SENATE

Tuesday, March 16, 2021

The Senate met at 1.30 p.m.

PRAYERS

[Madam President in the Chair]

MISCELLANEOUS PROVISIONS (SPECIAL RESERVE POLICE COMPLAINTS AUTHORITY) BILL, 2020

Bill to amend the Special Reserve Police Act, Chap. 15:03 and the Police Complaints Authority Act, Chap. 15:05 to strengthen the operations of the Police Complaints Authority and its relationship with the Special Reserve Police and matters related thereto, brought from the House of Representatives [The Attorney General]; read the first time.

CARIFORUM STATES (THE CARIBBEAN COMMUNITY AND THE DOMINICAN REPUBLIC) AND THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND BILL, 2021

Bill to give effect to the Economic Partnership Agreement between CARIFORUM States (the Caribbean Community and the Dominican Republic) and the United Kingdom of Great Britain and Northern Ireland; to effect consequential amendments to the Customs Act, Chap. 78:01 and for related matters, brought from the House of Representatives [The Minister of Trade and Industry]; read for the first time.

PAPER LAID

URGENT QUESTIONS

Collapse of Rice Industry
(Measures taken to prevent)

Madam President: Sen. Mark.

Sen. Wade Mark: Thank you, Madam President. To the hon. Minister of Agriculture, Land and Fisheries: In light of recent reports that the rice industry is on the verge of collapse, can the Minister indicate what measures are being taken to prevent such collapse?

Madam President: Minister of Agriculture Land and Fisheries

The Minister of Agriculture, Land and Fisheries (Sen. the Hon. Clarence Rambharat): Madam President, I thank you very much. Madam President, these reports—this discussion about the collapse of the rice industry in Trinidad and Tobago, they have been around for more than 20 years, they are not recent, and it has to do with the fact that at a particular time in our country’s history, with Caroni (1975) Limited and even before that, Trinidad and Tobago was a producer of rice. And a lot changed since then, particularly the desire of the local market for parboiled rice and the reducing interest in white rice, which is what our farmers produce.

Rice is the most supported and subsidized agricultural commodity in the country. The land is made available at a low rent, farmers are guaranteed a particular price, the milling is paid for by the State; the milling alone costs $4.8 million. And I appeared, Madam President, before a joint select committee and spent three hours articulating the Government’s position on the industry and the position is this, Madam President. The Government is prepared to support a rice industry of a particular size and provide the existing financial support but we also have approved a private sector project to develop a parboiling—a rice parboiling plant in Couva. That project is underway and the expectation is that local rice
produced by our farmers and imported rice—paddy from Guyana—will be used as the stock material in that plant. The Government is committed to support the rice farmers as we have been doing and that is the position of the rice sector.

**Sen. Mark:** Hon. Minister, you would agree with me that the number of farmers involved in rice production has been considerably been reduced. Can you indicate to this honourable Senate, what type of rice industry or kind of rice industry, and its size, that the Government of Trinidad and Tobago would like to envisage for that industry based on what you have said?

**Sen. The Hon. C. Rambharat:** Madam President, based on the discussions with the rice farmers, particularly at that Joint Select Committee before and after, that the Government is prepared to sustain a local rice industry of 3,000 metric tonnes produced by the farmers we have. We have also provided support and we have been working with the hill rice farmers. Hill rice is still a niche product but highly desirable. And my colleague, the Minister of Trade and Industry, and I, we were in Moruga recently for the launch of “Red Gold,” which is the second hill rice brand out of Trinidad and Tobago, and the Government is committed to support both the white rice farmers and the hill rice farmers in Moruga and wherever else they exist, particularly on the value added side and the export side. Thank you.

**Sen. Mark:** Madam President, given the fact that there has been a significant decline in rice production in this country, can the hon. Minister indicate what measures are being taken by the Government to ramp up rice production in Trinidad and Tobago, seeing that is a very important foreign exchange conservation measure?

**Madam President:** Sen. Mark, I would not allow that question. Next question.
Closure of Macqueripe Beach Facility
(Reasons for)

Sen. Wade Mark: To the Minister of Planning and Development: In light of the sudden decision of the Chaguaramas Development Authority to immediately close the Macqueripe Beach facility, can the Minister give the reasons for said decision?

Madam President: Minister of Planning and Development. [Desk thumping]

The Minister of Planning and Development (Hon. Camille Robinson-Regis): Thank you very much, Madam President, and thank you to the Member for the question. Madam President, this is not a sudden decision because there has been a certain amount of erosion taking place on the Macqueripe Beach, and quite a bit of degradation and destruction of the safety features that we have put in at the beach. The board and management of the CDA developed a comprehensive repair programme for Macqueripe Beach which includes the following works.

In the short term, the works have already begun with the clearing of debris, the pruning of trees in and around the facility. The curbs in the parking area are being repainted and the carpark spots are to be clearly demarcated. The railings are being temporarily repaired until we can remove and redo them using cable wire. The steps have been pressure washed, the lifeguard booth is to be painted and the steps will be repaired. Timber has already been purchased for these repairs.

In the long term, the Authority intends to repair the rails throughout the perimeter of the area by installing concrete PVC bollards and removing the damaged timber railings that have not withheld the constant sea blast and public use. There is a daily-paid crew that is solely responsible for cleaning Macqueripe. The rough terrazzo on the steps gets slippery when wet and therefore a white lime treatment is usually done, along with the pressure washing. These treatments need to be done, we admit, more often. It is difficult to do these treatments regularly as

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there is a water problem in the area and it was suggested that in order to further curtail—

Madam President: Minister—

Hon. C. Robinson-Regis:—the impact—

Madam President: Minister, your time has expired.

Hon. C. Robinson-Regis: Oh sorry, Ma'am.

Madam President: Sen. Mark.

Sen. Mark: Thank you, Madam President. Can the hon. Minister indicate what is the time frame for this comprehensive beach development programme to be completed, so that beach goers can resume their enjoyment of the Macqueripe Beach?

Madam President: Minister.

Hon. C. Robinson-Regis: Thank you, Ma’am. Before the Easter weekend, we will have this completed.

Madam President: Sen. Mark?

Sen. Mark: I will continue with my next question.

Madam President: Next question.

Compensation for Farmers in Penal
(Steps to be taken)

Sen. Wade Mark: Thank you very much. To the hon. Minister of Agriculture, Land and Fisheries: In light of the heavy rains and consequent flooding which affected farmers in the Penal area, can the Minister indicate what steps, if any, will be taken to compensate the farmers for losses suffered?

Madam President: Minister of Agriculture, Land and Fisheries.

The Minister of Agriculture, Land and Fisheries (Sen. The Hon. Clarence Rambharat): Madam President, the process for providing financial assistance to farmers who experience natural disasters like flooding, for example, is well
established in the Ministry. The farmers make a claim, the Ministry’s officers would visit the areas which from which the claims arise, the claims are processed and those that meet the criteria are paid.

So, Madam President, this particular area is called the Poodai Lagoon in Penal and it is one of those areas that is normally under water during the rainy season. And during the dry season—these are private lands, 120 acres, cultivated by about 36 farmers. The farmers, during the dry season, would take a chance because the soil is very fertile. And what has happened now is that the unseasonal rain and the excessive rain on two occasions have caused the flooding in that area.

So what has been done? Immediately, the Ministry’s officers visited, they have taken 36 claims from the farmers so far; 23 of those claims have come from registered farmers. The Ministry is conducting the verification. The area is still under water, so it is difficult to verify the claims. And once, Madam President, the claims are approved for payment, the Parliament, through the Minister of Finance, has allocated $9 million for assistance to farmers who face flood in this financial year. We estimate that the claims could be around 600,000 and the Ministry is in a position to pay those claims. Thank you.

**Sen. Mark:** Hon. Minister, through the President, is the Government contemplating repairing or fixing the pump at the particular gate that would really assist in avoiding or assisting, or facilitating the floodwaters to recede quickly in that particular area? Is there any decision or any action on the part of the Government to address this floodgate—addressing the floodgates?

**Madam President:** Sen. Mark, that question does not arise and the time—

**Sen. Mark:** [Inaudible]

**Madam President:** No, the time for Urgent Questions has expired. Leader of Government Business.

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ORAL ANSWERS TO QUESTIONS

The Minister of Energy and Energy Industries (Sen. The Hon. Franklin Khan): Madam President, the Government, once again, would be answering all questions on the Order Paper.

IATA’s Recommendation (Reopening of Borders)

77. Sen. Wade Mark asked the hon. Minister of Works and Transport:

In light of the joint statement issued by the International Air Transport Association (IATA) and three other air transport bodies that countries should open their borders and utilize agreed bio-safety protocols, can the Minister indicate when will this country’s borders be re-opened consistent with the IATA’s recommendation?

Madam President: Minister of Works and Transport. [Desk thumping]

The Minister of Works and Transport (Sen. The Hon. Rohan Sinanan): Thank you. Thank you, Madam President. Madam President, the Ministry of Works and Transport has noted the joint statement issued by the International Air Transport Association, Airport Council International and the International Civil Aviation Organization: recommendations that countries open their borders with biosafety protocols. This statement is understandable in the context of the adverse effect of COVID-19 restrictions on the airline and air transport industry. However, it should also be noted that upon the appearance of the COVID-19 virus on a global scale, in early 2020, Governments across the world imposed sweeping restrictions including border closure and travel restrictions in order to limit the importation of COVID-19 into their countries.

Further, in recent months, travel restrictions have been reintroduced in several countries to contain the surge in the case of the virus. The measures put in place by the Government of Trinidad Tobago, which include the closure of the
borders, are designed to ensure the safety of our citizens. The decision to reopen our borders will be made by the Government after consultation with the Ministry of Health and the Ministry of National Security.

The global best practice outlined by the international organizations have been adhered to by the Airports Authority of Trinidad and Tobago which, through constant collaboration with the Ministry of Health, has prepared our airports for a new normal of travel to ensure the safety of all users. Our airports will be ready and up to standard when a decision to reopen our borders is taken by the Government. I thank you.

**Madam President:** Sen. Mark?

**Sen. Mark:** Can the hon. Minister indicate whether the Government or his Ministry, or the unit in his Ministry that deals with IATA and the discussion about opening of the borders—in light of what the Minister has just indicated, can he indicate to this Senate whether there is consultation and collaboration between IATA and the Ministry of Works and Transport, insofar as the reopening of the borders is concerned?

**Madam President:** Minister?

**Sen. The Hon. R. Sinanan:** Madam President, we do subscribe to these organizations. However, a decision to open our country’s borders and by extension, the airport, is solely in the purview of the Government of Trinidad and Tobago, and we are guided by the scientific evidence provided by the Ministry of Health and Ministry of National Security.

**Madam President:** Sen. Mark?

**Sen. Mark:** Can the Minister indicate what scientific evidence is the Government awaiting before it takes a decision to reopen the borders of Trinidad and Tobago?

**Madam President:** Minister?
**Sen. The Hon. R. Sinanan:** Madam President, as I said before, any decision on the reopening of the airport would be based on information and the advice from of the Ministry of Health and Ministry of National Security, and I think that question should really be placed to the Ministry of Health going forward.

**Sen. Mark:** Is the Ministry of Works and Transport party to any decision making as it relates to this important matter of the open of the borders, given IATA’s position in the context of what the Minister has just outlined to this honourable Senate?

**Madam President:** Sen. Mark, that question is not allowed. Next question, Sen. Mark.

**Upgraded ASYCUDA System**

(Details of)

78. **Sen. Wade Mark** asked the hon. Minister of Finance:

Having regard to the upgraded ASYCUDA System at the Customs and Excise Division, Ministry of Finance, can the Minister advise as to the following:

(i) when did installation of the upgraded system commence;

(ii) when was the upgraded system commissioned;

(iii) have customs officers, customs brokers and customs clerks been trained in how to use the system; and

(iv) if the answer to (ii) is in the affirmative, when was said training conducted?

**The Minister of Finance (Hon. Colm Imbert):** Thank you, Madam President. The answer to part (i), the changeover from ASYCUDA 4.0 to ASYCUDA 4.2.2 began on December 31, 2020, at 1600 hours or 4.00 p.m.

Answer to part (ii), the upgraded system went live on the 4\textsuperscript{th} of January, 2021.

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Answer to part (iii), customs officers, brokers and clerks have been trained on how to use the system.

And the answer to part (iv), training for customs officers was conducted on December 28th to 30th, 2020; January 21st to 22nd, 2021; February 8th to 12th, 2021; and training for customs brokers and customs clerks was conducted on July 30, 2020; December 22nd to 23rd, 2020; January 04, 2021, and January 19th—

**Madam President:** Sen. Mark.

**Hon. C. Imbert:** Sorry. January 19th to 22nd, 2021.

**Sen. Mark:** Is the Minister aware that training—I have evidence before me and I would like the Minister to verify whether training of customs officers, customs brokers and customs clerks took place subsequent to the rolling out of this ASYCUDA 4.2.2 System, Madam President? Can the Minister advise—

**Madam President:** Sen. Mark, I would not allow that question based on the answer that had been provided to the question.

1.50 p.m.

**Sen. Mark:** Madam President, can the Minister indicate whether he is aware that—or let me put it another way—if information and evidence is provided to the Minister as it relates, Madam President, that the training programme commenced after the launch of the ASYCUDA system, would the Minister be prepared to apologize, Madam President?

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

**Sen. Mark:** To the Minister, Question No. 83. Or I am dealing with Paul’s question.

**Madam President:** Question No. 79, Sen. Mark.

**Sen. Mark:** Yes, Madam President, I am dealing with that.
National Insurance Board Reports
(Status of)

79. **Sen. Wade Mark** asked the hon. Minister of Finance:

Can the Minister indicate:

(i) the reason(s) why the 2019 and 2020 National Insurance Board reports have not been tabled in Parliament; and

(ii) the date(s) by which said reports will be presented for laying?

**The Minister of Finance (Hon. Colm Imbert):** Madam President, the reports are under review and would be tabled in Parliament shortly.

**Sen. Mark:** Madam President, these reports are overdue, and can I ask the Minister to be very definitive and specific as it relates to when those two reports that are long overdue will be tabled in the Senate, Madam President, through you?

**Madam President:** Sen. Mark, that question will not be allowed based on the response given.

**Sen. Mark:** Madam President, the hon. Minister has said “in short order”. I am simply asking, through you, if the Minister can clarify what he means by “short order” or “in short time”. So that is why I asked.

**Hon. C. Imbert:** Thank you, Madam President, and I can answer any supplementary question asked of me by Sen. Mark on any question, any time, anyhow. So, some background is necessary. The reports submitted to the Ministry contain matters of policy, which are outside of the purview of the National Insurance Board. They are Government policy matters. As a result, a subcommittee of Cabinet is reviewing these reports to see where the NIB has deviated from Government’s policy so that appropriate arrangements can be made. We expect that within a month that exercise will be completed.

**Sen. Mark:** Madam President, can the hon. Minister share with us, what are those Government policies that he made reference to?

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Hon. C. Imbert: Most certainly, Madam President. As I said, I could answer any supplemental posed by Sen. Mark. Those matters of policy are the registration of Venezuelan migrants for national insurance and the registration of self-employed persons; two matters on which there is no definitive Government decision, other than, at this point in time, the registration of Venezuelan migrants and self-employed persons is not permitted, but the reports contain policy with respect to those two matters.

Sen. Mark: Can the Minister indicate, Madam President, through you, what would have guided the management and, by extension, the Board of the National Insurance Board to take such a decision contrary—based on what you have said—to Government’s established policies? Can you share with this Senate what were the reasons or basis or rationale for this deviation, Mr. Minister, through you, Madam President?

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

Sen. Mark: Madam President, can the hon. Minister share with us—

Madam President: Sen. Mark, no, you have asked four questions.

Sen. Mark: I have?


Trinidad and Tobago Repatriated Citizens (Details of)

83. Sen. Paul Richards asked the hon. Minister of National Security:

With regard to the return of individuals to this country since the closure of the Nation’s borders, can the Minister inform the Senate of the following as at February 05, 2021:

(i) the number of T&T citizens repatriated; and

(ii) the number of persons with resident status that were permitted to return?
The Minister of National Security and Minister in the Office of the Prime Minister (Hon. Stuart Young): Thank you very much, Madam President. [Desk thumping] Sen. Richards, the total number for persons granted exemptions to enter Trinidad and Tobago as at February 09, 2021 is 12,509. The majority of these persons are citizens, and the exact numbers are currently being verified. As at June 02, 2020, permanent residents were granted exemptions to return to Trinidad and Tobago and each request is examined on a case-by-case basis.

Additionally, persons who have applied for permanent residency and have spouses or connections to persons who are citizens, have been granted approval, a number of them, again, based on a case-by-case basis. Thank you very much.

Trinidad and Tobago Public Transportation (Details of)

96. Sen. Paul Richards asked the hon. Minister of Works and Transport:

With regard to public transportation in Trinidad and Tobago, as at February 15, 2021, can the Minister indicate:

(i) what is the total number of persons on a daily and weekly basis who use public transportation;

(ii) what percentage of the commuting public is serviced by the PTSC; and

(iii) what has been the trend in percentage, over the past five years, of the commuting public that is serviced by the PTSC?

The Minister of Works and Transport (Sen. The Hon. Rohan Sinanan): Thank you, Madam President. Madam President, the following information is provided regarding public transportation in Trinidad and Tobago as at February 15, 2021. The average number of persons who use public transportation on a daily and weekly basis estimates to be 728,000 which is about 56 per cent of the Trinidad and Tobago population. The most recent statistics have shown that, on average,
approximately 1.55 per cent of the commuting public is serviced by the PTSC on a daily basis.

