharat would have indicated that this Bill will actually protect some of the areas in which persons who decide to squat on forested areas and areas that are environmentally protected. But I just want to indicate that we cannot just use this Bill alone in order to protect those areas. There must be proper infrastructure with regard to planning and development in this country.

And while the People’s Partnership government reigned from 2010 to 2015, we, on this side, passed the Planning and Development and Facilitation Act, 2014 and also laid the National Developmental Spatial Plan, and those are all policies
and frameworks that have to work in tandem with the Land Adjudication Act that would be passed in this Senate in order to properly manage and plan development of Trinidad and Tobago.

And just like Sen. Rambharat gave a story, while I was away for 10 days, I had the pleasure to visit Washington DC and when you look at the planning that took place there since, I believe, in the ’60s, you would be amazed at how properly they have laid off their infrastructure with regard to housing, business, green spaces. And I know that you are looking to me with some confusion, but I will get to the Bill, Madam President.

With regard to the policy behind the Land Adjudication (Amdt.) Bill is that, what it will do, it will create certainty of ownership, because what this Bill intends to do is define persons’ boundaries and give them their ownership of land. It will encourage security of tenure. We hope that there will be a reduction of land disputes when these areas are properly demarked. It will improve conveyancing. There will be an ease of transferring land between individuals. There will be a stimulation of the land market, as Sen. Obika would have alluded to. It would also support the land taxation regime that this Government has embarked on with regard to the property tax. And also, it will facilitate the overall management of the land resources of Trinidad and Tobago.

And in order for us to do all of this, there are some very important positions that were established through the Land Adjudication Act of 2000, and which are going to be amended by this Bill that was laid in this honourable House. And the first one is that of the adjudication officer. The Attorney General, when he laid this Bill, will now create the positions of a chief adjudication officer, a deputy adjudication officer, a demarcation officer, a survey officer, and a recording officer. But I just want to focus on two of these positions, and those are the
demarcation officer and the survey officer.

The appointments to these positions are made by the President, and when I read the legislation the President will be interpreted as the Cabinet of the Republic of Trinidad and Tobago. And the experience that is required for these positions is not outlined anywhere in the legislation or in the Bill. So, when I look at section 4 and clause 4 of the Bill also, it reads that:

“The President shall appoint such...Demarcation Officers, Recording Officers and Survey Officers as may be necessary for the purposes of this Act”.

So, therefore, there are no qualifications being given to these persons. But when we look at the parent legislation, there was one qualification and it is found at section 4(9) of the parent Act and it says:

“A Demarcation Officer and a Survey Officer shall be a Trinidad and Tobago Land Surveyor within the meaning assigned to it under the Land Surveyors Act”.

This provision was repealed by clause 4 of the Bill. I want to just go to the Land Surveyors Act, section 17 of that Act so that I can elucidate on what are the requirements of a person to be a land surveyor in Trinidad and Tobago. And it reads as follows that:

(a) a person must be—“...of good character and reputation; and

(b) possesses the prescribed academic qualifications.

(2) A person shall be registered as a Land Surveyor if he”—

(a) (i) again is—“...of good character and reputation and a fit and proper person to be so registered;

(ii) possesses the prescribed academic qualifications;

(iii) has gained such practical experience in a field of
surveying as is prescribed; or

(b) is otherwise qualified as prescribed.”

And when we look at this legislation, the survey officer and the demarcation officer who will actually be defining boundaries, using geometrics and GPS surveying, they are not required to have any experience whatsoever. So now we have inexperienced persons in these positions who would be defining persons’ boundaries as to how much land that they own. And I believe that we should include in this legislation, a qualification for the registration of demarcation officers and survey officers simply to fix this mischief.

And when we look at the type of powers that are being given to the demarcation officers and the survey officers under the legislation, they are given powers to enter a person’s property. Now, there is a safeguard with respect to if a person has refused to allow them entry, that you apply for an order of the court. But, Madam President, just recently we passed the Property Tax Bill and the Valuation of Lands Bill, and in that Bill persons who are appointed as valuators will go around and conduct valuations of persons’ homes to determine the assessed market value—rental value.

But, if we listen to the radio talk shows, we watch the social media, Facebook, and we even hear, just speaking to individuals, there is a fear that persons who are claiming to be valuators are coming and committing crimes, robbing persons, so it poses a security risk. And one of the criteria in order to be registered as a land surveyor in Trinidad and Tobago is that person must be of good character. And if these persons are allowed to enter your homes, I humbly suggest that these persons, the demarcation officers and the survey officers, also be persons of good character, [Desk thumping] because we live in a time where it is very difficult in order to protect our homes and our lives.

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And I also want to point out some of the duties of a land surveyor under the Land Surveyors Act. And if I may be allowed to go to section 22 of the Act, it states that a person:

“shall make and preserve exact and regular field notes…”

So therefore, there is a duty upon them in order to prepare contemporaneous notes so that if they are ever called upon in a court of law they will be able to produce their notes so that they can have their instructions defined. Now, this is not a requirement of the demarcation officer or a survey officer. And if they fail to follow these requirements, then by the Bill that is before us, they are not acting illegally, because the Bill actually states that they can act, notwithstanding the provisions of the Land Surveyors Act, which I believe that should be deleted.

3.30 p.m.

When we look at the other duties that they have they talk about they:

“...shall survey any holding or land for the purpose of preparing a plan to be attached to or referred to in any document or instrument purporting to confer, declare, transfer, limit, extinguish or otherwise deal with or affect any right, title, or interest whether vested or contingent to or over any holding of land...”

And, Madam President, this is one of the most important duties of the survey officer and the demarcation officer because one of the functions that they have under the Act is that the demarcation officer must compile a demarcation map, and this map must be prescribed on a scale as a result of the adjudication process showing the geographic boundaries of each adjudication section and every parcel therein. Again, this requires surveying, defining boundaries, and you cannot have someone with no experience, who is not registered as a land surveyor, doing this type of the work. It will only breed a lot of issues into the system because now
there would be more land disputes rather than this Bill actually addressing a reduction in the amount of land disputes regarding boundaries.

I know Minister Clarence Rambharat, Sen. The Hon. Clarence Rambharat, he would have raised the point that, well the reason behind removing this requirement for the demarcation officer and surveyor officers not being licensed land surveyors is because of time and bureaucracy. But it may cost us more time and more bureaucracy if we have persons with no training and no experience surveying our lands and preparing demarcation maps with regard to our property and the adjudication of same.

There was another point that was raised by Sen. Gerald Ramdeen with regard to the salaries that are payable to the chief adjudication officer and the deputy adjudication officer, and that is found at section 4(2) of the parent Act and it reads that:

“The terms and conditions...of the”—Chief—“Adjudication Officer”—and deputy adjudication officers—“shall be prescribed in accordance with section 141 of the Constitution.”

And that section 141 of the Constitution, it deals with the Salaries Review Commission reviewing salaries of persons who hold public office defined, and I glimpsed at a judgment—this judgment is C.A. No. 52 of 2005. It was a matter involving several Opposition Members against the Attorney General of Trinidad and Tobago. A Court of Appeal Judgment before Chief Justice Sharma, Justice of Appeal Warner and Justice of Appeal Mendonça. And, Madam President, at paragraph 23 of that judgment if I may be allowed to quote, it says that:

“Section 141 refers to the functions of the Salaries Review Commission as being to ‘review’ the salaries and…conditions of service.”

There is nothing in this section which creates an entitlement to salary by a
Member of Parliament, but that is with regard to the specific facts of the case. But, Madam President, the point that I am trying to make is that this section 141(1) does not set the salary of the chief adjudication officer or the deputy adjudication officer. All it gives the SRC powers to do is review the salaries. So I expect that probably in the Attorney General’s wind-up, that we get some sort of clarification with regard to the salaries that these persons are being entitled to and, also, whether or not these persons’ salaries would be coming out of the Consolidated Fund.

There is another issue that I saw with regard to the powers of the demarcation officer, and this was a very interesting power being given to the demarcation officer, and I want to just agree with the amendment that was made to the Act because it says that the demarcation officer can actually state the compensation that will be given to a person with regard to an adjudication, and the amendment to that is that he does not have the power to set it but he only has the power to recommend the compensation.

But when I looked at the section a little more in depth, Madam President, what that section actually does is that once he recommends the compensation payable to the aggrieved persons it does not state how this recommendation is made, whether in writing or not, and those things need to be clarified with some more detail. Those are the issues that I have raised with regard to the functions, the duties, and the entitlements of the persons and the positions that are established under the Land Adjudication Act.

I want to move on to one other area with regard to the adverse possession issue under the legislation. Madam President, Sen. Ramdeen would have dealt with the law and the policy and the areas in which he believed that we should fix in terms of the adverse possession. But what I want to focus on is the procedure with
regard to this, and if you may allow me, that currently the position is that with regard to lands that have to be brought under the Real Property Act, there are certain guidelines as set out by the Registrar General and I have a copy of that in my hand. These guidelines give a defined procedure. They give a defined framework in which a person who is interested in acquiring lands under the Real Property Act that they have to follow in order for the lands to be vested.

Now, when we look at the Bill before us, all it says is that the person must have been in peaceful occupation of the land for 16 years if it is private lands, or 30 years if it is State land. So it does not give, for example, the requirements, the documents, the evidence that is required to prove same. It does not indicate what the adjudication officer must consider before issuing a proper title or recommending proper title for the person who is interested in acquiring the land.

If you may allow me, Madam President, if I can just go through the application process with regard to bringing lands under the RPO, which we can probably fix in terms of making it a bit more tighter so that we can operationalize these provisions within the Bill that creates a person’s entitlement to gain title under the adverse possession provisions. And, Madam President, a person must execute a statutory declaration. It must include their name, date of birth, address, occupation, those normal things. But what is important is that you must actually state the acreage, the situation, boundaries, description of the land affected by the proceedings and reference to any deed—that is in this case there will be no deed because we are dealing with State lands—the local address in which the land is located on, the particulars of possession, the date on which and the circumstances in which they came onto possession, the names of persons by whom possession commenced—because possession can actually be taken from next of kin, from predecessors entitled—the duration of their possession and the nature thereof, the
history of possession up to the time of lodging the application, the nature of the acts indicative of adverse possession.

So this would be issues of fencing the land, planting the land, building a structure on the land, how they would have used the land to show that they would have been occupying the land with an intention to possess. And that is one of the lacunas within the Bill which I believe would be addressed at the committee stage, whether or not they were paying any taxes, because now under the Property Tax legislation squatters would be required to pay taxes. If they have birth certificates, marriage certificates because all of these things, show location of where a person is born or where a person is married, other documents. So there is the whole host of information that must be provided to the Registrar General before any lands can be vested to a person under the RPO Act, and I am saying that all of those are absent in this present construct.

Now, what is important is that the surveyor must issue a declaration and this must state that the “surveyor” caused a survey to be done on the subject parcel of land on a particular date—

**Madam President:** Surveyor.

**Sen. S. Hosein:** Surveyor—and that no objections were made, or if there were any objections stating who made the objections and the nature of the objections. With particular regard to the boundary lines by adjoining occupiers, this must also identify all relevant persons present at the time of the survey because under the Land Surveyors Act if a person causes a survey to be conducted on any particular land, a notice must be given to the adjoining lands indicating the date, time and who the surveyor would be in order to conduct the survey of this land.

Now in this present legislation, the demarcation officer and the survey officer, they have no duty to provide notices to anyone or they are not bound to do
so. They must include survey plans, witness declarations—those are persons living around the area—and those things are absent from this current Bill and those are very important safeguards.  

[Desk thumping] The reason why those things are actually included in the legislation is that persons would not go and make applications and say that I was on the land for 16 years when I was really there for two years, or that I am not even on the land. So there are examiners who would conduct enquiries with regard to whether or not this person has been in possession of the lands or not. And these safeguards, Madam President, protect the State’s resources because State lands belong to the State.

These are state resources and one very important safeguard that is also included in the RPO Act—which I believe should be transferred to the Land Adjudication Act—is that there must be an advertisement when a person makes an application because you want to know who is making the application, how much land that they are making the application for, and also give them the power to lodge a caveat in order to give their views with regard to the property that is currently being adjudicated upon. Those are the issues that I believe that should be addressed so that we can create some certainty, some procedure when a person wants to assert their rights in order to acquire lands under the Land Adjudication Act.

There is one very, very, important, but can be used as a very dangerous section of this legislation, and that deals with section 5 of the legislation. And section 5 of the legislation, it gives the power of the—sorry, not section 5. This is section 3, Madam President. It gives the Minister the power:

“(1) …by Order—to—“declare any area to be an adjudication area, from such date as may be specified in the Order.”

And, Madam President, the reason that I am raising concern with this section
is that for far too long many campaign promises have been made with regard to regularizing land tenure in Trinidad and Tobago, and I do not want a situation where we currently have no idea of where the demarcation areas are or the adjudication areas are. We do not know whether they are going to be defined by local government boundaries, by the entire municipal boundaries, by general election boundaries.

So we do not know these things and we are going to pass this legislation, and what is very dangerous is that before any election the Minister can approve or indicate that a certain area where, for example, there are a lot of squatters in a marginal area for example, and he can go there and say well we will declare this area as an adjudication area and one month before the election we give every person their title. That is not fair play.

So I believe that right now we should actually state where the adjudication areas are, how they are going to be defined, and which areas we are going to deal with first because we must plan [Desk thumping] before we execute. We should not execute and then plan. I agree with the Attorney General that there is 18 years of analysis paralysis, but sparing us a few hours or a few more days again so that we can get it right, we will move forward in a very comprehensive and a bipartisan manner.

So with these issues that I have raised, Madam President, I hope for them to be addressed so we must know, one, where the adjudication areas are—I see that Minister, Sen. The Hon. Clarence Rambharat is smiling and I know he is smiling because he is a very strategic Minister and he knows exactly where the squatting areas are in this country, and he is the Minister in charge of land—and also the issues that I have raised with regard to the demarcation officers, the survey officers, the chief adjudication officer, the deputy adjudication officer.
So, Madam President, there are several amendments that we intend on this
case to address with regards to the current Bill and legislation at the stage of the
decision, and I would like to thank you again for giving me this opportunity.

[Desk thumping]

Sen. Anita Haynes: Thank you, Madam President, for the opportunity to
contribute to this very important debate, which is a Bill to amend the Land
Adjudication Act of 2000, and from the onset please allow me to put on the record
from very early on, that this Opposition has demonstrated time and time again that
we are prepared to support legislation that is in the best interest of the people of
Trinidad and Tobago [Desk thumping] and from the time that I have sat here, as a
Senator, we, as members of the United National Congress on this Senate Bench,
have maintained a commitment to getting it right and to passing laws that will
impact the citizens of Trinidad and Tobago in a positive manner.

It has been my experience, Madam President, that the Government will
come here from time to time and urge us to pass legislation in an expedient manner
and we would be told that passing the law will in some way equate an
achievement, and I would just like to start by disagreeing with that. Passing the
law is not an achievement especially if you have the majority. It is a very simple
thing to do.
The achievement would be when the law is implemented and enacted properly, and
citizens feel the benefits of the laws that we have passed. It appears that the use of
legislation as a public relations tool is not something we will participate in as a
responsible Opposition because so far we have had a lot of laws coming before us
and being passed and very little by way of implementation. If you look at trial by
judge alone, the road traffic, the plea agreement, and a number of others where we
have come here, we have done the work and then nothing comes of it. But as we
look specifically to this piece of legislation that we are seeking to amend, there is a proclamation section in the Act and we have had no indication from the Attorney General or the two speakers that the Government has chosen to field in, again, in what I call a very important debate, as to when the legislation would be effected. It seems again, Madam President, we are being asked to participate in what can only be called a national mamaguy.

The Opposition has been viciously attacked, Madam President, on the decision taken by the Leader of the Opposition Bench not to debate the land package together.

**Madam President:** Sen. Haynes, I just want to say at this stage that enough has been said. The decision has been taken that the Bills will be heard separately and let us just proceed, and let us not make any more references to that decision. Okay?

**Sen. A. Haynes:** Thank you, Madam President. I would just like to say that what we have witnessed, especially in the contribution on this debate by Sen. Ramdeen and Sen. Mark, that a lot of work had to be done on this legislation, and it took us as well [Desk thumping] hours to complete the previous Bill, showing that the Government was intent, I believe, on almost abdicating on its responsibility to create law that would really benefit the people of Trinidad and Tobago.

**Madam President:** And Sen. Haynes, you are imputing improper motives by proceeding down this line. So I would ask you to start getting into the matter at hand, please.

**Sen. A. Haynes:** Yes, Madam President. I had no intention to impute any improper motives at all. So I apologize if anyone felt that I was. So, Madam President, as we look at the legislation and we look at the Bill that is before us, I looked at it in very great detail and I know a number of speakers would have raised
the powers of the chief adjudication officer and the deputy adjudication officer, and by these proposed amendments the impact these two officeholders that can have on each and every landowner in Trinidad and Tobago, and, quite frankly, it is quite concerning to us. With respect to the amendments proposed in section 4, and I would just like to read it into the record. Section 4(1A) that:

“There shall be such number of Deputy Adjudication Officers who may be recruited as necessary for the respective adjudication areas.”

And (1B):

“A Deputy Adjudication Officer shall be an attorney-at-law of at least ten years’ experience in conveyancing and shall be appointed by the”—JLSC.

And while we appreciate and we accept that the JLSC affirms a degree of independence, we on this side will be proposing a number of amendments to do two things. Firstly and most importantly, we will seek to define the terms and conditions of the chief adjudication officer and the deputy adjudication officer. We will seek to provide in law a high degree of protection from political interference by the Executive [Desk thumping] and that is any Executive.

You see, Madam President, no matter who is in power, PNM, UNC, doing the right thing will always remain the right thing and it is the right thing to do [Desk thumping] to ensure that as a country when we as a Parliament take a decision to repose these types of powers in a body of persons, that we must really do our very best to ensure that their independence is protected and that they cannot be influenced or coerced by, and again, any Executive. I know that the Government gets a little uncomfortable whenever we speak about checks to Executive power, and we are told time and time again that we are seeking to whittle down the Executive, but every time these things creep up in legislation we must do our duty—

UNREVISED
Hon. Al-Rawi: Madam President, I rise on Standing Order 53(1) (b), please. This is the fourth speaker on that Bench to raise the same point on the same clause.

Madam President: Sen. Haynes, I am going to give you a little leeway, but you have to be aware of the issue of tedious repetition because I have been trying to influence other speakers. Sen. Ameen, I am cautioning you to control yourself, eh. From this point, I can hear almost everything. Every sound I can hear. Okay? Continue, Sen. Haynes.

Sen. A. Haynes: Thank you, Madam President. And despite the fact that, again, it seem to be a very uncomfortable area for the Government, we on this side will say again that despite the fact that we may very well form the next Executive, right is right [Desk thumping] and we are suggesting that we take a very look at what we are doing here.

And so, Madam President, I would just also like to take a look at the parent Act. We are looking at section 4(6):

“The Adjudication Officer shall be competent to administer oaths and take affidavits in any inquiry undertaken by him, and to issue notices or orders requiring the attendance of such persons or the production”—this is important here—“of such documents as he may consider necessary for carrying out the adjudication.”

And (7) says:

“A notice or order...under subsection (6) shall have the same force and effect and be served in the same manner as a summons issued under the Summary Courts Act.”

These powers, Madam President, when one looks at the chief adjudication officer and the deputy adjudication officer, the orders that he makes are equivalent and carries the same force and effect as an order made by the court of law.
And so, we are virtually setting up a court, a body, that is able to exercise similar power and it has the power to compel a landowner to produce their documents, and this has an impact on the right to privacy and every landowner will be impacted by this legislation. So I would just like to put to the Senate that this is a very, very big deal and that we have to look very carefully and very closely at every action we are doing because we are in the very serious business of making laws that affect the people of Trinidad and Tobago. [Desk thumping]

Madam President, we realized that perhaps the Government in its expedience may not have thoroughly considered the far-reaching implications of this piece of legislation. You see, if you took the time to understand the nature, the extent and the ambit of the powers that are being given by these amendments they can be intrusive in nature to the right of property of each and every landowner in this country, and the Government and the Attorney General would have understand that this piece of legislation should require a constitutional majority. [Desk thumping]

Having recognized on our end that these amendments and this piece of legislation should be passed with a special majority, we would be, again, proposing amendments to effect the same and the Government should not fear a special majority. It is nothing to be afraid of, again, because we have the reiterated our position that we are prepared to participate in the mature consideration of every piece of legislation and that we are prepared to give our support and act responsibly in the best interest of the people of Trinidad and Tobago. [Desk thumping]

So if your arguments are convincing and the Government stands firm in its commitment to its policy, then I see no reason to fear a three-fifths majority. I think when we look, Madam President, at clause 9 of the Bill in front of us, and
clause 9 amends section 12 of the Act by deleting paragraph “(a)” and substituting to “award such compensation as may appear to him” in substituting the words—

Madam President: Sen. Haynes, no need to read the clause, please. Just give the gist of what the clause is saying.

Sen. A. Haynes: No problem, Madam President. The purpose of entering the clause into the record is because it also lends to demonstrating the seriousness of what we are called here to do today, and allow me to reiterate that it is incumbent on us, as lawmakers, to insulate persons that we are giving this wide ambit of power to from any kind of inference, political or otherwise.

So I would like to urge caution as we sit here as a Senate, as we think about what is in front of us, let us be deliberate and cautious in our actions, and as Sen. Hosein noted earlier, yes, it has been 18 years and many, many, years have been quoted before that, so a few more hours in careful deliberation cannot hurt.

4.00 p.m.

It really is imperative of us to do things in the right and proper way. And I know, Madam President, that a number of my colleagues would have raised, and I know the Attorney General may also raise the fact that there should be nothing to fear—because there is a right to object and you can appeal to a Land Tribunal—and therefore no need for a constitutional majority.

But, Madam President, when you think about the most vulnerable in our society, how are they going to avail themselves of this right to object and the appeals? And even as you look at the question of what we are doing here today, a number of persons have raised the issue of consultation, but I would like to raise the issue of public education. You see, Madam President, what we do in the Senate, even though it is widely televised and it may be on the news, et cetera, not everyone can understand what happens here on a day-to-day basis on legislation
that impacts people’s—

**Hon. Al-Rawi:** Madam President, Standing Order 53(1) (b) please. Same point raised by Sen. Obika, at length.

**Madam President:** Sen. Haynes, I know that you are the last person to speak on your Bench and, therefore, it may be difficult. But if you are going to raise something that someone else has raised then you need to be very, very brief about it, because tedious repetition is coming up here. Okay?

**Sen. A. Haynes:** Yes, Madam President. But I was going to take the point on public awareness from a different angle, given that I am in the public relations field, and it was really not to be a targeted hit on the Government but it was really going to be a suggestion. So had the Attorney General allowed be to elaborate on my point, it may have been of some assistant, but.

Madam President, if you look at—and I raised the public awareness and the public education point, because if look carefully at what has happened since the Property Tax has been passed—

**Madam President:** Sen. Haynes, I think I have to intervene and ask you to move on to another point. Okay? Because you are going down a road that is taking you further and further away from the Bill. Okay? So try and raise something different, please. Okay?

**Sen. A. Haynes:** Yes Madam President. Now, my intention here is not to be difficult, but I really do think it is important that we consider again, land owners are in every class, in every area of our society, and this includes rural areas. So if you look at, Madam President, we are being told that the notices would be published on the—[Electronic device goes off]

**Madam President:** Whoever that is, please just leave the Chamber for five minutes? Can I just please implore Members to put your devices on silent? And if
you do not trust yourself with the knowledge of your device, you should take it off. Okay? Thank you. Continue, Sen. Haynes.

**Sen. A. Haynes:** Thank you, Madam President. That was very timely, because as you said the knowledge of your device, I was about to raise the point that not everyone can use the Ministry of Legal Affairs’ website. So we may be wanting to think about where the information would be placed. I know, I have, in preparation for my debate, looked at the Attorney General’s website and the Ministry of Legal Affairs and I think it is quite detailed and the information is usually—

**Hon. Al-Rawi:** Standing Order 46(1), Madam President.

**Madam President:** Attorney General, I have stated that I am giving Sen. Haynes some leeway. I will make the determination when I think enough leeway has been given. So continue Sen. Haynes.

**Sen. A. Haynes:** Thank you, Madam President. Quite a bit of legwork today. But what we are saying is that the information provided on the Ministry’s website, I think, is usually quite good and quite detailed. And when we pass legislation that impacts the lives of people, there can be ways to roll out a public education strategy that would reach persons in every area, every section of Trinidad and Tobago.

And it was my suggestion to the Attorney General that once the amendments are made and the legislation is passed and it really is going to be legislation that we as a Parliament can be proud of, that there are ways to get the information to the people that is a cost-effective manner. I was going to suggest—

**Madam President:** But I think you have made enough suggestions on that, on what is to happen should the Bill be passed. So let us deal with what is in the Bill. Okay?

**Sen. A. Haynes:** No problem, Madam President. You see, we have been told in
the opening remarks from the Attorney General that this legislation would be
rolled out in Tobago. And when we look at the amendments we are asked to
consider in amending clause 4, in amending clause 6 and in amending clause 10,
the protections that we would like to have afforded to persons in this legislation, it
seems that, would they know what their rights and obligations are under the
legislation? You see, we have not been told, Madam President,—while we have
been told that there has been consultation, no one has detailed where, when and
how. And so we are asked to put our trust in just the word that consultation has
taken place.

And we would like to also note, Madam President, that the Government has
two MPs from Tobago. And there are Senators in here who are from Tobago. And
so I would like to ask if legislation is intended to impact the persons of Tobago
first what was done to sensitize the people of Tobago on the legislation? And that
was the end of that point. [Desk thumping]

Madam President, on this point on working together to pass good law, I
would just like to note that, for the first time the Opposition working as a team
together has circulated to the Senate information that it will assist us as a law-
making body in taking our responsibility to the nation very seriously and to
looking at what we are here to do, and how we are here to do it.

And so, Madam President, I think at every level in this, despite constant
interruptions and being almost—I do not want to run afoul of any Standing Orders.
But, Madam President, in the face of much difficulty, right, the Opposition has
remained, again, very committed to saying that the principle behind the law is not
something that we are opposed to. It is just how it is done. And the manner in
which you engage persons in a debate is very important, especially when you
desire their support.
And so, Madam President, as we go forward with looking at legislation, I would just like to urge the Government to approach the debate from the angle that their job is to convince us and the nation that what they intend to do is the right thing and the right way to go about it. It is not an insult for us to challenge or to question the ways in which it is done.

Madam President, I am concluding, yes. And, Madam President, as we go forward with more legislation, there is in a debate, I think, ample ways for the Government to show us that their intentions are good and clear and they should use those ways. And we as a very responsible Opposition will continue to act in the best interest of the people of Trinidad and Tobago. And with those few words, I thank you.

The Attorney General (Hon. Faris Al-Rawi): [Desk thumping] Thank you, Madam President. It gives me great pleasure to address the issues raised by my learned colleagues in this honourable Senate. I think that this has been a very healthy debate. I wish to thank Sen. Ramdeen, in particular for not only referring to the case law that he mentioned on the last occasion, but for in fact going the extra distance of providing the copies of the cases that he referred too. I think that is an exceptional step on his part and I thank him for it. [Desk thumping] I had the pleasure of pulling them a little bit beforehand, but I regret that I missed the email by which he sent it to all Senators. So, I thank the hon. Senator, through you, Madam President. I have to confess that I am in a blur as to which day of the week we actually are at and what time of day it is. All that I do know is that I am in this House, in this Chamber, be it House or Senate, for quite long periods at a time. So, I share hon. Senators’ concerns that our debates may be difficult at times to manage.

I wish to put on the record to hon. Senators that the interruptions are not
intended in any difficult way to throw you off track, but it is just very difficult to hear the same argument repeatedly.

Madam President, they have been a few very crystallized issues that need to be responded to. I hear the exhortations of learned Senators on the Opposition Bench. And whilst I do agree that the Senate Bench provides for a great degree of work and for reflection, regrettably this is not the same position in both Houses. And, therefore, one has to take it the way it comes.

I note the exhortations from Sen. Haynes, that there should be no public relations tool, and then she goes on to give us advice as the PRO of the UNC. So I do not quite know which way to go with Sen. Haynes. Is it hot or is it cold? Do I take the advice or do I not? It is rather interesting to hear advice come from that particular perspective. But I thank the hon. Senator for trying to make a point of it.

I think in round we can probably say that the issues concerned, (a) whether there was consultation; (b) certain legal issues which, between Sen. Hosein and Sen. Ramdeen, I think were quite pointed and those legal issues concerned firstly, whether there is a degree of entrenchment in respect of the terms and condition of the officers to carry out the functionality of the Land Tribunal; secondly, whether there is a form of equity or equality in treatment of persons who may be argued to be in similar circumstances as it relates to adverse possession between the private lands, adverse possession route and documentation of title and that of persons on State lands; thirdly, as to whether there was any form of turpitude to be found in the reference to the summons aspect and the compellability, and the person calling the summons having the power to treat with the summons, and, therefore, whether one can argue that a right of privacy is being intruded upon in that particular regard. I think those are the three solid legal issues that have been raised so far.

Sen. Mark, in what is almost a prescribed and fixed formula, started off
with: There has been a lack of consultation. I beg to differ. In fact, I have referred to the fact that the Law Association in particular was the only entity that actually stood and replied to the suite of laws that we had put out, and their observations have in fact been put into this Bill.

Sen. Haynes has made the point that the key in law is really not only what you pass but in what you operationalize. Sen. Rambharat pointed out the very hard work in the Fifth Republican Parliament by then Attorney General Ramesh Lawrence Maharaj. And, if I remember, is it 109 Bills that were?—192 Bills that were on the Order Paper. The vast majority of them have not seen the light of day. However, they stand unassented to, unproclaimed, some even died or lapsed, but certainly there was a genuine intention to do work, as Mr. Ramesh Lawrence Maharaj is known as a work horse in his own right.

But, I want to just address one point Sen. Haynes made as to the assent of other laws, because there is a proclamation clause feature into this. For the record, the laws require confirmation by the stakeholders that they can be proclaimed, plea bargaining, bail amendments, et cetera. We have written to stakeholders, and the Prisons Authority has asked us to hold our hand while they complete their last bit of training so that we can operationalize the laws. So do not for one moment think that we do not agitate for the proclamation and that we shall in fact proclaim.

Madam President, Sen. Mark asked that the order made by the Minister to declare an adjudication area, he reflected that that should receive parliamentary scrutiny and should be made subject to affirmative resolution of Parliament. Back to the prescribed formula and approach that Sen. Mark says: consultation, affirmative resolution, joint select committee, we shall not support. It is almost a formula of approach that the hon. Senator adopts.

I remind that section 3(1) of the Act is not in fact being amended by the
Land Adjudication Bill before us. And therefore, Sen. Mark’s observations are outside the fulminations of this honourable Senate.

Sen. Mark asked that we take note of his point of view, that the Minister responsible for land adjudication was not clear. I would just like to point out that the Minister with responsibility for this Bill will in fact be a Minister gazetted by the designation by the Prime Minister. And I want to point out something, because it has arisen in the contributions of Sen. Ameen, Sen. Mark and I think Sen. Obika. It is hard to discern the points made by Obika at times, but I commend him on trying to, at least put forward an argument.

But the point as to where this Bill will be located, how this Act will be operationalized has been something which, in effect, has stood in 18 years of understanding. And I say this this way. In 1999, when these Bills came, when this Act came into effect in just a couple of months later in the year 2000, and in the fulminations and in the five attempts previous to this Bill to actually get this thing operating, the understanding by the United National Congress, by the People’s National Movement, the two Governments in power at the respective periods, as recently as in the period 2010 to 2015, is that the land adjudication package would work as an insulated entity within the inside of a Ministry, no different from the Commissioner of State Lands in the independent operation there, no different from the Financial Intelligence Unit in the infrastructure coming from the Ministry of Finance, but having the prescriptions and positions for insulation. So the gazetting will specify who the Minister is.

It is for that reason that Sen. Ramdeen’s recommendation that we take an extra precautionary step to insulate the functioning officers, has found favour with the Government. I think it is an excellent submission. I think that we can improve the positions by adding on a level of prescription similar to that found in the
Constitution, which is that terms and conditions should never be derogated, that you cannot amend them to the detriment or derogation of terms and conditions which apply. So I think that there is a lot of merit in that submission and it certainly is something which we shall propose in committee stage to be adopted.

Sen. Mark continued by saying that the qualifications of the Deputy Adjudication Officer is not specified in section (1A). Perhaps Sen. Mark was a little tired and perhaps did not spot that section 4(1) (b) sets out the qualifications. I would read it into the record. Subsection (1) (b) says:

“(1B) A Deputy Adjudication Officer shall be an attorney-at-law of at least ten years’ experience in conveyancing and shall be appointed by the Judicial and Legal Service Commission.’;”

I regret Sen. Mark is not here to take notes of these things so that we can avoid a repetition of the issue in committee stage.

Sen. Mark also said that, with respect to clause 4 of the Bill, which amends section 4 of the Act, his observation is: What are the qualifications of the demarcation officers, assistant adjudication officers and the survey officers? And, again, perhaps Sen. Mark did not spot it, but I would put it on the record for him for when he returns.

Section 4(9) in fact sets out the qualifications of the demarcation officers, assistant officers, and the survey officers. Demarcation officer and a survey officer shall be a Trinidad and Tobago land surveyor within the meaning of it under the Land Surveyors Act, and that is clearly set of section 4(9) of the parent Act.

There is, of course, perhaps a misunderstanding on Sen. Mark’s part.

**Sen. S. Hosein:** Is it not that subsection is to be repealed and replaced?

**Hon. F. Al-Rawi:** I was going to address it under your submissions. It is not being repealed and replaced. It still stands as part of the Act.

**UNREVISSED**
Sen. S. Hosein: Okay.

Hon. F. Al-Rawi: And so section 4(9) is being maintained into the Act. There are, of course, and perhaps Sen. Mark got it wrong when he was asking for this, for the assistant adjudication officer. This Bill proposes that we no longer have references to assistant adjudication officers in the Act. The position is in fact being removed from the organizational structure. So I regret that Sen. Mark failed to appreciate that that is what the Bill is in fact doing.

Sen. Mark went on to address the fact, as he put it, that we have a system established in the country under the State Land (Regularisation of Tenure) Act of 1998, and he asked whether these systems are running in parallel. I want to point out that—and it was raised by a couple other Senators as well—the State Land (Regularisation of Tenure) Act from which we get the well-known instrument, the well-known document called a Certificate of Comfort and then there is a process to flow from that. That is still a feature to be maintained.

And in fact this adjudication Bill, the adjudication Act, allows for the production of documentary evidence and this Certificate of Comfort is in fact the type of documentary evidence that can still be brought forward in assisting in section 16 of the parent Act, in the documentation of title, albeit on a provisional basis for the consideration of the tribunal. So the systems will in fact be concurrent. There is no implied repeal intended. There is not intended to be any extinguishing of the provisions of that law.

In any event, it must be borne in mind that the State Land (Regularisation of Tenure) Act has been repeatedly portrayed by, perhaps, predecessor Members of the UNC Benches and by some of them, but not Members in this House, as some magic wand. I must remind that the Certificate of Comfort does not give documentary title. It does not give title to land. What it in fact failed to do, the
adjudication Act can in fact perfect in the round, by having an adjudication process, bringing forward the documentary title of evidence of documentary support such as the Certificate of Comfort, feed it into the adjudication matrix, take it to a land tribunal and then have your rights considered as to whether your provisional titling can be in fact converted to an absolute title.

Madam President, clause 11 of the Bill was reflected upon by Sen. Mark. Sen. Mark noted that the adjudication officer will be recording title in the name of the State. He asked: What does record title mean? He said that there was a conflict because one person is given title while another is not, an amendment should be made to paragraph (c) to give persons absolute title.

Clause 11, of course, refers to section 16 of the Act. This is something that Sen. Ramdeen also discussed, but Sen. Ramdeen’s submission was a very sharp one, which was significantly clearer than that raised by Sen. Mark. So perhaps, I would not be pejorative, but I think Sen. Ramdeen has the benefit of being a practising attorney-at-law who could focus the issue in a slightly different way. But I understood Sen. Mark’s point to relate to what I can call the equality of treatment argument. I think that it is meritorious that we do some surgery to this particular section 16, which clause 11 treats with.

In section 16, clause 11 proposes in subsection (c):

“a person who, without a documentary title...is in open and peaceable possession of a parcel of State land and has been in such possession whether by himself or through his predecessors in title for a period of thirty years or more”—he—shall record title in the name of the State;”

Now, Sen. Mark went off on a huge tangent over here. He made a bit of a song and dance on it. But let me explain the rationale as to why this is not in fact a mistake and section 16(c), as proposed by clause 11, is in fact correct. We intend
that if you are on State land and you have been there for more than the prescriptive period, you have been there for more than 30 years, that the recording officer—because that is what the adjudication officer is—simply note those facts, record those facts, send it to the land tribunal and then have the land tribunal treat with that. And that is the formulation that the Act itself prescribes. And that is to be found in the new subsection (2) to section 16, which clause 11 promotes, which is:

“Where an adjudication officer records title in the name of the State under subsection (1) (c) or (e), he shall serve notice on the—

(a) adverse possessor…”

That is the person claiming.

“and

(b) Commissioner of State Lands.”

And then in subclause (3):

“An adverse possessor of State lands under subsection (1) (b) or (c) may apply to the Land Tribunal in the prescribed manner for a vesting order.”

So we say, if you are on the land for more than 30 years, you have met the prescriptive period, take that to the adjudication officer. The adjudication officer simply records the facts. That is then put by way of notification to both the State and the person claiming adverse possession and then that matter can be taken to the tribunal and then the tribunal treats with provisional title going to absolute title.

Where I found merit in Sen. Ramdeen’s submission is in his reflection upon a part of the Act which we were not treating with. And that is in the private land scenario. Of course, in the private land scenario you are saying:

a person who, without documentary title is in open and peaceable possession of a parcel of land other than a parcel of State land, and has been in such possession, whether by himself or through his duly authorized agent or his
predecessors entitled for a period of 16 years or more—

We amended it from 30 because 30 was clearly wrong. Private lands, the prescriptive period is 16 years.

—the officer shall declare the title in such person to be absolute and record it as such.

Successive governments from, 1999 to 2018, maintained that formula of saying: “look, if you are on private land we will allow the recording officer to record you as the owner”. And let us see why. We took that approach because, factually the State and private land ownership is quite different.

The State has thousands of acres unsupervised by a few officers, some of whom have allegations of corruption against them, some of whom, they just do not care to turn up to work. Let us be honest about what we are dealing with. And, therefore, the State was given a longer prescriptive period. The State was given a whole extra amount of time to object. But the State was told: “Look, instead of the recording officer recording you as absolute title under the State lands, let us treat with private lands differently, because the system of adjudication operates such that you go into an area so declared. It is subdivided, as will be declared. Notices are blitzed all around Trinidad and Tobago.

