SENATE

Thursday, December 10, 2020

The Senate met at 2.30 p.m.

PRAYERS

[Madam President in the Chair]

PAPERS LAID


11. Ministerial Response of the Ministry of Health to the Fifteenth Report of the Joint Select Committee on Social Services and Public Administration, Fifth
Session (2019/2020), on an Inquiry into an Examination of Existing Arrangements and Possible Options for Regulating Geriatric Care Facilities/Old Age Homes in Trinidad and Tobago. [Sen. The Hon. F. Khan]


**ANSWERS TO QUESTIONS**

**The Minister of Energy and Energy Industries (Sen. The Hon. Franklin Khan):** Madam President, once again the Government is pleased to announce that we will be answering all questions on notice on the Order Paper and we will also be submitting the answer to the one written question that is also there. Thank you very much.

**WRITTEN ANSWER TO QUESTION**

**Medical Treatment of COVID-19 Patients**

(Details of)

33. Sen. Anil Roberts asked the hon. Minister of Health:

As regard the medical treatment of COVID-19 patients, can the Minister provide the following:

(i) the number of ventilators purchased and/or received by the State during the period April 01. September 30, 2020;

(ii) a list of the drugs/pharmaceutical products used to treat said patients; and

(iii) the amount paid for such drugs during the said April 01 September 30, 2020?

*Vide end of sitting for written answer.*

**ORAL ANSWERS TO QUESTIONS**

**Venezuelan Fishing Vessels in T&T Waters**

(Details of)

UNREVISED
12. **Sen. Anil Roberts** asked the hon. Minister of National Security:

As regard Venezuelan fishing vessels entering Trinidad and Tobago’s territorial waters over the period March 23 to August 31, 2020, for purposes of conducting business, can the Minister advise as to the following:

(i) the number of exemption requests made for such entry;
(ii) the number of exemptions granted for such entry;
(iii) the number of individuals who were allowed entry as part of the crew on each of the vessels granted exemptions; and
(iv) the criteria used to decide on the granting of exemptions referred to at (ii) above?

**The Minister of National Security and Minister in the Office of the Prime Minister (Hon. Stuart Young):** Thank you very much, Madam President. Madam President, a similar question was asked earlier this week. I believe it was an urgent question or as a question along similar lines. Nevertheless, the response is Trinidad and Tobago’s borders, inclusive of our maritime borders were closed to all, including nationals and non-nationals with effect from midnight on Sunday the 22nd of March, 2020. Notwithstanding this, as per Regulation 6(1) of the Public Health [2019 Novel Coronavirus (2019-nCoV)] (No. 13) Regulations, 2020, dated May 10, 2020, international and regional flights and cargo vessels trading in and/or bringing food and pharmaceuticals into the country were allowed entry.

Any vessels, maritime vessels—any boats, including Venezuelan boats arriving in Trinidad and Tobago at legal ports of entry that are bringing food, pharmaceuticals or cargo are not required to seek exemptions. The vessels being referred to in this question are vessels bringing fish which qualify under food into Trinidad and Tobago and as such they are not required to seek prior exemption. These vessels are allowed to continue operations in our waters as they bring
cargoes of fish to be trans-shipped to other countries. Accordingly, these Venezuelan fishing vessels entering Trinidad and Tobago’s territorial waters over the period March 23rd to August 31st, 2020, for the purposes of conducting business, i.e. the bringing in of fish qualifying under food, no exemption requests were made for any such entry. Thank you very much, Madam President.

Madam President: Sen. Roberts.

Sen. Roberts: Thank you, hon. Minister. Would the hon. Minister consider curtailing this practice due to the outbreak and the second wave of COVID-19 that Venezuela is currently experiencing?


Sen. Mark: Madam President, may I ask the hon. Minister whether the Government has established with this free entry of these vessels delivering fish, the persons on board, can the Minister indicate whether any mechanism or facility has been established to ensure that these people go through the normal Ministry of Health COVID-19 protocols to ensure that they are not carriers of this COVID-19? Is there any mechanism in place, Madam President for those persons?

Madam President: Minister.

Hon. S. Young: Thank you very much, Madam President. Madam President, the mechanisms in place are the same mechanisms that have been in place since the 23rd of March of this year for all cargo vessels. We do not allow persons to disembark. They are not supposed to disembark these vessels. Crew members are not given shore leave, they are not allowed to disembark. This applies to all vessels bringing in cargo, food items, pharmaceuticals.

From time and time some may disembark but that is supposed to be under the supervision of Port Health and others, and this applies to a vessel whether it is
coming from the United States that is currently the largest COVID outbreak nation in the world; the United States that is climbing on the daily basis. We are not even talking about a first wave, a second wave, a third wave. They recorded yesterday the most deaths for days—per day in the United States. So it is the same thing that applies to all of these vessels.

Madam President: Sen. Mark.

Sen. Mark: Madam President, may I ask the hon. Minister whether members of the protective services and officials from the Ministry of Health are on spot to ensure that those visitors do not leave the vessels and if they do leave they are in fact provided with the necessary safety protocols consistent with the COVID-19 pandemic? Can I ask the hon. Minister to clear the air on that?

Madam President: Minister.

Hon. S. Young: Thank you very much, Madam President. As I said earlier this week, and as I just repeated again, they are not provided with shore leave. Port Health, Customs and Immigration have their job to do and I assume and hope that they will do so.

Sen. Mark: Madam President, is the Minister aware that scores of Venezuelans coming on those cargo vessels to deliver fish as food have been disembarking from their vessels to purchase goods and services on our shores? Is the Minister aware?

Madam President: Sen. Mark, I will not allow that question.

Meeting with Mr. Wilmer Ruperti

(Details of)

13. Sen. Anil Roberts asked the hon. Minister of National Security:

Can the Minister advise as to the following:

(i) whether he held any meetings with Mr. Wilmer Ruperti, a former executive of Trafigura Pte Limited, and founder of ES Euro Shipping SA;
(ii) if the answer to (i) is in the affirmative, how many times did he meet with Mr. Ruperti; and

(iii) where were said meetings held?

The Minister of National Security and Minister in the Office of the Prime Minister (Hon. Stuart Young): The answer is, no.

Madam President: Sen. Roberts, any supplemental?

Sen. Roberts: If the answer is no—[Inaudible]

Leasing of Cabo Star
(Expenditure Incurred)

14. Sen. Anil Roberts asked the hon. Minister of Works and Transport:

Can the Minister indicate the total expenditure incurred by the Government, as at August 31, 2020, in respect of the leasing of the Cabo Star?

The Minister of Works and Transport (Sen. The Hon. Rohan Sinanan): Thank you, Madam President. Madam President, the total expenditure incurred by the Government in respect to the leasing of the Cabo Star from 2017, 2018, 2019 and 2020 would have been $158,322,112.30. Thank you.

Madam President: Sen. Roberts?

Occupation of State Lands at Mucurapo Road
(Commissioner of State Lands’ Permission)

20. Sen. Wade Mark asked the hon. Minister of Agriculture, Land and Fisheries:

In light of reports that acres of State lands situate at No.1 Mucurapo Road, St. James have been cleared by a religious organization without the official permission of the Commissioner of State Lands, can the Minister indicate whether the Government has formally granted permission to the organisation to clear and occupy said State lands?

The Minister of Agriculture, Land and Fisheries (Sen. The Hon. Clarence
Rambharat): Thank you very much, Madam President, [Desk thumping] and I thank my colleague, Sen. Mark, for this question. Madam President, the question deals with a parcel of state land originally comprising 32 acres, two roods, five perches. A substantial part of it has been utilized for public purposes by the State. This larger parcel of land is in that block bounding on the north by Mucurapo Road, at the east by Christopher Samuel Drive, on the south by Audrey Jeffers Highway and on the west by a road reserve. Madam President, a portion of that state land comprising approximately five acres, together with a three-acre portion of land owned by the city of Port of Spain had been for several years occupied and used by the trustees of the Jamaat al Muslimeen.

At present the Jamaat has a masjid and ancillary buildings on the site owned by the city corporation. That portion of land owned by the city of Port of Spain was eventually leased by the city to the trustees of the Jamaat al Muslimeen by a lease dated March 17, 1998, and registered on March 25, 1998, registration number 6176 of 1998. That lease is for a term of 25 years, renewable for a further term of 25 years. The land comprises three acres, four roods and 17 perches. And as indicated, the Jamaat has also built a secondary school and ancillary buildings on a five-acre portion of state land in close proximity.

In addition, Madam President, at the end of Christopher Samuel Drive and along the southern side of this block, the city of Port of Spain houses its transport and cleansing division and the mechanical division. The city has derelict vehicles through different sections of the block on the southern side. Finally, Madam President, it has been determined that a 10,000 square foot parcel of state land in that area was allocated by a so-called tenancy agreement without the approval of Cabinet. The circumstances surrounding the allocation of this 10,000 square foot parcel is currently under investigation by the Trinidad and Tobago Police Service.
Having noted the changes in the occupation and using of the land situated at Mucurapo Road, St. James, and having received requests from various organizations, including the city of Port of Spain for leases of state land in that area, the Ministry of Agriculture, Land and Fisheries recommended to Cabinet in March, 2019, that the state land be subject to a survey by the Director of Surveys to determine the present status of the use and occupation of the land. That request was approved by Cabinet in 2020, Madam President, and instructions have been given to the Commissioner of State Lands and the Director of Surveys to conduct the survey, including the determination of any encroachments and squatting on the site. I thank you very much.

**Madam President:** Sen. Mark.

**Sen. Mark:** Can the hon. Minister indicate, Madam President, whether it is the intention of the Government to lease that 10,000 square feet of land to the particular organization?

**Madam President:** Minister.

**Sen. The Hon. C. Rambharat:** Madam President, maybe Sen. Mark will clarify what he means by the particular organization. I did not refer to the Jamaat al Muslimeen in respect of the 10,000 square feet parcel at all, Madam President. I said that it was leased under a suspicious tenancy agreement without the approval of the Cabinet and it is now in the hands of the police. And if my friend wants me to clarify, that 10,000 square foot parcel is in no way connected to the Jamaat al Muslimeen.

**Moneys Owed to TSTT by Government**

**(Measures to Address)**

21. **Sen. Wade Mark** asked the hon. Minister of Finance:
In light of reports that the Government owes TSTT hundreds of millions of dollars, which is posing a financial threat to the company, can the Minister indicate what measures are being taken to address this situation?

**The Minister of National Security and Minister in the Office of the Prime Minister (Hon. Stuart Young):** Thank you very much, Madam President. Madam President, the Government does not owe TSTT hundreds of millions of dollars. That inaccurate figure arises from disputed invoices for CCTV services. This has been dealt with on many occasions previously. TSTT has in the past billed the Ministry of National Security for CCTV services at rates that were not agreed and which were based on an expired contract. As the Minister of National Security I directed that the terms of the new contract would have been on a month-to-month basis and on a quantum meruit basis. This was accepted by the Cabinet of Trinidad and Tobago, and because the contract had expired the Ministry of National Security therefore applied a quantum merit approach to determine amounts owed. And the Ministry of National Security subsequently settled in full its assessment of the arrears of payment for CCTV services provided by TSTT through a payment of $200 million in September of this year.

**Sen. Mark:** Madam President, can I ask the hon. Minister if he can indicate to this honourable Senate what was the initial sum claimed by TSTT in terms of outstanding moneys by the State given the CCTV debacle?

**Madam President:** Minister.

**Hon. S. Young:** Madam President, if I remember correctly TSTT was making a claim for approximately between $600 million to $700 million. That was rejected by the Ministry of National Security who are under my tenure always interested in protecting the taxpayers through negotiations and the application of proper legal principles. As I said, the matter was settled for $200 million, saving taxpayers
some $400 million to $500 million.

**Madam President:** Sen. Mark.

**Sen. Mark:** Madam President, through you, could the Minister say or advise this honourable Senate whether it was an imposed settlement or a negotiated settlement? Can you clarify for us?

**Madam President:** Minister.

**Hon. S. Young:** I am not sure what the Senator is asking.

**Sen. Mark:** I am asking whether there was mutual agreement between TSTT and the Government of Trinidad and Tobago in arriving at the $200 million settlement?

**Hon. S. Young:** Madam President, the word “settlement” means brought to conclusion by both parties.

**Sen. Mark:** Can I ask the Minister whether the Government of Trinidad and Tobago owes any moneys because of its failure to meet its obligation via Ministries/agencies of Government to TSTT? Can the Minister indicate, Madam President?

**Madam President:** No, Sen. Mark, I will not allow that question. Next question, Sen. Mark.

**Sen. Mark:** Is there a supplemental?

**Madam President:** I beg your pardon?

**Sen. Mark:** Is this a supplemental?

**Madam President:** Do you have any more supplementals?

**Sen. Mark:** Yes. I wanted one more.

**Madam President:** You have one more, yes.

**Sen. Mark:** Can I ask the hon. Minister in terms of this activity involving the CCTV arrangement, can the Minister brief this honourable Senate as to what is the status of this whole arrangement involving CCTV?
Madam President: Sen. Mark, that question does not arise. And now we are on the next question—[Crosstalk] Yes.

Police Officers on Suspension

(Action to Address)

22. Sen. Wade Mark asked the hon. Minister of National Security:

Given that hundreds of police officers are on suspension and costing the State approximately fifty million dollars annually, can the Minister indicate what action is being taken to address this situation?

The Minister of National Security and Minister in the Office of the Prime Minister (Hon. Stuart Young): Thank you very much, Madam President. Madam President, according to the information received from the Commissioner of Police as at October 19th, 2020, 292 police officers of various ranks were on suspension at an annual cost of $31,526,163.12, not $50 million as indicated in the question. In an effort to address these matters tribunals have been set up by the TTPS. They have been liaising with the Judiciary to have matters before the court dealt with expeditiously. And I remind this honourable Senate and the public that under the Constitution it is the Commissioner of Police who has full administrative authority of all to do with the Trinidad and Tobago Police Service.

Madam President: Sen. Mark.

Sen. Mark: Madam President, from a policy perspective, can the Minister indicate whether the Government intends to pursue a policy or recommend a policy to deal with this outstanding situation affecting the police service of Trinidad and Tobago whereas he said over $31 million is paid to officers on suspension?

Madam President: Minister.

Hon. S. Young: Government’s policy is that the Trinidad and Tobago Police Service should act within the ambit of the law.
National Committee on Reparations
(Implementation of)

42. **Sen. Paul Richards** asked the hon. Prime Minister:

Can the Prime Minister indicate the reason(s) for the delay in the implementation of the National Committee on Reparations?

The **Minister of National Security and Minister in the Office of the Prime Minister (Hon. Stuart Young):** Thank you very much, Madam President. Madam President, the national committee on repatriations was established in February, 2014, by the then UNC Government and launched officially in June, 2015, over a year later. The chairman of that committee was also the chairman of NJAC at that time. Regarding the future functioning of the national committee on repatriations this has been the subject of several discussions with interested stakeholders, including the Emancipation Support Committee. The matter is being reviewed by the Government and will be subject to Cabinet consideration in the near future so that the work could be continued, including research, historical and legal research, public education and the development of partnerships with local stakeholders.

**Madam President:** Sen. Richards.

**Sen. Richards:** Thank you, Madam President. Thank you, Minister, for the response. Can the Minister indicate if there is a timeline on the committee under consideration for the committee on the reparations?

**Madam President:** Minister.

**Hon. S. Young:** What I can indicate, it was recently before Cabinet within the last few weeks. Certain instructions were given and the Minister with the responsibility is working on it expeditiously, assiduously, and we expect to come back to the public very shortly.
Street Dwellers  
(Measures to Address)

43. **Sen. Paul Richards** asked the hon. Minister of Social Development and Family Services:

In light of the number of socially displaced persons dwelling on the streets of Port of Spain, can the Minister advise as to the following:

(i) what is being done to address this issue;

(ii) does the Ministry have the legal authority to remove said persons from the streets; and

(iii) if the answer to (ii) is no, what alternative does the Ministry intend to pursue?

The Minister of Social Development and Family Services (Sen. The Hon. Donna Cox): Thank you, Madam President. Over the years the Social Displacement Unit of the Ministry’s interventions with the street dwelling population involves an approach of voluntary engagement and removal from the street via a process of outreach assessment and referral of such persons, including the Ministry of Social Development and Family Services to street dwellers. Some of these are: support to the elderly to access homes for older persons; expansion of the community care programmes to include persons 18 to 54 years old who are unable to maintain themselves or have no means of subsistence or a place of residence; investigations of reports from agencies and the public on the presence of street dwellers at various locations throughout Trinidad and Tobago.

Social work interventions such as advice, counselling, referrals regarding independent living, employment, resolution of personal issues, as well as any issues related to relationship management; supervision, advice and support to the various NGOs and other stakeholders who provide services to street dwellers and
access to the suite of grants available via the Social Welfare Division. The Ministry also provides subventions to NGOs aimed at providing sanitary services, meals and accommodation to street dwellers.

One of the major features considered to be at the heart of addressing the issue of street dwelling is the establishment of an assessment centre. A determination of a street dweller’s needs cannot be done effectively while he or she is on the streets and it is best that he or she is off the street and at a location from which a comprehensive assessment can be undertaken. The assessment centre will allow street dwellers a respite, a place where their needs can be diagnosed and the beginning of individualized care plans can begin to take shape. Identification of a location for the establishment of street dwellers assessment centres has been a challenge as it pertains to suitability and ease of access.

The Ministry approached the Property and Real Estate Services Division of the Ministry of Public Administration to secure a property for the establishment of this assessment centre. Recognizing the urgent importance of this initiative the Ministry will continue to engage key stakeholders in identifying a suitable site in the shortest possible time frame. And while the Ministry maintains its responsibility for the development of infrastructure and programmes that facilitate the rehabilitation and reintegration of street dwellers, the success of this programme is also greatly dependent on the responsiveness of the other stakeholders. In this regard the Ministry has been collaborating and providing technical assistance to the Port of Spain City Corporation, who has responsibility for developing and implementing in collaboration with the Ministry of Health and the Ministry of National Security, a framework for the removal of persons found on the streets as well as the establishment of shelters for such persons.

The Ministry also engaged the Office of the Attorney General and the
Ministry of Legal Affairs on the swearing-in of mental health officers as Justices of the Peace which is a prerequisite for the engagement and removal of street dwellers who are deemed to be mentally ill. The Ministry has also revised the draft standards of care and policy document and is actively engaged with officials at the Attorney General’s office in preparation for the proclamation of the Socially Displaced Persons Act, No. 59 of 2000. It is envisaged that this will play a key role in addressing the needs of street dwellers which will allow for their rehabilitation and reintegration.

The Ministry recognizes the responsibility of the State and validates the need to have an appropriate and effective national strategy to eradicate street dwelling nationally. Evidently there is need for a collaborative and cohesive approach to effectively manage this issue of street dwelling. To this end the Ministry identified a framework for a continuum of care for street dwellers. The continuum of care model is the more commonly adopted approach in response to the street dwelling issue. The service delivery outcome of this model is intended to remove the barriers confronting street dwellers while at the same time maintain their inherent worth and dignity. The Ministry will continue to work closely with its key stakeholders in treating with this critical issue to facilitate successful reintegration of this cohort who are confronted with various challenges in life and has taken to the streets.

Madam President: Sen. Richards.

Sen. Richards: Thank you for the comprehensive response, Minister. Through you, Madam President, will the Minister be able to provide actual numbers of street dwellers nationally and disaggregated by Port of Spain, San Fernando, et cetera?

Madam President: Minister.
Sen. The Hon. D. Cox: Yes. Thank you, Madam President. The total number of street dwellers identified thus far, 441 persons. For the end of 2019 the figure for Port of Spain is 190 compared to 365 in 2010; Arima, 26 street dwellers; St. Augustine, two; Aranguez, one; San Juan, we are seeing 14 and we understand that there is an increase—a little more than 14 now because once you approach them in Port of Spain or anywhere they change location; Woodbrook, 39; Chaguanas, 20; Couva, three; San Fernando, 71; Princes Town, five; Point Fortin, six; and these are some of the figures that we have.

2.00 p.m.

Sen. P. Richards: Thank you. Finally, would the Minister be able to identify if there are plans in the strategies outlined earlier to identify a more appropriate centre in Port of Spain for accommodation intervention, than Riverside Plaza, which is considered by many substandard?

Madam President: Minister.

Sen. The Hon. D. Cox: Yes. Actually right now we are in the process of identifying areas because it is just not only housing them, but we are trying to find, to identify an assessment centre. We have spoken to the Ministry of Public Administration and Digital Transformation, because we must assess them first, and then we are also looking at—I had discussions with the Ministry of Housing and Urban Development with regard to assisting us with transition homes, because we need transition homes and also long care facilities for them.

Tomorrow there is a meeting planned with the Ministry of Health, Housing, the Mayor of Port of Spain and all the other persons involved, which would be also the Ministry of Rural Development and Local Government. Actually in that meeting we are going to have to get persons to commit to their role, the role that they have to play to assist us with the street dwelling problem.
Madam President: Sen. Richards you had another question?
Sen. Richards: No, no.

Matter of Privilege
(Sen. Jearlean John)

Sen. Paul Richards: Madam President, I hereby seek your leave, in accordance with Standing Order 30(2), to raise the matter directly concerning the privileges of the Senate, today being the first opportunity available for me to do so.

The matter concerns certain public statements allegedly made by Opposition Sen. Jearlean John following the passage of the Public Procurement and Disposal of Public Property (Amtd.) Bill, 2020 in the Senate on Tuesday, December 8, 2020, which were widely reported in the daily newspapers.

In an article written by Mr. Sean Douglas in the Trinidad and Tobago Newsday on Wednesday, December 9, 2020, entitled:

“Jearlean John upset at Independent’s vote on Procurement Bill”

Certain public statements reflected on the exercise by Independent Sen. Dr. Maria Dillon-Remy of her right to vote in this Senate during the passage of the Bill. Madam President, the statements attributed to Sen. John are as follows:

(1) “‘A shame and a disgrace’ was how Opposition Senator Jearlean John described an Independent Senator’s—Dr. Maria Dillon Remy’s—support for the Government to narrowly pass the bill to water down the procurement laws…”

(2) “Tuesday night had been an opportune moment to act properly but individuals with the power to do something had failed to do so.

(3) We can’t be complaining about something and when there is the opportunity to do something about it and when you have the power to do something, when the moment calls, you cannot then not do something.
(4) For me it should have been our finest hour. We should have all come on Tuesday to do what is right for the people of Trinidad and Tobago.

(5) All this throwing up your hand and playing you are Caesar’s wife. ‘You ain’t no Caesar’s wife’.

(6) I think it is a shame and a disgrace that there were people who decided to endorse what this Government is doing very openly.

(7) ‘Even abstention is a cop-out’…‘because it was very clear what was happening and what the Government was doing by having those amendments.’

(8) We went there to act on behalf of the people, and we expected our colleague senators who are independent to have acted in that way. We had expected the Independent senators to act right.

(9) ‘We didn’t have to ask anybody because we felt we were all there for the good of this country. We had expectations. I didn’t think we’d have to second-guess.’”

On the onset, section 40(2)(c) of the Constitution of the Republic of Trinidad and Tobago, the Constitution, it is very clear that nine Members of the Senate, comprising the Independent Bench, are not chosen based on allegiance to any party, but based on their expertise and contribution to society. As Independent Senators, we are free to vote based on our conscience. We are not aligned to any political party. We are not a bloc, but nine individuals who have been brought into the Senate to contribute to national affairs, based on our expertise. To that end, we, as indeed all Members, are protected by parliamentary privilege.

Madam President, parliamentary privilege is the buttress of a strong legislature which can effectively perform its functions in representing the people, scrutinising the executive and passing laws for the benefit of the citizenry.
Therefore, its sanctity must not be eroded, as it protects this august House from interference by anyone who may wish to impede or influence those proceedings in pursuit of their own ends.

It is a violation of this principle for a Senator to inappropriately reflect or challenge the vote of a Senator, and in that case, an esteemed Independent Senator. The statements attributed to Sen. John seek to undermine the integrity of the Independent Senator, lower her estimation in the general public, as well as cast aspersions on her character. This damages not only the Independent Bench, but also serves to bring the entire Senate into odium and disrepute. Such violation is strongly condemned, and gives me no pleasure to raise this Motion of privilege against Sen. John.

Based on the foregoing, if these purported statements and reflections are indeed true, I submit that the Senator has committed a contempt by breaching her privilege as a Member of this esteemed Senate. In this regard, Madam President, I refer this matter for your attention and determination, and I beg to move.

Madam President: Hon. Senators, I reserve my decision on the matter of privilege raised, and I will deliver same later in the proceedings.

**MISCELLANEOUS PROVISIONS (FATF COMPLIANCE) BILL, 2020**

Order for second reading read.

The Attorney General and Minister of Legal Affairs (Hon. Faris Al-Rawi):

Thank you, Madam President. I beg to move:

That a Bill to amend the Mutual Legal Assistance in Criminal Matters Act, Chap. 11:24, the Proceeds of Crime Act, Chap. 11:27, the Anti-Terrorism Act, Chap. 12:07, the Interception of Communications Act, Chap. 15:08, Financial Intelligence Unit of Trinidad and Tobago Act, Chap. 72:01, the Income Tax Act, Chap. 75:01, the Central Bank Act, Chap. 79:02, the
Financial Institutions Act, Chap. 79:09, the Companies Act, Chap. 81:01, the Securities Act, Chap. 83:02, and the Non-Profit Organisations Act, No. 7 of 2019 be now read a second time.

Madam President, the several pieces of law which are before us in this 13-clause Bill, can be effectively put into four categories. Those four categories are, firstly, with respect to clauses 4, 5, 7, 9 and 12, being suggested amendments to the Proceeds of Crime Bill, the Anti-Terrorism Act, the Financial Intelligence Unit Act, the Central Bank Act, and the Securities Act. Those specific laws are tied together by the common theme of meeting recommendation 35 of the Financial Action Task Force procedures and methods of evaluation.

The second category is with respect to clauses 3 and 5, that is, the Mutual Assistance in Criminal Matters Act and the Anti-Terrorism Act, where we deal with the concept of addressing secrecy and the obligations of secrecy for persons who function in those entities.

The third category relates to clauses 7, 8, 9, 10 and 12, being the Financial Intelligence Unit Act, the Income Tax Act, the Central Bank Act, the Financial Institutions Act and the Securities Act, all of which are tied into the concept of removing corruption and criminality, again assessed by the FATF in their 40 Recommendations and in their 11 immediate outcomes.

The last category refers to the category of Recommendation 25 and Recommendation 26 of the Financial Action Task Force, as they relate to clauses 11 and 13 being the Companies Act and the Non-Profit Organisations Act, and where we look to improving beneficial ownership in particular and certain aspects of legal arrangements.

Permit me to say, Madam President, that I am told by virtue of the media,
and then I received by request a copy of an email that came from the Law Association asking for this Bill to not proceed, under the rubric of it being associated with several other Bills: the Evidence Bill and also the amendments to the Administration of Justice Bill.

[Mr. Vice-President in the Chair]

And without going into anticipation in those matters, permit me to say at the outset that I cannot accept from the Law Association, most respectfully, an allegation that they have not been invited to participate in consultation, when one considers, specifically in relation, Mr. Vice-President, to the Evidence Act that that Bill was laid in April 2019, went to a special select committee, had full public consultations, and very specifically involved over a year of work where the Law Association simply and completely refused to turn up, notwithstanding letters of invitation, telephone calls, et cetera. I respectfully say today, and I will have more to say in my winding up, why it is these laws are proper for debate today, notwithstanding a supposed 6.33 a.m. message from one Shankar Bidaisee of the Law Association.

Mr. Vice-President, permit me to dive to the Bill quickly. Clauses 1 and 2 are relatively simple, the short title and the commencement clause. Clause 3, this seeks to amend the Mutual Assistance in Criminal Matters Act. As you know, the Attorney General is in that legislation listed as the Central Authority of Trinidad and Tobago, and has the responsibility through that unit to ensure that there is cooperation and assistance with respect to Commonwealth and non-Commonwealth jurisdictions, in treaty circumstances and otherwise, to provide assistance in criminal matters within the confines of that law.

There is a whole philosophy in law enforcement of not sharing information,
in the context where you do not know who is in the room and who is obliged by confidence in the room. It is extremely important to bear in mind that this Government, under my hand as Attorney General, transferred the Anti-Corruption Investigations Bureau away from the Office of the Attorney General, and to the Trinidad and Tobago Police Service. And specifically to improve the obligations of secrecy under the Mutual Assistance in Criminal Matters Act, we propose to borrow from the precedent of section 22 of the FIU Act, and to therefore bring to the fore the fact that if a member who has improperly disclosed information coming to him or her in the course of his functions at the Central Authority, whether during the existence of employment or after, that that member should suffer by way of a criminal offence for an improper disclosure, in the circumstances, of a fine of $250,000 and imprisonment for three years.

Mr. Vice-President, I turn to clause 4 which seeks to amend the Proceeds of Crime Act. Permit me now to say in respect of the Proceeds of Crime Act, I am going to borrow now the general connection that I make for the Proceeds of Crime Act, the Anti-Terrorism Act, the Financial Intelligence Unit Act, the Central Bank Act and the Securities Act, and specifically I am going to address the first major item, which is by the amendment to section 57, where we are proposing the introduction of administrative sanctions.

What are administrative sanctions and why do we need them? Administrative sanctions have fallen into direct and sharp focus, because when we underwent our Fourth Round Mutual Evaluation in January 2015, the Financial Action Task Force assessed us as being non-compliant in respect of Recommendation 35. Recommendation 35 is where you are obliged to have persuasive and alternatively persuasive mechanisms to cause compliance with the
law.

The Financial Action Task Force in its published report, our Fourth Round Mutual Evaluation report, had this to say, and I quote:

On comparison with previous FATF reports where no administrative financial sanctions are in place, no ratings above partially compliant have been given. We would encourage comparison with the Mutual Evaluation Reports of Switzerland and Norway in this regard. The matter was also raised in discussion amongst the Mutual Evaluation Report of Denmark. We would particularly note the ECG discussion on this issue in the Mutual Evaluation Report of Switzerland, and conclude that whilst administrative financial sanctions should not be regarded as mandatory—and here they say this—in specific circumstances a fine is the only adequate and proportionate sanction available. Therefore the absence of an ability to levy financial administrative penalties means that on the basis of current precedent and consistency with other reports, that the ratings should remain as partially compliant.

How does this affect us? As a result of the partial compliance on Recommendation 35, even though we have graduated out of the Financial Action Task Force grey listing by a spectacular performance in January 2020, the European Council and the European Union has blacklisted Trinidad and Tobago on the back of a failure to have administrative sanctions remedies in respect of Recommendation 35.

I have written to the European Commission, and received correspondence from them confirming that if we are able to address the Recommendation 35 deficiency, and if we are able to bring to life a law which we have already passed,
that is under the Registration of Deeds (Miscellaneous Provisions) Bill, where we have a register of trust, a private register of trust, that they are prepared to re-rate Trinidad and Tobago into compliance.

This means that our banking system and those persons who have been debanked and derisked in the European context, will have relief and aid.

May I ask what time is full time, Mr. Vice-President?

Mr. Vice-President: You end at 3.37.

Hon. F. Al-Rawi: 3.37, much obliged. Mr. Vice-President, in that context therefore we are proposing an administrative sanction route. What does that mean? In respect of matters where you can go without a mens rea, or a mental intention for the commission of a crime, in respect of matters where it is appropriate to have no discussion as to whether you intended to trigger an offence, you are allowed an administrative sanction route to say, if you breach regulations or you breach certain conditions, that you will be exposed in the first instance to an administrative fine. If you choose not to pay the administrative fine in the course of an examination as to whether you have in fact committed one, then you will default to a position of running via an offence, where you go to court and you have due process and you consider your outcome.

So what we are doing we are providing an alternative remedy, well established in law, in particular in the context of several other laws that stand on the books of Trinidad and Tobago. And I refer specifically to section 86 of the Financial Institutions Act, section 90 of the Securities Act, section 18(g) of the Financial Intelligence Unit Act, where alternate remedies are available.

You would recall, for instance, in the administrative sanction route for the IPO for FCB, that there was an administrative sanction route. It allows for an
alternative remedy. That alternative remedy comes to life only via regulations which must come to the Parliament and be subjected under the purview of the creation of regulations.

The Proceeds of Crime Act is further proposed to be amended, apart from the administrative sanction route, by adding on to that an amendment to the Seized Asset Fund. When one looks to the Seized Asset Fund, the Seized Asset Fund has been established under the Proceeds of Crime Act. We brought it to life in taking a case in the courts. We had the State order moneys, which were the proceeds of crime, into the Seized Assets Fund. What we propose to do here is to broaden the purposes of the Seized Asset Fund, so that they are more than just community development, drug abuse, rehabilitation, law enforcement, compensation under section 29 or restoration of moneys, or for the use under the Civil Asset Management Authority.

Now we are adding other purposes, and specifically in a context where money is hard to gain, we are asking for these proceeds of crime to go to the benefit of society. This is critical because we already have several unexplained wealth orders before the courts—several, where tens and twenties of millions of dollars stand now to benefit. There are proceedings in the United States of America as well where we are looking at up to 123 million United States dollars in potential proceeds of crime, to be repatriated to Trinidad and Tobago. Therefore the expansion of the use of that Seized Asset Committee in education, in drug rehabilitation, in the benefit of our citizens, supervised by the Seized Assets Committee under law, is critical for our society, as our explain your wealth laws now bring home justice for Trinidad and Tobago.

There is a consequential amendment flowing out of the administrative
recommendations for penalties, to the Financial Obligations Regulations, specifically section 42 there, and that is in keeping with introducing into the regulations, as we call them, FORs, Financial Obligation Regulations, the power to levy administrative sanctions.

We then turn to the amendment at clause 5 to the Anti-Terrorism Act. The Anti-Terrorism Act is proposed to be amended such that applications under listing of terrorist entities, section 22(b) of the Anti-Terrorism Act, allows for an application to court to list terrorist entities. That, once listed, involves disclosure under two heads: section 12, we have UNSCR, United Nations Security Council Resolution 1267, we have 1373. Those two regulations, those routes of resolutions at the United Nations, allow us to take the UN list: ISIS, Al-Qaeda, Da’esh, these other entities, we can bring them and list them in Trinidad and Tobago, or we can sponsor our own listings, as we have done, with Kareem Ibrahim, with other people, et cetera, in the context of us in Trinidad and Tobago taking the lead on terrorism.

Because law enforcement shares information and intelligence, which goes into the affidavit evidence before the court, we are asking for the record to be sealed. Now this does not mean that the order of the court produced is in jeopardy, because the redacted version of the order can be published as the law says. This allows law enforcement to simply talk to each other so that there is not a tipping off risk in the terrorism and the financing of terrorism category.

There is similarly an amendment in the Anti-Terrorism Act to add in the administrative sanctions route, which I have explained already in the context of the Proceeds of Crime Act. Of course there is a related aspect of adding an amendment to the Financial Obligations (Financing of Terrorism) Regulations,
where we marry the power of administrative sanctions into the regulations as well. We are adding in the secrecy introduction, that anybody who works at the Anti-Terrorism Unit commits an offence, if they disclose information improperly. Law enforcement, be it our international partners in the region or outside, all have similar provisions, and they say that we are to keep confidential information as confidential.

Mr. Vice-President, I turn next to the Interception of Communications Act. I would say simply here that the usual course that we take in the AG’s office prior to proclamation of a law, in this case the amendments to the Interception of Communications Act, where we introduce the bugging of prisoners—I wrote to stakeholders and received a comment from the honourable Director of Public Prosecutions that we ought to do two things: One, ensure that a designated advice where you can speak to your lawyer on legal professional privilege is properly identified. That is point one, and we agreed. And two, the honourable DPP pointed out that with respect to section 18A, that warranted information under the preliminary enquiries route section 5, under the Proceeds of Crime Act, sections 32 and 33, where a constable has had the power at law since 1917, in the case of the preliminary enquiry route, to go and get stored data. There was a lacuna in the law which we fixed the last time. Where we said, if you get the stored data via that warrant process, make sure it has the same level of protection as the Interception of Communications Act. In other words then, no tipping off, no breaching, et cetera. So we are adding a protection and coverage by adding in stored data into this realm.

Mr. Vice-President, I turn to the Financial Intelligence Unit Act. I would say that the FIUTT has obligations as a member of the Egmont group. I know Sen.
Lutchmedial who had the privilege, I am told, of serving there and very well while she served there, would be aware that the FIUTT in 2013 became a member of the Egmont group. We need to distinguish our FIU from other FIUs, so we have a nomenclature adjustment. We also have the need to set certain parameters within the law by way of adjustments set out in the Bill, and to add for the FIUTT the administrative sanction routes, which again I have explained in the context of the Proceeds of Crime Act.

We also ask that the transmission of the report should specifically, where the FIU is investigating a policeman, a police officer, and that police officer is under watch by the Police Complaints Authority, that the FIU not only inform the Financial Investigation Branch or the police, but that the FIU also inform the Police Complaints Authority. That is a critical amendment when we are looking at making sure the services are honest, because there is the dichotomy at place, there is a problem.

The TTPS is not seeing the kind of results for police misconduct, that the Police Complaints Authority has been advocating for. And improving our transparency and fight against corruption, and in this case corruption in law enforcement, where there is the PCA connection, we ask for this to be disclosed.

We also asked for the power for deregistration, *ex proprio motu*, meaning by yourself. The FIU acting on its own or by way of an application for deregistration. That is a lacuna in the law that just simply was not there.

We asked for the administrative penalties in section 18(i), as has been set out. Then we importantly improved the quality of mens rea or criminal offences, by adding in the concept of knowingly and recklessly so that there is a proof, and that you do not have too easy a prosecution, that the mental intention is anchored
in the appropriate sense.

We of course looked for the amendments to the provision treating with the regulations, and we have set the regulatory offences on equal level with all of the other breach of regulation provisions, as the FATF has already assessed us on, saying that we have become largely compliant in relation to our persuasiveness of criminal sanctions. Remember, the section 35, Recommendation 35 lacuna, is not that you do not have criminal sanctions that are persuasive, but you need administrative sanctions as an alternate remedy that are equally persuasive.

We sought now to amend in clause 8 the Income Tax Act, clause 9, the Central bank Act, clause 10 the Financial Institutions Act, and also clause 12, the Securities Act. Permit me to address those together.

By way of Act No. 10 of 2020, we specifically, at the request of law enforcement, this Senate, this House, the Parliament, amended those several pieces of law to treat with arguments on the breach of secrecy. So I give you an example. Section 55 of the Financial Institutions Act says that you cannot disclose information unless it is under compulsion of law. So we were getting the information under compulsion of law. Law enforcement went to court, got an order of the court, financial information was produced via a bank complying with a production order under the Proceeds of Crime Act. They had that order, time to now put that evidence before the court without a preliminary enquiry, i.e. a paper committal, that evidence must go under a witness statement.

So they have the evidence as produced by an order of the court, and they were blocked in their ability to put that evidence under a witness statement. The witness statement simply says: I, John Brown, bank officer swear this statement. The documents attached hereto are the documents produced to the court under a
That simple amendment that we put in, in Act No. 10 of 2020, allows for the DPP to take statements avoiding decades of preliminary enquiry problems. And therefore, as a Parliament, we passed in Act No. 10 of 2020 the amendments to the Income Tax Act, Financial Institutions Act, Securities Act, et cetera, as we do now do Central Bank Act, et cetera. What we are doing here is we are adding one more entity, the Police Complaints Authority. The Police Complaints Authority is permitted this witness statement route without a breach of secrecy on the part of the person disclosing by simply, number one, only disclosing to the PCA that which has been produced under compulsion of law.

Secondly and importantly, it can only go to the PCA with the consent of the Director of Public Prosecutions. So there are ample safeguards built in, in adding in this further category of person or entity into the exceptions for breach of secrecy, in this case here for the production of a witness statement.

Mr. Vice-President, that would take us through the amendments as I have just referred to in those particular clauses, and that would be the Income Tax Act, clause 8; the Central Bank Act, clause 9; and the Financial Institutions Act, clause 10, and then clause 12 which would have taken us to the Securities Act. Let us deal with clauses 11 and 13.

Clause 11 seeks to do amendments to the Companies Act. The Companies Act was radically amended by this Government. We introduced beneficial ownership to say who the real owner of the shareholding of a company is.

Secondly, for people who thought they were smart enough to never disclose
the shareholding at all, incorporate a company and never allot shares, we have provided that you had to mandatorily issue the shares, because obviously you cannot say who the beneficial owner is if you do not have a legal owner. And there was a lacuna because there was no compulsion for the issuance of shares. So we amended that.

In dealing with the issuance of shares and in dealing also with the removal of bearer warrants and share warrants—what is a bearer share warrant? It is a piece of paper that says, you have shareholding in a company with no name. The bearer of the share owns the shares, like a dollar bill. A dollar in your hand is your dollar, unless somebody could say you stole it. So the bearer share warrant and the share warrants were removed by the Government, as you would recall.

Mr. Vice-President: Attorney General, you have five more minutes.

Hon. F. Al-Rawi: Thank you, Mr. Vice-President. And what we said there was that we had to do certain things. So now we are coming to tidy up some of the language. Instead of deliver shares, you need to surrender shares. Instead of just treating with shareholding by way of limited liability shares, there was an omission. We needed to treat with shares issued by guarantee, guarantee of members, so we had to catch that second cohort of shareholding.

As you are aware, we have shares limited by liability, we have shares limited by guarantee, we have not-for-profit companies, we have externally registered companies. And in that entire matrix now, we need to capture each of the species in this particular pot.

We are also in participation of the digitizing the Companies Registry and completely removing the need for paper filings in the registry. We are asking in the digitization effort to include current information: name, nationality, occupation,
address, telephone, email, et cetera, because when you file your papers now at the Companies Registry, you are going to get a two-step authentication. Every time your record is amended, you get a text message, you get an email, you are alerted to somebody causing the filing of a return because too much fraud is carried out unbeknownst to people who are unsuspecting.

We have also, Mr. Vice-President, sought to amend in the not-for-profit organizations law the description of the FIU being a supervising authority. It was improper for us to call it a supervisory authority. In fact—sorry. It was improper for us to call him a regulator. They are not regulating, they are merely supervising within the powers and description of what the FIU really does. So we are correcting that reference to the FIU as a supervising authority. We are now—sorry, as a regulator, we are now calling it a supervising authority.

Mr. Vice-President, I will say in closing that this is sincerely law which has been in the public domain for a very long time. The concept of administrative sanctions have been discussed in 2015, ’16, ’17, ’18, ’19, ’20. This has been the subject of consultation, recommendation and very importantly, supervision by all of the regulatory authorities. The Law Association participated in the entire matrix of the earlier genesis mechanisms inside of here. We are bringing concepts of law that are well-known to the law to life. It is proportionate and it is balanced. I look forward to hon. Members’ contributions today, and I beg to move. [Desk thumping]

Question proposed.

**Mr. Vice-President:** Sen. Mark. [Desk thumping]

**Sen. Wade Mark:** Thank you, Mr. Vice-President. Mr. Vice-President, we are called today as a Senate to address this particular Bill whose short title seems to be
miscarried. It is almost like a misnomer. Several provisions in this legislation have nothing to do with FATF. Mr. Vice-President, I will show where several of these measures breach our constitutional rights and democratic principles. What we are witnessing in this Senate is no different from what many of our women and girls are experiencing in many of their relationships, massive doses of domestic violence. Many of our women are victims of violence in this country. We in the Senate are becoming victims of parliamentary violence, contempt, disrespect and abuse. Mr. Vice-President, how can we—

**Hon. Al-Rawi:** I rise on Standing Order 46(4) and (6), as I genuinely consider those statements inflammatory to Trinidad and Tobago.

**Mr. Vice-President:** Hon. Senator, as you are now starting your contribution, I will ask you to just temper your language a bit as you continue.

**Sen. W. Mark:** Mr. Vice-President, I am guided. Mr. Vice-President, the Attorney General has been bringing Bill after Bill to this Parliament; 12, 13 Bills for amendments in one piece of legislation, knowing fully well, Mr. Vice-President, that speaking time has been reduced by the Government and we as Members of Parliament have a duty and a responsibility to scrutinize very complex legislation in 20 minutes. And those who are lucky get a little extra 10, 30 minutes. Mr. Vice-President, that is an abuse of the parliamentary system in our country. [*Desk thumping]*

And I am saying, Mr. Vice-President, that when I look at this Bill before us, I want to ask the Attorney General, who did he consult with when he brought these pieces of legislation? Who did he consult with? The Law Association is asking for consultation. They are asking the Attorney General, give us seven days because we as the Law Association did not have sight of these Bills that you
brought here like a thief in the night.

Mr. Vice-President, and the arrogance, the contempt, the disrespect meted out to civil society and the Law Association is very manifest for you and I to see. It cannot be right that the Attorney General, representing the Government, can bring legislation knowing full well that there are civil society organizations that will want to comment on this law, and you simply dismiss their representation. It is a very sad day for our country and this Senate.

I want to put on record that this PNM Government constitutes a clear and present danger, not only to our Constitution, but to the very democracy of our nation; this Government. [Desk thumping] This Bill, Mr. Vice-President, is loaded with sweeping infringements on our citizens’ constitutional rights, using the cover of FATF. FATF has now become an excuse to breach and violate citizens’ rights and democratic and fundamental freedoms by this Government.

This is like a pepper pot. Mr. Vice-President, I do not know if you ever went to Guyana. I went there. They have a cook, they have a pot, like how we have pelau, they have a pot across there, it is called pepper pot. They put pork, they put chicken, they put everything into it for you to consume. What we have here today is a pepper pot piece of legislation where the Government has brought several pieces of unrelated legislation into this so-called miscellaneous provision amendment Bill that has no relationship whatsoever with FATF, none. And I will show you.

You tell me, Mr. Vice-President, or through you, what does the Central Bank (Amdt.) Bill have to do with FATF? Tell this honourable Parliament. I notice that the Attorney General, like an athlete, he ran fast past the Central Bank (Amdt.) Bill. You know why? He did not want the honourable Senate to know
about it. I did not hear him. I was right here. I do not know if you did. I did not hear him talk about that amendment. Tell me what FATF in France has to do with reducing the tenure of office of the Governor of the Central Bank from five years to three years? What does that have to do with FATF? You know what it has to do with? The PNM’s intention to control the Central Bank and to make the Central Bank a virtual division of the Ministry of Finance. That is what this thing is about.

[Desk thumping] They want puppets as governors at the Central Bank, so they bring this outrageous, unacceptable, inexcusable, indefensible amendment to the Central Bank, which we completely reject, Mr. Vice-President.

Mr. Vice-President, you look all over the Caribbean, look to Europe, look to America, you will never see what we are dealing with. This Government is seeking to transform Trinidad and Tobago into a full banana republic. [Desk thumping] Everywhere you look in the Caribbean, the minimum is four years. In the United Kingdom, it is eight years. You come here with an amendment and you give no justification. The Attorney General is a total embarrassment. All right. Let me withdraw it. He is not an embarrassment. But, Mr. Vice-President, I withdraw.