Over the past five years, the trend in terms of percentage of commuters using the Public Transport Service Corporation is as follows. 2015/2016; 6,713,384. The yearly ridership—an average daily ridership of 25,429, 3.49 per cent; 2016/2017, 7,597,074; 28,777 on a daily ridership, 3.95 per cent; 2017/2018, 6,859,643; daily ridership, 25,983, 3.57 per cent; 2018/2019, 5,583,528; daily ridership, 21,150, 2.91 per cent; 2019/2020, 2,982,817; daily ridership, 11,299, 1.55 per cent. Thank you.

Sen. Richards: Thank you, Madam President. Can the Minister indicate if the Ministry and, by extension, the Government is satisfied with given your answer that only 1.55 to under 4 per cent of the commuting population is serviced by PTSC, given the 400 million being spent annually, on average, invested into PTSC by the State?

Sen. The Hon. R. Sinanan: Yeah, thank you. Madam President, the 1.55 per cent was 2019/2020 and you must recognize this was the time of the COVID pandemic. This moved from 2015 to 2016/2017, 3.95 per cent. A recent survey that was done indicated that a lot more people would choose the PTSC as their service provider, their main service provider, however, the PTSC does have its challenges, and this is why the Government has taken a decision to look at the fleet at PTSC.

One of the problems PTSC has is the amount of routes. We only operate, I think, just about 50 per cent of the routes because of the amount of buses that we have. Government took a decision to purchase 300 buses. That would take the fleet up to 500, and we expect then a significant increase in the amount of people choosing the PTSC. However, that is coupled with an improved service where we can have a much more reliable and efficient service. Thank you.
Sen. Richards: Thank you, Madam President. Thank you, Minister, for the answer. Is there a benchmark percentage that the Government envisions PTSC to be able to provide in terms of percentage of the commuting public using PTSC at the next two years?

Sen. The Hon. R. Sinanan: Madam President, the long and short answer to that is, the Government is hoping that PTSC becomes the number one mode of public transportation. We are using the PTSC to fill the gap of mass transportation. We all know that the mass transit system that we were hoping to have implemented in Trinidad has now been put on hold because of the cost, and we have switched all our resources now to using PTSC. So we are hoping that, at least, we can get that ridership up to about 15 per cent with a more efficiently run bus service in Trinidad and Tobago.

Sen. Mark: Madam President, can I ask the hon. Minister whether he is aware, at the PTSC that a contract was issued by the PTSC Chairman to his spouse associated with a company called Corbin Communications? Are you aware of that and whether an investigation has been launched?


Taxi and Maxi-Taxi Transport Vehicles
(Details of)

97. Sen. Paul Richards asked the hon. Minister of Works and Transport:

As regard the operation of taxi and maxi-taxi transport vehicles in Trinidad and Tobago, as at February 15, 2021, can the Minister indicate:

(i) how many registered maxi taxis are in operation;
(ii) what percentage of the commuting public is serviced by maxi taxis;
(iii) how many registered ‘H’ taxis are in operation; and
(iv) what percentage of the commuting public is serviced by ‘H’ taxis?

The Minister of Works and Transport (Sen. The Hon. Rohan Sinanan): Thank you, Madam President. Madam President, the following information is provided as regards to the operation of taxis and maxi-taxis transport vehicles in Trinidad and Tobago as at February 15, 2021. There are 6,739 registered maxi-taxis in operation. Of the commuting public served by maxi-taxis, 17 per cent are for work and 18 per cent are for schools. There are 32,666 registered “H” taxis in operation consisting of 6,739 maxi-taxis and 25,927 conventional taxis. Recent statistics have shown that approximately 56 per cent of the commuting public used public transportation which consist of “H” taxis, maxi-taxis and buses. Thank you.

Sen. Richards: Thank you, Madam President. Would the Minister have information regarding the percentage of PH taxis providing services in Trinidad and Tobago, or would they be unregistered?


ANTI-GANG BILL, 2021

[Second Day]

Order read for resuming adjourned debate on question [March 09, 2021]: That the Bill be now read a second time.

Question again proposed.

Madam President: On the last occasion, there were 12 speakers including the mover of the Motion. The Minister of National Security. [Desk thumping]

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, as usual, it is indeed a privilege and an honour to be allowed to contribute in this House. Today, I have joined this debate to add the contribution
from a national security perspective and as the Minister of National Security to the Anti-Gang Bill, 2021, which is currently before the Senate. On the last occasion, a week ago, there was robust debate, valid contributions by those in this House. I would like to start, Madam President, by putting on the record, something that I have said repeatedly, and it is worth repeating, as I begin today’s contribution, from a national security point of view and without fear of contradiction, this legislation is absolutely necessary. In fact, I was pleased to see, as I was perusing the *Hansard* of last week’s contributions that Sen. Richards literally started his contribution by saying and I quote.

“It is untenable in 2021 that any country not have anti-gang legislation.”

And I join with him in that submission. Madam President, we cannot and should not bury our heads in the sand. Gangs are very real. Gangs have been operating in Trinidad and Tobago and gangs operate globally for many, many decades.

I saw previous contributors refer to a specific point in our nation’s history, 1990. Respectfully, gangs began even before then. Gangs have always been around from time immemorial. But what we are facing today—and this is about the third or the fourth time I have come to the Senate, Madam President, to contribute towards anti-gang Bills and anti-gang legislation.

Unfortunately, on previous occasions, both here and in the other place, we failed to reach and obtain the support for legislation that had more teeth than the piece of legislation that is currently before this Senate here today. I also caught the contribution of Sen. Vieira, a seasoned practitioner in the courts, a person with a lot of experience when it comes to legislation and, more importantly, the application of legislation. And, again, I was pleased to listen and to hear the sentiment that the legislation, anti-gang legislation, is necessary. Temporary Senator, John Heath, a practitioner in the criminal courts, also joined that cry.
that call.

Madam President, any citizen of Trinidad and Tobago who is serious and who is following what goes on knows that we are fighting a scourge of criminal gang activity, and that is what this legislation here today is to deal with, criminal gangs. And, quite usefully, the Schedule, the First Schedule, sets out—and I will get into it in the short while—some of the areas that we have found in national security criminal gang networks are operating.

No jurisdiction in the world that is facing the scourge of criminal gang activity is without specific anti-gang legislation. The gangs that operate in and around Trinidad and Tobago are real, and I will get into some of the activity they are engaged in today. We know them in certain acronyms and there are certain larger gangs that operate in every single area and, unfortunately, is penetrated by some criminal gang activity.

You have the Muslim gang fraction, you have the Rasta City gang fraction. We have had spin-offs of that into gangs called “Sixx” as I saw Sen. Richards refer to. Also another gang, the Anybody Gets it Gang, ABG. These are some of the bigger umbrella groups, and in those groups there are splinter gangs all over. And any law enforcement officer will tell you that gang legislation, anti-gang legislation, is an absolutely necessary tool in the arsenal of fighting criminal gang activity.

No one, no one has suggested, because it would be insane to suggest that there is any one piece of legislation that is going to solve criminal gang activity. However, to say not to have the passage of this, in my view, somewhat watered down piece of legislation, but necessary piece of legislation, is to prevent the police service from having a fighting chance in specifically targeting gangs.

One of the misleading comments that I have heard repeated time and time
again and, unfortunately, was repeated last week again, is to those who have not read the Bill, a suggestion that gang-related activity is covered in all other areas of the criminal law of Trinidad and Tobago. That is one small fragment of what this legislation is about. Madam President, when you look at the legislation, as I would do now, you see the very specific offences created by this legislation, created, and only existing in this legislation and all of those offences are specifically targeted at the scourge that is criminal gang activity. And for those in the public out there and for those in this Senate who may not be aware, who may not be affected, who may be fortunate enough not to have the information and to see the reality of the scourges of gang activity and the consequences of gang activity, I would like to just put that into some sort of context.

I saw yesterday reported in today’s newspaper and in the media that a Joint Select Committee on National Security in the Parliament touched on gang activity in one of the areas. Sen. Richards referred to it in his contribution last week, which is the prison system. There is no part of our society that is not touched by the criminal gang activity. And this piece of legislation, respectfully, Madam President, is absolutely necessary. I cannot emphasize that enough in dealing with the specifics of gangs and just adding a tool in the arsenal of tools necessary for law enforcement.

There were certain contributors last week, and I assume there may be some today as well, that are asking for sunset clause. Respectfully, we have gone past that. We have gone past this sunset clause. You look at how they have dealt with gangs in Los Angeles, gangs in New York. The scourge of gang activity in Chicago, gangs in the United Kingdom, gangs in Canada, all of these jurisdictions, in Australia, all touched by gang activity. You need to have specific anti-gang legislation, and to continue to say put a sunset clause, let us come back in two
years and measure it. I will also touch on how long it takes for a successful criminal gang investigation to jell and come together for the evidence to then be produced for it to then result in charges, and I will also get into this moving goalpost that I see, will tell us how many convictions there are under the anti-gang legislation. That is a completely false argument and premise within to measure this. Because we, as legislators, can only pass legislation. The Executive can only provide the tools and the resources. The police service, as part of the Executive area of Government falling under them, can only do the investigations, lay the charges. It then hits the criminal court justice system.

There are areas in the criminal court justice system that are protected by the separations of power principle. The Judiciary is protected. There is separation of powers. They are insulated. It is a court that must hear, try, look over the trial and take it towards either a conviction or an acquittal. It is a Director of Public Prosecutions who under the Constitution is, again, ring-fenced and protected. He and the police will lead the prosecution. It is the lawyers at the criminal Bar—and they get upset every time reference is made to them, but they also have a responsibility. Those are the three areas that have a responsibility for securing either a conviction or an acquittal. So to say that legislation has failed, is a completely false premise to argument and has absolutely no merit in my respectful submission.

So, just to jump into the composition of the gangs in Trinidad and Tobago. Madam President, the gangs that are currently in Trinidad and Tobago, like other areas of the world, are very sophisticated. They are operating sometimes at an advantage, because criminal activity always has the advantage of knowing what it is they are going to do and the State, in its response or in trying to be proactive has to either try to predict it, try to intercept it or try to deal with it. Unfortunately,
sometimes that happens retroactively in the vast majority of times, especially when dealing with gangs. Our gangs are sophisticated and we need to provide law enforcement, Madam President, with the various tools to combat criminal gangs and that includes this legislation.

Gangs and gang leaders are structured and now sophisticated. The police service along with the intelligence services have been targeting the criminal gangs. And even in this debate—and when speaking about it from a national security perspective, I must be cautious not to alert them. I saw in somebody’s contribution they said, they will be looking on and that is true. Anyone who believes that the criminal gangs that are operating are not sophisticated and they do not have specific, very educated persons in their structures, are completely wrong.

We have found, through intelligence, that there are persons with master’s in business administration, master’s in international relations, et cetera, who are part of the sophisticated gangs set ups, because the leaders need the advice. They have their legal advisors. They have their financial advisors. How do you tackle and dismantle these sophisticated gangs? You need specific legislation, and to jump straight into it, Madam President, when you look at this Bill, it is completely wrong and misleading, in my respectful submission, to suggest there is no need for this specific Anti-Gang Bill, and to say gang-related activity is captured, and that is really the Schedule, in other areas of the law.

So to start, the second part of this Bill, “Offences” Part II, every single offence in here—clauses 5, 6, 7, 8, 9, 11, 12 and 13—are all unique to this law. All are specifically designed to target gangs. And, through you, Madam President, just to let the public know, the first one is clause 5, “Gang membership”. There is no other piece of legislation that exists, no matter how the Opposition tries to spin it, here and elsewhere, that captures gang membership. So, clause 5, the first offence
is:

“(1) A person who—
(a) is a gang leader;
(b) is a gang member;
(c) performs an act as a condition for membership in a gang; or
(d) professes to be a gang leader or a gang member in order to—
   (i) gain a benefit for himself or another person;
   (ii) intimidate other persons; or
   (iii) promote a gang

commits an offence.”

That does not exist anywhere else in the laws of Trinidad and Tobago. How can we be serious as a nation that is facing the criminal elements and not have that in this day and age as a specific offence?

Clause 6 of this Bill, “Coercing or encouraging gang membership”. Again, specifically designed to target one of the pillars of criminal gang activity.

“A person who coerces, encourages, entices, aids or abets another person to be a gang leader or gang member commits an offence...”

So we are criminalizing what happens in reality. It does not exist in any other piece of legislation.

Clause 7, “Retaliatory action”. So, in other words:

“(1) A person shall not intentionally take any retaliatory action against another person or any of that other person’s relatives, friends, associates or property on account of that other person—
(a) refusing to become a gang leader or gang member;
(b) ceasing to be a gang leader or gang member;”

So persons who are trying to get out, if they are then targeted by others, we have
now created a specific offence to allow persons the ability to exit gangs. That is how serious it is. Again, that is in no other piece of legislation. So the continual cry and shout and scream, there is no need for anti-gang legislation because it is covered by other areas, is completely false. And it goes on to capture other things:

“(d) assisting in an investigation of a gang...
(e) giving evidence in the prosecution of a gang...”

Anybody who takes action against those persons, we are now creating a specific offence, Madam President.

Clause 8, “Counselling a gang”:

“A person who knowingly—
(a) counsels;
(b) gives instruction or guidance to;
(c) finances…
(d) otherwise provides support to a gang leader, gang member...”

We are criminalizing that.

These offences are very specific to what takes place in the reality of a gang world and a gang culture. It is so sophisticated now, the leaders themselves do not do it. The leaders themselves will not have the illegal firearms on them, the drugs on them. They will pass them down the chain of command. The leaders of gangs, in this day and age, move in convoys. They are moving in convoys, more sophisticated at times in some of the State convoys that are present. This is the reality of what is taking place. The reality of what is taking place across the country, unfortunately, is there are sections of criminality, and this is why this legislation has been brought here, once again. Unfortunately, some provisions taken out were necessary, because law enforcement needs it.

Clause 9:
“Preventing a gang leader or gang member from leaving a gang”
—a specific offence. It exists nowhere else in the law.

Clause 11:
“Harbouring a gang member”

2.20 p.m.

Clause 12:
“Concealing a gang leader or gang member”

I challenge anyone inside or outside to tell the population where else in the law these specific offences can be found. And every single offence I have referred to is specifically targeted at going at the heart of criminal gangs. Will it overnight when it is passed prevent the reoccurrence of gang activity? Absolutely not. But what it does now, it gives the law enforcement officers who are investigating it specific offences within which to target the gang activity.

Clause 13:
“A person who recruits another person to a gang commits an offence…”

Again, specific, and it goes on. Those are the specific offences created by this legislation. The reference to a definition of “gang-related activity” being covered by other legislation is completely misleading and it is being done to try and mislead the population that, “Do not worry, you do not need this anti-gang legislation because that criminal activity is caught elsewhere”.

Let us look at the First Schedule, Madam President, and I would just like to draw the public’s attention to just a few of the examples under this schedule and to show how it is related and captured by gang activity, but, yes, it can exist independently, nobody is saying, no, but the specific offences created by this legislation are not found anywhere else. The police powers that are being granted here, and that is the area where as a Government we had to look at it and take out
some of what existed before to bring it as a simple majority Bill. The “Gang-Related Activity Offences” in the First Schedule, and these are the ones I want to draw to the public’s attention in the limited time I have today, Madam President; 13 and 14:

“Threatening to publish with intent to extort”
And 14:

“Demanding money with menaces”

This is real in Trinidad and Tobago. Extortion is taking place. We are all aware that when certain contracts are being executed, criminal gangs very often go to the sites and threaten the contractor, threaten the workers that unless they are given the ability to have some participation in the contract, all hell will break loose. This ties right into that type of activity, giving law enforcement now an ability because it is something we have been trying to target and it is a difficulty because persons are afraid to come forward and that is why you have also seen other pieces of legislation being passed, other pieces of the puzzle being put together.

Also under this:
“Rape
Grievous sexual assault
Kidnapping
Kidnapping for ransom
Knowingly negotiating to obtain a ransom”

There are criminal gangs that have engaged in this behaviour. We have recently seen the unfortunate consequence of one of these operations in east Trinidad, that is the reality of what we face and it is the police service that is asking for this. And as Senators and as legislators you must ask your conscience, what could the
possible downside be of assisting and providing this type of legislation to tackle the scourge of gang activity?

You go on in this schedule:

“Causing or inciting prostitution
Controlling a child prostitute
Causing or inciting a child to engage in sexual activity”

Those three alone tied into the criminal gangs that are engaged in transnational organized crime and human trafficking. And I can tell the country here today that the police service, our intelligence services, with the support of the defence force are currently engaged in going after some of these criminal gangs that are engaging currently in human trafficking across the border, bringing persons from Venezuela to Trinidad to engage them in prostitution. This gives them an additional tool in the fight against that criminal activity.

You go on at 42 to 45:

“42. The keeping or management of a brothel
43. Detention of a person in a brothel
44. Procuration for the purposes of prostitution
45. Living on the earnings of prostitution
46. Meeting a child following sexual grooming”

Again, human trafficking elements where there are criminal gangs engaged across borders.

This last one:

“Forcible Entry and Forcible Detainer under the Trespass Act”

All of us who have certain housing developments in our constituencies are aware of it. We have constituents who come—I have it in east Port of Spain, places like the Harp in Charford Court; other areas, St. Francois Valley Road, Madam
President, where persons are forcefully ejected from their homes by criminal gangs. This allows the police now an extra tool in the fight against that criminal gang activity.