The area is seasoned to be aware that title is going to be looked at. They start by looking at the Real Property Act. They then move on to documentary title. These things are possessed. We send out notices. We have a feature in the adjudication Act that says if you have the suspicion that somebody did not turn up but you think they should, the officer must act that way. And therefore, it was more reasonable than not to conclude that the private land owner would be aware of the situation and could intervene.

Now, the balancing act that I imagine governments prior to this one and this
Government had to and still do factor: Do we overload a tribunal? Do we send everything to the tribunal, all adverse possession? Now, Sen. Ramdeen hit that issue square on the head. I think it is an excellent point to pull out into the fore of our considerations.

And in considering the issue and in discussing it with members of the Cabinet this morning prior to getting here, we considered the point from a policy point of view and felt well, perhaps, there is merit in the argument that this land adjudication process will be large on the front end but very small on the tail end because as you move past an adjudication area and you settle that piece, you move to another, and you move to another.

I think that there is merit in the submission made by Sen. Ramdeen that we should in fact send the private lands to the adjudication process via the tribunal as well. And so the Government will propose, at the committee stage, that we send all disputes in respect of adverse possession, whether in respect of State land or in respect of private land, to the tribunal. All that it will mean is that the Government has the extra burden, and it should exercise that conditionality, to provide the necessary support and manpower for the exercise. Or, that you treat with the zones in a different way; you go on a smaller zone and on a faster rolling basis.

You see, in Trinidad and Tobago we have the benefit now of a significant amount of technology which has been purchased and paid for by the taxpayers of this country. And I am referring to the cadastral information management system. I am also referring to the GIS system, and the land registration system, which the Office of the Attorney General and Ministry of Legal Affairs is deep in. That is, of course, bolstered by the IDB funding for US $100 million and also for US $7million.

4.30 p.m.
I note Sen. Mark’s request now that we must lay these documents on the table. I remind Sen. Mark that these IDB documents have been in the care and control of Trinidad and Tobago’s public sector, Ministry of Finance, Ministry of Planning and Development since 2008. And I find it curious that Sen. Mark is now making this recommendation when under the UNC there were two Bills brought in near exact fashion, and there was absolutely no cry or call for the laying of documents in Parliament, and table now, and we must have transparency, and affirmative resolution. This new version of Sen. Mark is quite an interesting version of the UNC’s perspectives [Interruption]—no thank you, not just yet, let me finish this point. Just a moment, I will give way in a second.

So Madam President, I think that there is merit in this point. Before I—I did not want to go off of Sen. Mark’s contributions because there is more to traverse, but I want to deal with the animus possidendi argument that Sen. Ramdeen has pointed out, and that Sen. Hosein has reflected upon.

I thank Sen. Ramdeen again for the provision of the case law. We agree that Pye (Oxford) is in fact locus classic us as well as adopted most recently by our own High Court and reflected by our Court of Appeal. I remind that there is a balancing act here. The provisions of section 16 of the Act, which clause 11 reflects upon, has a formula which says:

“a person who, without documentary title is in open and peaceable possession...”

And that is repeated for private lands and for state lands.

And when we are treating with that, I had a look at the Real Property Act, and Sen. Hosein made the submission that the Real Property Act which is prescriptive should be followed. I remind Sen. Hosein that we have the opportunity via Section 27 of the parent Act, the Land Adjudication Act, to put in
the same Regulations and to flesh out the process. I do not think that we need to be prescriptive at this point. It is by far better to allow it a more flexible approach, as we have under the RPA.

I can tell you now that the Regulations are ready, so we are going to treat with the Regulations shortly. But I took note of Section 49 of the Real Property Act Chapter 56:02, and in Section 49 it says:

“A person who claims with that he has acquired title by possession of land under the provisions of this Act...”

What happened with Sen. Ramdeen’s flag and, of course that is related to form E of the RPA Act, what happened was that the court then went into the judicial interpretation of what in fact adverse possession meant or possession meant. And it is truly the case that adverse possession is a bifurcated position on the first limb; you need to have the factor possession and on the second limb the intention of possession or the animus possidendi.

I think that we can in fact avoid a whole lot of debate as to whether we have reset the law. Certainly that was the position which happened in the United Kingdom when they made their 1925 amendments and their 1980 amendments, and therefore we think that there is room to improve the intention of the possessor inside of the language for both section 16(b) and section 16(c) and we can actually put in the formula of wording which says “with the intention to dispossess”.

And therefore that would satisfy the animus possidendi being on an express basis as opposed to an implied basis and it would not invite a court to consider whether Parliament “in its wisdom sought to reset the law to just mere possession”. That was not the intention here. The language which came forward and which successive governments have brought forward, really fell upon the sort of formulation the Real Property Act had, in particular in section 49 as assisted by
form E of that particular piece of law.

Sen. Mark made reference to regulations to clarify procedure in the Act. I remind that the regulations can be made subsequently and they are in fact ready to be proceeded with. Sen. Mark said that paragraph C seeks to address adverse possession. There is no definition of adverse possession, no definition is in fact required. It is term of law. It has been well traversed in our jurisdiction, and there is no need to be prescriptive in that regard.

Sen Mark says specific provisions should be made for procedures to obtain title as an adverse possessor. This procedure, of course, is set out in section 16(3). Perhaps Sen. Mark did not reflect upon that and the Land Tribunal can, of course, further prescribe the powers and procedures for Land Tribunal. But that is under a different Bill and I do not want to be running afoul of the rule against anticipation.

Sen. Ramkissoon, addressed a very interesting point. What happens to people in the declared zones, if I can call it that way? Environmentally sensitive forest reserves, et cetera. And Sen. Rambharat and I were having a fair amount of discussion in a sort of a pre-LRC, NLRC context as to the State’s future plans in how we treat with that.

I remind that, when we are looking at section 7 of the Act, that is the principal Act, and we looked to the subsections, 1(a) and (b) is declared to be a protected area and is declared an environmentally sensitive area under the EMA Act. First one under the Forests Act, second under the Environmental Management Act. We have room there to massage what else comes into there and what else can be removed out of there and that is to be dealt with under the separate pieces of law which is the Forest Act and the Environmental Management Act.

But, Sen. Ramkissoon’s question as to what happens with the people there, I think
has been properly well traversed by Sen. Rambharat and in my winding-up, I adopt his submissions because this Government intends that there will always be consultation. Land, being a very finite resource in this country’s perspective, has to be properly managed. So the issue of what happens to people on these lands is already prescribed by law. It is the existing law. The Commissioner of State Lands would receive the reference, the rules against occupation or the enforceability of the State’s rights would be considered. But successive governments have just left the issue alone because you have to have a lot political guts to treat with this issue, and that is the truth.

Whether this Government by this law intends to do something by way of disturbance is not on in this case. We are affirming the existing law. We are repeating it into the provisions of this Bill, if it becomes amended as such. But what has to happen with people’s lives and their homes, et cetera, is a matter of consultation and a matter of propriety which this Government can assure it will always maintain. That is, simply put, that there is always the room for consultation and management but that the State must have the right to treat with its reserves and with its environmentally sensitive areas, its aquifers, its forestry areas. It is not an easy subject.

Sen. Ramkissoon also asked about section 4; dealing with the demarcation officers and subsection 8(B). She made reference in her argument that it did not specify what time period the court would mandate for an officer to enter premises with the permission of the court. But obviously that is to be dealt with by the court making its own determination because a court makes determinations and prescriptions as to the manner in which its order should be made certain depending upon the circumstances of each and every case as it may be different from another.

Sen. Ramkissoon also reflected upon clause 20 which dealt with
consequential amendments.  Sen. Ramkissoon asked us to note that, in her submission, we were changing the language to allow for more adjudication officers but that section 16 and 20 were not amended as these other clauses were and she sought clarification as to whether this is intentional or an oversight.  The Government’s position is quite simple.  The amendment to section 16 is contained in clause 11.  There is no reference to an adjudication officer in section 20 of the Act, so I think that we got it right, Sen. Ramkisson, in our reflections.

Sen. Ramdeen, I had dealt with some of his submissions.  I dealt with the fact that adverse possession from Sen. Mark’s perspective inviting us to put a description, I think Black’s Law Dictionary and our own jurisprudence traverses that quite well.  We have dealt with the disparity between the State land adverse possessor route versus the private land adverse possessor route.

We submit that we would propose an amendment to treat with that by sending them both to the Land Tribunal.  We propose that we, in fact, add an express terminology to language to cover the mental intention of possession to meet with the Pye (Oxford) case and that we would add in the words “with the intention to defeat the documentary title”.

We come next to the submission as to salary and remuneration and anchoring that down.  We propose to adopt the formula of expressly stating that “the salary remuneration allowances and other conditions of the Chairman, Deputy Chairman, other members of the tribunal, and the assessors shall not be altered to their disadvantage after the appointment and duration of their tenure of office.”

So, Madam President, I think that we have pretty much hit the big cornerstone issues raised in this debate.  And I would like to remind the honourable Senate this land package, this particular Bill is intended to treat with the most scarce of resources in our country.  The land adjudication process is intended to
facilitate the reversal of what exists in our current law under the Real Property Act. The burden is upon the claimant in the court process to take advantage of the provisions under Part IV or the Real Property Act, to make an application which he or she pays for under the provisions of section 49 of the Real Property Act, to go through a judicial process in the land adjudication exercise. We propose that the State bear the responsibility and cost. We propose that the State manage the process entirely. We have proposed amendments to take us into avoiding constitutional pitfalls. We have proposed for a disaggregation of the executive mind away from the functionality of this. We have obtained loan and finance backing from the IDB. In this particular structure we have the GIS information, the Cadastral Information Management System ready and waiting for implementation.

We have improved the resources at the Land Registry. We intend to physically move the Land Registry, completing that exercise by September of this year. The improved IT and technology have already been factored into that equation. We have entered upon an exercise of registration at our registry and computerization and digitization. That exercise involves 5.8million pages of documents. We have opened up the RPA online system the journals, the books, et cetera; almost 80,000 documents running.

We are tightening the IT structures to allow for fraud to be removed from the situation by encrypted end to end management between attorneys-at-law and the registry, et cetera. And therefore, Madam President 2018, June 2018, the 7th of June, 2018, is perhaps a very auspicious day to allow us to get out of analysis paralysis and to allow us to operationalize laws which are in fact on the books of Trinidad and Tobago and have stood without an ability for action for a full 18-year period.
Sen. Mark: AG.

Hon. F. Al-Rawi: Yes, Sir?

Sen. Mark: Could you please advise us when would the accompanying Regulations be tabled before we operationalize these measures?

Hon. F. Al-Rawi: I expect to be able to treat with those Regulations in or around September of this year. They are finished already. So they will go through the Pre-LRC and NLC process, just for compatibility and double-checking aspects. We have them ready. We want to finish the rest of the land package. I remind that I have already indicated and expressed publicly that we will be bringing interim measures to treat with our land registration system because this package is a long-term situation which will take a number of years to be fully perfected. And in doing that interim measure, some of the regs are going to be managed as well. So we have that whole work product ready. We have gone out to consultation on that. We have completed consultation. We have factored the feedback into that so we intend to be moving with alacrity on this particular matter.

It is, of course tied in to our local government reform and I am very pleased to say that our land management and local government reform, we have in fact come to the end of the legislative process for that. We intend to have that on the table very shortly. I expect that at the end of this week to be able to manage that process.

So, Madam President, I think we are making good steps. I invite this particular Senate to be a participant in promoting the advancement of Trinidad and Tobago. I am very open to receiving submissions in the committee stage and I beg to move. [Desk thumping]

Question put and agreed to.

Bill accordingly read a second time.

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Bill committed to a committee of the whole Senate.

Senate in committee.

Madam Chairman: Hon. Senators there are 20 clauses in this Bill, I believe amendments are being circulated now on behalf of the Attorney General, am I correct Attorney General? Yes. And is there another set of amendments? Sen. Mark.

Sen. Mark: We have a set of amendments being typed by the office here and we are yet to receive them. So with your leave I would ask if we could probably—

Madam Chairman: Here is what we will do. I will take the break at this time and we will come back—we will come back at 5.20 p.m. Hopefully, those amendments will be ready and circulated because I would like us to start the committee proceedings as soon as I come back. So, the Attorney General is craving my indulgence—


Madam Chairman:—He seems to think that I have a generous spirit, so we will come back at 5.30p.m.

4.47 p.m.: Committee suspended.

5.30 p.m.: Committee resumed.

Madam Chairman: Attorney General. So, I am now seeing that there is a list of amendments proposed by you. List No. 2 which has been circulated and I am hoping all Members have list No. 2 which of course we can discard the first set. And then we have a list of amendments proposed by Sen. Ramdeen. So I am asking whether each Member has the two sets of amendments. Yes? So I remind Members that there are 20 clauses in this Bill and we are about to begin.

Clauses 1 to 3 ordered to stand part of the Bill.

Question proposed: That clause 4 stand part of the Bill.
Madam Chairman:  There are amendments proposed by Sen. Ramdeen and by the Attorney General. I think we will treat the Attorney General’s first.

Mr. Al-Rawi: I am in your hands, Madam Chair. I was thinking that we should go to Sen. Ramdeen first because his is more expansive. He would have seen that we propose—in essence that we both agree that we should amend the position. But his is rather more prescriptive than that offered by the Government.

Madam Chairman: In that regard, Sen. Ramdeen.

Sen. Ramdeen: I am obliged, Madam Chair. Attorney General, if I can be allowed to ask you to look at the explanatory note to the Bill that proposes the amendment by the Government and more particularly the amendment that deals with clause 4.

Mr. Al-Rawi: Sorry, the CPC team was just whispering something to me, I apologize.

Sen. Ramdeen: I am asking if you can look at the overleaf of the first page of the Bill that deals with the explanatory note and perhaps that will make it a little bit clearer. The explanatory note which does no more than guide us as to what we are going to do, Attorney General, says:

“Clause 4 of the Bill would amend section 4 of the Act by inserting after subsection (1), subsections (1A) and (1B), respectively.”—And this is where I go—“Subsection (1A) would provide for a specific number of Deputy Adjudication Officers for different areas and subsection (1B) would provide that a Deputy Adjudication Officer should be an Attorney-at-law with….ten (10) years experience in conveyancing law and should be appointed by the”—JLSC.

I thought that—I may be wrong, but I thought that the explanatory note providing for the specific number of deputy adjudication officers, I do not know if that is in
relation to the relationship between the adjudication areas and the number of officers that are to be recruited. I just do not know if that is what is meant by the explanatory note.

And the amendment that I propose is in relation to your amendment to (1A) which says that

A. In paragraph (b), in proposed Section (1A) delete and substitute the following:

“(1A) There shall be such number of Deputy Adjudication Officers who shall be appointed as necessary for the as may be necessary for the purposes of this Act”

B. Insert after proposed sub-paragraph (1B) the following sub-paragraphs:

“(1C) The Chief Adjudication Officer shall hold office for such term, not less than five years, as may be determined by the President at the time of his appointment, and is eligible for reappointment.

There shall be such number of deputy adjudication officers who may be recruited as necessary for the respective adjudication areas. And when you marry subclause (1A) and subclause (1B), the adjudication officers are to be appointed by the Judicial and Legal Service Commission.

I just found that the words “who may be recruited” in subclause (1A) did not really mesh with what I thought the idea of 4(1)(1A) and (1B) was supposed to do.

In my contribution I had asked: Recruited by whom? But, I guess that question will be answered by the Judicial and Legal Service Commission and I thought that it would be tidier for the legislation for us to change the word “recruited” to be “appointed” because that is the word that you used in the section that provides the power of appointment which is in (1B). So that I thought it would be cleaner for us to do that and, in any event, I wanted to raise the issue as
to how the legislation would work in operation because somebody has to—there has to be some conduit by which the JLSC would be informed that we are going to do so many areas and therefore we need these people.

There must be some triggering mechanism in the legislation to allow the JLSC to make the appointments because the ministerial office, the office of the Minister who will be in charge of land adjudication, will not have any direct relationship with the JLSC. I would expect that there will be some way in which the Ministry, whether it be the Ministry of the Attorney General and Legal Affairs or whether it will be the Ministry of lands will be able to inform the JLSC. And then the JLSC will then know that they have to make five appointments because you are going in five different areas or 10 or whatever.

So, to the first amendment I am suggesting, by virtue of the proposed amendment that I made, is to change the word “recruited” to “appointed” which will be in accordance with subsection (1B). And I am asking whether you are satisfied with the legislation remaining as is, without there being any provision as to how that appointment is going to be made.

Mr. Al-Rawi: Thank you. I thank Sen. Ramdeen for the care in explaining the position. There is no harm in changing “recruited” to “appointed”. It harmonizes with the subsection that follows just after that. Just to explain, the model that we used and the manner in which it is described here was to mirror what is done for the CPC’s department, for the SG’s department, for the DPP’s department. It is they, those officers appointed by the JLSC who trigger whomelse they wish to have. So we had kept it in line with what exists in those particular positions. So the law as it is suggested here reflects upon that so that the trigger is the head of department. In this instance it would be the Chief Adjudication Officer to say I need four more people and therefore it goes that way.

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Madam Chair, sorry if I could just chime in on the amendments as I read them, the suggested amendment to clause 4 helps us along in a prescriptive way to ensure that insulation away from the Executive.

A. Insert after paragraph (c), the following new paragraph:

“(d) by inserting after subsection (2), the following new subsection:

“(2A) The salary, remuneration, allowances and other conditions of the Chief Adjudication Officer and Deputy Adjudication Officers shall not be altered to their disadvantage after their appointment and during their tenure of office.”

B. Renumber the remaining paragraphs accordingly.

The CPC’s department, having a look at the submissions, thinks that we can have an easier fit if we were to say, out of an abundance of caution and expressly, that the chief adjudication officer, deputy adjudication officer shall be public officers. And if we did that that will take care of the need to say the President shall, et cetera. All of the other prescriptions can fall apart because they are public officers.

Sen. Ramdeen: In relation to the insulation?

Mr. Al-Rawi: Yes.

Sen. Ramdeen: I am on board with you in terms of saying that they are public officers. But I do not think that that would satisfy what we want to do and I will tell you why. Most of these prescriptive—I just want to ask: Are we doing them individually or all of them at the same time?

Madam Chairman: I am waiting on you all to tell me. I know we are dealing with the first part of your—so, I have not determined as yet because I just want to see how the discussions are going. We are dealing right now with your proposed (1A).
Sen. Ramdeen: Yeah, I was just limiting myself to that; that is why I did not speak to anything else.

5.40 p.m.

Mr. Al-Rawi: Madam Chair, could I ask you to consider whether we can, in fact, take them as a whole, because the amendment to clause 4, and the flow of the recommendations I think are intertwined, and it would help us if we had the logical explanation as to how they interrelate. Are you minded to consider that way?

Madam Chairman: Sure. So that we will deal with Sen. Ramdeen’s proposed amendments to clause 4 in its entirety. Okay?

Sen. Ramdeen: So I have done the one in relation to the change of the word “recruited” to “appointed”. Let me just lay the foundation for the rest of them. If the suggestion, Attorney General—well, let me first say this. The powers that are being given to these officers are powers which expressly, by the legislation itself, seem to conform to judicial powers—if we want to describe them as judicial powers, or we want to describe them as powers which allow us to interfere with the right to property—it does not make a difference to me.

The issue is that these are persons who are going to be given the powers under this legislation and, if you wish, I can actually point them out to you. It would be section 6, section 8—sections 4, 6, 7, and these sections I am referring to refer to the principal Act—section 8 and, principally, section 12. And all of the powers that are referred to in these specific sections are specific and expressed in nature to allow these officers to interfere with the right to property. It also allows, by virtue of section 4, 6 and 7, the power to demand documents and to subpoena someone to come to an enquiry, and that is backed in two ways: one, by the fact that by section 4(7), the Orders made—and they should have the same force as a summons issued by the Summary Court. That is section 4(7) and the last
section of the legislation—sorry, this is section 25 of the legislation which provides for the creation of an offence and for the punishment on wilful neglect and without reasonable cause.

Why I say that the prescription of saying that they are public officers would not satisfy is because in most of these hybrid situations where, Attorney General, you have tried to create these—I do not want to call them quasi-judicial bodies—but you have created these tribunals—for want of a better word—to be able to exercise these very intrusive powers. You have relied on these authorities of Sam Maharaj and Paul Lai as explained by the Court of Appeal.

The amendments that I have proposed are fashioned by the way in which the Tax Appeal Board—which is one of the examples that was used in those cases—that the court relied upon the fact that that type of insulation and, most importantly, in Suratt. It is the Tax Appeal Board that was the principal measuring yardstick that the Privy Council used in order to find that the Equal Opportunity Act was constitutional.

If your submission is correct, Attorney General, it would mean that in the Tax Appeal Board and in the equal opportunities legislation, these exact provisions that are expressly put into those pieces of legislation, would not need to be there, and all we need to do is to say that they are public officers. I think that the kinds of powers that these particular officers will be allowed to exercise by virtue of this piece of legislation are far much wider, deeper and intrusive to allow to just confine them or to define them for the purposes of the legislation and saying that they are just public officers.

And I do not see that there is any harm at all, if we can agree what the terms are, to expressly put it in the legislation for the purposes of providing the type of protection, because having it in the legislation simply provides you with the
assurance, that they are protected to the extent that the law gives them that individual protection as individuals.

The fact is that from the case law there are certain things that we can agree upon. The security of tenure, meaning that they are there for some type of minimum term gives them that security. The fact that their salaries cannot be—which you have agreed—interfered with to their disadvantage and I have also included the provision that is present in the Industrial Court Act which was subject to the litigation in Paul Lai, which is that after a first term of appointment, they are not cut off, because I understand your submission to be that this is a process that you envisage, is going to be long term—to use your words—and, therefore, you would not want to have persons who would be part of the process at the very beginning and then the policy of the Government falls apart because they cannot be reappointed.

So I have included the fact that they are selected for reappointment. You have the power to reappoint them. In most of these cases, the President reappoints upon the Chairman or the chief adjudication officer so recommending, and you also have the included provision that if there is any outstanding matter at the time that their term of office has expired, there is that prescription in the legislation to allow them to continue in office to complete the work and, therefore, I think the policy of the Government in putting this legislation in place—whether it be short term or long term—would be satisfied by all of these things.

The one other thing that you will understand as well is that it really adds to what you have done by seeking that they be appointed by the JLSC and there is no provision in any of the provisions here. Even if you apply 141, there is no provision in 141 to allow them to be terminated in any way and, therefore, you have the protection here for the JLSC under the proposed amendment that I have
asked you to consider in (1G) and (1F), that it allows them to resign for whatever purpose and for their reappointment by virtue of the President, and for them to be removed from office for inability and misbehaviour, or on the ground of any conflict of interest in relation to their carrying out of their functions under the Act.

I think that those are all of the provisions.

I have allowed you to have your chief adjudication officer to be there for a minimum of five years with a reappointment eligibility for another five years, which would give you 10 years which is a very long time in terms of your long-term planning in terms of getting it done, and I think that if you consider each of them, and we do that, you can still have—and you will see that I have not taken out your subjecting their terms and conditions which are expressed here to the Salaries Review Commission under section 141 of the Constitution. Because if you include the terms here, they can still be reviewed by the Salaries Review Commission, and that allows the Cabinet to do the review and for it to come to Parliament, and you have the majority if you wish to change it you can, and it gives you all the power that you need in relation to 141. I have not asked for that to be taken away from you. So you remain with your 141 subject which you have put in the legislation yourself and you have that protection.

I think if we do all of this, I think you will satisfy yourself and your Government and your Cabinet that all of the pre-conditions that the cases have said will insulate a tribunal such as this to do, and exercise constitutionally and lawfully the powers that are given to it here in a lawful and constitutional manner and, therefore, I suggest those amendments based on those submissions.

Mr. Al-Rawi: May I? Madam Chair, the submissions are compelling, they are far-reaching. They involved some significant considerations of policy, but they are also premised upon the fact of this being treated as a tribunal, and the intention of
the legislation was not to treat it as a tribunal per se, because we in fact have a tribunal in another circumstance where the adjudicative functions are actually vested in the Land Tribunal Act.

The adjudication system was intended to be a method of recording facts. It is after facts are recorded, and in the event that there is a dispute that the tribunal kicks in. So that was the disaggregation between the two. However, I do recognize Sen. Ramdeen’s views in respect of the subclauses as they relate to sections 6, 7, 8, et cetera, 12 and the potential—

**Sen. Ramdeen:** Attorney General, I do not want to cut you across, but I am sorry that I have to interrupt you, but I just want to draw your attention to one thing that might just add to your consideration. When you go to the provisions that you have asked in this piece of legislation to amend by virtue of your amendments to section 12, there is a very, very, peculiar provision that you have asked us to consider as a Senate, which is in relation to what was the old (e) of section 12(e), and you will see that there is a provision—I am sure you have carefully considered it—but you see what you are asking us to do is that the demarcation officer is allowed with the consent of the parties under (b) to adjust the boundaries of somebody’s land.

But not only that. What you have asked us to do is to allow him to recommend an adjudication officer to award compensation as may appear to the adjudication officer which is not this officer—right? I take that point—to be just in any of the circumstances. But what is difficult to comprehend about this is that when you go to the other two subsections, any person who is aggrieved by the amount of compensation given under this section may make an objection under section 20.

Now, I have highlighted the word “given” there because the exercise of power to make an award is not under this section. That is going to be—which is what you are referring to, but the legislation does not say that, and that word there that you
have not asked us to amend which says “given under this section”—I do not know if it is badly drafted, but on a literal interpretation, this “given” would be as though that Order now comes and attaches under section 3 to the land. I am just using that as an example to show you that you are not responsible for subsection (2) and you are not asking us to change it, but on a literal interpretation of it, it seems to me that that really means that somehow it attaches to the land by virtue of the word “given” because it is not under this section that you are going to get the compensation and, therefore, to buttress the point that I think we should protect it as being independent, I hear you on the fact that you are saying it is not supposed to be a tribunal, but I am suggesting to you that the adjudication power is not the only power that you want to protect.

Mr. Al-Rawi: Thank you. Just allow me a moment please. [Pause] Madam Chair—

Madam Chairman: Just one second, Sen. Ramdeen.


Mr. Al-Rawi: The difficulty that I am faced with is the CPC’s department has not seen your perspective. That is the first one. Secondly, that is only informative. It is not determinative of what the Senate itself does, but I am just putting it out on the record. Secondly, the policy and prescription—the prescription which came by way of policy was that this was never intended nor expected to be tribunal—not using the expression “quasi-judicial” but “tribunal”. So we had not yet gotten into the need for insularity, although I accept that we can improve the insulation in the circumstances of either the formulation now prescribed or by allowing for these persons to be public officers, and then they are backed by the Public Service Commission’s rules, regulations, disciplines, et cetera. The CPC’s view, which is being strongly urged for consideration, is that the public officers’ approach mirrors
that which exists under institutions which have worked well for many years: Solicitor’s General Department, the Registrar General, DPP’s Office, Commissioner of State Lands, although that is under test these days.

So the mix and match of this provision is colliding, on the one hand with the recommendations made here now, and on the other hand with the recommendations coming from the CPC’s Department. I therefore think that this is something that if we were to agree to the proposals now would require a bit more thought from a policy and prescriptive point from the Government’s end of the equation.

I am minded to ask whether this is something that the Senate would agree can be looked at. We are coming with a second set of amendments shortly, which will include amendments to these parent Acts, but albeit on a different run. We were going with the amendments to the manner in which we treat with the equitable interest and trust, et cetera in a host of Bills. The Registration of Titles to Land Bill was primary among them. Something tells me that I ought to take some more care before I accept the recommendations. I understand the logic, I understand the caution and I understand the mischief that you are suggesting should be addressed.

**Sen. Ramdeen:** One thing came to mind, which is something that I mentioned at the beginning of my contribution. You must bear in mind two things: one, these are statutory bodies that we are creating so they have no inherent power. They are only going to be given the power that the statute gives them. That is number one. Two, once they are interfering with somebody’s rights—and I understand your policy position—the policy of the courts is that they must be as narrowly construed as possible. So you have to be careful—not you. We have to be careful that Omar Maharaj and all of these cases that went to the Privy Council, once you are interfering with rights, the general principle is that the powers that are given are
very, very narrowly construed.

**Mr. Al-Rawi:** Agreed.

**Sen. Ramdeen:** And you do not want to find yourself in a position where there are two interpretations open on a piece of legislation as to whether—not tribunal, your public officers, whether they have the power to do this or they do not have the power to this, or whether you come up to the position where there is a legal challenge and the court has to determine: Does the legislation give these people this power or does it not give them that power? And you find yourself in a difficult position, because the court will then say we err on the side of the person who has the right, and that may be something that would need more careful consideration. Because if there is legal challenge, you would find that the Government—whoever that Government may be—will find themselves in that difficult position because these are creatures of statute. I just want you to be very careful about the fact—I understand this is what the policy is, and I understand this part of your plan is only supposed to be in identifying certain things and then you have another avenue where the adjudication will take place, but these powers under this particular piece of legislation are not limited only to doing that.

**Mr. Al-Rawi:** Madam Chair?

**Sen. Ramdeen:** Might I suggest that—and this is something the Attorney General perhaps may need a little time to think about—we just leave clause 4 and move on?

**Mr. Al-Rawi:** Madam Chair, I was just about to suggest the same. I was about to ask the CPC’s team to have a look at these positions. What I am minded to do, Madam Chair—this is entirely in your hands—is to understand the amendments that are proposed by the hon. Senators, if necessary—insofar as we intend to be here for quite some time, we have the option to adjourn the proceedings in the committee stage and come back to it in just a little while, and then press on with
other work, but I would not dare step in your shoes as the Chairman of this committee, but I would very much like the opportunity to consider this in a little bit more careful manner.

**Madam Chairman:** So I will therefore stand down clause 4.

*Clause 4 stood down.*

*Clauses 5 to 10 ordered to stand part of the Bill.*

*Clause 11.*

*Question proposed:* That clause 11 stand part of the Bill.

**Mr. Al-Rawi:** Madam Chairman, clause 11 is amended as follows:

A. **In paragraph (b)—**

   (a) delete subparagraph (i) and substitute the following new subparagraph:

   (i) **in paragraph (b)—**

   (A) by inserting after the words “such possessions”, the words “with the intention to defeat documentary title”; and

   (B) by deleting the word “thirty” and substituting the word “sixteen”;

   (C) by deleting the word “absolute” and substituting the word “provisional”; and

   (b) in proposed paragraph (c), insert after the words “such possession”, the words “with the intention to defeat documentary title”.

**Madam Chairman:** There is an amendment circulated by Sen. Ramdeen and the Attorney General has also proposed an amendment. Sen. Ramdeen, I would therefore call on you to discuss your proposed amendment to clause 11. Page 4 of
your document.

**Sen. Ramdeen:** Can I just ask for an intervention? On page 3 of my document, there are a number of amendments that are there, but in preparing them, the actual clause that is being affected has not being put on the left-hand column, and I do not want to miss them.

**Madam Chairman:** All of those are for clause 4.

**Sen. Ramdeen:** Okay. Good. Thank you.

**Madam Chairman:** Clause 11, page 4.

**Sen. Ramdeen:** As I explained in my contribution, the Attorney General has suggested—I have suggested a formula that I think meets the justice of the provision in relation to what the amendments to section 16(b) and (c). Madam President, I just want to indicate that the amendments to section 16(b) in clause 12 is not a section, save and except for the word “sixteen” that the Attorney General wishes to change. I am asking for the actual principal provision to be amended, which is not one of the considerations that we have before us. The Attorney General simply asked us to change the word “thirty”. I just wanted to make it clear when I am making the submission.

In relation to section 16 of the principal Act and the amendment by virtue of clause 12, the second amendment the Attorney General has asked us to make is to move “thirty” to “sixteen”.

**Madam Chairman:** Well, Sen. Ramdeen, just hold on one second. So we are dealing with clause 11.

**Sen. Ramdeen:** Which amends section 16 of the principal legislation.

**Madam Chairman:** Right.

**Sen. Ramdeen:** And I am just pointing out that I have two sets of amendments.

**Madam Chairman:** Yes.
Sen. Ramdeen: The first one relates to 16(b) of the principal legislation.

Madam Chairman: Which is not what—

Sen. Ramdeen: Which is not what the Attorney General has asked, and I am just making that clear. The Attorney General has asked us to change in that section the number of years from “thirty” to “sixteen”.

Madam Chairman: Yes.

Sen. Ramdeen: I am asking for an amendment to the principled section, which is section 16(b), after the word “State land” to put in the words:

—with the intention to exercise control and custody of the land as his own and for his own benefit independently of anyone else except someone engaged with him in a joint enterprise on the land.

And perhaps—would you wish me to—

Mr. Al-Rawi: No, I catch you. Madam Chair, Sen. Ramdeen and I are in agreement. Both of us seek to adjust, by way of clarification, the mental intention to occupy and Sen. Ramdeen has proposed—and I thank him for the suggestion—an expanded or prescriptive version of de animus. The version which we have circulated, even though we are not on it is intend to capture that, but in a slightly more succinct way.

Sen. Ramdeen: I was just going to deal with that, AG—

Mr. Al-Rawi: Sure.

Sen. Ramdeen: So, perhaps, when I am finished we can just agree.

Mr. Al-Rawi: Sure.

Sen. Ramdeen: I have looked at the suggestion that you have suggested, which is: “such possession”, the words “with the intention to defeat the documentary title”.

Now, why I respectfully disagree with that prescription is for this reason. You can
have someone as the cases have demonstrated, who is occupying a parcel of land, who does not at all know whether the land is State land or whether the land is private land. They do not even know if there is a documentary title holder, and the prescription that you have you suggested is one that would have perhaps worked before *Pye*, which is that you are really seeking to disposes the paper title holder which was the requirement before. But because the limitation Act has been interrupted to be that possession and the right to occupy independently, save and except anyone else, is the prescription.

This prescription that I have here is the prescription that President De de la Bastide had in the Persad Maharaj matter from Guyana, and I think it really succinctly sets out what it is and it will not allow you to fall into any disadvantage by limiting yourself to the paper title owner, because possession does not depend upon the paper title owner. It is simply possession. It is like in *Pye*, where you are grazing cows, it does not matter what the position is, once you have been occupying and unless you are occupying jointly, it takes care of that as well. So if you are a joint holder, you have successive periods of possession—

**Mr. Al-Rawi:** I got you. It touches all of the elements of intention as the case law traverses, including the fact that ownership may be joint and then joint enterprise may allow for in common versus joint tenancy aspects as well. I had not seen the expression “joint enterprise”. In law we have it—

**Sen. Ramdeen:** Virtually, principally because of the issue of tacking on and successes periods of possession, and I too have not seen the joint enterprise.

**Mr. Al-Rawi:** I got you. I was just saying that legislatively I have not seen it.

**Sen. Ramdeen:** But if it is good enough for Chief Justice de la Bastide, it is good enough for me.

**Mr. Al-Rawi:** Legislative draftsmen, Madam Chair, tend to find a little
discomfort with our language in court or in dicta. So I understand the rationale. I think that as expressed here, it is as clear as we can get. I was really to—because I had the same debate with the CPC’s department as to how we can capture this element of intention. When we looked to the Real Property Act—

**Sen. Ramdeen:** You can actually clean it up by saying, “engaged with him”, because I do not think that the concept of joint enterprise is one that is recognizable in civil law in any event, and I think that you could, perhaps, create your own equation by saying, “except someone engaged with him in joint possession or successive periods of possession” and take out the word “enterprise”, because I really do not think it is an enterprise. So you can say joint possession or successive periods of possession, and I think that really puts it in terms of the language that you would want to incorporate. You can suggest it to your drafters.

**Mr. Al-Rawi:** The tail end of (B) and (C) both have the succession aspects taken care of. So the original language is parcel of land, State land and has been in such possession, whether by himself or through his duly authorized agent or his predecessors entitled for a period of. So insofar as the successorship was embodied in the existing Act (B) and proposed for the new (C), I thought that we could have caught it on that tail end there. The question is—

**Sen. Ramdeen:** The joint.

**Mr. Al-Rawi:** Yes. Stopping joint is fine. So with the intention to exercise control and custody, I am sort of wondering about the control and custody aspects being separated as opposed to you just using the word “possession” with the intention of possessing the land as his own and for his own benefit. You see, desiccating it—

**Sen. Ramdeen:** I think we should stick with the control and possession, because it makes it very defined. The possessions are a very fluid concept and the intention
is linked directly to the control and the custody.

**Mr. Al-Rawi:** The thing that I am worried about here, and I would appreciate your view, through you, Madam Chair, is where control and custody is disaggregated, where someone is in occupation and then they relinquish control by allowing someone else and, therefore, the custody aspect falls somewhere else. So you see this control and custody may not capture the situation.

**Sen. Ramdeen:** The thing about it, in the Harripersad Kissoon which is mostly where all these problems come in where you have in-laws. So you have like a grandmother who allows her in-laws to come in and her children to come in, but she remains the person in control. You would have people who might say they are in custody of the possession of the thing, but the actual law only prescribes that protection to the person who is in control.

So you might have everybody living there and saying they want to be there, but the person who is in control, meaning the matriarch, is really the person who only the limitation rights will be prescribed to and, therefore, you do not want to extend what the law is at present in a statutory form to persons who might not be entitled to that type of protection. So you want to limit it to that extent also, because you would have a lot of people—even before we had suggested this—you have a lot of people who jointly occupy land together in a family setting.

6.10 p.m.

**Mr. Al-Rawi:** I was thinking about the Lakhan case in particular where we had the in-law situation come in and how to make sure that we did not—well, the thing that causes a red flag to go up in mind with it. I am comfortable with the intention and the mischief which we need to treat with, but I am wondering if it can be abused because of the division between the controller—

**Sen. Ramdeen:** It is also conjunctive which gives you that extra protection. The
problem with these adverse possession cases is that everybody wants to be an adverse possessor and the problem is you do not want to cast the net wider than the law allows you to do it and it presently stands. So if you conjunct the control and the custody together with the intention, the purpose of the law is to strike a balance between people who are in control and in custody of the parcel of land, but, at the same time, you may also have to cater for persons who are there with the consent. And that is why it becomes a problem because you have people who have implied consent. “You got me”?

**Mr. Al-Rawi:** “Gotch’a”. Madam Chair, may I ask us to stand down this particular clause, again just to allow for the reflection on it, if it is convenient to the honourable Senate?

**Madam Chairman:** So clause 11 is stood down for further consideration.

**Clauses 12 to 20.**

*Question proposed:* That clauses 12 to 20 stand part of the Bill.