Hon. Senator: And apologize.

Sen. W. Mark: With no apology I withdraw.

Mr. Vice-President: One moment.

Sen. W. Mark: Mr. Vice-President, I withdraw.

Mr. Vice-President: As much as you have withdrawn, it tells me that you understand that the statement in and of itself is not allowed. So if you could—[ Interruption] Sen. Mark. Sen. Mark, I am speaking. What I am saying is that you understand, before I could even rule that the statement is not allowed, then do not
say it in the first place. That is what I am asking, so that I do not have to get to my feet. Okay? Continue.

**Sen. W. Mark:** Mr. Vice-President, this measure is unprecedented. Nowhere in Caribbean can you find it, nowhere. We must reject this attempt at undermining our democracy and our independent institutions. Mr. Vice-President, you were here with me in Eleventh Parliament when the very Government brought amendments to the Central Bank Act. And what were those amendments about, Mr. Vice-President? It was about reducing—and not reducing, Mr. Vice-President. It was about providing the Minister of Finance and the Government with information on staff members at the Central Bank.

Mr. Vice-President, since April, the inspector of banks is like in Hollywood, an actor. He is acting since April. No deputy governors appointed by this Government. There is only a governor, no support. Why is this? And you bring an amendment, Mr. Vice-President, and the Attorney General of this country who had to recuse himself 37 times from the Cabinet, Mr. Vice-President, offers no explanation for this travesty and invasion of an autonomous institution like the Central Bank. Well, why do you not reduce it to one year? You want a URP instead of a Central Bank, that is what you want.

Mr. Vice-President, political interference by the Government through this measure is going to reduce the independence of that institution called the Central Bank. Is the Government seeking to influence and take charge of monetary policy which is the domain of the Central Bank? Why is the Government seeking to reduce the time or the term or the tenure of appointment of the Central Bank Governor? Provide us with explanation, Mr. Vice-President. In making this amendment, Mr. Vice-President, or proposing it, the AG is always talking to the
Chief Justice, the DPP. He is always talking to—consultation with this one and that one.

I want to ask through you, Mr. Vice-President, to the distinguished Attorney General. Did he consult with the former Governors of the Central Bank?—Ainsworth Harewood, Ewart Williams. Did he consult with Jwala Rambarran?—one of the best Governors. In fact, I think Jwala was one of the best Governors of the Central Bank that we have had. [Desk thumping]

Mr. Vice-President, did he consult with Wendell Mottley, Winston Dookeran, Ainsworth Harewood? No. No consultation, none. But what he has done, hon. Attorney General, is to bring a proposal here today in order to reduce the power of the Central Bank in this country.

Look, Mr. Vice-President, you know there is an old saying, those you cannot hear will feel, you know. I think that the UNC will have to take up a more aggressive role in this country because this Government seems to be bent on establishing a fascist dictatorship in our country [Desk thumping] and we will not stand for that. If they want this country to become ungovernable, we give you the promise today, we will make it. We will not allow the PNM to destabilize our democracy. We will defend our Constitution and our democracy, even with our lives. [Desk thumping] They are trying, Mr. Vice-President, to use law to re-enslave people in this country because they want total political control and dominance. How can we—when I came in here, I took an oath of office to defend the Constitution and I am not going to allow the PNM, headed by Dr. Keith Rowley the Prime Minister, to manipulate the laws of this country in order to destroy and undermine institutions. We are not going to allow that.

**Sen. Mitchell:** On a point of order—
Mr. Vice-President: Senator.

Sen. Mitchell:—please, Mr. Vice-President; 46(4), please and 46(6).

Mr. Vice-President: Senator, once again, I have to caution you on the type of language that you are using which is moving down a line of imputation. So I will ask you at this point to move forward and temper your language. Continue.

Sen. W. Mark: Mr. Vice-President, the people are crying, the people are hurting, the people are asking for justice, equality, opportunity and fair play. They want our democracy not to be diminished but to be improved, to increase, to be expanded. That is what the people are asking for. But you bring measures here to reduce the rights of the people. How can we facilitate that? We cannot. We reject that completely, Mr. Vice-President.

You would imagine, Mr. Vice-President, you give me 30 minutes—not you per se—but the abusive PNM, using their majority, they have imposed a tyranny on this Parliament. So I want to move on to the whole issue of the invasion, Mr. Vice-President. I see the hon. President is back.

[MADAM PRESIDENT in the Chair]

Let me go to the matter of the interception of communication which an amendment to, I think, clause 4—clause 6, Mr. Vice-President. Clause 6. Let us go to clause 6 and see what this Government is attempting to do. And you know they conveniently talk about what?—administrative penalties, Madam President, administrative fees, administrative fines, but they do not define these things for, so we do not know what these things mean. And because of that, Madam President, these fines that they are seeking to impose, this imposition of an administrative fee or sanction—right?—Madam President, this is clearly an infringement of due process. And if it is an infringement of due process, it is unconstitutional. Madam
President, we are being told that fines are going be 5 million—“like somebody sit down somewhere and just say 5 million, 3 million”. But the fine is being determined without any hearing and in the absence of any independent tribunal or judge.

So we are very concerned, Madam President, about these draconian measures that this Government is seeking to impose on this country. You look at the proceeds of crime before I go to interception—the proceeds of crime. Madam President, we see in the proceeds of crime, we have a Minister of Finance who is larger than life in many pieces of legislation today. And, Madam President, if you go to the proceeds of crime and you turn to clauses or clause—it is subsection (2), it reads as follows:

“The Minister may, by Order, in addition to matters set out in the subsection (1), determine that the funds of the Fund”—which is a seized asset fund—“may be used for any other purpose.”

And here, Madam President, the Attorney General tells us, very innocently, that he expects millions of dollars in this fund, and we must give the Government power to use this for recurrent expenditure. That was not the purpose that the fund was set up for. You know who is supposed to determine how these funds are spent under section 58 of the Proceeds of Crime Act?—a committee called the Seized Assets Advisory Committee. The Minister is to disburse funds, not to determine how these funds are to be disbursed and where they are to be spent. So what we are doing, Madam President, is a travesty our process in this Parliament and it constitutes a threat to our democracy.

But if we go to what is being proposed by the Government through the Attorney General, in clause 6, Madam President, it looks very simple:
“The Interception of Communication Act is amended in section 18A(1), (2), (6) and (7,) by inserting after the words ‘communications data’, wherever it occurs, the words ‘,stored data’.”

Just so, and that is it, you know, Madam President. You now have to go and do the research, Madam President. Go to Interception of Communications Act to see what these sections are. And if you are including “stored data”, Madam President, what does “stored data” mean?

Madam President, the Government is seeking to bring Bills in this Parliament that require a constitutional majority but they are using the rubric of omnibus miscellaneous as a cover in order to infringe on the constitutional rights and freedoms of our people. Hear what stored data means in the Interception of Communications Act:

It— “…means any data”— Madam President, any, any data— “of whatever description stored on a device;”

So you are now introducing, which was never there before, it was never there before, stored data, and you are going back in times like back in time parties. Stored data means you are going back. If stored, you can go back in the last 10, 15 years, and you come here with retroactivity involvement and you do not bring a special constitutional majority.

And, Madam President, what is even worse, under this interception amendment, in the parent law, only three bodies are responsible for dealing with interception of communications, the police commissioner, the Chief of Defence Staff and the SSA director.
4.00 p.m.

The Attorney General and his government have now allowed a policeman, a constable, to go to the court, a Magistrates’ Court and obtain a warrant to go into your cell phone data, your stored data.

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

**Sen. W. Mark:** Madam President, to go into your stored data for the last 10 years as they continue their witch hunt to undermine our democratic values and our democratic processes. And you come here without the requisite constitutional majority in this Bill.

So you bring 13 pieces of legislation knowing that we only have 30 minutes, and many of my colleagues who will come after me only have 20. How are we going to deal with these Bills as a Parliament if we have the fundamental duty to our country and to this nation to scrutinize every piece of legislation in the interest of the people of this country? That is our role. Our role is to keep the Executive in check. To bring the Executive to book. To make them accountable. But instead of that, Madam President, the PNM Government is using the Parliament as a balisier party group. That is what they are doing. They are using us, Madam President, as guinea pigs, so we are being experimented on, under the cover of COVID. So, supermarkets can open for 24 hours, but parliamentarians who make laws are being told, we have suspended your speaking time and you only have 20 minutes to make a contribution. And the Government will do nothing because it is in their interest to keep this level of debate almost stifled, to put us in a zone where we will not be able—

**Madam President:** Sen. Mark. Sen. Mark, I did tell you you had five more minutes a while aback. I would ask you to use your time to matters concerning the
Bill. You have gone way off now.

Sen. W. Mark: Madam President, I clearly understand what you mean and what you have said. All I can say, Madam President, is that the measures that they have brought in this Bill are so profound, sweeping and fundamental. You have a situation where they are now going to prosecute persons who they say reveal information. This thing is so vague. What do you mean by disclosure of information? Suppose they realize that in the Attorney General’s central authority office, the Attorney General is using information to get at his political opponents, and somebody comes and reveals that to the country, or brings it to our attention, you are going to criminalize that?

So, Madam President, we should be complimenting people who are going to save our democracy from these oppressors. All right, let me withdraw the word, they are not oppressors, they are just modern day Pharaohs. Madam President, I am extremely disturbed and troubled, because I would have liked to speak on every measure here today. I have been forced by the PNM to reduce my speaking time—

Madam President: Sen. Mark, I cautioned you on this issue already, so if you have no more to say—

Sen. W. Mark: No, I have plenty more to say.

Madam President: Well then, use the last minute and a half properly.

Sen. W. Mark: How many minutes I have again, Madam President, before?

Madam President: You finish at 4.05.

Sen. W. Mark: Okay, well, I have at least a minute. So, Madam President, in wrapping up I want to serve notice. We will be making sweeping amendments to this piece of legislation. And I serve notice that we will not, if the Government
Miscellaneous Provisions
(FATF Compliance) Bill, 2020
Sen. Mark (cont’d)

does not agree with our amendment, I give you the undertaking, and Trinidad and Tobago the undertaking, we will not support this piece of legislation. And I want to tell you, Madam President, through you, the Attorney General, the United National Congress will not be cooperating with this Government on any measure that they bring to this Parliament until they bring proper procurement legislation in this Parliament. [Desk thumping] And I thank you very much, Madam President. [Desk thumping]

Madam President: Who is next?

Sen. Roberts: Well, if nobody wants to talk, I will.

Madam President: Sen. Roberts.

[Sen. Roberts walks to podium muttering]

Madam President: Sen. Roberts, are you seeking—are you wanting to be recognized to speak? There is a way to do it.

Sen. Roberts: I would love to be recognized, Madam President. Could you recognize me, please?

Madam President: Yes.

Sen. Anil Roberts: Thank you. Thank you, Madam President. I am not sure what is taking place today. If anybody would like to debate, but this is a very serious Bill. And it appears that this Government takes its time to do absolutely nothing, and comes here on this day, two days after first laying a Bill, for Senators to digest, research, look at, analyse, and then bring to debate laws that will impact the citizens of our beloved country in a two-day span. This could never be acceptable governance. This cannot be what the people have put us here to do.

We pray every day before we start the session, to do our jobs well and to put the trust of the people, and to do our jobs. Yet this Government, through its
incompetence, its laziness, its inability to govern, comes here, thrusts Bills which have far-reaching consequences on business, citizens, foreign direct investment, freedoms, constitutional rights, human rights, for us to debate. And when we come here it looks like nobody wants to debate. Well, I will debate. If you say I have 20 minutes, I have 20 minutes, I will debate.

So the hon. Attorney General comes here, and I hope that he will correct me, because I was not at this time scheduled to debate, but I heard the hon. Attorney General say that Trinidad and Tobago has been blacklisted. If he did not say that, I would stand down for him to correct the record, please.

**Hon. Al-Rawi:** The hon. Member is correct. We are blacklisted by the EC, by the European Commission.

**Sen. A. Roberts:** Hon. Member, at what date was that, please? Bear with me, because I would like the information. It is the first time I am hearing this blacklist information.

**Hon. Al-Rawi:** The most recent blacklisting, which is a repetition of the three other times it happened, was in October of this year. But that is a repetition of continuing to be on the blacklist of the EC.

**Sen. A. Roberts:** Thank you, Sir. Well, that is information the population would need to hear. So I am glad that you are now stating that it is a repetition. So to all the citizens out there, Trinidad and Tobago, according to the hon. Attorney General, now has been repeatedly on the blacklist. My research shows that we were on the high-risk list. My research shows that we were on the grey list, that we are on the call-to-action list. But today I come to the Senate and I learn that my beloved country is on the blacklist. What does that mean? These are serious, serious situations. When you research what happens and what countries are on the
blacklist, like Iran and North Korea, my beloved Trinidad and Tobago is now on a blacklist with Iran and North Korea.

Our businesses will then be in jeopardy. Already the economy crashed before COVID-19. Over a 103,000 people lost jobs before January 2020. We are in a pandemic without data, without a national statistical office, and we are making laws here without information. When we are out there we can see that businesses have shut down. In the restaurant business we are seeing top J. Malone’s and big businesses that we would think were generating cash have closed their doors. If they have closed their doors we can only assume that those that were not generating the amount of business have also shut. That people who were making daily wages for nine months have not made money.

**Madam President:** Sen. Roberts, can you link what you are saying to the Bill at hand, please. Because—can you just link it?

**Sen. A. Roberts:** I have no problem with that, Madam President. This Bill being on a blacklist affects the ease of doing business, affects our competitiveness, affects how businesses can raise capital, affects how banks interact with their clients. It affects the foreign exchange, the availability of foreign exchange for our businesses to buy raw materials. For Trinidad and Tobago to feed itself. This is a serious all-encompassing blacklisting that affects every citizen. We are already in trying times, and the incompetence of this Government, the slowness with which they bring Bills has now—and I hear the Attorney General saying it.

I do not know if I heard, with pride, maybe to say that I am not aware. Well, if I am not aware, I humbly apologize, that we have been on the blacklist continuously. And that is said with some sort of arrogance and pride because we simply cannot come in a timely manner, after five years and two months, to bring
laws, to stay in compliance with countries that we would like to be. Big Vision 2030 is for developed country status. Developed country status is Europe, Germany, countries in Europe, in Australia, Canada, USA, Great Britain. We want to be developed yet we are on a blacklist with North Korea and Iran. Some of those conditions include extra due diligence. So every single business is seeking to either invest in other countries, or purchase, or do business in other countries, now must be subjected to an entire higher level of scrutiny from each and every financial situation, each of our banks.

Madam President: Sen. Roberts, you are focusing on one aspect of the Bill, and that is fine. But you are just talking at length about a certain topic, and you are making no effort to connect it to the Bill at hand. To the provisions in the Bill. I need you, Sen. Roberts, to do that please.

Sen. A. Roberts: The provisions in the Bill, Article 18, the entire Bill. Article 18 states, enhance customer due diligence. Madam, you are saying that I am speaking about the Bill but not about the Bill. I am very confused, because Article—

Madam President: So, Sen. Roberts, confusion reigns because I am trying to give you some guidance. Do not take just one expression in the Bill and feel that by just saying that you are talking about the Bill. I would like you to make your contribution about the Bill, please. And, Sen. Roberts, I know, I know, I know that you may be a little agitated—

Sen. A. Roberts: Not at all.

Madam President: But your facial expressions are not in line and in keeping with your being here in this place, okay?

Sen. A. Roberts: I am never agitated and I do not ever intend to get agitated. Article 18, Ma’am, of the Bill, it speaks about enhanced customer due diligence for
the ease of doing business, the affordable and the cost. The pandemic in the EU for the blacklist, for the pandemic, we were given extra time. The entire world, all governments were given extra time in which to become compliant. That extra time of the pandemic is now up, and Trinidad and Tobago is not yet compliant. That is incompetence.

We heard today from the hon. Attorney General in this august House, an attack, a scathing attack on the Law Association, who tried and attempted to communicate with the Attorney General. He stands here in the Senate and says, without providing an iota of evidence for Senators to look at, that the members of the Law Association were invited to consultations for the last year and a half, and they staunchly refused to attend. That they were incompetent. The Attorney General did not lay here for us to see, the roll or the attendance, or the quorum at all of these consultations, but we are to take him at his word as he cast aspersions on an entire body of citizens of the highest order, and we must sit here and accept that, while we say that Trinidad and Tobago is on a blacklist, because the Government has simply failed to do its duty and its job to bring laws and make us compliant. [Desk thumping] Our businesses are suffering because they cannot get foreign exchange. We need US dollars to do business, to create jobs, to create a situation in this country where people can enjoy their livelihoods in a safe secure environment, and take care of their families. Some other countries on the blacklist and the grey list. After no procurement law, we were here on Tuesday, and we came to water-down a procurement law, and section 7 states—

Madam President: Sen. Roberts. Sen. Roberts. Tuesday and the passage of that legislation, it has passed. I am asking you—we are dealing with a different piece of legislation, and this I really have to tell you is my last warning to you. You need to
get with the Bill, please. You have listed, you have called out names of countries on the blacklist. You have done all of that. There are other parts of the Bill, so if you wish to move on, fine, but you need to come to the Bill.

**Sen. A. Roberts:** Thank you for your guidance, Madam President. I am certain that I would try to do my best to please you. The debt-to-GDP ratio in Trinidad and Tobago, for example, now stands at a whopping 80 per cent as of budget day. Now, we are discussing that we are looking at impacting borrowing powers, impacting the ability to sustain, and a business environment, by not being compliant, Madam Minister, by not being compliant, our businesses are affected, our job creation is affected.

The call to action means that we must get involved and get the Bill passed. The Law Association this morning requested that we hold the debate on this Bill. I ask the Government to explain, why at this juncture would they not accede to a request from a law body, legal body, to continue consultation for seven days, to ensure that we pass real-time law, proper law and good law? This Bill includes many different aspects, which are not involved in FATF. My research for the FATF deals with money laundering, anti-money laundering, terrorist activities, accountability, and compliance. Yet here we are discussing invasion of privacy, constitutional rights of citizens, and it is a hodgepodge legislation just put together in haste to pass here in the Senate, to impact the lives of citizens, to later on say that we have done a poor job. It is totally unacceptable that we come here today, as we are enhancing—and the situation in the country that has been exacerbated by the pandemic, there is a black market existing in Trinidad and Tobago for foreign exchange. Businesses are now, due to the difficulty in ascertaining, obtaining foreign exchange, there is a black market existing where people are purchasing foreign—

**Madam President:** All right, Senator. Sen. Roberts. Sen. Roberts, I am going to
have to ask you to take your seat. [Desk thumping] I cannot—please. Minister in the Office of the Attorney General. [Desk thumping] I just want to remind Members please, you see the crosstalk, please desist from it, okay? If anyone wants to have a conversation with anybody, you are free to do it, but outside, okay? Minister.

The Minister in the Office of the Attorney General (Sen. The Hon. Renuka SagramSingh-Sooklal): Madam President, it gives me great pleasure to contribute to this debate this afternoon, and I want to sincerely thank you, Madam President, for the opportunity to do so.

Madam President, I will begin my contribution to this debate by echoing the sentiments of my senior, the learned Attorney General, that the Bill before us today, which is entitled, The Miscellaneous Provisions (FATF Compliance) Bill, 2020, which treats with the amendment to 11 pieces of existing legislation and 13 clauses in length, is a critical piece of legislation. A critical piece of legislation in this Government’s combat against crime and criminal activity in this country. Madam President, the Bill that we present today, it is our attempt to also fight against white collar crime. The kind of crime, Madam President, where criminals sit cloaked in their jackets and ties, and for too long, for too long have been untouchable in Trinidad and Tobago. What we are attempting to do as a government is to strengthen processes, to enhance the fight against white collar crime.

Madam President, our government stands ready to employ apt strategies through the machinery of our Legislature to ensure that every one of them, every white collar criminal is brought to justice. So when Sen. Mark comes before this Senate, and he calls this Bill a misnomer, when he criticizes our government as
having a lack of respect for the Law Association of Trinidad and Tobago, this is furthest from the truth. As a matter of fact, what concerns me, Madam President, is that Sen. Mark, in his contribution also stated, “who can’t hear, go feel”. I am very concerned, I am very concerned, is this a threat to the national security of our country? “Who cah hear, go feel”? If the PNM “cah hear, we go feel”? So, Madam President, if in this august chamber we as Senators, who are called upon the population, and we are held by a—

**Madam President:** Sen. Roberts, I am hearing you and I think you intend for me to hear you. So I will ask you please to desist from that line of conduct, okay? Continue, Minister.

**Sen. The Hon. R. Sagragsingh-Sooklal:** As Senators and parliamentarians, Madam President, it is my respectful belief that we are to be held at a higher standard. And for a Senator, any Senator, to make that statement, “who can’t hear, go feel,” it really concerns me, and I really take that, and I am really concerned whether it is a threat to our country. Whether it is a threat that if the PNM does not pass particular legislation in a particular way, is it that the Opposition intends to incite whatever they intend to incite? So, Madam President, today as I continue my contribution, I wish to place on the record that this is simply our government’s attempt to continue our battle against the white collar crime that continues to persist in our country.

Madam President, Sen. Roberts indicated that we are on the blacklist. And it is true, we are on the blacklist as the Attorney General would have indicated. Trinidad and Tobago was included in the European Commission, EC list of a high risk of third countries. However, that is why, that is very reason why we are here as a Parliament, that is the very reason why we are here as a government this

**UNREvised**
afternoon, to introduce legislation, amendments to legislation, that will take us off of this list. But, even if we bring this legislation, and we are constantly shut down by the Opposition, this said Opposition, Sen. Roberts, I would recall in his contribution, said that the Government was incompetent. He spoke of us not bringing regulation and bringing laws. But that is also a concern of mine because when we do bring legislation and we do bring law, there is a constant refusal of the Opposition to support the said legislation.

So, to answer to Mr. Roberts, yes, we are on the blacklist. The learned Attorney General would have alluded to that in his presentation. But we are here to bring recommendations to take us off that said list. And if there is really one ounce of love for country, as Sen. Roberts tried to allude to in his contribution, where he spoke of all the negative economic sanctions that being on a blacklist will bring to this country, which we all agree with, which I certainly agree with. If that is his position, then I would hope and I dare Sen. Roberts, to support our Bill as we seek to make recommendations and bring amendments to the legislation that could of course only allow us as a country the opportunity to move off of any blacklist that can, of course, affect enterprise and commerce in our country.

Now, Madam President, for the benefit of Trinidad and Tobago, and, of course, in the interest of speaking time, for the benefit of the man on the street, the learned Attorney General, of course, in his piloting of the Bill, would have gone through the length and breadth of some of the amendments that we have before us here today. So, what I would want to primarily focus on, Madam President, in my contribution, is in essence to see if I can shed light to some areas of this Bill that may be of some confusion to the regular man on the street, and to be able to identify to Trinidad and Tobago, that this amendment that is before this House
today, it is really with—it is really our government’s intention, as I would have stated in the very onset, it is in an effort to bring an end to white collar crime, or to curb white collar crime in our country.

Madam President, for my brothers and sisters and the people of Trinidad and Tobago, by way of introduction, we can ask ourselves, what is the FATF? Now, the Financial Action Task Force is a global anti-money laundering standard setting body which develops and promotes worldwide standards for combating money laundering and terrorism. As a policy-making body, the FATF works to generate the necessary political will with governments to bring about national legislative and regulatory reforms. Trinidad and Tobago, yes, as the Attorney General would have already alluded to, was removed from the FATF grey list on February 21, 2020. But, notwithstanding that, we recommend that—we realize that there is a dire need for further strengthening of certain pieces of legislation that will only strengthen us as a country.

Madam President, what has the FATF achieved so far? The FATF process, I wish to put on the public record, has helped streamline reform of the criminal justice system, with major legislative achievements in relation to the investigation—investigating, sorry, financial crime. The FATF, we have also recognized money laundering prosecutions for five individuals, 52 ongoing terrorism financing investigations, an increased use of financial intelligence for the fight against white collar crime. So, Madam President, the FATF, there has been a considerable amount of achievements. As I said, because time will not permit, I will focus on the amendment that clause 4(b), (c) and (d) of this current Bill proposes to bring. Madam President, in this particular clause, we speak to the seized assets. So I would read, Madam President. Clause 4(b) and (c), what it
proposes, section 58E of the Proceeds of Crime Act which deals with the purpose of the Seized Assets Fund is being amended by this particular Bill today.

4.30 p.m.

Now the Seized Asset Fund is a fund for which moneys seized under the Proceeds of Crime Act and the Anti-Terrorism Act can be directed in accordance with the management of the seized asset committee and in line with regulations governing the management and operation of the fund. Now why I choose to make special reference to this particular fund, and I know the learned Attorney General in his piloting he also focused on this particular section, this particular amendment should be of serious concern to the people of Trinidad and Tobago because what it does is that it will give our Government the ability to now determine how moneys that have been seized through matters which have been adjudicated upon, it gives the Government the ability to decide how these moneys can be spent.

So, for example, when we look at, the purpose of the fund is to provide funds for community development, drug abuse treatment, rehabilitation projects, law enforcement projects, compensation under section 29, restoration of moneys by the President, under section 42, all of these, Madam President, what it will do it can only benefit the people of Trinidad and Tobago. It can benefit our population so moneys that were once, for want of a better word, stolen from national purse can then be returned to the benefit of every single citizen of our country.

Madam President, as a Minister in the Ministry of Legal Affairs I would also want to focus on clause 11. What clause 11 seeks to amend is the Companies Act, Chap. 81:01 and this is also a very, very, important piece of amendment. These are amendments from the Registrar General Department and Companies Registry in light of the implementation and roll out of the beneficial ownership information
regime. Now, Madam President, beneficial owner, I would like to place on the record and also in furtherance of what the learned Attorney General would have alluded to in his piloting of the Bill, refers to one who actually directs the management of the business and the affairs of the company or the person who ultimately controls the company.

So the question is the amendment that we seek to bring to the Companies Act, how is that, in particular, going to assist us in the fight of crime or in our fight or attempt to further fight white-collared crime in Trinidad and Tobago. Madam President, what is necessary to know, is who is the beneficial owner of a company, where there are vulnerabilities in the financial system in many instances opportunities exist for the misuse of that particular system. It has been determined, for example, that a limited liability company it is one of the mechanisms often used by white collar criminals to disguise and convert the proceeds of crime through schemes designed to conceal the beneficial owner of the company.

So therefore, Madam President, transparency with respect to the beneficial owner and the beneficial interest held in a company is certainly necessary to protect the local and international economic systems against not only disguising the conversion of the proceeds crime, but also, Madam President, tax evasion as well as corruption and unfair business practices. So certainly the clause 11 of this Bill, Madam President, which seeks to amend the Companies Act, 81:01 would certainly bring significant—or certainly assist the Government significantly in our fight in being able, and the Attorney General always alludes to it, being able to follow the money. Because we are not only asking, we are also asking for that declaration of the beneficial owners of said companies.

Madam President, again as the Minister in the Office of the Attorney
General and Ministry of Legal Affairs what is also very important to me is that clause 13 of the said Bill.

Madam President: Minister you have five more minutes.

Sen. The Hon. R. Sagramsingh-Sooklal: Madam President, this particular clause, which is the final amendment of this particular Bill, what it seeks to do is to amend the Non-Profit Organization Act, No. 7 of 2009 in clause 10. Now this proposed amendment again it would certainly assist us in being able to determine the nature of these non-profit organizations and certainly allow us as a Government to be able to ensure that these are not organizations, for want of a better word hoax organizations, that were simply created as a mechanism to conceal money or to launder money. So again, as simple as that, as simple as that amendment is it is certainly going to assist the Government again in our fight against white collar crime.

So to my friends on the Opposition Bench who have critiqued this Government for being very lackadaisical, for want of a better word, for not bringing legislation when we ought to, I dare you to support this piece of legislation today; I dare you to support the amendments that we seek to bring by this Bill today, because this is certainly our Government’s attempt, this is certainly our Government’s attempt to continue our fight against white-collar crime. This is not our Government’s attempt to withhold fundamental human rights of citizens of Trinidad and Tobago. This amendment, it is not our intention to usurp constitutional rights of the people of Trinidad and Tobago. This is simply amendments that we as a government believe from the length and breadth of this Bill will give the powers that be the teeth which is necessary in order to once and for all be able to curb white-collar crime in this country, a matter which we all
complain about. Madam President, with these few words I thank you for the opportunity to contribute. [Desk thumping]

**Sen. Jearlean John:** Madam President, for the opportunity to join this debate. I have heard the hon. Minister in the Office of the Attorney General and Ministry of Legal Affairs and I want to make clear that the Opposition is firm that the Government must bring good law. We will support nothing that infringes on the rights of the citizens of this country. We are proud to have a legacy of some of the best attorneys attached to the UNC and led by the very capable senior counsel, Kamla Persad-Bissessar.

Madam President, I too have had sight—she bought first in law class—I too just want to also join in asking or putting on record that the hon. Attorney General should have affirmed the request of the Law Association, [Desk thumping] because there is where we have over 3,000 practitioners and they are the persons who will have to operationalize this Bill. You are not doing law for the sake of doing law, you are doing law to solve a problem, as he had said and the hon. Minister in the Office of the Attorney General and the Ministry of Legal Affairs has just said.

And with that in mind, if the practitioners are asking for seven days with which to look at this Bill, all of these amendments and how they will impact, I am sure he will appreciate that they have something to say that makes sense and that is useful. But, Madam President, this Financial Action Task Force describes itself—it is really a policymaking body. Because it looks into matters of global money laundering and terrorist financing, it sets itself as a watch dog. And sets out international standards and then will have—as a policymaking body they then work to generate the necessary political will to bring about national legislative and regulatory reforms.
So they have a body of recommendations and when you look at the body of recommendations one has to look at in terms of trying to comply, are these amended piece of legislation before us the best we can do with respect to compliance. Because all the measures are indeed extremely punitive but it does not have a comparable or accompanying education, communication, you know, information for the general public. Because we have reached a point where a taxi driver, a seamstress, a shopkeeper, somebody with the traditional little sou sou, the one that we use to know and some of us grow up on, they cannot go into a bank and deposit their money or even open an account. That is what has happened. One is not saying not to bring good law and have the necessary safeguards to ensure that we can run a better country, but certainly we are here legislating for the people out there in Trinidad and Tobago, for our citizens.

You see when I looked at the list of jurisdictions who are associating themselves with the FATF, it is about 200. So there is a mix, our very sophisticated economies, some that are emerging, some that are developed and really if they have to implement measures such as these, I do not know if the Government would have looked at the various models or if they are just throwing something against the wall and say, well I want that one in there and the other one in there, because I think we need to see how do all of these pieces work together. Yes, this is about proceed of crime and this is about this and that, but how does it work to ensure that we satisfy these recommendations from this policymaking body.

So as I said if the Government is attempting to model various jurisdictions where the FATF recommendation are well and fully implemented then I believe the Attorney General can let us know because basically based on what I am seeing
here there must be something, it is a body of legislation that has to be integrated because it spans various agencies, et cetera. Now I say this to say, in FATF designated non-financial businesses and professions, you know, they will have those like the banks and so on, but then you have the non-financials like the—coming back to the attorneys and the accountants they have to be brought under these recommendations. And legislation that I have seen before I think it would have been very good if they too could have been part of this oversight. I did not hear the Attorney General speak about casinos, where I have heard that there are huge sums of money passing unregulated. I do not know if this was dealt with prior to at another time and another forum, but FATF has listed attorneys as I said before, they have listed accountants, but we will see in other legislations where these kinds of professions are managed by the Government themselves. So I do not know how they are going to be regulated within the context of this suite of legislation.

I want to highlight the recommendation that there be a coordinated approach to all of this legislation which of course make sense, because as we can see there are many pieces that overlap and I supposed to do something and many interagency relationships that we need to merge, but how is the Attorney General merging these relationship seamlessly. Because as an integration, ease of information sharing, exchange and compilation then all of this will have to come together to ensure that there is some kind of smooth flow of information and, of course, if there is to be whatever kind of action that there is one pool. I do not know if this all takes place in the Office of the Attorney General, but the Attorney General himself is an active politician so that will be himself to himself if indeed he is also the person with the responsibility to oversee all of these pieces of
legislation and basically knowing what they are supposed to do, how they are supposed fit, that is a good thing. But in terms of someone with their eyes on the ball, pulling it all together I think that is very critical to ensure that this works and it is just not more and more draconian measures.

Madam President, I was going to talk about something here but you shut it down early. So, Madam President, it is proposed that clause 4(d) inserts after a new renumbered subsection which empowers this same Minister. I just saw Minister, I do not know if the Minister is indeed the hon. Attorney General, but I am talking about this Seized Assets Fund. Why it is that there must be a Minister involve in these things? Why we cannot just have a schedule basically of activity, of affected persons or proposed victims and then one can apply the law without it being meddled in by politicians. You seized the money that is fine, but in terms of the areas, the Attorney General I think has not been very detailed in terms of where they are going to apply this money. He said mental health, evaluation treatment, all of that is well and good, but there are many other victims of crime or many other areas where money if it is seized can be applied. And I do not think that it is just something that one could just sit in a room as a Minister and decide, well this one will get and that one will not get. So I think what needs to come before this Parliament maybe is a schedule to accompany whatever they want to do with this Seized Asset Funds.

So, Madam President, in over 200 countries and jurisdictions committed to implementing these—so it is really the recommendations and what is being said by Mr. David Lewis who is the executive secretary of this body in a key note address he said:

“Stopping money laundering is not about ticking boxes.”
He said:

“However, today the AML system is characterised by just that”—where people tick boxes.

So they probably go to their various Parliaments and they say well we have passed the law. This is the guy who is the Secretary General of the body itself.

So I think the Attorney General will have to maybe look at what he is saying, he has a very detailed speech somewhere on the Internet and ensure that we are not just ticking boxes. Because we can be here trying our best to pass some level of law, or some legislation to guide this and then it goes out there, the people who have to administer it they are not sure, because it comes back to that implementation, seamless implementation of the law.

Again I want to draw, Madam President, your attention to where the hon. Attorney General in his amendment Bill is introducing a new section 41, Mutual Assistance in Criminal Matters Act. And here they are saying that any employee:

“…employed in Central Authority”—I think, maybe that is a department within under the ambit of the Attorney General—“who knowingly and recklessly discloses confidential information.”

What, I mean—and the fine is $250,000. What if this information has to do with something where this person is working because they are working in the public service? What happens then? Is it not that this is a deterrent from somebody speaking up. And that is why I am saying this FATF, the regulations, the implementations, the operationalization ought not to reside in the office of any politician. This has to be by itself in a neutral zone to ensure that people know what they are doing and that they just comply with the law without fear or favour.

So one is wondering if there is a conflict between a FATF recommendation
and these new amendments I am asking the hon. Attorney General, because what is being said it is really, these are just recommendations and you really have to cut your cloth to fit your jurisdiction. Everything is not about taking wholesale and being so punitive by trying to set this thing up because we are still an emerging jurisdiction. So one wants to know whether these amendments are in conflict or they are harmonized with the FATF recommendation.

I spoke about the doctors and the lawyers and how they fall under the supervision. Then you have the private sector. What is being said is that there are many businesses who do not even have a history or regulatory oversight and in particularly in Trinidad and Tobago. A lot of our businesses are family-owned. They are run in many cases quite informally and therefore they are not given to be very structured or formal. So how are we going to apply this into the private sector, because the private sector creates the majority of jobs and certainly all of the cash flow that goes through there and all of the implications. What are we doing with educating and guiding the private sector with respect to trying to comply with FATF?

I think we, again I am not sure, maybe I am not sure about it, but if the Attorney General can give us some idea as to what has been done to education for persons to probably go in or have a template to show the private sector what is being looked at relative to banking, what you have to do with your banking and all of the matters that flow from it. Because I know the Attorney General like to talk about, follow the money so that is why I am talking about banking. And then the pandemic and FATF. You know that the pandemic was a cover for many people to do all kinds of things, you know, to spend all kind of money wildly and we need to know how does that in terms of the compliance, the billions of dollars spent in
recent months and in addition to which we have seen an increase use of virtual assets. Some people are using all this Bitcoin and Blockchain. I do not know if that is really something that is engaging the attention of the Government or if it is something that is widely used in Trinidad and Tobago, you know, you see one or two little things in the papers, but I do not know if it has really taken off in this country at all. But that is something most likely we will have to definitely look at, how is the pandemic affecting, our spending in the pandemic. And there is a whole range of crimes here, well I say where they amended some other part of the Bill to get into your computer and your stored data. So I do not know if that have to do with money laundering now that deals with the facilitation of a wide range of crimes, including the sale of drugs and illicit firearms, fraud, tax evasion, computer crimes, including cyber-attacks. That is another thing. I know Facebook is very prevalent and popular in this country, child exploitation, human trafficking.

So, Madam President, you know I think we still have a long way to go because if it is just about legislating and not about the operationalizing and transitioning the country through education then we are not going to get very far quite frankly. We will have the legislation on our books and cannot really use it in a productive manner. And the recommendations therefore set an international standard, that is what FATF has said—

Madam President: Sen. John—

Sen. J. John: And they are very aware that countries have—


Sen. J. John: —different financial systems. And so what FATF is saying, so cannot take all identical measures to counter these threats. So if it is that they are saying we cannot take identical measures, is it that the hon. Attorney General has
looked at a model and decided that this best fits Trinidad and Tobago or he is just kind of making it up as he goes along or what have you, if he sees a gap there he will say well this will work, et cetera, that is why he brought this suite of legislation. I think it will be helpful if we know that there is an objective and a path towards what he is trying to achieve. So, Madam President, with these few words I thank you for the opportunity. [Desk thumping]

Sen. Damian Lyder: Thank you, Madam President, Madam President, in listening to Sen. Sagramsingh-Sooklal make her statement about whether or not statements made on this side of the House were indeed a threat to this country, let me respond to her by saying, what is indeed a threat to this country is the continuous assault and erosion on this nation’s constitutional rights, our freedom and our democracy, Madam President.

Madam President, we are called to the Senate today to address the Miscellaneous Provision (FATF Compliance) Bill, 2020. In my contribution I will be circumscribed by the responsiveness of this Bill to the requirements to improve the rating of partially compliant against four recommendations based on the Trinidad and Tobago 3rd Follow-Up Report & Technical Compliance Re-Rating of CFATF.

Madam President, Trinidad and Tobago remains partially compliant under recommendations 25, 28, 35, 38. But let me state several facts for the record here in this debate. The first fact, it is the People’s Partnership Government under the astute leadership of Mrs. Kamla Persad-Bissessar SC that triggered the Fourth Round Mutual Evaluation of Trinidad and Tobago. Fact number two, the decision to trigger the fourth round was the responsible step for a nation that seeks to be a beacon in the globe of anti-money laundering and counter-financing of terrorism.
Fact number three, this Government has been simply required to follow FATF guidelines and the changes to the law are in line with FATF recommendations, and are no stroke of genius but rather a requirement. Fact number four, the reason why we are still not fully compliant with the efficiency of the law based on some recommendations has to do with tardiness of this PNM Government in following the timelines set out by FATF. And fact number five, the Government has rushed this Bill to Parliament despite the protest of the Law Association because they feel it makes for good PNM politicking even though they are aware it is half-baked in some key clauses and therefore makes for bad law.

Madam President, it was only this morning I heard my colleagues mention that the Law Association sent a letter. I believe it was 6.30 in the morning or 6.35 in the morning to ask the Government to halt. And for the record and for Hansard if you would allow me to read the letter, I would be most happy if you would allow me to. Madam President, in this letter it states:

Dear Member,

Reference is made to caption Bill which the Law Association understands are to be bought before Parliament shortly. The Law Association is of the considered view that these Bills have far reaching implications for the administration of justice and the practice of law. As such we wrote the hon. Attorney General this morning at 6.36 a.m.—not 6.35 a.m.—and respectfully requested an immediate suspension of any debate on these Bills for a period of no less than seven days to allow consultation with the Law Association so that we may have an adequate opportunity to prepare and forward comprehensive comments thereon pursuit to our section 5 mandate under the Legal Professions Act.
We are confident that the hon. Attorney General would grant our said request to allow for full consultative process consequent upon which we shall be requesting comments from the membership on the respective Bills.

Sincerely,

Mr. Shankar Bidaisee.

Secretary, Law Association of Trinidad and Tobago.

Madam President, I say all this whilst saluting the public servants for their dedication and commitment across the administrations from 2014 to date.

5.00 p.m.

Madam President, the Attorney General, who has taken much pride in this Bill, should thank the People’s Partnership Government for being an earlier mover to participate in the Fourth Round Mutual Evaluation Report of the Financial Action Task Force. Because it was this very action of engaging the Fourth Round Mutual Evaluation Report of the Financial Action Task Force that has allowed the Attorney General to boost his resume with the position of chair of CFATF from November 2015 to November 2016. If the Attorney General got the position in November 2015, just two months after the election, it does not take a genius to know it was indeed the work of the People’s Partnership Government that got the Attorney General into this post.

With this most honourable position, Madam President, we must all agree that this is a great position to be in. The Attorney General should recognize the fact that the People’s Partnership Government gave him this opportunity to be in the chair. You know, Madam President, we do not always have to be attacking each other. So I look forward in the Attorney General’s wrap up to express his gratitude to us on this side for more or less gifting him this international position.
Madam President, I say we do not always have to be fighting just as we do not always have to be voting along with this Government, but I will not go any further with that. We saw something happen somewhere, but I will leave that there.

**Madam President:** Sen. Lyder, even making that statement is out of order and you know that. I will ask you to withdraw it please.

**Sen. D. Lyder:** I withdraw it, Madam President, and take your guidance. Madam President, the Attorney General in piloting this Bill lamented that Trinidad and Tobago was placed under review and grey listing and, of course, we now hear blacklisting, but what this process has allowed our nation to do is develop systems in the realm of AML/CFT which strengthens the hand of our financial service sector.

This opportunity to grow was guided by the hand of FATF and was initiated by the People’s Partnership Government. The true winners would be our banks who are both based in Port of Spain as well as regionally and internationally. In line with this assertion of national benefit from cooperating with FATF is the imposition of fines by the Securities and Exchange Commission, but these are in line with the plan that was put in motion by the United National Congress-led Government when we triggered the Fourth Round Mutual Evaluation Report.

Madam President, what we will not endorse on this side is this Government’s railroading this legislation, through this House of Parliament, without at least giving the Law Association and maybe some other stakeholders an opportunity to pronounce on it. This Government, Madam President, is playing politics with law on anti-money laundering and on counterfeit financing of terrorism. We will not support this Parliament being used as a rubber stamp. In fact, we are all aware that the Law Association has made a public stance against
this Bill being rushed through Parliament.


Madam President: Continue Sen. Lyder.

Sen. D. Lyder: Thank you, Madam President. In fact, we are all aware that the Law Association has made a public stance against this Bill being rushed through Parliament. They have asked for a week to state their position, and we stand with the Law Association on this matter. [Desk thumping]

Madam President, FATF has examined Trinidad and Tobago in this fourth round based on its efficiency of the law and has found challenges with key Recommendations 25 and 35 along with two others. Madam President, Recommendation 25 which is the beneficial ownership from FATF, and if I may quote:

“Countries should take measures to prevent the misuse of legal arrangements for money laundering or terrorist financing. In particular, countries should ensure that there is adequate, accurate and timely information on express trusts, including information on the settlor, the trustee and the beneficiaries that can be obtained or accessed in a timely fashion by competent authorities. Countries should consider measures to facilitate access to beneficial ownership and control information by financial institutions...”

Madam President, financial institutions should have access, but not politicians in the Government.

Madam President, Recommendation 35 of FATF also states as follows and if I may quote:

“Countries should ensure that there is a range of effective, proportionate and
dissuasive sanctions, whether criminal, civil or administrative, available to deal with the natural or legal persons covered by Recommendations 6, and 8 to 23, that fail to comply with the AML/CFT requirements. Sanctions should be applicable not only to financial institutions...but also to their directors and senior management.”

Madam President, there could only be one reason why these recommendations were not fulfilled. Now I will be the first to commend and applaud the work of the public servants in drafting law and working on improving the laws of our nation, but the reason why these recommendations were not fulfilled, however, had nothing to do with the public service. They are hardworking. It has to do with the lack lustre and lazy approach to governance by this PNM regime. Over the past five years they have only chosen to play politics and not deal with the problems of our nation.

Madam President: So Sen. Lyder, I will ask you though, you are starting to repeat a lot of what has been said before and you are actually now—your contribution is going through a cycle, or you are repeating yourself as well. So I will ask you please, tighten up your contribution, make it relevant to the Bill please.

Sen. D. Lyder: Thank you, Madam President. So had the Government been concerned with the needs of the citizens, the stakeholders of T&T, they would have by now complied with the requirements of the law. Instead, Madam President, they rushed to the Parliament, brought this Bill in another place on the eve of the internal election of the UNC, and they were in such a rush they could not find the offices of any member of the Law Association to get their official opinion on the Bill. They took no advice from the legal fraternity on this matter. Therefore, it
comes as no surprise that there are key clauses, such as clause 6, the amendment to the Interception of Communications Act that we on this side are not prepared to support.

Madam President, the Caribbean Financial Action Task Force stated that in June 2019 Report on Trinidad and Tobago, pointed to the insufficient progress made to justify a rerating of Recommendation 35. This is because the sanctions to address non-compliance with anti-money laundering and counter financing of terrorism obligations were not proportionate to the infraction or sufficiently dissuasive to discourage reoccurrence. Therefore, Madam President, Trinidad and Tobago was weighed and measured and found wanting in the line with these recommendations. It is these deficiencies that would be expected to be addressed with this Bill. However, it would have been necessary for the purposes of fulsome debate to set aside the politics on this issue and deal with the meat of the legislative fixed required and, of course, this will be done during committee stage.

But this Government is tabling this Bill in the manner they have done. In the face of loud protest by the Law Association, it has shown that they have not heeded the voice of reason—


Sen. D. Lyder:—and they are not prepared to hold congress of the people on this matter.

Madam President: Sen. Lyder. Sen. Lyder, a Standing Order has been invoked. It is the Standing Order with respect to tedious repetition and I have to uphold it because you are on same issue right through, and I am asking you to tighten your contribution and move on.

Sen. D. Lyder: Thank you, Madam President. The letter this morning must have
been troubling. Madam President, under clause 7—

**Madam President:** Sen. Lyder, I have made a ruling eh. So it is my ruling. Okay.

**Sen. D. Lyder:** Thank you, Madam President. I take your guidance. Under clause 7 of the Bill we are seeking to amend the Financial Intelligence Unit of Trinidad and Tobago. This does not come up as a surprise because in the third follow-up report and technical compliance rerating of CFATF. Item 101 stated that and I quote:

“FIU—

**Madam President:** Sen. Lyder, you have five more minutes.

**Sen. D. Lyder:** Five more minutes. Thank you, Madam President. FIU and I quote:

“…FIUTT has a limited range of sanctioning power and there were deficiencies in the sanction regime for”—Recommendations—“6, and 8—23.”