You go to the Part III of this Bill, Madam President, which is now the “Powers of Police Officers” and previously the police officers were given wider powers to tackle gang activity because of how they do their business. The police have dismantled in the last two-and-a-half years some very specific criminal gangs throughout Trinidad and Tobago, and when you get into an understanding of their operations it is not how some people may think it is, with unsophisticated, just sitting down with a gun, drinking, liming, “Let’s go dong de road and commit an act”. They are very sophisticated. They have started money laundering, purchase of properties, rental of areas, properties in areas, rental of cars, all these different types of schemes. When you start to study these criminal gangs, they break out, they diversify into other areas, illegal gambling, prostitution, human trafficking, narco drug-running.

So the powers of the police now under this Bill, and I understood the debate and the Attorney General would address it later on, with dwelling houses and the entrance of dwelling houses, I understood the caution being laid. Previously this also dealt with outside of dwelling houses. The “Detention of persons”, clause 16, there was a lot of debate on this clause 16. Madam President, what I would like to put on the record is this is a necessary provision in the tackling of criminal gang activity, because what often happens is you may get intelligence of a certain gang operation going to take place; they are going to carry out a hit or they are going to conduct some criminal gang activity and you intervene, the law enforcement officers intervene and hold them. In that exercise, without getting into the specifics, there is a lot of evidence to be gathered but it takes time because of the
type of technology, the type of interface that needs to be done, the type of interrogation of devices that needs to be done, that cannot be completed.

When you start to build out the matrices of criminal gangs, who they are connected with, every time the law enforcement intervenes with persons engaged in criminal activity, they are then able to piece other parts of the puzzle together but it takes time. So they have asked for—and when you look at other anti-gang legislation around the world they allowed detention orders, and in this now, it has been reduced to the common law period that is accepted before a person is entitled, either be charged or be let off and that the police officers can go to a judicial officer. Is it that we no longer trust judicial officers for an ex parte order for a further detention of up to 14 days? This has been used, it has been used successfully by law enforcement over the past few years whilst the legislation was in place and it has prevented the occurrence of many issues of criminal gang activity.

**Madam President:** Minister, you have five more minutes.

**Hon. S. Young:** Thank you very much, Madam President.

Madam President, let me just answer some very specific comments that were made on the last time by Sen. Mark. I listened to Sen. Mark on the last occasion; I read the *Hansard* and he began this conversation about SRPs, so I would just like to correct the record here today and he made specific reference to section 6 of the Special Reserve Police Act. And as I was listening it dawned on me but I have heard this before, and I want to tell the country here today, as I am seeing happen very, very frequently, persons standing up in the Parliament, making certain arguments and points but then it is already in or followed shortly after in a pre-action letter. So to put the country on notice that this legislation is now being looked at and challenged and to have heard Sen. Mark—first of all, I place on
record here without fear of contradiction, and challenge Sen. Mark or anyone else to ask the Commissioner of Police, as the Minister of National Security, who is the Minister under the SRP Act, given certain powers of direction I have never, not once, never asked the Commissioner of Police to hire a single person as a Special Reserve Police. And under the legislation it is only the Minister of National Security who has that power.

Section 6 of the Act says:

“Subject to the general order and directions of the Minister”—that is the Minister of National Security—“the Commissioner shall have the general command and superintendence of the Special Reserve Police, and he shall be responsible to the Minister for their efficient condition and for the proper carrying out of this Act.”

At no point in time as Minister of National Security has that taken place. There has been no abuse of power. Sen. Mark also throughout, as they are famous for doing, “8,500 Special Reserve Police”; that is the figure he has, “It is a private army”, completely false. The Trinidad and Tobago SRP full-time force is 2,913 males, 864 females; part-time, 357 males, 242 females, so that is under 4,000. So not even half of the figure being suggested.

Very quickly, Sen. Lutchmedial, “Too many units in intelligence, the GIU, the OCNFB, SIU”, the fact is these were all iterations, they now exist. The SIU, Special Investigation Unit, and each division has an anti-gang unit and they have been doing what they need to. This cry about resources, they are not being resourced, completely false. Yes, there may be difficulties in releases to the police service, it has not affected the efforts being aimed at the criminal gang activities. Evidence that the law is working, this is another red flag that is always thrown up; I never quite understood this. So they are saying, “Provide us with evidence—and
this is the support for the sunset clause—that the law is working for us to support it”. Is there not a law against drinking and driving? People still do it. There is a law against littering; people still do it. There is a law not to use cell phones whilst driving; people still do it. So is it that you should not have those laws in place because people are still going to break it? It is against the law to carry illegal firearms; people still do it. It is against the law to murder; people still do it. So that could never be a substantive argument for the non-passage of this anti-gang legislation.

“Every type of activity contemplated by this piece of legislation as gang-related activity is already an offence under the law.”

As I have said at the outset, that is completely false and misleading and intentionally so and rejected. Another dog whistle with respect to this, “This is a holding Bill”, we hear it time and time again, to lock up people and sometimes the introduction of race, completely rejected. There is no holding Bill here, as I have taken the time, Madam President, through you, to point out these offences are specifically targeted at gang activity. The holding, you have to go to a court, to a judicial officer and convince him or her up to a maximum of 14 days and there is law that if that is done maliciously, you can get your damages as was held with respect to the state of emergency in 2011.

“No piece of law solves crime, we need to operationalize it and resource it.”

The truth is, Madam President, it has been operationalized. Madam President, I see you are telling me to wrap up, so I would like to take the opportunity to thank you as the President of the Senate and to the Members of the Senate and commend this piece of legislation to you, the Senators, because the reality is there is criminal gang activity and this is absolutely necessary to fight the scourge of specific criminal gang activity. Thank you very much, Madam

UNREVISED
Madam President:

Sen. Jearlean John: Madam President, thank you for the opportunity to join this debate. Madam President, the hon. Attorney General in his presentation of last week—and I think it is good that the hon. Minister of National Security also joined the debate because it helps to really further define the Government’s perspective and the Government’s policy as it relates to gangs, the management of gangs, the gang culture in Trinidad and Tobago. Madam President, the Attorney General in his overview in this very House, he gave a history of the anti-gang legislation which dated back from 2011, and of course he made mention of the three-fifths majority which also was a feature in the 2018 Bill. Now, the 2011 Bill which had a duration of five years based on the sunset clause, that was for a specific reason because of course there were intrusions into people’s constitutional rights which fell under section 4(a) of the Constitution, section 4(b) and one or two other sections in section 5.

Madam President, the Opposition at the time would have felt that 30 months, because in negotiation with the Government, was sufficient time because in his presentation in that other place at the time, the hon. Attorney General did say there were 2,400 gang members; they know where they were, they know where they lived, et cetera, which was a good place to start quite frankly. This is not a large country and certainly no one wants gangs around or—I want to put that on record, nobody wants gangs around, nobody wants that gang culture, it is not good for Trinidad and Tobago. So I really want to make that very clear that that is the position of the Opposition. But if you say that 2,400 and you know where they are—and it is very clear in law what constitutes a gang and that is here, I think, in Part I, what is a gang, who is a gang leader, who is a gang member, what is
gang-related activity. So this is very, very clear, Madam President.

So I am of the opinion and I believe that if you know where they are, you go and you pick them up, only if it means that there must be a gang-related offence now to match these people you are identifying as gang members because names are being called in terms of—the names of these gang, et cetera. So it means there is a lot of intelligence so why are we still being plagued by these gangs and now we want a law that goes into perpetuity to treat with it. It means, it appears as if the Government has no idea what they are doing relative to cleaning up this scourge. Now, Madam President, the Bill before us is not a tool of eradication or gang interruption, in the Explanatory Notes it actually starts very clearly and it says:

“The Anti–Gang Bill, 2021 seeks to make provision for the suppression of associations...”

How will that help us? If it is that the gangs are still there, it is just to suppress. Yesterday in that Joint Select Committee, I think, on National Security where they are treating with gangs, the head of prisons stated that in the prison—I think he said there are 17 gangs, so it is a revolving door. So they leave outside in gangs, they go inside, and he says they gravitate to the same associations that they know, and for those who had not been in gangs, 60 per cent of them go and join gangs. So what are we doing? So it cannot be gang suppression. It cannot be suppression of the gangs, it has to be interruption and eradication of the gangs. So we have to put other measures in place, it cannot only be a law that has them going in. And in this same joint select committee they said what they intend to do stands on five pillars: prediction, deterrence, detection, prosecution and rehabilitation. And all of that is well and good but the Government as we see it is doing nothing with respect to this prediction, or as I said, the interruption of this gang culture.
I do not know if the Government is unaware that a job recruitment programme with real jobs is a gang suppression tool that will work maybe much better than this Bill. If we just go anywhere in what they call these hot spots, they are just young people just doing nothing. They are there in their uniform, and I do not want to stereotype because I do not want to say because somebody is dressed a certain way, they look a certain way, they are from a certain place, that they belong to gangs. The police, I am sure, they are very aware of these things, they will have their intelligence. So, Madam President, there are needs for jobs. Just recently the hon. Minister of National Security, he was in this very place answering a question posed to him by an hon. Senator and he spoke about a national recovery committee or something of that sort, and it was eight months that they had been in operation and it was all about consultation. And two weeks ago I saw a report in the papers, they said it is a waste of time because nothing had come of it, but we are here today debating the anti-gang legislation because there is nothing else that goes with this anti-gang. It is just about, as they say, the suppression. We just want to suppress. They go into the—they are in a holding bay and then they sit there for over 10 years, as was reported yesterday.

So the reason the Government, in 2010 or 2015, as I have said, had put in this, the safeguard, was to ensure that there was very urgent action taken on this gang culture and these gangs in the country but it was not sufficient. So then they would have joined with the Government at the time in 2018, and then you had 30 months, and again, Madam President, knowing that there are 2,400—I mean, the Attorney General came and he said there has been a drop of 58 per cent—well, since then. And the hon. Sen. Lutchmedial asked, “Where did they go”? Are they in jobs? Are they in productive pursuits? Are they dead? Have they migrated? Where are these people? Because based on what the Minister of National Security
just said, it seems as if we have this scourge, it is just ongoing.

So, Madam President, Part I, clause 3 of the Bill, I think, gives very broad definitions and descriptions of who and what is the gang member, and as I said, yet we are plagued by this lawlessness. Clause 3 of the Bill, clause 3 described gang-related activity, so again I am making the point that these things have been laid out very clear in this Bill and Bills that came before and yet we have really not seen—I mean, yes, maybe the statistics—I would not want to challenge the Attorney General’s statistics, but people are not safe until they feel safe, you know. People do not feel safe in this country. People do not think that things are getting better. People do not think that we are being more secure. Everywhere you go people are investing in cameras and all kinds of security because they are not feeling safe. So, yes, the statistics are there and perhaps they are very true but people are not feeling safe, and unless they feel safe, then we are really not just “spinning top in mud”.

So clause 4 of the Bill sets really a low bar for establishing what is gang activity because what is said, there is no need for the gang to be known by a common name or insignia. So I think—does it mean therefore that—okay, it went on to say:

No—“…means of recognition…signal or code…but evidence which reasonably shows or demonstrates the existence of, or membership in, a gang shall be admissible…”

So you have to reasonably show that. Madam President, what is “reasonable”? You know, one leaves that up to somebody to decide what is reasonable. Because, yes, we want to get rid of gangs but we always said on the Opposition, there must be the social programmes that go with this because just as was said yesterday fortuitously by the Joint Select Committee, they migrate from out here where they
are free and they go into the prison when they are locked up and it is the same old khaki pants.

Clauses 11 to 14 more or less treat with persons in close proximity, and I am hoping we will get more on that because my colleague, Sen. Nakhid had spoken about the way people live, you know, in these very close proximity, multi-family units. Here persons made mention of people living in the HDC community but when—I know when I was a part of that organization and a report came that there was—either whether gang activity or somebody was acting up or threatening people, immediately a report will go to the police. There was a social department who would go and investigate and a letter will go threaten eviction. So one took matters, made sure there was strong action immediately to ensure that this issue did not grow and flourish in these kinds of situations because, as I said, people live in little, very small spaces and they live in shared spaces so it could really get out of hand and can be very uncomfortable for the vulnerable.

Madam President, well, I suppose—again the Minister of National Security, you spoke about, well, there is no sunset clause because there is need for this Bill, I suppose, to go into perpetuity. I do not know if that is what they call it in law but in finance we talk about things going on in an infinite manner as in perpetuity. Madam President, the hon. Sen. Sagaramsingh-Sooklal referenced two young men on two sides of the scale, one was a former client who was probably a perpetrator, and one, a young boy by the name Joshua Andrews who innocently became a victim of gang violence. And I think that is what should weigh heavily on our minds. How do we deal with the perpetrator, in this case the one referenced was 14 years old, and someone who is caught by gang violence and loses their young life tragically. These are the things. What are we doing in the schools? What are we doing in the communities in terms of jobs? What are we doing in terms of training?
There is nothing that is going on and because of that the gang culture is getting worse and worse, just as the head of prisons said yesterday that the young men gravitate to the gangs because they think they are being taken care of; I think it is the same thing out there. They probably have nothing and they just continue—that is not an excuse. That is maybe the reality, and if we know the realities, that is what we have to go at. That is where the gang disruption comes in, when there is proper training, there are schools and there are good jobs for people to get into so that they can have some kind of—some level of self-respect.

Well, 15(1), I do not know which of the clauses—I think it is 15(3) the Attorney General said he will attend to. But 15(1), Madam President, says:

“A police officer may arrest without a warrant a person whom he has reasonable cause to believe is a gang leader…”

Now, I think they are held for 48 hours and then it goes on to 36 hours thereafter. That is something one will have to look at because without that three-fifths majority I think that is infringing on people’s right to liberty. Yes, in common law it is the practice that one can be arrested for 48 hours if there is reasonable cause or whatever they call it in law, but certainly it cannot be that a young man in a white vest and a three-quarter pants sitting on the side of the road is stereotyped and labelled as a gang leader. What is, “reasonable cause”? If it is we are not locking these fellas up, given that we know where they are, we know the names of the gangs, we know where they congregate, we know the addresses, you know, I really would want an answer. If we have all of this intelligence, what is keeping the police or whomever from arresting these folks? And then of course we have the logjam that is the criminal justice system where they are in Remand Yard for 10 years without their case being heard.

So all these are the issues that have to be sorted prior to us moving on and
thinking that we have a tool with the anti-gang because people do not want to say, well, this will not work. If we have legislation and we come here and debate it, you want it to work, but if it is this legislation is not placed side by side with all of the social programmes, and one has to really do a lot of work to ensure that people are channeled in positive endeavours, and thereafter when they come out, whether it was training or what have you, they get into jobs. They never will find work for idle hands to do, you know, and it cannot be one law for one, you know, we are saying, well, somebody with reasonable cause could lock up somebody but people can sit on a porch—and, Madam President, this has to do of course with “reasonable cause”, it is very relevant—you know, on a porch on Cipriani Boulevard flouting the law and it is okay. That cannot be, there must be one law and applied equitably across the board.

So, Madam President, you know, we keep talking about the still broad and sweeping powers, never mind the Attorney General is saying that he has tweaked and so on, and there is some cherry-picking of some of the clauses. And in the First Schedule, Madam President, of the Bill, it lists 48 items as “Gang-Related Activity Offences”. Now, I scanned and it is a very detailed list. In there you have item 15, “Murder”; you have 22, “Rape”; 23, “Grievous sexual assault”; “Kidnapping” and so on, but, Madam President, I still think that there should have been a number 49 because there is no notice taken of domestic abuse or domestic violence, and the gang culture is very vicious, you know, there is a lot of violence inside of it and that is not just—it is not just left from, what do you call it, a “man and man” kind of violence. It also spills over to the young ladies because there are many young girls who are not only maybe not caught up in gangs but the associate of these persons who are labelled as gang members and they are the subject of great violence, Madam President. You have a lot of teenage pregnancies and so on.
2.50 p.m.

I believe that domestic abuse, in the same way the hon. Attorney General told us that we were able to—well the police was able to solve the murder—a very tragic murder—of a young lady, and to quote the Attorney General, he said the same way that particular murder and savagery to a young lady in this country, was found by way of a withdrawal of cash from her bank account, into the hands of someone else linked to a taxi driver, linked to PH, linked to the murderer, he said follow the money. Madam President, I mean, the young lady in question tragically was already dead. But there is a violence, as I said, the domestic abuse, so we also have to follow the violence, follow the beating, follow the domestic abuse, because that is part and parcel of what happens.

As a matter of fact, there is a big protest in London right now because a young girl, I think she went missing on March 3rd, was found on March 9th. What has happened, there is a big debate as to whether misogyny, or misogynistic behaviour should not be now listed as a hate crime, because women are being killed because they are women. I am saying in this First Schedule, domestic violence should be a part of it. We are not giving women bats, they are not getting pepper spray, they are not getting guns. Well, at least, if we are following the money let us follow the beatings, follow the domestic violence, follow the misogyny.

Madam President, as you probably would have seen yourself, we have a lot of candlelight vigils, et cetera, and lots of people expressing themselves for the savagery with which our women and girls are treated, and nothing happens. If this Bill is a catch-all, and we see in that First Schedule listed, as I said, 48 gang-related activities, and given the culture of violence, which is all pervasive within that gang culture, I am putting it to the Attorney General that research shows that misogyny
is a gateway drug to a wider division across society. Tackling it must become an urgent priority for all, and it must be recognized as a hate crime and be a part of this, given where it stands in the gang culture.