**Madam Chairman:** Sen. Ramkissoon.

**Sen. Ramkissoon:** Thank you, Madam Chair. In relation to the Attorney General’s wrap-up in relation to clause 20, and if you look at clause 20, this is the minor with the majority of—

**Mr. Al-Rawi:** Sorry, I am not hearing you very well, I apologize.

**Sen. Ramkissoon:** Sorry. In relation to clause 20, from your wrap-up you said that the many adjudication officers would have been captured with “an”, as opposed to “the”, and if you look at clause 20, it is there to “notify the Adjudication Officer in the prescribed form and manner the grounds”—

**Mr. Al-Rawi:** You mean section 20 or clause 20?

**Sen. Ramkissoon:** So, it will be clause 20.

**Mr. Al-Rawi:** Yes. And you are saying that we omitted to include a section of the
Act which has it, correct?

**Sen. Ramkissoon:** Right.

**Mr. Al-Rawi:** Which section is that?

**Sen. Ramkissoon:** Twenty.

**Mr. Al-Rawi:** Section 20. I am looking at it with you right now.

**Sen. Ramkissoon:** Okay.

**Mr. Al-Rawi:** So, what we did there is we did not have “Adjudication Officer”, we had amended it to be the “Chief” Adjudication Officer.

**Sen. Ramkissoon:** That is subsection (2) or subsection (1)?

**Mr. Al-Rawi:** No, that is section 20(1) where “Adjudication Officer” originally appears in that section towards the end of subsection (1). We, in this Bill, amended “Adjudication Officer” to mean the “Chief” Adjudicating Officer, so it was not “Adjudicating Officer” standing on its own. Similarly, in subclause (b) we changed “the” Adjudicating Officer to the “Chief” Adjudicating Officer. So that is why we said that we were not—that is why we said we did not need to amend it.

**Sen. Ramkissoon:** Okay. Just for clarification, so in clause 15—

**Mr. Al-Rawi:** Yes, that is correct.

**Sen. Ramkissoon:**—it says:

“Section 20 of the Act is amended—

(a) in subsection (1), by inserting after the word ‘manner’ the word ‘of’”

So that is good.

And:

“(b) by inserting before the words ‘Adjudication Officer’ wherever they occur, the word ‘Chief’”.

So, it is 20(1), but 20(2) we have, The Adjudication Officer. So is it, the “Chief” Adjudication Officer “shall within thirty days after the receipt of the grounds…”?
Mr. Al-Rawi: Yes.

Sen. Ramkissoon: So, section 20 of the Act is amended by inserting after the words—

Mr. Al-Rawi: Yes. So, wherever Adjudicating Officer appeared in section 20—if you look to the chapeau of clause 15, clause 15 says:

“Section 20 of the Act is amended—

(b) by inserting before the words ‘Adjudication Officer’ wherever they occur,”—So that is in (1) and (2)—“the word ‘Chief’”.

So, therefore, we did not need to take care of it in clause 20.


Mr. Al-Rawi: Keen eyes, however.

Sen. Ramkissoon: No, I just wanted to make sure I had it right.

Mr. Al-Rawi: Absolutely, sincerely appreciated.

Sen. Ramkissoon: Thank you.

Question put and agreed.

Clauses 12 to 20 ordered to stand part of the Bill.

Madam Chairman: Attorney General, well, we have one further amendment proposed by Sen. Ramdeen, but it is a new clause which can only be dealt with when we are finished with all the other clauses.

Mr. Al-Rawi: Madam Chair, subject to your consideration and direction. I propose, insofar as we anticipate going on to other work this evening, I propose that we adjourn the committee stage to facilitate deliberations on the clauses which we have stood down. But I would also like to consider the recommendation by Sen. Ramdeen for the insertion of a three-fifths majority aspect.

I must add, however, that I have an immediate answer to that now and that is that it is not possible, not because I disagree necessarily with Sen. Ramdeen, not
because I think one could try to hang a hat on Suratt, but because the rules are that the Act itself, which is part of the laws of Trinidad and Tobago, that Act was not passed with a three-fifths majority. And if I had to put in the three-fifths clause I would have to repeal and replace the entire Act which is a different formulation. I certainly do intend, however, to take it under advisement, and if necessary, because one would not want to have an EOC challenge itself as we had in Suratt—[ Interruption] I understand, but it means that the method where—I would have to bring a new Bill.

Sen. Ramdeen: But I just wanted to point one thing out to you, your strong point was that it was as a matter of policy, the position here is that you are just doing your preliminary work which will then be taken over by the tribunal. I just want to point out one thing to you, if you can go to section 15 of the principal act, look at the powers that are given to the actual people that we are appointing here which is the adjudication officers that we are appointing, and look at what happens under section 15 of the principal Act, and I think you would see exactly what I am talking about. If there is a dispute as to any boundary, whether indicated to the demarcation officer or not, or as a result of demarcation or readjustment made by him which the demarcation is unable to resolve, then look at the power that the adjudication officer is given under subsection (2):

“The Adjudication Officer shall adjudicate upon and determine any dispute referred to him under subsection (1), having due regard to any law which may be applicable, and shall make and sign the record of the proceedings”.

Now, that is a different formulation of what we have discussed before, and that, in and of itself, whether you call it a tribunal or you do not, this is something that is determinative of the rights of the parties as up to this point, because hereafter you then move to a different tribunal. So, while you are taking the advice just have a
Mr. Al-Rawi: I understood it that way, and, if I could say, I have also added into that the issue of the pseudo summons, the notice, et cetera. And why I said it, but albeit quickly, about the hanging of hat on Suratt is because of the due process argument that the tribunal can have, go forward. So I have taken on the point squarely. I understand the submission, and I know it is made genuinely in the attempt to have the law as sound as possible. But it is something that, from the CPC’s perspective, I would have to do by a full repeal and replace of the law with the three-fifths insertion into the parent Act itself, as in fact happened with the Anti-Terrorism Act. Anti-terrorism was dealt with that way in 2009 and April 2010, for the very same reason. So it is a solid point which we will undertake to look at, and if necessary to also treat with. But I am not in a position on that point to agree with that just today, but it is a very strong observation made by my learned friend which the Government will undertake to look at clearly.

Madam Chairman: So, hon. Senators, based on the deliberations we will suspend this committee and we will revert to it later on in today’s proceedings, okay? So the Senate will now resume.

   Senate resumed.

   LAND TRIBUNAL (AMDT.) (NO. 2) BILL, 2017

Madam President: Attorney General.

The Attorney General (Hon. Faris Al-Rawi): Thank you, Madam President. It is a little bit longer than the time I had—I think it was on Wednesday—to reset. Madam President, I beg to move:

That a Bill entitled an Act to amend the Land Tribunal Act, 2000, be now read a second time.

Madam President, may I ask if it is the will of the Senate that in fact we also
debate a very short Bill being the Crown Suits legislation at this time, that would be an Act to repeal and replace the Crown Suits Limitation Ordinance? And I ask that, most respectfully, because at committee stage we will be taking the two separately, so that one would have good advantage to take full time and fulminations in the course of that. May I ask if that is the will of the Senate?

**Sen. Mark:** No.

**Madam President:** Continue, Attorney General, there is no agreement so the Bill will have to be done separately.

**Hon. F. Al-Rawi:** Would it be infra dig to ask for a division on that?

**Madam President:** No. It does not matter, Attorney General, it has to be a unanimous—[Crosstalk] Yes.

**Hon. F. Al-Rawi:** I see. I said so only out of pure hope and desire that good sense would prevail in this Senate, but I thank Sen. Mark for ensuring that there is consistency in the approach by the Opposition. So, Madam President—

**Madam President:** Just one second, Attorney General. I remind Members of my earlier warnings about loud comments across the floor, shouting. I warned you before that that will not be tolerated. Attorney General, continue please.

**Hon. F. Al-Rawi:** Thank you, Madam President. Madam President, this Bill before us, the Bill to amend the Land Tribunal Act, is squarely intended to articulate with the land package as it is referred to. The Government proposes, Madam President, to operationalize a package of laws which are interrelated, and they are the Registration of Titles to Land Act, the Land Adjudication Act, and this particular Act, the Land Tribunal Act. Madam President, the Land Tribunal Act is an Act of Parliament which was considered in 1999 under the hand of then Attorney General, Ramesh Lawrence Maharaj. It was brought into law via the process of passage in the House of Representatives on the 15th of November, 1999.
It was passed in the Senate several months later on the 4<sup>th</sup> of April, 2000, and then the Senate amendments were agreed to by the House of Representatives on the 4<sup>th</sup> of May, 2000. That parent Act, the Land Tribunal Act, is comprised of 18 sections, and today, Madam President, we seek through eight clauses in this Bill to amend sections 2, 3, 4, 5, 7, and then in clause 8 to put in a general amendment provision.

Madam President, this particular Land Tribunal Act, as it was created, was created in a context then in Trinidad and Tobago when the issue of constitutionality and independence of officers of tribunals was not quite sharply into focus in the fashion that was brought into Trinidad and Tobago’s jurisprudence through the passage of several of our cases, now landmark cases, passing right up to the Privy Council. Indeed, the amendments which this Bill seeks to make are squarely brought to treat with what is observed unconstitutionality in the Land Tribunal Act, the parent Act. The Bill which we seek to deal with today seeks through the first substantive clause, and that is clause 3, to cause an amendment to section 2 of the Act. Section 2 of the Act is firstly intended to treat with the definition of “Adjudication Officer”. Madam President, is it possible to ask the Leader of Government Business to just move a Motion that we suspend just for a moment?

**Madam President:** Well, there is no need, I can suspend.

**Hon. F. Al-Rawi:** Thank you very much, should it please you, just for five minutes.

**Madam President:** Yes. Hon. Senators, I will suspend the sitting for 10 minutes and we will return at 6.36.

6.26 p.m.: *Sitting suspended.*

6.36 p.m.: *Sitting resumed.*
Madam President: Attorney General.

Hon. Faris Al-Rawi: Thank you, Madam President, and I thank the honourable Senate for allowing the indulgence. Madam President, we also had the opportunity during the short break to discuss how we can narrow issues further which was very opportune in terms of the general run of deliberations. So permit me, Madam President, to indicate that the Government proposes to move ahead with narrowing of issues and to consider the recommendations of all hon. Senators in a more tight time frame, and if necessary to consider it in another fashion as well.

Madam President, I was saying a little while ago that the Land Tribunal Act, which we are seeking to amend via this Bill, and via the eight clauses in this Bill, seeks to treat with the heart of the tribunal aspect of the land package. Let me put this into operation, as we know the land laws of this country stand in a significant state of antiquity. We have it already that we are treating with two systems of land management. On the one hand, of course, we are treating with the Registration of Deeds Act, and the Conveyancing and Law of Property Act which stand on one side. We are also treating with the Real Property Act which stands on the other side.

The Real Property Act was introduced into our laws in 1892, we are now 126 years later. The Conveyancing and Law of Property Act was introduced in 1845, we are now 173 years later, and the Registration of Deeds Act, Chap. 19:06, was introduced in 1884, we are now 174 years later. This Bill and the amendments to the Land Tribunal plug effectively the dispute mechanisms into the land registration process. With the Registration of Titles to Land Act we caused the manner in which the Registrar will treat with the recording of title in an improved environment to what the real Property Act looks like. We base it upon a folio system where there are four folios that record the various types of interests. We
deal with adjudication. We deal with compensation. We deal with the freezing of searching of interest and titles, and we essentially try to put Trinidad and Tobago into a case where there is an indefeasible title, except of course for issues of fraud, et cetera, which are the usual caveats.

The land adjudication process is intended to move what was only a 15 per cent success rate for voluntary title recognition, which is what the Real Property Act or Torrens system contemplated into a compulsory registration exercise where the State takes the burden of surveying, demarcating, and then recording the facts of positions, which is where the Land Adjudication Act comes in. And then when there are disputes to be had in the land adjudication process, and in certain aspects of the registration of title process, we refer it to a land tribunal.

The Land Tribunal also proposes, Madam President, that certain other laws where adjudicative functions are managed, and in particular those laws are the State Lands Act, Chap. 57:01; the Town and Country Planning Act, Chap. 35:01; the Pipelines Act, Chap. 35:51; the Advertisements Regulation Act, Chap. 35:53, and the Land Acquisition Act, No. 28 of 1994. In those five pieces of law there are adjudication functions where in the State Lands Act, sections 22 to 24, allow a magistrate to make certain determinations. Under the Town and Country Planning Act, in section 16, a magistrate has judicial function. In the Pipelines Act, sections 9, 10, 11 and 14, a magistrate again has certain functions, and the Advertisements Regulation Act it is the Minister involved in section 7 of that Act, and the Land Acquisition Act, section 11, we have a judge of the High Court.

Those five pieces of law we also seek to have utilization of the land tribunal process. So this land tribunal, which is created by this Land Tribunal Act, 2000, which has been on the books of Trinidad and Tobago for now 18 years, this Land Tribunal Act really is a core articulating brain and centre function for a number of
laws. So that is beyond the Registration of Titles to Land Act and the Land Adjudication Act.

In the original Act, Madam President, we saw the utilization of a tribunal under Part II. There was an establishment and jurisdiction of land tribunal determined and declared under Part II which began with section 3 of the parent Act, and, Madam President, and which continue through the successive sections until we got to Part III. So we went from sections 3 to 12. Madam President, in the original Act the tribunal, which is the Land Tribunal, it was established, it was deemed to comprise a chairman and a deputy chairman, and such other members appointed under the section. The chairman and deputy chairman were appointed by the Judicial and Legal Service Commission, and they were supposed to be attorneys-at-law of at least 10 years’ experience. But the other members of the tribunal, not exceeding six in number, were to be appointed by the President.

Now, we all know that the reading of the word “President”, pursuant to the operation of the Constitution between section 74 and section 80 of the Constitution, one reads “President” to mean the Cabinet of the republic of Trinidad and Tobago. So therefore, the President acts on the advice of Cabinet. And the chairman, deputy chairman, and other members their term was prescribed to be five years, and their terms and conditions were done on the advice, again of the President, which would of course be directly related back to the Cabinet. This particular formula in the original Act also allowed for temporary members to the added, and when one looked to that structure, that is the chairman and deputy chairman, being JLSC creatures, meaning backed by a service commission, and therefore meeting the *R v Hinds* and other principles for insulation from Executive interference. The problem that we saw with that tribunal was the utilization of other members that were effectively Cabinet appointees.
There was a further complication inside of there, in that there was no disaggregation between the functionality of persons in this whole matrix. Of course we are now all the much wiser, post the legislative interpretation in cases that have now become landmark features in our jurisdiction. I refer to, of course, the case of *Sam Maharaj v the Prime Minister* of Trinidad and Tobago, and in particular the Judicial Committee of the Privy Council in their 2016 UKPC judgment, which is Privy Council Appeal No. 0056 of 2015. I, of course, refer to the case of *Hinds v the DPP*, which is a well-known case arising of the Court of Appeal of Jamaica. I refer to the case of *Kenneth Suratt v the Attorney General*, again a Privy Council Appeal, No. 84 of 2006, a case which we are all very well familiar with. And of course the case of *Paul Lai v Attorney General* which in fact is a case which my learned friend, Sen. Ramdeen, appeared in on behalf of the respondent, the Attorney General, and that is Civil Appeal No. P129 of 2012.

There are numerous examples of appellate bodies which now adopt an improved structure as a result of the case law, and the review of the Legislative Review Committee and of the Cabinet on the Land Tribunal Act determined that what existed in section 3 would have been deemed to be unconstitutional from that which is now properly well-established law in Trinidad and Tobago.

Consequently, the recommendation arising out of clause 4 of the Bill, which treats with an amendment to section 3 for the establishment of the tribunal, is that we entirely reformulate the tribunal. We now say that a tribunal is to be known as the Land Tribunal, and we specifically declare that it shall be a superior court of record and that it shall have, in addition to the jurisdiction and powers conferred on it by the Act, all the powers inherent in such a court. That is an important and empirical improvement to the jurisdiction and power expression of the tribunal.
We then go on to take care of the issue of the problem between the mixture of the JLSC appointees and the non-JLSC appointees. In the new subsection (2) we propose that the tribunal shall comprise the chairman, the deputy chairman and four other members, all of whom shall be attorneys-at-law of Trinidad and Tobago of at least 10 years’ experience in the practice of land law, and who shall be appointed by the President on the recommendation of the Judicial and Legal Service Commission.

What we propose in the establishment of chairman, deputy chairman and four members, therefore six members via the JLSC, is that we have those persons sitting as the adjudicators, and only those persons.

Now the reference in subclause (3) to sections 104 and 107 of the Constitution applying to the appointment of the members of the tribunal, is very important in anchoring the constitutionality of this particular proposed amendment. And if one turns to these sections of the Constitution, it is instructive to have them read into the record so that one can understand the import of these positions.

Section 104 of the Constitution falls under the heading of appointment of judges. And 104 of the Constitution treats with the manner in which judges, other than the Chief Justice, shall be appointed by the President, acting on the advice of the Judicial and Legal Service Commission, and it then goes on to the prescriptive measures and how the appointments operate.

Madam President, 105 of the Constitution deals with the qualifications of judges; 106 of the Constitution deals with the tenure of office, and that says specifically:

“Subject to section 104(3), a Judge shall hold office in accordance with sections 136 and 137…”—of the Constitution, and that—

“No office of Judge shall be abolished while there is a substantive holder of
that office.”

In other words then, these members of the tribunal are being insulated from any form of attempt to abolish their offices, the most basic of positions, which is specifically set out in prescriptive terms at section 106 of the Constitution.

Madam President, 107 of the Constitution says:
“A Judge shall not enter upon the duties of his office unless he has taken and subscribed the oath of allegiance and the oath for the due execution of his office set out in the First Schedule.”

Now expressly therefore, incorporated into these provisions are sections 136 and 137 of the Constitution, and these sections are very important for the consideration of the hon. Members of the Senate. That falls under the rubric Special Offices, and section 136 deals with the tenure of special offices, and that treats with the usual and now tried and tested prescriptions in sections 136(1) right through to 136(16) of the Constitution.

Madam President, 137 of the Constitution is where you look to the manner in which removal from office of a judge is factored in the Constitution, and that is 137, if you look at subsection (1) right through to subsection (4) of the Constitution. So this Bill proposes an expressed incorporation of the supreme law of Trinidad and Tobago, specifically being sections 104 to 107 inclusive of the Constitution, and therefore also incorporating, subject to 104 (3) of the Constitution, section 136 and section 137 of the Constitution.

We go further to indicate that:
“The Chairman, Deputy Chairman and other members of the Tribunal shall be appointed on such terms and conditions as shall be fixed by the President in accordance with...”—a new subsection (3)—which this Bill proposes.

We then describe in the new subsection (3)(1), we get in subsection 3(5) that:

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“The quorum of the Tribunal shall comprise the Chairman or Deputy Chairman and two other members selected by the Chairman or Deputy Chairman.”

So therefore, out of the six persons appointed, we expressly provide for what the quorum shall be and, again, we are only having quorate those persons who are backed by the protection of the Constitution and therefore insulated from any argument of the *R v Hinds* type, of the Executive interference type in this specific structure.

We then propose in a new section 3A that we actually introduce the fact that the President may appoint lay assessors. And this provision of lay assessors, where you are not to have law assessors exceeding six in number, these lay assessors shall come from such persons as appear to the President to be suitably qualified by virtue of knowledge and experience in various disciplines identified in subsection (4). Those lay assessors come from particular fields, being at subsection (3):

“(a) local government;
(b) town and country planning;
(c) environmental planning or environmental science;
(d) architectural, engineering or surveying;
(e) land valuation;
(f) agriculture;
(g) land management or administration;
(h) land law; or
(i) any other discipline in respect of which the Tribunal needs assistance in determining any issue which engages its attention.”

Now these lay assessors, I must add, I must caution, I must qualify, have no functionality in the decision-making aspects. Decisions are to be made only by the
JLSC-appointed persons, who are the persons comprising the court of superior record and whose terms and conditions are entrenched and properly catered for.

It is interesting to note that the lay assessors, as we provide in the new proposed 3A subsection (4), that they shall hold office for a term not less than three years, as may be determined by the President at the time of his appointment, and that they are eligible for reappointment.

Madam President, we go a step further in managing the insulation of terms and conditions in the proposed introduction of a new subsection 3B. We say in the new section 3B(1) that:

“The terms, conditions and allowances of the members of the Tribunal, including the Chairman and Deputy Chairman, shall be determined by the Salaries Review Commission in accordance with section 141 of the Constitution.”

This section 141, we are all familiar with, is the SRC formula. It is the formula which this Senate has passed and considered in the land valuation mechanisms that we just treated with when we were dealing with the property tax and land valuation tribunals. So this is the current formula, the prescriptive formula that we use in law for the establishment of tribunals, post-Suratt, post-Sam Maharaj, et cetera.

Madam President, we say specifically, and this is in the new subsection 3(b) subsection (2):

“The salary, remuneration, allowances and other conditions of the Chairman, Deputy Chairman, other members of the Tribunal, and lay assessors shall not be altered to their disadvantage after their appointment and during their tenure of office.”

That is to take care of a very important consideration in how one operates the SRC report under section 141 of the Constitution. Let me explain that.
The SRC under section 141 of the Constitution conducts an exercise, makes a recommendation. The last SRC report, for instance, was the 98th report. They submit that report to the Cabinet. The Cabinet then considers what it wishes to have. The Cabinet then brings the report to the Parliament. There is a debate in relation to it. The Parliament determines what it will accept, and then the Ministry of Finance issues circulars to the Ministry of Finance, state enterprises or other provisions.

That is how we operationalize the SRC report, as accepted by the Parliament and those terms and conditions which affect judicial capacity are dealt with as charges against the Consolidated Fund. But in this section 141 it is important to note that what we provide for here is an expressed statement that terms and conditions cannot be altered to their disadvantage. Let me give a live example of why that is important.

In the 98th report of the SRC, the SRC for instance, in relation to parliamentarians, said that parliamentarians should no longer have the benefit of tax-free concessions for their motor vehicles. That was in stark contrast to the basic provision that you should not derogate from terms and conditions. So to take care of that mischief, we have made sure to expressly provide that these office holders, all of the persons in the tribunal and including lay assessors, that you should not derogate from terms and conditions to their disadvantage.

Madam President, we are very careful in the proposed subsection 3(c), that we say:

“Decisions of the Tribunal shall be made by the members appointed under section 3.”

That is expressly stated therefore that it is only the JLSC-appointed persons who are backed by the service commission position, that they are the only persons that
engage in the judicial functionality or decision making aspects.

We propose in amending section 4 of the parent Act, which is pursuant to clause 5 of the Bill, that where a member of the tribunal or a lay assessor, as the case may be, has a pecuniary interest, direct or indirect, in any proceedings before the tribunal, that they shall inform the Chairman accordingly and cease to take part. We then provide by the insertion of a new subsection (2), that:

“Where the Chairman has a pecuniary interest, direct or indirect in any proceedings before the Tribunal, or is a member, officer or employee of any public body or local authority that is a part of any such proceedings, the Chairman shall inform the Deputy Chairman accordingly, whereupon the Chairman shall cease to take part in the proceedings.”

This is a unique insertion to avoid conflicts of interest. It is an expressed provision provided into the law. It is a very commendable provision, because it makes sure that we can have a positive obligation upon decision makers to avoid conflicts of interest. Obviously, a positive assertion and obligation comes with it the consequence that if you fail to do it, that there is an interdiction and an action that can be met against persons falling into or running afoul of this particular provision.

Section 5 of the Act is quite an important section. We propose through clause 6 of the Bill to treat with amending section 5 of the parent Act. Section 5 of the parent Act is the jurisdiction of tribunal. What we are doing here is in section 5 (1) we are saying subject to this Act and any other written law, the tribunal shall have jurisdiction, and then we specify jurisdiction. First of all, to hear and determine appeals against a decision of the adjudication officer.

Let me draw this carefully, because it relates to something which we have treated with in another debate. It is the adjudication officer who pushes the record of facts to the tribunal. The tribunal is the entity that deals with disputes or
objections. There is the right of objection to the tribunal. There is the right for the tribunal to treat with disputes. In amending section 5(1)(a), we make sure that we maintain the jurisdiction to hear and determine appeals against decisions of the adjudication officer, to review any recording, cancellation or recording, any revision of registration, any decision of the Registrar under the Registration of Titles to Land Act, and to direct the correction thereof. So this is the very important vesting of jurisdiction in the tribunal.

We also allow the preservation to hear claim for compensation under the Registration of Titles to Land Act. Specifically, we sought to expand section (c), that is section 5(1)(c), by reformulating it, and this is what we prescribe in new subsection (c) through (g) inclusive:

To declare a provisional title as absolute for the purposes of section 16(3) of the Land Adjudication Act. And that is where we have the ability, as we propose now, that private lands with a 16-year prescriptive period, State lands with a 30-year prescriptive period, that these matters of provisional titling go to the Land Tribunal, and the Land Tribunal is the one that will treat with that property right. So therefore we vest the property right, quite clearly, as Suratt provides, in a tribunal which is insulated from executive positions.

Of course we all know the hallmark of Suratt is saying that not every section 4 or section 5 right must be treated with by a three-fifths majority. Therefore the Suratt principle comes to treat with any allegation as to the need for three-fifths majority in the original 2000 Act, as it was cast then. Because we are not repealing and replacing any one of the Acts. We are not repealing and replacing the Registration to Titles of Lands Act. We are not repealing and replacing the Land Adjudication Act. We are not repealing and replacing the Land Tribunal Act.

In the new subclause (d) we say that the tribunal’s jurisdiction also includes
the power to hear and determine applications relating to adverse possession of State and private lands. We go further: Shall have jurisdiction to make vesting orders. Jurisdiction to give directions to the Registrar under the Registration to Titles to Land Act. To hear and determine any other matter that may be assigned to it by order made under section 12. And that is a very important omnibus provision, which allows for improved jurisdiction and function to be on a rolling and evolving basis.

Madam President, we then next go to some tidying-up in section 7 of the parent Act. That is done by way of clause 7 of the Bill. It is a minor adjustment of adjudication officer, and then we come down to the fact of making sure that the appellate functions are just. Even though this is a minor amendment where we change “A”, “O”, Adjudication Officer to adjudication officer with “a” and “o”, this section 7 of the Act is where we deal with appeals to the tribunal.

I want to just put it on the record that the appeals coming are appeals—we prescribe the time within which the notice of appeal may be lodged. We deal with appeals under this section. The tribunal may affirm a decision. It may make such orders as it thinks fit. But what we did is we removed the aspect in subsection (3) where we had the remit going back to the adjudication officer with directions. We removed that function because we did not want to have adjudicating features in the land adjudication exercise. By “adjudicating features” I mean we sought to preserve the tribunal acting quasi-judicially or judicially, insofar as one may allege it is a court of superior record. We wanted to separate this out, so the tribunal is the adjudicative arm of it really.

The Adjudication of Lands Act, that deals with really recording. There is a difference between the two. The term “adjudicating” in the other law may be a bit misleading. It really is recording of information which is then sent to the tribunal.
We of course then go to orders of the claim for compensation provisions in section 8, 9, 10, 11. We next go to clause 8 of the Bill. Clause 8 of the Bill treats with a general wrap-up provision. Let me just refer to clause 8 specifically. So clause 8 of the Bill is amending and deleting the words “Adjudication Officer” into “adjudication officer”, but essentially what we are doing is really just treating with the guts of the tribunal. Making sure the tribunal is properly accounted for in terms of the current jurisprudence, which binds Trinidad and Tobago from the Privy Council come down. Making sure that we insulate the tribunal from Executive interference. Making sure that we have the terms and conditions of the tribunal members and the lay assessors properly insulated.

We are borrowing from the supreme law of Trinidad and Tobago, and that is no small thing. We are incorporating the utilization of the SRC formula in section 141 of the Constitution. We are going further than the SRC formula to make sure that a Cabinet does not have the ability to derogate from terms and conditions in the manner in which it accepts the recommendations of the Salaries Review Commission, which section 141 provides.

But this Bill in toto, when considered in the matrix of the Registration of Titles to Land Act, the Adjudication of Lands Act, this Bill proposes a curing of constitutionality which existed in the Land Tribunal Act, 2000 and it takes us into a much safer environment when one looks to the operationality of the law.

I propose to treat with observations that hon. Senators may make in the wind up of this particular Bill, and very much so in the considerations in the committee stage, and I beg to move.

*Question proposed.*

**Sen. Wade Mark:** Thank you very much, Madam President. I am very happy to join this debate on a Bill that deals with the Land Tribunal, and that will in fact
have, not the original powers that were envisaged in the 2000 parent legislation, but when we go to the actual Bill before us there are additional powers given to this Land Tribunal. Those powers are very far reaching, worse than what we were discussing earlier. We have a Bill before us that ought to take into account section 4, subsection (a) of the Constitution of the Republic of Trinidad and Tobago.

Madam President, I want to say from the very outset that the Constitution of our country enshrines certain fundamental human rights and freedoms, and 4 subsection (a) speaks to the right to the enjoyment of property and the right not to be deprived thereof except by due process. Anyone who is going to tamper with my property rights, they need a special constitutional majority to do so. [Desk thumping] So I put the Government on notice very early that this Bill that we are about to debate is not as simple as meets the eyes, and I will explain why.

When we talk about this particular tribunal, what are we talking about? We are talking about a law that gives this body the power according to the 2000 parent Act, to hear and determine appeals from any decision in the course of the land adjudication process, and from the decision of anybody relating to the use and enjoyment of land, the division, the development and the compulsory acquisition of land.

Madam President, if you go to section 5 of this legislation, and we juxtaposed it with what—I would like you to go to, section 6 of the Bill that is before this House. Apart from the hearing and determination of appeals against decisions of officers called “adjudication officers”, and to hear claims for compensation and to hear and determine matters assigned by order, in section 6 of the legislation that is before us, this tribunal which is a superior court of record—and I will deal with the matter of the AG, the hon. Attorney General that is, saying that this amendment has sought to cure certain defects that were in the original law,
and by making it a superior court of record. I will show you how that is partly so and partly not so.

In section 6 of the legislation we are being asked, or the Bill is giving the following additional powers to this tribunal. Under 6(c) I am not reading the entire thing, I am just summarizing as you have guided us, they are to declare provisional titles whether they are absolute. So provisional, they can say that provisional is now absolute. They can hear and determine applications dealing with what is called “adverse possession”.

They have the power to make vesting orders, and that is in the case of declaring absolute titles, and they have the power to give directions to the Registrar under various Acts, including the Registration of Titles, and they have the power to hear and determine any other matter that may be assigned to it by Order made under section 12 of the Act.

So, Madam President, this tribunal, as we are told in the legislation, is now a superior court of record. I was doing my research on this concept of a superior court of record, not being a lawyer, being a layman, and I have observed that when we talk about a superior court of record, where judges or persons with the power of a judge under the Constitution, they gave to these particular bodies the protection, so that there would be not executive incursion into their decision-making and actions. So they are insulated and they are protected by the Constitution. So when we talk about a superior court of record, we are talking about judges, magistrates, et cetera, who have that insulation and protection as given by the Constitution.

But what are we seeing here? We are seeing where this tribunal, in accordance with clause 4 of the legislation before us, we are seeing where this tribunal is divided into parts or sections.

7.15 p.m.
On the one hand, Madam President, you have a chairman and you have a deputy chairman, they have a certain period of experience and they are both attorneys-at-law, they have a minimum period of experience as I said. They are appointed by whom?—by the Judicial and Legal Service Commission, so they are given a certain kind of insulation.

And, Madam President, there are other members who are being appointed along with the chairman and the deputy chairman, and they too have a certain kind of protection.

But, when we go into subclause (5) we observe a certain kind of development which I found to be a bit strange. In subclause 5 we are told that a quorum will be made up either of the chair or the deputy chair and two other members selected.

Madam President, if we are talking about judicial powers and we are giving these people judicial cover or coverage, why are we in legislation seeking to determine how a quorum and who will determine a quorum? A quorum should consist of four persons and which would include the chairman, and let those people make their determination, that is what independence is about. But we are being told in this legislation that the chairman shall select the two other members who will now quorate. Why is that so? Why is it necessary for us to have such an arrangement in legislation? Let those people who have been appointed judicially, let them decide who will make up their panel.

Madam President, even we decide these things here when we go and we set up our Joint Select Committee, we appoint, we select our chairman our vice-chairman and we determine our business. So, why is it we are seeking to tell this body how they should run their business?

Madam President, I go further. We go to subclause 3A of this legislation,
and what do we see? What do we see? But, before I go to 3A, I want to let you know that I have looked at the Environmental Commission and the court that operates that body, the environmental court. I have looked at the Tax Appeal Board, I have examined the Industrial Relations Act and the establishment of the Industrial Court, and each one of those institutions has what is called, a registrar. And here it is we are establishing a supreme or superior court of record and there is no provision in the legislation for the establishment of a registrar to run the affairs of this body that is the equivalent of a superior court of record.

So, I want to indicate—and in doing the research, Madam President, we have discovered that in Zambia there is, in fact, a tribunal of the type that we are discussing here, they too have almost—like a superior court of record in the form of this Land Tribunal having that kind of power. And you know, Madam President, they have a different way of comprising their tribunal, in addition to the composition of their tribunal, they have also established a registrar for the tribunal.

So, I serve notice on the Government that one of the things that we will want them to consider in strengthening this legislation is to look at the composition of the tribunal, and look towards establishing a registrar who will be responsible, as almost like the secretariat, for its administrative functions. So, we will put that forward as a suggestion and a consideration for the Government and the Attorney General in this instance.

Madam President, I want to also ask you to look at clause 4, subclause 3A, and there is where the breach, the almost violation of the separation of powers comes into play. The hands of the Executive get into the activities and the independence of this tribunal and its activities and its personnel. So on the one hand, we are saying that we have a tribunal which is equivalent of having what is called the equivalence of a superior court of record, and then you give them certain
indirect independence because of the appointments.

But, as we turn the pages we see the hand, the heavy hand of the Executive, and I am a bit disappointed that when the hon. Attorney General was making his intervention a short while ago, he talked about the lay assessors, he spoke also about the President appointing the lay assessors, but for some strange reason, nowhere did the Attorney General alert this honourable House to the fact that the Executive, the Cabinet of the country is equivalent to the President of the country.

[Desk thumping]

So, Madam President, here it is we are being told that lay assessors are going to be appointed, and we outlined the fields:

“(a) local government;
(b) town and country planning;
(c) environmental planning…
(d) architectural,…
(e) land valuation;
(f) agriculture;
(g) land management…
(h) land law;…”

—these are lay assessors. And, Madam President, you know what?—we are being told in 2018 that we are going to give this tribunal the power of a superior court of record so we could maintain its independence, and whilst we are saying this, what does the Government do on the other hand in an effort to get involved in the business of the land tribunal?

And, Madam President, remember this land tribunal in spite of what we were told by the Attorney General that these lay assessors will not be involved, of course they are not going to be directly involved in the decision-making process,
but the reason why they are appointing lay assessors is because they want these lay assessors to assist the tribunal in arriving at their decisions. [Desk thumping]

The lay assessors, so we are be told by my colleague here that the lay assessors, [Interrupt] they are making decisions. So, whereas I thought that it is really the tribunal that eventually will make the decision, I am being advised by my colleague that the lay assessors are actually making the decisions with the chairman.

So, Madam President, why is the Government seeking to take us down a road that is very rocky and stony? Why are they not coming out and telling us that the real intention of the Government is to—I am not saying it is intentional, it might be a genuine oversight on the part of the Government, maybe it is a genuine oversight, because here it is you are going to determine my boundaries. You are going to determine ownership and land conflicts. You are going to determine inheritance land conflicts. You are going to determine title, to give title, and who is going to do this thing, Madam President? Madam President, who is going do this?—it is going to be a tribunal, and that tribunal will be assisted by what is called lay assessors.

Madam President, let us go to 3A (1) and let me share with you what is at stake there. It is no longer the Judicial and Legal Service Commission and the President of the Republic that is involved here, it is the Cabinet, it is the Executive, and the Cabinet is appointing:

“...lay assessors not exceeding six in number, from among such persons as appear to…”—

Who?—as appears to the Prime Minister. When we talk about the President, we are taking about the Executive, when we talk about the Executive, we are talking about the Cabinet. Who heads the Cabinet?—it is the Prime Minister. Why did
the Attorney General in his presentation earlier tonight not level with the country and the Parliament and indicate that the Executive hand is involved in this whole process and therefore, there is going to be a certain kind of influence—[Interruption] before I conclude I will recognize you. So, Madam President, at the end of the process this is an area that is very invasive, and we are asking the Attorney General to remove completely any role of the Cabinet in the appointment of this.

I want to ask the Attorney General to go to the Zambia model. The Zambia model, hon. Attorney General, through you the hon. President, says, yes, they are going to appoint lay assessors. But, you know who will appoint the lay assessors under the Zambian model?—not the Prime Minister, not the Cabinet, but the tribunal.

I want to propose—and we will be making amendments to that effect, because when you are talking about land, and you are talking about people’s property, you do not want any party be it UNC, be it PNM, be it COP, any agents of those parties involved in matters that can compromise or in any way determine, Madam President, if your land claim is going to be accepted or rejected by a tribunal. We want independence, we want insulation and we want protection in accordance with the rights enshrined in the Constitution. So, Madam President, I raise that point.

Madam President, you know in Trinidad and Tobago we are being told today that apart—Madam President, listen to this carefully, eh, people are being laid-off, no money, although the hon. Attorney General said he is following the money, but there is no money. But, hear what we are being told in 3A subclause (2). We are being—in the first instance I always refer to the doctrine of vagueness, I want to refer to it again. Madam President, up to now, we are not being told in
3A (1) how many lay assessors are going to be appointed. All we are being told is that from among such persons as appear to the Cabinet to be suitably qualified.

Madam President, how can we run, how can we organize, the Government must have an idea if they have done their homework, [Interruption] if you have done your homework properly you would know what you are doing. When you go to subclause 3A, we do not get a number. Okay?—not exceeding six, we are told in this one. Okay. Madam President, not exceeding six.

So, we now come to (2), it states that:

“Where the need arises or where a vacancy exists in the number of lay assessors,…”

—the Cabinet comes back into the picture. The Executive and the Prime Minister get back into the dance and they are now going to be appointed temporary. Right?

“…temporary lay assessor to the Tribunal, for such period as the Chairman may recommend,…”—to the Prime Minister or to the Cabinet—“…a person with special knowledge and experience…”

So, Madam President, we are talking about no more than six, not exceeding six lay assessors and on the other hand, we are saying we are also going to be appointing temporary assessors and, again, who will determine that?—the Executive arm of the State. That cannot be, we are not serious, and you are dealing with people’s rights, their property, their lands? You cannot be taking people’s land and putting it into the hands of a group of people who can be influenced by lay assessors appointed by the Cabinet to determine your claims, that is unacceptable.

And therefore, we are serving notice on the Government that we will be removing from the legislation any kind of reference to the Cabinet via the President, we are not in support of that arrangement whatsoever. So, Madam President, we go further. It does not end there, like Alice in Wonderland it
becomes “curiouser and curiouser”.

So, here it is, the Executive in an independent Land Tribunal, which is equivalent to a superior court of record or has the power of a superior court of record, is not only appointing lay assessors and temporary lay assessors, but it goes further.