We note, Madam President, that paragraph (d) of clause 7 would amendment section 11 to insert a new subsection to empower the FIU to impose administrative fines, but we also note that is simply the hand of FATF that the Government is compelled to follow.

So, Madam President, the CFATF third follow-up report citing regarding Recommendation 35, the civil and administrative sanctions are not proportionate and dissuasive under point 106. So I would like, Madam President, the hon. Attorney General in his wind up to point to where this has been addressed and, if not, what are the challenges with so doing. So Madam President, it is imperative that the Government listens to other people on the outside—I do not want to repeat myself—and maybe they may also want to listen and consult maybe with the
bankers association and other entities who I am certain will be interested in contributing on this Bill.

[Mr. Vice-President in the Chair]

We in the Opposition have already indicated that there are clauses in this Bill that we simply cannot support, and the Government would do well to listen, withdraw this Bill until further notice, and take the recommendations of the Law Association, and I thank you, Mr. Vice-President. [Desk thumping]

Mr. Vice-President: Minister of Agriculture, Land and Fisheries.

The Minister of Agriculture, Land and Fisheries (Sen. The Hon. Clarence Rambharat): Mr. Vice-President, thank you very much for the opportunity to join in this debate on this Bill, and—Sen. Nakhid I have missed you. Mr. Vice-President, Sen. Lyder started off in competition with Nancy Drew, and as you correctly pointed out, really needed Waze. I have been saying that he needed Waze or GPS to get back on track, but it was bewildering to hear my good friend, who is normally so focused and whose contributions I enjoy all the time, it is bewildering, but I guess it must have been the Sen. Roberts effect. But, Madam President—Mr. Vice-President, it really disturbed me to hear Sen. Mark lead off with the FATF becoming an excuse to abuse and violate the rights of citizens and, of course, he went into the usual fascist and shout down the Government. We were hearing that leading up to 2015.

In fact, sometimes he got me worried the way he was threatening to get rid of us. The circumstances did not go his way thankfully. And then to hear Sen. Roberts talk about the Government takes its time to do absolutely nothing, but Sen. Roberts you could not be more wrong than that. I want to say, Mr. Vice-President, Sen. Mark is so absolutely way off point in making the point that this Bill has
nothing with FATF. This Bill has everything to do with FATF. And it was so ironic that Sen. Lyder would anchor his contribution in the fourth review and even boast to say that is was revolutionary and ground-breaking that the People’s Partnership would trigger the MER. You know what triggered the MER? The fact that across many follow-ups to the first MER, you did absolutely nothing of significance in Government. And what that meant and I will take it through the places shortly—and it is factual and nobody coning after me could change that fact. It is written, it is there.

The fact is that when you say this Government has taken its time to do absolutely nothing, Sen. Roberts you are demeaning the work of this Parliament from 2015 to 2020 in particular. I want to place on record you are demeaning the work of former Sen. Saddam Hosein, because I remember, and those of us who were here remember, as we went through those many pieces of legislation—and I will remind you of them—to meet FATF requirements and to meet EU requirements—and I am surprised that that EU blacklisting is news to you. I knew you were lying low for a while Sen. Roberts, catching yourself, but not so low that you could not know that this country had to bring the Opposition here and beg the Opposition to come here to evade blacklisting from the EC. This is not news. I know you think that this country born in 2015, but I did not think that you were missing for so many years that you did not know that.

The fact is, Sen. Mark, this has everything to do, this Bill, with FATF, and the MER report that it seems very familiar to the Opposition, this Bill deals with mutual legal assistance. It is on page 9 of the MER fourth review. POCA, it is on page 6; Anti-Terrorism Act, it is on the first paragraph. The opening paragraph of that review, the report, addresses anti-terrorism. And you see because AML
became AML/CTF, Countering Financing of Terrorism, CFT sorry, countering financing of terrorism became an issue; IOCA; FIU is dealt with in the MER; the Income Tax Act. In relation to the FIU the MER points out that there is limited use of intelligence—the Income Tax Act—the Central Bank. On page 7 under the issue of supervision the Central Bank Act is addressed; Securities: Under page 7 under issue of supervision, securities are addressed and this issue of non-profit it always bothers me because you in Opposition and a lot of people around the country were galvanized in support of ensuring that we did not bring NPO legislation into this country. And what stands out in every follow-up report between 2010 and 2014 is the fact that there were several omissions but no omissions, your inactivity in Government, nothing stood out more than NPOs because you were ignoring something that had developed around the world in terrorist financing.

You were ignoring and I say nothing negative in relation to any NPO in Trinidad and Tobago, but the fact is that consistently the reports started to show the use of NPOs in terrorism financing. And I stood here in this Parliament one day and I was going through the FIU report and I was making the point that as we saw the increases in the STRs and the SARs, I made the point that we are seeing a steady increase in the terrorism financing reports, and I said one day we would come into this Parliament and terrorism financing, STRs and SARs will lead the list. We recognized that and NPOs are dealing with them, protecting the ones who do good work in this country and dealing—not that it is persuasive but ensuring that Trinidad and Tobago is not used as a conduit. It was vital to us and you ignored that for the five years and three months you were in Government. So Sen. Mark, this has everything to do—this Bill has everything to do with FATF.

Sen. Lyder, you talked about your Government taking responsible steps and
that this legislation is rushed. You know the Opposition has a way is either it is rushed, there is no consultation, there is no regulations, one out of the three and, if it is not, it is oppressive, it is this, is that. You know what, in the gambling legislation which is at the core—one of the core elements of meeting the requirement of FATF is gambling, and in that legislation we included the regulations, and through maybe more than 14 meetings over five years, and eight or 10 interim reports, you have not signalled to this country any interest in having gambling legislation. I will come back to that.

So the responsible steps did not happen. This is what this Government did with the support of our colleagues on the Opposition Bench, and with the independent Senators. In 2016, gambling legislation, insurance, and anti-gang and if you do not think anti-gang is connected to FATF, read the reports. 2017, anti-terrorism, mutual assistance in criminal matters, mutual assistance in tax matters, land titles, and if you feel that land titles and registration of deeds are not linked to FATF, read all the follow-up reports that reported on you and your conduct.

Tax information exchange, 2018; 2018, TTRA and you know your position on TTRA. An important element in dealing with the financial issues in this country, TTRA. No support from you; Whistleblower, no support from you. You know a history with that piece of legislation. 2019 was a busy year. Civil asset recovery. This country is very thankful we have legislation like that that you failed to address notwithstanding all those follow-up reports that you had and what during your responsible time; the Companies amendment, very simple piece of legislation. Every report in the follow-up flagged your failure to address this issue of beneficial ownership and you know why. You know why; Income Tax (Amdt.) 2019; Miscellaneous Provision (Financial Institution) Securities and Insurance;
Miscellaneous Provisions (POCA); Miscellaneous Provisions (FIU and Anti-Terrorism); Miscellaneous Provisions (Lands and Conveyancing); NPO in 2019 we got that piece of legislation through and came back to make some small amendments. 2020, at the end, coming to the end, we got real estate agents and registration of deeds so that people would not use this land and land as an asset to launder money.

That is what we did. With the support of Sen. Hosein and all the other Senators who were there before you, and the Independent for long hours. That is the sort of legislation, and I only gave you an example of a few. So Sen. Lyder, let me send you to the mutual evaluation reports and let me tell you this. In your time in Government between October 2020 and November 2014 there was the third report, fourth report, fifth report, sixth, seven, eight, nine ten, eleven reports. You had nine follow-up reports during your time, and by the time we came to your famous fourth MER in 2016, let me just read one thing that was in the report:

Law enforcement authority needs to prioritize the offence of money laundering the offence of money laundering; focus on organized crime, fraud, tax evasion, drug trafficking, increase training and resources.

In other words, having had five years and three months you had not tackled the core elements of what the FATF is about, organized crime, fraud, tax evasion and drug charges. You have not started your work and you know why.

So at the end of it, in that period, when you go to the last report rendered during your term in office you would see this: non-profit organisation: NC, non-compliant right through your five years; beneficial ownership: NC, non-compliant right through your five years; AML requirements for money service, remittance service. NC, non-compliant, five years; foreign branches and subsidiaries, that is
the regulation of international banks that set up in Trinidad. I would not call any name. You know them. NC, non-compliant right through your five years and three months; correspondent banking which is important. This is an important element in the movement of dirty cash. Correspondent banking, NC, nothing in your five years and three months; and politically exposed persons, nothing in your five years and three months.

That is your—what did you say? Your responsible steps that you take. This is the record. Go through the reports and this is your record. Eight significant areas at the core of FATF work, at the core of dealing with money laundering and terrorism financing and all those things, and the report say you were NC, you did nothing. And that is what caused us, contrary to what Sen. Roberts has said, that is what caused this Government, with the support of Opposition Senators, and with the support of the Independent, to bring a suite of legislation to ensure that Trinidad and Tobago and its citizens and its financial services sector is protected and is protected from laziness and inability to do what is necessary to protect the interest of the country.

And we are back here today, Mr. Vice-President, on what is a very simple Bill to continue work that we started in 2015 to make sure that Trinidad and Tobago, its citizens, and its financial systems, gets away from all the difficulties created through your NC, non-compliant. Thank you very much, Vice-President. [Desk thumping]

Sen. Jayanti Lutchmedial: Thank you, Mr. Vice-President, for recognizing me to join in this debate, this very important piece of legislation. Mr. Vice-President, as you would heard the Attorney General say from 2012—2015 I was at the FIUTT as the senior legal officer, and prior to that I was at the Trinidad and Tobago
Securities and Exchange Commission as the legal officer who actually had conduct of the anti-money laundering portfolios. So I am quite happy to be able to contribute today to this Bill. After leaving office at the FIUTT in 2015, I have also now, and I declare upfront just in case anyone thinks it is conflicting, that I do a significant amount of work in the field of anti-money laundering in terms of training and consulting with the DNFBPs who are captured under the—that is the designated financial business who are captured in terms of this legislation. So I just want to declare that upfront.

But, Vice-President, the challenge we have here today in terms of making a meaningful contribution, and perhaps it is the same challenge that the Law Association has faced, you know I want to say—I do not want to belabour the point, but we are saying that they were invited to make representations, they were maybe tardy with whatever, but the point remains a very fundamental player in this game has asked for the opportunity to make comments, and it is not an unreasonable time frame. When I saw the email this morning, seven days, I think it is quite reasonable especially given that I myself and I consider myself somewhat of a subject matter expert in this field. I have all of the international qualifications in anti-money laundering. I work in the field every single day and yet I have been challenged with the time frame that was given to us to comment on this Bill and especially because there are so many things lumped into this one Bill.

Now I know that this has been somewhat the style that we have been seeing and it is a trend that we have been seeing, but when you are amending 11 pieces of legislation in one Bill, you not only make it difficult for us on the Opposition Bench or the Law Association, but for anyone, anybody to be able to sit and understand. What compounds the error is the fact that we do not have—and I am
thankful for the Attorney General, he took on board a suggestion that I whispered to him to supply us with some unofficial consolidated versions of this law. But, Mr. Vice-President, when you are amending a piece of legislation that was amended last year, and your amending it and adding to it, it really is a challenge even for those of us who are accustomed to reading amendments. I literally sit with everything printed, cut it and stick it together so that I can read the Acts properly, but it is very challenging and it is very challenging to do so in a short space of time.

So these Bills were made available last week Monday in the House and, of course, we had other things to be dealt with here, other business to be dealt with here on Tuesday, and I really do—the Law Revision Commission falls under the Attorney General’s Ministry and we have not had the updated laws being put onto the website that we would normally all use since 2016. So I would ask him to look into that and to see if he could make it a little easier for all of us to have meaningful debates as we go forward with Bills like this especially when we are bringing these miscellaneous provision typed legislation.

5.30 p.m.

Just to address something very quickly that the Minister of Agriculture raised. It is not—and I do not want to get into a tit-for-tat—and I said on Tuesday—who did more, who did less, who did not do and who did it first is not my style and I do not want to get into it. But it is not correct to say that in the five years that the People’s Partnership Government was in office that nothing was done and I know that a lot was done because I was there helping doing it. I was sitting right where the technocrats sit there now and I was the one sitting next to the Minister Howai when he piloted amendments through both of Houses of
And let me just remind very quickly when we say that—I want to read from the FATF public statement. I do not delete anything and I am so happy that I have the speaking note that I would have contributed to back then because all of the information is right there and I have quoted it. The FATF said in October of 2010, this is when the Partnership Government had just come into office. They said:

In February 2010, Trinidad and Tobago made a high-level political commitment to work with the FATF and CFATF to address its strategic AML/CFT deficiencies. However, FATF has determined that certain strategic deficiencies remain.

At that point in time when the Partnership came into office, we were on the verge of being blacklisted. In fact, we were what we call the dark grey list. This is when we were in the third round of mutual evaluations and there were a lot of things to be addressed and they were not being addressed and FATF was not happy with us. Right. Two years later, FATF went back and they have the plenary meetings and they assess where you are and CFATF does your assessment and so on. And I am sorry, I cannot break all of this down in the short space of time that I have but I know the Attorney General knows what I am talking about. And in 2012 when they issued a further statement, they said:

The FATF welcomes Trinidad and Tobago significant progress in improving its AML/CFT regime and notes that Trinidad and Tobago has established the legal and regulatory framework to meet its commitments in its action plan regarding the strategic deficiencies that the FATF had identified in February 2010.

Trinidad and Tobago is therefore no longer subject to FATF’s monitoring
process under its on-going global AML/CFT compliance process. Trinidad and Tobago will work with CFATF as it continues to address the full range of AML/CFT issues identified in its mutual evaluation report.

So in the third round, coming out of the third round, when the PNM Government was in power up to 2010, we had several deficiencies. The biggest one being that we did not even have a properly constituted FIU. They had just put someone there to act, the person was not properly appointed. All of these things were happening and it is the Partnership Government that took the steps and started doing things.

The Proceeds of Crime Act alone was amended about three times under the Partnership Government. It is under the Partnership Government that money laundering become a stand-alone offence in I think it was 2014 or 2015, a miscellaneous amendments Bill that we brought to amend Proceeds of Crime, Anti-Terrorism and the FIU Act. It came to this Parliament and we are the ones who brought it. We widened the pool of assets where the State could confiscate and seize and forfeit cash.

That section 38 of POCA where we now do cash retentions, the famous cash retentions that are happening when people operating outside of the financial system, totally unregulated. These types of arrangements—let us call them arrangements—that people are entering into amongst each other because they are avoiding the formal banking system. The power to do those cash retentions and to strengthen that law, it was the Partnership Government. So let us be real and let us be sincere as we move forward.

Now, I want to say—and all of the money laundering charges or most of the money laundering charges that have been brought to date that Minister
Sagramsingh-Sooklal has spoken about were able to be brought because we changed the law so that you could bring a stand-alone money laundering offence and you did not have to identify a predicate offence. Because prior to us amending the law, there were no money laundering charges before the courts in Trinidad and Tobago and I say that without fear of contradiction because that was one of the main reasons why we were on the brink of being blacklisted. The law was simply unworkable when you had to determine the money being laundered, where it was coming from and we took that step.

We took that step, that first step. So yes, we did not get everything done and I commend the last Parliament for all the work that it has done and I am grateful that Minister of Agriculture has identified that our colleagues would have worked with them and so on and we want to work with you too but let us be sincere and let us be genuine when we speak about the work that is being done.

Now the other challenge that we have when we have so many things lumped into one Miscellaneous Provisions Bill is that there are some good things that we may wish to support but others that we have a challenge with and that we cannot support. So I would say openly and, you know, as I go through the clause-by-clause, I have no challenge—for example, I do not have any difficulty with the amendments to mutual assistance matters. That is quite good. I do not have any difficulty with some of the other—at the beginning of clause 4 and the strengthening of the penalties. I would say however that the penalties are extremely high and I have no problem with very high criminal penalties but where I do have a problem is where we come to the administrative penalties and that power and where it should go. But before that, I just want to touch upon the amendments as being made to the Seized Assets Fund and section 58 I believe it is.
Now, the Seized Assets Fund is administered by a committee and in our Proceeds of Crime Act, initially we set up the committee, we have the fund established, we have the committee and we listed the things that could be used. I think it also—they came with an amendment and they put in another that the committee can use it for its work or something like that. But generally speaking, we spoke about community development, drug rehabilitation projects, drug abuse treatment. We have another Bill to debate that talks about a drug treatment court, the Seized Assets Fund could be used very well to that purpose, law enforcement. And of course, one of the things that you have to keep in mind is that people have or the President of the Republic can actually restore property to people pursuant to an application under this Act.

So the fund cannot just be plundered and spent however we see fit and in that respect, I do believe that if you want to give any further discretion with respect to the use of the seized assets committee, let us say to add to other education or emergencies and so on, it should be left to the committee and not to the Minister to simply make by order. I do not think that when we embark upon the process of seizing the assets that belong to persons who are deemed to have derived them from criminal behaviour that we should be able to willy-nilly decide how we want to spend it. There is a committee and the committee should have proper use of that.

And this is very much in keeping with FATF guidance. There is a best practices paper on confiscation which relates to Recommendations 4 and 8 and a framework for ongoing asset recovery. And this also has to with civil asset recovery as well as when the recovery of the assets is done pursuant to criminal matters.
At page 7 of this document, and I would be happy to share it with anyone, it says:

“Use of Recovered Property
The Interpretative Note to Recommendation 38 requires countries to consider establishing an asset forfeiture fund into which all or a portion of the confiscated property will be deposited for law enforcement, health, education or other appropriate purposes.”

So it does ask—the FATF guidelines and FATF recommendations do recommend that the purpose for which the fund is being used are appropriate purposes, it should be justified, and I do believe that that is best left to the committee to deal with.

So I will move quickly now to the core issue that I have which is the administrative penalties. At the TTSEC, we had an administrative sanctioning process. There is a board set up and any breach of the Securities Industry Act could have attracted a penalty and a fine. Most of the times what you have happening is, because of the way that organization is structured, the board of the TTSEC sits in a quasi-judicial capacity. They sit almost like in the way you would have the Public Service Commission when you have a complaint made against someone where they would constitute a tribunal. So the board in the TTSEC for example would sit in that way and they would administer sanctions.

So I do not have a challenge with respect to the administrative sanctions that are being imposed. When I say I do not have a challenge, not to the fact that we should be doing it. I mean I understand that Recommendation 35 says and if we want to achieve compliance, it has to be done properly but there must be due process. And when it comes to the FIU and the way that the FIU is structured, you
see we have to go back in time and go back in history. The FIU Act, when it was passed, was set up as an administrative-type FIU solely for the purpose of receiving suspicious reports, analysing it and disseminating that information out to the law enforcement agencies.

Then we needed somebody to supervise this whole lot of people who are captured by the Proceeds of Crime Act which are referred to the designated non-financial businesses and institutions in the FATF guidelines. We call them the listed businesses and these are the lawyers, the real estate agents, the gambling, the betting, the accountants and jewellers and so on. So then the FIU become vested with the supervisory powers and they became the supervisory authority for all of these people. But the FIU remains as a unit within a Ministry. The director of the FIU has staff under his or her supervision who would be the ones conducting compliance in relation to the supervisory authorities.

I am very proud to say that we used section 18H when I was there, it was the first time we had hearings. We did warning letters, we developed a procedure under which we can warn people who were not complying with the regulations and how they can go about coming into compliance and so on and they were not listening, we convened something like a hearing to ask them to make representation and then we went further. But we had to go to court and get a civil court order to compel the compliance.

I remember very clearly going on affidavits in that first matter that we took to the court in order to be able to get someone who we were supervising to comply and it was for failure to register or to have a proper compliance programme and so on. Now all of that is all well and good because you have in added that level before any real sanction is applied where you go to the court. But with an
administrative sanctioning process, what is contemplated here is that the director of
the FIU, without any board or—the director of the FIU, from what I recall, does
not even have to be a lawyer.

The TTSEC, if you look at the way that the Act is crafted, the board must
comprise of attorneys with at least 10 years’ experience. I think the Chairman must
have certain qualifications and so on. So that—

Mr. Vice-President: Senator, you have five more minutes.

Sen. J. Lutchmedial: Right. So that we really do have to wonder now when we
are going to impose these very stiff administrative penalties which if they fail to
pay it can then translate into criminal penalties whether there will be due process.
I cannot support what is being put forward here as a mechanism to impose
administrative sanctions on entities who are not in compliance via the FIU because
it will violate your due process rights.

There is no separation between the person who is making the allegation and
the person who will be administering the sanction. There is no process through
which a person, in the law that is, apart from any internal arrangements that can be
made, there is no process in the law by which a person who is aggrieved by the
decision of the FIU can then go and appeal that position. And I believe that there
is an appeal process in the Financial Institutions Act and also you can appeal a
decision of the TTSEC when it is that they impose a sanction upon you. I think
there is a right of appeal that goes forward from there. Especially when you are go
to attach a criminal sanction to the failure to comply with the administrative
sanction, it is certainly something that they need to look at and I would urge the
Attorney General to look a little closer as to whether or not this section can
actually stand on its own.
I do not like to criticize without putting forward a recommendation and my very strong recommendation is that we look to using the self-regulatory authorities as is described in the FATF recommendations for regulating some of these listed businesses and imposing sanctions upon them and not the FIU. The reason being is that, look, if someone is really that non-compliant and they are not doing what they are supposed to do, they have nothing in place to guard against money laundering, they might even be facilitating or participating in money laundering, be it a lawyer, an accountant, a real estate agent, whoever it is, a jewellery store, whoever it is, motor vehicle dealers.

When I do training for people, there is one photograph that appeared in the newspaper of a man who had been killed by the police and shot, a fisherman I think he was and he was wearing about six gold chains around his neck and collecting the keys to his brand new Range Rover and it appeared in the media and I always use that as an example to say listen, there are several businesses that ought to be regulated who should answer for something like that and should answer for why it is this person who was known to the police was allowed or slipped through cracks because that is what happens. And when people are slipping through the cracks, the appropriate thing to do is not just put an administrative sanction on them. What would really make us strengthen our AML/CFT regime in this country is that you revoke their licence, you do not allow them.

So look at all the DNFEPs that come under Proceeds of Crime. The Law Association has a disciplinary committee, they can sanction and discipline lawyers. The people who apply under the Gambling and Betting Act and under the other sets of rules, they have to go to the Magistrates’ Courts to get a licence. Jewellers
have to get a licence. We now have Real Estate Agents Act where they would be, I think, regulated by the Companies Registrar if I am not mistaken. So the Companies Registrar can now look at them and say well you are very non-compliant, the FIU has issued a letter of non-compliance to you. And once you have that synergy between your regulators, it will be very easy. Kick them out of the industry altogether. But do not have a system in place where the FIU without being properly constituted to have due process and to give people their due process rights and that separation that you need between the person who is making the allegation and the person who is imposing the sanction to just impose administrative penalties.

I do not feel that that is the way we should go. I do not feel that it will advance our compliance properly with section 35. It may open up the system to legal challenges. I know how the Attorney General hates that and please do not blame the UNC lawyers because I am not saying that here to instigate anybody to bring challenges but it is something that we have to be mindful of. We want to make a good law, we want to make a law that could withstand scrutiny if someone were to take it to court and I firmly believe that if you do not consider—if you want the FIU to be able to administer sanctions the way that the TTSEC can, you have look at reconstituting the whole framework of the FIU and how they are structured. Firstly, they need to be removed as a unit of the Ministry of Finance. They cannot function that way and carry out the mandate that you have envisaged for them in this piece of legislation.

So with those few words, I thank you very much, Mr. Vice-President. [Desk thumping]

The Attorney General and Minister of Legal Affairs (Hon. Faris Al-Rawi):
Thank you, Mr. Vice-President. May I say very respectfully that I thoroughly enjoyed Sen. Lutchmedial’s contribution. I think that it is clear that her knowledge in the field has immense worth. I am capable and do intend on distinguishing all of the points raised by my learned colleague and I am confident that they can resoundingly stand scrutiny and certainly legal challenge.

I start off by saying that Sen. Lutchmedial should perhaps have just spoken for everyone on the Opposition Bench because Sen. Lutchmedial effectively and, as graciously as she always does, in fact disagreed with all of her colleagues. She did not join issue with Sen. Mark’s wild accusations of constitutionality and three-fifths. She did not fall into the trap that Sen. John fell into of asking well why is gaming not being regulated and how come gaming is not here. Because Sen. Lutchmedial knows very well that the only reason why Trinidad and Tobago is on the IMF list as the only country regulated by the IMF without gaming regulations is because the UNC would not pass the law.

Sen. Lutchmedial did not fall into the irrelevance of Sen. Lyder’s speech which was written for him by someone I am sure who could have done a little bit better than go to the third follow-up report because the third follow-up report is historical. “We long past that”. Sen. Lutchmedial will know, had she seen Sen. Lyder’s speech, that the third follow-up report was in relation to technical compliance. And the Fourth Round Mutual Evaluation and how you graduate out of the Fourth Round Mutual Evaluation depends upon your efficacy. They are looking at the 11 immediate outcomes. Let me break this down.

The Financial Action Task Force has 40 Recommendations and 11 immediate outcomes. When you get up to Third Round Mutual Evaluation, you are looking at what we call TC, technical compliance. And I confess to being a
subject matter expert on this area as well having spent the many years that I have in drafting the laws and considering the purposes. And I will say Trinidad and Tobago was on the dark grey list, we did come out of it in our third round evaluations but it is when we—and I thank Sen. Lyder for doing something that no other UNC Member in this Parliament has done, accepting the responsibility for deciding to go for the Fourth Round Mutual Evaluation. Trinidad and Tobago, out of the blue, decided that it would become the first Caribbean Financial Action Task Force country to undergo Fourth Round Mutual Evaluation.

Today we heard it said because they obviously caucused. I think Sen. Lutchmedial missed the caucus, but the rest of them when they caucused came up with the idea that Sen Lyder would say that Mrs. Persad-Bissessar, the Leader of the Opposition, when she was Prime Minister, the hon. Member, took the decision to do the Fourth Round Mutual Evaluation. Thank you, Sen. Lyder. The Fourth Round Mutual Evaluation was done when we had not finished our Third Round Mutual Evaluation. They rolled up the Third Round and the Fourth Round into one as Sen. Lutchmedial would tell. That put us into an assessment.

January 2015, the FATF came to Trinidad and Tobago, did the Fourth Round Mutual Evaluation and we failed terribly. So bad was the failure because we were not looking at the efficiency of the application of the law. The FATF says look, you could have the laws but what you have to show for it? How many money laundering prosecutions do you have? How many money laundering convictions do you have? How do your laws rate in reality? So bad was it and because of the size of our economy, we were put into enhanced follow-up, that is in the Caribbean Financial Action Task Force and we were also placed into the ICRG, the International Co-operation Review Group. So Trinidad and Tobago

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became subjected to two forms of scrutiny, one at CFATF and the other one at FATF.

And I can say this as the Attorney General that sat, drafted, piloted over 530 laws in the last Parliament, I can say, thanks to the work of the technocrats, the entities, the institutions, the Judiciary, Trinidad and Tobago resoundingly succeeded in its follow-up reports to the point where we were taken out of the International Co-operation Review Group, we were taken off of the FATF negative listing and we came free. And everybody in this Parliament had their fair share.

The fact is, the record will show, we did not get the easiest form of support for those laws. On the occasion where we required three-fifths majority support, in particular the Anti-Terrorism Act, we had to make concessions that the FATF was very unhappy with because the Opposition changed its mind. And there were occasions when we had to come to this Parliament and we had to strip apart Bills and pass only simple majority law leaving the three-fifths majority aspects out of the Bill. So I take no comfort in the support of the Members of the Opposition. In fact, the rest of the Caribbean took no notice of it either. It was a difficult task. But you know what? We did do it. This country did it. And I can tell you that we have received some of the highest technical ratings in the world and as a country, we should be very happy with that.

For the record and to address the surprise that Sen. Roberts expressed and I mean no criticism to Sen. Roberts. Look, Sen. Lutchmedial will tell you if I were to say the following acronyms: ICRG, DMFB, FATF, CFATF, people would not even know what I am talking about. In the FATF world, you have to be a master of acronyms in a technical compliance expert way and you have to know your way around the block. The fact is and I am sure that Sen. Roberts did not mean it this
way, most people confuse the EC, the European Commission listing and the FATF listing. We graduated out of the FATF listing. We are not in any form of non-compliance there but the European Commission has taken the FATF list and applied a negative rating to Trinidad and Tobago when they should not.

[MADAM PRESIDENT in the Chair]

For the record, Madam President, I wrote to John Berrigan, Director General of the Directorate General for Financial Stability, Financial Services and Capital Markets Union, European Commission by way of letter, October 22\textsuperscript{nd}, 2020 and I gave very strong criticism, very strong and public criticism of the European Commission and condemn now as I say now, in writing, for treating Trinidad and Tobago the way they did because they used the FATF methodology to put us on the list originally in 2016 and 2017 and when we graduated from the FATF list, they forgot to take us off. And for the record, Recommendation 35, which we are doing in large part here which is the administrative sanction route, Recommendation 35 was not part of the Big Six Recommendations. Sen. Lutchmedial is aware of what I am saying. We did not have to comply with Recommendation 35 to come off the list.

So in acknowledging the truth of what I have said, the European Commission wrote to me and said look, we will hear you out, even though you do not have to be re-rated on Recommendation 35 in FATF, if you do it and if you proclaim your beneficial ownership register, your trust register—which by the way, the UNC did not support when I brought the law to bring the register for trust into action. If you do those two things, the European Commission says they will treat us well. As a responsible Attorney General, I am therefore bound to undertake that work on behalf of Trinidad and Tobago and to make submissions.

UNREVISED
cannot wait and sit idly by and not recommend my Cabinet to move with alacrity. I cannot wait for stakeholders who choose not to give submissions for years. It is a matter of record that we have written on many occasions to the Law Association. I came here in the last Parliament and read 17 times in record how many times I had asked the Law Association to give us comments on various aspects.

At the end of the day, is the work before us today complicated? Number one, this law requires no three-fifths majority. Had that been the case, the most eminent counsel, certainly on the Opposition Bench, would have said so and she did not. That is a very telling position. Secondly, is the difficulty with the administrative sanctions in the FIU difficult? Well the FIU says no, the Egmont Group says no, the Financial Action Task Force says no and in respect of the existing aspects for regulatory non-compliance: failure of a supervised entity to register with the FIU; failure to notify the FIU of changes to the registered office or principal place of business; failure to notify the FIU of changes in its directors, partners or compliance. Those three alone, we do not need the quasi-judicial capacity to treat with those aspects.

Why have we harmonized the laws the way we have? The TTSEC, the FIU, the FIA, et cetera, CBTT, because the sanctions are intended to be persuasive and dissuasive and there is the due process because if you are meted out with a finding to say, listen, you have an administrative sanction to pay here, under a regulation which is done in the Parliament by the way because you have the opportunity to see it in the Parliament, then if you do not agree with the administrative sanction, you go to court. There can be no greater due process that the courts of the Republic of Trinidad and Tobago: the High Court, the Court of Appeal and the Privy Council. It is your choice if you want to avoid court to say well okay, I will
pay the fine.

Is it any different from a fixed penalty ticket? In a fixed penalty ticketing system for possession of cannabis for instance, you get a fixed penalty notice, $2,000 or $5,000, if you do not want to pay, you go to court. Same thing for not wearing your masks, in the fixed penalty system, you go to court. This is an administrative fine and most respectfully and with deference to my learned colleague Sen. Lutchmedial who I wish to compliment on a very valiant attempt at criticizing this Bill, I respectfully do not agree with the hon. Senator.

With respect to Sen. Mark’s incredible submission that we are doing some violence to the Interception of Communications Act, permit me to address that on the record. Interception of Communications Act, Sen. Mark says that we are being retroactive in that law. Sen. Mark says that we are putting into law something that could never happen before. If I could only find my Interception of Communications Act here, but effectively—and I will do it from memory now because I cannot find it here. The Interception of Communications Act says in the disapplication provision in section 4 that this Act shall not apply and does not affect the production of evidence pursuant to section 5 of the Preliminary Enquiry (Indictable Offence) law by which you get a warrant to go and get anything since 1917 or in relation to sections 32 and 33 of POCA where you have production orders that you can get. It disapplies the law from affecting the validity of a constable warrant then. And specifically in acknowledging that that has always been the case because Sen. Welch I am sure could tell us all that the police traditionally go for your cell phone. They get your cell phone, they get it under a warrant and then they analyse it. That is not new to Trinidad and Tobago. Since 1917, section 5 of the preliminary enquiry law has existed.
But what was missing was the protection that section 18A of the Interception of Communications Act now gives, and we amended that law in Act No. 10 of 2020, where we said to the country, look, insofar as intercepted communication, under the Interception of Communications Act has safeguards, the safeguards are that you cannot tip off, you cannot give the information out, you cannot “buss ah mark”; insofar as all of that is protected, had you got intercepted communication pursuant to a judicial warrant under section 8 or section 11 of the Interception of Communications Act, there are safeguards in the law; sections 13 and 14 in particular, of that law.

What we have done now is to say take those safeguards, in section 18A, and apply them to the section 5 warrant, the section 32 warrant, and the section 33 warrant. What could be wrong with that? Because clearly Sen. Lutchmedial did not agree with that. Forgive me for putting words in the hon. Senator’s mouth, but Sen. Mark, I think, most respectfully, stands on his own on that submission.

And therefore, Madam President, it is certainly the case that we cannot look to whittle away the protection that is provided in adding stored data to communication data, et cetera, within the parameters of section 18A of the Interception of Communications Act.

You see, whilst law is technical, whilst Parliament is not intended just for lawyers, because the perspective of the non-lawyer is perhaps even more germane and necessary in the real word because lawyers tend to be very paternalistic in their views of law, or maternalistic in their views of law. The fact is we need that perspective of objectivity from the citizens of Trinidad and Tobago which is why our Benches do not require us to be lawyers. Now, it is true that following the law
is sometimes a difficult thing. But the recommendation is that really, when you get into deep subject matter experience like this, it is perhaps best to assure yourselves that sometimes subject matter experts are required to lend some assistance. And I again come back to the point of saying to Sen. Lutchmedial that was a most valiant attempt on the hon. Senator's part to bring some sensibility to the argument.

The fines that are proposed in the administrative sanction route are not disproportionate. I remind that the maximum set out in any law where you have 10 years imprisonment, or a million dollars fine, those are merely expressions of the maximum permitted by way of judicial application. You may get zero. You may get nothing at all. You may have a reprimand and discharge, if it is the Magistrates’ Court in a summary offence pursuant to section 71 of the Summary Courts Act. You may have all of the relief provided to you from zero to maximum. And therefore, the law, as set out, must be in harmony with the other laws. Why do we prescribe penalties and sanctions of such a level for breach of administrative sanctions? Because we have to harmonize the other laws. When did we harmonize the other laws?

When we recently amended the Trinidad and Tobago Securities Exchange Commission following upon the public outcry that happened in the IPO scandal and the administrative fines being under $500,000, there was a public outcry and the Parliament of the Republic of Trinidad and Tobago amended the law to raise the fines. Because the application of the law demonstrated that it was necessary to do that.

So, Madam President, I respectfully believe that we are on the right path. I do not believe that we have a problem of capacity or the need to restructure. I would like to say the Government is currently looking at whether we ought to
adjust the FIU into a different structure. There are three structures for FIUs, the administrative, the hybrid or the prosecutorial. But in looking at that right now, as we are in the Office of the Attorney General, I can tell you we are noticing that hybrid FIUs and prosecutorial FIUs are reverting themselves back to administrative FIUs. So there is global trend that we have to be very careful about in understanding what works best for us.

There is no misnomer in this legislation. I thank Sen. Rambharat for so comprehensively connecting the dots, not only from the Mutual Evaluation Report, the Fourth Round Mutual Evaluation report. But I need to tell the hon. Senators present this, Madam President. The Fourth Round Mutual Evaluation is not the end of the show, you know. The FATF is currently in discussions for the Fifth Round Mutual Evaluation. Terrorist financing, proliferation financing, money laundering, corruption; these are scourges that metastasize like cancers.

Terrorism has a way of metamorphosis. There was a time when terrorism was confined to hijacking a plane. It became bombing. It became sabotage. It became execution. There are horrible examples. Sen. Nakhid has lived in the Middle East. He will know what I am saying. I also too come from family from the Middle East and I have spent a lot of time there. We, perhaps both, can say, and forgive me for putting words in the hon. Senator's mouth, you “eh” see nothing yet, Madam President, until you understand what this thing looks like upfront. These are not small issues, and we are not immune.

Let me put this into context. What time is full time, Madam President?

Madam President: Sixteen minutes past six.

Hon. F. Al-Rawi: Let me put this into context, through you, Madam President. Trinidad and Tobago, beautiful island, wonderful people, cosmopolitan. We think
perhaps terrorism cannot exist here. Why would terrorism come to God’s beautiful country, where we celebrate doubles? No “chook” intended to my friend and colleague. Right? [Laughter] Where we celebrate doubles, not necessarily what it does to our appetite, or to our diet, or to our NCDs, as I support my colleague. We celebrate our music, our love, our fashion. But let us look at this, Trinidad and Tobago is an oil and gas-producing country, where gas is our major product.

What do we have? We have BP here. The Minister of Energy and Energy Industries is here. BP earns, I believe, 17 to 20 per cent of its global revenue from Trinidad and Tobago. One incident gone wrong in this country, on one of our platforms, rocks the stock market of the United States and England and elsewhere.

We have a Caricom border structure where you can purchase citizenship by acquisition in the rest of the Caricom. We have a single market economy. We have free trade, free movement. We do not necessarily have full control of borders under the CSME structures. It is a live issue. We are not immune from the scourges around the world, which is why we as a country have done so well to tighten our network. I have said this repeatedly and I will say it again. We have sought to tackle the ills of this society by applying a methodology of plant and machinery, people, processes and law. We are following the money, Madam President. And for the first time, a government can demonstrate, by way of a dedicated structure, that we have put in place articulated mechanisms. And what are they? We are tackling cash. Sen. Rambharat left out the demonetization of cash. We are tackling businesses, and we are tackling land. The three places where you can put the proceeds of crime: cash in demonetization; businesses, look at the amendments in the Companies Act: beneficial ownership, removal of bearer share warrants, share warrants, mandatory legal ownership instruction, digitization.
of the company’s registry; deregistration.

We are tackling land. We have gone for full disclosure of land, trust behind land, et cetera. But we have operationalized at the same time. The move to digitization, which my two senatorial colleagues, my colleagues in the Senate here, bring, Ministers West and Bacchus. The reason why the hon. Prime Minister established a Ministry such as this is specifically to capture the data. Sen. Sinanan, the hon. Minister, in capturing the data behind licences to make sure that every car is known, driver’s licence is known; they are all connected to anti-crime mechanisms.

And while some people could not see the connection of anti-crime in a number plate, or in a red light enforcement or in the removal of bearer share warrant, or in making it mandatory that if you have shares that you disclose it, or that you have land that you register your deeds. Because it is perfectly lawful not to register your deeds in certain circumstances, Escrow clauses, et cetera. But Madam President, there is nothing complicated in this matrix before us today, most respectfully. As we report to the European Commission this month, as we must, we need to be able to tell a good tale.

Recommendation 35, tick the box. All that we have done is to put the legislative spring broad that you can have administrative sanctions. Those administrative sanctions will come when we are doing the regulations.

**Madam President:** Attorney General, you have five more minutes.

**Hon. F. Al-Rawi:** Secondly, we want to operationalize the Interception of Communications Act. Why? We want to bug the prisons. We want prisoners uncomfortable. We want them to know that if they are talking about killing people on cell phones, that they are not supposed to have, with everything that they say
can and will be used in a court of law against them in the prosecution of a matter.

It is a matter of public record that certain lawyers who are traditional supporters of the Opposition have already threatened, and I have received pre-action correspondence in certain areas, that they intend to tackle the Interception of Communications Act. I will meet you in court. No problem. That is what the court is there for; to test the validity and the constitutionality of laws. I make no complaint about that. But from a government having to fight to do the very best for the people of Trinidad and Tobago, we have to take every single opportunity to do what we will, which is why I can say now, up to yesterday the Minister of Works and Transport met with his team, and I was there, so that we can manage PH drivers, law enforcement and protect our innocent. Because the Prime Minister has given a directive to get it done.

So Madam President, most respectfully, I do recommend these amendments to the 11 laws before us contained in this Bill in clauses 1 to 13. I look forward to my learned colleagues’ submissions in the course of the committee stage, and I beg to move.

*Question put and agreed to.*

*Bill accordingly read a second time.*

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

*Senate in committee.*

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

**Clause 4.**

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

**Madam Chairman:** Sen. Lutchmedial.

**Sen. Lutchmedial:** Attorney General, as I indicated I have a difficulty with the clause 4, part (d), and the Minister by order being able to add to the list of things that the Seized Assets Fund should be able to be used for. Would you consider
making an amendment that would say that the Seized Assets Committee can make a recommendation or give them the power to determine whether there are other items that can be added to that list, as opposed to the Minister by himself?

**Madam Chairman:** Attorney General.

**Mr. Al-Rawi:** Thank you, Madam Chairman. May I address the hon. Senator’s concerns as follows. Section 58 of the Proceeds of Crime Act does indeed have a Seized Assets Fund and a Seized Assets Committee. But the committee is appointed by the Minister entirely and therefore it is a bit of a circle in that whole construct. Because once the committee, which is appointed by the Minister, we are not escaping “the mischief” of, as one of the Senators put it, political interference. So respectfully we prefer, in keeping with the manner in which amendments are done by way of subsidiary route, i.e. statutory instruments including orders pursuant to the Interpretation Act, we still prefer to go with the structure of the Minister by order doing these things.

**Sen. Lutchmedial:** Okay, I understand. And if it is—I mean, I would prefer to have power in the hands of a few people, as opposed to one person. But in that, I take your point, if it is that the Minister appoints the committee and you say he basically controls the committee, would you then consider saying that the order be made subject to affirmative resolution? Because I do not feel that the expenditure of, as you say millions and millions of dollars that are coming and we expect to be coming into the fund, that the Minister, by way of negative resolution, should just be able to, without having a debate on it, be able to expand the realm of how that money could be spent.

**Mr. Al-Rawi:** So Madam Chair, I hear my learned friend. We definitely wanted parliamentary oversight, which is why we put negative resolution.

In my experience with affirmative resolution matters, they tend to be
extremely complicated in terms of moving the point. It is wide open for any Senator, within the 42 days of the laying of an order, and those 42 days are not calendar days, just for the record. If Parliament is not sitting, the 42 days suspend until Parliament begins to sit again. So it might actually turn out to be a year, in some instances. So our position is that the negative resolution route works.

But I want to give a live example. It was not until Madam Justice then, Justice Lucky, had pointed out that the court was at the point—we were tracking the fact that the court was at the point of putting for the first time the seized assets moneys in. If we did not have the ability to do certain amendments by way of order and easily, we would have missed that opportunity. So we do believe that Parliament requires an oversight. We are comfortable with the negative resolution oversight, as opposed to the affirmative because of the workability of the structure.

Madam Chairman: Sen. Mark and then Sen. Vieira.

Sen. Mark: Madam Chairman, the Attorney General would be aware that once you have a negative resolution, as soon as the decision is taken and published via a Legal Notice it takes immediate effect. And it is not 42 days. It is 40 days that we have within which to file. And if you have the Minister having this power to deal with this fund or these funds as he determines, I think it is quite reasonable to allow Parliament to have an oversight role. So I support it being changed from negative to affirmative, Madam Chair.


Sen. Vieira: Madam Chair, coming out of Sen. Lutchmedial’s point and the hon. Attorney General talking about being circular, when you look at section 58, it is the Minister who shall disburse the moneys as advised by the committee. So the Minister really is the one to, correctly stated in the amendment.

Mr. Al-Rawi: May I? Are there others?
Madam Chairman: Just before, Sen. Lutchmedial, you wanted to say something again?

Sen. Lutchmedial: I wanted to make the point please, Madam Chairman. The fact is that when something is negative resolution the Minister has the 42 days before it comes up for debate to act and nothing will undo the act. So that was the point that I wanted to make for the Attorney General, which is why I asked for the affirmative.

Madam Chairman: Attorney General.

Mr. Al-Rawi: Thank you Madam Chair. So, what I was referring to, if I jump first to Sen. Vieira, was 58F, as in foxtrot:

“The Minister with responsibility for national security shall appoint a committee to be known as ‘the Seized Assets…Committee’...”

So that is where I was going in the circular argument; that the committee is a creature of the Minister anyway.

Secondly, Sen. Mark has correctly identified one of the methods that the negative resolution operates by. But that is entirely subject to the fact that the order may also have in it a date by which the order comes into effect. So it is not always that the order bites automatically subject to being negatived by a Motion to negative the order. But in any event, the point is, I agree with Sen. Mark, there is parliamentary scrutiny because that order is in fact published. And once that order is published, the fact is that there is the opportunity to negative the position by moving it in the Parliament.

The question is the immediacy of moving to have the subject matter included, versus the mischief of no parliamentary supervision. We are adding parliamentary supervision with the opportunity to negative the order, and once negatived everything falls apart.
Sen. Mark: It is very interesting how history has a way of turning on its head. The Attorney General has been the one in Opposition insisting that these things be subject to an affirmative resolution. And now I am supporting him, because I am in Opposition, the Attorney General says, “No, the negative it the better approach”. Oh, my God. Madam Chairman, I rest my case.

Mr. Al-Rawi: I just do not agree with that view of history. It just does not stand to scrutiny and I could hard press myself to even find a point where that happened. The fact is that we all know, by way of affirmative resolution positions, that they take very long and you need to allow for the law to be as nimble as possible with the safeguard. And the safeguard is the ability to negative the order pursuant to the procedures that we have in the Parliament here with parliamentary oversight.

Question put and agreed to.

Clause 4 ordered to stand part of the Bill.

Clause 5.

Question proposed: That clause 5 stand part of the Bill.

Madam Chairman: Attorney General, there is an amendment circulated on your behalf. Yes?

5(1)(b) In proposed paragraph (c) in—

(a) subparagraph (i) delete the words “five hundred thousand” and replace with the words “one million”;

(b) subparagraph (ii) delete the words “one” and replace with the word “three”

Mr. Al-Rawi: May I?

Madam Chairman: Yes.

Mr. Al-Rawi: Madam Chair, thank you. Madam Chair, in the House we omitted to bring this one up to the, how should I say it, to the level that which we had done
all the other regulations. So we needed to move the 500,000 to one million and the one million to 3 million, again being expressions of the maximum range of regulation sanction that is permissible. This is, of course, in keeping with the other clauses that we amended, as you will see above, where we had done, for instance, in clause (i) above in (ii), in A and B you will see where we had done the one million and three million. So this was an inadvertent slip in the House perhaps, because, we were doing so many Bills at the same time.