Madam President, I wish I could have been more optimistic about the Bill because, yes, it picks up a lot of offences—offences that are specific to gangs and, yes a lot of these listed on the Schedule, one, are already part of our common law. They are already laws on the statute book in Trinidad and Tobago. So we have to ask ourselves, we have it there on the statute book, we had it from 2018 to 2020, yet we have gangs, the activity is not receding. It appears as if it is getting worse. The crimes are getting more vicious. So what does it tell us? Is it that the people who are perpetuating this violence, they are not afraid of the law? Because we can be here just engaging in a mechanical exercise. It must be that when we pass this—when this law is passed, should it be passed, that something happens. If nothing happened from 2018 to 2020—this is not a new thing, it is not new. All the clauses that have been spoken about, they have been on the books already. I am just asking: Why did we not get a better result? It cannot just be one is talking about statistics, and these cannot be proven, because again I reiterate, people are not feeling safe. If you are not feeling safe, it means you are not safe in this country, and it is not good, because we have the right to enjoy our liberty and property.

So, Madam President, I thank you for the opportunity to join this debate, and I am hoping that the hon. Attorney General will further explain to us. I always talk about the operationalizing of these legislation, and the hon. Attorney General I do not think he ever gives it much attention, because they believe it is just about putting the laws on the books. But how they are rolled out, we have to pay attention to that. What is the effect? Are we getting anything in return for the time spent here? Is the time well spent? Do we need this anti-gang? Perhaps, but maybe
we probably need people to respect life more, respect each other more, and that is not being trite. We somehow have moved too far away from where we ought to be from our moorings, you understand. So in terms of just coming and saying, these laws, these draconian laws will solve the problem, it is the magic bullet. It has not solved our problem. If we continue to do the same thing over and over again, we will continue to get the same result. I believe there is need for more than that.

If we know where these people are, we need to go and pick them up. We do not need even 30 months, because we know where they are. We are very clear on who a gang member is. We are very clear on who are gang leaders. We are very clear on what a gang activity is. So I am just asking the hon. Attorney General to explain to this House, what are they going to do that is different from what has been done before, to ensure that at the end they can apply this law and maybe bring us back to some level of peace and tranquility. [Desk thumping] Thank you, Madam President.

**Madam President:** Sen. Deonarine.

**Sen. Amrita Deonarine:** Thank you, Madam President, for the opportunity to contribute to this debate on: “An Act to make provision for the maintenance of public safety and order through discouraging membership of criminal gangs and the suppression of criminal gang activity and for other related matters”

During the course of the debate thus far, I have heard many valid concerns raised, and I have heard many recommendations being put forward. I too am looking forward to have them clarified and responded to by the Attorney General.

Madam President, anti-gang laws are common in a modern society that struggles with criminality and organized criminal activity. My opinion is that there is no question about whether we should have anti-gang law or not. The question is how to shape or fix this legislation to ensure that the low conviction rate and
whatever ineffectiveness that the statistics paint, can be dealt with going forward. I agree, and the Government has acknowledged, that this Bill is not a panacea for crime in Trinidad and Tobago. As a matter of fact, I am sure that citizens would not feel any safer when this Bill comes into law. However, I understand it is another tool to assist in the fight against organized criminal activity in the country, in an effort to try and restore some level of safety.

Madam President, coming in this late in the debate, I do not want to run afoul of any tedious repetition. However, there are some points that were brought to light during the debate, and I would like to offer some of my thoughts on them briefly.

Now, research has shown that anti-gang laws around the world are generally considered difficult to prosecute. The data and statistics provided from the Crime and Problem Analysis unit of the TTPS confirms this. I know the Attorney General would have brought to the attention of this honourable House the number of gang-related murders that were solved, and the consequential arrests or persons charged. In 2018, there were 22 cases solved, which resulted in 28 arrests. In 2019, 13 murders solved with 10 persons arrested. In 2020, there were five gang-related murders that were solved, with 13 persons arrested.

Now this is good news, but when you look deeper into the statistics, what we can see, and I am drawing reference to the data provided to me from CAPA, we see that the number of gang-related murders in 2018 was 182, and only 22 of those were solved. In 2019, we had 192 gang-related murders, only 13 were solved. In 2020, we had 130 gang-related murders, five of them were solved.

Now, I understand what the hon. Minister of National Security is saying, that you cannot really look at the statistics in such a manner, it takes time for a case to go through the criminal justice system and so on. But then if that is the case,
then in 2020, let us say crime from gang-related murders from 2018 are being solved, should the 2020 figures not reflect more than five? So to me the data does not tell a compelling story. There seems to be a wide gap between the gang-related murders committed and the rate at which we are solving them.

I want to be clear, I am not sharing these statistics to paint anyone in a negative light, but for me as a Member of this honourable House, one part of saying yes to this legislation has to do with the productivity of detection of criminal gang activity. To me, based on these statistics, clearly the intelligence gathering is either, one, taking too long or, two, not sufficient, and something clearly is wrong with the criminal justice system. This brings us back to the difficulty that we may find ourselves in trying to convict persons arrested under this law. So what I need to know is how will this low conviction rate be resolved? What it is we are doing to ensure that going forward this situation is improved?

Madam President, just for the sake of having both Houses come back and comprehensively look at the productivity of the detection of criminal activity, I would also want to emphasize, just like Sen. Richards and a couple other Members who participated in the debate, that passing this Bill should be done with another sunset clause. Also, I would further recommend that perhaps after five years we should subject this legislation to a joint select committee for a comprehensive review, to deliberate over the success of this legislation, and not only deliberate over the effectiveness of the legislation, but have a chance to look at how gang activity has evolved, and make the necessary provisions for them going forward.

As a matter of fact, Jamaican anti-gang laws passed in 2014 were recently reviewed by a joint select committee, and was laid in their Parliament in May 2020. This is six years after they have passed their initial anti-gang law. So I would strongly recommend that we try to follow the same route.
Now, if you look at clause 4 of the Bill with respect to evidence in relation to a gang, I see that we are trying to make it easier to prosecute by not making it mandatory to show, and I quote:

“that a particular gang...”

—identified by a particular name, sign, et cetera, but rather by evidence which reasonably shows or demonstrates the existence of membership in a gang.

Then clause 15(1) goes on to say:

“A police officer may arrest without a warrant a person whom he has reasonable cause to believe...”—and it continues.

I am sure everyone is familiar with the clause by now. My take on this is that it could cause some level of subjectivity on the part of the TTPS, such as we end up with arrests with evidence that is unable to stand up to court scrutiny. I say this, and I would like to draw reference to a Court of Appeal case. I think the Attorney General quoted it during piloting of the Bill. It is the case between The Attorney General of Trinidad and Tobago v Kevin Stuart on July 25, 2017. The ruling was an unlawful arrest. I quote, according to Justice Bereaux:

“To prove reasonable suspicion it is important to show a nexus between the gang members...It is necessary to provide evidence showing that there was a reasonable basis for suspecting the three alleged gang members were acting in concert to sell a narcotic drug. Evidence of their respective roles as gang members in the activity would also be required.”

So it appears that it is indeed difficult and requires a lot of intelligence gathering and evidence gathering in order to guarantee conviction. As a matter of fact, it seems as if conviction under this law is highly dependent on also witnesses of ex-gang members or associates.

Obviously, when you have such individuals as state witnesses for the
prosecution, you obviously would suffer some deficiencies in terms of credibility. Of course, independent evidence sought by the TTPS could improve the credibility, based on the extent to which the Interception of Communications law or Act could be utilized to corroborate evidence.

The point I am making, Madam President, is that to penetrate and dismantle gangs you need long-term, high quality covert work by the TTPS, because you have to build cases to prove the involvement in gang activity in order to have convictions, or else we end up in a situation just like the case that I cited earlier, where wrongful arrests ended up costing the State, in this one instance, $350,000. Madam President, right now Trinidad and Tobago does not have any sort of fiscal space for unlawful arrest such as this, and even one case is far too many.

There are three more clauses I would like to comment on. The first one is with respect to clause 17, which speaks to the forfeiture pursuant to conviction, so forfeiture of property. It deals with where:

“the Court may order that any property—

(a) used for, or in connection with; or

(b) obtained as a result of, or in connection with,

the commission of the offence, be forfeited to the State…”—according to the Proceeds of Crime Act.

I am not too sure if it is somewhere hidden between the words, between the lines, but I would like to recommend, and I think that we should also include a provision to allow for immediate cancellation of licences or contracts awarded to accused persons by Government or state enterprises. I think this is a must. As a result, we should end up having a consequential amendment to the Procurement Act and take that into consideration as well. I also believe Jamaica, under the JSC report that I referred to earlier, is also considering this amendment to their 2014

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Anti-Gang Act.

With respect to clauses 18 and 19, Madam President, my respectful view is that the introduction of new criminal offences under the Second Schedule should be subjected to affirmative resolution. I think it is important that the Minister responsible should come and make the case for each inclusion to the Second Schedule. The same applies for clause 19. Here too I have to agree with many other speakers who indicated that this ought to be subjected to affirmative resolution. I would go further to say that under sections 18 and 19 of Jamaica’s Criminal Justice (Suppression of Criminal Organizations) Act, 2014, that is their equivalent anti-gang legislation, they have ensured that any changes to the schedule of offences and laying of regulations are subjected to affirmative resolution. I do not understand why we are trying to do it differently, especially when we are dealing with legislation that has far-reaching consequences when it comes to security and liberty of individuals.

Madam President, now two things that I would have liked to see in this legislation, and it is not included, perhaps there are other laws that would capture it, but I would like to raise it just for the sake of probably having the Attorney General respond to it. What happens in the case where—how do we treat with non-nationals who become part of a gang? So especially in our case where we have a large influx of non-nationals and, in some instances, illegal non-nationals, are we considering what if they end up being a member of a gang? I am not too sure what the answer to that is, or if we need to include a provision.

The other thing, and this is also interesting, I saw several countries did adopt this route, and maybe it is something that we can consider also. For persons charged with or convicted of offences under this Act that we do an organized criminals registry or a watch list, so that it will be something that will be published
and the rest of the country would have sight of it.

Madam President, in conclusion, to me this Bill will not be a magical fix to the crime problem in Trinidad and Tobago. The law on its own is not enough to combat criminal elements in this country, and the Government has agreed and confessed that is the case. It really treats with the symptoms of underlying issues that have become deeply entrenched in society.

We need to have coherent functioning support systems. Effective legislation requires effective policing by the authority. Support and resources must be given to the TTPS, not only in the form of policy, but also training. They face an uphill task indeed, but it is not insurmountable.

I thank you, Madam President.

Madam President: Sen. Welch.

Sen. Evans Welch: Good afternoon, Madam President. I welcome the opportunity, as everyone else, to speak on this Bill, which relates to the suppression of gang activity in our nation.

Let me first of all start by saying it is a fundamental principle of constitutional law that the Government of the day has the responsibility for the good governance of this Republic. Part of good governance necessarily involves the passage of legislation to deal with urgent situations which arise, which affect the comfort, safety and security of citizens.

Having said that, Madam President, it is undisputed that the country has been faced with a situation of gang violence for quite some time. This situation has escalated over the years, and it is of grave concern to all of us because not only are gang members affected by it but, by and large, citizens live in fear and there is also consequential loss of life when gangs engage in such activity. Therefore, it is necessary, and I support the philosophy and I applaud the initiative of the
Government in this regard, to pass legislation to deal with what is an urgent situation. It is like a pandemic. The attempt may not result in absolute success, but as the saying goes, it is better to try and fail than to fail to try at all. Therefore, I see in this legislation an attempt to appropriately deal with a situation which has grown and escalated.

Madam President, however, the litmus test is not simply whether anti-gang legislation is justified, or whether it is called by the politically and socially correct name “anti-gang legislation”. The litmus test of whether any legislation is appropriate and effective also depends on the legislative measures, and not simply the fact that the legislation of that nature is needed. The question always has to be asked, and the question which has come to my mind, having examined the Bill, is whether it in all instances has properly identified its target individual. Has it gone too far and wide, and increased the scope of persons who can be covered by it? Have the measures, in some instances, affected persons who are not covered by it, and are too draconian in some instances? Have the measures in any way affected fundamental doctrines that are known to the law, and which are guaranteed to every citizen in a democratic society? As I said, while I applaud the effort, the questions which I have raised are questions which, in respect of some of the measures, have occurred to me when I looked at this Bill.

Now, Madam President, one of my discomforts with the Bill and, especially in light of the Minister of National Security’s contribution, I do not want it to be misunderstood. But one of the discomforts I have with the Bill is the definition and its wide scope and its wide breadth. Of course, as the hon. Minister of National Security has pointed out, in answer to the argument which has been advanced, that the Bill is merely creating offences that already exists, he has pointed out that under clause 5, Part II, there are a number of new offences:
“A person who—
(a) is a gang leader;”

It is an offence to be a gang leader. It is an offence to be a gang member. It is an offence to perform:

“an act as a condition for membership in a gang;”

It is an offence to profess to be a gang leader, et cetera.


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However, the issue is not so much the fact that you have new offences created for gangs that do not currently exist in the law. What we have to look at, in judging the creation of these new offences and their effectiveness and their scope and whether they are too far or gone beyond or misfire at its target, is the definition. Clause 5, which creates these offences, has to be interpreted in light of the interpretation section of the legislation which defines gangs, and this is where one of my concerns arise. For instance:

A—“‘gang’ means a combination of two or more persons…who engage in gang-related activity;”

So immediately we see two persons can be a gang. And what is gang-related activity?

“‘gang-related activity’ means—an offence…”—so it could be a single offence.

“an attempt to commit an offence…”—one attempt to commit an offence.

“the aiding, abetting…of an offence; or
a conspiracy to commit an offence…”—which a gang leader is responsible for planning.

Potentially stripped of its decorations and enhancements, this captures—potentially captures a situation where any two by four—two persons get together, unplanned, not part of any wider or larger organization and go down the road and commit a robbery, hold up a store or assault someone, because these are some of the offences which are listed in the Schedule that defines gang-related activity, for instance, larceny of a motor car, possession of a firearm, arson, receiving stolen goods.

There are some gang offences as well but they have to be looked at in light of the definition, murder, rape, grievous sexual assault, assault occasioning actual bodily harm. And if one of the persons—one of the two persons is the planner of it, then since the definition of gang is two persons, then that is a gang activity. So that captures, potentially, a whole number of situations, once you have more than one person committing an offence. And the disadvantage of that is while it may be argued, “Yes, the more the merrier”, the disadvantage of that is that the law already caters for that largely; that is the first disadvantage.

The second disadvantage is that it devalues the purpose of the legislation and getting at what we commonly know and understand to be gangs which does not include that type of situation.

And thirdly, the third disadvantage and an adverse consequence of it is that we are spreading the otherwise justifiably draconian measures, which are required to deal with gangs, and spreading them by and large across a wide segment of the population and criminal activity, when such measures are really justified for an extreme situation. So it would seem to me that therefore, that when it comes to the definition, it is far too loose and it is not an answer to simply say, “Well, look this
legislation creates new offences”. That is looking at it in a vacuum without regard to the definition.

When we speak of gangs in commonplace language, one is referring to organized crime. One is not necessarily referring to the commission of a particular offence, but the whole atmosphere of intimidation. For instance, I know of a mother who told me, she and her son were ordered to get out of an area by a certain individual within three days, and they had three days to leave, which they did. That is the sort of gang situation which legislation should also be aimed at capturing by its definition; intimidation of a community, threatening of a community, et cetera; things which may not necessarily fall within a particular offence, but for that very reason which the legislation needs to cater for.

And this why I was very—when I took this view and looking at the legislation, I was very—I did not have much research to back me up, so I was very heartened by Sen. Seepersad during her contribution where she said, the definition is not robust enough, which is a conclusion and an opinion I had formed. And then she referred to the definition which is used by the US customs and drug enforcement—justice and customs enforcement unit which speaks to:

“…whose members collectively identify themselves by adopting a group identity…to create an atmosphere of fear or intimidation…”—and it must be at least three persons.

So, in addition to whatever, if in addition to the definition that have been used by the hon. Attorney General, if it cannot be replaced with this, then certainly this notion should be added to it, of organization created for the purpose of an offence, or perpetuation and involvement of an offence and to drive intimidation, et cetera, and it is consistent with what the hon. Sen. Seepersad quoted.

It also drove me to the point of looking at Jamaica where Jamaica who has
had a much longer history and more experience than us with this—and this is what the Jamaican Act which is called the Criminal Justice (Suppression of Criminal Organizations) Act—and when you look at it, it does not talk about, it does not even list a lot of offences; assault occasioning actual bodily harm, robbery, et cetera. It creates a wider picture in its definition in recognition of the fact that these offences are already probably catered for. This is what criminal activity is defined by under the Jamaican Criminal Justice (Suppression of Criminal Organizations) Act:

“…means any gang, group, alliance, network…or other arrangement among three or more persons…”

So it has—it is a minimum of three as opposed to two.

“…that has…”

And this is important:

“a) that has as one of its purposes the commission of one or more serious offences…”

So it is not concerned about identifying assault on every crime that exists. It is the creation of an organization which has that particular purpose.

And then b) says:

“in relation…”—

“…or”—an alternative.