Madam President, I want to ask you to join me on this brief journey, let us go to clause, same clause 4, we go to 3B (1). Well, before I go to 3B, I go to (4) just above that. We are being told that an assessor shall be appointed to:

“…hold office for…three years, as may be determined by the President at the time of his appointment,…”

So, Madam President, the Cabinet is hiring and firing lay assessors who have to take very important decisions on land titles on whether you have provisional title to go into absolute title, whether it should get a vesting order, the President which is the Cabinet is not only appointing, but they are also determining the period of time that you will serve at their pleasure. So you are now serving at the pleasure of the Cabinet of the Republic of Trinidad and Tobago. Madam President, it does not even end there.

You know they want to determine your terms and conditions as well? So, the Cabinet of the country is determining salary remuneration. They will probably deal with allowances if that is necessary and other conditions of service. For who?—all the lay assessors, all the temporary lay assessors. How can the Government be serious? How can the Government want us to support the passage of such legislation in this Parliament? This is where you are talking about the rights of people.

Madam President, may I remind you and remind this honourable House, one of the key functions and powers of this Land Tribunal that the Attorney General
has now added on to the parent functions, is to hear and determine applications relating to adverse possession of not only State lands, but your private lands as well. It is not only State lands, it is both State lands and private lands. So, what do we have here? Are we back in the 19th Century? I thought we have a democracy here?

I mean to say, at one time I was heading towards a communist, you know, I had communist leanings, but I am now a democrat. Madam President, so I do not know if I have to head back there, because this legislation seems to be taking me back to the Soviet model.

Madam President, you are now infringing on private lands, you are going to have the power to determine these things and you are putting that power into the hands of who?—a tribunal. Who is assisting the tribunal?—lay assessors. The lay assessors are assisting and helping and determining claims. At the end of the day, even though it is being taken by the chairman and his team, but they are being assisted by these lay assessors and they are going to be determining these things. And we are being told that we must give support to this travesty that we are being asked to engage in.

Madam President, we reject completely these provisions that are contained in this, it is illegal, it is unconstitutional and as far as we are concerned, we cannot support measures that are in violation of sections 4 and 5 of our Constitution, particularly the section that deals with the enjoyment of the right to property and never to be deprived thereof unless by due process. [Desk thumping] So, Madam President, these are very, very serious matters that we are dealing with here—very, very serious matters.

I was doing a piece of research and I came across something called the “Judicialisation of ‘Administrative’ Tribunals in the UK: From Hewart to Leggatt”
and it is written by Garvin Drewry. And, on page 51 of this particular matter, this report that is before us, they made it very clear:

“We consider that tribunals should properly be regarded as machinery provided by Parliament for adjudication rather than as part of the machinery of administration”.

So, the tribunal is about adjudication. It goes on to say that—

“The essential point is that in all these cases Parliament has deliberately provided for a decision outside and independent of the Department concerned,…”

And it closes by stating that the use—

Madam President: Sen. Mark.

PROCEDURAL MOTION

The Minister of Energy and Energy Industries (Sen. The Hon. Franklin Khan): Madam President, in accordance with Standing Order 14(5), I beg to move that the Senate continue to sit until the completion of the business at hand. Out of clarity the business at hand means the conclusion of this Bill and the conclusion of the Crown Suits Limitation Ordinance.

Sen. W. Mark: Madam President—

Sen. The Hon. F. Khan: And the adjudication which we suspended during the committee stage.

Sen. W. Mark: Madam President, before you put the question, may I just remind my colleague, and I think that when we adjourned last evening, whenever we take the word of the Leader of the House upon an adjournment it is like a law. I have before me the Hansard, and when we adjourned on the last day and the House agreed to that, the hon. Leader of the House said we are going to come back here today to conclude on the Bill before us which is the adjudication and we will start
Sen. The Hon. F. Khan (cont’d)

the Land Tribunal (Amld.), Bill.

So, to come at 7.50 or 7.40 and tell us, Madam President, that that has been altered and he has given us no justification, it is at variance with the decision that we took when we adjourned.  [Interruption] No.  I am saying when the House adjourned, that is what he told us.  He told us that when we came here today we are dealing with two matters.  We are continuing with this adjudication—

Madam President: Sen. Mark, this Motion that we are putting now is one that goes without debate, eh, and there is really supposed to be—you know, these kinds of discussions, I see the coordinator, the Leader of Opposition Business, I see many times when you all confer together.  So, I am now going to move the Motion the Leader of Government Business has indicated.

Question put.

The Senate divided: Ayes 14  Noes 12

AYES
Khan, Hon. F.
Gopee-Scoon, Hon. P.
Sinanan, Hon. R.
Moses, Hon. D.
West, Hon. A.
Cummings, F.
De Freitas, N.
Huggins, R.
Lewis, Ms. A.
Romano, Ms. A.
Rambharat, Hon. C.
Henry, Dr. L.

UNREVISED
Question agreed to.

7.45 p.m.

Madam President: Sen. Mark, you have five more minutes.

Sen. W. Mark: Only?

Hon. Senator: Continue wasting time.

Sen. W. Mark: Thank you very much, Madam President. Thank you very much. Madam President, I was making the point in terms of the significance of the independence of tribunals, and it is manifested in this report that I quoted from. I also would like to refer to the Zambian model again, and I want to ask the Attorney General, Madam President, because we are going to share these in amendments.

The role of the Chief Justice in this matter is very important. Who will
make the rules for the operations of this tribunal? You know in Zambia, under section 18 of their Lands Tribunal model or legislation:

“18. The Chief Justice of Zambia, by statutory instrument, make rules”—prescribing the following:

“(a) the powers and functions of the Registrar…;
(b) prescribing the forms to be used in connection with any matter before the Tribunal;
(c) prescribing the procedure for summoning and compelling the appearances of witnesses…;
(d) prescribing the procedure to be followed and the rules of evidence to be observed…;
(e) prescribing—”

Madam President, the Chief Justice of Zambia prescribes the functions of the assessors, not the Cabinet. The Cabinet has no role in the Zambia Lands Tribunal model. Who determines their functions? The Chief Justice. Also, the Chief Justice makes rules to empower the tribunal to award costs, to prescribe the procedure for the review of the taxation, and for regulating the procedure among other things.

Madam President, I raise these points to let you know that even in a Third World country like Zambia they have a more progressive piece of legislation, and there is greater transparency and accountability to the people of Zambia than what we are proposing in the legislation. It is totally unacceptable what is being proposed here this evening. Madam President, I want to also let you know that this Government keeps shouting to the mountaintops that this is about helping poor people, and they want to deal with 250,000 persons who are informally settled, as they call them, better known as squatters.

UNREVISED
I want to say, if that is so, I would like the Government to tell this Parliament what provision is there in the legislation to aid and assist poor people who might be occupying State lands and they need help to go before a tribunal that they are establishing, and that tribunal, Madam President, most likely would require attorneys-at-law to appear before it? Where are these poor people going to get money to appear before this Land Tribunal? Where? Where? Who is going to help them? They are under real pressure in this country because of the policy.

Madam President: Senator, can I ask you to not—

Sen. W. Mark: Oh, yes, I think the night is becoming a bit—yeah, I must come down. I agree. Madam President, I agree. Madam President, I am simply asking, is the Government serious or they just mamaguying the people? Well, I will know if they are serious tonight. We are proposing on this side—Madam President, am I okay now?

Madam President: Just take it down.

Sen. W. Mark: Okay, great. Madam President, I am proposing on behalf of this alternative bench, the Government to replace the PNM shortly, [Desk thumping] we are proposing on this bench an amendment that will deal with legal aid for those citizens who are unable to find moneys to appear before the tribunal when this law becomes law. We want a provision in the law to give to those poor people that support, and I will see how serious the Government is, because I am going to call for a division on that matter as it relates to that.

Madam President, I will now opt to close, and I thank you very much for giving me the opportunity to make my contribution. Thank you very much. [Desk thumping]

Madam President: Sen. Ramkissoon.

Sen. Melissa Ramkissoon: Thank you, Madam President, for acknowledging my
willingness to join again once more on this debate on this suite of land legislation. I am proud to be kicking off the Independent Bench today, and I must say it is a very important piece of legislation. The Opposition describes it as a very important legislation for the people of Trinidad and Tobago. The Government has described it as a piece of legislation to cure various types of legislation and amend and help deal with corruption in our land.

So, I am very proud to stand here to speak on the Land Tribunal Act, 2000; the amendments that are put forward today. And this piece of legislation is the Land Tribunal Act, 2000, and its amendments are to establish a tribunal to hear and determine appeals for any decision made in the course of land adjudication process. And, not too long ago we were in the debate of the Land Adjudication Act, and it is to be as a body relating to the use of the enjoyment of land in Trinidad and Tobago, the division, the development and compulsory acquisition of land, and the matters connected therein, or related to. And we have learnt also that the Land Tribunal is to serve as a Superior Court of Record, and there are many clauses that are being amended before us.

I wanted to also look at clause 4 of the amendment which is to deal with section 3 of the parent Act, as Sen. Mark dealt with it in a very broad manner, and also a different take on which I want to look at it. His contribution was also looking at the lay assessors and the Cabinet involvement, but I want to look at it in terms of what is presented before us. Now, during the piloting, we learned that the lay assessor, and it was clearly noted by the hon. Attorney General, that they are not the decision makers, and they are there to advise the tribunal. And that is what I interpret it to be. But when I looked at—

Sen. Gopee-Scoon: That is correct.

Sen. M. Ramkissoon: And thank you to Sen. Gopee-Scoon for saying that that is
correct. So that is good that I heard right. But, I could not get that from the amendments, so I just wanted us to look at the amendments right now. So, if we go to clause 4(3)(2), it says:

“The Tribunal shall comprise”—of—“a Chairman…Deputy Chairman, and four other members…”

—and they all supposed to be attorneys. Now, 3A goes on to say to that—“the appointment of the lay assessors—it has the President, who will appoint the lay assessors and it shall not exceed six. And these are to advise the tribunal on matters related to their specific disciplines.

But when we go to 3A(2), it says:

“Where the need arises or where a vacancy exists in the number of lay assessors, the President may appoint, as a temporary lay assessor to the Tribunal…”.

So, I would expect that to read, if we are to say that at (5) it should read:

Where the need arises or where a vacancy exists in the number of lay assessors, the President may appoint as a temporary lay assessor to advise the tribunal.

—and not to the tribunal.

So, what we have in the amendment is that the temporary lay assessor to the tribunal, making it seem that this lay assessor could now serve on the tribunal, and I do not think that is what we want. So, I would like us to clarify if we really would like a lay assessor to be serving on the tribunal, or if we want them to advise, because we have two different things written in the amendments before us. And law is always such an interesting thing. I always think lawyers are brilliant, they could take words and make them into a mountaintop of different interpretations and meanings. I am very happy that I did not study law, because I
do not think I could have been that deceptive with the terms of words—

Hon. Al-Rawi: “Ooooh”.

Sen. M. Ramkissoon: Okay, sorry, sorry. Sorry, I will withdraw that.

Hon. Al-Rawi: Creative.

Sen. M. Ramkissoon: Creative, thank you. [Laughter] Creative with the wordings of the language of English. Not the law, but the English Language. So, creative. I apologize, Madam President, I withdraw that word. [Interruption] I am a proud engineer so maybe my words are not always the best-choice ones. But, thank you Attorney General for assisting me with the correction.

Moving on, I would like for us to look at clause 5, which deals with section 4(2) of the parent Act. I also would like to commend the Government, and the Attorney General, and his team for making this amendment because it was initially overlooked in the 2000 Bill where the chairman shall share an interest, direct or indirect, in any proceedings before the tribunal. So it is being amended where, if the chairman does have a pecuniary interest, direct or indirect to the matter before them, they may ask the deputy chairman to now take over the proceedings of the tribunal. And that is good.

But my question is, Madam President, and maybe it is a rare case, but what happens in the scenario where there is both the chairman and the deputy chairman who both have pecuniary interests, indirect or direct, to the matter before them, what happens? Because, if we look at the Act, the clause 3(5) says:

“The quorum of the Tribunal shall comprise of the Chairman or Deputy Chairman, and two other Members.”

So it needs to have a Deputy Chairman or a Chairman. So, if we have these two members who are unable to serve for reasons—to the public interest they cannot, what happens? And my thought here is, we probably should have
considered, or maybe the Attorney General and his team could consider looking at having the President to appoint a member to serve in this scenario where the deputy and the chairman both have—as rare as the case may be—pecuniary interests, either direct or indirect to the matters before them, or the care of the proceedings that they may be looking at. So, I do ask that that be considered. Since it was overlooked in 2000 when they were doing the parent Act, I would like it considered at this stage when we are looking to amend it, and make that completeness aspect of it.

I also would like, Madam President, for us now to look at clauses 3(a), (3)(b), which deal with the lay assessors and their various experiences. And, the lay assessors, from the piloting we have heard from the Attorney General. Before us there are a couple of areas of interest or experience that the lay assessors must have, and these will be considered special interest areas related to land which will help the tribunal make their decisions, and be able to provide that insight. Now, my concern, really is to deal with how the present administration is going to handle this particular part of the Bill, and that is:

(3) The “lay assessors”—referred to—“in subsections (1) and (2)…who are qualified in the following disciplines”—and—

“(b) town and country planning”.

And, Madam President, I have not heard in any of the debates thus far about our development plan, which deals with the guide to developers and applicants and planning commission which was dated in 1972.

Now, this particular is very important to me, because a lot of my friends are drafters, and that is in the field of engineering, that is part of one of our fields of study. And, as a landowner who wants to be a future homeowner, either for business/commercial, you need to go and get your plans, you have to have your
indeed, you have to obtain a survey, you have to outline your approvals, and you need to prepare plans and technical drawings, and all of this is a process that you can just find on your Division of Planning website. But, in order to get the submissions, this guide to developers and applicants for planning commission is very vital, and why is that? Because this selects all the guidelines that present day, in 2018, we design a home to—

**Madam President:** Sen. Ramkissoon, I am not sure you are dealing with clause 3(a)—

**Sen. Ramkissoon:** (b).

**Madam President:**—dealing with the lay assessors, but you have gone off a little bit, and I think I need you to quickly, quickly, get to the point Okay?

**Sen. M. Ramkissoon:** No problem. Thank you, Madam President. The point in relation to the 1972 guidelines is that, how are the lay assessors going to advise the tribunal in 2018 about houses that are not in conformance to these guidelines? For example, the guidelines are very clear on how many feet you should be away from the pavement, how many carports, and if you take a walk in the city you would notice these are not in conformance, persons are not in conformance of these guidelines that are law, because it was written the in 1972. So, this is not an issue that—

**Madam President:** Sen. Ramkissoon, I think you have to remember what is the remit of this particular tribunal as it relates to the other pieces of legislation that we have already discussed, and sort of zone in on that, because I think you are going beyond the discussions that we have had. Okay?

**Sen. M. Ramkissoon:** Thank you, Madam President. I think I am not probably making my point as clear as I would like to. Let me go back to the clause and maybe that would bring some—
Madam President: No, I understand the clause.


Madam President: I am listening very, very intently. I am just asking you to tie the point that you want to make, I think that you should make it a little faster. Get to the point. But I also think the point should be relevant to the matter at hand. Okay?

Sen. M. Ramkissoon: Thank you, Madam President. So, in relation to lay assessors, we have before us, or the amendments before us, multiple pieces of experience, and they even went on to say:

“(i) any other discipline in respect of which the Tribunal needs assistance in determining any issue which engages its attention.”

And my concern about writing these things into amendments, or Bill, or even guidelines to how these tribunal will work, is how is it going to be operationalized when we have outdated other pieces of legislation, or pieces of guidelines, or regulations that the lay assessors will now put at a disadvantage, and that is probably my point. The lay assessors are now at a disadvantage, because they are using a 1972 piece of regulation to guide 2018. That is my point, and I would leave it as that, in relation to that because, I have read it and I found it was a little bit interesting to see where we are at in 2018, and what land owners do.

Okay, so let us look at clause 6x of the amendment. And we are dealing here with section 5 of the Act, and subsection (c). Now, this, Madam President, we stood down some time, just now with the committee, so this would also be an issue here with section 16(4), of the Land Adjudication Act. So, we will have to await what is the decision going forward with that, because that would tie into that same section 16. And let us look at subsection (d). So, section 5 of the Act deals with the jurisdiction of the tribunal, and we have a list here, but we are now
amending the list now to add a section (d), that says:

(d) “To hear and determine applications related to the adverse position of state lands and private lands;”

And, Madam President, we have really heard a lot said in the other debates about state lands and private lands, and I have raised an issue before about forest reserve, and I do thank the Minister of Agriculture, Land and Fisheries for giving myself and the public the understanding of where we are at, that there are about, and I could say 5,000 plus, because I do not want to quote the exact figures that was given during his debate, but about 5,000 structures—substantial structures—within these areas that are deemed as state lands but are also in the forest reserve restriction, so they should not really be there. And I understand the Attorney General saying that this is based on consultation, and we need to go forward. But what next, Madam President? That is my question.

We are asking a tribunal to look at matters related with state land, where we already have places in the forest reserve district who are 40 years plus. What can they now do? Because we have already been told that the adjudication officer cannot make a declaration on these lands. Right? That was understood from the Adjudication Act. Good. We know that they cannot make a declaration. We know that the existing laws have provisions to deal with these persons, but they have not been dealt with. They are 40 years there. And, Madam President, I can give a quick, quick example.

**Madam President:** I also want to say to you, I want you to remember Sen. Ramkissoon what we are debating here. Okay. What you are saying right now, that point, was not for this piece of legislation. That might have been for the other piece of legislation that we have just finished debating. So, I just want you to understand that this piece of legislation is very specific, okay? I would not want
you to be reintroducing issues in this piece of legislation as we debate it.

**Sen. M. Ramkissoon:** Thank you, Madam President, for the guidance because I do agree with you, and I agree with your guidance, that this is specific to the tribunal, and maybe I am trying to share some issues that the tribunal will encounter if we do not put provisions or amend the amendments as they are right now to give them that teeth that they need. Because, right now we have a lot of institutions that are toothless, and they are unable to get the support of law and legislation, and maybe the different Ministries, and when we sit here we try our very best to give them the assistance to really get it done, to drive it forward.

Because nobody, Madam President, wants to ensure that persons are at risk, because that is what the state lands will think, persons who EMA related, or even the forest reserves and these things. And that is why when I read the amendments, I read the Act, and I saw the composition of the tribunal, I wanted to ensure that when we are choosing the lay assessors, even though there are areas of experience, that they are persons that are given the support areas to really strengthen. And that is why I brought up the guidelines from 1972, and that is why I wanted to bring up the quick, quick example, if you may permit me just to share it, so persons could really understand the challenges that exist today.

Because we cannot be narrow-minded sometimes, because we really want these laws to be operational and bring the change that we deserve. And, the example I wanted to share was based on experience working in a state enterprise or organization, where I learnt that, yes, we have to have an EMA declaration that this place is unsafe. But in a gas compression facility, Madam President, I have to wear full PPA, the full gas mask, hats and everything.

**Madam President:** Sen. Ramkissoon, I am so very, very sorry—and I will be very happy to hear the story, but not now—

Madam President: —because it is not relevant, you know. You can even come up here and sit with me and tell me the story. [Laughter] But right now, for the purposes of this debate, I have to ask you to move on to your points, please, that deal with the Bill at hand. Okay?

Sen. M. Ramkissoon: Thank you, Madam President. I think I am bringing comedy to the entire Senate today, unfortunately.

Hon. Al-Rawi: Joy, joy, not comedy, joy.

Hon. Senator: Comic relief.

Sen. M. Ramkissoon: No, I do not feel like relief right now, unfortunately. But—

Hon. Senator: Move on, move on.

Sen. M. Ramkissoon: All right, so—[Pauses]—okay—[Sighs]

Madam President: I have not told you to stop, you know, Sen. Ramkissoon. I have just told you to move on to another point. Okay? So, you can continue your contribution.

Sen. M. Ramkissoon: Thank you, Madam President. So, I really would like to just share, not much more about the Land Tribunal Act, and I do like to bring my personal experience and the challenges that I have seen existing in the different Ministries and the different areas that I may live and operate.

But, I did not bring it up at the other pieces of legislation because I did not think it was necessary then. So maybe I did miss the point then, and so be it. Hopefully the matters will be addressed some other way, but I have tried my best, and I will allow those to speak after me, and hopefully they will raise the points that I was unable to raise today.

I thank you. [Desk thumping]
The Minister of Agriculture, Land and Fisheries (Sen. The Hon. Clarence Rambharat): Madam President, thank you very much for allowing me to join the debate on this Bill, an Act to amend the Land Tribunal Act, 2000. And, Madam President, with all due respect I understand the difficulty that we may find ourselves in in dealing with this Bill, simply because it is a simple Bill. This is legislation, the third piece that we are dealing with from 2000, and it is legislation that has not been brought into force as yet, and before we do that, certain changes are being made.

And I want to respond to two of the previous speakers before I get into the Bill itself. In relation to Sen. Mark, I will get back to this point, but I just want to say, having been in this Senate for 30-something months now with my colleague Sen. Mark, I thought that—to use the expression—this was right up his alley. This has all bells and whistles that you would normally ask for, with the exception of the lord serving on the tribunal. But, I will get to it, because I want to identify at least 10 protective mechanisms in the Bill, and several other aspects of this short, but important Bill, which satisfies, if it does not satisfy the other 30 Members of this Senate, it ought to satisfy the demands of Sen. Mark, and maybe he missed it. Maybe he missed it.

But, I want to go directly in relation to Sen. Mark, to his comment on legal aid, and I am seeing him in and out drafting, and I want to save him, because he promised to bring to us a robust clause addressing the matter of legal aid. And I remembered when I went through the parent Act, I had in mind in the creation of dealing with a tribunal the extent to which the public will get support. Because I understand what will happen with this tribunal. I look forward to this tribunal being operationalized, and I expect that they would have a significant amount of work to do.
And, I wondered if on the one hand we were saying we were removing some of the cost, and maybe delays and bureaucracy currently experienced in other parts of the Judiciary, and bringing these claims to a tribunal, I wondered the extent to which we were really going to save cost or create cost or create expenses. And I want to say, in the parent Act, under section 7(6) of the parent Act, provision is made for proceedings before the tribunal to be treated for the purposes of the Legal Aid and Advice Act as though they were proceedings before the Supreme Court.

**8.15p.m.**

And that simple provision makes it possible for persons who have a matter before the tribunal to make an application to the legal aid for support. But there is something more important than that, which is at section 7(7) of the parent Act, which is a provision which says:

“Where a person”—brings—“an application to the Land Tribunal, the Tribunal may make an Order for that person to be given Legal Aid for the proceedings before the Tribunal.”

So it is not only the proceedings which qualify for legal aid as though they were proceedings before the Supreme Court, but the tribunal itself may make an order for the provision of legal aid to an applicant.

And thirdly, Madam President, in relation to the legal aid point, I want to say that section 7(8), section 7(8) of the parent Act provides that:

Where the Adjudicating Officer—and this is before we get to the tribunal. This is the Adjudicating Officer.

Where the Adjudicating Officer believes that there is reasonable cause for an applicant to appeal to the Land Tribunal, the Adjudicating Officer may recommend legal aid for that applicant.

So, I have set out there, I hope, for the satisfaction of Sen. Mark that his
concern about support of applicants before the tribunal, his concern is well founded and the current legislation of 2000 which is still to be proclaimed provide in three places—section 7(6), section 7(7) and section 7(8)—for the provision of legal aid.

In relation to Sen. Ramkissoon, I want to address a few issues that Sen. Ramkissoon raised. The first is to say that, one, in relation to the piece of information I provided. When I spoke about 5,000 structures and Sen. Ramkissoon said 5,000 structures on State lands and across, and it sounded as though it was across the country, I want to be very clear that I gave information specific to the forest reserves in the municipal boundaries of the Sangre Grande Regional Corporation. I only dealt with regional corporation and I used Sangre Grande because the boundaries may be easier for the public to understand than if I say the North East Conservancy, which is a forestry division geographic area.

So, the 5,000 structures of which 3,859 are residential structures, are on 2,264 acres of land within forest reserves which are in the boundaries of the Sangre Grande Regional Corporation. And I want to be very clear on that. I want to say too, Madam President, in response to Sen. Ramkissoon, that I was very clear in my reading of the Act and I could be wrong that where, that the proposed—the Bill proposes to amend section 3 of the parent Act by deleting it completely and substituting a new section 3, subsection (1), (2), (3), (4) and (5) and thereafter, the Bill proposes to introduce a new section 3A. And in 3A, subsection (2), the provision reads:

“Where the need arises or where a vacancy exists in the number of lay assessors, the President may…appoint as a temporary lay assessor to the tribunal for such period”—and so on.

So the matter of an appointment of a member to the tribunal is addressed under the new section 3. The matter of lay assessors, which is a separate matter, is
addressed under the new 3A. And what 3A (2) in my mind talks about is the appointment of a temporary lay assessor to the—not an appointment onto the tribunal, not as the member of the tribunal, but to work. But I do agree, I stand to be corrected that it may create confusion, but I do not see it happening because it is a separate section. It is a section in its own right and it is matter for the Attorney General to consider, but I do not see that it creates any impression that the person is being appointed as a member of the tribunal.

I want to go back to the Bill itself in it is entirety and I want to address, because, Madam President, with the greatest of respect to Sen. Mark, much of what he said is completely misplaced when you consider the structure and the contents of this short Bill. And I would say that even though this Bill is just 8 clauses, to me and I use this expression with the greatest of respect, to me it is the “platinum Sen. Mark model”. Because it contains in these eight clauses, provisions for the President, the Judicial and Legal Service Commission, the Salaries Review Commission. It deals with the matter of tenure; it deals with the matter of the minimum experience of tribunal members; it deals with the application of the constitutional provisions in section 104 to 107 of the Constitution and to me, if I put all the debates and contributions of Sen. Mark together, I will come up with this model.

Sen. Khan: You skipped out the subject to parliamentary scrutiny.

Sen. The Hon. C. Rambharat: Oh, the parliamentary scrutiny. And let me identify what I consider to be 10 areas of protection. The first area of protection is the fact that the tribunal, the minimum experience is set out in the new proposed 3 (2). So clause 4 of the Bill proposes the repeal of section 3 of the Act and the replacement of section 3 by this new section 3. And when you look at this new section 3(2), I am saying that the first protection is that the qualifications of the
chairman, the deputy chairman and the four members, the qualifications are set out there. And it is not something that is going to be whimsical. It is, if I go back to Sen. Mark—his contributions of 32 months—they are ringing in my ears; it sets out that the members would be, first, attorneys-at-law; two, with at least 10 years experience; and three, that experience is in the practice of land law. And to me, that is the first level of specificity and protection.

The second area of protection is that these members of the tribunal under the new 3 (2) are to be appointed by the President on the recommendation of the Judicial and Legal Service Commission. So again, where we have had in the past issues with appointments by the Minister, by the Cabinet, by the various functionaries and so on, I do not think we can ask for a better level of protection than the appointment by the President on the recommendation of the Judicial and Legal Service Commission. And that is the second protection I have identified.

The third protection, Madam President, is in relation to the proposed—in the new section 3 that is proposed, subsection (4). And subsection (4) provides that:

“The Chairman, Deputy Chairman and other members of the Tribunal shall be appointed on such terms and conditions as shall be fixed by the President in accordance with section 3B.”

Again, dealing with the issue of clarity, we have had that already in relation to previous land Bills. The issue of clarity in terms of the terms and conditions and who is going to deal with the terms and conditions and that falls to the President to determine in accordance with the new section 3 (4).

The fourth area of protection is in the proposed new section 3A. And in subsection (1) it reads:

“The President may appoint lay assessors…”

Again bringing clarity, satisfying a requirement and a recommendation that I
hear in this Senate all the time and providing in my view a fourth level of protection.

The fifth level of protection I see is in, again, the new 3A (2) where, it falls to the President to appoint the temporarily lay assessor.

Number six, Madam President, deals with—under 3A (4) and subsection four provides that:

“A lay assessor…shall hold office for such term…as maybe determined by the President at the time of his appointment, and that person is eligible for re-appointment.”

And the term shall not be for less than three years.

We talk about arbitrary removal, removal because of political considerations. We talk about not having security of tenure and that to me, that new subsection 3(4) provides a fifth level of protection.

Madam President, I go to the sixth level of protection, and keep in mind that I have said that this to me represents the platinum standard of Sen. Wade Mark model in a Bill.

The proposed new 3B provides in subsection (1) that:

“The terms, conditions and allowances…of the Tribunal, including the Chairman, Deputy Chairman, shall be determined by the Salaries Review Commission…”

And that is well established. A constitutional body operating independently making its recommendation to the executive, but determining in accordance with all those senior and all those independent offices in the country, determining the compensation to be paid and the terms, conditions and allowances of the members, the chairman, the deputy chairman of the tribunal. And I consider that to be in 3B(1) the sixth level of protection.
The seventh area of protection is again in 3B of the Bill under subsection (2). And this subsection provides that:

“The salary, remuneration, allowances and other conditions of the Chairman, Deputy Chairman, and other members of the Tribunal, and the lay assessors shall not be altered to their disadvantage after their appointment and during their tenure of office.”

Because, Madam President, we know that interference with tenure, interference with term, short-circuiting term, removing somebody, reducing the quality of the terms and condition or the remuneration are factors which can work against independence. And it is not very often that we see in a piece of legislation such prescriptive provisions dealing with the manner of terms of conditions and remuneration of members of a tribunal. And I say that this provides a seventh level of protection to the members of this tribunal.

I go to 3B, subsection (3), which provides that:

“The terms and conditions of service applicable to the lay assessors shall be prescribed by Order of the President.”

And I say again, another level of protection to the members of this tribunal. I go to 3B(4) and I say that, in 3B(4), provision is at:

“The terms and conditions of temporary lay assessors shall be the same as…the other lay assessors.”

And what I have read there and what I have read into the record and provided to this Senate are specific examples which are demanded continuously in this Senate to show that the opportunity for interference by a Minister or interference by anybody have been addressed by clear provisions on how we are going to deal with appointment, how we are going to deal with terms and conditions, [Desk thumping] remuneration and how Salaries Review Commission in particular is going to be
I want to deal with a point raised by Sen. Mark very early in his contribution. In fact, he was going along the right road and someone on his bench took him along the wrong road, because he was making a point about the tribunal members. And he allowed himself to get into making a point that the lay assessors were going to be making decisions. And I want to say, Madam President, on another part of it, I have spoken about the protection, I have made a point/note here about the specifics, because we see the word “lay assessors” but these are not, as my colleague, MP Deyalsingh likes to say, this is not the man on the Talparo maxi taxi. And I do not know if Sen. Mark got carried away with the word “lay”, but the new section 3A at subsection (3) sets out that:

“Lay assessors…shall be selected from persons who are qualified in the following disciplines:

(a) local government;
(b) town and country…;
(c) environmental planning or environmental science;
(d) architectural, engineering or surveying;
(e) land valuation;
(f) agriculture;
(g) land management or administration;
(h) land law; or
(i) any other discipline in respect of which the Tribunal needs assistance in determining any issue which engages its attention.”

So these are technical people, experts who are available to members of the Tribunal to assist them in determining the facts in technical work and so on. These
are not your average laypeople where you would have concerns over their ability to make or may give technical advice. This is a specific provision meant to deal with the fact that the members of the tribunal are going to be lawyers only. And to compensate for any other technical area in which they may require advice, the new 3A (3) at (a) to (i) makes provision for this specific support to be given. And in specific response to Sen. Mark and what he was led to say, which was absolutely incorrect, the new section 3C says specifically:

“Decisions of the Tribunal shall be made by the members appointed under section 3.”

And the members of the tribunal, as I said before, appointed under the new section 3, are: the chairman, the deputy chairman and four other members, all of whom shall be attorneys-at-law in practice for more than 10 years in the practice of land law.

So there is no lay assessor making decisions under the tribunal. The role of the lay assessor is well set out and the justification for the lay assessors is established by virtue of the fact that you have a complete direction towards lawyers on the tribunal and a balance being struck with the lay assessors.

I want to point to two very important provisions and Sen. Ramkissoon pointed to one of them, which is the conflict of interest provision. And again, it is in our small country, it is likely that persons who are involved in the determination of these matters may have a conflict and it is the provision, section—clause 5 of the Bill seeks to amend section 4 of the Act, by inserting after subsection (1) of section 4 of the parent Act, a new subsection which addresses the issue of potential conflict of interest.

And the other important, very significant provision, Madam President, is at section six, and it is significant, but it is also potentially controversial. And in that
provision, clause 6, clause 6 seeks to amend section 5 of the Act by retaining the current 5, sub 5(1)(a), the current 5(1)(b), but deleting the existing 5(1)(c) and replacing it with (c), (d), (e), (f) and (g). And very significant to that amendment is the power of the Tribunal, now:

“6(c) to declare a provisional title as absolute for the purposes of section 16(4) of the Land Adjudication Act;”—and

“(d) to hear and determine applications relating to adverse possession of State lands and private lands.”

And right away we see, Madam President, consistent with what my colleague Sen. Ramdeen has said before, the issue that arises here is the extent to which in operating under 5(1)(c) and (d) and elsewhere, but these two in particular, the tribunal is now interfering with existing property rights which raises a section 4 of the Constitution issue. And my answer to that and the AG will respond fully in his wrapping-up—my answer to that is in the entirety of the provision, because this Act does not stand alone. This Act stands with the Land Adjudication Act and the adjudication process which leads you from the Adjudication Officer, to the Land Tribunal, to the Court of Appeal, to the Privy Council, the due process to me is established and the constitutional right are in no way infringed. But I will leave that for the Attorney General to expand on.

Madam President, and when you look in clause 6 at the proposed (e), (f) and (g), in the practice of conveyance and in dealing with land matters these are the sort of administrative responsibilities you want to give to a tribunal. You want a tribunal to be able to make vesting orders. You want a tribunal to be able to give directions to the Registrar. We have already dealt with the Registration of Titles to Land Act.

We talked about, I remember in that particular debate, the issue came up in
the debate about court orders and whether we should compel, we should set timelines for compliance with court orders. We know that sometimes a court makes a decision in relation to a partition or in terms of matrimonial proceedings in a particular course of action that must be taken and there is not necessarily immediate or soon enough compliance with the orders of the court. And the tribunal has the power in the new (f) to deal with the directions to the Registrar to make changes in the record of title and, of course, a sweep-up provision at (g):

“to hear and determine any other matter that may be assigned to it by Order made under section 12.”

Madam President, in summary I would say, it is 8 clauses but very important. I think that we have all the bells and whistles usually demanded. I think we have sufficient protection and we have sufficient specificity and I think we have amendment that will improve the current Bill when it is proclaimed. Thank you very much. [Desk thumping]

Sen. Saddam Hosein: [Desk thumping] Thank you very much, Madam President. And, Madam President, it gives me great pleasure to contribute to this debate at 8.39 p.m. after two days of debate on this land package, a Bill to amend the Land Tribunal Act, 2000. And, Madam President, we stand proud here as an Opposition to say that we are in this Chamber with a substantive Act of Parliament because of a previous United National Congress government. [Desk thumping] And we must give commendation to our former Attorney General Ramesh Lawrence Maharaj, Senior Counsel.

And, Madam President, what this Land Tribunal sought to do was revolutionize the land system in Trinidad and Tobago. And we have previously debated and passed the Registration of Titles Act; the Land Adjudication Act, is still before us and now we are at the stage of the Land Tribunal Act. And we see
how all of these pieces of legislation work together in order to reform the land system in Trinidad and Tobago, because we must admit that there are various issues that currently face Trinidad and Tobago when it comes to land tenure and security of tenure for persons.

Madam President, because we must understand that there are two systems of land registration that currently exist; the common law system and the RPO system. I would not go into depth with those matters, Madam President, because they have been ventilated at length in this Chamber over the past two days. So I would not give you much leg exercises for this contribution, Madam President, I assure you of that. But what this Land Tribunal is empowered to do is grant both legal and equitable remedies to persons who appear and file claims before it and any administrative tribunal set up is set up with the intent to remove the clog from the high court of justice in this country. And we have seen that they have thousands and thousands of cases that have filed over the years with regard to the land dispute—be it boundary, be it title, Madam President.

And then when we look at the genesis of the Land Tribunal Act in 2000, it was 18 years ago and 18 years ago the Civil Court system was under the old rule system. And it was only recently that we have converted the civil law system into the civil proceedings rules. And the reason for this is to reduce the amount of litigation that comes to court. So one common feature that is known to CPR, which is the Civil Proceeding Rules, is that of pre-action protocol letters and this protocol is really for the reduction of the cases being filed in court.

And when I saw that the Attorney General was amending the Land Tribunal Act I thought that the Attorney General would have included some sort of alternative dispute resolution mechanisms within this Bill. So that we would reduce the amount of matters being filed before this tribunal, so that parties before
the tribunal, they will now be able to manage their resources in a better way so that they would not have to spend enormous amounts of money for litigation, that the time wasted would be—let me not say “time wasted”—but there would be less time before any judicial body in order to come to some sort of conclusion with respect to disputes.

And this is the way in which every court is moving. This is the way in which tribunals are moving all over the world, in a way of alternative dispute resolution. So I commend to the Attorney General that we must look beyond litigation, because this Bill before us we are actually legislating disputes, we are legislating litigation. There is no way in this that there is any mechanism set up for alternative dispute resolution because at the end of the day, the chairman and the deputy chairman of the tribunal they would have to function within the four corners of what is given to them in terms of powers under this legislation. And they cannot go outside of that, Madam President.

So we must revolutionize, we must think progressive when we pass legislation in this country. And I also note in this particular tribunal that they are the appointment of the lay assessors. And a lot has been said so far about the lay assessors and the independence of them. So I would not traverse in terms of the independence of the lay assessors, because Sen. Mark would have raised the point with regard to these lay assessors being appointed by the President, which is ultimately the Cabinet, making an appointment to a judicial body. But we must understand the role that the lay assessors play in this tribunal.  

8.45 p.m.

What they would offer to the chairman, the deputy chairman and the other four members of that tribunal is that those six members are attorneys-at-law who are legally trained. So the lay assessors will bring from their background and their
disciplines expert guidance and advice to these six members. And if you would allow me, the disciplines are:

(a) “local government;
(b) town and country planning;
(c) environmental planning or environmental science;
(d) architectural, engineering or surveying;
(e) land valuation;
(f) agriculture;
(g) land management or administration;
(h) land law”—I will come back to that one—“or
(i) “any other discipline in respect of which the Tribunal needs assistance in determining any issue which engages its attention.”

Madam President, the role of an expert in any judicial matter is that the weight of the evidence that the expert lends to the tribunal would be extremely heavy, and I say that they would have a great influence with regard to the decision that the chairman and the deputy chairman will make. There must be very good reason for any of those six members to depart from the advice being given by any expert in the form of the lay assessors. But we must always remember that these lay assessors are Cabinet-appointed persons.