**Sen. Mark:** We were talking about the administrative fees or penalties. I think Sen. Lutchmedial was arguing and I also argued that this is an imposition, and there is no—we have no oversight of these administrative fees and/or penalties and/or sanctions. So it is like you are giving the Attorney General a blank cheque. So we need to—this thing needs balance. There is need for some degree of impartiality. Some independent person is supposed to be supervising this exercise, like a judge, a tribunal. What is this? So we have a problem with how these things are being—in some areas Madam Chair, it is administrative fines. In some areas it is administrative penalties and I think in the explanatory note, it talks about administrative sanctions. So it is all over the place and there is no definition for these things in the legislation. So it is confusing.

**Sen. Lutchmedial:** Madam Chairman, in both clauses 4, 5 and 6, I think it is replicated basically that a breach of the regulations, whether they be the Financial Obligations Regulations or the Financial Obligations Financing of Terrorism Regulations or the FIU Regulations, you are allowing the FIU to now impose a fine, I think even the Economic Sanctions Act, that they can impose a fine.

As I raised it before and I want to explain here, the way the FIU is structured, it is the person who is required to supervise you. We have a director, we have a deputy director—I say we but they have a director, a deputy director and
there is a compliance department. The compliance department supervises all of the persons who fall under this piece of legislation. They can write to you and say, “Listen, I do not think that your compliance programme has sufficiently assessed your risk”. “Can you please submit to us?” And if you do not do it, are you saying that they can now impose this administrative sanction? It is himself unto himself. Because it is an opinion that they would have formed. You may disagree with it, and then they are allowed to sanction you. And the way it reads here is that a person—who—and I am going back to the ones that deal with the—I know we passed on from clause 4, but they are all pretty much the same:

“failing the payment of the administrative fine…”—a person—“…comply with these Regulations may be liable to the administrative fine set out in Regulations;
“failing the payment of the administrative fine commits an offence and is liable on summary conviction or on conviction on indictment, to the penalty prescribed in section 57…”

So there are criminal sanctions that will now flow from that, and I strongly believe and I see it in every other institution, even the service commissions, how they set up a tribunal. They do not—you cannot be judge, jury and executioner all at one time and I do believe that that administrative sanctioning process eliminates the due process requirement that we need to have in law.

6.30 p.m.

Sen. Mark: Madam Chair, if I may? The constitutionality of this arrangement is going to be the challenged in the courts of Trinidad and Tobago if the Government does not address this. You cannot have himself imposing administrative fees on himself. You cannot do that. It must have an independent body, a tribunal doing that.
Madam Chairman: Attorney General.

Mr. Al-Rawi: Thank you, Madam Chair. First of all, you can get no more an independent body than the High Court, the Court of Appeal, and the Privy Council. There are umpteen examples in our own laws where we have administrative fines that are put in without a tribunal, pre-1962 and post-1962 laws. The Motor Vehicles and Road Traffic Act, post-1962 in that context and pre-1962, the Customs Act. Just two examples. Because the controller under section 223, 222, 224 of the customs laws, those of us that have practised there, are well aware of the sweeping powers there.

Madam President, the Companies Act has certain penalties inside of there which are devastating when you do the calculator for failure to file your annual return in time, and you are dealing with—if ever you wanted to know how factorials work in mathematics, you go to that Schedule. So I do not agree with Sen. Mark in his submission.

On the other hand Sen. Lutchmedial has raised an interesting point but I wish to distinguish the position as follows: We are saying—and here is how the process works. You:

“(a) may be liable to...”—an—“administrative fine set out in Regulations...”

It is not “shall”, that is the first part. We then say:

“(b) failing the payment of the administrative fine...an offence and...liable—

(i) on summary conviction...or

(ii) on conviction on indictment...”

That is the due process in and of itself. You may be liable if you are met with an administrator saying, here is your administrative fine and you are saying, “I am
sorry, I do not agree with you. I am not guilty of anything at all.” You go straight to court. And is at that point that it is only on a conviction summarily, or a conviction indictably, that you are then exposed to anywhere from zero to the maximum stated there. So there is due process, most respectfully. There is precedent in the value.

The concept of disproportionate or heavy penalties is not new to us. We went through this exercise as a Parliament, most significantly, when we were doing the Insurance Act, and when we were doing the securities exchange amendments. And in that, we in fact—I recall sitting in that Joint Select Committee in the period 2010—2015 for both of them, and again in 2015—2020 when we were dealing with the Insurance Act. We received fulsome submissions. I remember this vividly from Ed Fitzgerald, attorney-at-law for Maritime, on the excessive criminalization by way of sanctions in regulations. And we went through that from Privy Council, dicta, come down. So I am quite satisfied that we can withstand that position because lastly I will say, these Regulations have to come to Parliament pursuant to section 56 in the FIU context. They have to come to Parliament.

Secondly, the other factor is that the administrative penalties are tiered. They are on a tiered basis. You cannot just say, “Okay, $1 million for failing to file a return.” That is not the way it works. So they are tiered, they come to Parliament, and the due process is in the very set out of the law and language and for those reasons I respectfully decline the invitation to adjust the clause.

Madam Chairman: Sen. Lutchmedial.

Sen. Lutchmedial: I do not want to belabour the points. Right? But I am just saying, if you read the new section 42, for example, that is proposed to the Financial Obligations Regulations. Yes, it says you:

“…may be liable to an administrative fine...”
The second part, (b) says:

“failing the payment of the administrative fine, commits an offence...”

So it is the failure to pay the penalty that is already imposed upon you that will make you liable to be a criminal sanction. The criminal court is not going to delve into whether or not the administrative sanction ought to have been—the question that will go before a criminal court is whether “yuh pay it or yuh did not pay it”. It is almost like a thing. The way it is worded here, on my reading of it, it is that once that penalty is imposed, it is at the determination and the discretion of the regulator—the supervisory authority. And once that supervisory authority does so and you go to the court, it is almost like a strict liability offence. If you did not pay it, you are liable to the sanction. And if you did pay, it you are not. So that is the way that this is drafted. So that actually removes that level that the Attorney General is talking about.

If it was that the court would go back into the substance of the matter as to whether or not the administrative penalty should be paid or not, or should have been imposed or not, fine, I have no difficulty with that. But that is not how this reads at all.

And the second thing about it is that you make reference to other entities that impose administrative sanctions, and I agree with you. We did it all the time at TTSEC. But the point is, I am saying, they are constituted differently, they have a quasi-judicial function. Their board is the one, not the—what do you call it—the CEO and the head of the legal department and so on, they do not sit and determine that. They present the evidence to an independent-type board that has qualifications prescribed by the Act and they make the determination whether or not, for any breach, whether it is a breach to file your change of directors or to—something to do with your shares or whatever it is, and even under the FORs.
So it is the FIU and the structure of the FIU is where I have the difficulty, not with the other institutions like the Securities and Exchange Commission or the Insurance Act that is administered by the Central Bank, strictly with the FIU. If you could just consider that please, Attorney General.

**Madam Chairman:** Attorney General.

**Mr. Al-Rawi:** Madam Chair, I thank Sen. Lutchmedial. If the clause ended at “is liable—commits an offence” then I would agree with Sen. Lutchmedial. But it does not, it does not end there. It goes:

“…and is liable on summary conviction…”

That is where the process comes in. So it is read as a whole as follows:

“A financial institution…”

So that is the FORs I am reading, sorry. If I get to the FIU which is similar language.

You—“…may be liable to an administrative fine set out in Regulations;”

Stick a pin. Section 56, those Regs must come to Parliament. You will see what the tiered approach is.

“(b) failing the payment of the administrative fine, commits an offence and is liable on summary conviction or on conviction on indictment…”

But let us assume that (i) and (ii) did not exist, you would actually have in (iii) the existing law. So the existing law is the chapeau which would say—maybe it goes: commits an offence breach of regulations; you commit an offence and you are liable on summary conviction and conviction on indictment. It is the same language. We have not stepped outside the terminology used, and we have been very careful as well, taking aside the issue of whether there is a tribunal or not, we have been very careful as well to keep in harmony with the language we used in all of the other places where we have administrative penalties, Madam Chairman.

Sen. Vieira: Securities Act as well is the same language.

“Where a person fails to pay the administrative fine referred to in subsection (1) or where he continues to commit the offence after the expiration of twenty-one days following the date of receipt of the Notice referred to in subsection (1) that person is liable on summary conviction for the original offence committed.”

Question put and agreed to.

Clause 5, as amended, ordered to stand part of the Bill.

Clause 6.

Question proposed: That clause 6 stand part of the Bill.

Madam Chairman: Attorney General.

“Delete all words after the words ‘amended’ and substituting the words:

‘in-

(a) section 6A(2), by deleting paragraph (b) and substituting the following:

‘(b) in such places within a prison, as may be specified by the Minister, by Order.’; and.

(b) section 18A(1), (2), (6) and (7), by inserting after the words ‘communications data’, wherever it occurs, the words ‘,stored data’.”

Mr. Al-Rawi: Yes, Madam Chair, just to explain clause 6. Instead of fixing a piece of clause 6 what we did is we just deleted the whole thing and put it back the way it should read properly. And permit me to explain this, please, Madam Chairman. In our consultations prior to proclamation of the most recent amendments of the Interception of Communications Act, the DPP wrote to us and
said:

It appears that you need to define the places in which a prison are to be identified for the exercise of your legal professional privilege.

Let me put it into context. This is the section where we say that you could bug a prison, you could record in a prison, except where you have legal professional privilege in certain places or on certain devices. The DPP pointed out that it was important for us to say that those devices must be certain. They must be designated. You must know what the device is and you must know where the place is. And he was right. What happened was, in the settling of the draft, the chaussure, the shoes of the Bill, fell off and joined into the wording. So, if you look at what is circulated, you see in this:

“(b) in such places within a prison,”—the words—“as may be specified by...Order...”—was joined there.

So (a) was not qualified in the description:

“...as may be specified”

So with those that are not familiar with legislative drafting, you have the chapeau which is the first piece of the clause. It will be broken out into 1(a), (b), (c); 2(a), (b), (c), and at the bottom of it you have the shoes, the chapeau refers to the hat and the bottom is the shoes or chaussure. And the chaussure qualifies the same way the chapeau qualifies.

So this was really just a drafting error and what we did is we broke off the qualification words:

“...as may be specified by the Ministry, by Order”

So that both the place and the device would be certain by way of specification.

In (b), it is what we had circulated any way. This was actually accepted in the House. So we are adding in the words “stored data”. So we are not doing
anything new here. But to make the clause read easy, we deleted and replaced it. So that is the rationale for this, Madam Chairman.


Sen. Mark: Madam Chair, I wanted to ask the Attorney General where in FATF recommendations did this provision of clause 6, which is the Interception of Communications Act, where in FATF recommendations did they propose that this be included in the legislation? Could you advise?

Mr. Al-Rawi: Sure. It is not actually in the recommendations alone. It is in something called the IOs, the immediate outcomes. The 11 immediate outcomes require that you have something to show for the law, efficacy. What do you have to show for your terrorism law, your money laundering law, your criminality, your corruption? That requires you to convict someone. Conviction requires evidence. Evidence requires information obtained pursuant to the law. This Interception of Communications Act allows you to obtain judicially-approved warranted evidence in Section 8 of the Interception of Communications Act; section 11 of the Interception of Communications Act. And now by the amendments that we are proposing, you also have the ability, subject to the court’s approval in section 18 and section 17 of the Interception of Communications Act, to use recordings in the prison.

And therefore, this is squarely within IOs one to 11 and within the national risk assessment in recommendation one, if you look at the risk assessment alone as feeding into the pot. So it is littered through the recommendations and the outcomes.

Madam Chairman: Sen Vieira.

Sen. Vieira: And just to add to Sen. Mark’s enquiry. FATF is concerned with anti-money laundering and anti-terrorism. And so, if you have someone who is
looking to spirit away unlawfully obtained money in the prison that would necessarily of interest to the FIU and the authorities. Similarly, the transfer of funds for terrorist purposes. So it does fit into the FATF framework.

**Mr. Al-Rawi:** Thank you.

*Question put and agreed to.*

Clause 6, as amended, ordered to stand part of the Bill.

Clauses 7 and 8 ordered to stand part of the Bill.

Clause 9.

*Question proposed:* That clause 9 stand part of the Bill.

**Madam Chairman:** Attorney General.

“In proposed paragraph (dd) delete the word ‘other’.”

**Mr. Al-Rawi:** Madam Chair, we propose in 9(b) to insert the word “other”—sorry, forgive me—to delete the word “other”. So you will see in 9(b) we are:

“(dd) impose such administrative fines as are provided for under any...written law...”

So it includes this law. Central Bank in proofreading this spotted that the word “other” should be deleted.

*Question put and agreed to.*

Clause 9, as amended, ordered to stand part of the Bill.

Clauses 10 to 13.

*Question proposed:* That clause 10 to 13 stand part of the Bill.

**Madam Chairman:** Sen. Deonarine?

**Sen. Deonarine:** Apologies, Madam Chair. I had one question with clause 9, but I thought you were proposing the amendment as the Attorney General proposed first before you went back to the actual clause. So, apologies. I did not raise my hand in time to ask the question.
Madam Chairman: Sure. Well, perhaps you can have a discussion with the Attorney General—


Madam Chairman: —about it after. Yeah?


*Clauses 10 to 13 ordered to stand part of the Bill.*

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

*Senate resumed.*

*Bill reported, with amendments.*

Madam President: Attorney General.

Hon. F. Al-Rawi: Madam President, I wish to report that the Bill entitled the Miscellaneous Provisions (FAFT Compliance) Bill, 2020 was considered in committee of the whole and approved with amendments. I now beg to move that the Senate agree with the committee’s report.

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

Sen. Mark: No. Division.

The Senate voted: Ayes 23  Noes 6

AYES

Khan, Hon. F.
Gopee-Scoon, Hon. P.
Rambharat, Hon. C.
Sinanan, Hon. R.
Hosein, Hon. K.
West, Hon. A.
Browne, Hon. Dr. A.
Mitchell, Hon. R.
de Freitas, N.
Cox, Hon. D.
Singh, Hon. A.
Sagramsingh-Sooklal, Hon. R.
Bacchus, Hon. H.
Lezama-Lee Sing, Mrs. L.
Bethelmy, Ms. Y.
Richards, P.
Vieira, A.
Deyalsingh, Dr. V.
Deonarine, Ms. A.
Seepersad, Ms. C.
Thompson-Ahye, Mrs. H.
Dillon-Remy, Dr. M.
Welch, E.

NOES
Mark W.
John, Ms. J.
Lutchmedial, Ms. J.
Nakhid, D
Lyder, D.
Roberts, A.

Mr. D. Teemal abstained.
Question agreed to.
Bill accordingly read the third time and passed.
Matter of Privileges
(Sen. Jearlean John)

Madam President: Before we begin the debate on the next Bill I had earlier in the proceedings indicated I would give a ruling on the motion of privileges that had been raised. I will now inform the Senate that that ruling will be given at the next sitting of the Senate. Leader of Government Business.

(Sen. Anil Roberts)

Sen. The Hon. F. Khan: Thank you very much, Madam President. Madam President, before you move to the other Bill, I crave your indulgence and I beg that you allow me a few minutes to raise a matter of privilege that I choose not to raise under Standing Order 32 on this occasion, but it should be placed on the parliamentary record.

Madam President, as Members of this Senate, we must collectively frown on the conduct of any Member who attempts to reflect negatively on the Chair and thus bring the Senate as a whole into disrepute.

Madam President, I have observed that Sen. Anil Roberts would have this very afternoon, while we have been in this Senate engaging in the people’s business, posted on Facebook a video clip with subtext: “Senate President ‘Apparent Bias’” that reflects negatively on you in the discharge of your duties as Presiding Officer.

Madam President, there is no doubt that this type of conduct is not only unparliamentary, it is also an attack on your good self and your office and thus should be firmly rejected. As Members of the Senate, we have the responsibility by our conduct and our utterances to uphold the Standing Orders and the high traditions of this House. Therefore, I beg that the Member be cautioned on the post to which I referred, and that he be strongly encouraged to reflect and desist.
Madam President: Hon. Senators, when these matters arise it really—one may think that it is about me, but it is not. It is about this Senate and it reflects improperly on the Senate and it brings the Senate into disrepute. So where some people may be thinking that they are attacking the President of the Senate, they may even find that it is funny. But it really—we are all adults here and you are attacking the integrity of this Chamber, and I call on Sen. Roberts to desist. I am giving a warning at this stage. I call on Sen. Roberts to desist from this type of behaviour. It is unbecoming of any Member of this Chamber.

And I would ask further that the Leader of the Opposition Business, who has been a Member of the Senate and Member of Parliament for a very long time, who understands the practices and the parliamentary practices, I would ask that the Leader of Opposition Business try and influence the behaviour of Sen. Roberts who is a Member of his Bench. I give this warning at this stage and I really ask that we all try to do better to uphold the dignity of this Chamber. Attorney General.

Sen. Roberts: Madam President, can I be recognized?

Madam President: Senator Roberts, yes.

Sen. Roberts: Yes, Ma’am. I am not sure what Sen. Franklin Khan—I have not posted anything on my Facebook whatsoever. So I do not know what that was all about.

Madam President: So, Sen. Roberts, I have allowed you, please—

Sen. Roberts: Thank you.

Madam President: I have allowed you to say what you have to say. I once again call on you and call on Members, please, call on Members to desist from this type of behaviour. A reflection on the partiality of the Presiding Officer is a contempt in and of itself. But I am going—at this stage, all I am doing is giving a warning
and urging Members to uphold the dignity of this Chamber. This is the Upper House. There is a certain type of behaviour that is expected from Members of the Upper House. And that is all I am going to say at this stage. Attorney General.

**MISCELLANEOUS AMENDMENTS**

**(POWERS OF STATUTORY AUTHORITIES AND MATTERS RELATED TO CERTAIN BOARDS) BILL, 2020**

The Attorney General and Minister of Legal Affairs (Hon. Faris Al-Rawi):

Thank you, Madam President. Madam President, I beg to move:

That a Bill entitled an Act to amend the National Lotteries Control Act, Chap. 21:04, the Tobago House of Assembly, Chap. 25:03, the National Institute of Higher Education (Research, Science and Technology) Act, Chap. 39:58, the Children's Authority Act, Chap. 46:10, the Water and Sewerage Authority Act, Chap. 54:40 and the Trinidad and Tobago Electricity Commission Act, Chap. 54:70 to provide for amendments to the composition of various boards and the borrowing powers of certain boards and matters connected therewith, 2020 be now read a second time.

Madam President, it gives me great pleasure to move this Bill. The Bill before us is not a long Bill. It is eight clauses long, including the short title and the commencement clause. It leaves us therefore with six pieces of law to be amended. And permit me to dive directly into those positions now.

We propose firstly in clause 3, Madam President, to amend the National Lotteries Control Act, and quite simply, we are amending the section of the Act, section 3(2) which sets out the number of persons to comprise the Board of Directors in the NLCB. We are moving it from four and we are moving it to eight. And the question is: Why and with what purpose?

7.00 p.m.
And permit me to say immediately that it is a matter of public knowledge that the NLCB has been amended such that its powers include the ability to be involved in e-payment beyond the scope of merely lotteries. That was a very important amendment that we introduced in the last Parliament to section nine of the NLCB Act and therefore, when you look to the establishment of an entire Ministry with the responsibility for digitization and when you look at the issue of e-money, the issuance of electronic transactions regulations, the payment into an out of court legislation in 2018, and you understand that the Government’s manifesto has set out a desire to move towards an e-wallet with e-money for all of the good reasons; ease of doing business, elimination of fraud and corruption, easy accounting in eProcurement cycles and reconciliation.

When you look to all of that, it would not be in the best interest of NLCB to have four directors. They could not constitute sub-committees, they could not constitute a quorum with ease, they just simply have too few people to do the job. And in those circumstances, bearing in mind one of the central role and functions aspects of the NLCB in the rollout of e-money, it is important for us to recognize capacity, again with my mantra and rubric plant and machinery, people, processes and law. This is the combination of people and law. In these circumstances, it is therefore important for us to ensure that capacity is built out at the NLCB.

I turn to the THA Act in clause 4. Clause 4, Madam President, proposes to insert after section 51, which is the power to borrow section, a new section, section 51A:

“(1) The Secretary”—meaning the Secretary of the THA—“may, with the approval of the Minister, raise money by the issue of securities for the
purposes of meeting any of the obligations and discharging any of the functions of the Assembly.

“(2) The Minister may guarantee the discharge by the Assembly of its obligations in respect of any issuance of securities...”—and importantly in subclause 3 that:

“For the purposes of this section, ‘security’”—means the same thing—“as assigned under the Securities Act.”

This language i.e, the power to borrow by the use of securities is replicated in the concept behind clause 7 to the amendments to the Water and Sewerage Act and also the concept behind clause 8 which is the Trinidad and Tobago Electricity Commission.

Permit me to put it this way, the rationale stands, and I say now in my capacity as Attorney General, whenever we engage in borrows the Ministry of Finance engages in the procurement of the borrowing, the Note comes to Cabinet, the borrowing is undertaken, pursuant to the powers of which ever entity is involved, they may or may not be external loans and guarantees, pursuant to the legislation that we have but we are bound by the Exchequer and Audit Act.

In that structure, in looking at the power to borrow and now coming to the three entities that we look at, the THA, T&TEC, WASA, in looking at the statutorily created entities and the THA having rooting in our Constitution as well as, we have to look at the fact that the language contained in these three laws as to what you can borrow is archaic. When the THA Act contemplates in section 51 of its law, that:

“The Secretary may”—and I quote—“with the approval of the Assembly,
borrow by way of overdraft, such sums as the Assembly considers fit for the
discharge of its functions; or with the approval of the Minister of Finance,
borrow sums by way of terms loans for the purpose of capital investment”—
we start to get into trouble.

What is the trouble? Ambiguity as to the power to borrow and the type of securities
that you may use in borrowing.

Back in the day, to use the expression, borrowing was confined to overdraft
and typical fixed facilities. There may or may not have been cash hypothecation or
other forms of securities to back a borrowing but in today’s market, in particular in
a market of derivatives, the fact is the Attorney General is called upon when the
Minister of Finance does his process. The Attorney General must give an opinion
in most instances, where required, as to whether the borrowing is within the laws
of Trinidad and Tobago as contemplated.

Enter the problem. The problem in this structure here is that whilst the
Interpretation Act clearly says, when you create something at law, section 37 of the
Interpretation Act says, when you create a body you establish in that body the
power to be sued, to contract, to be contracted with and to dispose of such property
and regulate its own procedure and process. This position includes quasi-
disposition, where you tear the legal and equitable ownership half, in other words
then the power to borrow.

A borrow is where give the legal ownership to something but you keep the
equitable ownership, is like tearing a dollar bill in two. You keep half, the bank
keeps half. The bank cannot use your security unless it gets both sides. So it has to
go to court and take your half of the dollar bill, put it together and spend it, or you
the individual when you have paid back your loan, you have the equity of redemption. You redeem the other half that the bank held, you bring it back to hold and you have your dollar bill. That is a very simple way of looking at how mortgages work. But when you look to this point here, the disposition is the difficulty. A disposition can probably imply the ability to use the borrowing in the way that securities now provide and that is where the modern derivative market of using bonds come in.

What is a bond? In simple terms, a bond is an instrument which holds a number of assets. So a bond is created and it is backed by assets usually put under a trust arrangement, with an arranger et cetera and that basket pays the face value of the bond. Let us say your bond is $10,000 and your interest is a $1,000 your bond is redeemable on face value at $10,000 and you get your $1,000 interest. That bond then becomes a derivative security you can trade it, that is where the concept of jump bonds, rated bonds et cetera come in. So in the modern context in T&TEC, in WASA and THA we have run into a problem where the parent laws described borrowings in arcade terms, fixed loans, overdraft, disposition, we are bound to stretch the interpretation provided by section 37 of the Interpretation Act into your power to borrow and therefore you are getting into what I call too fancy the footwork. And therefore in today’s modern market, we propose that we amend these pieces of law to specifically allow for an alternative form of security to be utilize that is security within the meaning of the Securities Act.

The Securities Act sets out at Chap.83:02, that a:

“'security’ includes any document, instrument or writing evidencing ownership of, or any interest in, the capital, debt, property, profits, earnings
or royalties of any person and without limiting the generality of the foregoing, extends to—
…bonds, debenture, note…indebtedness…
…share, stock, unit, unit certificate…”—etcetera.
“…asset back security…
…investment contract
…profit sharing…
…trust”—et cetera; and
“…derivatives…”

It:
“…does not include:
currency…
a cheque, a bill of exchange, or bank letter of credit.”

That is the most comprehensive definition of what a security involves, and therefore we have proposed that we allow for reference to the term security as defined in the Securities Act, specifically in Chap. 83:02 in the definition section, as an existing form of security non-technically specific enough to continue to speak as the law evolves and as different forms of security are borne into existence.

That, Madam President, allows us for the rationality simply to improve the borrowing capacity of THA, the borrowing capacity of the Water and Sewerage Act, the Trinidad and Tobago Electricity Commission. Now, is this going to be a blank cheque? No, it is not. It is subject to the same caveat in all three pieces of law that the Minister of Finance must give the approval. Why? The Minister of Finance has a treasury division and a budget division and the Minister of Finance
Miscellaneous Amendments
(Powers of Statutory Authorities and Matters Related to Certain Boards) Bill, 2020
Hon. F. Al-Rawi (cont’d)

has limits in law and is supervised by the exchequer and audit arrangements. Needless to say the Auditor General as well. As we know section 116 of the Constitution applies in the purview of the Auditor General over WASA, over T&TEC and over the THA. Madam President that gives the rational for clauses 4, clause 7, clause 8.

Madam President, we are also taking the opportunity in this Bill, to adjust the number of directors in the NIHERST arrangement down from 14 to seven. Fourteen turned out, in the experience of NIHERST, to just simply be an unwieldy number and we have reduced it to seven. Very importantly Madam President, we are also in the T&TEC arrangement, sorry, in WASA moving the number of Board of Directors from nine to 11, why? WASA needs greater skills sets on its board. For instance, the Cabinet has recently looked at the composition of the board of WASA and in looking at our rationalization there is need for geology. A geologist is required when you are looking at winning water. Winning water from wells on land takes you away from desalination. Desalination cost the taxpayers US $6 million a month on a take or pay arrangement and therefore our country needs to move into a rationalization exercise of ensuring that we win water so that our taps are actually waterborne and not water dry.

I have left the most important for last and I am sure that Sen. Thompson-Ahye, if I could see under that mask, would be smiling Madam President, through you. The Children’s Authority. The Children’s Authority Act is proposed to be amended in two ways. Firstly, in raising the reference to the representative for youth from 30 to 35. Why? Because when we are looking at the age group and we are looking at skill sets in the age group 30 is just too low an age
limit. And 35 therefore gives us a better chance at finding persons with ability within a range to speak to issues. Importantly, we are also removing the word “child” from the concept of psychology. Why? Number one, we have one child psychologist in the whole of Trinidad and Tobago, one. The legislation is such that, that one child psychologist receives all of the work inside of the Children’s Authority. And therefore having that child psychologist apply to be on the board creates a conflict of interest scenario which is of course a difficult one to navigate. The law allows you to declare your conflicts of interest and you should and then you press on but in a pool of one it is extremely difficult.

What we have looked at as well is that the study of in psychology in Trinidad and Tobago at master's level does not allow for child psychology, so we do not have the academia in train to cause the production of psychologist and therefore we are moving upward in the terms of genus, we are moving upward in the categorization to go for a broader skill set of psychology as opposed to just child psychology so that we are not constrained Madam President, by the capacity issues on the Children’s Authority.

Sen. Thompson-Ahye pointed out to me earlier today that it was difficult to find the laws in its most updated form and Sen. Lutchmedial did very correctly raise in the previous debate, that the Law Revision Committee really has a role and responsibility to make sure that we have the most recent laws. I can tell you, Madam President, that whilst as Attorney General in my tenure we introduced the concept of providing whatever we could the marked up versions of Acts so that hon. Members could follow easily and whilst that was never the tradition of the Parliament of Trinidad and Tobago and in fact many a public servant has already
criticized me for doing that, saying that I ought not to do that, I have resisted that. I have provided marked up for copies wherever possible and I would like to say I have instructed the Law Revision Committee to publish the unofficial consolidated versions of Bills as quickly as we do them. Why? We cannot get to the consolidated until we proof read and we are absolutely sure we have corrigendum and we have this and that in place but in the mean while we need to track the laws.

7.15 p.m.

I might know the laws conveniently, because I am the author of the laws for the time being and, therefore, I have the ability to track them, but hon. Members and members of the public would be at a disadvantage. And, therefore, I give you the assurance that we are at the cusp of having all of our laws updated, and they will all be online so that hon. Members can track with better ease. I apologize for the difficulty in tracking some of these laws. The fact is that we have really—it is not often that a Government passes 530 laws, I would tell you that, in five years, which is where we were. We did a massive number of laws, but that is no excuse for bringing the laws up-to-date—and, certainly, it was not the Government that passed the laws, it is the Parliament that passed the laws. So I offer my apologies to hon. Members if finding the more recent text was somewhat difficult.

Madam President, I look forward to the observations and recommendations that hon. Senators would bring to this debate, and I beg to move. [Desk thumping]

Question proposed.

Sen. Wade Mark: Thank you, Madam President. Madam President, like the Attorney General, I would like to make some reflections and observations and record concerns on the measures that are now before us contained in the
Miscellaneous Amendments (Powers of Statutory Authorities and Matters related to certain Boards) Bill, 2020. Madam President, I will confine my contribution to, essentially, the following clauses: clause 4, clause 7 and clause 8.

Madam President, as it relates to clause 4 of the Bill, reference is made to the Tobago House of Assembly Act, Chap. 25:03, in which under section 51:

“The Secretary…”—because that is the finance secretary—

“(a) with the approval of the Assembly, borrow by way of overdraft, such sums as the Assembly considers fit for the discharge of its functions; or
(b) with the approval of the Minister, borrow sums by way of term loans for the purposes of capital investment.”

Now, Madam President, the amendment—so already, the Tobago House of Assembly does have the power under section 51 to borrow, but what I discern, there is no guarantee as to what is being proposed in this particular amendment. So the Government is amending this Act to incorporate 51A, which gives:

“The Secretary …with the approval of the Minister of Finance, to raise money by the issue of securities”—which, essentially, we are talking about bonds here—“for the purposes of meeting”—and this is the area I want clarification on—“any of its obligations or discharging of any of the functions of the Assembly.”

And:

“The Minister may guarantee the discharge by the Assembly of its obligations in respect of any issuance of securities…”

Now, Madam President, I have no difficulty with the Tobago House of Assembly having access to loans via bonds. Therefore, it is important that when we
are discussing this matter of borrowing and the issuance of loans, through bonds, Madam President, we need to get from the Government and from the Attorney General: debt security, through bonds, would be for what purpose, Madam President? We can borrow, Madam President, through securities and, in this instance, bonds for two essential purposes: budgetary purposes or developmental purposes.

We would like the Attorney General to tell this House: What is the purpose of the borrowing? Is it for budgetary support? So it means that the Tobago House of Assembly is not getting adequate budgetary allocations on an annual basis or I assume. Now, Madam President, if it is for budgetary purposes, you are talking about recurrent expenditure, you are talking about capital expenditure. Who is going to pay back if you are going to borrow for budgetary support? The Tobago House of Assembly is not a revenue generating organization. They depend on the central government for support. So the first question we need to clarify, Madam President, is the borrowings that are going to be done, will these borrowings be for budgetary purposes or are these borrowings for developmental purposes, Madam President?

Now, when you borrow, you have to repay, and hence the reason we are being told that for the first time, unlike section 54 of the THA Act, where there is no guarantee by the Government, by the Minister of Finance, in this instance, of the amendment 51A there is, in fact, a guarantee, Madam President. So we are asking questions. We need some clarification.

Madam President, if you are going to borrow for budgetary purposes—well, first of all, the interest rate on your borrowings would be very important. Now, this
THA does not have a track record of borrowings apart from within the limited framework of overdrafts, Madam President. What is the credit rating of the THA, in this instance? Outside of the realm of the Republic of Trinidad and Tobago, does this THA have some degree of credit rating? Madam President, who will guarantee these loans that are being borrowed by the THA? Would these loans form part of the contingency liability of the Assembly? And since it is government-backed, Madam President, what impact would this borrowing for any obligations and to discharge any of its functions—how will that impact on the national debt of our country, Madam President, that is Trinidad and Tobago?

Madam President, we already know the debt burden is extremely high. As we speak, I think the total is over $125 billion and counting. How will this arrangement impact, since the Tobago House of Assembly does not have a credit rating, because they have not been borrowing on the market? They are going to be new in borrowing and through the raising of bonds, Madam President. So it is a kind of double-edged sword, Madam President. So we need some clarification on this question of the Tobago House of Assembly.

And as I said earlier, Madam President, the Tobago House of Assembly, their main, I would say, source of revenue generation would be tourism, but that product has collapsed. So if the THA is going to generate revenue, the only area it can do so is through tourism to some extent, and that product, as I said, Madam President, is in deep trouble. So we need to get our act together properly, Madam President, in order to deal with this very important issue. So we need to get from the Attorney General, what are the new streams of revenues coming from the Tobago House of Assembly if they are going to be given the right to borrow? How
are they going to repay these loans?

Madam President, I would just would like to draw to your attention that the Tobago House of Assembly, even though I love to be in Tobago, I have to deal with the reality, and the reality, Madam President, is that the Tobago House of Assembly does not have a good track record in terms of management of the public resources. In the last 10 years, the Tobago House of Assembly may have gotten roughly over $27 billion. Madam President, I asked the librarian yesterday to provide me with the latest financial statements of the Tobago House of Assembly, and would you believe, Madam President, the last report is dated 2009 and we are in 2020. And, Madam President, when you look at this report, it would frighten you in terms of the financial improprieties, the irregularities, the suspicious and questionable arrangements, Madam President.

Madam President, would you believe that you have in this 2009 report, a disclaimer of opinion? This is the Tobago House of Assembly, and you have the Auditor General saying:

Because of the significance of the matters described in the basis for disclaimer of opinion, I have not been able to obtain sufficient appropriate audit evidence to provide a basis for an audit opinion. Accordingly, I do not express an opinion on the financial statements.

This is 2009, and because of the scandals and shambles of the finances of the Tobago House of Assembly, you cannot get the Auditor General giving a proper opinion on the financial statements.

So, I have a statement by Reginald Dumas entitled “The Untouchables” and, Madam President, if I read that for you, again, it would frighten you in terms of the
irregularities, improprieties. So I would like the Attorney General to explain to this Parliament, in the absence of a proper system of accountability, in respect of the Tobago House of Assembly, how would you be able to justify this borrowing and borrowing and there is no accountability, and you have the last report from the Auditor General on the financial statements of the Tobago House of Assembly being issued, Madam President, in 2009?

So, as I said, I am very concerned, Madam President, about the state of play in the Tobago House of Assembly. I have no problem with Tobago getting its fair share. If they want a federal structure to have full self-government, I support that, but you must be able to have proper accountability, Madam President. So $27 billion in the last 10 years, and you cannot get proper accountability for the moneys that have been expended. So this is an area, Madam President, I would like the Attorney General to pay attention to. Before I close, I will quote some excerpts from this article in the newspapers by Reginald Dumas, and he is a Tobagonian and he is talking about what is going on in the Tobago House of Assembly.

Madam President, the second thing I want to deal with is T&TEC. I just saw in the Newsday that the IRC has begun its process of reviewing rate increases for both T&TEC and for WASA. So what does that tell us, Madam President? Water rates will be increased in due course and electricity rates will increase in due course because the IRC, which is the body responsible for determining and finalizing ratings for those two utilities has served notice that it is about to embark on that exercise.

Madam President, T&TEC and WASA: I would like to find out from the Attorney General whether T&TEC is on the privatization chopping block. Let the Attorney General tell us whether it is the intention of the Government to privatize T&TEC. That is the information that we are picking up—that it is the intention of this Government to privatize T&TEC. And we also want the Attorney General to
let us know whether WASA, through its new board of directors, recently appointed—and now you are going to expand that board of directors—whether WASA is on the chopping block as it relates to privatization and whether you are about to lay off over 3,000 WASA employees. These are matters that we have to deal with as we come to this capacity to borrow. Because, Madam President, the same capacity being extended to the THA is being extended to T&TEC, is being extended to WASA.

But, Madam President, why are these utilities in trouble? Why is the Government, in the case of T&TEC, removing the President from approving loans for T&TEC and replacing the President, which is the Cabinet, with the Minister of Finance? Madam President, this Minister of Finance is becoming more powerful than the Prime Minister, because of the kind of powers that is being given to this Minister of Finance. Madam President, when the President was there, in terms of T&TEC, and actually determining, Madam President, loans arrangement or loan arrangement through bonds, Madam President, you had a Cabinet and you may have had a sub-committee of Cabinet going through this process. Now you are going to have one person, the Minister of Finance. He is now going to determine, Madam President, loans through bonds and how much and when. That is not extremely positive news. I think it is very troubling news, Madam President.

Madam President, T&TEC: T&TEC was one integrated company before 1994. They used to be in distribution and generation, and then Ken Julien came up with this bright idea under, I would believe, Patrick Manning, former Prime Minister, and they brought a consortium or consortium of companies, multinationals, and they took over the generation aspect of T&TEC. So T&TEC lost its generating
capacity because of PNM, through Ken Julien, bringing in a group of foreigners to take charge of T&TEC generation.

Madam President, you know what is the end result of that? Every kilowatt of electricity supplied by PowerGen, it is a take-or-pay arrangement. So whether you use it or you do not use it, you pay PowerGen. So T&TEC has been subsidizing multinational corporations represented by PowerGen. And Madam President, the second aspect is that T&TEC has to buy from NGC, Madam President, natural gas, for the very bulk purchasers and supplier of electricity to T&TEC. So when you hear T&TEC is in financial difficulties and NGC is crying, and they are saying that they in trouble, Madam President, these are some of the realities that faced T&TEC. And you know who have to pay? It is the ordinary customers in this country that have to pay new rates. So whilst multinational corporations are enjoying profits, T&TEC is experiencing losses. They have to pay for natural gas for PowerGen. And every kilowatt of electricity supply that they do not use, they have to pay for it. Madam President, that is not fair and that is why T&TEC is in trouble.

Madam President, do you know that the Government of Trinidad and Tobago owes T&TEC over $1 billion? That is the billion dollars they could pay NGC. The Government owes T&TEC $1 billion. The private sector in this country, they now owe over quarter billion dollars to T&TEC. So, Madam President, I raise these points to let you know that they are giving these two entities the power to borrow through bonds, and they would get guarantees from the Minister of Finance. But, in doing that, Madam President, we need to understand that these two important entities: T&TEC and WASA, one is a loss making enterprise,
Senator W. Mark (cont’d)

totally; WASA, without Government subsidies, it will crash. So I suspect that what the Government is planning to do—

**Madam President:** Sen. Mark, just one second, the Procedural Motion.

**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, which includes this Bill and the third Bill, which is the Miscellaneous Provisions (Administration of Justice) Bill, 2020, in addition to Motions on the adjournment.

*Question put and agreed to.*

**MISCELLANEOUS AMENDMENTS (POWERS OF STATUTORY AUTHORITIES AND MATTERS RELATED TO CERTAIN BOARDS) BILL, 2020**

**Sen. W. Mark:** Madam President, could you advise me how many more minutes I have?

**Madam President:** You have five minutes.

**Sen. W. Mark:** Five? So, Madam President, I am saying that, how will these borrowings impact on the national purse? How is it going to increase our contingency liabilities and overall impact on the credit rating of our country? These are matters that we would like to be cleared up by the Government today. Is the Government about to privatize T&TEC and WASA, and dismiss thousands of workers from WASA? These are matters that the Government would need to clarify for us today. And why is the Government giving the Minister of Finance who has become the new czar, Madam President, in terms of finances—
everywhere you turn, Madam President, the Minister of Finance is in your face. So we would like to know: Why is the Minister of Finance being given all this power and not the Cabinet? The Cabinet used to be there as the president, but we now giving it to the Minister of Finance.

Madam President, I would just like to indicate to you that in this article which I want to refer to, it is entitled “The New Untouchables”. This is an article written by a Tobagonian called Mr. Reginald Dumas and, Madam President, he as a Tobagonian, expressed what he considers to be the most waste and financial challenges that this THA has be experiencing, which does not make pretty reading, Madam President, wherever you look in this THA arrangement. And, Madam President, may I say, as I am talking about the THA, I hope this is not an election gimmick on the part of the PNM, because the THA elections is due on Monday the 25th of January and they have nothing to show to the people of Tobago, no autonomy for the people of Tobago. So they have come with this amendment to go to Tobago, Madam President—I hope that is not the case—to tell the people of Tobago, look, we have now given you the power to borrow and we will guarantee you that power, vote for the PNM again. I believe this is an election gimmick on the part of the PNM and they have brought this measure to us to deal with that matter, Madam President.

7.45 p.m.

Madam President, as I said, this situation involving Tobago, according to Mr. Reginald Dumas, he has called for value-for-money audit. He has been calling for a value-for-money audit of the Tobago House of Assembly, because as he said, and I quote:
Over the last ten years the THA has received more than $27 billion of taxpayers’ money and the absence of acceptable accounting puts scandal to shame.

And he went on to say, Madam President, in the last sentence:

Constitutionally the Auditor General is not subject to the direction or control of any person and therefore he expects that personnel—that time, personnel and money will be put to work in order to get the THA accounts up to date, that is to the current period.

Madam President, I believe that the Government is desperate, the Government is in a financial bind. They cannot support T&TEC, they cannot support WASA, so they are now giving both WASA and T&TEC the power to borrow on the open market and they are going to ramp up our national debt and that would have a negative impact on the overall credit rating of our country in the future. Madam President, I thank you. [Desk thumping]

Madam President: Sen. Dillon-Remy. [Desk thumping]

Sen. Dr. Maria Dillon-Remy: Madam President, I thank you for allowing me to be able to contribute to this debate on an Act to amend the National Institute of Higher Education (Research, Science and Technology) Act, Chap. 39:58, the Children’s Authority Act, Chap. 46:10, the Water and Sewerage Authority Act, Chap. 54:40; and the Trinidad and Tobago Electricity Commission Act, Chap. 54:70 to provide for amendments to the composition of various boards and the borrowing powers of certain boards and matters connected therewith. Madam President, allow me to join with Sen. Mark in saying to the Attorney General that it is very difficult to be able to go through so many parent legislations to contribute
to a Bill at such short notice. I am agreeing with Sen. Mark in this event. It is really very difficult. And in addition to the time that it takes, we are also—it is when we have to vote, Madam President, also you are voting on several pieces of legislation. There may be some things that you may not agree with in one and agree with in the other, I am just finding that is a bit difficult. So I just wanted to note this here.

I am humbled to contribute, Madam President, to this process. The first area I would like to touch on is clause 3 of Bill which would amend the National Lotteries Control Act, and the Attorney General did say the reason for increasing the numbers was because there are many more functions now that the National Lotteries Board has to undertake. But, Madam President, in 2020, just to say, I am increasing the numbers of persons on a board from four to eight without any qualifications as to what is required for these board members, I am just wondering whether there should be more than that that you need four more board members. What are the qualifications of these board members, given what is required of them now? So that is one point I would make about clause 3.

Madam President, clause 4 of the Bill which would amend the Tobago House of Assembly Act, Chap. 25:03, by inserting a new section 51(a) to empower the Tobago House of Assembly with the approval of the Minister of Finance to raise money by the issue of securities for the purposes of meeting any of its obligations or discharging any of its functions, this would empower the Minister of Finance to guarantee the borrowings. At first impression the historical underfunding of the THA and the comparable underdevelopment of the island is part of the rationale for the consideration of the Minister in the funding of the
THA. Over the years specifically related to the developmental funding, Tobago has been underfunded. And in spite of what was just said recently by Sen. Mark about the billions of dollars that have been spent in Tobago, we know the development in Tobago has been less than desirable.

[MR. VICE-PRESIDENT in the Chair]

This legislation is necessary given the years of waiting and seeking by the Tobago House of Assembly to access this type of funding for its development of programme. However, there is no prescribed action that the THA can pursue should the Minister of Finance refuse to grant the approval because he has to guarantee the loan. Therefore, the amendment in its current form does empower the THA legally to optimize its funding or cash flow via the borrowing option, but the fact that the vested absolute authority is with the Minister of Finance as opposed to giving him legal oversight authority may be a challenge.

For the THA and Tobagonians to really enjoy the benefits inherent in this amendment, this amendment must also provide legislative protection to the Assembly against any possible political differences between the Minister of Finance and the Secretary of Finance in the Tobago House of Assembly. I am saying this because currently you have a situation where the central government and the Tobago House of Assembly happen to be at the same party. There may be situations where that is not so and the authority vested in the Minister of Finance may not result in the Secretary of Finance in the Tobago House of Assembly getting what the Tobago House of Assembly needs to get. I am saying this, Mr. Vice-President, knowing that the Constitution (Amendment) (Tobago Self-Government) Bill is under a joint select committee and the issue of financing
is key to the self-government, the internal self-government, the development. So I am just putting this there as one of the key factors that has to be addressed in that Bill.

I do totally agree again with my colleague, Sen. Mark, about the statements made about the need to improve the accountability of the Tobago House of Assembly as evidenced by the several Auditor General’s reports that we have had that there are issues with. The other clause I would like to touch on, Mr. Vice-President, is clause 6 in which the amendment to the Children’s Authority Act to change the reference from child psychology to simply psychology for the stated reason that there is a dearth of child psychologists in Trinidad. The Attorney General just said that there was only one psychologist, child psychologist available in Trinidad and Tobago and as a result they are finding difficulty in staffing that place on the board and as a result this change is being made.

Mr. Vice-President, there is a vast difference between a psychologist and a child psychologist. [Desk thumping] And even though I accept the reality of what we have happening here, I just wish to point out that the World Health Organization—there is a document entitled, “Children are not little adults”, and the Handbook of Child Psychology and Developmental Science, Volume 3, by Richard M. Lerner and Michael E. Lamb, they highlighted in detail the differences in the physiological and psychological make-up between children and adults. It goes without saying that treating the psychological state of a child is a field which requires specialized education and training, and I am saying that given the fact that the board of management of the Children’s Authority is critical in monitoring the treatment plans for children in their care, they are not just an oversight board, they
are a management board, and they do oversee the treatment plans. And if you have a psychologist on the board who does not have the necessary skills available, it would put the board at risk.

So I am humbly suggesting that while this may be a temporary solution we should not be comfortable in just putting a psychologist on the board. We should be actively seeking, whether it is by getting people from elsewhere or the putting in process, making sure that we train child psychologists in order to meet the needs that we have. Mr. Vice-President, we are hearing about the great trauma that our children are going through. I mean, we just have to look at the news on a daily basis and see what is happening and these children have to be rehabilitated, and there is no way we can accept this resolution here of just putting a psychologist on the board instead of getting a child psychologist. I am saying we should make a greater effort than this. Mr. Vice-President, with these few comments, I thank you.