“(b) in relation to which the persons who are a part thereof or participate therein…issue threats or engage in violent conduct to create fear, intimidate, exert power or gain influence in communities, or over other persons in favour of unlawful activity;”

That is how it is defined and that is the problem with which we are really faced. It is not a problem of taking two by four bandits and calling them a gang
helter-skelter. And therefore, while I applaud the effort of the Attorney General in this initiative, we need a definition, that definition to be properly expanded or in some way to be circumscribed as well, in line with what I have already advanced.

Madam President, there is also—I will not address the question of clause 5 further because the Attorney General has already agreed in this contribution, which is one of the points I had intended to raise, that it needed further harmonization with respect to the dichotomy between some offences being indictable and some being summary, so I applaud that effort.

So there are several other matters which I will deal with—which I will seek to deal with at committee stage, but there are some which I think are important enough to highlight here. What I am concerned with is clause 10 which talks about possession of bulletproof vests, ammunition, et cetera. What I am concerned with clauses 10 to 12 is the manner—first of all, clause 10— the effect of clause 10 is to eliminate knowledge. You can still be found guilty under this clause even if you do not have knowledge that the bulletproof vest, firearm, ammunition or prohibited weapon would be used for a gang activity. It takes out the element of mens rea.

Now we have this already existing in the law, so it is not that it is not catered for. You can be convicted for possession of ammunition, et cetera, but if we are going give an enhanced punishment of 15 years, the law recognizes moral culpability which is knowledge that it is going to be used and you have it in your possession to allow that usage or to facilitate that usage. This eliminates that requirement of knowledge. And what is of more concern to me is that it replaces it with a civil standard. The civil standard belongs in the civil arena. It says:

“…which he ought reasonably to know would be used…”

“Ought reasonably to know” means really—what it comes down to is this. Even though you do not know that it would be used by a gang, you are still guilty if
someone else would have known, if the reasonable man placed in your position would have known. The criminal law ought always, especially with an increase in penalties to require actual knowledge before a person is liable to 15 years. Ought reasonably to know and convicting a person, based on what somebody else would have realized if they were in your position, has no place here. It is a civil standard and it is used—for instance, a doctor is expected to exercise the reasonable care of persons in his profession. And if he does not, he is liable in negligence and he pays damages, but he does not go to jail for 15 years.

If a person purchases a property, they ought reasonably to exercise the diligence of a purchaser and check out the title, otherwise they would be fixed and bound by anybody who has a better title or any previous owner. And that is the consequence they face in the civil law using that civil standard. They do not go to jail for buying a piece of bad land in error. So leave the civil standard where it belongs.

And notice this clause deals with a person. So it is not talking about a gang member, a gang leader or somebody affiliated with a gang. It is talking about your regular Tom, Dick or Harry can to go to prison for 15 years, not because he actually knew, but because somebody else would have known. So this attempt to change mens rea ought not to be incorporated in legislation.

It is the same thing for harbouring.

“A person who harbours a gang leader or a gang member commits an offence…”

I looked up the dictionary definition, harbours means shelters. Once you are sheltering that person, whether you know they are a gang leader or not, under this clause 11, you are committing an offence, and it need not be a person who is associated with the gang. Why are we abandoning mens rea? If you look at the
Jamaican legislation, again, they have always had a more serious problem than we do, and when it comes to clause 10(2) that deals with harbouring, it is important that I should read it out in its full context.

“A person shall not harbour or conceal a person knowing”—I emphasise it—
“knowing that the person is a part of or a participant in a criminal organization.”

So in the case of Jamaica, they recognize the fundamental doctrine of mens rea, and you should only be guilty if you have that guilty knowledge. Why are we increasing penalties and removing that requirement and imposing such a situation? There are many authorities which say, the absence of mens rea ought to be the exception. Some even question the constitutionality of eliminating mens rea from legislation.

And the other question which concerns me about this particular provision is this: harbouring someone—it ought to be, in my view, a requirement in there, not only that you should know the person is a gang leader or not, but it should be someone who is not ordinarily resident at your home if it is a dwelling house. Because what if you have mother who is taking care of her children as part of her social responsibility and a social relationship, or a wife who owes a house and is married to her husband who becomes a gang leader or something of that nature, what is this legislation compelling them to do in a situation where that person has been ordinarily resident with them for however long? Is the legislation now compelling them to change their social relationship and put someone out?

This is why I say when it comes to the question of harbouring, we should be concerned more with—first of all, you must have knowledge, and if it is a dwelling house, it should be a situation where it is someone who runs to you to seek refuge if the police is after them. Someone who is not ordinarily resident at your home or
dwelling house or your residence, and who just turned up there because they probably really live in Toco, but because of what they have done and being a gang member, they have gone to Mayaro to seek shelter. But where you are talking about a family situation and a situation which has existed, and that is the social fabric of the particular family, it ought not to be—

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

**Sen. E. Welch:** Thank you, Madam President. When it comes to clause 12, there is another concern I have. Clause 12 speaks to:

“A person who conceals—

(a) a gang leader…

commits an offence…”

Again, “knowingly”, I would have to say, was not left out in advertently or by omission or accidentally. It was deliberately left out, it appears, as a matter of policy because lower down in the clause you say, the burden is put on the person to prove that I did not knowingly conceal. But it must be part of the offence that you need to establish, and it is the same thing, again, in Jamaica.

“A person shall not knowingly conceal…”—although they speak of proceeds of crime in that clause—“…shall not knowingly conceal…proceeds of…”—crime.

The requirement of knowing is still very important—or:

“...knowingly aid and abet a…”—gang leader.

But what concerns me even more about this particular clause is the way how it fundamentally seeks to change one of the well-known doctrines of the law. This is how it defines conceals. Concealing is not defined as hiding someone, as we know it, secreting them. This is how concealing is defined under 12(2).

“For the purposes of”—this—“subsection…a person…”—conceals—“…if
in response to an enquiry from a police officer as to the whereabouts of the
gang leader or the gang member, the person does not reveal the whereabouts
to the police officer, despite knowing where that person is located.”

So if you maintain your silence—and this is not a person who is a gang leader or is concealing. This could be the neighbour who wants nothing to do with the gang leaders who live in the house next door. This could be the man who is proceeding to buy his newspapers and knows that there are nefarious characters living there, I wish they could move out. This could be the child playing in the road. If the police enquires of you and you know where X lives, you do not even have to know he is a gang leader, but the maintenance of silence is now being treated as the commission of a criminal offence. There is a fundamental doctrine, and as far as I am aware, it has not changed, that a person is not bound to assist the police in an investigation. There is also a fundamental doctrine that an omission to do or to say something is not a criminal offence unless a duty arises to do so.

So if you send a child to fetch a ball next to a pool by water, which is deeper than the child, and the child slips in, you have a duty because you have created that situation. Why should a neighbour be compelled in those circumstances for remaining silent, especially in a situation that we have in this society where police informants are sometimes knocked out, where witnesses are knocked out? You are putting a person in a very invidious position, a dangerous position, between a rock and a hard place. I stay silent, I get charged like a criminal under the gang Act. I open my mouth, I run the risk of being eliminated by the gang leader who may discover that he was pointed out by me. These kinds of principles incorporated into this legislation are not what are reasonably justified in a society that has respect for the rights of persons.

Madam President: Sen. Welch, your time has expired.
Sen. E. Welch: Thank you. [*Desk thumping*]

Madam President: Sen. Teemal. [*Desk thumping*]

Sen. Deoroop Teemal: Madam President, I thank you for the opportunity to contribute to this Bill before us, this very important Bill. Madam President, in the title of this Bill three distinct provisions are identified: one, maintenance for public safety; two, discouraging of membership in criminal gangs; and three, suppression of criminal gang activity. Madam President, I would have liked to see an additional provision and this being, ensuring the overall well-being of disenfranchised and impoverished communities ravaged by criminal gangs and gang violence.

I say this so that the human and social aspirations for these communities could be reflected in the crafting of legislation to remind us of the human and community aspects of the issue. And what we are trying to do is not just about deterrence and suppression of crime, but it is also equally and more important about serious and effective intervention and rehabilitation for these communities.

I am sorry I do not have the time or the latitude to get into our pathetic track record over the decades as a country in this regard, but I look forward to the day when we would have legislation before us that would make it illegal not to have intervention and rehabilitation measures implemented in order to bring about social justice in our communities.

Madam President, Sen. Seepersad, and we just heard Sen. Welch, in their contributions express concern about the definition of gang. And I share the concerns, particularly so since the definition of gang member and gang-related activity also flows from this definition. Issues with respect to the definition of gangs and gang activities have definitely been a major challenge if one is to trace the development of anti-gang legislation in most jurisdictions.

Since legislative wording assumes that one can only be punished if he or she
is a member of a gang, it is critical to reach a consensus on the definition of a gang that would not provide grounds for defence based on ambiguity and too wide a breadth of definition, as mentioned by Sen. Welch.

Gang research clearly recognizes that there are varied levels of participation in gangs, and that membership in some types of gangs is ambiguous in that there are different types of gang members including core members, associates, peripheral or fringe members, and “wannabes” or recruits whose commitment and participation in the group varies.

In the case of Jamaica, Madam President, gangs themselves are classified as first generation, second generation and third generation gangs. First generation gangs are loosely organized groups—a lot of what we have here—that sometimes operate as street-corner gangs. And these gangs usually engage in criminal activities such as extortion for protection and in drug activity at the community level.

Second generation gangs are those that exhibit more centralized leadership and are focused primarily on organized crime. They lead criminal organizations involving drug smuggling, gun running, extortion, on more organized scale and sometimes have their businesses through which they launder money.

The third generation gangs are those with broad reach including international access and they operate legitimate businesses which they also use to launder money and usually operate businesses that handle a lot of cash.

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Madam President, the crafting of legislation is therefore well served by a knowledge of the behaviour that is being attempted to change, and the ground reality of the issue. In fact what is before us, is that which is before us, Madam President, careful enough to capture delinquent behaviours of gang members who
are committed active participants in gangs as opposed to encompassing fringe members or wannabes, for example, and avoid imposing the law on those who are not full participants in gangs. Madam President, in the title of this Bill, specific use is made of the word “criminal” in relation to gangs and gang activities by referral to criminal gangs and criminal gang activity. But what you see in the respective definitions on page 2 for “gang”, “gang leader”, “gang member” and “gang related activity”, the word “criminal” is left out. If this is intentional in the crafting of this legislation, I would certainly appreciate some explanation for this from the hon. Attorney General.

In addition, in the First Schedule which lists gang related activities, the gang related items are items five to 12 of that First Schedule. And I do not see gang leadership specifically mentioned as one of the offences in this schedule, and I am of the view that this should definitely be included in this schedule. Madam President, although this legislation is crafted on the basis of deterrence and suppression, we must ask, we need to ask the question of whether it would facilitate the required investigation and prosecution to ensure a high rate of conviction because surely we would not want to pass legislation in a vacuum just for the sake of passing legislation. In an article in the Trinidad Guardian by Joel Julien, February 09, 2019, Renée Cummings a New York-based, Trinidad-born criminologist and criminal psychologist is quoted as saying, and I quote:

“It is impossible to eradicate gangs, but it is certainly possible to reduce gang violence using a comprehensive strategy of prevention, intervention and suppression tactics. In Trinidad and Tobago, there’s been an over-reliance on reactive policing and suppression tactics which have consistently delivered limited results. Short-sighted get tough on crime policies actually make gangs become more organised and more violent…”

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Devoting more attention and resources to the investigation and prosecution would send a clear message that gang violence will not be tolerated.”

Madam President, if we are to go by the number of convictions, we can safely conclude if we only just use this criteria that anti-gang legislation in Trinidad and Tobago has not lived up to its promises thus far. Not one gang leader to my knowledge has made a jail arising out of previous incarnations of this legislation. As stated by Sen. Lutchmedial in her contribution, the editorial of the Trinidad Express, November the 21st, 2020, addressed this issue as well as going on to question the validity of the statistics put forward by the hon. Attorney General and the Commissioner of Police, to substantiate the alleged success of the 2018 Act. The statistic provided in this debate by the hon. Attorney General highlights the high number of arrests made. When we compare this with the lack of success with convictions it is a matter for serious concern. We heard from Sen. Richards during his contribution about the impact of the Remand Yard in the hardening of young men into gang members and the control of remand by gangs. The prison system is at present not capable of handling a Remand Yard filled with gang members awaiting trial for lengthy periods of time due to a severely overburdened judicial system, and this allows for gangs managed by gang leaders external to the prison to remotely control the Remand Yard.

Gangs are now in control of Remand, running their business of crime from the Remand Yard, in addition to recruiting members from Remand. The long delays in trial also contribute to the problem, particularly since witnesses are targeted by gangs during the long wait for trial. If they are not killed they are intimidated to the point where they are no longer willing to testify. In light of this I ask the question, are we exacerbating the problem by making arrest that cannot be convicted to conversions without adequate police intelligence and investigations,
and not having a speedy trial due to an overburdened justice system? In the same way, does the transfer of the burden of proof to the accused in clauses 10, 11, 12 and 14 make the investigative role of the police less stringent, and make successful prosecution much more difficult thus leading to lack of convictions even though many arrests are being made?

Madam President, another ground reality is that gang leaders themselves do not perform the actual crime activities themselves, and we know it is difficult to prove their direct involvement in criminal activities without extensive police investigation and good prosecution. Otherwise the ones who get caught by this legislation would only be what we refer to as the small fry, whilst the big fish, the very well-resourced big fish gang leaders will remain at large. We know it is not the young boys walking around with the Glock in their waist who are the leaders, and the only effective way of dismantling gangs, established and well-organized gangs is by getting into the real gang leaders who are skilled at camouflaging their operations and activities.

Madam President, in a policy discussion paper by Andrea, standing on “The Threat of Gangs and Anti-Gangs Policy”, Institute of Security Studies, South Africa, Paper 116 of August 2005, we are provided with a clear example of legislation working in conjunction with proper police investigation and good prosecution in a timely manner in the case of South Africa. In addition to that, prevention of organized crime which deals with criminal activities of gangs there has been the policy to target the so-called high flyers, the gang bosses. According to both the police and public prosecutors one of the key reasons why the state of South Africa has failed to prosecute prominent gang leaders was due to a lack of synergy between police work and state prosecution. Evidence captured by traditional police investigations had often been exposed as inadequate and
disorganized, meaning that state prosecutors had found it very difficult to build strong cases against gang bosses. Their high flyer initiative was strengthened by the introduction of investigations and prosecutions that involved the police and state prosecutors working together over a much longer time-frame. This approach added security and trust that prosecutors offered witnesses. It was felt that in some areas people were more reluctant to give sensitive investigation to the police than to state prosecutions. This reflected a level of public distrust in local police who were often accused of being corrupt and having close connections to gang members and gang leaders. I humbly suggest that we look at policies such as these that would provide us with a fighting chance of catching the big fish gang leaders.

Madam President, I would like to go to clause 8 which deals with persons who knowingly counsel, give instructions or guidance, finances or otherwise provide support to a gang leader, gang member or gang. I would like to refer to a publication by the San José State University, December 26, 2018 on The Impact of Gangs on Community Life in Trinidad and Tobago, by Ericka Adams, Patrice Morris and Edward Maguire, and I would like to outline two particular findings from this study. The first finding is that:

In Trinidad and Tobago gang leaders have become important intermediaries between the Government and the community. Government officials select gang leaders who are also referred to as ‘community leaders’ to distribute and oversee short-term public works employment projects within a community, often in exchange for securing residents’ votes in upcoming elections. With public work projects being valued in the millions, prospective community leaders engaged in violent gang conflicts and intra-community struggles as they vie for control of these projects. Though the Government’s provision of services to the impoverished communities is
well-intentioned, no doubt about it, the relationship between government officials and gang leaders situate gang leaders as people capable of providing necessary resources to community residents and legitimizes their presence in the eyes of the community members.

The second finding:

Government officials view community leaders as arbiters of violence within depressed communities and expect them to mitigate and contain crime within their neighbourhoods.

So it is a question of containment.

In some communities gang leaders serve as agents of social control regulating the types of crimes that can be committed, designating which individuals can be victimized, and punishing gang members and non-gang members for carrying out unauthorized offences. Gang leaders are routinely described in the media as community leaders and interact often with Members of Parliament.

Those are the two findings from that report I refer to, Madam President. Madam President, in Alert T&T news and media website, July 07, 2019, in a report by Anna-Lisa Paul, Commissioner of Police Gary Griffith is quoted as saying, and I quote:

“The catalyst towards reducing gang-related activity will continue to be one thing and that is, gangs must stop getting state contracts.”

The report goes on to say that:

“The CoP”—stated—“this practice had been allowed to flourish under the last four political administrations.

This escalates the problem because it emboldens them, gives them the opportunity to profit and they use this, not to help their communities but to
purchase more firearms, get more illegal drugs and hire more gang members. Griffith”—I am referring to Commissioner of Police—“described state contracts as the Achilles heel of the T&T Police Service as they fought against criminal elements.”

Madam President, I would just ask, in the context of these findings, probably a ticklish question, could or would government officials who knowingly award contracts to gang leaders/community leaders and gangs/community groups, could they be open to prosecution under this clause 8? Could politicians and political parties be prosecuted for associating, giving instructions, providing guidance or providing support to gangs and gang members or gang leaders legitimized under the thin guise of community leaders and community groups? With regard to clause 8, I am proposing, Madam President, that we remove the word “knowingly”. Knowingly has been applied to clauses 10, 11, 12 and 14, where the burden of proof has been placed on the accused. But to me if we really want to give teeth to clause 8, I am suggesting we remove that word “knowingly”, and the real supporters and the hidden supporters of gang leaders and the perpetration of their activities would be more accessible in terms of prosecution.