So how can we guarantee the independence of this tribunal if the lay assessors are being appointed by Cabinet, and the weight of their advice must be so much that the six members, the deputy chairman and the chairman will have to have extremely good reason to depart from the advice being given by them? [Desk thumping]

But, Madam President, what raises another important point is that one of the disciplines as outlined that the lay assessors must have is that of land law. But
when you look at the qualifications that are required for the chairman and the deputy chairman, they must be 10 years experienced as an attorney-at-law in the practice of land law. And now we are having the lay assessors requiring experience in land law. To me, Madam President, that is extremely redundant, because we have the six members, all of whom shall be attorneys-at-law for 10 years practising in land law, and then you bring six more assessors—and one can be of experience of land law? Madam President, I believe that is one of the disciplines that should be deleted from the Bill because it would serve as being redundant in this matter.

The powers being given to this Land Tribunal are extremely wide. I say this because the Attorney General, in the piloting of the Bill, mentioned some of the powers being given by this legislation to this Land Tribunal. And one of the most contentious issues that this Land Tribunal will have to adjudicate upon is one of land acquisition. And if we look at the Schedule to this Act at 5, the first column, it reads: “Land Acquisition”, and in the second column: “The jurisdiction to determine these matters are a Judge of the High Court.”

So when we see this, we now look at those powers being vested from a High Court judge to that of the Land Tribunal. There are several matters of public interest that are before the courts with regard to the compulsory acquisition of land, and in order for any court to determine whether or not they will grant a compulsory acquisition of land to the State is that they must pass the public purpose test. So this Land Tribunal now will have to adjudicate upon whether or not the State is embarking upon a public purpose for the acquisition of the said lands.

And if we look at Tobago currently, right now, there is a very contentious issue with regard to the expansion of the airport, where there are several persons who are aggrieved and they go towards the media in order to ventilate their issues
with regard to land acquisition. There is also one other very contentious issue with regard to acquisition in terms of the Curepe Interchange Project, but I leave that right there. I would not go much into that because it is very late into the night.

**Sen. Ameen:** Rohan, “he sparing you”.

**Sen. S. Hosein:** Yes, I will spare Sen. The Hon. Rohan Sinanan. [*Crosstalk*]

**Madam President:** Senators, please. I am not departing from what I said at the very beginning of this sitting. I will not tolerate the crosstalk that will disturb the proceedings. Sen. Hosein, you were going very, very well, and you are starting to now deviate from what is relevant. I need you to get back on that very good track that you were going on. Okay? [*Desk thumping*]

**Sen. S. Hosein:** Thank you for the commendation, Madam President, and I will go back on that track, because the point I will make—[*Crosstalk*] Madam President, by saying the word “track” you know what you reminded me of? Back in about 2007—[*Interruption*] No, you sent me back down memory lane. There was a PNM government that wanted to run a train track over my house, and we had to go and protest because we could not allow that.

**Madam President:** Sen. Hosein, please. Do not go back in time. Stay on this Bill, please. Okay?

**Sen. S. Hosein:** Madam President, I say that just to say that we had confidence in the court because we know we could have approached the High Court and we had confidence that there is an independent Judiciary, an independent judge that will adjudicate upon our case [*Desk thumping*] and we would be granted fair and impartial relief. But under this Land Tribunal there is a level of doubt that is being cast upon the independence and the insularity and the fairness of this Land Tribunal.

**Madam President:** So you know now that you are echoing, in great detail, what
Sen. Mark has presented. So you know that my next caution to you is about? Give me the two words.

**Sen. S. Hosein:** Tedious repetition.

**Madam President:** Thank you very much. Okay?

**Sen. S. Hosein:** Madam President, since I am here I am learning these Standing Orders by heart now. I am memorizing them. Let me start to go back in the direction that you want to take me, Madam President. I am coming back in time now.

Madam President, there was one provision in the Bill in which the Attorney General sought to amend the pecuniary interest and the recusal of the chairman and the deputy chairman with regard to any pecuniary interest that they may have where parties appear before the tribunal. But we must bear in mind that this issue of disclosing a pecuniary interest and recusing yourself from determining any matter, goes to the heart of that of natural justice and fairness, and that is the reason that any judicial person will recuse themselves from any judicial matter.

But we must remember that this Bill was passed in 2000, and now we are in 2018, and if you may remember the famous case of *Porter v Magill*, and the case of Pinochet in which the House of Lords would have given certain judgments with regard to fairness and bias, and the test that must be applied when a judicial officer must recuse himself.

And there are two types of bias: apparent and direct bias. And this provision in the Bill seeks to address that of the issue of both apparent and direct bias, and I will just quote the test just as a matter of record. The test is that there is a question of a fair-minded and informed observer, having considered the facts, would conclude that there was a real possibility that the tribunal was biased. And that is the test with regard to that. The point I would like to make with regard to this is,
why is this expressed in the legislation? Because these are established rules of natural justice, [Desk thumping] and I believe that it is superfluous for us to be debating this and actually including it within the Land Tribunal. So now that raises the question on whether or not there are any issues of bias. And, again, I want to echo Sen. Mark’s one point on the independence of this Land Tribunal. [Desk thumping]

And, Madam President, I am not running off track, because I am going towards a clause in the Bill that deals specifically with section 12 of the Act, which amends section 12 of the Act. That clause is—sorry, it does not amend the section, but I want to make reference to section 12 of the Act. And these are members now who are being the deputy chairman and chairman, who have to sit on these matters, and if you would just allow me the leeway just to look at section 12 of the Act, because in section 12 of the Act, it allows the Cabinet to assign matters towards this tribunal. And I think that is a very dangerous power that is being given to the Cabinet.

Madam President: But, Sen. Hosein—

Sen. S. Hosein: Yes, Madam President.

Madam President: If section 12 of the Act is not the subject of the Bill that is before us, then why are you spending precious time talking about section 12?

Sen. S. Hosein: Madam President, I am spending this time on section 12 simply because when we look at clause 6 of the Bill, and when we go to part (g), it says that—now, the tribunal is being given the powers:

“to hear and determine any other matter that may be assigned to it by Order made under section 12.”

So that is the point I am trying to make, that the Bill touches and concerns section 12. And the problem I have with this is that this power being granted to the
Executive under section 12, via clause 6 of the Bill, allows the Cabinet to determine which matters go before the Land Tribunal, and these matters are outlined in the Schedule of the Act.

So we have matters under the State Lands Act, matters under Town and Country Planning, Pipelines Act, Advertisement Regulation, Land Acquisition Act and any other matters can be added simply by an Order made by the President which is ultimately the Cabinet. And I think that is a very dangerous provision to be putting into this legislation. Because I believe it should be the Chief Justice under an independent Judiciary that should be assigned with the powers to determine which matters go before which court in this country.

Now, I also want to raise the point with regard to the establishment of a Secretariat or a registry for this court, because they had no provisions being made with regard to—

Madam President: And Sen. Hosein, that was covered by Sen. Mark.

Sen. S. Hosein: Madam President, if you may just allow me one point on it and that point was not made by Sen. Mark, is that when we look at the tribunal and the ambitions of its power, its powers are: it is not bound by rules of evidence. And the point I would like to make is that if there is no proper registry or record-keeping system, we must establish one, simply to balance the powers being given by the tribunal not to be bound by evidence with that of proper record-keeping so that we can see what is being done by the members of the tribunal.

And there is another power that I would like to ask the Attorney General, whether or not the Government, as a matter of policy, has determined whether or not this tribunal should be granted the powers to award costs and interest in matters. Because this tribunal can make an order for compensation and I believe that it should also have the power to award interest and costs, because there would
be a lot of judicial time being spent by attorneys-at-law—[Interrupt] Thank you, Sen. Ramdeen.

Sen. Ramdeen: Section 8(3).

Sen. S. Hosein: Okay, it does have the power to award costs but it does not have the inherent powers to award interest. Madam President, I just want to make one last point with regard to this tribunal, because I would not have the opportunity to do so again, because after this contribution I do not know when the Attorney General will ever amend this Act again. And I want to say that, Sen. The Hon. Clarence Rambharat raised the point with regard to this tribunal touching and concerning constitutional provisions regarding property. And I want to go on record by saying that this Bill requires a special majority because it touches and concerns section 4 and section 5 rights of the Constitution. And I think that the Attorney General must give consideration to this matter.

So just to summarize the issues that I have raised, is that we must look at the powers being granted to the Land Tribunal; that we must also include mechanisms for ADR; we must look at the appointments of the lay assessors; the powers being given to the Cabinet to assign matters; the establishment of a Secretariat; whether or not we need those provisions dealing with pecuniary interest, and whether or not this Bill should be passed with a special majority. And I thank you for your indulgence. [Desk thumping]

Madam President: Sen. Ameen. [Desk thumping]

Sen. Khadija Ameen: Thank you very much, Madam President. I rise at this time to contribute to this debate on Bill to amend the Land Tribunal Act. Madam President, there are a number of—I intend to be very brief this evening and I must say that I think the spirit of debate is being hurt in this instance by the Government’s apparent rush to deal with these Bills, and I think the public would
have benefited from us dealing with them separately, because in every one of them, I think many more issues were examined and brought to light.

I want to add to those some queries that, perhaps, the Attorney General could mention in his response. Where section 3 is amended, that part that concerns the composition of the tribunal and the qualifications, in that it should comprise of a chairman, deputy chairman and four other members, all of whom shall be attorneys-at-law of Trinidad and Tobago, of at least 10 years’ experience; 10 years’ experience in practice in law. My question is: How are you going to determine that that person actually has 10 years in practice? Ten years being admitted to the Bar, a 10-year period of practice does not mean a certain number of cases that you would have experienced. There is no registry to determine the value of the practice in terms of the intensity of the case, the intensity of your participation in the case.

So, that 10 years, while it is good that you have a 10-year period and a requirement for experience, the truth is that an attorney-at-law who has been admitted to the Bar for 10 years, regardless of their experience, could be a person recommended, and there is no way to really assure the public that the person truly has a wealth of experience. So that is my question in terms of how you will determine the value of the time.

Secondly, Madam President, I want to endorse a point that was made earlier, in terms of the quorum that should comprise of the chairman or deputy chairman and two other members. I think we could put a full stop there; whether it is two members or three members. But usually you form a quorum by showing up. Where there is a specific need for a certain qualification, there are bodies, for instance I know, like the Children’s Life Fund board, for instance, they have members who have certain qualifications. So that is where you specify, so that you will have the benefit of their experience in making the decision.
But in this case, in the board, all of the members are qualified in land law, so you are not missing on a particular area of expertise when you consider a decision before the board. So I feel that there is no need to put in that second part. We could speak to the quorum but without allowing the chairman or the deputy chairman because you could have the exclusion of members and it sort of interferes with the conduct of the board. So that is with regard to quorum.

My other suggestion has to do with the second part of 3(a) in terms of the appointment of the assessors. It reads:

“Where the need arises or where a vacancy exists in the number of lay assessors the President may, upon the advice of the Chairman, appoint as a temporary lay assessor to the Tribunal, for such period as the Chairman may recommend, a person with special knowledge and experience in one or more disciplines listed in subsection (3).”

Initially, it could be interpreted that the President ought to be advised of the vacancy, if one of the lay assessors, for some reason cannot function or if the chairman feels that they need another person, they can so advise. But another way of looking at it is that the chairman actually recommends the persons to replace, or recommends the temporary lay assessor.

So I do not think that is proper practice that the chairman of, whether it is a board of directors, in this case a tribunal, which is a serious body, should recommend someone to replace itself onto itself. I think it should be that the chairman would advise the President of the existence of a vacancy, and if that is the intent of the paragraph here, then maybe it needs to be reworded. But the chairman should be advising of the existence of a vacancy, of the fact that a vacancy has come up, and not recommending the person who would be replaced. So that is something for consideration. If it is, in fact, that the chairman does not

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recommend the person to replace, then maybe it needs to be reworded.

The other thing I want to move on to is with regard to the terms and conditions of the chairman and deputy chairman and all the other members of the tribunal where it states that the Salaries Review Commission would set the salary. This came up in our debate on the land adjudication again, where this recommendation was made to determine the salary. The Salaries Review Commission reviews existing salaries. I do not believe that the Salaries Review Commission determines salaries. In numerous cases that is what happens.

Also, I wanted to make a suggestion with regard to the Integrity Commission, whether these persons will fall under the Integrity Commission in terms of a person in public life and their requirement to file in terms of the returns of their assets. One other thing with regard to the whole issue of the Salaries Review Commission, the recommendations that the allowances, the salaries, the remuneration and their other conditions should not be altered during the term of the lay assessors to their advantage after their appointment to their tenure in office. The term of their office is specific in terms of the number of years.

I am wondering if the Salaries Review Commission, they have their assessment every three years; they make their recommendations; they make changes, and very often the changes are to the advantage of the office holder. So, to me, I feel that this—the Salaries Review Commission is a very independent body for a reason. Even we, as legislators, accept the report of the Salaries Review Commission, but Parliamentarians do not get to decide the remuneration, the benefits and the other terms and conditions in terms of salary and allowances, and so on, for a specific reason. And I feel that by putting in this part here, we undermine the purpose of the Salaries Review Commission.

Now, mind you, I am not the biggest fan of Salaries Review Commission. I
Sen. Ameen (cont’d)

think they can often be very detached from the—well, I certainly experienced it as a councillor. [Desk thumping] They are very detached from the realities of what is required by certain offices. And we had a number of issues come up with Salaries Review Commission, but their purpose, their function, is to operate independently without having the interference from anyone. It does not have to be political interference. And I feel that this undermines the purpose of independence and that protection guaranteed to them.

Madam President, I now want to move on to section 4, where section 4 of the Act is amended in (c) with regard to a chairman declaring pecuniary interest, whether it is direct or indirect. This is common practice. Even in a regular committee, even here in Parliament where we have Parliament committees, where a person has an interest in a matter; is involved in a matter in any way, they ought to declare it, of course, first, and then remove themselves.

While it is listed here—and I agree that the chairman should inform the deputy chairman and then cease to take part in the proceedings; this should be applicable to any member of the tribunal, because it is not only the chairman. While the chairman would lead the decision making, any person as a part of that tribunal, who has any interest, direct or indirect, should declare that to the rest of the members, or to the chairman or deputy chairman. But it should be taken into consideration that the other members can influence the decisions made and therefore they, too, should be asked to—and I quote here—

“…cease to take part in the proceedings”.

So that is something I would want to see included there and it is just a matter of adding in the words to accommodate the other members.

Madam President, the other part I wanted to mention is with regard to the lay assessors and the qualifications. I think it is good that you have persons from
different fields that play a role in land management and land administration in the country and different parts of—representing different interests like local government, Town and Country Planning and so on. I agree with Sen. Saddam Hosein with the fact that you have at (h) a person in land law. Again, I think there is no need because you already have the members having that qualification.

But when it comes to local government, when you speak of people who are qualified in certain disciplines, you expect—well, there is qualified and there is experienced. So my question here is, for instance, if you want to have an attorney-at-law, you can specify a qualification in terms of an academic qualification. If you have a person in, let us say from Town and Country Planning, that is a ministry and a person can be designated from that Ministry, or recommended from that Ministry to the President to be appointed. And it will, of course, be a person who is senior and experienced.

9.15 p.m.

And my question is, how are you going—from the others, you have architectural engineering, and so on, you have qualifications that you can assign, what level of qualification are you looking at? And secondly, how do you intend to determine a qualification in local government? Are you looking for an academic qualification, are you looking for a number of years’ experience? You can have a person who was a former Permanent Secretary in the Ministry of Local Government, or you could have a local government councillor having served a three-year term.

So when you say “qualified”, I think you are really looking at qualified in terms of experience and perhaps we could examine that and see what level of, well I do not want to use the word “qualification”, but certainly what level of experience. Because I know for a fact that there are many people who have
experience in local government on the ground, having served in regional corporations whether it is administration or as elected persons, councillors, and serving higher up in the Ministry and at different administrative levels. So that is something that I would like to see clarified.

With those few words, Madam President, I want to thank you for the opportunity to contribute. [Desk thumping]

**Sen. Anita Haynes:** Thank you, Madam President, for the opportunity to contribute to this debate on the Land Tribunal (Amdt.) (No 2) Bill of 2017, that will amend the Land Tribunal Act of 2000, which provides for the adjudication of rights and interest in land, whereby any claim made by an individual would be thoroughly investigated before settling such rights and interest in land in Trinidad and Tobago. We have discussed quite a bit with respect to land law over the past few days and I think the contributions that have gone before today, and on the previous day, have clearly demonstrated how important the issue of how our land governance is and how detailed. And so, while this amendment Bill may be short, it does not make it any less critical and far-reaching in its effect.

So, as I said it before, land has both social and economic importance in Trinidad and Tobago. In addition to providing housing, the population depends on their land as a means of production and it touches every aspect of our lives, and land conflicts are generally caused by an increase in population, and the scarcity of land which the Attorney General has spoken about time and time again, which has led to a high demand for better land governance which I know we are seeking to do and I have said before and I will say again, it is essential that we do correctly.

Disputes over land fall into three main categories: boundary disputes, ownership land conflicts, and inheritance land conflicts. The Land Tribunal, which we are debating here, will be given the statutory power to deal with the various...
types of disputes involving land or property, and the tribunal works much in the same way as an ordinary civil court with the main focus on land matters and, therefore, the establishment of the Land Tribunal is theoretically meant to treat with these matters in an expeditious manner and eliminate the archaic three to five-year process which exists today.

So, Madam President, I know a lot of speakers before me have looked at the composition of the Land Tribunal and I would just like to take a different angle on this point, simply because when I looked at clause 4 of the amendment Bill, it tells us that the Land Tribunal shall comprise of a chairman and a deputy chairman with four other members, all of whom shall be, et cetera, attorneys-at-law, et cetera. And so, clause 4 is seeking to amend the parent Act, section 3, Part III, with a chairman and deputy chairman—that remains the same—and other members not exceeding six in number.

So, Madam President, I was going through the amendments—and a lot has been made about the time we spend here and what we are doing, et cetera, et cetera, so my question is: is there some data or some study that informed this amendment that said we needed to change the number? I was just trying to figure out, and if the Attorney General can tell me what is the justification for this change or this amendment is, because I would like to hope that we are not just changing things arbitrarily, but there is some sort of reason behind this or else we would not have to be here discussing that particular amendment today. I know Sen. Mark had spoken about the Zambian model and we can see on their model it is 12 members. So we are reducing our members on the tribunal while they have more members? I was just trying to figure what best-practice approach led to the decision being taken to move this amendment.

We need to ensure that the composition of the tribunal can give us proper
consideration to the rights and interests of parties appearing before it. Are we thinking about the diversity in the composition and how and what we are looking to accomplish, or are we acting with the end goal in mind? I hope, Madam President, that when we are doing things, making amendments, that the data that has informed the decision would be presented to us during the course of the debate.

Madam President, as I stated before, section 4 of the amendment Act says that 3(1) says:

“A Tribunal to be known as ‘the Land Tribunal’ is hereby established, which shall be a superior court of record and shall have in addition to the jurisdiction and powers conferred on it by this Act all the powers inherent in such a Court.”

And so, Madam President, as I was doing my research and we are talking about the appointment process, overall I think there have been public outcries for greater transparency in the selection and appointment of judges, and the legislation as I just read out in clause 4 proposes to give the power to appoint to the JLSC and that persons who sit in the tribunal ought to be persons with extensive knowledge in the practice of property law, and suggesting that persons ought to be selected after consultation with key stakeholders in each area such as the Law Association, the Registrar General, Town and Country Planning, the Director of Surveys.

[MR. VICE-PRESIDENT in the Chair]

I would just take us briefly to an article from 2013, Mr Vice-President, which is entitled, “No pay for tardy judges” by Jada Loutoo. Sunday, December 13th—

Hon. Al-Rawi: 46(1), Mr. Vice-President.

Sen. A. Haynes: Thank you. Thank you. The point that I was making—welcome back. Welcome back.

Sen. Ameen: He just want to let you know he came back.

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Sen. A. Haynes: Yes, that is interesting. So the article—and I am not going to quote the entire article which I feel like I should now, but Justice Gobin said accountability should begin with the process of the appointment to the bench. And she said, the current method of selecting judges to the court.

Hon. Al-Rawi: 46(1), Mr. Vice-President.

Mr. Vice-President: I am not sure—one second—did you give the title of the article and the—

Sen. A. Haynes: Yes I did.

Mr. Vice-President: You did? Okay.

Sen. A. Haynes: “Current arrangements allow for a public announcement to be made when a new judge takes the oath of office…”

Now, I did not intend to read this paragraph, but the Attorney General made me lose my place. So I will just to through now and I will get to where I was.

I will just reiterate for the benefit of the Attorney General who just joined us, that:

“A Tribunal to be known as ‘the Land Tribunal’ is hereby established which shall be a superior court of record and shall have in addition to the jurisdiction and powers conferred on it by this Act all the powers inherent in such a Court.”

And the point that I am making from the article is that there has been public discourse and discussions around how we look at the appointment process, and I am saying as we create a new body, the Land Tribunal, and we are giving them the same powers and we are looking at their appointment process, have we taken into consideration the public discourse going as far back as 2013? Because if we are doing things in the best interest of the people, it is important to take into consideration the pronouncements I would have been made before because it is just
a simply logical way of doing things.

Justice Carol Gobin submitted these recommendations to the National Constitution Reform Commission in 2013, and I think they are valid when we are thinking about how persons are to be appointed to the Land Tribunal and that we are looking—and an important point that Justice Gobin made is that:

“Judges are now more than before required to be time managers, efficient and effective in the control weighty docket and court lists.”

I make this point because we are aware that—and I have stated previously that land conflicts take up a lot of time within our system, and that when we are thinking about the composition of the Land Tribunal, are we thinking about persons not just with their official academic qualifications and professional qualifications, but as well as a representation of how effectively they have managed their case before? Because I think that will go a long way into achieving the end goal of the tribunal, and to that we are not just doing with something for doing it sake, but that we are doing it with common sense.

Now, Mr. Vice-President, again, persons have spoken about the appointment of lay assessors, and I am taking this now before somebody says it is repetition. Yes, it is talking about lay assessors, but now I would like to talk about the fact that since coming into office, prior to the last mid-year review, we have been told time and time again that we are under very severe financial constraints, and that again since coming into office there have been various cuts to expenditure that has resulted in job loss figures that we have been speaking about as an Opposition for some time.

Section 3A of this amendment outlines the process of appointing lay assessors and despite the economic turnaround that we have heard about, subsection (3) (a) we see a variety of professions listed here and, first, the persons
from this pool to be appointed will obviously be expected a remuneration and compensation package for providing their services that is reflective of their professional qualifications, and my question here is, where will this money be found? We know it will not be cheap. And so, when we look at the composition of the tribunal and the expertise required, I think that somebody can give us how we will implement and effect the legislation because we have been told there is no money, but now we are hiring more people and we are creating a new body. Where is the money to be found?

Mr. Vice President, the issue of money is very critical in this particular clause because the appointment of the lay assessors, they will have to be appointed for a period of no less than three years. So that we are making contractual obligation for no less than three years and, again, we have heard a lot being said about salaries and wages with respect to the Government, and I am saying as we look at this legislation have we thought about the financial expenditure that would be assigned to it, and is somebody going to tell us about it as we go forward?

Mr. Vice President, we can also look—I think that there is a wealth of experience to be tapped within the public service. So that if you look at the division in the Commissioner of State Lands, the Surveys and Mapping Division and the Evaluation Division, you may be able to find suitable experts there and you can work out an arrangement, but you pay per recommendation as opposed to a monthly remuneration package to an assessor. So that is another thing you can think about when looking at the Land Tribunal and how you can effectively manage your expenditure given that it was said that the lay assessors would only advise the tribunal occasionally.

Looking now, Mr. Vice-President, at the jurisdiction of the tribunal, we see that we have outlined in section 5 of the Act, sorry, clause 6 which amends section
5 of the Act:

“…by deleting the paragraph (c) and substituting”—for—“new paragraphs:

(c) to declare a provisional title as absolute for the purposes of section 16(4)…the Land Adjudication Act;

(d) to hear and determine applications relating to adverse possession of the State lands and private lands

(e) to make Vesting Orders (in respect of applications for the declarations of absolute title);

(f) to give directions to the Registrar under the Registration…of Land Act and to record the title in the Land Registry; and

(g) to hear and determine any other matter…assigned to it by Order made under section 12.”

And these additions are seen around the world as to what tribunals can do, and I would like the Attorney General to tell us how these inclusions will be beneficial to the citizens of Trinidad and Tobago. Will the tribunal be efficiently and effectively resourced to competently treat with these additional responsibilities?

Most of the land matters we see in Trinidad and Tobago involved less wealthy citizens of the country, and I know the point has been raised before so I will not belabour the point. However, Mr. Vice-President, it is very important to note, that in Trinidad and Tobago, culturally speaking, land ownership does not equate wealth and it does not equate liquid assets. So that we must really be asking ourselves when we do things like this will it assist the average citizen, the average Trinidadian, and that is where Sen. Mark made the point on legal aid.

Now, Mr. Vice-President, I would just like to raise a couple—and I always had the sticking point of implementation because we have seen legislation being passed and then not be effectively implemented because there was no plan going
forward, and I think on the last occasion the Attorney General raised the idea of “ad hocism” and that is exactly what you can see when you do something without an effective plan to go forward. And so, one of my concerns revolves around the infrastructure, or rather the lack thereof. The Government did not tell us if there has been any building identified to house the tribunal, what is the budgetary allocation to outfit the offices of the tribunal, will a new space be constructed, will a new place be leased?

Now, I know that there is no budgetary allocation for the Land Tribunal because it does not exist, however, in telling us that you are going to do this big lofty thing, you can at least, I think, tell us what your intention is to roll the Land Tribunal out. I ask these questions, Mr Vice-President, because we are always hearing about different arms of the Government working simultaneously. The Attorney General tells us all the time about things, I think, that while the long-term pasture is growing they have short-term pastures to feed.

So what I am asking is, if the different arms are working simultaneously are they in fact working in unison? We should be provided, I think, with the legislative on one hand, but also the administrative and financial implications of this project. You can look at the Equal Opportunity Tribunal, for example, to understand that the finances involved in running these organizations, and if you look at the Draft Estimates for Recurrent Expenditure at the Equal Opportunity Tribunal we see that there is no allocation for rent. And so, we can see that there is an estimated expenditure of around $2.1 million, so I am saying that you can average out what these things look like and come here with a more total explanation of what we can expect.

Mr. Vice-President, the Bill also does not address, or the contributions thus far have not addressed any staffing or resource allocation for the tribunal, and the
Government needs to tell us what the composition of the administrative set-up is because, again, you can give us the skeleton, but without the details how are we to make a well-reasoned assessment of what is before us.

So, Mr. Vice-President, I think what we can look at, as we move forward, is whether or not what we are doing here today can be implemented effectively. Before bringing the legislation and before bringing the amendments to Parliament, whether everything has been looked at in totality and there is in fact a plan to move forward? And if there is no such plan and I think then there should be no problem going back to the drawing board and getting the legislation right because simply speaking if we pass it today, if we get this done today, it is still going to take a very long time to get it working correctly. And with those few words, Mr. Vice-President, I thank you. [Desk thumping]

**Sen. Gerald Ramdeen:** Mr. Vice-President, good evening and thank you for allowing me at this late hour to contribute to this Bill, an Act to amend the Land Tribunal Act, 2000. Mr. Vice-President, we have now been through the Registration of Titles to Land Act, 2000, the Land Adjudication Act, 2000 and we are at the stage of debating the Land Tribunal Act, 2000, and we are at the third stage of a process aimed at arriving at a position where we will have a composite registry and on the ability to assess all of the lands and the real property registered and unregistered in Trinidad and Tobago.

But I think that I can say with confidence, that this particular amendment and this particular piece of legislation is a piece of legislation that is most important in the process, because we started off with the legislation that allows us to demarcate and to survey the parcels of land registered and unregistered. We then gave the power to the persons to do that and now we are providing an institution—and I want to use that term very carefully—whereby persons who are dissatisfied with the
process will be able to have access to that institution to be able to adjudicate upon their disputes.

And it is very, very important, Mr. Vice-President, because I do not think that we can reiterate enough that there are three principal fundamental rights that the fundamental rights provisions in our Constitution guarantee at the outset in section 4: the right to life, the right to liberty and the right to property—and after life and liberty, property comes thereafter. And like the Attorney General has outlined in the other pieces of legislation in piloting them, that English law provides a special character to the protection against property, liberty comes first, and property comes thereafter.

And when one looks at the way in which this particular piece of legislation is structured, it is very clear to me that the amendments that the Attorney General has piloted here today, and more particularly the amendments that seek to amend section 3—and I say so respectfully—these particular amendments can really be termed—and the Attorney General will understand when I say this—Suratt-like amendments because one can understand that the drafters of these amendments, when you look at them—and I have the equal opportunities legislation here before me—you will see that these particular amendments, the reason why—and I want to surmise that the reason why these amendments find themselves in the particular form that we are asked to pass them is because they are carbon copied out of the equal opportunities legislation section by section.

And while the Attorney General has—and has the right to rely upon that decision of the judicial committee of the Privy Council in the Suratt decision, which item by item when you go through the jurisdiction provisions of that particular piece of legislation and that tribunal, there was a very careful analysis as to how that constitutional challenge was determined in the way that it was that it
allows the Attorney General to come here and present this piece of legislation in the form that it finds itself in. I want to caution us all and perhaps raise an amber light, if I can call it that, with respect to the way we treat with this particular piece of legislation, and I say so and I want to set out the boundaries in which I say so, and I think the Attorney General will understand why I say so.

The Attorney General is entitled to rely upon a decision of the highest court, and the Attorney General is also entitled to rely upon the reasoning of that court, but we must also be careful as legislators because we are not here to determine the constitutionality or the legality of legislation. We are here to pass legislation that we deem is in the best interest of the people of Trinidad and Tobago, and that protects and guarantees the rights of people in Trinidad and Tobago. [Desk thumping] I want to put on Hansard this evening, at this very late hour, and we may all be tired, but it is a very important point. The decision in Suratt related to a discrimination case and that right of someone to prosecute the fact that they have been discriminated against before a special tribunal set up by law, the Privy Council found that to be constitutional on those facts.

We are here setting up a tribunal that deals with a property right case which is something of a totally different character, and English law has always ascribed a different character to the right to property. And it is in those circumstances that I think we should be very careful that, not alleging that what the Attorney General has put together here does not accord with what the highest court has said is constitutional, but we must be very careful to think about the issue as to whether we can equate the determination of a discrimination claim with a right to property, and I want to put that on the Hansard because I think it is very, very important and something that I would ask the Attorney General to consider very carefully. I will give you an example of why that is important, Mr. Vice-President.
In that Suratt decision and I am focusing on that because that is the basis of this amendment in section 3, and if I am wrong I think the Attorney General will correct me.

Hon. Al-Rawi: Correct.

Sen. G. Ramdeen: In that Suratt decision—and I sorry that not all of us here practise law, but it is for us to share our knowledge with everyone—there was a dissenting judgment by the most—and I would say so without apology—respected judge that was produced by the common law, the English common law, perhaps in the last century, Lord Tom Bingham, and whenever someone refers to the Suratt judgment they always refer back to that judgment that was a dissenting judgment. One out of four, but it was a very powerful dissent by the President of the court in that case. And the reason why I refer back to that, Mr. Vice-President, is this, law is an evolutionary thing, it is a dynamic subject, that is what makes it such an amazing process and it changes over time—

Hon. Al-Rawi: That is true.

Sen. G. Ramdeen:—because as a people, you change over time. As circumstances change you change over time, and perhaps the most potent way of demonstrating the argument that I am making is this: In 1977 to 1981, there was a trilogy of cases. The Attorney General will be very familiar with them. There was the case of De Freitas v Benny, the case of Moses, and there is one other that will come to me, Stanley Abbott. And in those three cases we found ourselves in a very, very similar position that we find ourselves today in this Suratt judgment. There were three judgments of the Privy Council where there was a singular dissenting judgment that said a person who was going to the gallows had a right to see the material that was before the Mercy Committee, and on three times the Privy Council struck it down. Twenty-one years later, in a case called Lewis v the
Attorney General, that dissenting judgment, that sole dissenting judgment that was 21 years old, became the law for all of us today.

9.45 p.m.

And that is why we must be very careful that when we adjudicate on matters like this and we use cases that tell us this is the law, we must be able to analyze as to whether we think we are doing the right thing. Because, while we are entitled to follow the law, we must stay astute to the provisions of the Constitution, which is the supreme law.

And the Attorney General will also understand the reason why I am making these arguments is because on this particular issue, about how you treat with these types of rights and how you allow someone to infringe these types of rights in our jurisdiction is in a state of flux at the moment. Because in addition to the Suratt judgment, we have had a five-member judgment of the Court of Appeal in Barry Francis, where you have had two powerful dissenting judgments on this same issue.

And it is in those circumstances and on the way in which section 3 is structured, not to go into each one of them. We have done that before. I am not going to repeat it, but I would like the Attorney General to cast his mind at those judgments and to think about whether, in this particular piece of legislation—because in the committee stage in the last piece of legislation, the Attorney General advanced the argument, I think quite correctly so, in saying if it is that in that, we were not really designing the rights to interfere with people’s property rights, we will come to that, at this point, which is in the Land Adjudication Act, and that is what we are doing.

And there is no dispute that this tribunal that we are setting up, one of those specialized tribunals, they call them quasi-judicial at times, is a tribunal that has the power of a court. And the Government has tried their best to amend section 3,
to be able to provide, in the same way that the Equal Opportunity Commission provides, a tribunal that allows lay assessors to assist the members of the tribunal but provides a certain degree of protection, in relation to those things, in relation to the constitutional requirements of insulation and the independence of the Judiciary.

With regard to that, Mr. Vice-President, I want to focus—I am not going to repeat any of the arguments before—one particular issue. I think the Attorney General will hear me on that issue. And it is the issue about the amendment that the Attorney General proposes to section 3(2), and it relates directly, Mr. Vice-President, to the qualification. The clause says:

“(2) The Tribunal shall comprise a Chairman, Deputy Chairman and four other members all of whom shall be Attorneys-at-law of Trinidad and Tobago of at least ten years’ experience in the practise of land law and who shall be appointed by the President on the recommendation of the Judicial and Legal Service Commission”.

And Madam President, through you to the Attorney General, I would like to suggest to the Attorney General that while this is a tribunal that is set up very similar to the Equal Opportunity Commission, I think that the powers of this tribunal are going to more direct, in terms of affecting the rights of the citizen and it is more in the nature of judging and the determination of rights and obligations of different parties, having regard to the powers that are given.

And while we are attorneys and we understand, we both practise law together, we practised against each other and we understand the legal system, I think, and I will repeat again what I said in the last debate, a tribunal that is given these kinds of powers, Attorney General, is one that you want to be sure that the persons that we put there have the ability to confidently discharge the functions that you are going to give them, pursuant to this piece of legislation.
You want to have a tribunal that people—you do not want to find yourselves in the position that many of us find ourselves in today, where people do not have confidence. Simply by the appointments, you can do a lot to build the confidence and to execute the policy that you seek to execute by these different pieces of legislation. Because if you have the right people there, then those landowners that you want to come before the tribunal and have the confidence that when a determination is made, they can have the confidence in the decision that is being made. And we will only be able to reach to that point to generate that confidence in the administration of justice, as I would put it in these circumstances, by having persons who are qualified. And I hope that what we see here, in terms of the 10 years’ experience in the practice of land law will perhaps, and if I can say so respectfully, be a minimum threshold, and we can attract persons.

Madam President, we have to understand what we are doing here. You are giving someone the ability to affect the acreages of land throughout Trinidad and Tobago. And the Attorney General said we are starting in Tobago, and perhaps we should take that as a starting point. Because, whereas the Attorney General has explained to us that in Tobago, because of Hurricane Flora, many people or most people in Tobago do not have a piece of paper that they can call their deed of title.

And while that may be so, we must also understand they may not have a piece of document to represent their title deed, but they perhaps hold perhaps some of the most valuable land throughout Trinidad and Tobago, and this is going to be the tribunal that is going to be vested with the power of determining how much land that is, how much land may be disputed, to resolve those disputes and also, very, very, very importantly, to provide a means of compensation to persons who bring disputes before that tribunal.

And, therefore, in those circumstances, to the Government and to the
Attorney General, I would like to implore two things. The first is front-end. The second is back-end. The first is that we get the right people. But the duty does not stop there, Madam President. It is something that we have not considered throughout all of these debates, and it is this: We have a habit in this country that when we appoint people to office, it seems as though that is the end of the journey. But in these kinds of circumstances, the promotion and appointment to a position like this is really the beginning of a journey. And something that I have learnt, that we have not concentrated enough on, and I am sure the Attorney General will agree with me, is that we have not paid enough attention to continuing judicial education and training.

And those persons who are going to be appointed to this tribunal, I would like to ask the Attorney General to make a special emphasis on training them in discharging the functions that you require of them. And having done that training, to ensure that they continue to have continuing judicial training and education in the specialized field that you give to them. [Desk thumping] If that is done, Madam President, I have no doubt standing here that what we propose by these pieces of amendments to this particular piece of legislation will work to the best interest of the people of Trinidad and Tobago.

Madam President, the same suggestions that I make to the Attorney General about those persons who are appointed to the tribunal, that is pursuant to clause 3(2), the chairman, the deputy chairman and the four other members, I think that we will do well to expand what I just suggested to the Attorney General, to the lay assessors as well. Because their role, one understands, is as important as the chairman and the members of the tribunal, because they play an important part in guiding the decision-making power of the tribunal.

Madam President, we must also understand that by virtue of the amendment
the Attorney General proposes to make to section 3(1), by making the Land Tribunal a superior court of record, I do not think anybody has touched on it but I think it is important for us to understand that the amendment that we propose seeks to attract to that tribunal, all the powers inherent in such a court.

And while those are very simple words, I think it is important for us to explain to those people who may be listening, to understand that the Land Tribunal being a superior court of record with the inherent powers given by this piece of legislation, will have the power to control its own process and to protect its own process by the powers that are given to it. So that it will have the power of contempt, and it will have the power to strike down for an abuse of any of its processes. And I think that is an extremely important power that every tribunal of this nature that has these powers should have.

With respect to one of the points that the Attorney General made, I think the Attorney General made it here. I am not sure, and if I am incorrect, I am sure the Attorney General will correct me. Attorney General, one thing that arises out of this is that you have indicated, in addition to bringing this package of land legislation, you will understand that you are providing very special powers that are now exercised by the High Court, in relation to the declaratory powers of the High Court to deal with matters that are going to be covered by this tribunal.

And I think it is very important, by having given the powers that you have described here in the amendments—I am referring now, Madam President, to the amendments that the Attorney General has suggested to section 5(1) of the principal Act; that is the power to declare a provisional title, to hear and determine applications, to make vesting orders and to give directions.

Perhaps you would want to consider, Attorney General, that if you are making this tribunal, giving them the powers of a superior court of record, I do not
think it will make sense, respectfully saying so, to continue to allow that power to reside in the High Court as well. Because what you will have is you will have two sets of tribunals, the High Court and the Land Tribunal adjudicating upon exactly the same subject matter. And what will be unfortunate about that is this is not like judicial review. So if you go to the High Court, the High Court will not be able to say go to the Land Tribunal. The Land Tribunal will not be able to say to go to the High Court.