[Desk thumping]

Mr. Vice-President: Sen. Deonarine.

Sen. Amrita Deonarine: Thank you, Mr. Vice-President, for the opportunity to contribute to the debate. Now, my focus on this Bill would narrow in on clauses 4, 7 and 8 which are the amendments related to the THA Act, the Trinidad and Tobago Electricity Commission and WASA. I would like to thank the Attorney General for giving us an explanation for these amendments from a legal perspective, however, my contribution today will focus on these amendments from an economic perspective and the impact that it will have on the economy and the Government’s budgetary and fiscal targets for this fiscal year according to its medium-term fiscal framework. So the situation that we have right now is that we
have a situation where contingent liabilities have been substantial for many years. It accounts for at least 21 per cent of GDP and it actually stands right now at around $31 billion as of fiscal 2019. Government transfers to statutory bodies have stood at around an annual of $6 billion to $7 billion since 2016.

The net operating deficit incurred in fiscal 2017 by WASA and T&TEC together accounted for 75 per cent of total net operating deficit by statutory bodies. WASA, to single them out, WASA alone accounts for 55 per cent and T&TEC, 25 per cent. This figure is according to the article for consultation with the IMF. And lastly I would like to say that T&TEC accounts for 25 per cent of non-performing loans in the last fiscal year. This amounts to $404 million. So, as I said, Mr. Vice-President, I am looking at this in the context of our medium-term fiscal framework as outlined in the budget where the Government, the Minister of Finance outlined in his budget presentation that our aim is to reduce the primary and overall deficit in the next two fiscal periods. That is for fiscal 2021 and fiscal 2022. And one of the strategies to do this, to establish this the Minister of Finance actually outlined that the intention is to phase out government guarantees in the medium term and also the intention is to reach a debt-to-GDP ratio of 65 per cent of GDP by fiscal 2023 to 2024.

Now the Bill before us in the three clauses that I highlighted proposed to with the approval of the Minister of Finance to empower statutory bodies, THA, T&TEC and WASA to borrow through the issuance of securities. And I believe, as the Attorney General would have said when he was piloting the Bill that the focus would be on long-term financial instruments which are bonds. So these are investments that would stand for more than five years at a time. When the
government guarantees these bonds, these bond issuances, whether they are guaranteed or not, the total public sector debt will increase. If they are guaranteed what we will have is contingent liabilities increasing, and if they are not guaranteed we would have total public sector debt increasing through that component of other public sector debt.

However, given that the Minister of Finance in the amendment has highlighted that he will be the one to grant approval to these entities for such a borrowing, I hope that it would mean that it would ensure that the Minister of Finance and his debt management unit would keep a watchful eye on the progression of the debt to ensure that the statutory limit under the Development Loans Act and other various loan Acts to ensure that they are not exceeded. And to also ensure that the debt sustainability thresholds are not violated. Now, debt management capacity in the Ministry of Finance therefore would become critical.

It will be important that their capacity be enhanced further, therefore I would like to recommend that a prerequisite to grant approval to these entities to issue securities would be to establish a proper debt management framework and conduct a biannual debt sustainability analysis. Because by allowing statutory bodies, T&TEC, WASA and THA, to borrow via securities means that really and truly what the Government is trying to do is to move away from borrowing at the central government level where it is passed on to statutory bodies via transfers and subventions towards a model where statutory bodies are able to manage their own internal accounts by borrowing with the permission of the Minister of Finance. So, again, Mr. Vice-President, debt management becomes critical. Annual borrowing plans, debt sustainability analysis, monitoring of debt ceilings, transparency,
accountability and a proper reporting framework is critical. So this means that the institutional framework and the governance structure under which these statutory bodies operate would need to become more efficient.

Mr. Vice-President, the message the Government is sending to these entities is that if you need money for the development projects and whatever restructuring that your entity needs, then I as the Government am empowering you to go to the market and raise these finances, issue these bonds, et cetera. Mr. Vice-President, if you really think about it over the long term, this approach could probably give these statutory bodies no choice but to move towards more sustainable operations. It would force statutory bodies to clean up inefficiencies and wastages. My concern though is that in the short term I do not think these entities are in a favourable financial position to take advantage of borrowing via issuing of bonds, that is singling out T&TEC and WASA. And also I am not too sure about the THA because last credit rating that I saw on THA was, I believe, around 2012. That is a long time from now. So I am not too sure of the financial position of the THA.

So, Mr. Vice-President, the Government needs to put in place mechanisms to move these statutory bodies into sustainable operations. A difficult task because it is no secret that these bodies need a complete overhaul in their institutional framework operations and accountability mechanisms; I am singling out WASA and T&TEC here. Mr. Vice-President, once they have to access these markets, these credit markets, audited financial statements, annual reports, other financial statements would be subjected to continuous scrutiny by potential investors, analysts and credit rating agencies. Of course having government guarantee—
central government that is—these financing arrangements would be helpful in terms of the attractiveness of these bonds to potential investors. And the reason why I say that is because the Government’s sovereign rating is more favourable relative to the rest of the region at the moment. But, Mr. Vice-President, without government guarantee, if potential investors see these statutory bodies as not being in a solid financial position without a proper strategic direction, without proper development plan, policies, et cetera, to achieve profitability and sustainability over the medium to the long term then these bond issuances may not be attractive.

As such, the Government may need to guarantee these loans until they become in top shape—until these entities become in top shape so that they can eventually access the credit market on their own. Because once the Government does not guarantee these loans the statutory bodies will be subjected to assessments by credit rating agencies on their credit worthiness. Now, a perspective that I want to bring here because it was not clarified whether the bonds or the securities, the types of securities that they would be issuing, whether it will be sought on the domestic market or the international market, but given that it is left open it would be possible for them to issue bonds on the international market. So should these statutory bodies seek credit on the international bond market then it can serve to prop up foreign reserves on the medium term.

Let me explain, Mr. Vice-President. Once the international bond is issued the USD earned, the foreign currency earned will go to the Central Bank. This will form part of the international reserves. The Central Bank could then hold these reserves at the Central Bank and provide local currency to the statutory bodies, assuming that the financing they require is primarily local currency. This will
basically insulate the problem that we have right now in terms of the shortage of the foreign exchange. However, two problems we could encounter here. The first problem is that the financing primarily to fund critical development projects in Tobago—that is in the case of THA—it is for infrastructural needs for development, procurement of equipment and improvement of electricity supply in the case of T&TEC, some of which may have a very high import content. For example, if you have to pay foreign suppliers for those equipment that you have to procure for the purchase of other equipment necessary to operate systems, to pay for international consultants, et cetera; you need foreign exchange to pay for those things.

The second problem that we can encounter is that when these international bonds become due for repayment, let us say maybe eight to 10 years, these statutory bodies need to find US currency in the local banking system to repay it, because they do not earn foreign currency, they earn local currency. And if by then these statutory bodies do not see a significant turnaround in their profitability and a significant improvement in their revenue streams and the economy’s foreign exchange problem does not turnaround, then we could have a serious problem. So, Mr. Vice-President, that is all that I have to say today. So in conclusion what I am trying to say is that I am concerned about these measures granting borrowing powers to these entities. I recognize that it is with the Minister of Finance’s approval, however, I am concerned about how much this would allow us to achieve our budgetary targets of trying to phase out government guarantees in the medium term and also help us to achieve our debt target of reducing debt-to-GDP ratio from 85 per cent in fiscal 2020 to 65 per cent by fiscal 2023 to 2024. Thank you,
Mr. Vice-President.  [Desk thumping]

Mr. Vice-President:  Minister of Trade and Industry.  [Desk thumping]

The Minister of Trade and Industry (Sen. The Hon. Paula Gopee-Scoon):
Thank you very much, Mr. Vice-President, and I am very pleased to have the opportunity to speak on this Miscellaneous Amendments (Powers of Statutory Authorities and Matters related to certain Boards) Bill, 2020.  The hon. AG would have gone through this Bill very clearly.  It is so very simple and straightforward but I still thought I would add my voice to clear up some of the concerns and just to speak a little bit about it as well.  So he had said it is straightforward, eight clauses amending six pieces of legislation.  I am not going to go through those.  Right?  Basically the Bill can be summarized in two parts where changes were made to the composition of several boards and the second part, the power of the statutory bodies to issue securities on the approval of the Minister of Finance; that was attended to in the second part as well.

Within the first part where we were amending the composition of boards, they were the boards of the National Lotteries Control Board, the NIHHERST, the Children’s Authority and also WASA.  With regard to NLCB, so we are moving from four directors to nine directors where you would have—am I saying the right thing?  Yes—and it is absolutely necessary, and I would tell you why I think so.  This is a statutory body established sometime in 1968 and when it was established of course it would have had a very narrow remit, and so that it would have been established just to promote and to organize and to conduct national lotteries in the country.

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However, over these years their responsibilities have widened so NLCB now has a very expansive role and they, of course, are managing the operations of increased online games and instant money games and so on, and also commercial services as well, the VIA and so on which was launched by the board in 1995. And we also know that a big pocket of work in the NLCB of course because of its large earnings would be the social responsibility, the corporate social responsibility where they spend—and I do not have the figure but it is millions every year.

8.15 p.m.

So there is increased responsibility and a much, much wider mandate, and therefore the board should really reflect the level of responsibility that is there, to ensure that there is proper oversight, to ensure that there is accountability as well and proper management.

As you know, all of these boards would have all their subcommittees, HR committee. It will have the HR committee, audit committee, finance committee. In this case you would have, where there is extensive corporate social responsibility, there is probably a board that deals just with donations and so on. You are going to have a lot of overlap if you just keep it confined to four persons, and I am sure everybody agrees with me. You cannot just leave this. With all the great responsibility and also the subcommittees that are absolutely necessary, one would be concerned about the quorum. You certainly would not want to also have a quorum of three or so, conducting these kinds of activities. This is a small country, they will all know each other. You would not want three persons to form an opinion, make or have a decision. Of course there have been questions in the past about NLCB. But this Bill is not about going into all of that kind of detail.
You just do not want any mischief and wrongdoing, and therefore the best thing is to widen the board. You can certainly create your committee. There is a larger quorum as well, and you are not going to have the kind of overlap, and so on. When you do that, when you leave it up to a few persons and a quorum of three, you know, you are really developing czars within the unit, within the company, in the authority, sorry, and of course what is going to happen is again these people run away with themselves. You just never know. You have to be very careful; be careful. You are dealing with large sums of money, accountability is absolutely, absolutely key.

I also agree with the AG with the NIHERST. I mean, in this case NIHERST again is a research organization. It was set up to do intellectual leadership, promote research, development and quality service, et cetera. So we all understand what their work involves. As I said, largely it is research, about technology, innovation or entrepreneurship and so on. Very, very, very important as we are a developing country.

Naturally, the research and the work that they do is instrumental and used by many Ministries and agencies within the Government and so on, but you just do not need as many members as you have there as it is. They have more board members than WASA and on NLCB. They do not have great financial responsibility, every board would, sorry, but their prime responsibility is research and so on, and there is no need to have all of these board members. So I quite wholeheartedly agree with the suggestion, with the amendment that is now being made.

With regard to WASA, just having—what do we have?—nine persons and
we are expanding to 11. Let me tell you, everybody knows that WASA is in continual transition, and every government has been trying to fix WASA. Recently, my colleague, Minister Gonzales spoke about it with passion. What we really want to ensure is that everybody gets a decent supply of water throughout the country, and so on.

The work of WASA is tremendous. I mean, everybody must have water but we all understand the den that we are dealing with. No government has been able to deal with it. The last I remember, it must have been in about—you had then Ganga Singh talking about, oh, water for all. Then of course in 2014, on the eve of an election in Tobago, 2013, they said, okay, by 2014 you are going to have full water in Tobago. These are all pie in the sky things. We have to deal with the reality, and therefore we need people on the board with the adequate skill set and so on, and to fill all of the necessary subcommittees. When you are dealing with a huge organization like WASA with big issues you have to have all your committees in place, and you need the skill sets. You cannot just rely on the persons that have been there, and have not done what really should have been done for WASA.

So you want your geologists, your accountants, your HR, all of your management representatives, your engineers, you want to make sure. You must have this skill set on the board. So widening the board I think is an absolute imperative, and I think it is just to deal with the work that is ahead. This Government is very committed to doing something about WASA. So that the additional amendment, which is to grant the power of the board to issue securities, will also be helpful as you deal with the transformation now, which will include
financial.

I can understand the comments made by Sen. Deonarine. Yes, you do not want to get into any more debt, but there is no question that you can make that leap without getting into further debt, but it is how. So this widens the type of instrument, debt instrument that they may get involved with. It is just not confined to loans and so on, but it extends to securities, and AG spoke about that. I will speak a little bit about that just now.

I understand very carefully with the Children’s Authority of Trinidad and Tobago, the sentiments expressed by Sen. Dillon-Remy, about the fact that AG lamented that there was one child psychologist. Sen. Dillon-Remy as she well knows professionally, that there is a difference between an ordinary—I do not want to say ordinary, because the work of a psychologist is very, very, very, very meaningful, but it would seem to me as a layperson that one is more of a multifaceted discipline. That is the psychologist. Whereas the child psychologist, that is a subspecialty dealing with children and adolescents as well.

So I can understand the sincerity and her professional wisdom in the comments, but however we just do not have the skill set in the country. Therefore, if this is what we have to do at this time, let us make the amendment and of course broaden the pool from which we can—the position, the actual position on the board can be filled.

But even if it is going to be a psychologist and not a child psychologist, at least that person can in fact deal with the whole question of human development, health, clinical issues, social behaviour, cognitive processes. They will still have the necessary skill set at that level, at the level of board, to make their serious
intervention that they are required to do.

Then we went on to talk about the power of statutory bodies to issue securities. So we spoke about the THA, and Sen. Mark spent most of his time speaking on the THA. I should not think that he should have the audacity to speak about the THA to that length as he did, when I know that party has no interest in Tobago. They do not even field candidates. They did not even do so in the general election. They have not done so in the election which is to come in January, internal elections. So I find it passing strange that he is going to spend all this time on Tobago, and taking issue with the THA as it is.

We will always have concerns about statutory bodies and their ability to carry out their roles, and to do so as expected, with transparency and accountability and so on; I speak for all of that. But at the same time, the THA to my mind has been a shining example of leadership, and if I can just judge by the voice of the people in 2017, where they took home about 10 of the 12 seats or so. I think judging from the pulse on the ground, they are likely to take home perhaps all of the seats in the election in January coming. It is the voice of the people. But again, as I said, I am very disappointed to the extent where I know that really and truly that party has no interest in Tobago. Even when they were in government, really did not leave a mark on Tobago, left nothing that we could say that they really did have an interest.

But he raised some questions about the credit rating and so on, and I was able to find out that in 2012, the THA did seek and they got an independent rating from Moody’s Investor Services, and the current rating is Ba1 negative, the same as central government. I questioned whether or not the borrowing is for budgetary
support. Sen. Mark knows that the Government supports every year in its annual budget, the THA, so that they would not be borrowing. Of course they are not getting everything they want. They could not possibly get everything, everybody has had to get less. Our revenues are less, but at the same time—so this is not about budgetary support.

As a matter of fact, you would be surprised to know that they do have some revenues. There is the Studley Park Enterprise Limited Company, for which the THA is a parent company and Studley Park manages the Studley Park quarries, and there are revenues annually. They supply this quality aggregate which is being used in very large projects, infrastructure projects, the ANR Robinson Airport. I know that they have been exporting, because they come to the Ministry of Energy and Energy Industries, and eventually the export licences are granted by the Ministry of Trade and Industry.

I am very well aware that I have been seeing and hearing of further requests, further plans to export more. They have been exporting to Guyana. I just quickly sought to find out, I understand that their revenue—it may not just be the Studley Park alone, but there are revenues other than their government subvention in the order of some TT $200 million annually, and this can grow, and so much so they can earn foreign exchange, and so on. So that is a very, very important source of revenue, at the Studley Park. I think it is much better managed, it is very well managed as a matter of fact, from my understanding of it. And of course the resource is one that is well—which is the aggregate, is one that is well sought after.

So I give this honourable House that this—the ability to source funding now via securities and so on, perhaps via bonds, it is absolutely not for budget for
support, but to undertake capital projects. I cannot understand why anyone in here would not want the THA to pursue the development of Tobago as it is. That is our sister isle. It is our primary source of tourism revenue. The country is beautiful. It can earn revenue. There was recently an investment by Rex Resorts, they bought out the Turtle Beach. There is interest in Magdalena. There is interest as well—we could have had Sandals there as well. So just give them the opportunity to be able to do the necessary development and so on.

So that is where we are with that. But just as the legislation says, they must get—

Mr. Vice-President: Minister, you have five more minutes.

Sen. The Hon. P. Gopee-Scoon: They must have the approval of the Minister of Finance. So all this thing about scandals and terrible track record, the voice of the people is the proof there “eh” no scandal at all with the THA. It is they are being like any other authority. There may be some irregularities which were highlighted with their last audit. I mean, you would always want to have clean audit, but it is not always possible. You are dealing with public servants and so on.

So I think we would all would be pleased that Tobago would have the ability, through the THA now, to be able by example to issue bonds and so on to raise capital to forward their development purposes. Of course that just widens, and it is not just for them and for the other companies, WASA as well, who would be borrowing, T&TEC as well. It is just going the way of bonds. It is a lot cheaper. You can borrow very large sums at very low interest rates, and it really gives you the opportunity to invest and grow and deal with your financial matters and so on. So it is a cheaper interest rate and so on.
Generally I would say as I conclude, there are always checks and balances. I do not know that there is anything to worry about. I think we must get on with the work. Through all of these institutions and authorities, of course the checks and balance will be within the statutory body itself and of course, again, if there is any security to be issued—any form of security to be issued or so, you must have the authority of the Minister of Finance, and the Minister of Finance is accountable to the Cabinet.

The Minister of Finance does not just act willy-nilly. He is accountable to the Cabinet. Something like the THA perhaps wishing to borrow, or WASA or T&TEC wishing to borrow, lend large amounts, it has to come to the Cabinet. So, it is yes, you must get the approval by the Minister of Finance, but he is accountable to the Cabinet.

Of course, the third measure of checks and balances would always be they must produce their financial accounts, which must be audited, and submitted to the relevant Ministry, the Auditor General, and of course there is Parliament scrutiny. I can tell you that I now sit on the PAC, the Public Accounts Committee, and I think that many of these authorities would fall under our scrutiny. So I think the checks and balances are there.

So as I said simple, but important Bill. It will allow for us for improving efficiency and skills on many boards. They would be able to operate more effectively, and of course the power of the mentioned statutory bodies to issue securities, to raise capital, very, very important, much needed in many of the bodies mentioned here.

So I thank you for the ability to respond, Mr. Vice-President.
Sen. Anil Roberts: Thank you, Mr. Vice-President. Before I get into the substantive Bill, it would be remiss of me if I do not deal with the hon. Minister of Trade and Industry, who made some statements there about the United National Congress and their disrespect or lack of interest in Tobago. Let me just correct the record. It is with the utmost respect that the United National Congress and former Prime Minister, Kamla Persad-Bissessar, as she led the People’s Partnership government, treated Tobago with the highest level of respect that has up to today, under the current People’s National Movement Government, has not been able to be maintained. [Desk thumping]

It was the Kamla Persad-Bissessar government who brought to the Parliament of Trinidad and Tobago, Tobago self-governance. The PNM, with a Tobagonian as the Prime Minister, has failed to do so in five years and three months. It was Kamla Persad-Bissessar and her government that had the sea bridge working smoothly. She did not have Tobagonians putting their goods on barges, and taking 12 hours to reach, and when they reach all “de banana have salt in it”.

It was Kamla Persad-Bissessar who, when she built MIC centres and NESC centres and gas stations in Tobago, did it in conjunction with the hon. Chief Secretary Orville London, never putting him on the floor to talk while other Ministers conducted business, whether it was Sandals and so on.

It was Kamla Persad-Bissessar who ensured that the parliamentary responsibility and budgeting to the THA always was up to a maximum of the 4 per cent of the budget and averaging 2.06 to $2.1 billion annually. Kamla Persad-Bissessar as Prime Minister was going to build an airport without removing
citizens of Tobago from their land and their houses, unlike this PNM Government. So we would just like to correct the record a little bit there, from the hon. Minister of Trade and Industry.

The hon. Minister also said, and I was quite astounded, and I wished that it would have been true, that Tobago provides right now tremendous revenue in tourism. Madam Minister, in 2014 the international arrivals under Kamla Persad-Bissessar and the People’s Partnership government to Tobago, international arrivals averaged 97,000 for the year. In 2017, after just two years of PNM, this dropped down to 17,000.

Trinbagonians in 2014, 652,000 Trinidadians went across to Tobago during the months of July and August, averaging six days’ stay, spending an average of $6,000 to $7,000 per stay. That number in 2017 went down under the People’s National Movement and a Prime Minister from Tobago, from 652,000 down to 152,000. The Tobago tourism industry has been decimated. People are losing their properties, and it is this fact that we are here today to allow the THA to borrow, because the only sustainable jobs that Tobagonians have are working for the actual THA now. Mr. Vice-President, 71 per cent of the working population of Tobago is employed by the THA.

There has been no diversification. There has been no increase in revenue. No increase in creative revenue streams. No development of sport tourism, no carnival tourism, no culture, no pan. It is THA government money expenditure, and now we come here to borrow more. So when you talk about respect for Tobago, just being born somewhere does not mean you get respect. Respect must be earned. [Desk thumping]
Also my hon. Minister went on to say that “water for all” is pie in the sky. Well, let me tell you, you mentioned the hon. Ganga Singh, former Minister of Public Utilities. In 2013 to 2014, he increased the percentage of people in Trinidad and Tobago receiving a 24/7 water supply to the highest number in our history. That number was 71 per cent. Right now after five years and three months of the People’s National Movement and five different Ministers of Public Utilities, we are down at a paltry 27 per cent of the population receiving a 24/7 supply.

In fact, the PNM boasts about giving out water tanks in 2020. People are fighting for water trucks. Water trucks are being repainted “Free Water” to make sure people that people do not have to pay for it. So I am not sure if we live in the same country or if facts mean anything. But under Kamla Persad-Bissessar, the People’s Partnership government, people were getting water. [Desk thumping]

Now we stand—we had many Ministers of the PNM come, and back in 2017, before the Minister Le Hunte had to swear in twice, he came and made a speech and said there were currently 2,800 leaks at that time, and that he by December 31, 2017, would get those leaks down by 90 per cent. The leaks increased from 2,800 to 4,200 during that period.

In a joint select committee here in the Parliament—it is on the record—WASA authority officials said that when they turn on their pump, full, after they turn the water into potable water by adding chemicals, chlorine and so on, when they pump it out of the pristine situation to get it to the citizens, per month WASA produces 7.2 billion gallons of water, potable water. When they turn on the pumps, due to leaks under this People’s National Movement Government, 4.1 billion gallons of water is wasted per month, and yet nothing has happened. But
we come here today to look to increase the borrowing limit.

My hon. Sen. Dillon-Remy, she spoke about a few issues, but there were some gaps. So I will fill the gaps for my hon. Senator. She said that in Tobago that $28 billion was spent and Tobago still needs development. What she failed to alert, because Independent Senators are not in politics, so I will deal with that—what she failed to state, and I will state it here for the record, is that since 2003, the PNM has ruled Tobago unfettered for 17 long years, $28 billion, and yet Tobago lacks development. And we are still talking about borrowing more money, and a Minister could come and tell me that $28 billion for an average population of 55,000, and the country is undeveloped, is great performance. Only in Trinidad and Tobago could somebody come with a straight face and try to tell me that.

From 2010 to 2015, I went through that. We were much more respected. Tobago was respected and treated as an equal partner. I have to deal with one other issue. I am baffled. I am hearing that in Trinidad and Tobago we only have one child psychologist. I do not know if that is factual or not. But are we saying in the Caribbean there are no child psychologists? Are we saying that we live only in Trinidad and Tobago, that there are no child psychologists in Canada, USA, Europe, who can come here to help and work with our children? That our children must accept that here we make a law that is telling our people, we have no child psychologists so give them a psychologist. I think that is rather disrespectful in many ways because a child psychologist is a specific profession.

Are my PNM Ministers saying that they would go to a cardio-thoracic surgeon for brain surgery? How can we stand there as parliamentarians, as lawmakers and say that for our children, those we must protect the most, “we cyar find
a child psychologist so give dem a psychologist”. I find that distasteful, disrespectful, and the United National Congress will not support that at all. [Desk thumping]

Find a specific child psychologist from wherever, and pay them. You can find foreigners to coach our football team. You can find foreigners all over the place. You have foreigners heading up our Caribbean Airlines making US $42,000 per month, and they were not even here on the land. But you are telling “tanty” she cannot get US, because that is a leakage.

You have foreigners down here. You have a Jamaican company winning tenders, $3.81 billion over five years, with a CEO, a young CEO. So why is it that now we cannot get a foreigner or a Caricom child psychologist to take care of our children? I do not see. I do not understand. I am confused.

We also have—moving into the Bill now. Just had to deal with some shop-keeping issues. We come here today to discuss the Miscellaneous Amendments (Powers of Statutory Authorities and Matters Related to Certain Boards) Bill, 2020. The name alone describes how the PNM governs—miscellaneous. Some parts “dey” say we need more board members, next board we need less board members, and Ministers can actually in one contribution justify both.

In one contribution “dey say, oh, well, on dis board we need more people because we need to expand the amount of qualifications and so on, but on dat board is too much people we need to get it down”. This is the problem with the PNM. Everything has to do with a specific plan, a specific strategy, a specific item that requires recusal to bring laws, and that is why the laws do not make sense.

You are coming here to borrow. Already the hon. Minister of Finance in the
budget told us that our debt-to-GDP ratio is at 80 per cent. That is way back. Some economists have said back then that it was at 83.5 per cent and going upwards.

The hon. Minister of Finance said that he is going to borrow $2 billion per quarter. Now we also come here to approve borrowing for all sorts of statutory authorities. Nobody is against Tobago getting anything, but if we are talking about a government and a budget, and we are desperately close to reaching 100 per cent debt-to-GDP ratio, when back in 2019, in September 2019, the accounts showed that we had $124 billion in debt, for my six-year-old daughter to go and pay back, “when she start to wuk in 20 years”. That is a very dangerous situation.

Now you bring a mix-match, an “oil down” of Bills here to say that on top of the Minister of Finance going to borrow, you are going to authorize other people to borrow, and therefore some will be contingent liability, some will be government debt, and the country will not know. We have to be very careful. We have to observe our debt profile, and take care of the budgetary restrictions and discipline, so that our children will not have to suffer as much as we are suffering right now.

It is very interesting. The PNM had COVID-19. They came to the Parliament, they made amendments and they got permission to dip into the Heritage and Stabilisation Fund. Up to now, we do not know how much was spent. The hon. Minister of Finance said $6 billion was available, they spent 4.1. Then we hear the hon. Prime Minister say that they spent 2.6. Then we hear the hon. Minister of Social Development and Family Services come and say they spent $5.13 billion, but when I analyze it, some $700 million is for VAT refunds, another set is for something else, and we have no idea where “de money gone”.

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So that all of us here who are sitting down without information, without a national statistical office, we are making laws and making plans and budgeting, and we have no clue what is taking place. Now you want to say that THA, on top of the $2 billion or $2.5 billion that you get annually, go and borrow. And the hon. Minister of Trade and Industry, to describe lack of Auditor General’s reports from 2003 to present, to describe $2.015 billion missing from the THA as, “some public servant might ah do something”. I do not think we can stand here in a Senate and really tolerate that.

8.45 p.m.

We need accountability. We need transparency. We need to know what are our children are going to have to pay back and at what interest rate. [Desk thumping]

So COVID-19 borrowing, we do not know it was spent but election, big money spending all over, all TV stations, all radio stations, all virtual, all truck. Everybody has a truck paint up, wrap up with left foot right foot, man dancing without rhythm down the road on video and all kinda thing. Now we have THA election on January 25th we come to say borrow. Is this another borrowing, an election gimmick, borrowing? This is what we really have ask here.

Let us go to clause 4. Clause 4 states, and let me read it carefully, sticking close to the Bill, eh. Clause 4:

“The Tobago House of Assembly Act is amended…inserting after section 51…”

Mr. Vice-President: Senator, you have five more minutes.

Sen. A. Roberts: Already, Sir. Thank you, Sir. Time flies when you are not
interrupted. What? Thank you. God bless “meh” this evening. 51A—

**Mr. Vice-President:** Senator, just be absolutely careful how you are making those statements.

**Sen. A. Roberts:** I am very careful, Sir. Do not worry, Sir. Thank you very much, Mr. Vice-President.

“51A(1) The Secretary may, with the approval of the Minister, raise money by the issue of securities for the purposes of meeting any of the obligations and discharging of any of the functions of the Assembly.”

Do you all not find that a bit wide, a bit not focused, a bit—for a THA that has not had Auditor General reports and money has been missing all across to just say, give them this, wield this power without any sort of oversight.

In clause 5 we say, is “The National Institute of Higher Education…” and they are going to change this board from 14 to seven, no explanation. Why was the board 14 in the first place? What were the qualifications? Why are we going down to seven? For what? The National Institute of Higher Education, is this a continued attack on the education? We have the UTT underfunded and programmes shutting down. We have MIC and NESC centres and COSTAATT underfunded and programmes shutting down. Is this a continuation of that? We have GATE funding in half from Kamla Persad-Bissessar and the UNC from an average of 770 million annually down to below 400 million. Is this a continuation of the cuts to the education of our children moving forward? Is this the policy position of the People’s National Movement? Why? What is the reason?

Then you go to clause 6 and you come to the Children’s Authority Act, and you tell me that, and the hon. Attorney General said, they are finding it hard to get
qualified, skilled people at 30 years old so they need to raise the age to 35. Why did they not just raise to 72 because the Minister of Youth Development and National Service under PNM is about 72 years old. So why they did not just, since it is a children’s authority raise it to 72 and hope you could get skills because the oldest youth Minister in the world comes from Balisier House. So I do not understand why are we afraid to give our young people the opportunity to provide service to the country. Are we afraid of young people? Some fellas in here long time and still “doh know what dey talking about”.

Moving onto clause number 7. WASA will raise money with approval of the Minister of Finance. They are going to increase the WASA board now from nine to 11. So in one case for the education of the children you cut the board in half. Then in WASA where you are going to now cut people’s jobs when the report comes in by January and over 2,000 people lose a job, the PNM comes to increase WASA’s board by two people? Why? You always have to look at what direction this Government is going; is always some plan that does not make sense. Because you are going to cut. You have said to the whole nation that WASA is overburdened with labour and it needs streamlining and so on, but you are not streamlining the board.

So you are not streamlining PNM power on top of WASA, you are just going to deal with the workers. And that is the difference between Kamla Persad-Bissessar and the hon. Prime Minister now. [Desk thumping] She considers people. So rather than fixing the leaks, you leave us to suffer, you create an emergency to then come and say, WASA could borrow money, and some big contract is going to come out and who is going to lose out? — labour, people, wages
on top of pandemic, on top of PNM five years. We need an ease up. Look how I have gotten an ease up this evening to talk. Look how free I am. My hands are moving. I want the country to feel free too. Free of the PNM. [Desk thumping]

Clause 7, and we go to clause 8 as we are wrapping up. The Minister of Finance now, he finds that he does not have enough power, he comes to take over, move out the president of WASA and “we putting the douen in power. So the douen in control now of everything”. Already our country is overburdened with debt. We have moved from a country of producers, brilliant, creative, oil industry since 1908. We have now been made by the PNM into a country of parasites, sucking the blood or the world without producing anything.

I thank you, Mr. Vice-President. [Desk thumping]

Mr. Vice-President: Before I call on the next speaker, Sen. Roberts, let me just mention too, as much as your contribution has ended, to just be mindful, because as you are getting excited about what you are saying, your voice also goes up. So you have a mask on and there is a mike in front of you, and I am hearing you as though you are right next to me. So just be a little more mindful when you are contributing especially if you doing it from that distance, that you specifically as you have mentioned in other contributions can tend to get really loud and the Chamber is designed to echo. So just be mindful of that.

Sen. Roberts: May I ask a question, Sir?

Mr. Vice-President: Um hmm.

Sen. Roberts: I was looking through the Standing Orders, what Standing Order is about volume of voice? I need to be guided.

Mr. Vice-President: And that is why—
Sen. Roberts: Ah born with a big month.

Mr. Vice-President: I understand that. [Crosstalk]

Sen Roberts: So if I am born with a big mouth, yuh telling me—

Senator, Senator, Senator. Okay, take your seat. That is why I said and as you rightly reiterated, it is just guidance.

Sen. Roberts: Thank you, Sir.

Mr. Vice-President: Thank you.

Sen. Roberts: I like guidance from you.

Mr. Vice-President: Attorney General.

Mr. Al-Rawi: I understand that Sen. Thompson-Ahye wishes to speak, Mr. Vice-President.

Mr. Vice-President: Sure. No problem.

Mr. Al-Rawi: I await her.

Mr. Vice-President: Sen. Thompson-Ahye and—okay. So we will do Sen. Deyalsingh, if he is ready before Sen. Thompson-Ahye and then Sen. Thompson-Ahye.

Sen. Dr. Varma Deyalsingh: [Desk thumping] I thank you for giving me the opportunity to contribute this evening on this Bill which it is really a lot of things in this Bill that we are looking at. But I am looking at—there are three issues really. One issue is increasing the membership of a board, of two boards and also decreasing the membership of another board. Then we are looking at the funding, you know, the ability for certain entities to fund. And lastly I would look at the idea of the Children’s Authority, some changes that are meant to be.

So, Mr. Vice-President, when I look at this at face value, I thought it was a
simple Bill, but I have heard the arguments on either side. And when I look at the idea that we want to increase the members of the board, certain boards, I think that this might be a little dangerous. It might be a little dangerous because what we might be actually doing is we might be creating loafers on the board, we might be creating loafers on the board, and this is something we have to be very, very cautious of.

And I also like to caution in giving the powers to borrow, you know, other entities to get the powers to borrow because, you see, I have heard the discussion go that, you know, certain entities, we do not have the financial trust that, you know, that they were handling their affairs before. So while I would like to look at the clause 3 which looks at the NLCB, Mr. Vice-President.

Now the thing about the NLCB, it is proposed that, you know, there is an increase of membership from four to eight, doubling up. But then if you look at the track record of the NLCB in a PAC hearing on Wednesday the 14th, 2018—2019 sorry, Mr. Nancis actually gave figures that NLCB made a profit, 3 billion last year, and even the lowest in the last decade was 1.4 billion in 2008. So why change a body that is performing? Why change it? I mean, this is what I am looking at. Why move on it? You know, why do you have this?—you see. So therefore, if you find that there are new parameters that this board has to consider, we simply will say, let us hire out those set skills. Because even when I was on the medical board and we had issues where, certain things we did not know, we simply hired out an expert in that field who would come into us and give us an analysis of the situation. So that is the opportunity that is available instead of increasing it.

Because, you see, increasing the board I must say, you know, the other
justification persons may say is that, oh there are only four or five members there. And, you see, if people cannot make it to a meeting, you know, it means that you do not have a quorum. But remember now, Mr. Vice-President, there are the Zoom meetings, so it is easier to attend these meetings so it is not as before where it may be physically, you know, sometimes physically impossible for some persons to attend running from meeting to meeting. So I am thinking, this board could very well manage, and by managing with the lesser number, we are saving money in that, you know, whole scenario where we are not going to be putting out money to hire more board members.

And, you see, I would like to just draw reference to a term. You see, in psychology there is a phenomena where we see called social loafing. And this is where a person exerts less effort to achieve a goal when they work in a group than when they are working alone. And it is one of the main reasons that groups sometimes are less productive than the combined performance of, you know, more members working. It is better as, you know, they said working as individuals.

So the whole idea of social loafing is, if a group is too big, if there are too many cooks, you find sometimes the productivity will wear off. So I am a bit, you know, cautious that we may be bringing in loafers into this scenario.

There are also, you know, I have to say that, you know, the whole justification of increasing too, it was this same Government who actually criticized the last regime for having 34 Ministries and reduced it to 23. So it seems less might be better. Less will save cost, and the same arguments there, you know, we will, I think, should be applied to this piece of legislation.

Now when I look at, you know, the same views I have there, I would have to
express the same views when I am looking at clause 5. Now clause 5 there are 14 members. Now I am saying 14 members, probably they are not performing as well. I have no problem in bringing down that 14 to seven. It is going to save cost on the board members, and again, the concept of social learning will not be there. But, you see, NIHERST is very important in this time because with our COVID around, NIHERST is the scientific body which will give us the idea of best practice and innovation within our country that might be able to help us in this fight because it is really it is a scientific fight that we need to look.

So I am thinking that they need to perform, they need to produce, you know, scientific benefits and innovations for us to help us at this time. We have seen other countries, persons had used their innovation to actually make the ventilator machines that could now, you know, hook up more than one person. So innovations like this is what we really would need from NIHERST.

So when I look at the boards and the history of boards, Mr. Vice-President, you see the boards that have served the country in various entities in the past have left a lot to be desired. For years we have looked at WASA. When WASA was first conceptualized WASA actually brought in different—there were different water-generating companies in Trinidad and Tobago. And years ago, I think, it was Mr. Kamaluddin Mohammed as the MP actually had a plan to bring these entities in to serve the country better. There were water companies just for Port of Spain in Queen’s Park in the Savannah and all those entities were brought in with a dream that it would actually help. But we have seen the situation where WASA is in today. We have seen the situation where the water situation is, and I had mentioned before even COVID struck here in our shores that, you know, we have
to get a better water supply to our citizens in our fight for COVID, and this is something I am saying we still need. We may need people without any water supply to get tanks given and also tanks being filled by a water supply system.

So I for one would love WASA to, at least, come up to mark, give us their best performance to see how we can actually, you know, get that water supply to our citizens because it is really a shame at the day and age with successive governments and successive boards appointed by successive governments that all the board seems to have is to carry us deeper into the hole of debt.

And this is what I am thinking that, if you have a board that is non-performing, I would say, move them out, put somebody else in that board. And then, you see, I noticed with this present regime there were three boards actually in WASA, there were changes, and I “kinda” welcomed those changes because I have seen if a board may not be performing well, you have your right as a government to change the boards. And then I realized that the new board that we have here now I have seen that there are esteemed persons like attorney Ravi Nanga who I have worked with in another entity then chairman Lennox Sealy, so I have faith in these persons. And I have faith that they can work. But then, you see, if you put those persons in this board, it shows that you have faith that they could perform, and then you are saying that from nine you are going to increase it to 11. So members may feel, “hey, what’s it? I mean, you are putting me there, you are saying that I am good enough to be on the board, but then you are now adding on persons”. You know, you are sending out mixed messages to the members of the board who may think that, you know, you may not have all that faith in them.
So therefore, I am thinking that, you know, this WASA situation is something that will have to have some sort of improvements, but the idea is, we have been fed the talk that WASA is overpopulated by almost 2,000 workers. It was mentioned by a previous Senator that we may be sending the wrong message if we are filling the top with persons and we may have to somehow get rid of the others who are the 2,000.

And, you see, with this WASA board I am saying, we have instances where the RIC has given a sort of, you know, they had given a release where they stated, you know, in their information requirements business plan document, they actually had announced that they are going to look at the rates of WASA and also the rates of T&TEC. And they are, I mean, but they mentioned in their release that they are an impartial, independent body and, you know, we are fulfilling our mandate to protect consumers’ interest while ensuring that service providers have the resources to provide the reasonable quality of service.

So here they are going about their business making their plans to, you know, see how they could improve what sort of rates they are going to put to us and here we are going now and adding on power to the existing boards to borrow more.

[Madam President in the Chair]

So what I am saying is, their work may be redundant. I think it would have been a better idea to wait until the RIC comes up with their suggestions, so we will know exactly where we stand. Do we really need to borrow after their suggestion has come through the system?

And also the fact that there is a subcommittee that we were waiting for to give us some sort of a feedback, I am thinking that it would have been germane to
wait for this subcommittee and wait for the RIC, you know, recommendations before we run to give WASA this extra power.

You see, the extra power as I am saying to borrow, we have had failures of boards in different entities. I look at when BWIA, you know, was dispersed, you had CAL and all the promises, and we go a lot of persons there of good calibre to run this board, but yet sill it is in that crisis.

We look at eTecK, we look Petrotrin. So am I to have faith in boards that were put there? I would not have that much faith. So therefore, if this same board is going to borrow money, how am I, what guarantee, what safeguard would I have that these boards would not put our country in to further debt.

You see, right now a major problem we have in Trinidad and Tobago is the debt we are facing, and the debt comes like a cancer of central government. We have that debt and now we are going to give little satellites. It comes like we have metastasis all over who is going to be sucking out and debts here, and how we are going to look and monitor these areas properly?

Because even when it was mentioned that you have oversight, the Minister has oversight, but oversight of a Minister was there before. The Auditor General’s oversight was there before, yet still we are in this debt crisis for most of our state enterprises. And, you know, even with the Clico scenario we also saw that was allowed to happen even though the Minister of Finance had oversight over Central Bank. So therefore, am I to have faith in that oversight? No. I am thinking we are giving powers that, you know, powers to borrow that we may not be able to say, hey, enough is enough.

So therefore, I am thinking I would have rather Government held its hand
until RIC reviewing rates. I would have rather also looking at the Tobago House of Assembly issue. I know Tobagonians had a hard time before. There was a history where the fall out between our first Prime Minister and ANR Robinson led to a lot problems between Trinidad and Tobago. There were talks of, you know, treating Tobago as a bastard child, not giving them funding, making things hard. So that is a history. And it is a history that we have to correct. And I am thinking, yes, I am all for correcting, but we have heard here this evening and throughout the day that there are a lot of issues where the accountability in the Tobago House of Assembly has questions, a lot of—it was brought up by various Members. I do not want to go into that and it is a fact. So if there is the accountability issues, my take on this is, listen right now we have the Joint Select Committee looking at the self-governance in Tobago. Right now it is public knowledge that that Tobago has asked for a greater cut of the budget, there are different, you know, considerations we have to go. How much from 4%? How much will we go up? So I was thinking, why not wait until the Joint Select Committee—I am looking at this self-governance issue and looking at funding, why not wait until the recommendation is made before we now give Tobago—

**Madam President:** Sen. Deyalsingh, you have five more minutes.

**Sen. Dr. V. Deyalsingh:** Thank you, Madam President. Why not wait, you know, for that? Why jump the gun. Give the Joint Select Committees members and the stakeholders time to say, hey you are getting a bigger cut of the budget and we many not need to have this, you know, concession made to the Tobago House of Assembly where, as I am saying, some members have shown in the past, we are a little uncomfortable that, you know, moneys may be spent that we may not be able
to sufficiently account for.

And then when I look, Madam President, at the fact that we are looking at the issue of children in Trinidad and Tobago and we have seen with the COVID is an increased risk of child abuse, sexual abuse or physical, sexual whatever. So there is a lot problems with COVID added on to what existed before. So therefore I would do anything in my power to see if I could help the Children’s Authority to give them more powers. Because, you see, the Children’s Authority acts as a saviour whereby if a child is abused and we could get that child rescued, put in a safe home, treat that child with love, attention, give that child proper training, take them away from that, that child could be an individual who can be a very productive member of society. People may be abused, but we need to mechanisms in place to be able to rescue them from that abuse.

And therefore, when we look at clause 6, I am thinking that, you know, two things there. We look at clause 6 and we looked the part (a) where, you know, we wanted to increase the age of representative on the board, the youth representative from 30 to 35; and I do not agree with that. We have enough young people, put a young person there. They know, are in sync with what is going on in the young minds. They know what games they play, what affects them, what is their new dating regime. So I disagree with that. Even, you know, the Commonwealth had a definition of youth from 15 to 29, but raising it to 35, I do not agree with that.

And also the changing in 2(b) where we are looking at the fact that we want to change the composition of the board from child psychologist to psychologist. I see no problem with that. Because, you see, that person in the board is really giving guidance, giving guidelines not really treating. So I am thinking that,
Miscellaneous Amendments (Powers of Statutory Authorities and Matters Related to Certain Boards) Bill, 2020
Sen. Dr. Deyalsingh (cont’d)

putting a psychologist, they would have gone through basic child psychology. They would have known what is needed, and they would have been able to recommend to the board. But what I am saying is that, yes we do need however to give scholarships for child psychologists when we are thinking about treating of our children. And I am appealing to the Government to seriously look into that aspect. We have needed child psychologists for years, scholarships may be something we need to think of. Thank you, Madam President.


Sen. Hazel Thompson-Ahye: Thank you, Madam President, and thank you hon. Attorney General for this concession. In introducing the many Bills before Parliament, the Attorney General because the word “children” I imagine was mentioned, he thought that I would be happy. He said he—probably I am smiling under my mask. I am not smiling and I am not happy.

I rise to speak on the Miscellaneous Amendments (Powers of Statutory Authorities and matters related to certain Boards) Bill, 2020. Clause 6 seeks to amend the Children’s Authority Act to delete the word “child” from child psychology or child psychologist, and also to substitute the word “thirty-five” for “thirty” in section 7 which details who are to be member of board of management.

Madam President, in 1989 the United Nations General Assembly ratified the Convention on the Rights of Child. And in 1991, Trinidad and Tobago ratified that convention. That convention has been called a Bill of Rights for children because it details the rights to which children, all children are entitled. It identifies the child as a person under the age of 18 years unless under the law of the particular jurisdiction majority is attained earlier. But the United Nations General Assembly
identifies youth as a person under the age of 25 years.

Our Children’s Authority Act was enacted in the year 2000. I well remember the day when then Attorney General came to the then called—well it is now called the Radisson Hotel, and in the middle of our conference that I had been instrumental in organizing for UNICEF and Penal Reform International and some other United Nations organizations, he presented the suite of legislation with much pride. And we did feel sense of pride. And at the end of that day we did come up with a Port of Spain consensus on child justice. We were very, very happy that we were doing things that many other countries in the international community had not done.

9.15 p.m.

Now, in the convention, there are some core principles, sometimes called fundamental principles, other times called guiding principles, and yet other times, umbrella principles— which is the term I normally use— the umbrella principle which governs all the other principles. The 20th of November is the day when we first had the Declaration on the Rights of the Child many years ago, and when this new convention came into being, the General Assembly, it was also the 20th of November. So all over the world, the 20th of November is the big day for children. On the 20th of November this year, I opened my newspaper, as I do every single day, and in the editorial of the Express, no less, the editorial spoke about the guiding principles. It mentioned non-discrimination, it mentioned best interest of the child, and it mentioned the child's right to life and survival—right to life and survival and development. That was three. I read the editorial again and counted three.
So I dashed off a letter to the editor saying that, you know, you have a responsibility to educate persons on child rights. In fact, the Government has that responsibility to make sure the convention is known to adults and children alike all over Trinidad and Tobago. And we expect that the media would be assisting the Government in that task. And therefore, I expect that in writing something like this that you would be very careful to be accurate in how you are presenting your information. And you had left out a very important principle, which is the rights of the child to be heard, to have his views respected.