Madam President, I would like to go to clause 12 which deals with the harbouring of a member or a gang leader, which essentially states that if a gang leader or gang member is a child the parent could be convicted by the court for harbouring, and in sentencing this parent, of course, the court shall take into consideration mitigating factors, as stated in the clause which I would not repeat. Madam President, I ask the question, is the inability to be a good parent due to extenuating and extreme circumstances, coupled with the natural human instinct not to give one’s child up no matter how wayward the child may be, provide a basis for the criminalization of such an action? And I would like to return to the
publication that I referred to earlier from the San José State University on The Impact of Gangs on Community Life in Trinidad and Tobago, and just refer to two additional findings:

In impoverished communities, particularly those in the Port of Spain area, the national government is unable to provide consistent access to public goods and services. As a result, residents in these communities encountering limited monetary, legal and social services at times accept or benefit from economic resources and security services provided by the gang leaders.

Second finding:

Just as organized crime leaders sometimes engage in pro-social acts to benefit their communities, gangs in the Port of Spain area fulfil a number of roles in their communities. They provide protection, economic opportunities to impoverished persons in their neighbourhoods, thus replacing some of the roles traditionally held by the state. This results in a curious duality which gangs are largely responsible for many of the problems on the communities, especially in extreme levels of violence. But in the absence of the State gangs have also become a key resource for their communities.

And I want us to reflect on those two findings in the context of clause 11—particularly clauses 12 and 13. For in such tight-knit, complex communities the fear of reprisal from gangs far outweigh the trust in the police to offer adequate protection, and coupled with the dependence on the gangs for sustenance, many persons in these impoverished communities are going to be caught up, as we say, between a rock and a hard place when it comes to the provisions of clauses 11 and 12. As Sen. Welch pointed out, and other Senators in their contribution, the whole question of the absence of the word “knowingly” in these clauses, and the transfer of the burden of proof to those persons accused under clauses 11 and 12 who
would not have the means to hire legal counsel for a defence, I think Sen. Nakhid did raise this point. I know we would say yes we have legal services, Madam President, but really in terms of the effectiveness and efficiency of the legal services to provide, you know, good counsel and timely counsel, that is questionable at this point in time in our judicial system. I propose that for clauses 11 and 12 the burden of proof remains with the police and the prosecution, and that the police really need to step up with their adequate intelligence and investigations.

Madam President, in closing let me repeat what several others have stated. Legislation and its enforcement are not the only way out. This must go hand in hand with effective criminal gang-related intervention and prevention strategies in the affected impoverished communities. It must! The possibility of wide-spread social unrest is real, arising out of gang-related activities. Madam President, we had a clear view of this following the shooting of the police officer in Morvant on June 27, 2020. What transpired afterwards was sheer chaos that shocked this entire country. Three persons were shot dead by police afterwards and protests erupted in Morvant on June 29th and 30th, 2020, and this country was subjected to the shocking sight of protestors actually shooting back at police. Madam President, following this incident the community recovery committee was established in July 2020 by the hon. Prime Minister, Dr. Keith Rowley, and it is tasked with the responsibility of developing and implementing sustainable working conditions solutions that address issues affecting at-risk communities. Madam President, it is inevitable that this committee takes an in-depth look at the issue of gangs in these at-risk communities. And I am sure the entire nation looks forward to the findings and recommendations of this committee. Madam President, I thank you for the opportunity. [Desk thumping]

Madam President: Sen. Deyalsingh. Hon. Senators, may I remind everyone of the
Standing Order 42(2). If someone wishes to speak you need to just, there are certain things you have to do. Sen. Deyalsingh.

**Sen. Dr. Varma Deyalsingh:** Thank you, Madam President, for allowing me to partake in this anti-gang legislation. And I first must say that it is, I looked at this piece of legislation, I realized that in its previous incarnation the Bill served to get three-fifths majority to pass in this House, and that important need is really a part of our Constitution to safeguard the rights of individuals from any sort of abuse or perceived abuse of power.

Today the Suratt judgement is once more used, in my opinion, to circumvent the intent of our Constitution with this necessary safeguard. Once more I feel as if Suratt made my role here as a bit—passing legislation, I feel impotent that this legislation comes in just now simply requiring a simple majority. But, I understand the role of the AG is to bring good laws. I understand the role of him is to maintain public trust, to convince us here why pieces of legislation should be passed. The AG seems to be, you know, hiding a lot these days between the Suratt pieces of legislation. But he uses that as a shield to pass laws. But I am thinking the AG is between a rock and a hard place, because he is expected to assist the Government with laws to give us relief from the crime situation. He is expected to at least, you know, give the public some sort of relief, and the solutions, the dilemma he faces was really, how could he get around this? So it is really now, I look at this piece of legislation as a balance of probably eroding the rights of citizens versus maintaining the safety of other citizens.

So, are gangs a problem? Yes. Are we scared to live in Trinidad and Tobago in the present situation with all the crime? I think, yes. Do we need legislation to control gangs? And Sen. Richards said, yes, there is a need to do that. So therefore, could we have worked in the existing laws to get the same means, and this is what
I was looking at a bit, Madam President. Would existing laws have been able to get the same benefit? And I want to just make a comment, Madam, if you would allow me, a police report that was given, November 19, 2020 media release, “CoP awards 51 detectives for dismantling gangs”. And in that piece of legislation the Police Commissioner actually praised the members of the police service, 51, and for dismantling three major gangs within the last three months. And he said:

“This represents a total of 18 gang members being charged under the Anti-Gang legislation from the Northern, North-Eastern, Port of Spain, and western Divisions.

…a total of 36 persons have been charged for the year thus far and 88 persons for the last six years for gang-related activities.”

So therefore this release told me, “hi, we were able to still achieve this”, and the fact that he gave awards it means that, do we really need this piece of legislation? Could it have somehow come about differently? So, since the parent legislation of this came in 2011, the previous PP Government saw the need to bring this. And, when we looked at what did this legislation do? Did it really give us what we wanted? And some Members, Sen. Deonarine gave some figures, and we really were looking to see, are we getting our money’s worth for change in this piece of legislation? Is the public getting their relief? So therefore, I am looking at the fact that if we have laws, Madam, there should be some sort of performance appraisal at these laws, from each Ministry, to say are we getting laws that are really serving the people, the KPI?

So if we are passing this Bill today, would we have some way of monitoring it and seeing that, “hi, the objectives are being met”? And so we have to see the effectiveness of the law, because we could be passing more draconian non-performing laws and not getting the effects as certain Members mentioned. So
therefore, a few Members who contributed also looked at the fact that, you know, crime is rampant, we have this situation where we must do something; we must bring some laws to show the gang members that we are serious about it. But then I am looking at could we have done it differently? Could we have not put a limited state of emergency as Jamaica did, certain hot-spot areas instead of this law. But as it is, the laws are here. So I am looking at now, my dilemma. Would the laws really—and the changes brought about, will it bring that effect that I did not see it brought before, could it bring that effect now? And I am looking at the fact that, if it does, now, I would look at certain parts of this piece of legislation where it gives more power to the police. The powers where the police may now be going into homes without any warrants.

And this, Madam, is something that I am also caught between a rock and a hard place. Because on the one hand, the police as was mentioned could in pursuing a criminal go into a place if at that point it is determined that there is a criminal activity about to occur, or some crime about to occur. But, again, if you are looking at the use of a warrant, Madam, a warrant is not just a piece of paper. It protects the rights of the individual. So, I am looking at that aspect of the warrants, and I am thinking, we should be very careful not to allow police officers to enter people’s home without warrant. You see, we should not allow the police to traumatize the already traumatized public, and therefore even though we are looking at some parts of this legislation allowing no warrant, I have a little problem with that. I think in the past if we look at the instances that we had, could police abuse their power? Is that possible? And I am thinking, yes. We had searches that were done before that actually laid persons to some sort of trauma. And I recall some time ago the cops raided seven Gulf View mansions but found nothing. This was recorded in the *Trinidad Guardian*, Radica De Silva article, the 3rd of May,
2019, where the police were actually accused of breaking down doors, preventing homeowners from entering the premises.

So therefore, after two hours officers left empty handed, but they continued raids in townhouses and mansions, in other neighbours. So they moved from neighbours houses to neighbours houses, and even a house owned by a retired Naparima Girls school teacher, Minty Ishmael. It was reported was searched by the police officers. So therefore, we have to be careful. We have to be careful in the sense that if then, you know, police could have come into this area, broke down people’s doors, and according to one individual, the police had face masks and goggles and it was very traumatic to some of those individuals. In fact, I have a young man I am treating now, he got what you call “acute stress disorder” after the police broke down in those areas. He now has post-traumatic stress syndrome. Anytime he sees police officers with their flashing lights he gets a sort of panic attack.

4.20 p.m.

So we have to say, yes, if we are giving police more powers can we not somehow give certain guidelines, Madam, guidelines to the police officer, some sort of regulations that if you are going into a home you have your camcorders on, you do allow the other members of the home to come in with the police officers in the room so they would not be set up in any way. Because in instances you had cases where police officers told individuals you are not allowed to videotape us coming into this raid.

So we have to get some sort of assurance, because the Minister of National Security was here this morning, that when police are going to make their raids they do it in a humane manner not to traumatize the public. They do it in a manner where there are certain guidelines, where you can allow the members of the home
to go in the room with the individuals, because other than that we may be setting up ourselves for instances where people will question the activities of the police officer. So there are a lot of instances, Madam, that it is in the newspapers, I do not want to quote others:

Cops in search warrant video acted unlawfully.

There are many others. And then, you see, even at the time Member Fitzgerald Hinds when questioned about a search in a home in Princes Town, where a woman’s burglar proof doors were destroyed, articles of her home were destroyed, he also said probably a fund should be set up from the police officers to compensate these individuals. And this is something I also would like to endorse.

So, Madam, we know the police officers may have that ability to misuse the power and this is why I am a little hesitant in that aspect of having any sort of area where we may allow them to go. You see, a police officer now will have to apply to a magistrate. Sometimes a police officer might say, okay, it is easier just to go and use this piece of legislation without applying for a warrant. But applying to a magistrate give us a little level of safeguard. And it gives us some level of safeguards and I am thinking that this part of the regulation should still insist that you have to go to a magistrate, you have to give that safeguard. And even also I want to go a step further, Madam, in the sense that, in the past you found that there were instances where police would go to houses, they would raid houses, they would go with warrants even self, but they come up empty-handed. There should be some sort of a means of checking—sure.

**Hon. Al-Rawi:** Thank you so much for giving way. I just want to follow, are you saying that you would like a warrant for all of the activities? I just want to pinpoint the clause that you are speaking about.

**Sen. Dr. V. Deyalsingh:** Not all of the activities. But you see, when we are
looking at warrants, you know, you said the police may not need any warrants again. What I am saying is that a safeguard—I mean, a police could actually go into an area if there is a commissioning of a crime or they are falling, a gang leader running into it, but if you are going in to search, I am thinking you should have a way that the police should try first for a warrant and—yeah, sure.

**Hon. Al-Rawi:** Thank you again, Senator. We have proposed the use of a warrant. So is there something that I am missing, if you could just take me to the clause that you are speaking about because we say warrant—and in my piloting I did say we are going to amend 15(3), that there was a misprint on that. If you could just assist so I can capture your submission. Thank you so much.

**Sen. Dr. V. Deyalsingh:** When I come to the Bill I will bring that point out. So what I am saying is we really would want, as I am saying, some sort of safeguard. I am hoping that we can get that safeguard in place to any sort of regulations to search. And I am thinking we need, we have seen a deficiency from newspaper reports so we need to be very, very, clear about it, where we can have guidelines, probably the Police Complaints Authority should have guidelines when you are coming into that.

So therefore, could police abuse occur? I say, yes. Are there safeguards? I say we need as much as safeguards that we can get. So I am saying that even the video footage I am saying we have to have that as a safeguard, probably bring a JP there also to be on board, less chance for abuse. And I am thinking no evidence should be collected without a sort of video footage that could be used in court to get away from the idea of police come in and planting evidence or taking things, right?

I think the CoP is aware, he may have some police officers who are in fact wanting. He has suggested lie detection tests and even I remember a case in St.
Joseph station where they found guns and cocaine in the roof, drugs in the roof and those officers in the station were just transferred. So we need that safeguard. So can we allow the aggressive techniques of search to occur? I am saying it is time we move beyond that, time we have this—any sort of instances where we could put a policy or come in a certain manner, in a humane manner. Because I do not want patients or persons—imagine you are going to a house where somebody is raped and you see police officers breaking down the door, you can traumatize that, a mentally ill person could be further traumatized also.

So the insensitivity of the police I think we have to teach them how they can do this, how they can fix back the place after, how they can give compensation. So therefore, humane search methods I want. I am looking at the fact that magisterial, you know, should the magistrate also be on a checklist that if you are giving warrants to police, certain police officers, are they getting the fruits of the search warrants collected or are they just asking for search warrants. So there should be some sort of a system to check on the ability of the officers asking for a warrant that they get results or were they just asking for warrants to get into somebody else without due diligence and testing.

The parts on the Bill where they actually looked at the youth and the fact that they are looking at the youth element where you are now trying to engage a child, a person who recruits a child, I commend that. Because you see, I am looking at clause 13(2):

“A person who recruits a child to a gang commits an offence…”

It is excellent for that.

I am seeing that you have understood that, you know, youth involvement. I think some Member mentioned as young as 14, 15 years joining gangs and interestingly what I am thinking is that part of the earnings gotten, because when
you are looking at seizing the property of the individuals this again is something that the proceeds of crime, when you are getting this proceeds of crime, where under clause 17(2):

“…the Court may give directions…”

“Where property is forfeited to the State under this section, the Court may give directions as to the storage, investment and disposal of the property.”

I do not think judges will be in a position to make, how to invest, where to put the money. I think we should put clear guidance that if we get property, put it into a fund that could go to the police youth groups to help against crime. Get a definite line there that you are not going to put a judge in a position, where are we going to put it, could it be an NGO that I like or I do not like. So clear guidance I am thinking, should have been given to that.

I am also looking at the fact that some, I think a Senator mentioned about the youths who get a gun and feel that empowerment and research has definitely shown that testosterone levels would rise in individuals and youths who hold a gun. So there is a link for young persons. But the idea is to keep the young persons engaged. And the idea of punishing those persons who would recruit the young, a child, I think that is very commendable in this part of the Bill.

I also looked at the fact that some mention was made about gangs, Venezuelan persons coming down here, being in gangs, and I wanted some clarification. If a Trinidadian identifies certain gang members, is there an extradition treaty that we can go after them and bring them back? So this is something the AG may bring some sort of clarification on. I also would like to make to the effect that Sen. Richards did mention the fact that it was during the 1990 coup he thought that where the Muslimeen was a gang and it was there that the whole gang situation started. But I would like to quote a study done by—the
United Nations had commissioned a study and it was a study entitled:

“No time to quit: Engaging Youth at Risk
Executive Report of the Committee on Young Males and Crime in Trinidad and Tobago”

Prof. Selwyn Ryan was actually the man who chaired this. And what makes mention is, he said, we have to look really at the:

“…first tasks was to look at the growth of gangs in the context of the steelband movement. To the extent to which these bands engaged in acts of violence, they might be considered precursors of our contemporary gangs, the main difference being that the steelbandsmen waged their “wars” not with guns, but with bottles, sticks, knives and razors. Another contributing factor might be the many conflicts that took place in the interwar years.”

He also makes mention of the fact that:

“…radical political organisations…”

And he makes mention:

“(NJAC) which surfaced in the sixties and early seventies in response to the perceptions of black youth that while political Independence had been…”—left out and—“they remained economically powerless and culturally deprived.”

So we have different reasons why persons may have joined a gang. So it went further, it went before the 1990 coup I must say, and the fact is if we have gangs, we have to do something about it. If this legislation is giving us that piece of extra ammunition to deal with them, you know, it was there before, we did not get much result before, but the Police Commissioner did make an appeal to bring this piece of legislation. So if we are listening to the Police Commissioner—he did also make an appeal, as Sen. Teemal mentioned, of not hiring gangs. So we may
have to listen to him in state contracts. So we may have to also be aware of his appeal along that direction also.

Madam, I must say this piece of legislation, I think, it has me wondering will it really do what we want it to do. But seeing the situation of the crime in the country, I mean, I have seen persons who had succumbed to gang violence, I have seen their relatives, treated their relatives, and I am thinking if we need to give the Police Commissioner and the Minister of National Security some time to bring this in, I am willing to do it, but I am begging the Attorney General to, please, consider giving us back a sunset clause. Because I am thinking a sunset clause will at least prevent persons from thinking we are creating a state where we are having too much power in the hands of the police who may abuse it and I am thinking this is something we would have to look at in terms of giving us a revision in a year, what have we done, what have we achieved. Have we got any sort of—have we met any of the performances indices in the amount of gangs we got rid of, you know.