And, therefore, in your proposed amendment to section 5, where you grant these powers in (c), (d), (e) (f) and (g), do you want to consider also that you may be able now, while we debate this legislation, to deal with the backlog and to prevent the continuing bottleneck that exists at the High Court, to put in a provision here that says these powers are exclusive to the Land Tribunal? And, therefore, anyone who has a dispute that relates to any of the exercises of these powers will know that the exclusive jurisdiction to deal with that is in the Land Tribunal.

And why that makes sense is because, unlike the High Court where you sit with a judge, in this particular piece of legislation, as you have provided, you have a judge, together with lay assessors, who may have specialized knowledge that may not be available to someone who sits as a puisne judge in the High Court. And, therefore, it will serve two purposes. It will give you a better quality in the dispensation of justice to persons who seek to access that justice. That is number one.

And two, it will clear up a certain degree of applications that you know come from the registry, as in these particular pieces of legislation that you have proposed, go for vesting orders in the High Court, and then you have the resources of your Ministry, which is the Ministry of the Attorney General, together with the
Ministry of Legal Affairs, having to do exactly what the Land Tribunal would have been specialized and set up to do. And, therefore, I want to suggest to you that you put in a provision like that, and it will do well to be able to clear—you can kill two birds with one stone, as they colloquially say.

One of the things that I think, Attorney General, you have proposed that you take out the power, in your amendment to section 7; the power to:

“…remit the matter to the Adjudication Officer with such directions as the case warrants to do justice between the parties”.

And I do not think—and I apologize if I did not, and I am prepared to give way if you wish—we got the reason as to why. Because I thought that was an important power, that an appellate tribunal such as this would have to be able—after they have adjudicated, if an error is made, it can go back. But I see it has come out. If you do not do it now, I am sure you will be able to do it in the wrapping-up.

I think one of the things that has not been provided, Attorney General, in that particular section, is that in the Act that we did before, which is the Land Adjudication Act, you provided there. It has become a habit now and one that, I think, will act in the best interest of everyone who utilizes these pieces of legislation. You gave a time limit in the last piece of legislation for reasons to be produced. I think the exact words were brief reasons by the adjudication officer. I do not see that there is any provision in this particular piece of legislation, unless I am wrong, that places that duty to provide reasons, which is something that has become part of our public law on the Land Tribunal.

And I think that is important, because an essential part of this piece of legislation is that you have created a right to the Court of Appeal and a subsequent right to the Judicial Committee of the Privy Council. And I think you will do well, Attorney General, when you treat with your amendments to section 6 and the
provisions that relate to the manner in which the procedure of this tribunal is to be carried out, if you will include, respectfully, a provision that places a time period on the right to give reasons. It is a fundamental tenet to the principles of natural justice and it will place an added responsibility on those and give a certain degree of confidence. Because the provision of reasons for any litigant always provides a fundamental pillar that, in the interest of justice and in the public interest, provides a foundation for someone to feel confident that they know the reason why things were done the way that they were done. And I respectfully ask that you do that.

One of the things that you may also want to consider, Attorney General, on that point is that this, whereas in the two different pieces of legislation that we have done thus far, if that is not done you have the ability to judicial review any failure on the part of any of the public officers that are involved in either the Registration of Titles to Land Act or the Land Adjudication Act. That will not apply in the particular circumstances of this tribunal. Because this is a superior court of record. And, therefore, judicial review will not lie against it. And that is why it will be important for us to ensure that whatever procedural mechanisms that are in place to move the process along, that we put the right time tables in it. Because it is not open to a litigant to be able to challenge any of the steps in these processes as we go along.

If you would allow me, Madam President, those are principally my contribution, in relation to the provisions that the Attorney General has proposed to us, in relation to this. But, with your leave and unless the Attorney General objects and obviously with your permission, Madam President, I would just like to make two points that I think would benefit us all. Attorney General, you have provided, in one of the amendments, that the appeal in this matter is as of right to the Court of Appeal. And I think that is a very useful provision.
I do not think that when the drafters of this principal piece of legislation provided section 14, that the law was developed in 2000, to the extent that it was developed now. And what you have, in most of these pieces of legislation that have created these things which are now, as you indicated, 18 years old, is that we have had many judgments of the Court of Appeal, more particularly a matter I was involved in, which is the Jamaat al Muslimeen appeal against the State, where it is recognized now that when you go under section 109, you have certain requirements that you must satisfy. So, it is not an appeal as of right.

And since you are making the appeal as of right, in the other circumstances as you move up the trilogy of accessing the three courts in our jurisdiction, I was wondering whether you would not want to add in that the appeal, under section 109 of the Constitution, is an appeal as of right under section 109(1)(a). Because what happens is that if you do not do that, and for example—I can give you a very quick example to bring home the point—if someone applies for compensation and their compensation is not granted, so that there is no monetary value on the claim, you know that when you reach under section 109, you do not have an appeal as of right, because there is a monetary value that you must satisfy. And, therefore, similar to what happens in the Judicial Review Act, under, I think it is the second to last section, let us make the appeal as of right. It is something that you might want to consider. Your policy will tell you whether you will agree with it or not.

But I think, principally we have made a good attempt at coming up with a formula that is far better than what was there before, especially in relation to the composition and the jurisdiction of this particular tribunal. We have also done well to be able to put in the terms and conditions of, I think, both the chairman and the deputy chairman, the other members of the tribunal, as well as the lay assessors.
And, therefore, with the suggestions that I have suggested, I think that we can be able to find a tighter piece of legislation that accords with the public interest and will provide the public with a tribunal that will be able to lawfully and constitutionally discharge the functions for which it is mandated under this piece of legislation.

And, therefore, if the Attorney General were to consider carefully, Madam President, when you were not here, before you came in, those arguments that I have advanced with mature consideration as to whether this particular piece of legislation is one that requires a special majority and that the Opposition and the Independent Bench will be prepared to support the Attorney General, were the Attorney General to include that.

I am sorry that it may put you in the unfortunate position that we suggested, with respect to the last piece of legislation, because this came through the same route. But I think the importance that attaches to what the functions of this particular piece of legislation is required to do and to carry out, and the interest that is required to serve, is one that certainly justifies the means of getting it right and being able to assure yourself that when this piece of legislation is finally proclaimed and put into effect, that it will not be able to be the subject of any constitutional challenge under section 13, not being the provisions alleging, not being that any reasonable society with respect for the rule of law would have has part of its law.

So with those few words, Madam President, I want to thank you for the opportunity to contribute to this debate. [Desk thumping]

The Attorney General (Hon. Faris Al-Rawi): Thank you, Madam President. I wish to thank all hon. Senators for the mature reflections given to the material that we have just considered. People sometimes tell me that I am too complimentary,
but I have to compliment Sen. Ramdeen again for a very clear and concise submission, which I think is intended to give constructive criticism to the legislation and to cause mature reflection.

Madam President, Sen. Mark started on a rather familiar track: consultation, three-fifths majority, property right, the ghost of the Executive, political interference, and that the UNC will have none of that. Perhaps he meant none of that whilst in Opposition. Because none of those submissions are ever made when they are in Government. But we understand Sen. Mark's position in making those submissions. The argument as to an intrusion into the three-fifths right is an interesting one. I thank Sen. Ramdeen and Sen. Hosein for recognizing that the amendments which have come to the Senate are in fact amendments, which are certainly a considerable improvement upon the provisions which existed previously, that we did have the benefit of having a very careful look at the Suratt effect upon the Equal Opportunity Tribunal, as it is constructed.

Sen. Ramdeen is right, the provisions which reflect themselves into the proposed amendments by clause 4 into section 3 of the parent Act are very much akin to the Suratt formula.

There are variations somewhat here and there and there are also reflections and flavours of the Industrial Court. I find Sen. Ramdeen's argument on paying attention to the dissenting judgments in Surrat and Francis quite appealing. I mean one always looks at powerful dissenting judgments as a potential for the manner in which law may yet evolve. And I think he may be on to something. But at present, the majority decision of Surratt still echoes as the final decision in this country. Certainly Baroness Hale, in her balancing exercise, I think, has provided a useful prescription for movement of our society. One ought not to sneeze at a Chief Justice's dissenting judgment, as has happened in the Francis decision which,
interestingly, was a supported decision of the dissenting judgment in the Suratt case.

However, I am aware that the Chief Justice's views on that are perhaps not the same, if one is looking to where we move as a court. I always find it particularly interesting to reflect upon the Clico decision and the Privy Council's fulminations there, which, in essence, supported the prevailing mood and condition of any society. And it is perhaps there that I will say, that I genuinely believe that the formulation in clause 4, for the amendments proposed to section 3 of the Act, I think, have us on safe ground.

We are a superior court of record, this tribunal. The JLSC members are the only members who are invited to contribute to decision-making. The lay assessors are in fact features of existing law. In fact the Equal Opportunity Tribunal certainly has lay assessors. The lay assessors in this particular Bill are not participants in the decision-making process. The lay assessors being elected by the President.

Sen. Mark made a rather interesting argument that I had failed, according to the hon. Senator, to say that President equalled the Executive, when in fact I recall distinctly that I did say that section 80 of the Constitution is such that the President, in combination with the articulation of section 74 of the Constitution, is the Cabinet. And if Sen. Mark did not understand that the Cabinet is the Executive, well then, I say so now that the Cabinet is the Executive. So, perhaps Sen. Mark wanted that explained, but I did expressly indicate to the hon. Members of the Senate that that was the case and I made the admission.

Madam President, the use of lay assessors as specialist areas. There was an interesting submission by Sen. S. Hosein saying that there ought not to be someone in land law; that a lay assessor with qualification or experience in land law was
something which was odd.

But I want to remind of the power of legal clerks or persons that work in Ministries that have genuine experience in land law. Search and title clerks, conveyancing clerks, are people who may not have law degrees or be qualified attorneys-at-law, but they are certainly people that have significant experience, persons who are surveyors who have land experience as well. And it is not unusual for many a court to have assistance of experts. In fact, the Civil Proceedings Rules allow for experts to be appointed by the court. Parties can agree to the provision of an expert on a joint basis. But the court also has the mechanism to appoint an expert to assist the court. And experts in that scenario, in the civil proceedings scenario, stand almost akin to lay assessors.

I can find comfort certainly in recommending that hon. Senators reflect upon the Equal Opportunity Tribunal, where the formula of lay assessors stands and that we find comfort in the fact that the Privy Council has in fact upheld the constitutionality of that very structure.

Madam President, I could not quite agree that there is need for a three-fifths majority in this legislation. I wish to say that this legislation allows for due process. Sen. Ramdeen is very correct in his observations that our test really is not to decide constitutionality as a Senate or as a Legislature. That is an exercise for the court. But our test is really to observe the tenets of section 13 of the Constitution, where we are obliged to pass laws, which can at least meet the muster of the type of democracy, which we consider to be that which Trinidad and Tobago upholds at its highest level.

But in looking at the argument of a three-fifths majority and whether one affects a property right, I am very, very comforted to point out that this Land Tribunal, in having its appellate functions, vested into the Court of Appeal. First
of all, I do believe that establishing this as a court of superior record with the inherent powers for contempt, for regulation of its own procedure, et cetera, causes the court to have a degree of certainty and insulation that is required.

Secondly, the fact that our appeals are appeals—we have in section 13 of the parent Act and section 14 of the parent Act, if we look to those sections, Madam President, at Part III of the parent Act, under appeals, section 13 clearly sets out that:

“(1) An appeal against a decision of the Tribunal shall lie to the Court of Appeal”—and—

“(2) On the hearing of an appeal from any Order of the Tribunal in any matter, the Court of Appeal shall have the power to confirm, vary, amend or set aside

the Order or make any such Order as the Tribunal might have made, or to make any Order which ought to have been made, or to make such other Orders as the nature of the case requires and on such terms and conditions as the Court of Appeal thinks fit to ensure the determination on the merits of the question in controversy between the parties to the appeal”.

And section 14 of the parent Act:

“(1) An appeal against the decision of the Court of Appeal shall lie to the Privy Council subject to section 109 of the Constitution”—and—

“(2) Rules governing appeals to the Court of Appeal may be made by Rules Committee established under the Supreme Court of Judicature Act”.

I wish to point out here, this is remarkably different from the prescription set out in the Industrial Relations Act.

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When one looks to the Industrial Relations Act, which is also a court of mixed composition those appointed; chairman and vice-chairman, president and vice-president of the Industrial Court appointed by the JSLC. President of equal standing of the qualifications of a High Court judge and the others appointed by the Cabinet or the Executive using the label of President. When one looks to the appellate functions and appeals coming from the Industrial Court, section 18(2)(D) jumps out at me. You see in the Industrial Court the prescription for appeals is limited.

They set out the matters which can be appealed and I note in particular 18 (2d) which says that an appeal should be appealed on law and specific grounds. And, therefore, I dare say that this tribunal allows for no limitation on appeals, no limitation to simply points of law, no limit to facts being cut out of the equation, no limitations on the type of jurisdictional limitations that one would have and therefore I am comforted that this broad discretion provided in the appellate consideration from the Tribunal to the Court of Appeal is welcomed.

Relative to the limiting of the route of the High Court, Sen. Ramdeen is correct there will be a concurrency of matters being capable of being taken to the High Court and to the tribunal. But, I would think it something that would be dangerous to introduce an ouster of the High Court into these proceedings. I mean one could allege that the Parliament would be infringing upon the Constitution itself in the separation of powers principle and section 90 of the Constitution by ousting the jurisdiction of the court, and I would want to be very careful to avoid that sort of allegation of a breach of the separation of powers.

Furthermore, it may very well be, that in the divisioning of courts that we are proposing, as the Government has been championing and has succeeded and
has operationalized a Family and Children Division, as we move to the motor vehicle and traffic management in a different system as we deal with the criminal division, and traffic division as we are next about to treat with the probate division which allow for the creation of specialist courts. I think the time may very well come where we can specialize things.

But, I also find comfort in the amendments which this Bill proposes, where we have taken at least a step towards the reflections of Sen. Ramdeen as recommended and I think they are very noble suggestions. I think Sen. Ramdeen is clearly on to something that makes sense and that is the need to have specialist courts.

But Madam President, I wish to remind, that pursuant to section 12 of the Act, the parent Act, the Schedule sets out in the first column the laws which provide for functionalities which are vested currently in the magistracy and in the High Court with respect to State lands, Town and Country Planning Act, the Pipeline Act, Advertisements Regulations, Act Land Acquisition Act as we transpose the judicial functions from the magistracy and to the High Court into the tribunal.

So we have already taken the step to move that particular route and I think that that is commendable and may very well be the half-way house that we are looking at. I note the under section 12 of the parent Act that the President making an Order, it is where an Order is made just specify the composition of tribunals, jurisdiction, et cetera. So there is room for evolution of that principle and certainly the Government’s current trajectory is along the lines of specialist courts. And we intend to see that operationalized we are well on track with that, when we come to debating other legislation which is now before this hon. House, this Senate, I think that that will be pellucidly clear.
Madam President, I am not sure if there is much left to reflect upon. I think that the question of operationalization is a genuine one, implementation is a genuine one. Sen. Haynes has asked a number of questions as to implementation. Suffice it to say, she reflected upon whether a plan exists, do buildings exist, do offices exist. I want to remind that this Government has had the pleasure of implementing the public procurement legislation. That stood on the books for many years without implementation. We are implementing the DNA Regulations, the DNA Act for the first time. We have implemented the Family and Children Division. We have opened by way of implementation [Desk thumping] two courts.

We have interviewed 13,000 people, we have hired the functionaries, and we are implementing and have implemented the Child Rehabilitation Centres. We have implemented the reforms of the prisons to treat with our children. We are about to treat with specialist courts there. We are implementing which is why we are so careful to make sure that we arrive with legislation in respect of which we have prepared regulations, we have prepared the formulae for approach and Madam President, I am confident that this can be equally managed here.

Madam President, I urge the honourable Senate to support this legislation. If it is that Sen. Ramdeen is correct or the hon. Members of the Opposition Bench are correct that this Bill requires a three-fifths majority that may very well have to be decided by a court of law. In any event we will be looking at it in great detail. But the fact is that this law needs to be implemented. We need to establish the tribunal. We need to get the registration of title for lands in gear. We need to get an adjudication system.

We have got the IDB loan, we have US $100 million on standby, we have US $7 million on standby. We have the Geographical Information System ready. We have the Cadastral Information Management System ready. We have got the
land tiles of Trinidad and Tobago in place. We have the surveyors on the ground. In fact we havevaluators afoot under a different piece of law mapping areas. WASA—people may not know—has one of the best GIS systems in the country where each one of their meters can be pulled up and their information, et cetera. So Trinidad and Tobago is no stranger to getting things done.

Many people use the programme Waze, many people use Google maps, many people use iMaps, where every inch of Trinidad and Tobago is already available by information systems online. It is high time that we allow people the privilege of the certainty of their titles; it is high time that we work our way forward. The Government is anxious to start. [Desk thumping] Yes, there may be need to improve as we move along the way; that is what the Parliament is here for. Yes, if we find a hiccup along the way we have room to treat with that. But I do not see anything here which can disturb progress.

Dare I say, this particular tribunal formula is by far better and deeper in its structure than one which this Senate has already supported? And that is the Valuation Tribunal. We have already considered law in this Parliament in this session, in this Senate which does not go as far as this particular point. And I dare say that this is law which we believe can be supported, we will take on board the observations made by my learned colleagues. I take them to have been offered in all sincerity, it was very constructive reference by my learned colleagues Senators Ramdeen and Sen. Hosein in particular, these two contributions as they squared off on the law—I do not mean to single them out. But as a lawyer I am looking at the law and as a legislator on that point, I single out the contributions because they were sharply focused on the law.

So Madam President, in all the circumstances I beg to move. [Desk thumping].

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Question put and agreed to.

Bill accordingly read a second time.

Bill committed to a committee of the whole Senate.

Senate in committee.

Madam Chairman: Hon. Senators may I remind you that there are eight clauses in this Bill.

Sen. Mark: Before you go—Madam Chair, normally you would ask, but I am surprised that you did not.

Madam Chairman: Ask what?

Sen. Mark: We have amendments—

Madam Chairman: I asked my Clerk here and I was told that there are no amendments here.

Sen. Mark: Well, there are no amendments here now.

Madam Chairman: Yes.

Sen. Mark: But they are being typed.

Madam Chairman: But, Sen. Mark—

Sen. Mark: No, but what I am saying is that we do not have the resources to have these things typed.

Madam Chairman: Sen. Mark, how long again? And—

Sen. Mark: We were just—we just saw them and we were told that they will—it is just a few changes. Can we suspend for a few moments?

Madam Chairman: All right, I will suspend—

Sen. Mark: At least about 15 minutes so I can go through this.

Madam Chairman: 15 minutes.

Sen. Mark: Just to go through and to make sure that everybody has copies.

Mr. Al-Rawi: Madam Chair, we can start the next Bill.
Sen. Mark: I am thinking about reading this thing—so if you can just suspend for 15 minutes.

Madam Chairman: No. What we will do is, do as the Attorney General has suggesting and being the debate on the last—State Suits Bill, and then we can deal with the committee stage of this Bill at a later stage. So, hon. Senators we will suspend the deliberations of this committee and the Senate shall now resume.

Senate resumed.

STATE SUITS LIMITATION (NO. 2) BILL, 2017

Order for second reading read.

The Attorney General (Hon. Faris Al-Rawi): [Desk thumping] Thank you. Madam President. I beg to move:

That a Bill to repeal and replace the Crown Suits Limitation Ordinance be now read a second time.

It gives me great pleasure, Madam President, [Laughter and Desk thumping] to rise again in the honourable Senate before these fresh-looking Senators, who are in charge of their senses, to move this last Bill in the package of Bills referred to as the land package Bill. Needless to say, Madam President, we, in terms of a process of law, are considering four pieces of law which are essential to management of the most valuable of resources, and that is our land.

Trinidad and Tobago is a twin-island state, surrounded by water. We are in the process of looking at how we treat with our resources. This Bill treats with a modernization of some very archaic language, treats with an exception to precious resources which need to be carefully managed. And this parent Act, this Ordinance, if you want to call it that, is one which essentially treats with that very important concept of prescription.

Statutory limitation you see, Madam President, the essence is that persons
are entitled to land unless there is someone with a better and more importantly prioritized competing claim. The State has land, private individuals have land and land can in fact be acquired through a process referred to as adverse possession. That is where somebody occupies land and intends to dispossess the title owner of the land by their occupation. So, there is a physical occupation, a fact of occupation on the one hand and an intention to put the legitimate owner, if you want to use the expression, out of possession of the land.

For State land, the period which the State considered to act anything before 30 years, is a period of time when the State’s right is still preserved, once you cross 30 years, there is a possibly of applying through the legal processes for a vesting of the State land in the person who claims the adverse possession. In private land, of course, the time formula is in fact 16 years. Let me put the context of how this Bill is relevant in terms of a simple linguistic need.

Crown suits limitation number 5 of 1898 of the laws of Trinidad and Tobago dated the 28th of March, 1898 and ordinance for quieting possessions and titles against the crown in this colony.

“Hubert E. H. Jerningham, Governor, 20th April, 1898

Whereas it is expedient to make provision for quieting possessions and titles against the Crown and against the Grantees of the Crown and their successors in Estate in this Colony: Be it enacted by the Governor of Trinidad and Tobago with the advice and consent of the Legislative Council thereof as follows:—

1. “This Ordinance may be cited for all purposes ‘the Crown Suits Limitation Ordinance 1898.’

2. Nothing contained in this ordinance shall extend to any action, information, or other suit or proceeding, instituted or commenced before the passing of this Ordinance.”—But listen to this, section 3—

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3. “The Queen’s Majesty, Her Heirs or Successors, shall not at any time hereafter sue, impeach, question, or implead any person or persons for, or in any wise concerning any lands, tenements, rents, or hereditaments whatsoever, with such person or persons or his or their or any of their ancestors or predecessors or those from, by under whom they do or shall claim, have or shall have held or enjoyed or taken the rents, revenues, issues or profits thereof by the space of forty years next before the filing, issuing or commencing of every such action bill, plaint, information or other suit or proceeding as shall at any time or times hereafter be filed, issue, or commence for recovering the same or in respect thereof.”

That is one sentence in one clause, one section of a law dating back to 20 April, 1898, by Governor Jerningham.

Madam President, suffice it to say the fact is that the language is archaic, it took the drafters of this current Bill, no sparing of any effort, hard dedicated work, to try and figure out what this thing was actually saying. It was an exercise in extreme patience to try and make sense of it. The first observation is that the reference is 40 years whereas the law is now settled in Trinidad and Tobago that the State’s prescriptive period to be considered after which there should a claim for adverse possession actually vesting, is 30 years and not 40 years.

The second fact is that the language was just plain old unintelligible English language which has no relevance in a modern society as this. Madam President, we quite simply say in section 2(2) of the Bill that subject to section 3, the State shall not at any time sue, impeach, question or implead any person for and then we list out the matters and that is the case where the person has held or enjoyed or taken rents, revenues, et cetera, for a period of 30 years.
So we now bring the law into consistent application with what the settled law in Trinidad and Tobago is. Very importantly in section 2(2) we say notwithstanding subsection 1, the State or any person claiming by subsection grant et cetera shall be entitled to determination grant to file information or commence an action to show title. So the State has the ability to, in fact where it is not met with an adverse possession claim, to take action to seek to recover the premises from an adverse possessor. But that is always subject to the presentation of a claim for adverse possession by someone after the 30-year period.

Clause 3 of the Bill is really where we have a new introduction. Because clause 2 relates to the old section 2 of the ordinance, clause 4 relates to the old section 3, but clause 3 of this Bill is where we seek to harmonize the land adjudication policy with this particular policy. And this Act, under clause 3 shall not apply to land declared to be a protected area or forest reserve under the Forests Act, (b) declared to be environmentally sensitive under the Environmental Management Act and (c) identified by the State for public purposes. In that regard, we seek to have way of consistency a preservation for the State to environmental I sensitive to geographically sensitive or for lands and land for State for public purposes.

Madam President, we, in the clause 4 of the Bill, treat with the onus of proof on the estate after 16 years possession by the defendant and in clause 5, we treat with the savings of law that nothing in the Act shall be construed as extinguishing any rights accrued in any proceedings commence under the Crown Suits Limitation Act and that was essential so that we had it right. Very importantly and quite simply in clause 6, we seek to repeal the Crown Suits Limitation Ordinance this is very straight forward, very necessary law. It is something which is eminently capable of being supported. It is something which is logical, simple, precise and in

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those circumstances, I beg to move.

Question proposed.

Sen. Wade Mark: Thank you, Madam President. [Desk thumping] Like the Attorney General, I too have in my possession Act No. 5 of 1898, dated the 28th of March entitled an Ordinance for quieting possession and titles against the Crown in this colony.

And Madam President, one would have thought that in a modern State that the Government would have taken the time to modernize and update and upgrade our legislation. What we have before us is simply a changing of a few sentences here and there but almost the same replication of the colonial legislation. And I find that so disappointing on the part of the Attorney General. And he comes here tonight, the hon. Attorney General, Madam President, to tell us how long it took the Chief State Solicitor or Chief Parliamentary Counsel (CPC) to deal with this.

Madam President, I am totally disappointed in this Attorney General. You know in 1981 when they sought to modernize the same matter we had a piece of legislation that has been passed, it is now an Act of Parliament, but it was never proclaimed. It is entitled the Limitation Act of 1981, and Madam President, I would have thought that the Attorney General would have at least taken this same piece of legislation and seek to either bring some further changes to it and upgrade it to make it now relevant. Because it was this 1981 legislation that became an Act but it was never proclaimed, that repealed the Crown Suits Limitation Ordinance, 1898. But here it is we have the Attorney General bringing an amendment, an repeal rather, to this particular 1898 legislation as if the Attorney General and the Government believes that we were sleeping.

But there is a law, Madam President, 1981, which repealed the very law that we are now debating. But the only difference at the material is that there was no
proclamation of the 1981 legislation.

And this was a comprehensive piece of legislation. It did not just deal with what the Attorney General has brought to our attention tonight or this evening, and therefore I am a bit disappointed at the Attorney General of our country. If you look at the legislation in New Zealand, you go to Australia, you go to the United Kingdom every one of those states and other states, Madam President, has upgraded their legislation as it relates to limitation Acts. But you are coming in the year 2018 to just delete from colonialism to republicanism.

I mean, it just does not make sense. I want to ask Attorney General if he, hon. Attorney General that is, would not mind or would not be adverse to bringing definition, Madam President, to the legislation. The legislation particular in clause 4 of this Bill, that is before, talks about certain concepts that the ordinary people may not be all familiar with.

There would be need, Madam President, for some clear definition in the legislation and I would have thought that the Attorney General and Government would have taken the time to at least put into the law certain definitions so people would understand what they are dealing with. For example, Madam President, in 1898, when I was nowhere on compound. [Laughter] In 1898, there was a 40-year stipulation in order for you to entertain the concept of adverse possession whereby you can claim title and therefore, Madam President, no one would have the right to say, “look I can sue you, I now have the right to enter, I can take possession even though it is adverse, but I will now be entitled because 40 years have passed”.

10.45 p.m.

So we come in the year 2018 and even before, Madam President, and we stop at 30 years. So the big achievement for the Attorney General, at this evening’s meeting of the minds, is that we have now changed from 40 to 30, and
that has been going on for several years even before the amendment before us.

You know a modern thinking Leader of Government Business would have come here tonight and say, listen as we move towards modernizing our State, seeking to bring about equity and social justice in our society, do you know what we will want to do? We want to reduce the 30 years to 15 years; 15 years. In Barbados it has gone to 12 years; before, Madam President, you can claim adverse possession. In Jamaica, it is just 15 years. In the United Kingdom, I think it is 12 years. We are coming in 2018 from 40 years to 30 years. Where is the progress, Madam President?

I would have thought that the Government would have come here with some revolutionary approach to this whole question, so we can begin looking now at the future where, for instance, the 250,000 people that we were told that the Attorney General and the Government and us here will be taking care of, rather than keep to a 30-year timeline, we can say we are now dealing with a 15-year timeline or a 12-year timeline.

I have not seen anything to make me happy this evening. Nothing, Madam President, and you come here to delay my sleep [Laughter] with three pages of a document that is literally, and for all intents and purposes, with a few changes here and there, is almost a replica of 1898, and you want me to say, “well look”—as if, you know—“ah back in massa day.” No, Madam President.

I would have liked for the Government to go back, hon. Leader of the House, go back to ’81 and even—

**Sen. Rambharat:** 1881?

**Sen. W. Mark:** No, 1981, hon. Minister of Agriculture, Land and Fisheries.

**Madam President:** Sen. Mark?

**Sen. W. Mark:** Yes, Ma’am.
Madam President: Your contribution, you are now starting to repeat what you have said prior—well previously—in this very said contribution. So I would ask you to move on to a new point please.

Sen. W. Mark: Madam President, let us go to clause 4, because I want to be specific. I always like you to guide me, because it just inspires me more. [Desk thumping] I want to deal with clause 4, Madam President. Madam President, try to follow what clause 4 is telling us as a team of legislators. Clause 4 is telling us this evening—and, again, Madam President, I ask the question, in the absence of definitions, could the Attorney General, when he is winding up, explain to this House what these things really mean? Because we are being told, Madam President, in clause 4(2)—and I know I would not burden you with the entire clause by reading it—but I would like the Attorney General to indicate when we talk about where possession is proved in fact.

Madam President, you know in this country, that many ordinary people may be on state property or State land and, Madam President, they may not be able to prove possession of land, and what is being said is that if you cannot prove in fact the State or the person who is claiming through or under the State shall not be entitled to judgment except on proof of title. What does that mean, Madam President? What does that mean, Madam President?

Can the Attorney General explain to this Senate what would be the implication of this provision for persons who cannot prove, Madam President, in fact and they do not have what is called evidence of their claim and, therefore, would they, Madam President, without proof of title be deprived of their possession? That is what this clause is seeking to tell us, and the hon. Attorney General, in a very sleight of hand, dismisses that but that would have implications for people, for citizens. And, Madam President, you know that the challenge that
people would face. They will be faced with problems.

We heard from the Minister of Agriculture, Land and Fisheries, and I am glad that he was able to point out that to me in my absence, so I did not put it in my amendments, so I am glad because he did indicate that it is in the Land Tribunal matter that we just dealt with—legal aid. But, Madam President, in this instance, if you cannot prove title, are you going to lose your property that you have been in possession of?

Madam President, you know what is also significant in this? There is no time period that is being defined in the legislation as it relates to possession. We do not know, Madam President, if possession means one year, 10 years, 15 years. What does that mean, Madam President, before the State is able to take what you have from you? And that is why I felt it was important for us to have some clarity in this particular matter.

Madam President, remember the principles that we are dealing with here, according to the Attorney General, are essentially two when it comes to limitation. The hon. Attorney General is saying if you are in possession for 30 years and over then you have absolute title. On the other hand, Madam President, if you are on private property and you are there for 16 years and over, then you also have absolute title. All I am asking, Madam President, in a society where we are seeking to create “not a roof over your head democracy”, as the former Minister of Housing and Urban Development—who has now been sent to another Ministry called Tourism—said, but he was just attempting to almost devalue the concept that we had coined, “a home-owning democracy”.

Madam President: But, Sen Mark—

Sen. W. Mark: Yes, Ma’am.

Madam President: We are now going so far away from what—[Crosstalk] You
know, I was with you until we started about home-owning democracy.

**Sen. W. Mark:** No, well I was just trying to wake you too.

**Madam President:** No, no, no.

**Sen. W. Mark:** Sorry. Sorry, Ma’am.

**Madam President:** I am very much awake.

**Sen. W. Mark:** I thought—sorry, sorry. I understand.

**Madam President:** I am so awake, it is not funny, Sen. Mark. So I will ask you please.

**Sen. W. Mark:** I think I would think about sleep myself. I agree with you. I might be the one falling asleep. [*Laughter*] So, Madam President, all I am saying is that I would not want to detain you any further. I am guided by you. As you know, we are good friends for many years. Many of them do not know this, but we go back long time. We met in Pointe-a-Pierre, you will remember. [*Desk thumping and laughter*] We met in Pointe-a-Pierre, that is when we met, and we have never left each other after Pointe-a-Pierre. [*Laughter*] We met in Pointe-a-Pierre, but I must tell you “and ting”, “ah geh ah sound lickin in Pointe-a-Pierre”. [*Laughter*] But I have never forgotten that relationship that we established in Pointe-a-Pierre.

So, Madam President, you know, we must have a little laughter, and a banter and thing to keep the thing going. [*Crosstalk*] I think 600 votes. No, I think 600. Madam President, but as I tell them in south, we go back long like with my colleague here, the Leader of Government Business, we go back long, also the Minister of Agriculture, Land and Fisheries. I think the one that I do not know well—

**Madam President:** Sen. Mark. [*Laughter*]

**Sen. W. Mark:** Sorry. Sorry, Ma’am.
Madam President: The camaraderie is so delightful, but let us now get back to the matter at hand, please.

Sen. W. Mark: Thank you very much, Madam President. I think I have everybody awoke now. Madam President, these are some of the points I have sought to bring to your attention to get some clarification from the hon. Attorney General as to the way forward. And, hon. Attorney General, through the hon. President, I would like you to give the assurance to the poor and the downtrodden in this country, who might be concerned about this particular provision, how can you give them the assurance that they will not be adversely affected by this provision, and I think that is where, Madam President, clause 4(2), in particular, we need to give the population this clarity on this particular matter as it relates to the future.

Madam President, I wish to thank you for the opportunity to make this limited intervention. Thank you very much. [Desk thumping]

The Minister of Agriculture. Land and Fisheries (Sen. The Hon. Clarence Rambharat): Madam President, thank you very much for allowing me to join the debate, and I continue where my very good friend, Sen. Mark, left off, giving assurance to the poor and the downtrodden. And, Madam President, this is the assurance we can give to the poor and the downtrodden.

Let me just remind my friends, in 2010 to 2015, they managed two pieces of land legislation: planning and development legislation which was partially proclaimed and a piece of legislation that touches and concerns the real estate profession. So that they had ample opportunity to take this 1898 Ordinance and give it new life and meaning, and they did not do so. So what we offered the poor and the downtrodden, the well-heeled and the well-to-do and the average citizen of this country tonight are four pieces of this legislation. This first one will bring
into fairly understandable language, the rights of an occupant of State land to avail themselves of title, 30 years having elapsed.

The second thing we will do for the people, Sen. Mark has mentioned, is that we will create an opportunity for the determination of rights relating to land, through an adjudication process set out in a Land Adjudication Bill that is also before us.

The third thing we will do is, where there are interests to be determined beyond the adjudication process, is through a Land Tribunal Bill, which would provide a route that is not the established route through the magistracy or the Supreme Court.

And the fourth thing we would do, ultimately, is to provide a system for registration of titles that is simplified, that makes use of technology, that provides access and also protects existing interests. That is what we offer the poor, the downtrodden, the well-heeled, the well-to-do, the middle-of-the-road; everybody, every citizen, and we do it in the form of four pieces of legislation relating to land with more to come.

Madam President, in response to Sen. Mark, I would also say that limitation legislation is not usually very long because the main focus of the legislation is to prescribe a particular time within which something must happen, and this Bill does that.

However, I want to also say that we must be very careful, as Sen. Ramdeen has pointed out, I think we have reached the point in our jurisdiction, where the law relating to adverse possession in relation to both State and private land is now well settled. I think that while we may want to modernize and make the language a little more understandable, we have to be very careful that we tread along the course established by the case law, which has consistently explained, even though

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the Crown Suits Limitation Ordinance of 1898 is difficult language, we have a sufficient body of case law which assist us in understanding, first, the elements to be established for adverse possession, the manner in which your occupation and the period of occupation could be established, and in relation to the—I would still say new rules of the Supreme Court, the manner in which evidence, in particular expert evidence, can be introduced in order to support a claim. So, I would be very slow to modify the language in such a way that we lose the current interpretation that we have in relation to adverse possession. It still does not stand in the way of future reform.

Madam President, in relation to the Bill, there are three areas I just want to quickly point to. The first is—I have already explored, but I want to make the point that this Bill protects protected areas and forest reserves, environmentally sensitive areas and land identified by the State for a public purpose. It means that the rights in clause 2 of the Bill, which are clearly established, do not apply to those categories of land, and I have already traversed that area, but I want to draw attention to it that it is for the first time we are introducing—this is something the current Ordinance does not have—an exception in relation to those categories of land and I have dealt with that when I spoke on a previous Bill.

Madam President, the second thing I would point to is clause 5 of the Bill, which—and I had mentioned this in a previous debate—sets out to save the existing rights and that, I want to read that clause:

“Nothing in this Act shall be construed as extinguishing any rights accrued or any proceedings commenced under the Crown Suits Limitation Ordinance prior to the coming into force of this Act.”

So, it means two things. It means that those persons who have already filed actions, or commenced claims under the existing Ordinance, will have those
claims preserved but, more importantly—and I had flagged it before—that it is not going to be a simple matter of determining exactly which rights have accrued and are preserved, because we are dealing with the passage of time.

So if somebody has been on State land for 29 years, 28 years, the rights are going to be saved. But I am saying that from my experience, it is going to be something that we will have to work through to get the guidance on this clause 5, because we are dealing with all sorts of facts, and it is a factual matter that will require some getting accustomed to in terms of its application.

But, Madam President, this is what we have. It is still not perfect language, but it is an improvement and it does not stand alone. As far as I see it, it is actually the first Bill that we should have dealt with, because it deals with the rights relating to adverse possession, out of which a lot of what is contained in the other three Bills, flow. And I think it is the step in the right direction. I thank you very much. [Desk thumping]

The Attorney General (Hon. Faris Al-Rawi): Thank you Madam President. Madam President, I want to thank my learned colleague, Sen. Rambharat, for literally doing the reply for me, because there is really nothing more that I could add to that reply. I just wish to simply adopt everything that he has just said, thank him for the submissions made and I beg to move. [Desk thumping]

Question put and agreed to.

Bill accordingly read a second time.

Bill committed to a committee of the whole Senate.

Senate in committee.

Madam Chairman: Sen. Mark, do you have any amendments circulated? Hon. Senators, I would remind you that there are six clauses in this Bill.

Clause 1 ordered to stand part of the Bill.
Clause 2.

Question proposed: That clause 2 stand part of the Bill.

Sen. Mark: Madam Chair, may I ask the hon. Attorney General whether he is of the view that concepts in this legislation like “grant” and “title”, do you think that there is need for operational definitions, so that ordinary people who are interpreting this law, they will be able to know that when we talk about grant in clause 4 or you go to clause 2 and you see the word “grant” coming up like in clause 2(2), the word “grant” is used on two occasions as well as the term ‘title’?

Now, you and I would know what we are talking about, right? But remember we are no longer using the concept of title. We are talking about land certificate. So I am wondering, for instance, whether given what we have already agreed to in the previous law, whether we are not engaging in matters that may turn out to be redundant. So I am just trying to get some clarification from you.