In crafting our Children’s Authority Act, the framers were well aware that we are dealing with children and that children’s views have a right to be heard. And it is for that reason I dare say, that included in the board of management was a youth representative. Perhaps it was thought that it would not be wise to have someone deemed a child. So you went one step further and we had a youth representative which was designed and which was said to be any person under the age of 25 years. Subsequently, that part of the Children’s Authority Act was amended. We went to age 30 years. Today we are looking at going to the age of 35 years. The child rights committee, which is the committee of experts, who sit and look at what countries around the world are doing in terms of implementing the convention, they put out a document, which is No. 10, General Comment, “Child’s Right and Juvenile Justice”.

And at that time the committee said that no country should have an age of criminal responsibility less than 12 years. We had already decided that at our conference here in 2000. So when they came up with that, the international committee in 2007, we were far ahead. And last year, they changed to age 14. So it
is very, very important that we look to see how this child’s right is to be heard, how we deal with children and that children must always be involved. Why they moved to age 14 is because of the work of the neuroscientist. And they have said that, you know, until the age 25 that individual is not yet fully matured. And the strange thing about it, the only people who really recognize—the only professional body who recognizes that age 25 as being a very important age, are the insurance companies. And is that reason that if you have a child under age 25, and that child is driving, your insurance is going to be higher.

So that age is very important. So to come here today and we move from age 25—under 25 to age 30, to age 35, I think it would be a wrong step. It is very easy sometimes to forget the child’s right to be heard. But it is a very important right to have that voice of the child. How someone thinks at age 25 is very different from how someone thinks at age 35. And I do not think the neuroscientists have to tell us that. And it is very easy sometimes to forget, you know, that these core principles must always be embodied in whatever we do as far as children are concerned. When I was doing my master’s degree in international rights of the child, I was sitting in that exam room, and I said I reached that point, four principles, and I was only getting three. And I said, “Lord Jesus, you know I know this at the back of my hand. Tell me what it is,” and it would not come. I said, “Lord, help me.” And the Lord said to me, “Girl, leave the space. I would tell you in the end.” And I went through the exam, and right before I finished, “the child’s right to be heard”, I penned that in. It is easy to forget.

But what I blame the Express for, you made a mistake, go back and correct it. And we must always recognize how important it is to have that young person’s
voice. I know there has been a bit of difficulty in sourcing. The Attorney General spoke about skill sets. But I was fortunate to be invited to a youth awards function at Queen’s Hall. I was amazed at what was happening in Trinidad and Tobago. Amazed to see the kind of things that are happening. We have a lot of talented people. Now, people do not advertise for positions. You do not normally advertise. So how do you get the word out is always very difficult. I myself tried to source someone, you know, who I could put forward—a name to put forward. And had I known that there was this difficulty continuing, certainly I would have continued searching. I do not know how far afield the net was spread, but I am sure that we can find some children.

Insofar as the psychologist— the dearth of child psychologist is concern, I spoke a few moments ago with a former head of the association of psychology—the psychologist association, and what she was telling me is that having spoken to another person who has been head of the psychologist association in Trinidad and Tobago, is that there are about 10 persons who are in fact qualified in that soft speciality and have been working with children for some years, and she mentioned a few names. I see the Attorney General shaking his head. I can only report what I just got on the telephone, you know. So, I am saying, if perhaps you could hold your hand on these two provisions for a little while, and let us search, let us tarry a while and see what we could come up with. I know that it is not the best to be without the board, but I can tell you, between the two boards that I was in—I was involved in, that there was a longer break, and the Children’s Authority did not fall down. So that there is no board now. We need a board of management. But perhaps now that it is out there that we are looking for these two skill sets, these
two persons in this speciality, that something good may happen. Perhaps people were not aware or that the wrong information was put forward, but I think we can do better, Mr. Attorney General. And I would urge us to please do what we can do for our children. It is very important. I thank you again for the accommodation, both to you and again to, Madam President. [Desk thumping]

The Attorney General and Minister of Legal Affairs (Hon. Faris Al Rawi):
Thank you, Madam President. Madam President, I wish to thank all hon. Senators for their very lucid and certainly well-intended contributions. I will not be pejorative and exclude the Opposition from the recommendations of compliment. But permit me to just dive quickly to the task of responding.

Two main issues on the Independent Bench tonight: child psychologists, age of 35. Two main issues in common, Sen. Dr. Deyalsingh, Sen. Hazel Thompson-Ahye, people for whom I have great respect, leaders in their fields. We also heard a very important echo and submission coming from Sen. Dr. Dillon-Remy. So, permit me to dive to that. Sen. Thompson-Ahye was absolutely correct that the interest of the child has to be paramount. That is why we have a Children Act; that is why we have a Family and Children Division; it is why we amended in the Family and Children Division Act, 19 laws in consequential amendments in the Schedule; then in the Miscellaneous Provisions Bill, 23 laws there; it is why we developed the Drug Treatment Court for children; it is why we anonymize children records, it is why we amended the composition of the board of the Children’s Authority twice.

We did not do that lightly. We did that because we could not find the capacity for the board in a number of ways. The capacity for the board is required
to specifically populate the sub-committees of board. Remember, the Children’s Authority manages adoptions, children issues, et cetera, and their sub-committees must go to work. We have heard two hon. Independent Senators say, “Hold your hand Trinidad and Tobago and the Children’s Authority will not fall down without the board.” I agree with hon. Senators that the sentiments are correct, that we really ought to have the focus upon child psychology and we really ought to capture the spirit and intention of the voice of the child, hence the child representative. But let us apply that now to the factual circumstance. And what does that tell us? The Office of the Prime Minister and the Office of the President have confirmed that in Trinidad and Tobago, with the specialization in child psychology, that there is in fact only one registered child psychologist in Trinidad and Tobago. And I will repeat that, one registered child psychologist.

I accept that we can look elsewhere. Where do we find that person in COVID? How do we attract that person to come to the board? We are not talking about the utilization of the skill of child psychology by way of referrals for the children that come before the authority and are subjected to the purview of the authority. That is not what we are dealing with. We are dealing with a member on the board of directors. So, do we bring that person in meeting to meeting from Jamaica, from the United States, from the United Kingdom, where the skill exists? Do we ask them to move to Trinidad and Tobago, and come and join the board of directors? Because that is what we are talking about. The board of directors of the Children’s Authority having a child psychologist. We are not talking about a child psychologist for the skill set of that application to the children who are before, or the families who are before the Children’s Authority. They are two completely
different issues. I agree a child psychologist should be available but that child psychologist cannot sit on the board and be hired by the board and paid by the board, and children referred to by the board. That is section 29 of the Integrity in Public Life Act. It is a conflict of interest that you have to refuse yourself from.

So, do we wait for the master’s programme and the bachelor’s programme to produce that skill set? We cannot. We have to recognize that the number of reports coming from the Children’s Authority have increased. Why? Because we have a Family and Children Division now. We have a Children Court now for the first time. We have levels of reporting going through the roof. Why? Because we have operationalized the system: plant and machinery, people, processes, law; Family and Children Division Bill, 19 amendments to 19 laws, Schedule; miscellaneous provisions, 23 amendments, 23 laws; Drug Treatment Court; child advocates in the Solicitor General’s Department; international management of children’s rights issues in the Office of the Attorney General; gender and children’s issues birthed an operational team at the TTPS; hotlines. And what are we seeing? We are seeing in the reports of the Children’s Authority, the reported abuse of our most innocent and beautiful children between the ages of zero and three months being raped and reported to the Children’s Authority.

I, in good conscience, cannot wait for that relief to be brought to the board by waiting for someone to matriculate from a master’s programme that Trinidad and Tobago does not have right now to put the board member on. What we are asking, in the context of section 7(2A) and section 7 — section 7, we are saying, replace child psychologist with psychologist.

**Sen. Dillon-Remy:** Attorney General, just a question. Since it is such an important
matter, could there be like a clause where this does not stay forever? I am not sure how that would be done. So we just do not put a psychologist there and the next 10 years, we just have the same thing there.

**Hon. F. Al Rawi:** Thank you, hon. Senator. What we are doing right now, we are putting the broader skill set of psychology knowing as follows: we know that we have the following situation in Trinidad: There are no standards in Trinidad and Tobago governing the profession of psychology, and there are no specific local training offered at the University of the West Indies or UTT, at bachelor's or master’s level in child psychology. We know that we have practicing psychologist for children. We know that. We know we have people working with Centre for Human Development. We know that we have specialization by way of work in the field of child psychology. But that to be registered as a child psychologist, that you have to have the master’s certification and registration. We know that that certification can only happen at master’s level abroad and it is certified that there is one child psychologist on the list of professionals of the psychology association of Trinidad and Tobago.

So, what we are saying is, amend the law, put psychologist for now, take the people with the training in child psychology, the practice in child psychology, bring them on to the board, and keep the child psychologist for the treatment. We need the child psychologist for the treatment. We cannot conflict out the board, Member, and say, “Well, hey, you on the board, that means you cyar take a single case. Hard luck.” Next thing you know Sen. Mark will be saying how many times we recuse yourself from the board? Thirty seven times, for the right reason. But the law says if you have a conflict of interest, recuse. It is only in this country, doing
the right thing falls into odium, you know, from some people’s perspective.

So, the issue of child psychology and whether we can put a sunset clause on to that. We do not need the sunset clause yet, because the intention is that we will take the wider genus. We will take plants and then describe the categories of plants by way of practical work, and our Ministry of Public Administration and the Ministry of Education, in the reformulation of scholarship and bursaries, our governmental priority and policy is for fields exactly like this. But we got to train them up. And I respectfully disagree with Sen. Thompson-Ahye. I cannot wait for the board to wait for that. No adoptions, no referrals. How can we leave our most vulnerable to wait for somebody to qualify so we get more than one child psychologist? Respectfully, whilst I understand the intent, we are missing the bus entirely here. And therefore, my humble submission is, we have to appoint a board. We have to go with the category of psychology. We are going to take the practical experience of the child psychologist and we are going to educate our people into that capacity.

Let us deal with the concept of youth. One is obliged to look at the law. We are looking at the concept of the youth representative in the context of section 7(2A). Because the youth person has to be skilled in the following areas, the youth person has to have schooling in the areas specified, and if you permit me to put that into context. The specialization is, the youth must come from the following fields: child psychology—well you know the problem there—social work, paediatrics, education, accounting, family law, management, administration, psychiatry. So far, we get people in the 20’s, usually about 27 or so, but then you age out quickly. You age out. So you got a 29-year-old and he can only hold on for a year. You get
a 28-year-old, he could only hold on for two years. You need some degree of continuity. Therefore, going to 35 is not a travesty to the thing we want to protect. You are going to age out at 35. That is not a far cry from 30. What is the magic number between 30 and 35? When does one officially retire or when is one too young or when is one too old? Realistically, 35 is not an objectionable number. Because you have to look at the 35-year-old who is qualified in the fields that we have just described. And if we are looking for the best opportunity in the management of the Children’s Authority, why not go for a younger person who is qualified and better qualified? Because it is not just the fact that you are sitting on the board, it is that you have a skill set that is apposite to the best interest of the thing which you are managing, which is the Children’s Authority.

And they have done a phenomenal job, all persons who have sat on the Children’s Authority board. We have the likes of Hazel Thompson-Ahye sitting on that board, Senator, as she is here. We had Stephanie Daly, we have had Mr. Benjamin. We have had so many champions of Trinidad and Tobago served and served commendably, under whatever administration, on that board. And I salute each and every one of them for their yeoman service to Trinidad and Tobago. But respectfully, this is not too hard a tasks to agree upon. There is a distinction to be had between the child psychologist on the board and the child psychologist in the field? So I hope that that helps to give some degree of comfort to hon. Members. Relative to Sen. Mark’s questions, permit me to address those. May I ask what time is full time, Madam President?

Madam President: You finish at six minutes to 10.

Hon. F. Al Rawi: Much obliged. I do not intend to take all of that time, should it
please you. Madam President, we had some questions coming from Sen. Mark, they included: questioning debt security, the issue of whether we were budgetary or developmental in our purposes, whether the THA had any credit rating, what will we be doing in terms of national debt? Does it affect debt to GDP, in essence? THA’s revenue. How much THA is going to do? You know, I have to tell you that there was an expression in Trinidad and Tobago, there are two. It is vernacular, permit me. It is called “fast and out ah place”, and then the other expression is “bold face”. And let me tell you why I have referred to those two expressions: I find it curious that the UNC has all of this love for the THA and for Tobago, when as a national party, they cannot field a person to run in a Tobago elections. Or even more importantly, they are incapable, consistently so, of finding candidates in a general elections in Tobago.

**Sen. Mark:** Madam President, 46(1)

**Madam President:** Attorney General, perhaps you can get to the Bill, please, on this issue.

**Hon. F. Al Rawi:** I am squarely on the Bill, Madam President, and I am responding to the debate, and I would press on.

**Madam President:** Attorney General, I have actually asked you to get to the Bill, so just forget about that path and you can just move on, please.

**Hon. F. Al Rawi:** I am squarely on the Bill and I am responding, and I will take your guidance. I am on clause 4, the THA, Sen. Mark and his contributions, and I will tie them together. That one line having been said, Madam President, in answer to Sen. Mark’s question, and I hope you consider this relevant as to whether we are being developmental in role or budgetary in support. The
amendment before the House is really very clear. And that amendment is section 51A, clause 4.

“The Secretary may, with the approval of the Minister, raise money by the issue of securities for the purposes of meeting any of the obligations and discharging any of the functions of the Assembly.”

So, the answer to Sen. Mark’s question, if he does not consider it relevant, I do, is quite simple. Your obligations are obviously inclusive of your debts and development. It is pellucidly clear. And your functions set out in sections 24 and 25 of the THA Act are pellucidly clear as well. So, it is both developmental and also budgetary. That is ex facie, it is on the face of it, for anybody who wishes to read it that way. Relative to Sen. Mark’s curious position about the Minister of Finance in the T&TEC Act, and this all powerful Minister, and where he comes from to replace the president. I mean, Sen. Mark is respectfully guided to the Constitution. There is a free copy that was given to him many times over, I am sure. It is available online. I invite the hon. Senator to go to section 80 of the Constitution. Section 80 of the Constitution sets out that this President means the Cabinet, unless you put words that restrict the operation of the President.

If you are saying “the President, acting in own discretion”, well then, it is that; if you are saying “President in consultation with the Leader of the Opposition and the Prime Minister”, then it is that. But, to refresh Sen. Mark’s mind, President means the Cabinet. And this allegation that the Minister of Finance has no place in this law, well, that is just ludicrous. It is ludicrous quite simply because the Exchequer and Audit Act exists. The Minister of Finance is Treasury. As Treasury, he has the power to do the debts and borrowings of Trinidad and Tobago. He acts
as Corporation Sole. One of the most important characters in the financial landscape of Trinidad and Tobago, in the context of our Constitution and our legislation, is the Minister of Finance acting in his own capacity. Are other checks and balances? Yes. We have the development loans, we have the company guarantees, we have our ceiling limits for borrowings which we do by way of Motions; we have to amend those things. We have the overdraft principles. We have all of these structures which are common to Trinidad and Tobago’s landscape and history and knowledge, and Sen. Mark is not a newcomer.

Sen. Mark has served on the Public Accounts Committee, the Public Accounts (Enterprises) Committee. Sen. Mark has served in this Parliament for decades. One would think that he would therefore be open to at least the osmosis of education by way of association, of principles, of law that are relevant to the question asked by the hon. Senator. Osmosis. Osmosis. The transmission via semi-permeable membrane in a context of an area of high potential moving to an area of low potential, Madam President. I do not know where the high potential is or the low potential is, but I encourage the hon. Senator to read.

**Sen. Mark:** I did not recuse myself 37 times from Cabinet—

**Hon. F. Al Rawi:** Because you have no interest to recuse from.

**Sen. Mark:** —because of corruption.

**Sen. Mitchell:** You were never in the Cabinet.

**Hon. F. Al Rawi:** Oh my. [*Interruption*] Madam President, I hope crosstalk is not—

**Madam President:** It is quite late, and I do not know about you all, but I would just prefer if we could stay on track, and let us finish this Bill. Okay? So, the
crosstalk, let us just stop it now. Attorney General.

9.45 p.m.

Hon. F. Al-Rawi: Thank you. I am debating, not cross-talking and I am guided.

Madam President: Attorney General, I just made a ruling, there is no need for you to say what you are doing and what you are not doing. Just let us get on with the work, please.

Hon. F. Al-Rawi: Thank you, Madam President, I am getting on with it. Madam President, I look to the further submissions coming from the hon. Senator, as late as the hour may be, I think it important to answer just a few more concerns raised.

This conspiracy theory about chopping people and cutting people and firing people and having some form of odium for people paying their fair share and due in this country, whether it be in respect of the submissions made on WASA or in respect to the submissions made in T&TEC are just not on, the issue of the composition of the boards of directors and the numbers, Madam President, these are very squarely within the realm of explanation for skill sets, for subcommittees, et cetera, particularly to answer Sen. Deyalsingh in the context of the NLCB. The NLCB structure is in the expansion of its board of directors because four directors is just simply too limited a number to work with.

Madam President, the RIC’s exercise in the rates and functions of electricity is an ongoing exercise just to confirm that. We are not in the realm of the untouchables as put forward by Sen. Mark. The untouchables in this society would be, SIS and Panama where there is no extradition treaty. Those are untouchables, they do not exist in this realm.

Madam President, in summary the legislation before us is certainly well set
out and well proportioned. The structures before us can be substantiated by reference to the law for those who have the osmotic potential to absorb it and I mean only Sen. Mark, and Madam President, I do not think there is much more to answer so 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.

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

Clauses 5 and 6.

Question proposed: That clauses 5 and 6 stand part of the Bill.


Sen. Vieira: Clause 6, Madam Chair—

Madam Chairman: Yeah.

Sen. Vieira: Clause 6 deals with the change to 35 years old? I move through you, hon. Attorney General, that we go back to the 25. The United Nations General Assembly defines a youth as someone between 18 and 24 years of age. It is a time when one is young, it is a condition of being young, 35 years is not a youth. At that stage you have children. You are going into your middle age. We are looking here for someone to represent the youth and we have some very bright young people doing A levels, at university, under 24 years old. So I do not agree with this.

Madam Chairman: So you are going to deal with clause 6 as well? Alright so let us just deal with clause 5.
Clause 5 ordered to stand part of the Bill.

Madam Chairman: And we revert to clause 6.

Clause 6 reintroduced.

Sen. Richards: Thank you very much, Madam Chair. Through you to the Attorney General, I certainly support Sen. Vieira’s assertion that it should not be moved, because I was not respectfully compelled by his argument and I do not see the issue of them ageing-out to be an issue. As a matter of fact, you may have a chance to get more young people to get the kind of experience they need, or younger people, sorry, into that sort of arena and we have spent so much—we have invested so much training young persons at undergraduate and postgraduate level who can fit these positions. I am not convinced that it should be changed.

Sen. Lutchmedial: I do not think that it is necessary for us to move the age up. I think that there are certainly enough qualified people and again I do not think that the ageing-out—I think change is a good thing for different perspectives to come. So I would like to support the position of Sen. Vieira, please.

Mr. Al-Rawi: Madam Chair, I certainly respect all my learned colleagues in their submissions. I come here armed with the practical experience of trying to get people acceptable to the Office of the President. It is the Office of the President that has made these observations when the rejections come by way of the umpteen recommendations that come in. I mean this is Parliament and we must speak. So we did not come here lightly or with any circumstance. We came here with a backdrop of an inability to populate the position and then the complaint coming from the board itself under several boards that they were losing representatives too quickly and then therefore subcommittees fell apart, et cetera. So it is a practical concern.
Whilst I accept that it is certainly preferable for us to be looking towards a youth person, we have encountered the practical operations of the board. And for those of us that may mistrust what is being said I have an obligation to put it on the record that this is a habitual problem that is coming up over and over with the board. Now, Sen. Lutchmedial said something which was quite attractive, that there is no problem with ageing-out and change is good, but continuity is equally quite important. So I am in a bit of a conundrum here. Clearly there are some strong views being expressed and I am in the strong view of the written papers coming back at me and the experience coming from the Office of the Prime Minister and the recommendations of the President’s Office. [Crosstalk]

**Madam President:** Just one second. Sen. Thompson-Ahye.

**Sen. Thompson-Ahye:** I also put forward my views on this. I feel strongly about it. I have gone and explained, and having sat on—having the advantage of having sat on the board and seen the changes on people’s resignation from the board, that was never an issue as far as I am aware, that people leave, the youth. A number of people have left the board for other reasons over the years. And the fact is about populating the committees, when I sat there we had not made the amendment to extend the number of persons. So you have a longer board, you have more people on the board now which makes it easier in terms of populating the subcommittees. As I said before, Trinidad has a lot of talented youth, I have met with them, I have read of them and I think that we ought to cast our net wider afield and we will—too many people at UWI, at law school and you know, who can fit that bill. But they just have not been put forward.

**Mr. Al-Rawi:** Madam Chair, I have just leaned over to the Leader of Business in this House. I will declare for the record I have no horse in the race. My obligation
is to put forward the facts. I am here to take instructions and to sense the will of the position. If we are destined to butt our heads, then so be it. If that is the will of the Senate and we have a difficult time and we ignore, as we are entitled to, let me not put it that way, eh. This Parliament is entitled to ignore positions if it chooses to. This is the will of the Parliament, we make laws for the peace, order and good governance. If that is the prevailing will, I will inform my Cabinet that that is the position and seek to delete that provision in the clause that makes the recommendation to go to 35. I have put my caution on the record. I may come back again and hopefully you would say “well, boy, you told me so”, like you did in other places.

**Madam Chairman:** So you are going to delete—

**Mr. Al-Rawi:** Should it please you, Madam Chair, if I look at it in clause 6, it would be in paragraph (a), clause 6(a) of the Bill and then we would renumber. I am sorry for the inconvenience. [Crosstalk] So what it would be, the proposed amendment would be:

   delete clause 6(a) and number (b).

**Sen. Vieira:** Thank you, Madam Chair. Hon. Attorney General, I heard you speak about the problem with “child psychologist”. Let me put it this way. I would not want a tax attorney representing me in a murder trial, I would not want a foot doctor doing brain surgery on my child. Child psychologists assess and treat children and adolescents. They help children cope with divorce, family issues, school, death, they deal with learning disabilities, autism. It is a specialty focusing on the formative years. So I do not think we should be looking to water it down. If there is a dearth of getting people with either a, Master’s or doctoral degree, if there is a problem with licensure because we do not have a role for psychologists, I
understand it. And my suggestion would be, define “child psychologist” as someone who has had training or who practices in or who has a special interest in child and adolescent psychology. That would resolve it for the time being. But you see just coming down and just saying, “psychology”; I am not happy with that at all. Thank you, Chair.

**Sen. Richards:** Thank you, Madam Chair. And a question, hon. Attorney General through you, Madam Chair, and a suggestion because I am getting—because this is also my field—a lot of information from persons, professionals in the field who are extremely concerned about that wide area that this list proposed. What is the process for registering someone as a child psychologist and where is that registry reposed?

**Mr. Al-Rawi:** May I, Madam Chair? Madam Chair, the information—we have had a number of persons recommended for years to this position of child psychologist and the Office of the President has rejected all. So the Office of the President, is the ultimate arbiter of what it is. The Office of the President has come back to say that the training has to be a Bachelor’s in the area or a Master’s level in the area of child psychology. You have to be certified and then there is a registration in the field of child psychology listed as a professional of the Psychological Association of Trinidad and Tobago. So that is where the skill must be registered. It is that you must be registered on the list of professionals of the Psychological Association of Trinidad and Tobago. To be registered there you have to have the Bachelors in child psychology and the Master’s in child psychology.

**Sen. Richards:** Thank you, AG.

**Sen. Vieira:** I actually know something about that Association. It is not a
regulatory body. It is more a club association. They have not even got a full proper membership list. So I am sorry, AG, I am not persuaded.

**Mr. Al-Rawi:** Hold on, you caught me in the middle of my submission. I was asked a question how is this done, I replied, the Office of the President of the Republic of Trinidad and Tobago has applied the following standards. We have submitted umpteen requests and they all have been rejected. Not for want of trying. So I am just not finished yet. I catch the point folks, allow me to please at least address the issue. It is a heartfelt issue that we need a child psychologist, we agreed because we put it in law unless you forgot. We put it in law so we have tried for a long while to put this position and I am hearing some of our Senators, all of whom I respect, say, they want a child psychologist. So I am answering the questions as they come.

One, the Office of the President, has put this forward. I have on many occasions argued the point as well as Attorney General that I disagree, we send an opinion, it is rejected, we send an option, it is rejected in certain circumstances, right? So we have this issue of child psychology. In looking at this and having heard the debate we had come up with a potential tooling, because I like Sen. Vieira’s point of trying to define a child psychology. I fear that that may be problematic so we had thought of something else and it would be along this line: we keep “child psychologist”

or where this qualification or skill is not available, psychology. That is a partial solution, because again it gets back down to the “are you qualified, are you not”. The problem in defining it in a de facto way as opposed to a de jure way becomes a little bit complicated and I am not qualified in this area to have a view on it. So that is my problem on the issue if I state it openly. I have no instructions, I do not have the qualifications and I could not say about that.

So a potential for discussion through you, Madam Chair, if we go to the
structure of:

child psychology

—and it would be instead, if hon. Senators are open to it:

or where this qualification or skill is not available, psychology.

So it sends Parliament’s intention, you want this skill and that anything else is a default and really that would now open the de facto door to say, well, okay, this person is a psychologist but has experience in or has training in or has practice in—and as Sen. Richards told me during the break, he studied child psychology for two years but had not done the clinical aspects and therefore cannot call himself a child psychologist, but has training in the area. I do not know what the views are on this, Madam Chair, but I am certainly wide open to suggestions.


Sen. Richards: Thank you, Madam Chair. I have a suggestion that may also prove to be productive and useful, and widen it to:

clinical psychologist or counselling psychologist or neuropsychologist who has training and expertise to treat children with clinical issues.

So it widens the possibility of specialists who have training and/or expertise in child psychology but may not call themselves a child psychologist. So:

clinical psychologist or counselling psychologist or neuropsychologist with training and expertise to treat children with clinical issues.

So that you have a wider repository of possibility and you have certainly persons trained in those areas in Trinidad and Tobago who would have expertise and/or training in child psychology. So you are not as limited but there is still specialty
involved in the specification.

**Mr. Al-Rawi:** Madam Chair, could I just borrowing from that excellent suggestion. My fear in going to the specific wordings of clinical psychology and neuropsychology, et cetera is that again, I am entirely unqualified to say what the parameters for those would be. But I am wondering if we were to further attenuate the “psychology”. Because the mischief now is, okay, you did not find a child psychologist, we know we have one and the persons says no, so you are back to the same mischief that we do not want which is “psychology” which may be too broad, right? How about if we were to say:

psychology
—and we attenuate that language with—so we say:

or where this qualification or skill is not available, psychology with training and experience in child psychology.

Because training and experience would meet the muster, it is what we have locally. We have a number of people practising in the field, have the training and experience but they did not yet get the actual certification. Would that assist?

**Sen. Richards:** Through you, Madam Chair, not necessarily because it did not meet a particular designation benchmark. So anyone could say they have training or experience but at what level, what is the benchmark for acceptance?

**Mr. Al-Rawi:** The problem is I cannot say what clinical psychology and neuropsychology is either. I do not know what the training and experience is in that or the subspecialty field.

**Sen. Richards:** With respect, to call yourself a clinical psychologist or counselling psychologist is a trade specialty that is designated.

**Mr. Al-Rawi:** Again, I come to the concept through you, Madam Chair, of de
Miscellaneous Amendments
(Powers of Statutory Authorities and Matters Related to Certain Boards) Bill, 2020 (cont’d)

facto and de jure. I do not know what the technical qualification for that is, whether it is a professional rating to it or not. So, if I were to go to the bracket of drafting, Parliament, if a court is interpreting or the Office of the President is interpreting this, the Office of the President would see the following: child psychology, number one, or where this qualification or skill is not available, psychology with training and experience in—

**Sen. Richards:** Can I add one caveat?

**Mr. Al-Rawi:** Of course, please.

**Sen. Richards:** At the Master’s or doctoral level.

**Mr. Al-Rawi:** At the—?

**Sen. Richards:** At the Master’s or doctoral level.

**Mr. Al-Rawi:** But that is the problem. That is the very problem that caused this debate. We do not have Master’s and doctoral level in this field.

**Madam Chairman:** Sen. Richards, could you just hold it? Sen. Thompson-Ahye.

**Sen. Thompson-Ahye:** I just want to mention that over the years I have interacted with the Association of Psychologists and part of the problem that they have spoken to me about is that there is no requirement for psychologists to join the Association. So it is not like the medical field, it is not like the law field, so you have people out there who are not part of the Association and who are practising. Maybe that is why the former President could tell me just now that there are 10 persons who could qualify under this specialty. I do not know if they are not registered. But the person she would have spoken to, one of them is definitely a child psychologist.

**Mr. Nakhid:** Thank you, Madam Chair. Well, I have listened to everybody speak about it, what they have heard and they have had contact with, I have personal
experience with it. My son Dimitri is a qualified child psychologist. The modalities that you have to go through are significantly different than anything else you have to do. The specialty training you have to do to be a qualified child psychologist is significantly different. The amount of field trip and field work that you have to do is way greater than anything else you have in neuropsychology and so.

And by the way, Sen. Richards, that clinical psychology you are talking about, you can be a child psychologist, you have to be a clinical psychologist as well. But you can be a clinical psychologist, does not mean that you are qualified to be a child psychologist. [Crosstalk] No, but what you were suggesting is that you want to broaden the ambit and that is not acceptable and I do not think it is what you are looking for, Attorney General, in order to have an effective policy.

**Sen. Khan:** I think we are missing the point, you know. The AG tried to explain it in his wrap up. This is not a psychologist going to treat a specific child for a specific ailment or challenge. This is a member of the board of directors who makes general policy. So the AG’s language there, if, if you do not have a child psychology—with experience in that, it will qualify you for the board, you understand enough of the field so you can make general policy. You are not going to specifically treat a particular patient.

**Sen. Lutchmedial:** Madam President, if it is that—[Interruption] and I agree. If it is that we have one qualified child psychologist who has to treat the children, then I think that the wording, “a person with the qualifications…psychology, but with”, I do not know if a certain amount of years of experience with treating children, because I see a lot of these people on the Trinidad and Tobago Psychologist Association say that they specifically treat children. So we do have people even
though they do not have the Master’s degree, they specialized in the treatment of children. So, if the Attorney General could work out that wording and just know that—because people tend to say that they have experience in something, but it is like they have been doing it for six months. So that cannot work. So we would have to work out a wording I think, where there is a significant amount of experience in dealing with children, so any psychologist who has a significant amount of, I do not know if we can agree on a time frame or a time period of the amount of experience you have, I think that would work in the circumstances for a board member.

**Sen. Nakhid:** Madam President, policy to be implemented effectively, it comes down to personnel. You cannot have this broad ambit that the Minister of Energy and Energy Industries is talking about. You cannot have that when it comes to child psychology. It will not work.

**Madam Chairman:** Attorney General, I think you have heard every one.

**Mr. Al-Rawi:** Madam Chair, I think we are actually all on the same page, literally. Again, just for the record’s sake. [Crosstalk] Sorry. I respectfully believe that we all are on the same page. I have discharged my duty to say that the Office of the President has repeatedly rejected all of the persons taken forward who have the experience and training but not the high-level certification in child psychology and this was the motivator for the proposed amendment.

Secondly, I thank Sen. Nakhid for pouring some serious light on this issue. We are very fortunate to have his perspective on the table. The point that my colleague, the Leader of Government Business raised was really that the psychologist would not be at sea because the psychologist has a general understanding of the area, may not be an expert in the particular area but could be
advised or informed by the expert. However, I catch the general gist of the debate which is, look, notwithstanding that, let us try and keep as high a level as possible on this point to bring the greatest skill possible. I understand that.

I think Sen. Lutchmedial hit the nail on the head. How do we wordsmith it so that we achieve all of the objectives. The fact that Sen. Thompson-Ahye raised the fact that there are a number of people according to the past President who practice and have training and experience in this field, captures it, because that is really what we are looking for, training and experience in the field. So to be a psychologist you have to qualify. We know that, you are qualified. And then to have the subspecialty of training and experience in the field, that gives you a further number of years in the profession. So if I could respectfully just put a general principle to be a catch on this point, it would be:

child psychologist, or where this qualification or skill is not available, a psychologist with training and experience in child psychology.

Because that would capture all of it. You would have to be a—your first option is a child psychologist. In default of that person we then have somebody with training and experience. And nobody could take away from someone’s CV the fact that they having training and experience. I am not saying “or”, eh; training “and” experience. The President, the Office of the President, past President, current President, they look at your CV to look at the training and experience and it must be vouched. So that has been the difficulty in overcoming that hurdle.

**Sen. Richards:** Through you, Madam President, AG, I am comfortable with that because then there would be the vetting process by the Office of the President in that case anyway.

**Sen. Vieira:** Ditto.
Mr. Al-Rawi: So, Madam Chair, the words so that we could put it into law would be in clause—so in that subsection (b), remember we just deleted the (a) and we deleted number (b). So it would read: subsection 2(b)(a) by—let us strike the words “deleting the word”, just put a line through that, “deleting the word ‘child’”. And if we could just insert the following words instead. So:

After the word “by” inserting after the word “psychology”

And continue:

the words “or where this qualification or skill is not available, psychology with training and experience in child psychology”.

10.15 p.m.

With the expression of sincere gratitude to all to helping us to get to there.

[Ms. Eversley confers with the Attorney General] Deputy CPC is saying that there should be a comma after the word “available”. Yes, Madam Chair.

Madam Chairman: So hon. Senators, the question is that clause 6 be amended, by deleting 6(a), and by deleting number (b), and further amending by deleting the word “child” and inserting after the word “psychology” the words “or where this qualification or skill is not available, psychology with training and experience in child psychology.”

Question agreed to.

Question put and agreed to.

Clause 6, as amended, ordered to stand part of the Bill.

Clause 7.

Question proposed: That clause 7 stand part of the Bill.


Sen. Deonarine: Thank you, Madam Chair. I just have a question with respect to
whether this debt would be guaranteed by the Government or not?

Mr. Al-Rawi: Debts are always open to being guaranteed or not in any circumstance.

Sen. Deonarine: Through you, Madam Chair, a possibility exists that these securities may not be guaranteed? Is that a possibility?

Mr. Al-Rawi: From the field of financing I can say, yes. Guarantees are provided at the request of a lender who wants to have security for obligations. So it is the lender’s request that is then considered as to what the collateral for the security will be. The collateral for the security is often, though not always, vouched by a request for a guarantee.

Sen. Deonarine: Okay. So then in that case, through you, Madam Chair, given the financial position of WASA, what consideration has been given to solve these problems before even considering, allowing, granting them the opportunity to issue this debt?

Mr. Al-Rawi: Madam Chair, WASA Act currently can be interpreted, with a lot of pushing, but it can give a security at present and it has been done. But it keeps coming up over and over again as to whether security within the meanings of the Securities Act provides. So I have done AG’s opinions, I have seen previous Attorneys General give opinion. So what we are really doing here is we are clarifying the law so that an AG’s opinion does not have to constantly trip over Solicitor General saying yes, Treasury saying no, AG saying yes, bank saying yes, and then it gets very confused. So what we are doing is that we are clarifying the law because the language of the Act, the WASA Act and the T&TEC Act, it is just basically outdated. So what we are doing is we are modernizing this.

With respect to the question—forgive me if I got it wrong—how are we are
fixing the entity before we do the borrowing, I think that is always going to be a
horse and cart and which one comes first sort of question. I think that according to
the Prime Minister, I have heard him say when he sat on the board of WASA in the
early 1970s they were wrestling with that problem.


Sen. Richards: Thank you, Madam Chair. AG it is widely documented in public
domain of WASA significant debt. In addition to the fact that it is also in the public
domain that the hon. Prime Minister in the other place, and the Minister of Public
Utilities, have spoken about a committee that has been formed to assess WASA’s
present position and look at possible restructuring. So I am wondering in the
absence of the completion of that report by that committee on WASA’s future,
why are we changing commissioners? Because in your presentation you say you
are looking for specific additional skill sets. In the absence of understanding where
WASA is now, and where WASA is to go via that report, why are we changing
these things now?

Mr. Al-Rawi: So we were just on the question of security. Are you now asking—

Sen. Richards: I am on the commissioners and also the issue of securities to
raising money.

Mr. Al-Rawi: May I?

Madam Chairman: Yes.

Mr. Al-Rawi: Thank you, hon. Senator for the question. WASA is an essential
service. It does generate water which we all need. The skill sets of the board are
required now in terms of people to help to manage WASA out of its difficulties,
and two more commissioners helps us get there. It is quite simply more manpower
to assist in the task that is afoot right now, because this is going to be something

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that is going to be worked out in the next couple of months to years. There will be a short-term, medium-term and long-term perspective. So the immediacy of the request for two further commissioners is to assist in that process, and therefore, from our perspective, it meets with the intention of getting it into the right state. That is with respect to the number of commissioners.

With respect to the security, the ability to broaden the types of instruments which you can borrow from, WASA has the general power to borrow all now. The question is: Is that instrument of borrowing clear enough? You can borrow by way of an overdraft, by a fixed term, by short-term, by hypothecation, all sorts of ways to go, but the current funding available is largely in the form of derivatives or securities. Bonds are cheaper to negotiate. The cost of borrowing gets cheaper particularly when you look at the fact that assets can be aggregated in more innovative ways under the face cover of a bond and a trust deed arrangement.

So what we are doing is where we are actually assisting the very process that is afoot by finding cheaper ways to borrow in more diverse ways, using more people to help us to analyse the situation. Because remember, the board of directors of WASA comprised of its commissioners ultimately have to carry out the job, and therefore, having more people to populate sub-committees and work is the intention.

Sen. Richards: Thank you, AG. It just seems, through you, Madam Chair, counterintuitive to, we are making these kinds of decisions about WASA’s future, when the hon. Minister of Public Utilities is on record as saying there is a committee in place assessing where WASA is possibly to go, and in the absence of that you are making decisions about WASA’s future and making accommodations for WASA’s future. It just seems counterintuitive to me.
Sen. Vieira: Thank you. Just to point out that what we are talking about really is the raising of finance, and by bringing it under the definition of security having the same meaning as the Securities Act, you are coming under the jurisdiction of the Security and Exchange Commission. Now they are pretty well established. They have security very, very well defined, and they will police because when you look at their functions about:

“Maintaining surveillance over the securities”—industry—“…ensure orderly, fair…equitable dealings”

—they are very jealous about making sure that the people under their jurisdiction file their regular reports and accounts. So if the concern is that WASA is going to take money and then just lose it, I do not see that happening if it is brought in under this definition.

Mr. Al-Rawi: Madam Chair, I thank hon. Sen. Vieira for his intervention and I associate myself with his submission. In answer to Sen. Richards, I would say it is true that it may be counterintuitive from one perspective, but it is also very productive from another perspective where the Government in coming for this amendment, we already know we need more manpower to get the job done. So whilst that exercise is going on we know that the report that comes out has to be given to WASA. WASA has to carry out its affairs by its board of directors, its statutory authority. No Minister could stand on the outside and tell them do this, and do that, and do that within certain parameters because the fiduciary obligations belong to the commissioners themselves. So we already know that we need more manpower to assist in the very exercise. So from our perspective it is productive to increase the numbers at this point. I would ask if we could consider it this way, there is no mischief in increasing the numbers to two. If anything there is a benefit.
Clause 7 ordered to stand part of the Bill.

Clause 8.

Question proposed: That clause 8 stand part of the Bill.

Sen. Deonarine: Thank you, Madam Chair. I have two questions. One question is pertaining to the definition of the “President”. Now I know the Attorney General said in his wrap up that the “President” refers to the Cabinet, but according to the Interpretation Act I see it is the President of the Republic of Trinidad and Tobago. So could the Attorney General, through you, Madam Chair, clarify that for me? And the second question is that now I looked at the WASA Act and I saw reference was made that possibility exist for the Minister to guarantee debt under the WASA Act, however, I did not see something similar to that under the T&TEC Act. So could that be clarified as well?

Mr. Al-Rawi: Thank you, Madam Chair. I can certify that the hon. Senator is correct. The Interpretation Act says “President” means the President of the Republic of Trinidad and Tobago. However, the Constitution is what we use as the aid to interpret the meaning of “President” within this law. The Constitution sets out at section 80(1), that the “President” means the President acting on the advice of Cabinet. Unless there are words to restrict that operation where the President is bound to act in her own discretion or upon the advice of the Leader of the Opposition or the Prime Minister, et cetera. So you will see it in 80(1), subparagraphs (a), (b) and (c) where they circumscribe what “President” is intended to mean. So I can confirm that “President” means Cabinet in this instance.

With respect to the ability to guarantee, the WASA Act, yes, does have the expressed guarantee provision, and the T&TEC Act whilst it may not—I do not have it with me in front of me here—the T&TEC Act—let me see if I do—section
I do not have the second page there but I recall seeing the concept of guarantee. I will just double check from the electronic version now, just permit me. But I can say even though there is that, the ability of the Minister of Finance to give a guarantee voluntarily or at the request of an entity is always there. That is the condition of a lender asking for it, and then it is within the discretion of the Cabinet, by way of decision of the Cabinet, to decide whether it will grant a guarantee or not. So that is the subject of a Cabinet decision.

Clause 8 ordered to stand part of the Bill.

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

Senate resumed.

Bill reported, with amendments, read the third time and passed.

MISCELLANEOUS PROVISIONS (ADMINISTRATION OF JUSTICE) BILL, 2020

Madam President: Attorney General.

The Attorney General and Minister of Legal Affairs (Hon. Faris Al-Rawi): Madam President, I beg to move:

That a Bill to amend the Supreme Court of Judicature Act, Chap. 4:01, the Summary Courts Act, Chap. 4:20, the Coroners Act, Chap. 6:04 and the Sexual Offences Act, Chap. 11:28 to provide for the procedural matters of the Courts and for matters related thereto, be now read a second time.

Thank you, Madam President. Madam President, I am aware that I am
pushing my luck. I wish to profusely apologize to each and every Senator here for the indulgence that is upon us. I know it is difficult to do three Bills in a row, to do five Bills in two days in one week. I know that hon. Senators deserve the respect of having the room to prepare, and to read, and to assimilate. I am intimately aware, Madam President, of all of those things because every Senator in this House is a responsible Senator who takes pride in representing the interests of Trinidad and Tobago by coming prepared.

With that said, Madam President, I would like to say that the reason for piloting these Bills in this fashion is complicated. It is complicated because it involves the COVID pandemic that we are in. A simple thing like 12 Bills to treat with a date is important for somebody that has an accident and has no insurance coverage because their license was not extended. Meeting an FATF for obligation so that you can get off a blacklist so that businesses could function in COVID is equally important; ensuring that the board of an authority is properly populated is equally important because children’s lives are at risk and it relates to the sexual offences amendment before us here. I do not intend for this to be a habit in this Parliament that we do work like this, but the fact is that year end we inevitably end up in this position.

So, Madam President, permit me to say that the legislation before us for consideration, the Bill before us, actually has some easy thematic connections. The first clause is the Miscellaneous Provision (Administration of Justice) title; the second clause is the commencement clause that it can come into effect upon proclamation. Why did we put that? Because you may wish to partially proclaim the law because you have to make sure you are ready to proclaim the sections that you want to do.
Clause 3 of the Bill, the amendment to the Supreme Court of Judicature Act, in particular 3(a), is connected to paragraph (c) which is the proposed amendment to the introduction of a new section 65R, and that is also equally connected to the amendments in clause 4 for the Summary Courts Act at paragraph (a) and at paragraph (b) of the proposed amendments. Let me deal with the connection between those two. We propose, Madam President, in clause 3 as to those parts, and in clause 4 as to those parts that I have referred, we propose the introduction into the High Court, Supreme Court level, Court of Appeal—that is where the Supreme Court of Judicature lives—the same thing that we proposed to introduce in the Summary Courts which is the Magistrates’ Court now called Districts Courts. We propose that we borrow from the most excellent example that we have of law coming into effect and that we lift from that example by Act No. 6 of 2016.

In Act No. 6 of 2016, in the Family and Children Division, we created at section 47 the Children Drug Treatment Court Process, and in that we specifically defined what the drug treatment process will be. We birthed that drug treatment court process, we brought it to life, we put it into operation, and we anonymise records. But what that drug treatment court process did in the Family and Children Division is to allow us to treat with the whole of the family because the Government and the Judiciary share the point of view that it is all well and good to treat an individual, somebody who is before the court. But far too often how do we stop monsters from coming into our society is dependent upon preventing the growth of monsters, and that is driven by application of a term called CHINS, children in need of care, and CHINS are birthed where we say now Trinidad and Tobago time for a different module.

That different module is in clause 3 and in clause 4, and it is tied into the
Family and Children Division in section 47 onward, where we say let us stop treating an individual. Let us start treating a family, and my hair stands on my back, on arms and chest as I say that because so powerful is the need for us to now deal with the treatment of families that we come now to bring a success model from the Family and Children Division, from the Children’s Court, we are bringing it into the Supreme Court and into the Summary Court. And what do we do?

We come up with the definition in common to clause 3 and clause 4, where we say “A Drug Treatment Court Process” is “a process where a person is referred by a Judge, a Master, a District Court Judge...” Why? Because we harmonize the jurisdictions. A master can act in the Summary Court, in the High Court.

“…in accordance with Rules made by the Rules Committee…to an intensive treatment and counselling programme and other services that require the person”—notice not the accused—“to be monitored by a Judge, Master or District Court Judge, and to abandon successfully the use of the drug or alcohol and to be held accountable by the Judge, Master or District Court Judge for meeting his obligations to the Court, society, himself and…family.”

That definition is directly related to the definition for the drug treatment court process in the Family and Children Division, made law by Act No. 6 of 2016 in fully operation as we speak. We say that a dangerous drug means dangerous drugs as defined in the Dangerous Drugs Act and includes alcohol because the two separate in our law. And then we say that in the application of the drug treatment process that:

“…A Judge, Master or District Court Judge”—can—“where it is satisfied that the person has a history of alcohol abuse or substance use and is—
Miscellaneous Provisions
(Administration of Justice) Bill, 2020
Hon. F. Al-Rawi (cont’d)

(a) before the court”—meaning you are an accused—“in any criminal or traffic matter other than a violent offence;” or
“(b)” you may be “a party to a family matter”—and a family matter is defined in the Family and Children Division,
“(c)” or you are “a parent, guardian or person with responsibility for a child who has come to the attention of the Children’s Authority as a child at risk;”
“(d)—or—“with the agreement of the person, a member of a household of—
(i) a child convicted with an offence…;
(ii) a child who would be liable…,
… if the child is a child at risk and the substance use by the member of the household is negatively affecting the child.”