So I think we need this piece of legislation, I think we need the safeguards and I just would like to make mention and get some clarification in, when I am looking at clause 3 of the Bill, when we are looking at the law enforcement agencies which you can punish the members of the gang if they are actually damaging or a police, Excise and Customs Division, law enforcement persons. And I am just wondering, in cases of the Board of Inland Revenue established under the Income Tax Act, Defence Force. So gang members who go after those individuals, prison services, they would also face a greater degree of punishment. But I just wondered at (g):

“any other agency of the State in which investigative powers, similar to those exercisable by a police officer appointed under the Police Service Act, are lawfully vested;”
So this is another group who may come in under special privilege if they attack. And I am wondering, did we consider private investigators for security companies because sometimes an individual may have an involvement with a gang and they may not go to the police officers but they may now decide, let me hire a private investigator, let me hire a security firm. Security officers will be getting information instead of the police officers. So should we now use this to cover more? So I am mentioning clause 5(5)(b):

“to do some grievous bodily harm, shoots at, a member of a law enforcement authority…”

Could we consider again or should we put some private investigators there who may also be working towards the same ends of trying to capture or get information on the gang members. I looked at clause 6 where, coerces, encouraging gang members:

“A person who coerces, encourages, entices, aids or abets another person to be a gang leader or gang member commits an offence…”

Again, this deals with recruitment and I am thinking this new law, this new part again and certain new parts that the Minister of National Security mentioned like clause 9:

“A persons who prevents a gang leader or gang member from leaving…”

All those are commendable new offences I think is has created. I am looking at clause 7 where we are looking at reference to clause 7(1), people leaving, you know, you are going to retaliate against persons leaving. And again, persons—I looked at clause 7(1)(h):

“refusing to provide funding or resources to a gang leader, gang member or gang.”

Right now there is a person who sells doubles in Malick, in Barataria, but
every Friday they have to pay $7,000 to a leader of the gang. So, yes they are under some coercion, yes they are doing this and I am thinking would they be now held liable if they refuse to provide this, because they are also a victim. So those businessmen I am thinking we have to somehow be able to see if they are protected in this. Because obviously they know it is a gang but they are giving into this money that if they do not, their business will be destroyed or life will be difficult to them. I looked at clause 8:

“A person who knowingly—

(a) counsels;

(b) gives instruction or guidance to;”

And this is very welcome, because remember there are certain banks where people when they get their money you find that individuals may follow them home. And there is also, I think a certain bank is trying to investigate their bank tellers, are they providing information to these members of the gangs and I think they will fall into that. So this is to me very commendable. I am looking clause 10:

“(1) A person who—

(a) uses a bullet-proof vest, firearm, ammunition, or prohibited weapon…”.

I am thinking somehow there we can probably put in armoured vehicle. Because if you are looking at bullet proof vests—

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

**Sen. Dr. V. Deyalsingh:** You see, remember at once some persons were bringing down armored vehicles and now some persons are using some kind of laminated film to bullet proof their cars. So a gang member could easily do that. We have to also look at walkie-talkies. Some of them are not going through the normal cellphone but there are walkie-talkies there that you have to see if you can
probably include it there. I am suggesting it may be something to look at there. Harbouring a criminal at clause 11, looked at. I think this again, I think it is excellent in that where if you have a child who you think is involved in a gang situation, the parent now may be duty-bound to come forward, because they now will be caught under the law. So we will be hearing less of when you have police shootings, “Oh he was a good boy” because this may tell them you have to act, if you do not act, you either put him out or you report it. Again clause 12:

“(1) A person who conceals—

(a) a gang leader or a gang member…”

Madam, you see, when we did the Trespass Act I mentioned that there is a person in Curepe where an elderly person who rented out the place and it was really a gang who took over that whole house and she cannot do anything, she is scared. And in cases like this, you know, if she conceals or if she knows what they are doing, will she be caught under defence. She made, actually, attempts to get them out but they are not even budging and the police officers I think, in the area know about this case but the gang has now set foot in their home and their neighbours around are feeling that level of terror.

I am looking at the fact that clause 13(3), where you looked at if you try to recruit somebody from near a school or a place of worship it results in a higher level of conviction. But I am thinking, right now having alcohol, a bar next to a school and next to a Church is also, you know, against the law but it occurs. So will this really make a difference? I am not too sure. When you are looking also, Madam, at 13(2) somebody:

“…who recruits a child to a gang commits an offence…”

I would like to see a mentally challenged patient. Because mentally challenged persons were used sometimes to carry drugs and whatnot. So somehow we will
have to bring in this aspect there.

Looking at the fact that, when I make mention to clause 15, Attorney General, subclause (3):

“A police officer may enter without a warrant and search a place or premises not used as a dwelling house including a building, ship…carriage, box…”

So I am thinking if they are going in to search those places and there is somebody in it, there is somebody occupying any sort of premises, we do not want any sort of abuse of positions there that if persons there could be traumatized. I am looking at detaining for a period of not exceeding 48 hours. I think our prison system is and conditions are not up to mark and I think it is very, very—if somebody is innocent until proven guilty, to put somebody in that situation where you could imprison them is not a proper thing to do, 48 hours I think is not too long even though and then you could now apply to extend that from a judge or a magistrate. But I do not like that aspect of having an ex parte. I think that person if you are going to ask for more time, you should at least let the person take part in that deliberation if you are asking for a greater time.

And I am looking at also, Madam, the negative resolution that was asked for in clause 19. I think, no, there should be positive resolution. I looked at the schedule where the list of things, there are things—a lot of criminal acts here that will definitely help us in terms of “Conspiracy to defraud the State”, “Meeting a child following sexual grooming”; all these are commendable things.

So in conclusion, I want to say we may have to give the Commissioner of Police what he wants. Sen. de Freitas did say this is like a cancer society and I support this Bill with a two-year sunset clause. I think we need a report after one year to see how did it help and we need to send a clear message to the gangs. We also need to understand that it is really social changes may be really beneficial in
also handling the situation. Thank you, Madam President. [Desk thumping]

**Sen. Hazel Thompson-Ahye:** Thank you, Madam President, for the opportunity to present my views on this Bill, for the Anti-Gang Bill, 2021. Steven E. Mayer, Ph.D. of Effective Communities LLC tells the well-known tale:

“Saving the Babies: Looking Upstream for Solutions”

It can be found at www.effectivecommunities.com. And it goes like this:

“One day a group of villagers was working in the fields by a river. Suddenly one of them noticed a baby floating downstream. A woman rushed out…brought it to shore and cared for it. During the next several days, more babies were found…and…rescued…Soon the whole village was involved…”—in what turned out to be—“…a steady stream of babies…”—being rescued and taken care of by the villagers who “…fed, clothed, and housed…”—them. “While not all the babies…”—were—“…saved, the villagers…”—thought—“…they were doing…”—a pretty good job but they soon—“…became exhausted with…”—the—“…rescue work.

Some villagers suggested they go upstream…”—and investigate—“how all these babies were getting into the river in the first place.” Others disagreed. They thought their energies would be better expended in the rescue operations. The idea of going upstream was so that they might find “…out how those babies were getting into the water…”—and possibly—“…repair the situation…” And “…that would save all the babies and eliminate the…costly rescue operations downstream.

‘Don’t you see,’…”—they said—“‘if we find out how they’re getting in the river, we can stop the problem and no babies will drown? By going upstream we can eliminate the cause of the problem!’

‘But it’s too risky,’ said the village elders. ‘It might fail. It’s not for us to
change the system. And besides, how would we occupy ourselves if we no longer had this to do?”

The long title of this Bill is:

“An Act to make provision for the maintenance of public safety and order through discouraging membership of criminal gangs and the suppression of criminal gang activity...”

[MR. VICE-PRESIDENT in the Chair]

This Bill deals with rescue operations from gang activities but fails to go upstream to eliminate the root causes of the problem. The Attorney General has said repeatedly that the Commissioner of Police needs this anti-gang law as it is an important weapon in its crime-fighting arsenal. I am all for supporting the Commissioner in his fight against crime. But I am not so sure that this law will achieve its laudable objectives.

Mr. Vice-President, when I was sick and lay in bed last week, and I thank you and I thank people, Members of the Bench for their expressed concerns, I did not have two pillows around my head as we used to say a nursery rhyme in primary school, but a lot of research material around my bed. I learned that many countries around the world had problems with gangs. The Institute of Security Studies in South Africa published a “Policy discussion paper” by Andre Standing titled:

“The threat of gangs and anti-gangs policy…”

Based on:

“...research...involving interviews with a wide range of people...police, policy makers, gang experts, community residents in gang areas...”—and—

“gang members themselves...”

It showed that with the end of apartheid and opening up of the borders, this:
“...resulted in a more fertile transnational criminal environment. 
...drugs such as cocaine, heroin...stolen goods...such as cars, could be 
exported overseas and used as currency in drug deals.
...gangs increase...their power and financial base...rapid sophistication... 
increased brutality of...business practices...”

Sounds familiar?

They invest in real estate and their desire to expand means war with each 
other using:

“...a frightening array of weaponry...turned communities into 
battlegrounds...
Although drugs represent the most lucrative...activity...”—they invest—
“...in night clubs, shops...garages...”—to launder money and in 
organized—
“...prostitution, car hijacking...”—and entice—“...young people...with 
promises of wealth and gifts...designer clothing and drugs.”

State response to criminal gangs is usually legislation, like what we are 
doing now, influenced by STEP which is the Street Terrorism Enforcement and 
Prevention Act coming out of California and the Racketeer Influenced and Corrupt 
Organizations (RICO), 1970 Act of the US again. South Africa, enacted the 
Prevention of Organized Crime Act, POCA in 1998. And this criminalized 
membership of street gangs, Trinidad and Tobago seeks to enact today the 

Concerns have been expressed about some provisions of this Act. The Law 
Association has published its views on the legislation. One of its concerns was 
with the definition of “gang” and “gang-related activity”. Its view was the 
definition involved a degree of circularity. Clause 3 of the Bill defines “gang” as:

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“…a combination of two or more persons, whether formally or informally organized, who engage in gang-related activity;”

“Gang-related activity” is defined as meaning:

“(a) an offence;
(b) an attempt to commit an offence;
(c) the aiding, abetting, counselling or procuring of an offence; or
(d) a conspiracy to commit an offence

listed in the First Schedule, which a gang leader or gang member plans, directs, orders, authorizes, or requests;”

Now, the Law Association states that the offences are created by the Bill itself and the elements of these offences require reference to the word “gang” which is defined by reference to the “gang-related activity”. So their suggestion is to remove offences from the schedule. Now, I too have problems with the definition of gangs and I will explain. And I would like to begin by reference to an article in Crime & Delinquency, Vol. 47, No. 1, January 2001, pages 105—130, published by Sage Publications. It is entitled: “Youth Gangs and Definitional Issues: When is a Gang a Gang, and Why Does It Matter?”

4.50 p.m.

It is written by Finn-Aage Esbensen, L. Thomas Winfree, Jr. and Terrance Taylor. Now the authors make a general observation that gang research in the United States suffered from definitional shortcomings—is that strange—and calls into question its ability to inform policymakers and expand criminological knowledge. They quote research which concludes that:

“There is little, if any, consensus as to what constitutes a gang and who is a gang member, let alone what gangs do, either inside or outside the law...”

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The authors posit that:

“Failure to employ universal definition of youth gangs and gang membership has numerous implications for gang research and gang-related public policy.

The possibility of under-or overestimating gang membership is far from a trivial matter. Resource allocation and public concern (i.e., fear of gang crime) are largely shaped by reports of the magnitude of the problem.”

So when one reads or one hears report of the number of gangs in Trinidad and Tobago and in the prison system as we did last night, and the extent of gang membership, one cannot help but wonder as to the reliability of the definitions used to identify gangs and the accuracy of the stated membership figures.

Clause 3 of the Bill, as I said earlier, defines a “gang” as a combination “of two or more persons, whether formally or informally organized, who engage in gang-related activity”. Now the use of the word “engage” suggests to me not a single act, but a pattern of conduct. The South African anti-gang law, namely the Prevention of Organized Crime Act 121 of 1998 defines “criminal gang” thus. It:

“…includes any formal or informal ongoing organisation, association, or group of three or more persons, which has as one of its activities the commission of one or more criminal offences, which has an identifiable name or sign or symbol, and whose members individually or collectively engage in or have been engaged in a pattern of criminal gang activity.”

Jamaica’s equivalent legislation, the Criminal Justice (Suppression of Criminal Organizations) Act, No. 3 of 2014, defines “criminal activity” as meaning the “planned, ongoing, continuous or repeated participation or involvement in any serious offence.” Now implicit in these words “ongoing, continuous or repeated” indicates to me a pattern of conduct. Now when you compare the Trinidad and
Tobago Anti-Gang Bill what do we see? It defines “gang-related activity” as meaning:

“(a) an offence;
(b) an attempt to commit an offence;
(c) the aiding and abetting, counselling or procuring of an offence; or a conspiracy to commit an offence.”

To my mind the effect of that section in that one act can constitute gang-related activity. I have not found similar provisions in the laws. Further, when one looks at our definition of “gang”, we observe that it says:

“…a combination of two or more persons, whether formally or informally organized, who engage in gang-related activity;”

Jamaica law defines “criminal organization” to mean:

“…any gang, group, alliance, network, combination or other arrangements among three or more persons...”

I repeat:

“…three or more persons (whether formally or informally affiliated or organized, or whether or not operation through one or more bodies corporate or other associations)... 
(a) that has one of its purposes the commission of one or more serious offences;
(b) or in relation to which the persons who are a part thereof participate therein (individually, jointly or collectively) issue threats or engage in violent conduct...”

The South African law quoted earlier in its definition states:

“…includes any formal or informal ongoing organisation, association, or group of three or more persons…”

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Bjerregaard whom I referenced earlier in her paper “Antigang Legislation and its Potential Impact: The Promises and the Pitfalls” states:

“Although a variety of definitions are utilized by different states, the majority of states clarify that the gang should consist of at least three individuals…”

Now I read yesterday in an announcement from the Jamaica Information Service that Jamaica is reviewing their 2014 anti-gang law in a Joint Select Committee and the report is to be tabled in the House before the end of March. Perhaps that is the route we ought to take. I heard my friend say something different about what is happening in Jamaica Parliament. So I do not know what to make of it, but that is what I read last night. I am aware that the saying that Parliament can do everything but make a women a man and a man a women, but I find it difficult to stand here and have Parliament do violence to the English language or destroy logical thinking. The dictionary defines a “gang” as an organized group of criminals. It defines “group” as a set of people who have the same intention or aims and who organized themselves to work or act together. One would expect, therefore, that a gang must, of necessity involve not two, but at least three persons as the other jurisdictions have specified. But we so want to widen our net to catch not the big fish but the little people that we used a definition that no other legislature does are found.

Last time I checked two together make a couple, or a twin like my grandsons. Bjerregaard again, of the University of North Carolina, writing in the Criminal Justice Review, Volume 14, No. 2, June 2003, pages 117 to 192, in an article titled “Antigang Legislation and its Potential Impact: the Promise and the Pitfalls”, points out that there are three primary strategies that have been developed to deal with gangs: prevention, intervention, and suppression. Prevention
programmes have been designed to identify and amend the factors associated with gang membership. Intervention programmes are designed to direct youth out of the gangs. Suppression strategies emphasize the supervision, arrest, prosecution and incarceration of known gang members. And that is where we are operating in today, in that sphere.

She explained that the STEP Act, 1997 after which a number of anti-gang legislation is patterned, requires that before conviction under gang legislation, the state must prove a number of elements:

1. they “must demonstrate the existence of a criminal street gang.”
2. “they must demonstrate that the defendant had ‘knowledge that [the gang] members engage in or have engaged in a pattern of criminal activity…”
3. “that he or she had a specific intent to ‘promote…or assist the criminal conduct of the gang’.” and
4. “…the state must demonstrate that the defendant is a member of that gang.”

A number of previous speakers have spoken to their concern about the constitutionality of the Bill and a need for words that import element to mens rea, or guilty mind to be included in clauses 5, 6, 7, 9 and 30. Suffice to say, I agree and I will avoid tedious repetition.

Bjerregaard again saw potential benefits of antidrug legislation, in that it addressed the frustration experienced by both law enforcement agencies and the court in attempting to solve the gang problem by traditional criminal laws. And here I suppose I shake hands with the Minister of National Security and the Attorney General. So they were faced with unique challenges and confronted with situations where they were unable to act as, for example, dealing with situations
with multiple offenders being prosecuted for the same incident. She sees anti-gang legislation as providing law enforcement personnel and prosecutors with additional tools, as the Attorney General said, for addressing gang-related activities. In addition—

“...such legislation serves as a deterrent by announcing to gang members that engaging in criminal activities will not be tolerated and that if one participates in these behaviours as a gang member, this will enhance the punishment received for the substantive criminal act.

Perhaps most important”—she says—“such legislation provides the community with a sense that something is being done to tackle the problems.”

Mr. Vice-President, I began with the story about saving the babies. We must save the babies. Within the last few weeks children have been exposed to brutal crimes. Can we save them? Because when they suffer trauma frequently, trauma not addressed, they turn the wrong side. Michael Corriero the judge from—I do not know how many of you look at Hot Bench on television, he shares a story of Roberta.

When Roberta was seven years old she answered a knock on her door to her apartment. Her father who was estranged from her mother was standing at the door. “Go get your mother”, he told the little girl. She walked into the kitchen, tugged at her mother’s dress, “Mummy, daddy at de door.” Her mother walked to the door, Roberta trailing behind. As her mother approached the opened door, her father doused her mother from head to toe with gasoline from a can he was hiding. He then ignited her clothing with a cigarette lighter setting her on fire. Roberta’s mother survived but was horribly disfigured. Eight years later, Roberta now 15, stands before the
court for putting a gun to a stranger’s head and threatening to shoot him unless he turn over his money.