Mr. Al-Rawi: Thank you, Madam Chair. I thank Sen. Mark for the question. This, of course, is very much a relevant issue in much of the rest of the world, where plain English or simple English is in fact used. This is still a necessary feature of our law, because it is to treat with the gap in-between the measures now, and then the ultimate registration of title to lands position.

Conveyancing and land law is very much a technical area of law. It is deceivingly simple. People think it is just a piece of paper, but things like hereditaments and messuages and things thereto belonging and pertinences, et cetera, are still very much relevant. There is no need necessarily to put in the description. In fact that could be quite problematic, because what we do is to disturb the interpretation that the courts and practice have at present.

So, at this point, I think that it is still a necessary feature of the law, but certainly as we progress, I think the plain English and other terms and simplicities
could prevail.

**Sen. Mark:** Madam Chair, if I may again ask my hon. colleague, through you, the concept of adverse possession, while it was not explicitly outlined here, but where and when would we be able to establish appropriate guidelines so that people could understand the stages that that entails and how you go about accessing, let us say, the tribunal or approaching the adjudicator as the case may be? Are we going to have specific forms that would be printed or brochures established that will give people a clear concept of this, if I may.

**Mr. Al-Rawi:** Yes, Madam Chair. You are in a very generous mood tonight. Sen. Hosein, in fact, is in possession of the very forms referred to by my learned colleague, printed by the Registrar General under the RPA Act which gives all the prescriptive formulas, et cetera—[Crosstalk]—yes, the guidelines at the Registrar General’s Office. So, I am sure that Sen. Hosein would back me up here that they already exist.

So I do catch your point, however, that in the roll-out of the package of laws that information and management and publication and implementation becomes necessary. So, I certainly think that the State, through its land adjudication process, will be treating with those things and doing the necessary public education.

**Sen. Mark:** Thanks, Madam Chair.

**Sen. S. Hosein:** Madam Chair, sorry. To the Attorney General. I have one comment, Attorney General. Now, the original Crown Suits that we are going to be repealing, well the State Suits, is actually a model after the English Crowns Suits Act, 1769. Right? Now, there is a judgment—

**Madam Chairman:** No, Sen. Hosein, we are dealing with clause 2.

**Sen. S. Hosein:** Yes, yes, Madam President.
Madam Chairman: So your comment, you have to tighten up and ask the question, please.

Sen. S. Hosein: Sure. The question, Attorney General, is that under the present construct of clause 2, what it does, it just bars the State from bringing an action against any person who is in possession for the 30-year period. What it does not do is extinguish the title of that of the State.

Now, the judgment that I wanted to refer to actually stated that the State’s title is not extinguished by this construct, and they made a comparison to section 22 of the Real Property Limitation Act so that where private lands are concerned, once you prove the adverse possession for the 16 years, it actually explicitly states that the title is extinguished, but in this case it does not say that. So I wonder if we are going to be going to that route as how we treat with private lands.

11.15 p.m.

Mr. Al-Rawi: So the answer is to be found in the rest of the Bill which treats with the ability of the State to still take further action. So the blank or hardball extinguishing was not intended to be placed there. In fact, Sen. Mark said it quite well, this is just modern language to the very Ordinance which we had, just to make it a little bit more intelligent. We had not taken a policy decision to move the law more than where it is right now. In fact the 1981 Limitation Act is something which is being looked at, at the same time that we look at the condominium legislation, 1981, which is something that still has yet to come. So what we wanted to do, because there was a lot of complaint about the construction and application about the language in the Ordinance, is that we really just tried to clean it up. So this is really just a cleaning-up exercise for now.

Question put and agreed to.

Clause 2 ordered to stand part of the Bill.
Clauses 3 and 4 ordered to stand part of the Bill.

Clause 5.

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

**Madam Chairman:** Sen. Ramdeen.

**Sen. Ramdeen:** Attorney General, Madam Chair, through you to the Attorney General—

**Madam Chairman:** Sen. Ramdeen, could we hear you, please?

**Sen. Ramdeen:** I am sorry. Madam Chair, to the Attorney General, through you, the hon. Sen. Rambharat raised the issue about the width and ambit of clause 5 and I am not sure that clause 5 provides the protection to persons who would be in occupation of State lands by the way in which it is worded, and I can explain why, because somebody who is in occupation of State land for less than 30 years on the passage of this legislation would not have any rights accrued to them and therefore it puts them in a very precarious and prejudicial position. Because of the way in which this legislation operates by barring the State, what it does, is that after 30 years you have, what we refer to in property law as a chosen action that would then be able to be materialized into a right in rem when you get a vesting order.

And therefore, I think that if it is that the intention of the Government is to provide a mechanism that protects persons who are in possession of State land, and their occupation—that is the way it is supposed to be explained there—their occupation is not to be affected by the passage of this legislation, then clause 5 does not do that because they have no rights that are accrued. And if they have no rights that are accrued and it is not caught by clause 5 then they will be prejudiced to the extent that the time will start to run again once this Act is proclaimed.

**Sen. Mark:** And, you know, Madam Chair, just to follow up on what my colleague had said, these are some of the thoughts that were rushing through my—
and I am glad that Sen. Ramdeen really elucidated it in the way that he has done, because I was concerned about how this thing is going to impact upon ordinary people and the time. So I am glad that he did.

Mr. Al-Rawi: May I ask Sen. Mark what formulation of remedy he would give us to this particular clause?

Sen. Mark: Well, really, and so on, I would ask if we could defer this matter so that we can confer. Let us defer it to confer on it, and I have my colleague there who would help me construct. [Laughter]

Mr. Al-Rawi: At least there would be consistency in the constant deferral of committee stage, but may I, through you, Madam Chair, ask Sen. Ramdeen perhaps, what is the surgery that is in his mind, because I have not yet grasped the fact that we would somehow be resetting the clock for people at this point?

Sen. Ramdeen: Well, what would happen is that—it really is an argument in the negative. If it is that the protection that is given by clause 5:

“Nothing in this Act shall be construed as extinguishing any rights”—that would be—“accrued”.

So, if we take that literally, if there are persons who have occupied for more than 30 years and they would have a chosen action, which would be a right, and therefore that is protected, but everything else would not be protected because it does not give you that protection here. So that what you would want to do is perhaps say that:

Nothing in this Act shall be construed as extinguishing any rights accrued, or…

—you want to be able to capture—

…or affect the possession by any person of State land.

That is what you want to protect, and I am saying all of this subject to the fact that
this is your policy. I am sure that is what you want to do.

**Mr. Al-Rawi:** So the point being made is that the accrual of right-only vests after 30 years.

**Sen. Ramdeen:** After 30 years.

**Mr. Al-Rawi:** So, the run-up to that accrual is what you are trying to say.

**Sen. Ramdeen:** Because they have no rights.

**Mr. Al-Rawi:** Yeah. But when I read the Bill as a whole and I look at clause 2:

“Subject to section 3, the State shall not at any time sue…whatsoever”—for these things—“which the person has held or enjoyed or taken…thirty years next before the filing”.

**Sen. Ramdeen:** Yeah, but, you see, that allows—

**Mr. Al-Rawi:** —is the accrual.

**Sen. Ramdeen:** Yeah.

**Mr. Al-Rawi:** Notwithstanding (1), the State when the person claiming by—I am still trying to figure how this repeal and replace of the State’s limitation affects somebody advancing the claim that I must now restart afresh at 30 years, because this Bill does not speak constructively to say, look, the law of Trinidad and Tobago is now that from this day forward you must reset your clock. I cannot see how we get there.

**Sen. Ramdeen:** But why are you protecting—what is the purpose of 5 then, because if the rights are accrued, the Bill cannot affect it?

**Mr. Al-Rawi:** Well, you see, I think it was really meant to treat with things which may have actually commenced under the Crown Suits Limitation Act, so where somebody would have relied upon or taken a step—

**Sen. Ramdeen:** But I am not treating with that because that is just the preservation of anybody who would have commenced an action under the—that is
the second part, right, so I am not saying that is ineffective. I am not treating with that at all, and they are disjunctive. So, you have the first part which is the extinguishing of any rights accrued, and then you have persons who are, and that would really be negligible, people who have commenced proceedings—

**Mr. Al-Rawi:** So I am with you, I think that the accrual of rights is saved. I think that the actions taken pursuant to—

**Sen. Ramdeen:** Just one minute. On the accrual—on your reasoning—on the accrual there would be nothing to save, because once the 30 years have passed, the right is then crystallized and therefore you cannot save it—sorry, there is no need to save it because there is nothing to save, because the State, at that point in time, cannot commence an action in any event. So I think it is one of two things, it is either that “we surgery” the first part because it seems to be superfluous or ineffective to do anything, because what we are seeking to do—

**Mr. Al-Rawi:** If I were to flip it on its head and put it simply, the mischief that is being pointed out is the potential allegation that you are going to have to restart a clock for people under 30 years.

**Sen. Ramdeen:** Well, let us take them one at a time. That is why I am asking, because I might be wrong, what is it that the intention of the first part of the section is intended to do?

**Mr. Al-Rawi:** I think that we could state it in the first part severed from the second part, which is proceedings commenced. The first part is intended that if somebody was at the point of having had the right accrued under the expressions of the Ordinance that we are making sure that out of an abundance of caution that those things are still deemed to have been accrued. They are deemed to still have been crystallized but they did not yet go the step of taking the suit.

**Sen. Ramdeen:** The only thing that could crystallize—let us look at it practically,
you are amending 40 to 30, the only thing that could crystallize is somebody who has been there for 40 years and now you are breaking it down to 30 years.

**Mr. Al-Rawi:** Well, worse yet, the law has been interpreted to be not 40 years but 30.

**Sen. Ramdeen:** No, I accept, but that is because of the Real Property limitation—

**Mr. Al-Rawi:** And the implied repeal aspects.

**Sen. Ramdeen:** Right. But if this Act gave protection to someone who would have been there for 40 years and we are cutting it down to 30 years, we are not increasing it, if we were increasing it then you would be able to say, it does not affect someone who has an accrued right. But what we are doing is decreasing it so that there would not be a need to protect an accrued right, because the right has to be accrued already. And if the right was accrued under 40 it must—

**Mr. Al-Rawi:** You see, I still have not gotten the mischief, how does the argument reach to be that we are extinguishing everybody who is under 30 years? There is no reset. It cannot be that a court—sorry, I mean this most respectfully, but I am just not catching the mischief on this one.

**Sen. Ramdeen:** No, I probably did not understand what you meant in terms of the first, because in any event, like you have said, under the Real Property limitation the extinguishment would take place there, so they have that protection there. I am just wondering now having reasoned it that way whether there is any need to have the first part before the “or”.

**Mr. Al-Rawi:** I just do not see it.

**Sen. Ramdeen:** No. No. No. I am saying whether there is any need to have it.

**Madam Chairman:** Members, I think we have had enough deliberation on it. I think the Attorney General has listened and—

**Sen. Mark:** Madam Chair, I think it is something that we need to—just allow me
for a second. I would not want us to approve something that we would live to regret, I think it is something that we should give some thought to.

Mr. Al-Rawi: In what way, Sen. Mark?—put it from your perspective across to me.

Sen. Mark: Well, what I understand that is being said is simply this—[Interruption] He is okay?

Member: Yeah, we are okay.

Sen. Mark: Okay. [Laughter]

Question put and agreed to.

Clause 5 ordered to stand part of the Bill.

Clause 6 ordered to stand part of the Bill.

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

Senate resumed.

Bill reported, without amendments, read the third time and passed.

Madam President: Hon. Senators, we had moved into committee for the Land Tribunal (Amdt.) Bill, 2000, and the Land Adjudication (Amdt.) Bill, so we will now resume the committee, and we will deal with the Land Adjudication Bill.

LAND ADJUDICATION (AMDT.) (NO. 2) BILL, 2017

Senate in committee.

Madam Chairman: Hon. Senators, if I can remind you—

Mr. Al-Rawi: Chair, I am so sorry, I mistakenly understood that my team had sent out our proposed amendments upon reflection of submissions for Sen. Ramdeen; I understand that has not be done. So in those circumstances, could I indulge you to do the Land Tribunal first?

LAND TRIBUNAL (AMDT.) (NO. 2) BILL, 2017

Madam Chairman: Hon. Senators, so we are going to resume the committee
stage in dealing with the Land Tribunal (Amdt.) Bill. There are amendments circulated on behalf of Sen. Mark. I trust that we all have them. Yeah? Sen. Small?

Sen. Small: Yes, Madam Chairman.

Clauses 1 to 3 ordered to stand part of the Bill.

Clause 4.

Question proposed: That clause 4 stand part of the Bill.

Madam Chairman: There is an amendment circulated by Sen. Mark.

A. Insert after subclause 3(1) a new subclause 3(1) A:

“3(1) A (1) There shall be a Registrar of the tribunal, who shall be appointed by the Judicial Service Commission.

(2) The Registrar of the Tribunal shall, subject to this Act or any rules made under this Act-

(a) issue all summonses;
(b) keep a record of all proceedings of the Tribunal;
(c) keep, or cause to be kept and maintained, a register of all orders and judgments of the Tribunal;
(d) have the custody, and keep account, of all fees and other moneys payable or paid to the Tribunal, and shall keep proper accounts thereof;
(e) subject to any rules made under this Act, hear and determine interlocutory applications:

Provided that no direction or order made on an
interlocutory applications shall operate so as to prejudice the Tribunal from giving such decision upon the case as may be just; and

(f) have such other functions and exercise such other powers as may be conferred by rules made under this Act or by any other written law.

(3) A person aggrieved with a decision of the registrar may appeal to the Chairperson and in the absence of the Chairperson, the Vice-Chairperson.

(4) A person shall not be appointed as registrar of the Tribunal unless the person is a legal practitioner with ten years legal experience.”

B. In Subclause 3A (1) by:

(a) Deleting the word “President” and substituting the word “Tribunal”

(b) Inserting a new sub-paragraph (6):

“(6) The determination of any matter before the Tribunal shall be according to the opinion of the majority of the members considering the matter:

Provided that-

(i) in the event of an equality of votes, the person presiding at the sitting shall have, in addition to a deliberative vote, a casting vote;

(ii) Where in any matter before the Tribunal the dispute to be resolved is on a point of law the decision of the
person presiding at the sitting, shall prevail.”

C. In subclause 3A (2) by:
   (a) Deleting the word “President” and substituting the word “Tribunal”
   (b) Deleting after the word “assessor” the words “to the Tribunal”
   (c) Deleting the words “as the Chairman may” and substituting the words “as deemed necessary”

D. In subclause 3B (1) by:
   (a) Inserting after the word “Constitution” the following words:
       “and shall be a direct charge on the Consolidated Fund”

E. In subclause 3B (3) by:
   Deleting the words “prescribed by Order of the President” and substituting the words “determined by the Salaries Review Commission”

F. Renumber accordingly.

**Sen. Mark:** Oh, thank you. I am just in time, Ma’am. I think the AG was waiting and was praying that I did not come back. Madam Chair, because of the nature of this particular institution that is being established, and I am looking into the future, and because of the fact that we have been advised that we have close to 250,000 citizens who are living informally in terms of settlements, better known as squatters, this particular tribunal would have a lot of work to do along with the number of cases that would be referred to it by the adjudication officers, especially the chief adjudication officer. And because the numbers have been reduced from six, initially, I think, to four, it means to say that they have already reduced the numbers. I remember, Madam Chair, that in the parent legislation Mr. Ramesh Lawrence Maharaj had anticipated that tribunals would have been able to sit
simultaneously in different parts of the country.

**Madam Chairman:** Sen. Mark, I hate to interrupt but I am a little puzzled by your contribution.

**Sen. Mark:** No, I am just giving you a background.

**Madam Chairman:** No, we do not need the background at this stage. You have an amendment.

**Sen. Mark:** All right. Okay, well let me go on—

**Madam Chairman:** Yes, if you can go straight—

**Sen. Mark:** But what I am saying is that I think there is need to have a secretariat fully functional and that secretariat would be headed by a Registrar, and I have sought to indicate what the Registrar should be doing in terms of carrying out certain functions in order for that tribunal to function properly. And I went on further to suggest, we are deleting, Madam President, where you see—I do not know if it is in the—

**Madam Chairman:** Okay, so, Sen. Mark, what we will do is because the amendments to clause 4, there are quite a few, so let us deal—we will deal with the amendment at A, which is dealing with the Registrar of the tribunal, and we will deal with 3(1)A, (1), (2), (3) and (4).

**Sen. Mark:** Okay.

**Madam Chairman:** Okay. Attorney General.

**Mr. Al-Rawi:** Madam Chairman, there are two schools of thought, that you appoint a Registrar prescriptively by stating so in the wide fashion set out here is not in fact normal, but the concept of a Registrar is well-founded. Industrial Court, the Equal Opportunity Tribunal—whilst I was sitting here I had a look at section 41 of the Industrial Court, of the Equal Opportunity Tribunal, and it just simply says—and it is a subsection of the establishment of the tribunal, a small subsection:
“There shall be appointed for the purpose of assisting the Tribunal in the performance of its functions a Registrar and such other officers and staff as the President thinks fit”—simpliciter.

That is quite an attractive formula. There is precedent for it. It allows for the prescription to be dealt with otherwise. So perhaps we could look at including a subclause into that effect at clause 4, in the new 3 where we have 3(1), 3(2), 3(3), 3(4). Perhaps it will be a new (5). To address Sen Mark’s prescriptive version I would just say that the Government would prefer to not be as prescriptive in this effect, but I do take on board the very good suggestion that a Registrar should be specified. Sometimes the public service could trip itself up by saying, well, look, you did not provide for it. So perhaps we can do it in the same fashion that the Equal Opportunity Tribunal has done it.

**Sen. Mark:** May I, through you, Chair, Attorney General, I think that my colleague had indicated earlier that the Equal Opportunity Commission, they perform a different function and role to what we have before us, and it is against that background we were suggesting that this Registrar and the accompanying staff should have a greater degree of independence away from any potential influence from the Executive. Now, when you say, “President”, I know we are talking about the Cabinet as you told us earlier, so I do have a little reservation about the President getting involved in the appointment of the staff, be it the Registrar, unless you can indicate, through the Chair, that that will be done in accordance with well-established public service arrangements or regulations. So you would have a little buffer between the Cabinet getting involved directly, and you would have like, for instance, the institution of the public service coming.

**Mr. Al-Rawi:** I understand the point.

**Sen. Mark:** So that is what I am trying to just ensure.
Madam Chairman: Attorney General.

Mr. Al-Rawi: Madam Chair, I am comforted and I take solace in Paul Lai, Sam Maharaj, Suratt, and in the functionality of the Equal Opportunity Commission. Not everything needs to be done as the Constitution says with respect to judges, et cetera, that is now, you know, quite commonplace. The fact is that I think that we recognize the merit of Sen. Mark’s recommendation. The CPC’s department has suggested instead of slipping this in into the area that I had just noted that we could perhaps put a new 3D.

So when we come to the end—if you look to the Bill at page 4, Madam Chair, we propose the formula of words which I recited already, but which I will recite again, and to give Sen. Mark the assurance there will be, of course, the usual public sector, PMCD, job descriptions, et cetera, that go along with these things. But I think that we could easily accept the language in a new 3D being as follows, if it were to meet with you, Madam Chair. New 3D inserted after 3C:

There shall be appointed for the purpose of assisting the tribunal in the performance of its functions, a Registrar, and such other officers and staff as the President thinks fit.

And let me just explain that when Cabinet is invited to do structures the formula is that it goes to Public Admin. There is a PMCD report; the management committee report, that report goes through job descriptions. There is a conversation with the CPO. After the conversation with the CPO there is an advertisement; the advertisement prevails, applications come in, the HR committees interview, and there is a whole well-established public service approach towards the establishment of these units. So I think that we can find solace in that very well-tried and tested formula.

Sen. Mark: May I seek clarification again from the hon. Attorney General? Are
these workers, essentially, would be on contract rather than public service? Because if you are going on contract, in this regard, then I am wondering, Madam Chair, how that is going to affect the independence of this institution.

**Mr. Al-Rawi:** Madam Chair, I think I have a brilliant solution, because I have been juggling three Bills, and eight of them between yesterday alone, I am now up to 11, I confess and I apologize sincerely and profusely to the honourable Senate that I did not remember section 15 of the parent Act. So, again, I apologize. Section 15 of the Act says, under Part IV, administration—I am almost ashamed:

“There shall be a Registrar and a Deputy Registrar of the Tribunal and such other officers as may be necessary for the proper administration of this Act and any regulations made thereunder”.

So I apologize to you, Madam Chair, and to my learned friend, Sen. Mark, that I had not recalled this particular provision. I confess it is due to the number of Bills that I am juggling at the same time. [Interruption] Yes, section 15.

11.45 p.m.

I am sure Sen. Mark was in the same boat as I was because of the number of Bills we are juggling tonight; 15, 16 and 17. Ignore what I have just said please; I apologize.

**Madam Chairman:** That is all right. Sen. Mark—

**Sen. Mark:** Yes, I withdraw mine.

**Madam Chairman:** Well, you withdraw this part of it, but you have—let us turn the page and we go to (b), what you propose at (b) on page 2 of your amendments. So you are withdrawing this part here—but (b).

**Sen. Mark:** 3A.

In Subclause 3A (1) by:

(a) Deleting the word ‘President’ and substituting the word ‘Tribunal’.

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(b) Inserting a new sub-paragraph (6):

Madam Chairman: At 3A (1), Sen. Mark, you wish to replace “President” with “Tribunal”.

Sen. Mark: Yes.

Madam Chairman: So that you want it to be that the tribunal will appoint the lay assessor as opposed to the President?

Sen. Mark: Yes, Ma’am.

Madam Chairman: Attorney General.

Mr. Al-Rawi: Madam Chair, I would not want to have the tribunal itself shopping for lay assessors from time to time. One can agree that a court actually has that power in the appointment of experts to guide the court under the Civil Proceedings Rules, but the parties are usually involved in that exercise and have some degree of say. I think it is by far a safer route to have the President appoint the assessors. There is a functioning formula in Trinidad and Tobago dealing with very important rights, constitutional rights, which is the Equal Opportunity Tribunal which has the exact formula, that the President appoints lay assessors, and there has been no complaint to that approach.

In any event we are insulated by the fact that there is a right of appeal to the Court of Appeal, right of appeal to the Privy Council in accordance with section 109, So we have all of the due process layering inside of this. So respectfully, Madam Chair, the Government does not propose to accept the amendment from my learned colleague.

Madam Chairman: And then we have to insert a new subparagraph (6); Sen. Mark. I think though you mean that to be 3(6).

Mr. Al-Rawi: Because 3A does not have a (6) it ends at (4).

Sen. Mark: That might be a little typo.
Mr. Al-Rawi: So what is it, Madam Chairman?

Madam Chairman: At 3(6) to include a new subparagraph (6): The determination if any—well, Sen. Mark.

Sen. Mark: Yes, thank you, Ma’am, I know you like to help me.

(6) The determination of any matter before the Tribunal shall be according to the opinion of the majority of the members considering the matter:

Provided that—

(iii) in the event of an equality of votes, the person presiding at the sitting shall have, in addition to a deliberative vote, a casting vote;

(iv) where in any matter before the Tribunal the dispute to be resolved is on a point of law the decision of the person presiding at the sitting, shall prevail.

Attorney General, through the hon. Chair, we are saying that we should outline, as you would say, prescriptively, a clear kind of position as it relates to how decision-making should be taken. And because of the equality of numbers, I have seen where we have said, we have a chairman, a deputy chairman and four other members. So we are talking about six persons.

Mr. Al-Rawi: I am familiar with the argument. Fortunately in 1979, the Interpretation Act was amended in section 50 to provide for the exact circumstance of majority and deadlock and other provisions, and in fact this has been utilized as recently as the Police Service Commission’s recommendations for the appointment of a commissioner of police, something which is well now in the public domain. So we have the specific operation of the Interpretation Act, section 50. It is a very good observation on my learned colleague’s part, but it is already taken care of in
law.

**Sen. Mark:** Okay.

**Madam Chairman:** Then we move down to 3A (2).

In subclause 3A (2) by:

(a) Deleting the word “President” and substituting the word “Tribunal”.
(b) Deleting after the word “assessor’ the words “to the Tribunal”
(c) Deleting the words “as the Chairman may” and substituting the words “as deemed necessary”

**Sen. Mark:** That is consistent with the (1).

**Madam Chairman:** Then you have, deleting after the word “assessor” the words “to the Tribunal”.

**Sen. Mark:** Madam Chair, I think it is self-explanatory.

**Madam Chairman:** Attorney General, if you could deal with 3, with C, in its entirety. C (a), (b) and (c).

**Mr. Al-Rawi:** Thank you, Madam Chair. So 3A deals with the appointment of the assessors. 3A (2), the recommendation is that we delete the word “President” and substitute with “Tribunal”. This is Sen. Mark’s position. Consistent with the Government’s position in relation to the recommendations at paragraph (b) as put to 3A (1), we respectfully do not accept on this occasion the recommendation of my learned colleague.

In subparagraph (b):

Deleting after the word “assessor” the words “to the Tribunal”.

I cannot see what that is aimed at, because (2) reads:

“Where the need arises or where a vacancy exists in the number of lay assessors…the President may appoint as a temporary lay assessor to the Tribunal...”
Sen. Mark is proposing that we delete the words “to the Tribunal”. I cannot see that that could be anything else other than the Tribunal. And then (c) says:

Deleting the words “as the Chairman may” and “as deemed”—for such period as the Chairman may recommend.

We think it sensible to maintain the direction of someone with responsibility, being the Chairman, because with responsibility comes identification of culpability and responsibility going side by side. So we prefer to leave the Chairman there, specifically because it would put an obligation, an onus on him.

I understand what Sen. Mark is trying to get at. I am not sure that we should head there for the assessor and deleting the words “to the Tribunal”. I think it is necessary for clarity, and “as the Chairman may”, we prefer to pinpoint the Chairman to have a positive obligation so that there is a responsibility in the event of culpability.

**Madam Chairman:** Then let us move on Sen. Mark to (d).

D. In subclause 3B (1) by:
   (a) Inserting after the word “Constitution” the following words:
   “and shall be a direct charge on the Consolidated Fund”

E. In subclause 3B (3) by:
Deleting the words “prescribed by Order of the President” and substituting the words “determined by the Salaries Review Commission”

F. Renumber accordingly.

**Sen. Mark:** Again, Madam Chair, just to be consistent with an earlier position that we had dealt with. We believe even though the persons are going to be subject to the SRC, we just wanted to do like the judges and them, even though their salaries and terms and conditions are determined by the SRC, but there is a clear
provision that it should be a direct charge on the Consolidated Fund. Again to give this group a certain degree of independence and are not in any way subjected to any possible potential influence by the Executive. So that is the rationale.

**Mr. Al-Rawi:** Madam Chair, I understand my learned colleague’s point. It is a very good point to ensure independence, but it is specifically that because we are not putting the lay assessors in any judicial-making capacity that we must not adopt the formula of charges against the Consolidated Fund, because that is reserved exclusively for the Judiciary. So we do not want there to be any allegation that these persons are judicial in nature or capacity.

I mean, there is nothing that can stop their payments, et cetera. We have already put that there cannot be a derogation in respect of their terms and conditions, et cetera, but they are not judicial officers, and to apply the judicial formula of the charge against the Consolidated Fund we think would be crossing a boundary.

**Sen. S. Hosein:** AG respectfully, with respect Madam Chair, with your permission. I understand that when we set up the Land Tribunal it would be a court of superior record, and I want to support Sen. Mark’s—

**Mr. Al-Rawi:** But you see, Senator, sorry to cut in, but the court is the JLSC people, it is not the lay assessors. The decisions are made by the persons appointed under section 3, and those are the judicial and legal services persons.

**Sen. S. Hosein:** All right. I take your point.

**Madam Chairman:** And lastly Sen. Mark, 3B (3).

**Sen. Mark:** Again, Madam Chair, the thinking here is that again attempting to avoid the external influence on the part of the Executive, and that is why we were saying these parties that are the lay assessors, and even those who are coming in on a temporary basis, their terms and conditions could be fixed by the Salaries Review
Commission rather than by the President. So that again was the thinking behind this recommendation.

Mr. Al-Rawi: I want to give Sen. Mark the assurance that in this particular formula of prescription by Order of the President, that the CPO always is involved, and therefore the standard public service formulation and service guidance will apply. So there cannot be the circumstance where the CPO’s directive will not be given. So there is comfort to be found in the existing structures.

Sen. Mark: But you see the CPO is a creature of the Executive as opposed to the SRC that is entrenched in the Constitution. And—

Mr. Al-Rawi: You see, if I may butt in, the difference between the CPO and the SRC is that the SRC makes recommendations. The CPO gives it direction as to what is going to be done, which is why strikes happen outside the CPO’s office. That is such the power than the CPO has. So there is a strong tradition of independence in the CPO’s office, to the point where whomever the CPO is is actually the person who is picketed by every single union.

Madam Chairman: Sen. Hosein.

Sen. S. Hosein: AG, the point I was just raising earlier where you spoke of the JLSC appointments, now that is 3B (1) of the Bill. That deals with the Chairman and Deputy Chairman, and in those circumstances—

Mr. Al-Rawi: And the four others.

Madam Chairman: Sen. Hosein, where are you at? Because we are dealing with 3B (3). Are you dealing with 3B (3)?

Sen. S. Hosein: Oh no, Madam Chair. I am on 3B (1), sorry.

Mr. Al-Rawi: I am not 3B, I was on 3(2) on page 2 of the Bill.

Sen. Hosein: I do not think Sen. Mark had an amendment for (2), it is 3B (1).

Madam Chairman: No, we dealt with 3B (1), we had the discussions, and we
have moved on to 3B (3).

**Sen. S. Hosein:** Can we just revisit that 3B (1) please? I will not be long, Madam.

**Madam Chairman:** Is that not the point that you were asking about the Consolidated Fund?

**Sen. S. Hosein:** The Consolidated Fund and the chair and the deputy chair. I think just because of this tribunal being a court of superior record that we should protect the chair and the deputy chair, and even the four others.

**Mr. Al-Rawi:** I am going to rely on the same formula in the EOC which is a court of superior record, where the lay assessors are done the same way, and has been functioning—the charge on the Consolidated Fund—

**Sen. S. Hosein:** No AG this is not the lay assessors, this is the chair and deputy chair, not the lay assessors. So 3B (1).

**Madam Chairman:** But if I may just say that we are dealing with an amendment proposed by Sen. Mark, and you are asking something that is different from what has been proposed by Sen. Mark.

**Sen. S. Hosein:** No, Madam Chair, I do not know if I am being understood.

**Mr. Al-Rawi:** Madam Chair, I think I catch what Sen. Hosein is saying.

**Madam Chairman:** No, let me catch all, *[Laughter]* because I just want to keep all of us on track here. Sen. Hosein I will allow you the smallest—a crack is what that window is right now.

**Sen. S. Hosein:** Madam Chair, thank you, and all of the landowners will thank you also for this. With regard to that AG, I think we need to include the charge on the Consolidated Fund at least for the chair and the deputy chair for that protection.

**Mr. Al-Rawi:** Madam Chair, I misunderstood what was said earlier. I thought it was in reference to the lay assessors. I have no objection to the recommendation that Sen. Hosein is making, I think it is a sensible one.
Sen. S. Hosein: And that falls on D of—

Sen. Ameen: All the members of the tribunal?

Sen. S. Hosein: The chair, the deputy chair and the four other members.

Mr. Al-Rawi: Yes, I think it is a good recommendation. Just let me look to see where we can put that.

Madam Chairman: Well it is proposed here in Sen. Mark’s amendment. It is at D, page 2.

Sen. Ramdeen: Madam Chair.

Madam Chairman: Just one second, Sen. Ramdeen. At page 2 at D:

In subclause 3B (1) by:

(a) Inserting after the word “Constitution” the following words: “and shall be a direct charge on the Consolidated Fund”.

Is that not what you were saying Sen. Hosein?

Sen. S. Hosein: Yes, Madam Chair, but 3B (1) does not include the other four others persons who are appointed on that tribunal. It just deals with the chair and the deputy chair, so I think we will need to include the four other members also.

Mr. Al-Rawi: Madam Chair, through you, the better location for this would probably not be in 3B (1), but be in 3B (2). So if we looked to page 4 of the Bill which begins—

Sen. Ramdeen: Sorry, AG you might just spend less time on it. In your proposed amendment in the next Bill that is in the next committee that we are doing, you could just cut it from there.

Mr. Al-Rawi: That is exactly what I am doing. So we would propose in 3B (2), if you are at page 4 of the Bill, at the end office, literally at the end of the paragraph there, if we would insert before the full stop:

“and such salary, remuneration and allowances shall be a charge on the

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There is a small difficulty there with what I just said, because I just spotted “and lay assessors”. So, Madam Chair, if you have the language that I gave you a short while ago, just right after the word “allowances” if you could kindly insert: of—

**Madam Chairman:** Salary, remuneration and allowances.

**Mr. Al-Rawi:** So it goes:

And such salary, remuneration and allowances—remember I asked you just after the word “office” to insert certain words?

**Madam Chairman:** Yes.

**Mr. Al-Rawi:** So in those words that I gave you they would read after the word “office”—

And such salary, remuneration and allowances—let us just insert here now—of the chairman, deputy chairman and other members of the tribunal—and then it continues—shall be a charge on the Consolidated Fund.

**Madam Chairman:** So let me read it as it will now read, Attorney General:

The salary, remuneration, allowances and other conditions of the Chairman, Deputy Chairman, other members of the Tribunal and lay assessors shall not be altered to their disadvantage after their appointment and during their tenure of office, and such salary, remuneration and allowances of the Chairman, Deputy Chairman and other members of the Tribunal shall be a charge on the Consolidated Fund.

**Mr. Al-Rawi:** Yes please.

**Madam Chairman:** Sen. Hosein?

**Sen. S. Hosein:** That is it, Madam Chair.

**Madam Chairman:** Sen. Mark?

**Sen. Mark:** Yes, Madam Chair.
Madam Chairman: Thank you all so very much.

Sen. S. Hosein: Thank you, Madam Chair.

Madam Chairman: Sen. Mark, in light of the responses of the Attorney General, will you withdraw your proposed amendments?

Sen. Mark: I humbly do.

Madam Chairman: Thank you very much. I thought you told me you were hungry. [Laughter]

The question is that clause 4 be amended as follows:

At 3B (2) to read as follows:

The salary, remuneration, allowances and other conditions of the Chairman, Deputy Chairman, other members of the Tribunal and lay assessors shall not be altered to their disadvantage after their appointment, and during their tenure of office, and such salary, remuneration and allowances of the Chairman, Deputy Chairman and other members of the Tribunal shall be a charge on the Consolidated Fund.

Question put and agreed to.

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

Clauses 5 to 8 ordered to stand part of the Bill.

Madam Chairman: Sen. Mark, we are now proceeding with your other amendments.

New clause 9.

Sen. Mark: Madam Chairman, I propose a new clause 9 which reads as follows:

The office of a member shall become vacant—

(a) upon the member’s death;

(b) if a member is absent without reasonable excuse from three consecutive sittings of the Tribunal of which the member had notice;
(c) if the member is adjudged bankrupt;

(d) if the member becomes mentally or physically incapable of performing the duties of a member;

(e) if the member is convicted of an offence under any written law and sentenced therefore to imprisonment for a term exceeding six months without the option of a fine.

*New clause 9 read the first time.*

*Question proposed:* That the new clause 9 be read a second time.

**Sen. Mark:** Madam Chair, through you to the Attorney General. In doing the research, I realized that there was no provision in the legislation, both the parent as well as the amendment, that addressed the whole matter of when a vacancy arises—what were the circumstances that could lead to a vacancy arising. I just thought that the Attorney General might want to consider a provision that would guide the members of this tribunal as well as members of the public, and this is why I sought to insert this new provision.

Now, these are supposed to be standard procedures, but you will find these things, as the Attorney General was saying about the matter that I raised earlier, and that is why I am suggesting that they be considered in the context of the amended Bill.

**Mr. Al-Rawi:** So in recent times we have been putting in specific provisions of this type. I am just pulling just quickly Chap. 22:03 just to take a quick look at it. You can go either way. You can actually put it in or allow it to operate in the fashion of the application of the Interpretation Act, et cetera, and then the usual provisions. So I am just taking a quick peek at this.

Madam Chair, I took the opportunity to look at the Equal Opportunity Act which only provides for the lay assessor position and not for the members of the
tribunal itself. I know in those circumstances that it is implied as to how that position operates. I can do also a quick comparative check now of the Industrial Court. [Confers with Drafters]

12.15 a.m.

Madam Chair, I just took the opportunity to look at two relevant pieces of law which will be the Equal Opportunity Commission and the Industrial Court, neither of which provide for the mechanisms that we are treating with here. It would not be true to say that these things do not find themselves elsewhere because we, in the Valuation Tribunal the other day, put in certain provisions.

However, in the circumstance of the EOC and the IC, the Industrial Court, what is quite interesting is that it resides essentially with the JLSC because the power to appoint includes the power to revoke, and that would apply in the case of the JLSC’s structure of the JLSC having the power to revoke. It really would, therefore, be a matter for the JLSC if we left it the way it was without any interference.

In the recommendation that Sen. Mark is asking us to consider, “office upon”, “absent without”, et cetera, “tribunal”. You see, we are slightly narrower than the formula which we had used in the Valuation Tribunal, where there were other reasons that could have filtered in.

I think that we would be quite safe, Madam Chair, to just leave it to the JLSC which has the power to appoint, therefore, has the power to revoke.

Question put and negatived.

New clause 10.

Question proposed: That new clause 10 be read a second time.

Madam Chairman:  Sen. Mark.

Sen. Mark: Thank you, Madam Chair. Again, Madam Chair, I am looking at the
experience in other jurisdictions and the independence of the tribunal. The Chief Justice in, for example, Zambia has a very important role to play in the establishment of rules, although the Minister still retains the power to bring regulations to the Parliament to effect the provisions of the legislation.

So, the rules that we are suggesting here would be very important to maintain the integrity of this tribunal, given the functions that it has to carry out, and it does not in any way deprive the Minister of executing his functions as it relates to the regulations that he is already given the responsibility to lay in the Parliament in the form of negative resolution.

But it is incumbent upon us to ensure that the tribunal is properly guided in its operations, and I am suggesting that the Chief Justice, as obtains in Zambia should be given that responsibility to carry out the functions in terms of rules that have been outlined.

So, I do not have to detain the House in going through each rule that I am suggesting that the Chief Justice, by statutory instrument, should address, but I think that the hon. Attorney General would appreciate that you need to guide these members of the tribunal properly. Somebody has to make the rules—

**Mr. Al-Rawi:** I understand the point, thank you.

**Madam President:** So I am just asking.

**Mr. Al-Rawi:** Madam Chair, may I? Madam Chair, I thank Sen. Mark for his submissions, he is quite correct that rules are required. Sen. Mark’s submission is that the Chief Justice should make the rules. Respectfully, the Chief Justice, I think, is a little bit far removed from this process.