We have sought to capture all of the circumstances where we go for the family. No longer individual counselling. And by the way folks, good news, we left the definition of “child psychologist” in this law. The Family and Children Division has a child psychologist, we have not amended that law because we need a child psychologist specifically. It is unlike the board of directors in the Children’s Authority where we are looking for a director with a certain skill. So we kept child psychologist as we [Member beats his chest] put it into law in 2016.

So here is where we are saying, Trinidad and Tobago, we are doing things differently. We did a pilot project, we did it with the UNDP; we did an arrangement for the Family Court; we had the Children’s Court; we have the drug treatment process; we have the peer resolution; time to replicate the success and let us stop thinking with blinkered approach and narrow purpose, and let us go to the family. So that is the rationale behind the guts of clause 3 and clause 4 as it relates
to Supreme Court of Judicature and Summary Courts Act for the drug treatment court process.

**10.45 p.m.**

In clauses 3 and 4, we also seek to apply learning which has just come from the Privy Council, specifically from the Turks and Caicos Islands, where the judicial committee of the Privy Council in the case of *Attorney General of the Turks and Caicos Islands v Misick and others* on the 13th of November, 2020 considered in a judgment delivered before Privy Council as Lady Black, Lord Lloyd-Jones, Lord Briggs, Lord Hamblen and Lord Stephens, the fact of whether it is a breach of rights to have a trial conducted virtually. Is there the right to face the judge face to face? Must you be in court? Can a trial be conducted virtually? These were all the issues before the Privy Council and the Privy Council decided that there was no breach of rights, it was not an infringement in the equality of arms battle between defence and prosecution that a fair trial could be done by way of a virtual hearing.

And in those circumstances, being cognizant of the fact that in Trinidad and Tobago, we have had court matters done in the civil arena for years now. POS 19, I remember when we first went and they had the joy of standing up in front of a screen that linked us to SF 6 or POS 25 or Tobago courts. The fact that we could go to court by telephone and by video conferencing became so novel at the time but then so normal, and then by virtue of amendments in the Family and Children Division Act and in Criminal Division Act and practice directions, we have now birthed virtual courts. But taking account of the most recent decision from the Privy Council, we are obliged to stop using that methodology just in the subsidiary routes of rules of court and practice direction and instead lift it into the parent law.
which is the Supreme Court of Judicature Act and the Summary Courts Act.

Madam President, what time is full time?

**Madam President:** Five past 11.

**Hon. F. Al-Rawi:** Five past 11. So, Madam President, we propose in clauses 3 and 4 to also treat with virtual hearings being assured by the Privy Council that we are right to do that, being prudent that we ought to put it in the parent law and not subsidiary law.

I turn to the concept of the application of fees for administrative matters, et cetera, in these clauses and again, coming out of the fact that we have gone from online application, we are filing virtually, we are filing electronically, we are paying electronically, we have overheads to meet and therefore, the Judiciary, notwithstanding the payments into and out of court legislation, needs to have legislative springboard to allow for the application of fees to be sorted out in the usual way by the promulgation of rules and other methodologies. So that is clauses 3 and 4.

Clause 5 treats with the Coroners Act and in the Coroners Act, we are attending to an administration of justice issue as it relates to the fact that in an unusual death, a magistrate sits as a coroner in the circumstances where the unusual death involves a policeman who is under the watch of the Police Complaints Authority. The Police Complaints Authority has often found itself in the very invidious circumstance of having to go and argue before the coroner that they have a right to be an interested party. There is no definition of interested party in the Coroners Act, so they always get in. But the problem is they usually do not know that the matter is being dealt with. So what we have done is we bifurcated the responsibility—bifurcated the purpose.
One, we are giving the locus or right of audience to the Police Complaints Authority as an interested party within the Coroners Act and secondly, we are telling the coroner, tell the Police Complaints Authority if you have a policeman in front of you. So that, they are put upon positive notice and do not have to go and check the list every Monday morning to figure out if somebody is there or not. That treats with a serious societal problem where many people cry out for justice by the PCA knowing that they have to investigate police conduct, and they are not satisfied that the police prosecutor before the coroner will necessarily be reporting the matter to the DPP or to the police for a complaint process. This balances the rights of justice in our society by ensuring that we have people who have a complaint, that have lodged their complaint before the Police Complaints Authority, have the attention of the Police Complaints Authority. It ties in with the last Bill that we just did without reviving that Bill, obviously where we have witness statements, et cetera, going from certain entities to the Police Complaints Authority.

Madam President, I turn to the most important clause in my mind which is clause 6. The Sexual Offences Act is proposed to be amended. Looks simple. Subparagraph (a), delete the word “shall”, put the word “may” and in subsection (b), in (3)(a), insert after the word “report”, “where the report was requested”. What is this about? Madam President, it is a matter of history and record that we came to this Parliament, I came as Attorney General and piloted the amendments to the Sexual Offences Act to bring the sex offenders registry to life. The sex offenders registry was done in 1999 and not a single person was put on the sex offenders registry because the law was badly drafted.

It required the person who is to go on the sex offenders registry, whilst he
was being sentenced by the court, to miraculously leave the courtroom, turn up in a police station and log himself in. Obviously, that could not happen, the process flow was not mapped out, we did some sweeping amendments, but very importantly, we went to a special select committee and we heard from a host of NGOs and interest groups, wide-scale consultation. We came as a Government with a very aggressive plan. You are a sex offender, public registry. You are a sex offender, stamp it in your passport. I was beaten into some degree of submission where people told me, “Yuh going too far too fast.” I have to listen. I am an advocate for a cause but I do not make law for myself and certainly the Government does not make law for the Government alone. Under section 53 of the Constitution, we make laws for the peace, order and good governance of the country and therefore, I was obliged to listen.

And what we did is we put in a stricture which is a dangerous one. We breached the separation of powers principle. We said that the court shall, before putting somebody on the sex offenders registry, the court must get a psychiatric report. I begged, I pleaded but I had to comply. I asked for the word “may”. I was voted down by the collective will of the Parliament, I make no complaint about that.

But the fact is there are monsters amongst us. Monsters amongst us who have murdered and killed our most beautiful and most vulnerable and I always feel a sense of crying shame to call someone’s name and therefore, I have never called people’s name in this Parliament and I do not want to, but I too have daughters and a son of tender age and every parent in this room or uncle or aunt or person could relate to the fact of the need to cherish the beauty of our youth and their innocence, and no child of ours or no person of ours, male or female should ever be worried
about whether they are going to be exposed to a predator.

And in Trinidad and Tobago when we take note of the countless examples of PH taxi drivers, sexual penetration of minors, impregnating minors and those monsters walk amongst us— because you know what? Even though they are reported in the newspapers, who pays attention? Because there is not one locality to find out: well, who is on the list? Left up to me, I would also put a list, personally, of everybody who is on a rape charge or a sexual offence of a minor charge. Why? Because it is public knowledge. One has to be careful to avoid vigilante justice and therefore, your personal desire has to be tempered by your obligations at law to make sure that lynch justice does not become the norm in this country.

However, today is a day where we ask the honourable Senate to consider that by simply changing the word “shall” to “may”, we restore the separation of powers principle, we allow a judge sitting in a matter who is convicting someone the discretion of deciding whether a psychologist report is required or not, not mandatory requirement. Why? Because in the law that we amended and that we passed, we said you have the right to tell the court why you should not be on the sex offenders registry. We have balanced that.

Today is Human Rights Day, the colour is blue, hence my blue shirt, blue tie, blue suit, blue mask, which I cannot wear and which I should not display, I apologize. “Ah have no blue polymer notes in meh pocket”, I wish I did right now. I see Sen. Lyder is in blue, Sen. Lutchmedial is in blue and all of our hearts are in blue today, international Human Rights Day. Clause 6 is about international human rights. Clause 6 is about the subset of rights to children and most vulnerable. Clause 6 is about our balance of justice in our country.
So, Madam President, I draw to conclusion by saying, I deserve to be “bouffed” for pushing “meh” luck on the number of Bills, I will take the criticism. I thank hon. Senators for allowing us to do this work. I thank you for your time and your energy and your effort and the difficulties of having to pull all of this together. I look forward to the contributions at the debate level and at the committee stage, and I beg to move. [Desk thumping]

Question proposed.

Sen. Jayanti Lutchmedial: Thank you, Madam President. I know it is late and I would try to move quickly, and it is Human Rights Day so we have to have some human time. My response on this Bill and my contribution, I would firstly deal with the Drug Treatment Court. I do not have much to say on that except that I have noticed that the Rules Committee will make the rules. I do not know if in his winding up, the Attorney General will give us some more details as to the type of facilities that the Government would have in mind, what has been designated. Because sometimes we come here, we stay here very late in the night to debate things such as Drug Treatment Court Process and so on, and then it does not really materialize into anything.

So what I would really like to know is what is the vision for a drug treatment court. It is very broad, the definition of this process, in terms of what can be done. It is entirely different from any other type of process that we see in the legislation where you give judges and magistrates the powers to refer people for psychiatric treatment and so on. So what I would like to know from the Attorney General, with respect to the Drug Treatment Court, is really how it would be operationalized? Because if we do not have that information, then all of this just feels sort of like an academic exercise. So that is all I have to say on the Drug
Treatment Court Process.

However, as we move on with respect to the videoconferencing and having the video link. Now I have read the Misick case from the Turks and Caicos Islands, and I understand the position with respect to not violating constitutional rights and the Privy Council has so held. Madam President, my challenge however is the fact that—now, first to begin with, that case dealt with—a case that had a lot of documentary evidence in it and that does not apply to many cases that we have in Trinidad and Tobago. Other than fraud matters, most of our criminal law matters here are based on eyewitness testimony and so on.

So when you are testing the varsity of a witness, for example, it is very challenging to do that when you cannot assess demeanour and you have other challenges that may be posed when you have the video link-type facility. I have seen my fair share of stress in SF O6 dealing with you people up in POS 19 because of the type of connection that you have sometimes, it is very, very challenging and this has been going for years. It is not a COVID issue, it is a general issue that we have now.

And even now, as we all try to—now, I have to say I have no objection. I love CMCs and so on, via video conferencing. I have been doing my CMCs from the Opposition Caucus Room when we have Parliament when I slip out. It is really good and I hope that they keep it up post-COVID. But, Madam President, removing the discretion from the trial judge as to how to conduct a trial, particularly a criminal trial, I do not agree with that.

And, Madam President, the other thing is that we have the Rules Committees. They have left the Rules Committee in charge of making all of the rules as they relate to the Drug Treatment Court in this very said Bill. However,
when we move on to the process where we get to the videoconferencing-type trials and the video and audio link, it is that the Chief Justice will do it by way of a practice direction.

Now I cannot understand why that is the case, Madam President, because, again, and I said it earlier today, when you have a whole committee and the Rules Committee is very clearly defined, it is a very broad-based—it incorporates people from the Law Association, Court of Appeal, all of this, and you have a whole committee of people who could be constituted to make rules, why are we concentrating the power in the hand of one person?

And I know that the usual rhetoric that we hear is that, you know, it is COVID and we have to do these things expeditiously. Madam President, I do not accept that needing to act expeditiously is a reason to bypass good process. I firmly believe that this is a very important matter and I think that the Rules Committee should be vested with the power to make rules for audio and video link-type trials, because I think that they would have to take into account all the different permutations and the different types of trials that you may have when you are determining whether or not you can do via videoconferencing, and give judges at least some sort of a discretion.

Now, Madam President, under the Rules of Court, it is clear in the Supreme Court of Judicature Act, I think it is section 78 where it talks about what the Rules of Court are made under this Act would be for the following purposes and it includes: regulating places and time for the sittings of the Court of Appeal and the High Court, regulating and prescribing how—you know, whether it could done with a jury or without a jury. So it clearly falls within the ambit of what the Rules of Court and the Rules Committee are supposed to be doing. The Rules
Committee— it is right here. It incorporates the Attorney General, a judge of the High Court, Court of Appeal, a master, the registrar and two practitioners and the Chief Justice could say that any four of those persons can make rules.

So it is similar in the Summary Courts Act, section 23, rules. It talks about the Rules Committee making rules generally regulating practice and procedure for summary courts and giving effect to this Act. Even in the Evidence Act, when you have the new— it is not new, but the section 14 that came in some time ago, 14E, when it talks about the different ways that you can receive evidence. It vests the power to make those rules into how you receive evidence in the Rules Committee. So we have adequate precedent here to say that the Rules Committee, this is something that falls for them to do and I do not agree that it should be left to the Chief Justice by way of practice direction.

Most significantly— because the rules made by Rules Committee must come to the Parliament and it is subject to negative resolution, whereas a practice direction is not. So again, we may have a particular perspective. We may want somebody— a responsible Opposition would have to look at the rules, we may wish to raise something for a Motion, to have it debated and we would be deprived of that opportunity if all of the circumstances and the directions to be taken for how trials are to be conducted via video and audio link is done by way of a practice direction. There is no opportunity for parliamentary oversight with a practice direction, whereas the rules have always provided— when the Rules Committee publish their rules, it is subject to the negative resolution. We have the 40 days in which we can raise that objection or raise it for a debate and have a debate on it. So I do sincerely believe that that is an important thing that we must look at in this Bill and I would ask the Attorney General to reconsider those provisions.
Madam President, COVID has—yes, it has changed everything and it has revolutionized everything, but when I was going through this Bill and I looked at the need for having the Chief Justice to make a practice direction—and the thing about it is there are currently matters before the court where the judge making an order to have that a criminal trial must proceed by way of video hearing. It is actually being challenged right now in our court because of the lack of a legislative authority, so it is interesting that this came in the middle of all of that. I suppose it will change the course and outcome of those matters that are before the court. I read about it in the newspapers. The challenge was mounted by a former Member of this House, Senior Counsel Sophia Chote in relation to her client because of course, the fact is that they have been operating by way of just the practice directions that go forward and it raises serious issues with respect to the rights of your client, because every case should really be looked at on its merit.

In civil and criminal trials, you have the issue sometimes, let us say, for example—and it is not something that affects only the defendant. As a prosecutor, I could tell you, when you have a hostile witness, the first thing that clues you in that, “ay, this witness is going to turn on you”, is the body language, the way that the demeanour of the witness might change. You have to change strategy mid-question as to how you are dealing with the witness and I am certain and I can say that I know that there are certain people who still on the prosecutorial side who have very serious concerns about judges making orders or following the directives that all trials, except for domestic violence trials, have to be done via a virtual link. Because even today—so it is not just about the rights of the accused, even the prosecution, even the claimant side, we have issues because you are going to have that problem coming up time and time again as you try to deal with these things.
Now, when I read it and I read through the Bill, I remember these two articles that I had looked at some time that was circulating and it is about in the UK and how:

“Parliament surrendered role over COVID emergency laws, says Lady Hale.”

Lady Hale, of course, being the first woman who would have sat at the head of the Supreme Court in the United Kingdom. And I just want to read, with your leave, Madam President, some of the excerpts from this article and it said:

“The former president of the supreme court says parliament ‘surrendered’ its role over emergency laws restricting freedoms amid the coronavirus pandemic, in an intervention expected to embolden MPs threatening a Commons revolt.”

Now it basically said that look, we were so paralyzed with fear and we had to get everything done so quickly that we look for the shortest route and that in doing so, the power to make rules to put things in place, things that ought to properly have been done by the Parliament, they were surrendered. And these sentiments were echoed again by Lord Sumption and I am sure the Attorney General has seen this because it was making the rounds, it was very popular at a point in time. I even saw one commentary on it that talked about instead of coronavirus, they call it “corona-vires”, as in ultra vires, because it was really something that challenged and it spoke about how in the middle of this pandemic, we have been just bypassing Parliament and looking to get the quickest solution for everything, and he was speaking about it and saying that it cannot happen.

And there are some very interesting quotes here, Madam President and again, if you would just bear with me, I think it is necessary to say it:
I said if many people think that in an emergency, public authority should be free to behave in this way because the ordinary processes of law-making are too deliberate and slow, I do not share this view. I believe that in the long run, the principles on which we are governed matter more than the way we deal with any particular crisis.

Madam President: So, Sen. Lutchmedial, I just want to know if you can—what you are referring to, if you could tie it back to the Bill, please.

Sen. J. Lutchmedial: Madam President, the point is that just to be expeditious and to have something done so that we can quickly move along and have the legislative authority to have these video link trials where they are necessary is not because we have this COVID pandemic and we are not supposed to have in-person hearings or we want to limit the amount of in-person hearings, it is not really the best way that we should be going. And all of the literature is there that shows that in the course of lawmaking and in the course of making rules, we ought not to be going down that road. So I do object to where we have those things being done by the Chief Justice.

Madam President, the Children Act spoke about a remote location evidence, I think it is, so that that is already incorporated in the children legislation. Of course, it was there to protect a particular type of evidence that has to be given by children in the Children Court and so we have that there. But I do not believe that it is justifiable in all cases to mandate that this be done and it ought to be looked at again.

And thirdly, Madam President, we have the amendments to the Sexual Offences Act. Again, I agree with the Attorney General, it would have been violating the separation of powers to mandate a judicial officer to do something.
But then, it is interesting that the Attorney General would say that to mandate the judicial officer to get that he must request or shall request the assessments—the mental assessment would be a violation of the separation of powers but in the same breath, we are trying to pass a Bill where it gives the Chief Justice the power to mandate to all the judicial officers and remove a discretion from them as to how they should conduct trials. You see, we cannot have it both ways. Every judicial officer sitting in a particular matter ought to have a discretion and I agree here with the amendments to the Sexual Offences Act. It remains the discretion and that same principle ought to carry through, through everything else.

Madam President, the Attorney General has spoken quite a bit about the Sexual Offences Act and the register, and if you would just permit me—how much time do I have left?

Madam President: If you go to your full time, you finish at 28 minutes past 11.

Sen. J. Lutchmedial: Okay, so I have quite a bit of time. So I just want to say one thing. A register deals with sexual offences that occur post—well, it has already happened and what we have seen in these past couple of weeks is that we need more, in terms of preventing these things from happening.

Madam President, I had the privilege to look at one of these—and to be invited to view—United Nations, they hosted a Spotlight Initiative because, of course, Human Rights Day, which is today, is the end of what we call the 16 days where we advocate against violence against women and girls, the 16 days of activism. So at that Spotlight Initiative, I heard some comments made by one Marcus Kissoon who is a research officer at UWI at the Institute for Gender and Development and he champions the Break the Silence Campaign, and he spoke about gender stereotyping and the contribution that that makes it sexual abuse and
child sexual abuse.

Madam President, I just want to say that I would recommend that everyone looks at it. It is available online. It has a lot to say and a lot to do, and I think that we have so much responsibility to really do more in terms of the development of the Sexual Offences Act and the registry. But a register really takes us only with dealing with the problem after it has occurred. We need a culture change and I commend that everyone take that into account.

So with those few words, Madam President, I thank you very much. [Desk thumping]

11.15 p.m.

Sen. Evans Welch: Madam President, thanks for calling upon me to address you on this Bill relating to the administration of justice. My focus would be particularly with respect to clause 3 and 4, insofar as it relates to giving the power to the Chief Justice to issue directions to ensure that criminal and civil trials may be conducted by audio and video link in the High Court and the Magistrate’s courts, as well as to give directions to ensure that evidence is also given by video links in both courts.

My concern with these particular clauses, as expressed in the proposed section 14A and the proposed section 57A of the Summary Courts Act and the Supreme Court of Judicature Act is that the Chief Justice, if I may read it again, may, when the circumstances warrant issue directions to ensure that the criminal trials are conducted in that manner. So it is a subjective test of the Chief Justice when he thinks that the circumstances warrant and the directions are to ensure that they are conducted in that manner.

So if it is when the Chief Justice thinks that the circumstances warrant then
the Chief Justice may think so on any basis. It does not have to be COVID-related. It does not have to be pandemic-related. If he thinks that there is a large backlog of cases and therefore he needs to get rid of them by having the trials conducted as quickly and as expeditiously as possible, he can do so under this proposed amendment because it does not give the criteria on which he may exercise that discretion. It does not specify what factors he must bear in mind. It gives him open field to do so.

And what concerns me about this as well, these provisions, is that although they are expressed to deal with the current situation, in the explanatory notes it says this is critical for times in which there is a pandemic. However once these provisions are put into a parent legislation, they last potentially forever, even when the pandemic is over. There is nothing in this parent legislation which says that this power that he is being given is to come to a determination when the pandemic ceases, such as occurs in jurisdictions such as Australia where there are provisions which says the power to have audio and video trials exist so long as there is a declaration of emergency in existence. So by elevating this into a parent statute, it is a permanent situation. And the rights of a person to a fair trial would include the right under normal circumstances to be present at his trial, to instruct his attorney at his trial, to confront witnesses face-to-face at his trial. All of these are to be regarded as his constitutional rights. And effectively this is—by having this level of permanency that is not pandemic-related, those rights are compromised on a long-term basis.

What concerns me as well about these provisions is that there is—the Chief Justice is the one who determines whether the trial proceeds in this way or not. The discretion is taken away from the trial judge. Even if a trial judge considers
that it is inappropriate to proceed in a particular manner, he can be overridden by the Chief Justice by putting this provision in parent legislation. And this provision does not suggest that the Chief Justice has to consult with the trial judge or has to consult with anyone.

Nor does it relate, nor does the provision specify what is the criteria here is going to use. So if he, as I said before, if he thinks it is convenient to get rid of the backlog by having trials truncated by this process, he can do so, because his discretion is not circumscribed in any way by this piece of legislation.

My friend pointed to the Misick decision and suggested that it was necessary, the hon. Attorney General, sorry, suggested that it was necessary to elevate this power into parent legislation. But one thing is clear about the Misick decision is that it makes it very clear throughout that that decision, whether to proceed by way of video link or not, is reflected in a practice direction under subsidiary legislation in the Turks and Caicos islands, PD 4 of 20 and I am quoting from the judgment and it is also under a Regulation 4(6). And the judgment from for paragraphs 67 to 73 all reflect that the Privy Council indicated clearly that it is for the trial judge to decide, and if I may quote from the judgment:

“There may be some cases, or some parts of cases, where there are particular reasons why it may not be appropriate to use video links, but these are matters for a trial judge to determine in the exercise of his discretion on the basis of the particular facts and circumstances before him. As the appellants submitted ‘much will turn on the specific nature of a particular case and the evidence to be called’. There is no proper basis upon which the Board can or should seek to usurp the trial judge’s role by making a preemptive ruling. The trial judge can also use his case management powers to
ameliorate any issues which may be identified.”

It goes on again at paragraph 71:

“It all depends on the particular facts and circumstances, as they transpire, and these are matters for the trial judge to consider, as and when it may be appropriate to do so.”

So it is for the trial judge in the Turks and Caicos Islands—and I am referring to the very same case to which the Attorney General refers—who decides whether one should proceed by video link or not. He is the best person to exercise that discretion. He is familiar with the evidence. He is familiar with the nature of the issues in the trial and whether or not those issues can properly and adequately be dealt with by audio and video method, or whether it is necessary to have in person hearings.

And this is what the Privy Council went on to say at paragraph 72:

“This is also a trial in which much of the evidence is documentary. No doubt, there are other matters of relevance best known to the trial judge with”—the—“experience”—he has—“of the case.”

Whilst it will be preferable that the trial judge be physically present again, it is for him to decide.

And they refer to, in that case, the trial judge in deciding to do the case remotely, was exercising a discretion under what is called a Regulation 4(6) and a practice direction PD 420. It was not pursuant to any legislative measure. But what we are doing here and what is being proposed here is that the Chief Justice who is not the trial judge and who does not commonly preside over criminal trials, may give directions, and look at the language.

“to ensure that the criminal trial takes place by way of video.”
So a criminal trial that is being presided over by a judge of the High Court who may think, in his discretion, that it is better to have an in-person hearing may be directed by the Chief Justice under these provisions, these legislative provisions, to do the trial by way of audio and video link and remotely against his own view and against his own wishes and against the submissions which he would have heard from the attorneys on the issue. So this is why this piece of legislation is somewhat dangerous and too far-reaching by transferring the discretion from the trial judge to the Chief Justice and not imposing any criteria by which the Chief Justice is bound.

He can exercise any subjective view he wishes, because it says when the circumstances warrant. So the Chief Justice may think that the circumstances are warranted, not necessarily by anything relating to the trial itself, but by his view that we should simply advance and move forward to a new form of technology.

And contrary to the explanatory note, as I pointed out, whereas the explanatory note of this Bill talks about it is critical for this legislation to be used now that there is a pandemic, there is no time restriction or sunset clause or any duration if this is promoted to parent legislation. The wording of the parent legislation is that once this is enacted, we have to live with it forever. Audio and video link method of trial is an emergency measure which is suited now for safety. But it is not ideal. Under normal circumstances, once the pandemic is over, a person should have the right to face his accuser in court and have the procedures, which have traditionally existed continue as they are, as they have been traditionally, because that is what the Constitution says. The Constitution gives a person charged with a criminal trial the right not to be deprived, and if I may quote from section 5 of the Constitution; deprive a person charged with a criminal
offence of the right to a fair and public hearing. The Parliament should not do that. An audiovisual trial it not consistent with a public hearing. He should not be deprived of a fair public hearing and no procedures should be implemented which affects the protection of his right to a fair hearing. Audiovisual links potentially affects that right to a fair hearing by him not being in court to instruct his attorney or to face his accuser if it is a blanket situation. It must depend on each case on its own facts, whether it can be done without compromising his rights or not, without compromising the rights of the accused.

But to demonstrate as well why this Bill can be regarded, not only as draconian but totally unnecessary is because what really, is the necessity for it? And one way of judging the necessity for it is asking the question: What has been happening all along since the COVID pandemic? Has there been a measure in place which has been effectively taking care of situations? If yes, then why do we need this proposed section 14? And the answer to that is yes. Because under section 78 of the very same Supreme Court of Judicature Act, under section 77, a Rules Committee is established. And under section 78, that Rules Committee may make rules for the conduct of court proceedings. And that Rules Committee has acted and has made rules, the Criminal Procedure Rules for the conduct of court proceedings. And under 20.1 of those Criminal Procedure Rules, this is under subsidiary legislation, the Chief Justice is given power to issue practice directions. So, then why do we need this 14A to be a permanent part of the legislative framework by being put in parent legislation?

And the Chief Justice has exercised that right on many occasions, under Rule 20.1, by issuing several practice directions since March. And the most recent practice direction is one issued on the 1\textsuperscript{st} of December. And under that practice
direction it says because of the pandemic certain things are put in place. The general rule is that there should be no in-person hearings. But nevertheless, a trial judge, under this practice direction, is given the discretion. The trial judge, consistent with the decision in Misick, to which the hon. Attorney General has referred, the trial judge has been given the discretion under a practice direction issued by the Chief Justice. He gives the trial judge the discretion to determine whether there can be an in-person hearing. So the trial judge has that power. The trial judge has the power to say a witness exercising his discretion should be called in person to give evidence in the court building. The trial judge has the discretion, after he assesses the evidence and the issues in the matter, to allow the parties, the attorneys to be present, the accused to be present, et cetera.

So the trial judge is recognized by the Chief Justice, under these practice directions, as the appropriate person to determine whether a trial should proceed by way of audio or visual link. And a criteria is set out by which the trial judge is to exercise that. So why are we, in the very same Act—if we have section 78 of that Act and a practice direction has been issued pursuant to rules of the Supreme Court, giving the trial judge that discretion, why are we now seeking to introduce a section 14 which will take away that discretion from the trial judge and give it to the Chief Justice and give it to him with no indication of what factors he must consider and it is open to him to exercise any subjective judgment he wants. And he can direct a judge who thinks otherwise this case is not appropriate for a remote trial, he can direct a judge to do so.

If this is passed, if this 14A, as proposed by the Attorney General, is passed, it supersedes the practice directions, which have been put in place since March and which have been operating since that time. What has the hon. Attorney General
identified is the problem with those practice directions? He had suggested that the need to be in parent legislation.

There is nothing in the authorities which says that they need to be in parent legislation. And as I pointed out, the Misick case from the Turks and Caicos Islands on which he relies was based on practice directions and was based on rules issued under the Chief Justice powers, similar to our section 78, which how exists.

The advantage as well of these practice directions is that when the pandemic eases, because it is merely a practice direction, it can be superseded unchanged. So there is a certain amount of flexibility, and this how the practice direction is worded. Because when one reads it, one sees it exists for a particular period of time and is called the Court Operations COVID-19 Pandemic Directions. So it is to take care of an emergency situation. And when that emergency situation is alleviated, there is no reason why we should not go back to the norm where an accused gets to exercise his right to a fair trial by being in a courtroom.

And the practice direction, this is how it reads:

This practice directions supersedes earlier practice directions. It takes effect from 1st December 2020 and continues until further notice or otherwise superseded.

So because it is a practice direction, when the emergency situation for which it was put into place is over, it can be abandoned. But you cannot do that with parent legislation. That is why we have practice directions. With parent legislation—

Madam President: Sen. Welch, I think that you have, in your contribution, you have spoken at length about the issue of practice directions against the legislation itself. So I think you could, at this stage, move on in your contribution.

Sen. E. Welch: Very well, Madam President. So the point I am making as well is
that the COVID-19 pandemic has affected us. It has required safety measures in place, stopgap measures. But it is to be regarded as having infected or killed a person’s right to a fair trial and constitutional right to do so. It should not have killed the discretion of the trial judge under section 78.

There is no reason, I submit, for this piece of parent legislation. I submit, it is unwarranted. I cannot support it. It is unfortunate that it is wrapped up with other legislative measures which may be justifiable and therefore when one comes to either saying yea or nay, it is not a divisible situation. So it is unfortunate that it has been presented in that manner.

**Madam President:** Sen. Welch you have five more minutes.

**Sen. E. Welch:** Madam President, because I am involved in largely a criminal practice, I can say that it has been my experience, empirical experience, that a number of judges have been adjourning matters in the hope and expectation that some day this pandemic would be over. And often you get an email from the judge’s JSO; matter has been adjourned to X date. When X date comes, matter has been adjourned again and it is partly because these judges have taken a view of the nature of the matter before them is such that it cannot be conducted by audiovisual link, as dictated by the present practice direction. Even though it gives them a discretion. That is the view they have taken.

Now, this proposed Bill, if put into legislative effect, will amount to a direction to them that you must proceed. That is not proper. Each case has to depend on its own facts, as Sen. Lutchmedial pointed out, and as the Privy Council pointed out in the Misick case. And there would be some cases in which to proceed like that would therefore constitute a violation of a person’s constitutional rights.
And the reference I just made to the practice direction shows how flexible it is. It can be changed. It can be stopped. It can be superseded. And that is the advantage of practice directions. Legislation cannot be dealt with in the same way. We would have to live with it forever, even after COVID is done.

So I re-emphasize, in coming to a close, that there is a measure in place under section 78 and there is no need to try and supplant that measure by the introduction of this section 14A and section 57.

Madam President, with that I do not have a difficulty with several of the other proposed measures, and therefore my focus has been on this particular area. And I think it is unwarranted and unjustified and ought to be withdrawn or not pursued for the reasons which I have identified. Thank you, Madam President.

**Sen David Nakhid:** In the name of God, most gracious, most merciful. Madam President, thank you for allowing me to join and contribute to this debate on a Bill entitled the Miscellaneous Provisions (Administration of Justice) Bill, 2020.

Madam President, dealing with the Supreme Court of Judicature Act Chap. 4:01, I am of the view that the move to have drug and alcohol addiction treated as a health issue, as opposed to a penal issue, is a worthy attempt, but I am perplexed when I consider the reason advanced for the paradigm shift. The paramount reason advanced, it appears, as most have alluded to, is to reduce the burden on the criminal justice system when the reason should be a focus on social ills which plague our society, leading to a loss of productivity, loss of life and severe socio-economic strain on the family.

**11.45 p.m.**

My concern is that this Bill, Madam President, is a plaster for a festering sore. This Bill deals with treatment after the fact, and may not reach everyone
unless and until that person affected is in breach of the law and then enters the criminal justice system. And entry into the criminal justice system is dependent on an already low detection rate, so that in the meantime the destructive course of both drugs and alcohol abuse continues until detection.

So while I understand the general policy of this part of the Bill I am disturbed that the Bill is woefully inadequate to meet with what should be the objective. I am not going to dwell on all of the horror stories caused by drug and alcohol abuse because my time is short. But I would like to reference our hon. Minister of Social Development and Family Services who earlier made the statement of us having about 400-odd-plus homeless. I do not mean by any means to be disrespectful in any way, but, Madam President, everyone here knows that to be patently untrue.

Madam President, I have personally walked—and I have done that through Port of Spain proper and the environs—will give you at least 400-odd-plus only in Port of Spain and the environs. And most of these people that you see there homeless, make up the majority shareholders of this country, Afro-Trinbagonians and Indo-Trinbagonians. They make up the homeless population, Madam President.

So there must be a more holistic approach, more proactive approach to that, rather than treating with these people when they are already homeless or in the criminal justice system. And that is my problem with my colleagues on that side. And I do not want to be stopped and interrupted and—no. They must realize that it is not only about populist policies but to really have an empathy and care for the people. And we do not see that here. It is a treatment after the fact, after they are already in the criminal justice system.
But having looked—I also looked, Madam President, at the Tobacco Control Bill. I have to wonder why we do not have a similar piece of legislation—I will link it for you, Madam President—dealing with alcohol. This part of the Bill deals with a proposed cure after the fact. Prevention obviously is better than cure. So my suggestion to the Government is to consider preventative measures and bring legislation to deal with that.

In the same way that the Tobacco Control Act limits and to a large extent prevents advertising, we should do the same with alcohol, Madam President. It is not that far of a reach. The Bill before us does not record that alcohol is the ultimate gateway drug. That is where it all starts. So in this part of the Bill I am expressing hope that we take steps to protect our people from the adverse impact of not just substance but alcohol abuse.

And Madam President, I would like to point out, because I like to link everything to the man on the street, anyone here who would like to go through the hotspot communities, you can see what we call the hotspot communities, you can see a bar every 100 meters. Correct Sen. Bacchus? You go through Mount D’or, you go through Tunapuna, you have a bar. Alcohol every 100 meters. You cannot see that in Bayshore or Goodwood or Diego Martin where we all live probably. You do not see that. Why is there a bar with alcohol every—

Madam President: Sen. Nakhid, I have given you an opportunity—please take your seat.

Sen. D. Nakhid: All right, sorry, Madam.

Madam President: It is all right. I have given you an opportunity to put your argument in some sort of context, but you are moving away from the Bill and I need you to focus more on the Bill at hand.

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Sen. D. Nakhid: Madam President, I wish to turn my attention to clause 6 of the Bill, which seeks to amend the Sexual Offences Act. Madam President, again, I am not comfortable when I hear that we have monsters among us. Yes, there are monsters among us. But Madam President, we made those monsters. We created those monsters and we must find a way to treat with it holistically and get away from the populist talk.

I am trying to understand the rationale behind this amendment. Why are we moving away from a mental health assessment to one that is discretionary? Unless lawyers are trained to spot the appearance of mental illness or psychiatric disorder we will have judges and magistrates engaging in guess work. It will be a virtual hit or miss. Unacceptable.

Madam President, I have been reading on two concepts. One, therapeutic jurisprudence and the other being social justice. We are at a point in our existence where our country is feeling the effects of toxic masculinity. We all know that. We can even see it sometimes in the Parliament. You know somebody—“yuh would geh hit with two slap”, you know what I mean, we are toxic.

We are at a point, our women and children unfortunately being raped, slaughtered. A lot of us, we have spoken about that, and we are at a point where we are no closer to understanding the psychopathology of the offenders. What leads to their deviant behaviour? We are no closer to understanding how exactly we can act to prevent the widespread slaughter of the innocent. So I am asking the Government to enlighten me as to the rationale for moving away from mandatory mental health assessments which would help us to have discretionary assessments, where we might be allowing a number of repeat-type offenders. [Interruption] He is right, we might have people like Ted Bundy among us, so we cannot be
discretionary with this. You have to have mandatory health assessments. They cannot be discretionary. We have to be able to identify the “predelictions”—“predelictions”—predilection, sorry, it is getting late. We have to be able to identify that. We cannot identify that in a discretionary manner. We have to have experts to do that, and allow us to know what we need to do to deal with our men and protect our women.

Madam President, I turn to clause 3(b) of the Bill which seeks to introduce a new section 14A to the Supreme Court of Judicature Act. I read an article online under the experienced journalistic pen of one Darren Bahaw of the Newsday. That article deals with an SOS. Of course, sent out by the Law Association, we all heard about it today. Asking the hon. Attorney General to hold his hand on this debate, so that the Law Association would have an opportunity to look at the Bill, offer its opinion in keeping with what I am being told is a legal mandate under the Legal Profession Act. When I read the article I thought about the last debate and the fact that the Law Association had to send its views to be circulated whilst the debate was actually in progress. I—

Madam President: Sen. Nakhid, I have to interrupt you. From what I understand with the previous debates that we have had, the letter from the Law Association was in respect of the first Bill that we did today, and not in respect of this. Am I correct?


Madam President: Sorry?

Sen. Mark: [Inaudible]

Madam President: And this?

Sen. Mark: Yes.
Madam President: Okay. All right, then my apologies.

Sen. D. Nakhid: No problem, Madam President, we all make mistakes. I want the Attorney General, Madam President, to tell us whether the Law Association was consulted about this Bill and the last Bill. If they were consulted, then how long before the debate were their views solicited? If they were not consulted, then why were they not consulted? And whether the hon. Attorney General intends to continue with the trend of not consulting an institution that has a statutory mandate, Madam President, to safeguard the public on legislation which might affect them.

Because clause 3, Madam President, does not affect just the lawyers. The effects are not limited to persons in the criminal courts facing serious criminal charges. It also affects the average citizen who is a litigant before the court.

And lastly, it affects the independence of our judges. In reading the law, Madam President, and because I lived and studied in the United States I have an understanding of the concept of separation of powers. From my understanding, I am convinced that clause 3 is a grave intrusion, an interference with the separation of powers. From my days in university during some of our law classes I still remember a quote dealing with the separation of powers which was used to illustrate why King James I of England was beheaded in 1688. The essence of the quote was that if the three distinct powers of the Government are vested in one person or body, there can be no liberty.

As I understand it, the rule of law and the doctrine of the separation of powers go hand in hand, and it is the structure of our Constitution. The doctrine is to the effect as far as the judicial arm of the State is concerned, that judges do not make law but merely apply and interpret law. The understanding is that Parliament

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ought not to act to erode the independence of the Judiciary.

Madam President, this Bill from my reading seeks to give the Chief Justice the power to make directions which can only be practice directions as we have heard ad infinitum to determine the mode of trial and the manner of taking evidence. So the Government through its majority in Parliament is seeking to give to the Chief Justice actual power to make law. With this amendment the Chief Justice will be given law-making powers delegated to him by the Government.

Madam President, each individual judge is vested with something that we call inherent jurisdiction. And each individual judge is entitled to his own judicial independence to determine how he runs his court and how he exercises his discretion to do justice to the parties before him, so that the independence of the Judiciary is not just the independence of the body referred to as the Judiciary from Parliament and the Executive—

Madam President: Sen. Nakhid, you have four minutes remaining.

Sen. D. Nakhid:—but the independence of each individual judge. So I have to refresh my memory, Madam President, of what a Practice Direction is. People spoke about it, but what is it actually? So when you check the law dictionary by L.B. Curzon, 5th edition, pages 323-24, it reads:

Direction is a note generally published in law reports indicating the views of the judges of the Court of Appeal or the judges, Masters or Registrars of the High Court relating to matters of practice and procedures of the court. They do not have statutory authority.

That will lead to conflict, Madam President.

I also read section 77 of the Supreme Court of Judicature Act which establishes a Rules Committee and I have observed the purpose, function, and
powers of the Rules Committee. If Parliament wishes to delegate any powers as apparent from clause 3, the proper recipient of those delegated powers would be the Rules Committee. The safeguard of the Rules Committee is that they are independent practitioners who can act as a safeguard. All things to protect our democracy.

Additionally, whatever rules of court are made by this Rules Committee is subject to negative resolution of our Parliament before it becomes law so that the elected and appointed representatives of our democracy can decide whether the rules can be passed with a simple majority or whether a special majority is required. That is another safeguard for the people.

Madam President, not much time left. I do not know how the Law Association feels about the Bill. I do not know the extent to which citizens will be affected. None of us know. It is like we are *Alice in Wonderland*. But I am not comfortable with an individual judge being told that he has to conduct trials in a certain way or to receive evidence in a certain way. I am of the view that the person best placed to make that decision is the individual judge who has the litigants before him, and is aware of all the circumstances which would help him determine whether hearing by video is best or whether the hearing should be done in person. That just seems to me to be commonsense. And that is why we should allow the Law Association to have a chance at what they say.

I think we also have a Criminal Bar Association in this country. But there is one, we should wait to hear what they also have to say. If this clause is passed in its present form, then what about the views of the litigants and whether the wish a hearing by video as opposed to a hearing in person? We have to remember they also have a right.
I do not know about the legal process but should the person most affected not have a say in a trial that he is paying for? Madam President, I wrap it up with this. I go back to the issue of separation of powers. I read section 99 of the Constitution which deals with the powers of judges. And in reading it I had to look at the savings clause, section 6 of the Constitution. I sought advice and advice pointed me to section 54 of the Constitution, which tells me what parts of the Constitution can be amended and with what majority. Section 99 is one of the sections which cannot be amended. So unless I am mistaken the inherent jurisdiction of judges which they enjoyed before the Constitution, and which was saved by the Constitution is not capable of being whittled down by any kind of majority. It is sacred. It is untouchable and in closing, it makes me wonder whether I am in Iraq or in Trinidad and Tobago. I thank you, Madam President. [Desk thumping]

Madam President: Sen. Deyalsingh.

Sen. Dr. Varma Deyalsingh: Thank you, Madam President, for giving me this opportunity to present on this Bill, the Miscellaneous Provisions (Administration of Justice) Bill, 2020. And I must say when I heard the clock striking just now midnight and I am hearing talks about monsters from both sides and creation of monsters, it just occurred to me that it was an 18-year-old person, girl actually, Mary Shelley, who created the most ferocious monster in history, Frankenstein. She was a very good author and actually had that as a creation.

So when we are talking about monsters and how we are going to deal with them the Attorney General actually had a lot to say about the Sexual Offences Act and dealing with these people. So I will come to that last. But first, Madam, I must say that when I looked at the different aspects of the Bill, the six clauses of this
Bill, and in clause 3 where it actually mentioned that the Supreme Court of Judicature Act when we looked at the definition of the words “A Drug Treatment Court Process” and “substance”, what I must say, Madam President, those definitions are very important when we are dealing with individuals. Because you see, just recently we came to this House to debate what is a substance.

And I think the Attorney General had, you know, the foresight to put amendments to that “substances” that we had. Because when we had things like the “zesser” party and people fall in, certain substances fell out of that Act that we had before. So the definition for “substance” I think it is very vital to this Act in clauses 3 and 4. And then I am looking at the fact that we have new substances that are coming into the market, Madam President. We have crystal meth regrettably has now made its presence felt in our country. And it is really hell on earth if this gets out of hand and we have no sort of manner to treat with this.

So this aspect of having this drug court, it is very welcomed. It was there before because the psychiatric association had meetings with the Chief Justice before and Justice Malcolm Holdip. And things were already in place. We have sent people to Piparo. We have already had cases where, you know, we would have made recommendations. So this is actually furtherance to that. And furtherance to that, and also furtherance to the fact that younger and younger persons are now using drugs, and there are more dangerous drugs out there disguised as many different things, as gummy bears, and drugs that are aiming to get to children.

So, Madam President, while we have this drug treatment court and we have the drug treatment court in Piparo, I must mention the fact that we are seeing younger persons. And it is a great difficulty when you see parents coming to us with young children and we have no place to put them, nowhere to treat them. And
you see, you have a young individual, you would not want them in a setting with a jail. So this is a good avenue for the treatment of these children who may resist all sorts of advances to say, “Hey, go in to some treatment”. They may refuse.

But if we can use the court system to assist parents, to assist the community, and as the Attorney General said “the family, the community, the patient”. If this piece of legislation could help get those individuals into therapy, we would be doing a great justice because it is really difficult I am saying, when you have the young persons especially refusing treatment.

Madam President, with the legislation change recently where people are legally entitled to have 30 grammes of marijuana, what I am seeing now is within the COVID period certain young persons are actually buying a little more than that, because they are saying they do not want to come out and be caught. And they basically want to have their stack of drugs home and they are going for that. And sometime there was a case where they had some marijuana that you call “high grade”, and there was a low amount in the market. We were not getting it. Those young persons actually went out, bought more, were stocking it, and I know two individuals actually were caught with a greater amount of the marijuana. So therefore, we have to put factors into a point, you know, that if persons are caught with possession, no we do not really care for a jail treatment for them. We really would want them to go to another avenue.

But, Madam President, what I might say, as I say I applaud this, this Bill here, but I am saying the Attorney General must think more. Because you see, not everybody would want to go to Piparo. And eventually I am hoping that you know, dealing with drugs is a lifelong battle and therefore there are other options rather than Piparo. Some people may say the conditions are not right as a drug treatment
centre. So therefore, we have to look at there is the Substance Abuse Prevention Treatment Centre in Caura, very clean, very good. Or, there are also private opportunities in like Mount St. Benedict. So probably we may have to look at the link between the courts not just to send them to that drug treatment centre in Piparo, but to these other avenues under certain conditions.

Now, the thing is, I also applauded the fact that the Attorney General stressed that it is not just drugs, where substances we are looking at but we are looking at alcohol. And as Sen. Nakhid went into some details about the alcohol, the availability of alcohol, the dangers of alcohol. We have to take into account that this piece of legislation would also serve to help in our cases of domestic violence and substance abuse. And not just domestic violence, sorry, but sexual abuse, because people who use alcohol may get disinhibited and may lash out more, or may go and abuse someone where they may not have done that before. So his call for, you know, the added scrutiny of easily accessible alcohol I think is something I support also.

Madam President, when I looked at this also, I must make mention that when you look at the definition here given that you have to look at persons like in clause 3, right, paragraph (c) where you try to give a definition and you say that:

“…a Drug Treatment Process…”—is—“…where it is satisfied that the person has a history of alcohol abuse or substance use…”

Now, I understand what it means and I think most of the persons will understand if alcohol is a problem. But medically-wise our definition has moved a little beyond that. We are calling it alcohol or substance use disorder. So I do not know if we would need clarification in the Act for that. I mean the idea is what is caught there. We are looking at substance abuse and alcohol abuse that is probably
affecting criminal activity in some manner. But again, the definition may have to be looked at. Do we put it as alcohol or substance use disorder? And I am looking at the fact that this is something we will have to consider.