First of all, I refer to the fact that section 18 of the Act in which:

“The Minister may, subject to negative resolution of Parliament . . . rules prescribing:
(a) the procedure and forms to regulate applications and appeals to the Tribunal;

(b) arrangements and procedures to be followed for developing and regulating the systematic rationalization of the title to land, its use, development…”—et cetera, any other matter.

The Industrial Court has an interesting formula. So, under section 79 of the Industrial Court Act, it is the President of Trinidad and Tobago who makes such regulations as he considers necessary or expedient for the execution of the Act, regulations by the President under the section are subject to negative resolution. So, that is Industrial Court.

If we look to the Equal Opportunity Act:

“The Rules Committee under the Supreme Court of Judicature Act may, subject to provisions of this Act, make Rules governing appeals to the Court of Appeal”.

So that is the rules committee. The rationale for the Government preferring to stay with section 18 of the Act, which we do not propose be amended by this Bill, where the Minister makes the rules subject to negative resolution, is specifically because we are vesting in this court of superior record the ability for it to regulate its own procedures. In fact, we have prescribed that they do so on the civil basis, but that they not be prescribed by the strict rules of evidence and hearsay, et cetera.

So in the circumstances we think firstly: (a), the Chief Justice is a little bit outside of the parameters of the operation and independence; (b), we have the ability to find solace in the Equal Opportunity Act; (c), we have support from the Industrial Court Act; and (d), if I recall, we have support as well for the Valuation Tribunal where we left it to the Minister to do the regulations for the same reasons that I have just enunciated. In the circumstances therefore, I respectfully decline to
accept the hon. Senator’s recommendation.

**Sen. Mark:** Madam Chair, can the AG advise, for instance, we have the registrar that is in the old, in the parent Act. Who would be responsible for prescribing the powers and the functions of the Registrar?—is it going to be the Minister via regulations or is it going to be the rules committee of the Supreme Court? Who is going to do that?—because this tribunal has to function.

**Madam Chairman:** I think—yes, Attorney General?

**Sen. Mark:** So I just want to know.

**Mr. Al-Rawi:** Madam Chair, if I may just stick with the answer that I had given a little bit earlier? I considered it in the round, I understand the merits, but we prefer to maintain the position as we have it.

*Question put and negatived.*

**Preamble.**

*Question proposed:* That the new -Preamble be added.

**Sen. Mark:** We believe that given the kind of powers and the violations that are inherent in terms of fundamental rights, we think it is very safe for the Government to consider rather than having this thing challenged by some commoner, we should, in fact, collectively agree to do everything to safeguard the integrity of the legislation that we have all worked so hard to achieve. And we have indicated to the Attorney General that the Opposition is in support, and we will support a three-fifths majority, and we believe it will be safe and it would be more secure that we go that route rather than take the risk that this thing could be challenged.

I am not saying that we are going to challenge it, I am just saying that you do not want to take that risk, and we are in support of the legislation, but we just felt for safety it would be better to remove all doubts about any future challenges, so that is why we have proposed this for the consideration of the Attorney General.
Madam Chairman: Attorney General.

Mr. Al-Rawi: Thank you, Madam Chair, I wish to sincerely thank Sen. Mark for expressing the support that he has just indicated and for the recommendation that he has given. The difficulty that I have with accepting it is not residing in the fact that it does or does not need a three-fifths majority, it is that technically to insert a preamble of this type we would have to repeal and replace the entire Act which this Bill does not do, so that would be a radically different version of this.

What we certainly will be doing with that very warm invitation from my learned colleague is to go back and have a look at this. If there is a need in the deeper consultation to come back with a full repeal and replace, as happened for instance in the anti-terrorism legislation, then we would have to take it via a different route.

So, I respectfully decline the insertion of this clause for the reasons I have just given, and I wish to thank Sen. Mark for the generous manner in which he has just expressed himself.

*Question put.*

*Bill reported to Senate.*

*Preamble negatived.*

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

*Senate resumed.*

*Question put and agreed to.*

*Bill reported, with amendment.*

*Bill accordingly read the third time and passed.*

Madam President: Hon. Senators, we will now resume the committee proceedings for the Land Adjudication (Amdt.) (No. 2), 2017.

**LAND ADJUDICATION (AMDT.) (NO. 2) BILL, 2017**

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Sen. Ramdeen: Right.

Madam Chairman: Okay. We had stood down clauses 4 and 11 and the two new clauses as proposed by Sen. Ramdeen. Attorney General, I think we had heard from Sen. Ramdeen on his clause 4. Attorney General, can you advise what you are proposing in your clause 4?

Mr. Al-Rawi: Sure. Thank you, Madam Chair. And may I start off by thanking Sen. Ramdeen for the circulated version of clause 4 that he sent out. We had a chance during the stand down of this particular matter to look at clause 4, and we accepted that there was merit in the reformulation of clause 4.

In the clause 4 as circulated the first thing that we did in clause 4(1) and that is, if you look at your Bill, we have suggested that we adopt the formula indicated by Sen. Ramdeen. Forgive me, I mistakenly put “three” years, I intended to put “five”. So that we are suggesting that:

The chief adjudication officer who shall be an attorney-at-law of at least ten years’ experience in conveyancing and who shall be appointed for a period of five years by the President on the advice of the JLSC.

So, Madam Chair, in the draft which you have circulated there we would see a 4A (a)(i) go to (ii) in the second line, “shall be appointed for a period of” not “three” but “five” years.
Madam Chairman: But you have that on list number three.

Sen. Obika: Yes, we have “five years”.

Mr. Al-Rawi: My own says three. So, sorry, my list three said “three”, so my new list three says “five”, and just like that my solution has been found. So, we have borrowed from Sen. Ramdeen’s formula.

The next thing that we have done, Madam Chair, is we are proposing to accept the deletion of the word “recruited” which would have been in 1A, and we have gone consistently with the word “appointed” as recommended by Sen. Ramdeen.

In 1B which the Bill was proposing to be inserted, we have gone with the recommendation by Sen. Ramdeen that we go for a period of “three years”, again, in the same formula.

We have proposed the insertion of a new 1C, and it is where we have, again, taken the recommendation, and this would make us consistent with what we just did in the land tribunal:

“The salary, remuneration, allowances and other conditions of the Chief Adjudication Office and the Deputy Chief Adjudication Officers shall not be altered to their disadvantage after their appointment and during their tenure of office”.

We have proposed in 1D—

Madam Chairman: Attorney General, may I just stop you?

Mr. Al-Rawi: Yes, Ma’am.

Madam Chairman: I am so sorry, but at B (b) you have, “who shall be appointed for a period of three years by the President on the advice of the”.

Mr. Al-Rawi: Yes, and it would continue to what was there before which is the “Judicial and Legal Service Commission”.

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Madam Chairman: Okay.
Mr. Al-Rawi: Yes?
Madam Chairman: Yes.
Mr. Al-Rawi: Are you okay?
Madam Chairman: Sorry, continue.

Mr. Al-Rawi: No. Not at all. So that is 1C, I have dealt with that, and then 1D:
There shall be paid to the Chief Adjudication Officer or a Deputy Chief Adjudication Officer such remuneration and allowances as may be determined by the President and such remuneration and allowances shall be a charge on the Consolidated Fund.

1E we are saying:
Notwithstanding that their term of office is expired, the Chief Adjudication Officer and Deputy Chief Adjudication Officer may, with approval of the President continue in officer for such period after the expiry of their term as may be necessary to complete adjudications conducted by them in an adjudication area or to do anything in relation to proceedings that were commenced before their term of office expired.

Again, this keeps in with the recommendations of my learned colleague and it also finds precedent in the Industrial Court Act, et cetera.

Madam Chair, if you turn over, then proposed in the new C which is to be found at page two of our list in paragraph (f) this again flows from the recommendations Sen. Ramdeen had made. Sen. Ramdeen recommended in subparagraph (8) of this particular clause 4, sorry, yes, in 4. In subparagraph (8):
The Demarcation Officer, Survey Officer may, with the permission of the owner or occupier and on giving—
—we proposed and accept the deletion of “reasonable notice”.

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We are saying, Sen. Ramdeen had recommended 28 days, but I have asked for consideration of no less than 14 days’ notice to the owner. And that would take care of what we consider should give the period of notice. In subclause 8A, we have just done some tidying up. We propose the deletion of the word “and” and we have replaced it with a “,”, so that would be in the third line of 8A just after the word “found”. And then we propose that we just tidy up the language by deleting “which will require” with respect to the circulation of two consecutive weeks, we delete “which will require” and put “requiring” instead.

And those were the recommendations that we ask the honourable Senate to consider. They are based upon recommendations coming from my learned colleague Sen. Ramdeen, and I would be very interested to hear what the views on the Opposition Bench are.

Madam Chairman: Sen. Ramdeen.

Sen. Ramdeen: Madam Chair, I have had the opportunity to look at the amendments and I think they cure the defects that I have identified, and most of them are suggestions that I have advanced, so I have no reason to object or to oppose any of the amendments that have been proposed by the Attorney General as per his revised clause 4.

Madam Chairman: Are you pursuing yours or will you be withdrawing yours.

Sen. Ramdeen: No. I will withdraw mine and go with what the Attorney General has proposed.

Madam Chairman: Thank you very much.

Question proposed.

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

Clause 11 reintroduced.

Madam Chairman: Attorney General.
Mr. Al-Rawi: Yes, please, Madam Chair. Again, I start by thanking my colleague Sen. Ramdeen for the reflections on clause 11. We agree that we can avoid having judicial interpretation of the animus possidendi, the mens rea aspect of possession even though other bits of law on our books like the Real Property Act, et cetera, do not have the mental intention clear, I think we can take the opportunity to be clearer on our own draft here.

We propose in clause 11 which is circulated that we amend section 16 of the Act, so that after the word “possession” in subclause (b), so in the parent Act 16(1), subsection (b) after the word “possession” we qualify the mental side of it by inserting:

…with the intention to possess the land to the exclusion of all other persons including the person with absolute title.

Now, we have moved away from the use of the expression “documentary title”, gone with “absolute title” to keep it in conformity with what the Registration of Title to Lands Act and these package of laws together will have, because it is here that we create provisional versus absolute title.

And then we have also accordingly in subsection (c) that is 16(1) (c) as it will read in the parent Act, provided for the same expression with respect to State land. That would take care of the recommendations in context in clause 11A(i) and it keeps the maintenance that we had which is changing “thirty” to “sixteen” years which was part of the original Bill.

We have also, sort the amendment in paragraph (c) here by the deletion of the word “absolute”, we now go to “provisional”, and then this automatically kicks into the fact that adverse possession interests in respect of private land will go through the provisional route which is where they go to the next stage, and ultimately end up at the Land Tribunal.
So, we are harmonizing the fact that private adverse possessors, adverse possessors for private lands and for State lands get provisional and provisional goes to tribunal, so there will be no recording of absolute title by the adjudicator in this process.

In subparagraph (b) of clause 11, this is where I had referred to earlier qualifying the possession with the intention in the same fashion that we had done in subparagraph (a). And then in subparagraph (c) in the proposed subclause (5), we had proposed the necessary consequential amendment to make whole of that process from provisional to absolute via the Land Tribunal. So subclause (5) would read:

The holder of a provisional title—and in this case it is both of them—declared under subsection 1B and D(a) may apply to the Land Tribunal in prescribed manner to have the title declared absolute.

So that is the manner that we proposed clause 11 to be treated with, they spring from the recommendations of my colleague Sen. Ramdeen.

**Sen. Ramdeen:** Madam Chair, I thank the Attorney General for his mature consideration of the suggestions. I only have one issue that arises with the formulation that the Attorney General has suggested and it relates to the words “to the exclusion of all other persons including the person with absolute title”. And the reason why I say that is because at paragraph 40 in JA Pye in the speech of Lord Hope, it actually goes against that actual wording.

**Mr. Al-Rawi:** You mean for the joint aspect?

**Sen. Ramdeen:** No. No. Not at all. The actual exclusion part—

**Mr. Al-Rawi:** Right.

**Sen. Ramdeen:**—because the possession does not have “takes” which is what the law was before Pye, and just to bring it home to you it says:
“…an intention to possess means in this context an intention to occupy and use the land as one’s own”—and then the sentence after is the most telling one, it says—“it is not necessary for the squatter to establish that he had a deliberate intention to exclude the true owner”.

That is why I just have a difficulty because I think—

Mr. Al-Rawi: Sure. I can see that.

Sen. Ramdeen:—I am not saying that it is just on the authority, so the words “to the exclusion”—

Mr. Al-Rawi: Yeah.

Sen. Ramdeen:—I think that is what causes the difficulty and would take us back to the law before Pye.

Mr. Al-Rawi: Madam Chair, may I ask whether removing “to the exclusion of all other persons with the intention to possess”—

Sen. Ramdeen: The land as his own, “with the intention to possess the land as his own”, and you can take everything else off.

12.45 a.m.

Mr. Al-Rawi: I think that that would do it.

Sen. Ramdeen: Yes.

Mr. Al-Rawi: Thank you very much, Madam Chair.

Sen. Ramkissoon: You can do it; it is both.

Mr. Al-Rawi: May I recommend that, therefore. So, in clause 11 as—yes, thank you.

Madam President: Sen. Ramdeen, does that mean you are withdrawing your amendment?


Madam President: Yes?

Madam Chairman: Thank you very much.

Sen. Ramdeen: And you have to do it in subclause (b) as well.

Mr. Al-Rawi: Yeah.

Madam Chairman: Hon. Senators, the question is that clause 11 be amended as circulated by the Attorney General, and further amended as follows:

At paragraph A (i)(a), by inserting after the words, “such possession” the words “with the intention to possess the land as his own”.

So, we are deleting the words “to the exclusion of all other persons including the person with absolute title”, and then at B, again, it will read:

In subparagraph (2), in proposed paragraph (c), insert after the words “such possession”, the words, “with the intention to possess the land as his own”.

We are therefore deleting the words, “to the exclusion of all other persons including the person with absolute title.” Yeah?

Mr. Al-Rawi: Yes.

Question put and agreed to.

Clause 11, as amended, ordered to stand part of the Bill.

Clause 19 recommitted.

Question proposed: That clause 19 be recommitted.

Mr. Al-Rawi: Madam Chair, Sen. Ramdeen raised a very interesting point, and this springs from the ability in section 4 of the Act, to section 4, subclauses (6) and (7). If I may? In section 4(6):

“An Adjudication Officer shall be competent to administer oaths and take affidavit in any inquiry undertaken by him, and to issue notices or orders requiring the attendance of such persons or the production of such documents as he may consider necessary for the carrying out of
adjudication”.

So, (6) required production of documents, and documents could very well infringe upon privacy rights, private life issues. Certainly the attendance could not, because you could compel somebody to attend. But, we thought that there was merit in the observation that we may tripping ourselves here into the private life issue.

In clause 7, this is 4(7):

“A notice or order issued under subsection (6) shall have the same force and effect, and be served in the same manner summons issued under the Summary Courts Act.”

Now, this is the existing law, we have not sought to amend that. But we got down to clause 19, which amend section 25. If we look to section 25, what was there in 25(a), and I will read 25(a) as it originally stands:

“Any person who—

(a) having been served with a summons issued under the provisions of this Act, wilfully neglects or refuses to attend in pursuance of such summons”

We had changed that, because the word “summons” was really never there in 4(6). What 4(6) said was you can have a notice or an order, and then they called it a summons, effective summons in the next paragraph. So, the original intention was to amend section 25 to provide for this notice or order issue by an adjudication officer, and then we were providing for wilfully neglecting and then putting in the offence.

So, what we have sought to do is to separate out the Order, remove it, only treat with the wilful refusal to attend, remove the obligation to produce, and therefore not trip the rights which were potentially there. So, that is the rationale behind it, and I thank Sen. Ramdeen for cautioning that which I think was a very
important observation. So, Madam Chair, we propose in all of those circumstances that clause 19 be revisited, and amended in the manner circulated.

*Question put and agreed to.*

*Clause 19, as amended, ordered to stand part of the Bill.*

**Madam Chairman:** Sen. Ramdeen, you have a new clause as listed on page 5 of your amendments, but that new clause is seeking to treat with section 3 of the parent Act which is not dealt with or covered by the Bill that is before the House. Therefore I do not think that this is something that we can consider at this stage. Okay?

**Sen. Ramdeen:** I think also there are two new clauses, so I have to withdraw the one before?

**Madam Chairman:** Yes, we are dealing with the last one now, which is page 4.

**Sen. Ramdeen:** Okay. We are okay.

**Madam Chairman:** The preamble. Yeah?

**Sen. Ramdeen:** Yeah.

*Preamble.*

*Question proposed:* That the new preamble be added.

**Sen. Ramdeen:** I have listened to the Attorney General with respect to the previous piece of legislation, and while I strongly suggest that this is the position in law, I accept that the Attorney General will give consideration to this in the future, and if it is that he finds that there is merit in that proposition of inserting the certificate and having to adopt a different course, then I trust that that would be adopted in the best interest—in the public interest that should be, and therefore I would withdraw the amendment for the new clause.

**Madam Chairman:** So, that is withdrawn?

*Preamble withdrawn.*
Sen. Ramdeen: Yes.

Madam Chairman: So, hon. Senators, the question is—

Mr. Al-Rawi: But, may I thank Sen. Ramdeen for that recommendation, and for the observation in the manner he has put it.

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

*Senate resumed.*

The Attorney General (Hon. Faris Al-Rawi): I am honestly, extremely happy to read these words, Madam President.

*Question put and agreed to.*

*Bill reported, with amendment, read the third time and passed.*

**ADJOURNMENT**

The Minister of Energy and Energy Industries (Sen. The Hon. Franklin Khan): [*Desk thumping*] Madam President, I am happy to also read this part of the adjournment, just like my colleague on the side here. [*Laughter*]

Madam President, I beg to move that this Senate do now adjourn to Tuesday, 12th of June, 2018 at 10.00 a.m. [* Interruption*] and we will be doing the two Motions listed under Government Business that has to deal with the Children’s Community Residences, Foster Care and Nurseries Act, Chap. 46:04; both Motions.

Madam President: Hon. Senators, before I put the question on the adjournment, leave has been granted for two matters to be raised on the Motion for the Adjournment of the Senate. Sen. Mark. [*Desk thumping*]

*University of Trinidad and Tobago*  
(Lack of Comprehensive Plan)

Sen. Wade Mark: Madam President, the first matter I want to addresses is the situation involving the University of Trinidad and Tobago, and the absence of a comprehensive plan of this Government as it relates to this university.
Madam President, UTT is our only national university. Almost 100 per cent of the funding for this university comes from the public purse. Madam President, I ask the question today, this morning, whether the Cabinet, by its actions and inactions is responsible for the dismantling of this institution that Trinidad and Tobago created. The Government must take full responsibility for what has happened to this country’s only national university. [Desk thumping]

We were recently told by the Minister of Education, that it was mere speculation, and that no decision had been taken to close UTT campuses. This was the same Minister some weeks ago who gave the staff hope that it was mere speculation that hundreds were to be fired. But to see, Madam President, the exact opposite taking place. He said they were not to be fired, and the opposite occurred. What is the plan for the University of T&T? Where is the University of T&T’s strategic plan?

Madam President, we are advised that UTT spent over a year on developing its strategic plan, which was approved by the board in 2017. But, was this only for accreditation? Because it has now been placed on the highest shelf possible, and has no bearing whatsoever with the current plans and future of that organization. And therefore, I want to put certain questions to this honourable Senate.

[MR. VICE-PRESIDENT in the Chair]

Did the Cabinet pronounce on the former strategic plan, or the new plan for the dismantling of the UTT? [Desk thumping] Is the UTT’s strategic plan approved by the board in 2017, supported by the staff and management of the organization worth the paper it is written on? [Desk thumping] Is UTT—if UTT, rather, got accreditation based on this plan, which is now in abeyance, is the accreditation of UTT now in jeopardy, Mr. Vice-President?

1.00 a.m.
UTT’s Mission Statement speaks about it being an entrepreneurial university. What has been done to this university to be innovative and entrepreneurial, to seek new opportunities for funding itself? How many businesses have been developed by the university? UTT was not set up to graduate fashion designers. It was set up to help in the diversification of this country [Desk thumping] in fashion, in arts, in music, in education, in maritime and in aviation, among others.

Mr. Vice-President, the university continues to fire staff, yet no organizational structure has been approved and made known to the organization. The same management that is now running the organization do not even know that their own structure—they do not know that their own structure, Mr. Vice-President, is in danger. And therefore we need to know the following: Who has determined the new unseen organizational structure of this organization? What role did the management of the organization play in determining its own structure? Was this structure determined by persons outside of UTT or was it a board that determined it? The board members of the UTT as we know, Mr. Vice-President, that Board is headed by Prof. Ken Julien. We also want to know whether Cabinet approved this organization structure.

Mr. Vice-President, it was the PNM under Patrick Manning who formulated a plan to develop a Tamana Industrial Park. Now we are hearing about another park being establish by the Chinese. But it is now 10 years since UTT Tamana Campus started construction, yet, Mr. Vice-President, we hear that UTT and the Government, they do not have this plan organized.

Mr. Vice-President, we want to know the following: What is the total cost of this campus? Was $300 million spent on this campus within the last year? And
whose sanctioned this expenditure? Was recurrent savings—

Mr. Vice-President: Sen. you have two minutes.

Sen. W. Mark:—used for capital expenditure? Did the Minister of Finance approve that? Why did the UTT spend $300 million which accounted for 99 per cent of its reserve on a campus that has no plan?

Mr. Vice-President, this is very serious. Who will maintain this University? Do you know as we speak that this university pays a foreigner who is its President a salary of $250,000 a month?

Hon. Senator: What!

Sen. W. Mark: Do you know a foreigner who heads UTT gets $250,000 a month? And we are paying that in foreign exchange. And that foreign exchange is leaking out of our country. Mr. Vice-President, why is this being allowed? I ask this Government to make this matter public. We have been advised that this President gets TT $250,000 a month. Could you verify that? Could you indicate that is so or not?

Mr. Vice-President, I know my time is limited, but I have raised this matter about UTT because we [Desk thumping] want to save UTT. UTT belongs to the people of T&T and we are not happy with what is going on with that institution under this administration. They must take full responsibility for the failure of this organization and I call on the Government to speak out and speak up now on the future viability of that institution. I thank you very much, Mr. Vice-President. [Desk thumping]

The Minister of Agriculture, Land and Fisheries (Sen. The Hon. Clarence Rambharat): [Desk thumping] Mr. Vice-President, the Motion calls upon the Government to address the failure of the Government to provide the
country with detailed information on a comprehensive plan for the future of UTT. And let me say from the outset, the Government has not failed to provide the country with a comprehensive plan for UTT. At the heart of the issue in UTT, Mr. Vice-President, is the fact that 70 per cent of the recurrent expenditure of the university goes towards staff salaries. So UTT runs the risk of having more employees than students in the institution. And having regard to the economic situation and having regard to the priorities in this country, two things have happened. The first is that UTT has to return to the appropriate moorings for that institution. And secondly, UTT has to focus on what the country needs. Arising out of that, contrary to what Sen. Mark has said, the comprehensive plan is built around the following nine elements.

The first is that, Mr. Vice-President, UTT has focused on its programme accreditation. All UTT’s programmes which are subject to accreditation except one, have received specialized accreditation. One of UTT’s commitments is for all programme areas to apply for specialized accreditation or recognition by the start of the academic year 2019/2020.

The second element of this comprehensive plan—and I am sure my friends on the other side will appreciate this—in September 2018 the university intends to open its Aviation Campus at Camden, with the first intake of students into its flagship, aviation programme, the BSc in Aeronautical Engineering and Airworthiness Engineering. This programme will be European Aviation Safety Agency certified and accredited by the Royal Aeronautical Society after the graduation of its first cohort.

In October 2018 UTT will have the benefit of Dr. Narcrisha Norman of Embry-Riddle Aeronautical University, who is a 2018 Fulbright scholar. Dr.
Norman in this capacity will develop, implement and access to research agenda for the university’s aviation programme.

Third, the emphasis on research. Research and development will form the core of the university’s operations and UTT has embarked on a rigorous research agenda which seeks to provide solutions to the challenges of today’s society. In March 2018 two UTT research centres were established.

Four, expand student intake. The university offers training in 20 programme areas at the undergraduate level and also recruits students for taught and research Masters and Doctoral programmes. UTT is intent on growing enrollment by building its regional and international student body in aviation, biosciences, agriculture and food technology, petroleum engineering, maritime studies and marine sciences.

The fifth element of this nine-point comprehensive plan, Mr. Vice-President, UTT seeks to enhance Students Support Services. On February 01, 2018, UTT launched a pilot of its personal tutor programme which seeks to enhance the academic performance of each student, while at the same time providing support and advice to students on social and financial matter.

The sixth element. Consistent with what Sen. Mark has said in relation of earning revenue, to address some of the university’s financial issues UTT’s faculty has been tasked with the responsibility of focusing on social and industrial research of national relevance and of international standard and by extension to offer consultancy services to the local and wider regional communities.

The seventh element of the nine-point plan: build partnerships with other universities and institutions. UTT students are and will continue to be its number one priority. The university will not embark on any action which will in any way
compromise the educational experience of its students. In fact, Mr. Vice-President, in March 2018 UTT signed a Memorandum of Understanding for UTT’s student to participate in Huawei’s Seeds of the Future programme. In 2017 five UTT students journeyed to China to participate in this programme and another five were in China and returned recently in 2018.

Eight, Mr. Vice-President, UTT continues to rationalize operating costs and to develop a more efficient system of administration. In academic years 2016/2017 the university embarked on a review of its programme offerings and campuses. The review is ongoing and has resulted initially in the university closing the UTT Campus at SAPA and the Fredrick Settlement Facility. The university has also reviewed its academic staff loading, as well as its justification of corporate and academic support numbers. I want to emphasize, Mr. Vice-President, that this issue of dealing with the staff numbers, is a matter pending as the university continues consultations with the recognize majority union.

And number nine, Mr. Vice-President, of this comprehensive plan that my colleague says is absent and missing, UTT seeks to leverage digital technologies that set a target for 2018/2019 academic year that each programme area has been directed to offer at least one online or blended course. And by September 2019 many programmes will be offered totally online or blended for easy access at remote locations. The university will also seek to accelerate integration of digital technologies into its administrative processes in order to achieve greater efficiencies.

In closing, Mr. Vice-President, let me emphasize, there is no dismantling of the University of Trinidad and Tobago.

Mr. Vice-President: Minister you have two more minutes.
Sen. The Hon. C. Rambharat: There is no plan for dismantling. What the Government has set out to do along with the board of governors of the UTT is to return UTT to the appropriate moorings and to focus on what the country needs for its development, having regard to the economic realities and having regard to the wastage of five years which preceded September 2015. I thank you. [Desk thumping]

Rise in Criminal Activities
(Negative Impact on the Country)

Sen. Wade Mark: Thank you very much Mr. Vice-President. Mr. Vice-President the explosive and exponential rise in criminal activities in this country, particularly murders and homicides continue to have a negative impact on the lives of citizens in our country. People are living in fear in Trinidad and Tobago, Mr. Vice-President. Crime is affecting our economy. It is affecting investments in our land.

1.15 a.m.

Tourism arrival is down because of this escalating crime tsunami that is gripping our nation. [Desk thumping] We have learnt, as we speak, that there are over 250 murders so far. How many murders for this year, about 250?


Sen. W. Mark: And rising.

Hon. Senator: Cross that.

Sen. W. Mark: Cross over 250 and rising. And it is being predicted, Mr. Vice-President, if the Government does not get its act together, Trinidad and Tobago may end up with a projected murder toll in the vicinity of between 550 to 570 murders at the end of 2018. This is almost incredible and unbelievable, but
that is what is taking place in our land today after this Government came to power on a platform of promises that they will address the crime situation. We have spent billions and billions of dollars over the last few years and more so over the last three years, on national security, and the results have been very, very disappointing.

Mr. Vice-President, Trinidad and Tobago today is a country in which we find that between 2000 and the current period, some 7,037 citizens have been murdered in this land, compared to 2,701 between 1966 and 1991. So in a span of 33 years, that is 1966 to 1999, we have seen the murder rate in terms of a ratio of 1 to 2.6 when compared with the 19 years, 2000 to the current period. Where are we going with this? We have spent, as a country, close to—we have collected, rather, over $300 billion in revenues between 1999 and 2017 from the energy sector alone, yet still, we are unable to give our citizens some degree of peace and security in this land.

Mr. Vice-President, would you believe, we were told today that a gentleman was driving on the Beetham and he experienced a breakdown of his vehicle, and whilst he was attending to that he was shot right on the Beetham—right there on the Beetham. Mr. Vice-President, where is this country heading? And we have been told that the Government needed the anti-gang legislation in order to address the criminality in our country. They got it and nothing has happened [Desk thumping] since the Government has gotten that power. So we are very disappointed in the Government, the Minister of National Security, in this situation.

In fact, I call on the Minister of National Security today to do the honourable thing. Tender his resignation. [Desk thumping] Pack up and leave. Because, Mr.
Vice-President, the people are fed up with this Government and the inactivity of the Minister of National Security.

Mr. Vice-President, I am passionate about that, “becor” I live here; I will die here and my children live in this country and I am not happy with what this Government has been doing to protect of citizens in this country. [Desk thumping] The business community has been calling for joint army/police patrol throughout this nation. We have almost 6,000 members of the defence force. I do not know what is the Minister of National Security and the Prime Minister, who is heading the Natural Security Council, doing to protect our citizens.

Mr. Vice-President, we have 6,000 policemen, almost 6,000 members in the defence force: army, police, air-guard, reserve, and we cannot have a joint patrol throughout the length and breadth and get at the criminals who have us living in fear today? What is the Government doing? We have to take action and we have to call out the Government on this matter. We cannot continue how we are going.

So today, this morning, at 1.20p.m.—

Hon. Senators: a.m., a.m.

Sen. W. Mark: a.m. in the morning, almost. Mr. Vice-President, I raise this issue because the people are crying out and the Government seems to be oblivious to the reality. [Desk thumping] They do not understand the cries of the people. They are not taking any action to help the people. So, therefore, I call on the Minister of National Security this morning to tell us what are his plans to arrest this crime tsunami in our nation today? What are his plans? The business organization, SBA, of south Trinidad, they call for the establishment of what is called, joint army/police patrol for the whole of the south. Central Trinidad has been overrun, literally, by bandits and criminal activity. The East/West Corridor has been taken

UNREVISED
Rise. In Criminal Activities 
(Negative Impact on the Country) 
Sen. Mark 

over by banditry and criminality. 

**Hon. Senator:** Gang warfare. 

**Sen. W. Mark:** Gang warfare all over the place, and the Government is sleeping on the job like Rip Van Winkle. *[Desk thumping]* They have to wake up, man! It is 20 years they have been sleeping on the job. And wake up! Wake up! People want action from the Government. 

**Mr. Vice-President:** Senator, you have two minutes. 

**Sen. W. Mark:** And, Mr. Vice-President, if this Government does not wake up, I want to tell them they will be shaken up, you know. We will shake them up. *[Desk thumping]* You cannot continue to play with the lives of people. People are living in fear. I call on the Minister of National Security to take action. Get the army out on the streets. Show visibility. There is no reason why there cannot be throughout this island joint army and police patrols—throughout the country—and let people feel safe. 

Get at the criminals. Arrest them. We were told that the Minister of National Security—the Attorney General told us, they know “it have” 300 gangs, 3,000 members. They know exactly where they are. They know their names, the streets. We passed law, the anti-gang law. It has been proclaimed, and this Government has done nothing. In fact, since the anti-gang law has been passed “it have” more criminality in this country. *[Desk thumping]* So it tells you that the Government does not have a clue. They do not have a plan. They do not know what they are doing and they are really carrying this country downhill. 

The time has come for the Government to act and to act now, and if you do not act, we will take action to ensure that this thing *[Desk thumping]* cannot continue as it is going. Mr. Vice-President, I thank you for giving me the
opportunity to deal with this matter.  [Desk thumping]

**The Minister of National Security (Hon. Maj. Gen. Edmund Dillon):** [Desk thumping] Thank you very much, Mr. Vice-President.  Mr. Vice-President, Sen. Mark seems to not remind himself that we went through a period of—during the last administration where there was no respect and understanding of security at all, where the very security structure that was put in place by a PNM government was totally dismantled and we are seeing the effects of that even now as we speak.  So do not come and speak tonight about security now, when your government dismantled all the security structures that were put in place and allowed so many issues of guns and ammunition to come into this country that are causing the murder and death that we are treating with today in Trinidad and Tobago.

But let me address the issue that you spoke to, because the Motion speaks to the use of soldiers in terms of joint army patrols, and so on.  Sen. Mark, the issue of—in fact, let me not speak to you.  Let me speak to the people of Trinidad and Tobago, because the issue of joint police patrols have been here for us for quite some time.  As a matter of fact, it is over 40 years we have been using police and army in operations in Trinidad and Tobago.

I spent 36 years in the defence force, from 1974 to 2010.  I can tell you, during that time there were, and there continues to be, the law enforcement support by the Trinidad and Tobago Defence Force for issues of crime and criminality in Trinidad and Tobago.  It is not a new phenomenon, and we will continue so to do, because part of the Defence Act says the soldiers and sailors will come to the aid of the civil power whenever and wherever it is required.  And they are doing that even as we speak.

The Interagency Task Force is spread across all the divisions and in Tobago,
with a combination of soldiers and policemen who treat with the very situation of crime and criminality in the nine divisions and Tobago in Trinidad and Tobago. The Interagency Task Force is based in Port of Spain, in central division, in northern division, in southern division, in south-western division, in eastern division, in Tobago, and those are combined of soldiers and police working together in an operational environment.

So the question of joint army/police patrol is something that is there. There is a joint army/police post in Charford Court from where police and soldiers patrol the streets of Port of Spain: in Piccadilly, in Charlotte Street, and those areas that are known to be hotspots, and even in the Belmont area. We do have police and soldiers patrolling in various areas. We have instilled what is called the joint army/police land-based coastal patrols that treat with—and that is combined with the coastguard and the maritime side to prevent the very guns and so on that you all allowed to come into this country during your time in office.

**Hon. Senator:** What?

**Hon. Maj. Gen. E. Dillon:** Yes, you have allowed it, when you dismantled and sold the OPVs and left our borders open.

**Sen. Ameen:** Three years pass now—[ Interruption ]

**Hon. Maj. Gen. E. Dillon:** Oh no. We are taking the guns off the streets that you all allowed to come into this country. [ Desk thumping ] But last year we took out most—the largest amount of guns off the streets. The police took 1,064 guns.

**Sen. Ameen:** Three years and they still blaming UNC.

**Hon. Maj. Gen. E. Dillon:** Because it is five years you left the border open. We are treating with that right now. [ Crosstalk ] Do not absolve yourself from those responsibilities. But let me address the issue of the joint border patrols.
Mr. Vice-President: Please just let the Minister respond to comments of Sen. Mark who moved the Motion. Continue, Minister.

Hon. Maj. Gen. E. Dillon: Thank you, Mr. Vice-President. They “doh like tuh hear dat, yuh know.” They “doh like tuh hear dat.” But, Mr. Vice-President, the Motion is about joint army/police patrol and I want to address that, you see, because we have established bases and we continue to support those bases. As a matter of fact, there was a situation when I came into office where the murder was, in fact, very—the largest amount was in the Port of Spain division. We established a joint army/police base in Soogrim Trace, Laventille, and that is still there and working effectively and efficiently. That has reduced the murders in those areas by their very presence.

We have also established a joint army/police base in Enterprise area, for Lionsgate, and they are there and they are in central. They patrol from there into the Enterprise area and in other areas of the Enterprise and Chaguanas area—joint police/army base, that is there.

We have also instituted a number of different activities and initiatives where the police and the army work together in targeted operations—focused operations—through the length and breadth of Trinidad and Tobago. But not only at that level alone, Mr. Vice-President. At the Executive level, at a strategic level, on a weekly basis, the planning and operations between the Minister of National Security, the Chief of Defence Staff, the Commissioner of Police, the Commissioner of Prisons, the Director of the Strategic Services Agencies, meet and plan and treat with operations, again at the joint level.

So the “jointness” is not only at the operational level but at the Executive
level, at the strategic level, because we understand, and this Government understands, that to treat with crime and criminality it must be an all-agency operation, a joint operation, at the strategic and at the operational level. So that the whole question the Sen. Mark seems to purport as though there is not a joint concept, there is. There is, and we will continue to work together to treat with the issues of crime and criminality to ensure that we bring all the resources of the State together to deal with the issues of crime and criminality.

We have also initiated in Tobago—in Tobago we have the same aspect of the joint army/police patrols that work together. We initiated what is called the Confidence Patrol in Tobago where the army works with, in terms of the hoteliers, and so on. They visit the hoteliers, together with the police to ensure that the tourism aspect of Tobago is also placed in the environment of safety and security.

1.30 a.m.

So there is a “jointness” throughout. I think, Sen. Mark, I am going to have to take you on one of these patrols now. I do not know if you might last. I do not know. I hope your heart is good, but I may have to take you on one of those joint patrols one of these evenings or one of these nights, if you are so intent, to give you an understanding that what the soldiers and the policemen of Trinidad and Tobago—while you sleep, or while you are here this morning, they are outside on the streets right now in the various coastal villages. From Icacos to Chatham, to Los Iros, to Quinam, to Moruga, to Galeota, to Blanchisseuse, to Toco, to Matelot, they are all there right now patrolling and ensuring the safety and security of our citizens their “jointness” that they are doing.

These men and women work day and night assiduously to ensure the safety and security of this country. But there is a combination of things that we have to
do as a country to treat with the issues of crime and criminality, and hence the reason why the support of everyone, including your good self, is important to deal with crime and criminality. So when we talk, let us also understand that we are citizens of this country and lend your hand, and lend your support when is required to deal with the issues of crime and criminality in Trinidad and Tobago.

Mr. Vice-President, I can assure you, and I can assure this country, that the agencies of the State, the agencies of national security, working together in collaboration and cooperation to bring the resources of the State at the right time and place to treat with the issues of crime and criminality in Trinidad and Tobago, and we will, as we bring our resources together, we will have an impact on the crime and the violence in Trinidad and Tobago.

I thank you. [Desk thumping]

Question put and agreed to.

Senate adjourned accordingly.

Adjourned at 1.31 a.m.

WRITTEN ANSWER TO QUESTION

Government Assistance for Tuition Expenses Programme

(Details of)

118. Sen. Taharqa Obika: Asked the hon. Minister of Education:

Having regard to the Government Assistance for Tuition Expenses Programme, can the Minister indicate the following:

i. the total amount owed by Government to local tertiary level institutions;

ii. a breakdown of the respective local tertiary level institutions and the amount of GATE funding owed to each as at February 2018, and

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iii. how soon are these institutions likely to receive full payment of monies owed to them?

The Minister of Education (Hon. Anthony Garcia): The reply is as follows:

(i) The total amount owed by the Government to local tertiary level institutions as at June 1, 2018 was $340,303,301.00.

(ii) A breakdown of the respective local tertiary level institutions and the amount of GATE funding owed to each as at June 1, 2018 is detailed in Table 1.

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