Now, when I look at the clause, the aspect of the Act where clause 3 would amend section 78, it also allows for the change for the cost of photocopying to be put on the legislative footing. I think that is more something that I think probably just to get the cost of running the department. I still have to get clarification on that. Is it just to put the cost of photocopying people cannot get or gain any sort of copies from the Government service or whatever. So, I think if that is so, be it so, I think I have no problem with that aspect of it.

Now, when I look at the fact that we are dealing with drugs and we are looking at persons who are trying to escape the law, may also try to seek to get into this aspect here. Because for instance persons who sometimes come in to St. Ann’s Hospital come in because they are owing money to some drug dealer and they run to St. Ann’s as a safe haven. So we have to be very careful that people do not abuse this piece of legislation here. To try to get into a nice little court treatment centre in Piparo or whatever, just to get away from whatever hardships they are dealing outside, in terms of trying to get into a safe house to get away from dangerous times.

Now, the aspect I want to look at also is the need that we have to establish certain centres for younger persons. And probably the Attorney General may have to assure us that if the drug treatment centres are mainly for adults or are they also for children. Because there are court cases that recently went to St. Ann’s Hospital where when children were admitted to an adult ward the courts basically told us, “no”, we cannot do that. And we had to establish a separate ward for the
psychiatric treatment of the children.

Now, when I look at the objection some of the attorneys made in the trial, the trial judge not being able to, you know, having the discretion. And I could understand their concerns and it is two esteemed attorneys, so even that I was trying to figure how could we get a solution to this? I mean, the avenue of having to cross examine, we know it is an important process where you look at the body language, the facial expression. And as one of our Senators mentioned, part of the whole process in court is to really—you would know your witness, you would know what they are going to do. You would know if they are not telling the truth. And again, you see, they are attorneys and justice may not be served if it is totally left to the video conferences.

But we may have to look at do we have to hire a psychologist specialized in facial expression as we know the work of Paul Ekman who actually looked at facial expressions in persons to know if they are lying, if their eyes are turning one way, all their micro expressions. So we may have to somehow tie in that to legislation to see if it can appease the attorneys later on where psychological experts come on board in all these video conferences, court matters.

With clause 5 now, Madam President, I must say that clause 5 actually gives us the PCA, you know, the ability now to sit in to any sort of a quest that is occurring by a coroner or a magistrate. And I guess this is important in the sense that if they are left out and if they have to come in after the fact, you find that this may be an injustice.

12.15 a.m.

Because I am saying, if there are major issues involving police shootings, if there are major issues involving the public having some sort of outcry, I think they
being there in the beginning may be able to get a full understanding of what goes on. But then I am thinking, how, what would their role really be like? Just an observer or be part of the trial? Suppose the coroner on his own decides he is going to throw out a certain matter or the police in a shooting is not guilty, would they be able to object? If there is a shooting of a police officer, if the police had shot somebody, what is going to happen in that case where the coroner says he does not think it is a guilty case for the police officers to answer but the PCA may have a different opinion? Because both of them will be in that same hearing, so I wanted to know the level of involvement of the individuals of the PCA. And again, with this COVID time, will it be virtual hearings also?

Now I must say, as I am coming to a close, I must say the Attorney General did mention the fact that his hair stood on different parts of the body, stood on his arm, his chest, and we got to hold anatomy when he was talking about clause 3, I think it was, and the family being involved. That, I think, is an excellent reason for your hair to stand on end because it is an exciting, you know, parameter where we have the whole family and community involved in handling drug rehabilitation. But my hair actually stood on end when we looked at clause 6. You see, the heinous crimes that are occurring, the fact that we are seeing murders, women being missing and the fact that the sexual offenders registry was 20 years without one single person being put there, that is an injustice to the women, that is an injustice that occurs in society. And I think we have to commend the Attorney General for coming today now to change that instead of having mandatory mental assessment. Before, you know, we were leaving it for judicial discretion now. So I think that is an excellent aspect.

Madam President: Sen. Deyalsingh, you have five minutes.
Sen. Dr. V. Deyalsingh: And I thank him for bringing on that to the surface of the people. Thank you, Madam.

Madam President: Sen. Mark.

Sen. Wade Mark: Thank you, Madam President. Madam President, why would a government keep us here at this time in the morning to pass a Bill or seek to pass a Bill that the Law Association has called for some time to look at because it would impact negatively in the administration of justice? Madam President, I want to remind you, and this hon. Senate of a pastor by the name of Martin Nieöller. He was an outspoken public foe of Adolf Hitler and he spent seven years in a Nazi concentration camp, and he left us with this very important statement:

First—“…they came for the Socialists…

…I was not a Socialist”—I did not speak out.

“Then they came for the trade unionists
And I did not speak out

Because I was not a trade unionist

Then they came for the Jews
And I did not speak out

Because I was not a Jew”

Madam President, I want to tell this honourable Senate at 21 minutes past 12, I have created this one: “Then they came for the Judiciary and I did not speak out because I was not a judge. And then they came for me and there was no one left to speak for me.”

Madam President, the Bill before us, I want to concentrate on two areas of the Bill: I want to look at the Supreme Court of Judicature clauses and also the Summary Court clauses. When I looked at this Bill, as a bush lawyer, the Bill,
Madam President, the Bill before us threatens the fundamental rights and liberties of the citizens of our country. It threatens the independence of the Judiciary. It undermines the discretion of our judges. And, Madam President, I want to ask the Attorney General: Who recommended these clauses, was it the Attorney General? Did Attorney General have an audience with the Chief Justice? Where did these clauses come from, Madam President? I think we need some answers from the Attorney General who is not here with us at this time. Madam President, as a Parliament, I have sworn to uphold the Constitution. And this Bill in its current form represents a direct attack, an assault on the Judiciary of our country. That is what this Bill is attempting to do. And the Government has brought this Bill and they want us to support this measure, and it is very impossible for us to do so.

Madam President, let me—as I focus on these particular sections, what is coming out very clear in clause—we have clause 4—Madam President, I am talking about section 14A of clause 3, you will see where the concentration of unlimited power in the hands of the Chief Justice to determine on his own when and in what circumstances, and offer due process is going to be impacted upon. Madam President, in our system, we believe in open justice and the measure in 14A, Madam President, it says:

“The Chief Justice may, when the circumstances warrant, issue directions…”

Madam President, the principles of open justice are well-known. These were discussed in a case which should be familiar to the AG. The name of the case is Al Rawi and others v The Security Service and others, 2011, UKSC34. Madam President, in that case, the Supreme Court held and I quote:
“There are certain features of a common law trial which are fundamental to our system of justice (both criminal and civil). First, subject to certain established and limited exceptions, trials should be conducted and judgments given in public.

The open justice principle is not a mere procedural rule. It is a fundamental common law principle.”

Madam President, in 14A of the legislation before us, the Chief Justice when he deems necessary, he is ensuring that criminal and civil trials may be conducted by audio and video link. Madam President, the Chief Justice is not a lawmakering individual, only the Parliament can make laws. And there is a difference between a Practice Direction and, Madam President, the rules that are made by the Supreme Court committee that sets rules for the Supreme Court.

Madam President, we know that there are exceptions when you are talking about trials in public. In certain circumstances, it has been held proper for trials not to be conducted in open, such as where a child is giving evidence, or there is some issue that can, that could, rather, compromise national security.

12.30 a.m.

Madam President, these exceptions are rare and should not be permitted to become the normal operating procedures. The Bill before us proposes to put into the hands of our country’s Chief Justice an unbridled power for him, Madam President, to determine in his sole discretion, in what circumstances audio and video links can be used to conduct both civil and criminal trials. I do not think the framers of our Constitution designed our Constitution in a way to put all this power into the hands of a Chief Justice. Madam President, that goes too far. It should be left to the Parliament to carve out these exceptions in substantive law when they
For instance, it is an entirely reasonable view for a judge to adopt the view that video and audio links can be used where there is an outbreak of an infectious disease. That has been happening, and the courts have been utilizing that power and using technology effectively, Madam President. The short point is that any derogation of public trials in a courtroom interferes with principles of open justice, and that is a matter which Parliament and Parliament alone should treat with, not the Chief Justice.

The fact that technology platforms are not the same as an open court where any member of the public can walk in, who does not have access to technology and view trials. And whilst, Madam President, one may argue that the Chief Justice is responsible for the administration of justice, that does not mean that he should be given carte blanche power to determine, on his own, when trials could be abandoned. This is a matter that should be left in the hands of a judge to determine. Madam President, on this same section of the legislation, I wish to say that there are some trials which involve rigorous cross-examination, and audio-visual technology is simply inappropriate.

We have all witnessed—Madam President, I do not know if you saw it—but I saw a trial which came live in the public domain where the Chief Justice himself was being cross-examined online, and I am not commenting on the substance of that case. But anyone who looked at that trial would have observed that there were several breaks in the technology which disrupted the smooth flow of cross-examination. Madam President, that is a problem. I do not know if the hon. AG has ever conducted cross-examination himself, like I know many other distinguished lawyers have done. But, Madam President, the hon. AG may wish to consider the
words of *Jones v National Coal Board* where Lord Denning commented on the importance of cross examination, and I quote:

“It is only by cross-examination that a witness’s evidence can be properly tested, and it loses much of its effectiveness in counsel’s hands if the witness is given time to think out the answer to awkward questions…”

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

Sen. W. Mark:

“…the very gist of cross-examination lies in the unbroken sequence of question and answer.”

Madam President, this matter is extremely serious, and I believe that the Government must realize that we cannot associate or support this kind of measure that is being promoted.

Madam President, I want to say the following. Every judicial officer ought to have complete independence in determining how it ought to receive evidence, based on the circumstances before the judicial officer. This independence is a constitutional safeguard to ensure that no outside interference of how evidence is to be received by a sitting judge or even a magistrate.

Madam President, the granting of the Chief Justice the power where circumstances warrant to issue directions as being proposed, will take away the wide discretion that a judge has enjoyed for centuries to determine the mood and manner and location where evidence may be taken. This amendment will, invariably, remove that discretion and independence of any sitting judge in dispensing justice on a case-by-case basis. This power is proposed to be taken away by the amendment, through the Chief Justice, who is exercising an administration function, who is not even sitting, Madam President, in that or in the
particular case.

Madam President, by this amendment, a litigant’s right to a fair hearing before an impartial court, who no longer has the authority to dispense justice, according to the litigant’s circumstances, is therefore fundamentally eroded which is a clear breach of a litigant’s fundamental constitutional right. The proposed amendment that I have mentioned in section 14A, Madam President, it is obvious, it would have come from the Judiciary. And I would like the Attorney General who is here, when he is winding up, to tell this honourable Senate whether this amendment came from the Judiciary or the Chief Justice himself.

Madam President, the hon. Attorney General must tell this Parliament, if the Executive and the Judiciary, together, brought this amendment, and whether the Attorney General is aware that this amendment will take away the constitutional rights of the citizens of our country to a fair hearing. This proposed section is designed to erode the powers of a sitting judge and transfer that power into the hands of the Chief Justice and, by extension, the Executive.

Madam President, this is unacceptable. We do not support these particular amendments that I have seen in section 14A of the legislation, and that I have seen, Madam President, repeated in section—I think it is the section 6, Madam President—section 4 and it is repeated in this section. Madam President, I would like to believe that the AG can tell us whether this Bill cannot be dubbed—and, Madam President, I mean no aspersions here—the Justice Frank Seepersad Bill.

**Madam President:** Sen. Mark, your time is up. Your time is up. [*Desk thumping*]

Sen. Vieira. Just for the record Members, what Sen. Mark—his last sentence there was totally out of order and in conflict with the Standing Orders.

**Sen. Anthony Vieira:** Thank you, Madam President. Madam President, before
going into the meat of my contribution, I would like to start off by picking up from where the Attorney General left off, when he spoke about pushing his luck, and why he deserves to be bouffed. While I see the usefulness of miscellaneous amendments brought in omnibus fashion, as in this legislation, let me just say, all of us in this Chamber want the same thing. We want good law. And even though we may be the last leg in the legislative process—and I know it goes through the CPC and then the LRC and then Cabinet—our role is still crucial.

As an attorney, one is acutely aware of the negative consequences of poorly drafted legislation. Failure of a statute to achieve its desired result, it leads to litigation. It is difficult for lawyers to be able to give certain and sure advices on the particular instrument. It undermines the rule of law and the principle of certainty of law. As the Attorney General himself observed, the laws for the sex offenders registry was badly drafted. It is now in the wee hours of the morning and, today, barely two days after very intense scrutiny and debate on a highly contentious and very important legislation, we have traversed, not one, not two, but three omnibus Bills. Madam President, 11 Acts we traversed under the FATF compliance; six Acts we traversed under the statutory authority miscellaneous; four Acts we are traversing now. In one sitting, 21 Acts in all. That is a lot to read in a very narrowly compressed time. It is a lot to research, it is lot to process. And as we have heard, this Bill has some very technical components to it: separation of powers, constitutional rights of the accused. It cannot be best practice to be doing legislation in this fashion. It is not conducive to good law. The highest goal of all is the effectiveness of the legislation.

So I would ask the hon. Attorney General, through you, Madam President, in future to afford us more time to study, please do not overload us with multiple
Bills of this nature, as was done today. We want to avoid unanticipated consequences, undesirable side effects of poorly drafted legislation. The revision of the law must be considered through calm and careful deliberation.

Turning now to the Act itself, this legislation seeks to amend several statutes for essentially four purposes. First, to provide for the introduction of a drug treatment court process; secondly, to formally empower the Chief Justice and the Rules Committees, to issue directions for matters in the courts to be conducted via video and audio link, with relation to the drug treatment processes; thirdly, to allow the Police Complaints Authority to participate as an interested party at coroners’ inquest and to be informed when inquests are being held, when those inquests involve a death which is being investigated by the PCA; and fourth, to give courts discretion on whether or not to order mental health assessments under the Sexual Offences Act.

Let us deal with the first issue, the drug treatment court. Clauses 3 and 4 of this Bill are absolutely revolutionary in that they swim against the tide of the traditional, heavy-fisted, punitive approach, used by the courts when dealing with drug offenders. The drug treatment court and its processes seek a less punitive, more holistic-integrated response to persons who run afoul of the law where they have addictive disorders, whether drug or alcohol. So, this is not about getting soft on crime, but about embracing a multidimensional approach, a humane approach, in working towards a drug-free society.

Now, besides it being a matter of pure common sense, there is enough empirical evidence to show that fining, locking up, criminalizing, stigmatizing people who are sick and who themselves are often victims, that does not work. It cannot work in curing or rehabilitating those persons. What they need is help, but
the heavy hand of the law leans in a different direction. The system treats drug addicts and alcoholics as losers, as pests. They are humanized and then they are cruelly pushed down—out of sight, out of mind—where they are in the lock up, as though somehow that will cure them of their addiction and make them productive citizens when they are released. But what, in fact, we have been doing, what in fact the system does is, it turns sick people into convicts and criminals. So this drug treatment court process is designed to supervise cases of drugs offenders who agree to treatment for substance abuse. This is restorative justice in action, as it requires the offender to accept responsibility for his actions, and to agree to enter into monitoring intensive treatment and counselling.

This legislation offers a lifeline, a lifeline to those who are down and who are going under. It is also a less expensive option to incarceration and it will reduce the burden of the criminal justice system. And last, but not least, it gives families—families that have been fractured by the scourge of alcohol and drug abuse—it gives them a chance to heal, to regroup and to heal. I want to say this is not just a Government initiative. This is one that has been fully supported and endorsed by the Judiciary and international organizations like the OAS and the Inter-American Drug Abuse Control Commission.

You know, I have a statue in my office at home of Lady Justice. In her left hand, she holds the scale of justice, she is blindfolded and in her right hand, she has a sword. When Lady Justice wheels that sharp sword blindfolded, she can do a lot of damage. This is an instance where Lady Justice will momentarily put down that sword. She will outstretch her hand, not to cut down, not to punish, not to exact retribution, but to raise up to offer hope. But it should be noted, her sword is not far. It remains within reach to protect any child at risk and, if need be, to

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straighten out the non-compliance as the amendments do not preclude criminal penalties where warranted. But this helping hand, this legislation that we are so privileged to be able to be part of, if grasped, it offers prevention, harm reduction, treatment, social reintegration and supply reduction. The alternative means being dealt with in the traditional criminal justice system. So I very much support the philosophy and thinking behind this drug treatment court process.

The controversial point of the legislation has been in regard to the audio and video links. Now, the legislation seeks to make clear that the Chief Justice—and here we are really not talking about the individual. We are really talking about the Rules Committee under section 77 of the Supreme Court of Judicature. Well, it is long recognized, he has the authority and the power to issue Practice Directions and we are now talking about Practice Directions for virtual hearings, in criminal and noncriminal matters, as it relates to drug treatment court processes.

You know, we are hearing a lot of talk and there has been a lot of speculation about how this is going to be so draconian. I think we are taking it way out of context. We are talking about directions for virtual hearings in relation to a drug treatment court process. We are talking about rules prescribing procedures of drug treatment processes, and Practice Directions are routinely issued in the Supreme Court of Judicature, which as we know, consists of the High Court and the Court of Appeal. They are issued under the Civil Proceedings Rules, they are issued under the Criminal Procedure Rules, Family Proceedings Rules and Children Court Rules. And why do we need clause 4? We need clause 4 because summary courts are a separate jurisdiction and so, we will also have to ensure that there are Practice Directions in relation to the Magistrates’ Court.

We have been using video conferencing for a while now and, as we know,
the COVID restrictions have accelerated its use to the point where virtual is going to be—is in fact, the new normal. I agree with the Attorney General that there is no breach of rights. Look, Parliament is supposed to be public. Where are the members of the public in the gallery? Are these proceedings any less public? Let me make it clear. Practice Directions are going to evolve as we get more familiar with the various types of platforms and the technologies. We need to guard against proceedings becoming entirely closeted however. I agree with that.

As we have heard, one of the requirements of the law is that the general public should be allowed access to proceedings in open court. And so, we may have to do like what we have in this Parliament. Provisions may have to be made for the live broadcasting of court proceedings. Alternatively, for interested parties to be able to contact the registry and to get an invite to the virtual hearing room. So early stages are going to evolve and that is why we need these Practice Directions.

Look, one of the things that I have been noticing as a trend, and it is very hard on young lawyers today. When I started practice, the courts were open. Chamber court was there, everybody was there lined up, and you got a chance to look and see experienced advocates practise their craft. Even before COVID restrictions, we started to have scheduled appointments. Everything was being done in chambers. Young lawyers are not getting a chance to see. So we have to cater for young lawyers, so that they can be mentored and see the experienced and the best advocates in action. We have to cater for law students. How are they going to learn their craft? And, I agree, there are occasions when you need to have cross-examination in person. So I expect that they are going to have hybrid hearings evolving that will allow some participants to attend in court, in particular, when it comes to cross-examination in person. I do not see anything here—and I will deal
with this in the committee stage—about judges’ discretion being removed. It says the Chief Justice may—right?—may be conducted.

Let us look at the Police Complaints Authority point now. As we know, coroners are responsible to enquire into the causes and circumstances of unnatural deaths, and in Trinidad and Tobago our magistrates act as Coroners. In some countries, you have Government officials, you have all kinds of other people that can serve as coroners, but in Trinidad and Tobago it is magistrates and they will serve as coroners—

**Madam President:** Sen. Vieira, you have five more minutes.

**Sen. A. Vieira:** Five minutes? Whew!—usually within their particular districts, and these enquiries are conducted under the Coroners Act. So this amendment gives the Police Complaints Authority standing to participate in coroners’ proceedings as an interested party, in particular, where the deceased is or was the subject of an investigation being carried out by the authority. In other words, where the PCA is investigating alleged homicides involving police officers.

Now, this is going to allow for harmonization between two sets of investigators. It is going to ensure that the PCA is kept in the loop when coroner hearings are being held, and it will enable coroners to get the support and insight from the PCA when enquiring into deaths involving police.

Now, mental health. Section 49 of the Sexual Offences Act requires the court, before determining whether a person convicted of the registrable offence, should report to a police station to request a mental assessment report from a psychiatrist. Mental health assessments are used to see if a person has a mental disorder and what type of treatment might help. So, mental cognitive evaluations, definitely, are helpful to courts.
But, I agree, why fetter the court’s discretion? Why make it mandatory? It does, I think, overstep the separation of powers principle, and I think particularly where there are situations where the courts accept that it is not really necessary. All you are doing is, you are just slowing down the ability of the court to make orders that the offenders go to the police station and do reports, to make those orders in a timely way. And, the fact that this amendment says that the court now has a discretion, does not preclude the court from making the order for the mental assessment.

So, again, I see nothing sinister, nothing invidious with any of the amendments sought under this legislation, and I will support it fully. Madam President, I thank you. [Desk thumping]

The Attorney General and Minister of Legal Affairs (Hon. Faris Al-Rawi): Madam President, good morning to you and to all my distinguished colleagues who still look remarkably fresh and well-tendered this afternoon, leading into tonight and now this morning. Madam President, there are a few matters that need to be addressed in wind up and permit me to dive directly to this. I think we are all agreed that the drug treatment court process is something that we can all support. I have not heard any serious criticism in relation to those aspects in clauses 3 or 4 and, indeed, I think that the purpose of that has been well established by all hon. Members. The crux of concern is really the aspect of the proposed section 14A in clause 3, which is the Chief Justice’s Practice Direction capacity and, similarly, in clause 4, where we have the same structure in the proposed section 57A in paragraph (c). So let us get to that.

1.00 a.m.

Section 2 of the Constitution of the Republic of Trinidad and Tobago sets
out that the supreme law is the Constitution of the Republic of Trinidad and
Tobago. Chapter 7 of the Constitution sets out in clear form the whole
management and structure of our constitutional knowledge of what stands as the
supreme law as it relates to the courts; Chapter 7, “The Judicature”, Part I, “The
Supreme Court”. It then goes on between sections 99 to 100, the “Establishment of
Supreme Court”, “Constitution of High Court”, and then we get to the Court of
Appeal. The Constitution is then followed by two very significant pieces of law,
the Supreme Court of Judicature Act, Chap. 4:01, and also, Madam President, the
Summary Courts Act.

When we get to those pieces of law and we get specifically to the Supreme
Court of Judicature Act, it is material to note in section 14 of the Supreme Court of
Judicature Act:

“The jurisdiction vested in the High Court…”
—And there is similar provision for the Court of Appeal later on—

“…shall, so far as regards procedure and practice be exercised in the manner
provided by this Act or by Rules of Court and where no special provision is
contained in this Act or in Rules of Court with reference thereto any such
jurisdiction shall be exercised as nearly as may be in the same manner as
that in which it might have been exercised by the former Supreme Court
under the Judicature Ordinance (repealed by this Act).”

Section 15 goes on to the “Powers of single Judge”. We then come, Madam
President, to the fact that whilst the Supreme Court of Judicature Act certainly has
rule-making power; section 76 sets out the committee, 77 sets out the functions of
the rules of the Supreme Court, there is a hierarchical order of the application of
laws, Constitution, Supreme Court of Judicature, Summary Courts Act, statute.
What are the two statutes that I want to draw attention to today, I would like to respectfully begin with Act No. 6 of 2016, the Family and Children Division. And I refer you, Madam President, and hon. colleagues to section 5:

“Sittings of the Family Court…”

—And then we go on to the Children Court later on—

“…shall be held at such locations and at such times as the Chief Justice, in consultation with a Family Court Judge, may appoint…”

Subsection (2):

“Notwithstanding subsection (1), the Family Court may, when required and appropriate, sit at any time, and may conduct hearings by telephone, video conference or other appropriate electronic means.”

Let us now go, Madam President, to Act No. 12 of 2018, the Criminal Division and District Criminal and Traffic Courts Act. Let us go to Part II, “The Criminal Division of the High Court”:

“There shall be a Criminal Division of the High Court which shall comprise a court known as ‘the Criminal Court’.”—Section 4.

Section 6:

“Sittings of the Criminal Court shall be held at such locations and at such times as the Chief Justice, in consultation with a Judge assigned to that Court, may appoint in accordance with the Supreme Court of Judicature Act.”

Subsection (2):

“Notwithstanding subsection (1), the Criminal Court may, when required and appropriate, sit at any time, and may conduct hearings by telephone, video conference or any other appropriate electronic means.”
Let us get to the fact that we have Civil Proceedings Rules which vest the powers of case management in the judge and only the judge. Let us get to the Criminal Procedure Rules which recognize that the power of case management is exercised not by the hon. Chief Justice as is exactly the case in the civil court arena; and instead, Madam President, where we get to the Criminal Procedure Rules, section 10, “The court’s case management powers”, 10.1:

“(1) In fulfilling its duty under rule 3.2 the court may give any direction and take any step to actively manage a case.

(2) In particular, the court may—

(c) for the purpose of giving directions, receive applications and representations by letter, by telephone or by any other means of electronic communication, and conduct a hearing by such means;”

Let us go further. Let us get, Madam President, now to Miscellaneous Amendments (No. 2) Act, which is Act No. 20 of 2020. Let us continuing adding the pieces. So we have the Constitution, the Supreme Court of Judicature Act, the Criminal Division and District Criminal and Traffic, and the Family and Children Division, let us go now to the Summary Courts Act amended by section 4 of the Miscellaneous Amendments (No. 2).

“The Summary Courts Act is amended—

(a)(ii) by inserting…in alphabetical order, the following definitions:

video link:

‘video link’ means a technological arrangement whereby a person, without being physically present in the place where the proceedings are conducted, is able to see and hear and be seen and be heard by the following persons:

(a) …Judge, Master, Magistrate…Magistracy Registrar…Clerk of the
Miscellaneous Provisions
(Administration of Justice) Bill, 2020
Hon. F. Al-Rawi (cont’d)

Court;

(b) the parties to the proceedings;
(c) the Attorney-at-law…in the proceedings;
(d) any interpreter…
(e) any other person who may be required to assist the Court in the
conduct of its proceedings;”

And then we get down to section 7:

“The Chief Justice may, by Order—
(a) designate…”—et cetera.

Let us come down to the least in the hierarchy, the Practice Direction. I read
section 14 and section 15 in the Supreme Court of Judicature Act, Rules of Court,
Acts, practice directions are not mentioned. Practice Directions are a clinical tool
designed to tell you how something is done, not where and not the circumstances.
There is nothing in law to supplant the inherent jurisdiction of the trial judge
within the ambit of section 5 of the Constitution, the supreme law of Trinidad and
Tobago, to take away the case management functions and the trial and the justice
and the appearance of justice that the judge brings—nothing. Let us get to the
language of the Bill before us, 14A:

“The Chief Justice may, when the circumstances warrant, issue directions as
deemed necessary to ensure…”

This is now two words, “may” versus “ensure”.

I can understand and fully respect my learned colleague, Sen. Welch, but
that word “ensure” may be problematic. I picked up on it when I understood the
learned Senator’s position on the law and his interpretation; very capably
delivered, very skilfully put. And I compliment again Sen. Lutchmedial. I have to

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confess, I always enjoy listening to her contributions. She gave a clinical approach with excellent advocacy for her point of view. I take it at its highest, as I do Sen. Welch’s, to mean that there is a concern in the interpretation. Let us put it now into mischief and solution.

It is that the hon. Senators tell us and should we pay attention to whether we are somehow impliedly repealing the Constitution, the Supreme Court of Judicature Act, the Family and Children Division, the Criminal Division, the Civil Proceedings Rules and the Criminal Procedure Rules as I have set them out, as amended by Act No. 20 of 2020. My humble submission is taking the argument at highest that we can easily do some surgery to the language here. Instead of “ensure” we can say “facilitate”, and therefore we would take away the collision between “may” and “ensure”. My own interpretation and intention was that:

The Chief Justice may, when the circumstances warrant, issue directions as deemed necessary to facilitate the holding of criminal and civil trials that may be conducted by audio and video link.

We now know that those terms were defined by other laws. And that “evidence” not “is given by audio” but that “evidence may be given by audio and video link”. That effectively takes the argument out of the equation and takes us into the safe harbour of surety.

So accepting what my learned colleagues say is a caution, not necessarily agreeing because I hold the same view that Sen. Vieira put onto the record. I associate myself 100 per cent with that point of view. But I respectfully believe that this is something which can be addressed. Sen. Welch asked a very important question, “Why do this”? And the hon. Senator skilfully referred to the judgment in the Misick case which effectively—and I am going to put this in my own words—
upheld through in the context of COVID Regulations that the right to a fair hearing did not mean that it was the right to the fair hearing such that you had to breathe the same air. In fact, the judge could be breathing the air on one island, the witness on another island, et cetera. But this law was not intended to be a COVID law otherwise it would have been in the COVID Bill. We brought this under the Administration of Justice (Miscellaneous Provisions) Bill because of the rational connection between the fact that the game has changed.

The game changed, Act No. 6 of 2016. The game changed in 2018. COVID merely precipitated what we had anticipated in the laws. It changed by Act No. 20 of 2020, Act No. 10 of 2020. We have not been sitting idly by as a government or as a Parliament, we have been progressively amending the laws and fortunately we did so because COVID did not catch us unprepared. So we do want this law in perpetuity. It is not for the record and for the sake of Pepper v Hart intended to supplant the judge’s discretion nor could it ever supplant defence counsels’ objection, nor could it ever supplant the fact that you have the right of judicial review in relation to a Practice Direction if you did not like it, as Sen. Wayne Sturge did; as Senator—now past—Sen. Sophia Chote is in the middle of doing on the criminal trial right of fair hearing arguments interestingly enough dealt with by the Privy Council in the Turks and Caicos Misick decision.

So, Madam President, most respectfully, I genuinely, I am of the firm view that this law is in safe harbour. Can we take on board the amendments suggested by my learned friends, Sen. Lutchmedial and Sen. Welch? I think we should. It is prudent for us to take the counsel of the collective mind, after all that is the Parliament, the place where you speak. And, Madam President, I genuinely believe that that in essence is the substance of where we are. Sen. Mark made a number of
submissions and I do not think that we need to associate ourselves with wild conspiracy theories. We are not on about any ad hominem legislation, this is a matter of general principle. The Office of the Chief Justice has the traditional power to do as Chief Justices do, that is why they are called the Chief Justice, head the Judicial and Legal Service Commission, head the rule-making power under the RSC functions, issue practice directions.

When we look at Act No. 20 of 2020, we allow the Chief Justice the ability in his own discretion, not as we are doing here to do the followings things:

“…may, by Order—

(a) designate locations…

Where the Chief Justice considers…having regard to…circumstances, it is desirable…in the interest…”

—or expediency of hearings to transfer matters from one judge to another, from one district to another.

“Notwithstanding…”—that—“…where a Court hears a matter by video link…”—where it—“…is deemed to be held…”

Are we forgetting what happened in cases like the Marcia Ayers matter? Litigants were left stranded in the middle of trials. We must take judicial notice when it is in court but we must take parliamentary notice when we are here of the need to ensure that we avoid litigation. Trinidad is a very litigious situation but there is a balance to be had. There is no over-centralization of power in the hon. Chief Justice’s office.

There is a measure and balance because the Constitution, the Supreme Court of Judicature, the Summary Courts Act as amended, the Criminal Division, the Family and Children Division, the Civil Proceedings Rules, the Criminal
Procedure Rules are all in priority to practice directions, and practice directions are the subject of challenge and the Constitution in the right of fair hearing does not supplant defence counsels’ or prosecutorial counsels’ submissions to the court as to why a matter should be case-managed in a particular way. Indeed, it could form the basis of an appeal and again there is that due process argument. So, Madam President, I am quite confident that we are on safe ground. I look forward to submissions at the committee stage, 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.*

*Clauses 1 and 2 ordered to stand part of the Bill.*

**Clause 3.**

*Question proposed:* That clause 3 stand part of the Bill.

**Madam Chairman:** Sen. Lutchmedial.

**Sen. Lutchmedial:** Attorney General, as we have been discussing at clause 3(b), the new 14A, would you consider the wording then:

The Chief Justice may, when circumstances warrant, issue directions as deemed necessary to facilitate—

(a) criminal and civil trials which may be conducted…

**Mr. Al-Rawi:** Yeah, it reads well.

**Sen. Lutchmedial:**—by audio and video link.

**Mr. Al-Rawi:** “Um-hmm.”

**Sen. Lutchmedial:** And then:

(b) evidence being given by audio and video link or other communication
medium from a remote point in criminal and non-criminal matters.

Mr. Al-Rawi: I think that is excellent. Sorry to jump in, Madam Chair, may I?

Madam Chairman: Yes.

Mr. Al-Rawi: That is a nice fit in (a). I was looking at the wording in (b) and I was trying to get away from “is” and to go to “may”. So I was thinking of “evidence which may be given”.

Sen. Lutchmedial: To facilitate evidence—well—

Mr. Al-Rawi: So you do not wish—evidence to facilitate—

Sen. Lutchmedial: If we changed the top in the chapeau to “facilitate”:

deemed necessary to facilitate—
evidence being given…

I think that sort of reads—because that is what the direction would be doing, which is to facilitate the—

Mr. Al-Rawi: The CPC is expressing a little discomfort from a parliamentary perspective. I quite like it. There was an alternative that we could have gone to say—I am sorry, may I?

Madam Chairman: “Um-hmm.”

Mr. Al-Rawi: “The Chief Justice may, when the circumstances warrant, issue directions as deemed necessary to ensure”—keeping that—“to ensure that—

(a) criminal and civil trials may be conducted by audio and video link; and

(b) evidence…”—may be—“given by audio and video link or other communication medium from a remote point both in criminal and non-criminal matters.”

So that would keep “may” in both (a) and (b), preserving the discretion factor.

Sen. Welch: Attorney General—

Mr. Al-Rawi: Yeah.
Sen. Welch: I am just wondering if to take care of some of the concerns raised, “The Chief Justice”—after the words—“The Chief Justice may, when the circumstances warrant”—and after the word “warrant”, “as determined by its trial judge”—well, whoever is hearing the matter basically, “issue directions as deemed necessary to ensure that”—in other words, after “warrant”—because, you see, when the circumstances warrant we do not know who is determining that the circumstances are warranted. And the general case law shows that really, it is the trial judge who really makes that determination or it should be the trial judge who is making that determination. So—

Madam Chairman: Sen. Welch, just one second, I think he is conferring on an issue so—

Mr. Al-Rawi: I am so sorry, Madam Chair. Thank you for observing the difficulty of being torn in two directions. Madam Chair, I did catch the gist of what my friend was saying, my colleague was saying that he wanted to preserve in this aspect the subjugation to the judicial officer who is in charge of the matter, so I understood that to be the gist of it. My response to that is, because the Practice Direction which is being issued by the Chief Justice is general in purport and under no circumstances intended to supplant the judge in the course of his case management, the Practice Direction stands alone. It is never—I am going to use the phrase now—ad hominem.

The Chief Justice could never give a practice direction in respect of that case, unless the Chief Justice was coming to take over the case himself and transferring it in a different capacity. So because the practice direction is general in purport and not directed towards a particular case, because this is not a case—for instance, where we amended the Summary Courts Act and the other legislation, Petty Civil Courts Act in Act No. 20 of 2020, where the Chief Justice is
transferring a particular matter on the back of some circumstance. We did it in the Administration of Justice Act by the way, which is about to be proclaimed.

In that law we created the circumstance where a case could be transferred where a magistrate or a judicial officer became functus, died, or some other circumstance. In other words then, the Ayers-Caesar circumstances. That is the only instance where the Chief Justice or whomever is acting in that capacity can step into the case. But this practice direction in 14A stands apart from the trial because it is entirely subjugated to the Rules of the Supreme Court, the Summary Courts Act, the Supreme Court of Judicature Act, as well as the Constitution.

Sen. Welch: So, Attorney General, is it that we are going to have this 14A under which the Chief Justice can issue such Practice Directions while at the same time we still have section 78 operating under which Practice Directions to the same effect have actually been issued? Is it that this 14A will come into operation and run alongside section 78(a) which is to the same effect and which is making it clear that it is the judge who has the discretion? Are we going to have—

Mr. Al-Rawi: I understand.

Sen. Welch:—two sections about the same subject matter?

Mr. Al-Rawi: If I may, Madam Chair, in fact we will have more than two because you are omitting the amendments that we did to the Summary Courts Act in Act No. 20 of 2020. We are not factoring as well section 5 and section 6 of the Criminal Division and District Criminal and Traffic Courts, and the Family and Children Division. So in those two latter Acts which I read out into the record, sections 5 and 6 respectively, those two Acts already put in the power to do the video and audio linking. What we are doing here is to add further to the video link, to the video conduct and to the audio conduct. So there is no inconsistency because in this particular part we are adding in a specific direction with respect to “video
link”, “audio and video link”.

So I catch your argument that it may be viewed to be superfluous insofar as you could say that you have the practice direction capacity pursuant to section 77 of the Supreme Court of Judicature Act and you could argue that that could apply in the Summary Courts context, but we need to put it in the Summary Courts Act, so that is where clause 4 would come in. So we do not see it as inconsistent necessarily because of the amendments we did in Act No. 20 of 2020, the Family and Children Division and the Criminal Division.

**Madam Chairman:** Sen. Vieira.

**Sen. Vieira:** Thank you. Hon. Attorney General, I hear you. I thought we were going in a particular direction. As you know, and when you look at “ensure”, “ensure” means to guarantee, to secure, to assure. On the other hand, “facilitate” means to help, to be of use, to increase the likelihood of. Now, I know, unless there may be some case law that says, you know, avoid “facilitate” because it is a weak word, I would go with “facilitate”, but there may be yet another alternative. If you look at the very Supreme Court of Judicature, Rules:

“Rule of Court may be made under this Act for the following purposes:
(a) for regulating and prescribing…”

And so maybe:

as deemed necessary to regulate and prescribe the procedure for criminal
and civil trials.

So that might be another option, instead of “facilitate”, “for regulating and prescribing the procedure”.

**1.30 a.m.**

**Madam Chairman:** So, Attorney General, may I suggest that we stand down clause—
Mr. Al-Rawi: Madam Chair, I am actually perfectly happy with what Sen. Vieira has just said. It takes us way out of the woods, because it underwrites the fact that we are not, at all, ever allowing a Chief Justice to deal with a particular case. So it would read—

Madam Chairman: All right. So shall I take it down now as the final reading?

Mr. Al-Rawi: Should it please you.

Sen. Thompson-Ahye: While the Attorney General is formulating, is it at all possible to give consideration to having whatever is being drafted and the suggestions made put up on a board that we can actually see, and it would be much quicker, and everybody would be able to view what is happening and be able to assist? Is it at all possible that that can happen in this 21st Century in this new Parliament?

Mr. Al-Rawi: I am sure we can get there, Madam Chair, eventually. Madam Chair, I have the wording, if you will. So—

Madam Chairman: We will ponder that request, and we will have some discussions, administratively, on that issue.

Sen. Thompson-Ahye: It would help. Thank you for considering it or promising to consider it.

Mr. Al-Rawi: So, Madam Chair, at subparagraph (b) in 14A, if you just following me and then we can make sure we have it right. So the words are:

“The Chief Justice may, when the circumstances warrant, issue directions as deemed necessary to…”

Delete the words “ensure that”, and insert instead—sorry, take off “to”—“to ensure that”. Delete “to ensure that” and insert the words, “for regulating and prescribing the manner in which”—” and then it will continue:

“criminal and civil trials may be conducted by audio and video link and
evidence may be given...”—not “is”. Evidence—strike the word “is”—
“evidence may be given by audio and video link or other communication medium.”

Should it please you?

Madam Chairman: Yes.

Mr. Al-Rawi: So here we go:

At the chapeau in 14A delete the words “to ensure that”, replace with the following words: “for regulating and prescribing the manner in which—”. Paragraph (a) reads exactly as it does. Paragraph (b), delete the word “is” after the word “evidence”, and insert the following words, “may be”. So delete “is” and insert the words, “may be” after the word “evidence”.

So the full clause would read:

The Chief Justice may, when the circumstances warrant, issue directions as deemed necessary for regulating and prescribing the manner in which—

(a) criminal and civil trials may be conducted by audio and video link; and

(b) evidence may be given by audio and video link or other communication medium from a remote point both in criminal and non-criminal matters.

Sen. Lutchmedial: The whole function of a Rules Committee is to regulate and prescribe. So if we are using that same language in the same Supreme Court of Judicature Act, and you are taking away the power given to the Rules Committee to regulate and prescribe the manner in which trials are conducted and giving it to the Chief Justice, I really do not see the sense in that. And that is why I said from the very beginning, all of could be avoided if we just change the Chief Justice to the Rules Committee.
Mr. Al-Rawi: I can answer that immediately. The Rules Committee is not the best place to treat with how the technology works. The practice directions are down to Microsoft Teams, the type of IT software, et cetera. It is a different purport. The Rules Committee are entirely appropriate to deal with the other side of it, but when we get to the IT specifications and how we manage the handshake between IT, that is where practice directions become relevant.

Sen. Lutchmedial: Sure, but we have Practice Directions right now, which is the subject of the legal challenge, which says that you are not allowed to have in-person hearings, save and accept certain circumstances. And if you do not agree to have an electronic hearing, then you adjourn your matter. So there is absolutely no discretion now under the Practice Directions, which is the subject of the legal challenges that are before the courts, and that is the concern that I have. That you are giving the power now in law to one office holder to say no, no in-person trial must take place, whether it is COVID or whatever would come in the future. I take the point of Sen. Welch, this is something that is going to stay on the statute books forever, and forever have the power vesting in the office of the Chief Justice to say, suspend all in-person trials. It is either you adjourn your matter indefinitely or you do it electronically, and not— I cannot agree with that.

Mr. Al-Rawi: Madam Chair, if I could. I accept my learned friend’s submission. I do not agree with it. We have a fundamental difference in view, but I respect my colleague’s view. The simple position is that this one person that we describe—I would rather say the office—the office of the Chief Justice has very significant powers, and there is nothing unusual about this. The fact that there is a challenge is welcomed. I mean, that is what due process is for. So the point of view expressed by the person who is challenging the practice directions, this is not the first time we have had a challenge. There was a challenge brought for the Criminal
Procedure Rules themselves, and practice directions prior to that by Sen. Sturge, as he stood then, and that case was lost. So we will see what the courts come up with.  

**Sen. Mark:** Attorney General, would you not want to consider a sunset clause? Because this thing is coming in the context of the COVID pandemic, not so?  

**Mr. Al-Rawi:** No. If this was a COVID pandemic issue, it would have been in the COVID Bill. This is not a COVID issue. This is an administration of justice issue, which we are treating with in similar fashion. We are now curing the lacuna we had. We amended the Summary Courts Act previously in a different way. We did the Family and Children Division, and we did the Criminal Division. We are now back filling the Supreme Court of Judicature Act and, in part, the Summary Courts Act in point. So we are not “COVID-ing” this. This is not a COVID measure.  

In any event, I could state for the record, I did not get to say it in the debate, we are in fact about a month away from opening the jury courts at the COSTAATT building, so that all in-person jury trials can resume—all. So this is not intended for COVID.  

**Madam Chairman:** So, hon. Senators, I think that we have had enough discussion on this. The amendment—I am now going to put forward the amendment. So the question is that clause 3 be amended as follows:  

At 14A to delete the words “to ensure that” and substitute the words “for regulating and prescribing the manner in which—”, and at (b) to delete the word “is” after “evidence”, and include the words “may be”.

*Question put and agreed to.*  

Clause 3, as amended, ordered to stand part of the Bill.  

**Clause 4.**  

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

**Mr. Al-Rawi:** Madam Chair, in keeping with the amendments just offered and
accepted so far in respect of clause 3, we propose, if I take you page 10 of the Bill, at subsections— at paragraph (c) at 57A, if we could delete the words “to ensure that” as it appears in the chapeau, and insert instead the following words, “for regulating and prescribing the manner in which—”, and at paragraph (b), delete the word “is” after the word “evidence”, and insert the following words, “may be”.

**Madam Chairman:** So, hon. Senators, the question is that clause 4 be amended as follows:

At (c) 57A, to delete the words “to ensure that” and to substitute the words “for regulating and prescribing the manner in which—” and at (b) to delete the word “is” after “evidence”, and substitute the words “may be”.

*Question put and agreed to.*

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

*Clauses 5 and 6 ordered to stand part of the Bill.*

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

*Senate resumed.*

**Madam President:** Attorney General.

**Hon. Al-Rawi:** Madam President, I wish to report that a Bill entitled the Miscellaneous Provisions (Administration of Justice) Bill, 2020, was considered in committee of the whole and approved with amendments.

**Madam President:** The question is that this Senate agree with— Attorney General, I think there is a certain—

**Hon. Al-Rawi:** I apologize. The procedure is a little off, so I will merge the one from the one before.

Madam President—*Pause*

**Madam President:** Attorney General, may I help you?

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Hon. Al-Rawi: Yes, please.

Madam President: If you could just beg to move that the report be accepted.

Hon. Al-Rawi: Thank you, Madam President. I apologize. It is not on my procedure list.

    I beg to move that the report of the committee be accepted. Thank you so much.

    Bill reported, with amendment.

Madam President: Attorney General.

    Question put: That the Bill be read a third time.

Sen. Mark: Division!

    The Senate divided: Ayes 21  Noes 1

    AYES
Khan, Hon. F.
Gopee-Scoon, Hon. P.
Rambharat, Hon. C.
Hosein, Hon. K.
Sinanan, Hon. R.
West, Hon. A.
Browne, Hon. Dr. A.
Mitchell, Hon. R.
de Freitas, N.
Cox, Hon. D.
Singh, Hon. A.
Sagramsingh-Sooklal, Hon. R.
Bacchus, H.
Lezama-Lee Sing, Mrs. L.
Bethelmy, Ms. Y.
Richards, P.
Vieira, A.
Deyalsingh, Dr. V.
Seepersad, Ms. C.
Thompson-Ahye, Mrs. H.
Dillon-Remy, Dr. M.

NOES
Welch, Mr. E.

The following Senators abstained: Mr. W. Mark, Ms. J. John, Ms. J. Lutchmedial, Mr. D. Nakhid, Mr. D. Lyder, Mr. A. Roberts, Ms. A. Deonarine and Mr. D. Teemal.

Question agreed to.

Bill accordingly read the third time and passed.

ADJOURNMENT

The Minister of Energy and Energy Industries (Sen. The Hon. Franklin Khan): Madam President, I beg to move that this Senate do now adjourn to Tuesday, December 15, 2020 at 10.00 a.m. Later today the House will be debating the Finance Bill with some fiscal measure763.s that have to take effect January1st.

Once that is passed, the Finance Bill will be done on Tuesday.

Madam President: Hon. Senators, before I put the question on the adjournment, leave has been granted for two matters to be raised. Sen. Mark.

Sen. Mark: Madam President, in the interest of the staff, [Desk thumping and laughter] who have been here for about 10 hours and above, and they have to be here very early in the coming hours, I want to defer these two matters until the next
sitting of this Senate. Thank you, Madam President.

**Madam President:** So may I, on behalf of the staff, and it is a fact that the staff here, the Hansard, everyone, they have to return for a sitting later today. So I want to thank Sen. Mark for his kindness. [*Desk thumping*]

*Question put and agreed to.*

*Senate adjourned accordingly.*

*Adjourned at 1.50a.m.*