Maria was six years old and was walking with her mother, holding her hand, her father approached them on the street accusing her mother of having an affair with his best friend. He slashed her across from the face and then stabbed her repeatedly in the chest. She fell to the ground dead still holding Maria’ hand. Eight years later, Maria appears before the judge for slashing the face of a rival girlfriend over a boy.

Are we going to save the babies?

James Garbarino asked a child what he expects to be when he is 30, and he answers, “dead”. It is the same response the former Minister dealing with children affairs in Jamaica told me she got from a nine-year-old child. Garbarino says:

The—“lack…”—“of positive future orientation produces depression, rage and disregard for human life—their own and others”

It also undermines motivation to participate in the investment activities of adolescents such as staying in school, or doing homework, or to avoid the high-risk behaviours such as unprotected sex, carting weapons and joining the drug trade. These are all ripe for picking by the predators who are the gang leaders.

The Office of Juvenile Justice and Delinquency Prevention has produced a Comprehensive Gang Model and evidence-based framework consisting of five core strategies for anti-gang and violence reduction. These are:

1. “Community Mobilization—community engaging and collaboration”—it means.

2. “Opportunities provision—education, training and employment programs.”

3. “Social Intervention—outreach and access to provision of services for
gang-involved youth and their families.

4. Suppression—community policing with formal and informal social controls and accountability measures.”

5. “Organizational Change and Development—development of policy for effective use of resources.”

In the report I refer to earlier from the Jamaica Information Service, the Prime Minister noted that the Ministry of Education, Youth and Information has partnered with the Ministry of Justice to train for more teachers in restorative practices as part of a programme to provide alternative methods of treating with conflict in schools. He said and in 2019 more than 500 teachers were trained as restorative justice facilitators. Since the Ministry of Justice was disbanded in 2015 I have heard nothing further about the restorative justice policy document. I rest my case. God bless Trinidad and Tobago. Thank you, Mr. Vice-President. [Desk thumping]

Mr. Vice-President: Sen. Roberts.

Sen. Anil Roberts: Thank you, Mr. Vice-President. It clear today that the hon. Minister of National Security came up to the Upper House to lower the level of debate. It was shocking the case that was presented by the hon. Minister of National Security. He made the claim that for a serious society to be considered a country that is moving forward, we need anti-gang legislation. If that were the case, then we do not need to debate. Why are there so many clauses? Why are we are discussing this Bill if it is simply that we need something call anti-gang legislation. But it is not that simple. This Bill is a very serious Bill and has serious ramifications on the population, on the citizens as a whole. It is not just a simple Bill as we shall see.

The hon. Minister of National Security made the claim that there are many
laws out there. There are drunk driving laws, there are speeding laws, they have laws against murder, but yet these acts continue. What the hon. Minister failed to realize is that are many people who are convicted of drunk driving, many people who get tickets, who serve sentences, who magistrates have laid down sentences, even deep, deep fines up to $15,000 and maybe even jail sentences. We even had a former PNM Senator who was convicted of drunk driving. So the difference between these existing laws and the anti-gang legislation that we debate here today, is that we have not seen one conviction by this Government after bringing legislation, and now they remove a sunset clause and say that they do not have to bring any information to the Parliament to let you know why or what is the efficacy of this law.

The hon. Minister of National Security said there was no problem in under-resourcing of the police force and that this has no adverse effect. He said so in this Senate. Well I am happy that the Commissioner of Police would have been listening because he has been complaining for the last six months about under-resourcing, about deficits of $130 million, about less resources. Sen. Lyder went into that so I am not going to repeat it. He went through in great detail the deficit that the Commissioner of Police and his force have been having with this PNM Government, under-resourcing, underpaying, and under allocating resources to them. So I am as shocked to know that the Minister of National Security is not worried. He said it is just a mere release of funds issue and it is not impacting the police’s ability to fight crime.

The hon. Minister of Tourism, Culture and the Arts last week said—and I think he had a moment of deep honesty. He said that the Government removed the need for the special majority to circumvent the Opposition.

**Hon. Senator:** He said that?
Sen. A. Roberts: Yes, he said so on his Hansard. The hon. Minister of Tourism, Culture and the Arts said the Government brought this anti-gang legislation removing the need for the three-fifths majority in order to circumvent the Opposition because we are obstructionists, and therefore—and we have heard speaker after speaker on the Government Bench say that they are not happy with this legislation; that it is being watered down because the Opposition would not support it. Yet we have not seen an attempt before this was laid in the Senate, or in the Parliament, that the Leader of Government Business, or the Government, or the Minister of National Security, the hon. Attorney General, no one called on the Opposition for a meeting to discuss the anti-gang legislation.

We just heard and saw that it was laid once again. But when you are circumventing as the hon. Minister of Tourism, Culture and the Arts would say, the Opposition, you are circumventing the Constitution, you are circumventing democracy and you are circumventing the citizens. [Desk thumping] The framers of the Constitution as they may have, wanted to create a democracy based on some sort of fairness where the rights of citizens could be protected, and in their wisdom for a constitutional right to be removed they required a majority which meant that there had to be discussion. You had to convince someone who is opposed to you to support legislation because to change the rights and to impact the rights of citizens is a serious matter and cannot be played games with. It is not folly to circumvent the Opposition and to come here and say that you are going with a special majority. When we go into the clauses you will see, as some Independent Senators have rightfully said, these are very critical clauses that could impact the lives and the freedom of citizens.

And secondly, they keep saying that they brought it watered down and blame the Opposition. But if it is watered down and you only need a special majority,
you do not need the support of the Opposition. So go ahead with your Bill. You are happy with your Bill, and Opposition would always support good law. The problem is we do not see that here today. I have to go—I have listened carefully. I am quite shocked today here as I put a small pin here, that the Government in such a critical piece of legislation I was waiting to hear more debate from the Government, but I know that the hon. Attorney General will wrap up and may be the Government is satisfied with his performance only. But I would have loved to hear some more debate, to hear serious rationale for some of these clauses. So I listened intently to the Independent Senators.

Last week Sen. Vieira made some serious points, and I listened and I studied, and I was worried by some of his views. So, Sen. Vieira, I shall borrow the words of Nelson Mandela to make points to you based on your contribution that I listened you intently, and I will use these words of Nelson Mandela in this Senate debate on the Anti-Gang Bill. I do so in the hope to convince you that your position though heartfelt without malice and with a view toward nation building is in fact a wrong position.

Mandela said in the Old Synagogue courtroom on October 15, 1962 when he was brought up before a judge on charges:

“…I do not for…”—a—“moment doubt Your…sense of fairness and justice”—hon. Senator.

Mandela continued speaking about unjust laws as he represented himself in that case. He said and I quote:

We are not in Opposition to any Government or class of people. We oppose unjust laws some of which are as unjust to the Europeans as to us. The unity of the Africans, the Indians and coloured people against laws designed to suppress the rights of some, while upheld by others will lead to freedom
from oppression and enhancement of the principles of democracy.

In this case here where we are today, let replace the racist as opposed to the back in the 60s in South Africa with class, with income brackets, with poverty, with poor people as opposed to races. And today, we have to be very careful because as we sit here to make laws some of us who have access to resources, who understand certain things, levels of education, ability to read clauses and understand, access to the attorneys, knowledge of our rights and our Constitution, who can get an attorney quickly, we could be protected from abuse of provisions put here. But others who may not be so privileged or may not be so lucky may be opened to abuse and it is our job here in this Senate to protect all the people regardless of where they come from, what job they do, or who they support. [Desk thumping]

In that same case, Nelson Mandela in addressing the judge, he applied for the judge’s recusal on two grounds, the second ground being and he said and I quote:

“…I consider myself neither legally nor morally bound to obey laws made by a parliament in which I have no representation.”

Unfortunately, those who could be affected by this legislation, and let us for a moment—because when I was listening to the hon. Independent Senator Vieira, I heard the passion, but the passion assumed guilt. If we could know that these laws will impact the guilty, well all of us do not need to debate because we are all in agreement that the harshest penalty, draconian legislation. If we can know that there are going to be focused on guilty people as opposed to some innocent, then we would all be in support. But we live in the real world and innocent people come up every day to abuses by the police force, and the utilization of laws passed here to suppress the constitutional rights of people and we have to be very careful.

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We are here in the Senate and we are represented at a certain level, master’s degrees, PhDs, lawyers, doctors, business people. I do not see those on the ground being represented here in any big numbers.

**Sen. Vieira:** Senator, may I just ask, have you directed your mind to the fact that it is the same vulnerable communities where they are most at risk from the harm of gang-related activity, and it is this law that is looking to protect those very vulnerable people?

**Sen. A. Roberts:** Clearly, most definitely. However, as Nelson Mandela said supported by Gandhi, and supported by every constitutional lawyer and fighter for equal rights across the globe, it is better that 10 guilty people go free than one innocent human be locked up. [Desk thumping] And that is where we have to start from, because I heard your passion, I understand it, and as I said before, it comes from no place of malice. But we must understand that, yes, those people who live on the ground are most directly impacted by gang behaviour, but they are also most directly impacted by abuse of laws, abuse of the police, abuse of responsibility, and lack of knowledge of their rights. And therefore, if in trying to solve a problem we hurt and take away the freedoms of innocent people, we have to say, pause, and take a break and be very careful with what we do. Because the Universal Declaration of Human Rights provides that all men—which means women:

“...are equal before the law and are entitled without any discrimination to equal protection of that law.”

Now, being a dougla it will be remiss of me if I only quote Mandela and not Mahatma Gandhi. So I will have to also include Gandhiji. Gandhiji said in explaining his concepts of swaraj, which is freedom and dharma which is duty, he said and I quote:

I equate—“freedom with self-role because...”—we must—“build into the
concept of freedom the notion of obligation to others as well as to oneself...”

This—“...will be obstructed...”—if we place—“ourselves at the mercy of
our selfish desires.”

So we in the Senate have to be guided by these words. All of us, yes, we want to
pass good law, we want to stop the scourge of crime, but we have to be careful that
by passing laws, handing it to a force of people, a police force that I would not go
into the details, but the statistics are there that the Commissioner of Police is trying
to clean up. Some Independent Senators even gave instances of what may take
place, and you give it to a force that has not been cleansed. There is opportunity for
the abuse of innocence and that we cannot and we must protect against. [Desk
thumping]

Sen. Vieira, you made one statement that scared me. You said, and I
paraphrase: Constitutional rights must be a bridge to protect the citizens, to keep
the citizens safe.

It sounds good. I can almost agree with it except that we live in the real world. In
the reality the system is flawed. Law enforcement is flawed. Innocent people are at
risk, and this assumes your statement that sometimes you must give away your
constitutional right for the good. It assumes that only the guilty will be impacted by
this legislation and I wish that were true, but that might only be true in a fairy tale
like “planet Senatah” that may not be the reality on the ground in Trinidad and
Tobago. So we have to be very careful.

5.20 p.m.

We must remember because the Government made and the Minister of
National Security today made the point that this anti-gang legislation is absolutely
necessary to end the gang culture and to get convictions. We only need to look at
the history of Trinidad and Tobago, at the former UNC Government of the late
'90s to know that with a brilliant Attorney General, with a government that had the heart and the will to solve a problem without any anti-gang legislation, the biggest most vindictive, wicked, malicious gang was brought to their knees by the former Attorney General Ramesh Lawrence Maharaj and the United National Congress Government. Their assets were forfeited and you can go now to Piparo and see a rehabilitation centre. This was done by the UNC without any anti-gang law. [Desk thumping]. All it took was a brilliant, passionate, intelligent Attorney General who was willing to do what it took with the existing laws to fight crime. Oh, how we wish we had that now in government, we may be safer.

The hon. Attorney General in his debate last week spoke about the advent of this legislation coming in 2011 with the People’s Partnership Government of which I was a part, that was very interesting because what he failed to realize was that there was a problem and the People’s Partnership brought forward a possible solution. It had never done before. It was a creative new idea and therefore it included a sunset clause so that it could be analyzed, the efficacy could be vetted and it could see if it made any sense.

So to compare 2021, 10 years later, no convictions, with a government that came with a creative idea to try to attack a problem, does not hold water because the evidence is now clear that the Government here, the PNM Government has stated that 2020 was the lowest level of crime. They said and keep boasting at every level, crimes went down, murders went down, this went down, larceny went down, grievous bodily harm went down. They said that COVID had no impact on it. Then why are you panicking now, because there was no anti-gang legislation in 2020? So if the crime-fighting is the work of the Government, of the hon. Attorney General, of the Ministry of National Security, of the National Security Council and it is not COVID-related, then what is the panic here? Why rush this legislation, not
even bringing it in conjunction with the Bail (Amdt.) Bill in which it works in conjunction and very important? I am certain that the hon. Attorney General is going to tell us that he is going to bring back the Bail (Amdt.) Bill in order to go with this simple majority when it is passed by the Government. So I am speaking to the Independent Senators that we need to be very careful.

The hon. Attorney General said that there will be some amendments to clause 15(3) and he said, “so do not get so excited in the Opposition”. Well, we do not get excited about anything, we are here to discuss, to make points, to try to get better law that can help the Government solve crime and protect the rights of citizens. But in his wrapping up last week, he made the statement that he “watered down” clause 15(3) with his amendment because the Opposition is opposing for opposing’s sake so he would have preferred to have at 15(3)—how it was wrongfully put and rushed into this Bill, that he wanted—and he is quoted on Hansard as saying he wanted the right of police to go into premises without warrant. That if he had his way and he had the special majority and did not have to depend on us in the Opposition, that is what he wanted. I think that is extremely dangerous and it shows where this Government would like to go but we cannot allow that, we are here to protect all the citizens, not a few. [Desk thumping]

Getting to the Bill. When we start, we can see that this entire Bill is basically you are guilty until proven innocent. This is a very serious thing. For decades, we have operated under the innocent until proven guilty philosophy but this Bill changes it. The hon. Attorney General said that the Government listened and that is why he brought this anti-gang legislation. Well, if the Government was listening, the people out there who were screaming for the last five weeks because of the pain and the attacks on our women, I did not hear them say bring anti-gang legislation. I heard them say they want non-lethal weapons, pepper spray. Bring the
pepper spray legislation. Not that pepper spray is more deadly than guns, that is what I heard them say. I heard the people out there saying, those who are walking and praying for our women, I heard them say the women need FUL licences, expedite those gun licences. I am not seeing any discussion or Bill to bring it forward in order to expedite that. We heard that the people out there said they want a commission of enquiry into the criminal justice system. They want to monitor licence plates and so on. But we come here with an anti-gang legislation and say that we listened. Who did we listen to? Certainly not those people out there.

The hon. Minister of National Security said today that we need this anti-gang legislation because the Commissioner of Police asked for it. Okay. Well, let us follow the Minister’s argument. The hon. Commissioner of Police asked for pepper spray. Where is the legislation? That is over two years that the Government is receiving advice from some expert other than the Commissioner of Police. [Desk thumping] The Commissioner of Police begged for resources. He said this year he is in a deficit of $130 million. Well, Government, listen to the Commissioner of Police and give him the $130 million so he could fight the crime. [Desk thumping]

The very onset of this Bill, I read the title:

“An Act to make provision for the maintenance of public safety…”

Hon. Al-Rawi: Mr. Vice-President, may I respectfully on Standing Order 48(1) and also on tedious repetition.

Mr. Vice-President: Okay. Senator, you have moved on from the point previous and you are obviously reading the title of the Bill so you do not need to go back to the points before because you have made them, obviously, so just continue along.

Sen. A. Roberts: Thank you. I am glad that the hon. Attorney General is here and listening intently to do some squats. Now:

“An Act to make provision for the maintenance of public safety and
order…”

That in itself had to be written by someone who does not live in Trinidad and Tobago; “maintenance of public safety”. There is no public safety. The entire country is in chaos, people and bandits are running wild, our women are being attacked and we are having a Bill here to maintain that status quo? The name itself shows a disconnect from the society.

It continues:

“…through discouraging membership of criminal gangs…”

Well, let us see. What are the statistics? Is there a national statistical office that tells us about criminal gangs and their membership? Is there information on how many gangs, how you join a gang, where the gangs are? Because I am not aware of that. And we hear statistics thrown about, bandied about, claims made that certain gangs have been eliminated and so on, but yet we see no convictions. We have no statistics in Trinidad and Tobago. The central statistical office was talked about by this Government for five years and has not come. We even have the Central Bank telling us that during COVID between July and November, only 1,700 people lost jobs. Anybody living here knows that that figure is woefully short.

The third part of the very name of the Bill says:

“…the suppression of criminal gang activity…”

But this has been claimed already. The claim, as stated by the hon. Attorney General, Minister of National Security says that gangs and crimes have been down in 2020; info. Conditions are ripe now in Trinidad and Tobago for increased gang and criminal activity, not the opposite. The Government is saying that they solved it, that their plans are working, their investment is working but all of us know and all of us who have studied would know that when there is job loss, when they make cuts in education across the board, in GATE, cutting it in half from 800 million
down to 400 million, you shatter UTT, a PNM creation from a former PNM Prime Minister, you starve it of resources, that these lack of opportunities—

Hon. Al-Rawi: Mr. Vice-President, I rise on Standing Order 46(1). What does UTT have to do with this debate, Mr. Vice-President? [Crosstalk]

Mr. Vice-President: Okay, so Sen. Roberts, just tie it in to the Bill. A little closely, a little more neatly I should say. Continue.

Sen. A. Roberts: Thank you, Sir. Hon. Attorney General is very nervous. Education opportunities, job opportunities, income, these have impacts on crime. We are talking about a crime Bill.

[Technical device goes off]

Mr. Vice-President: So again, two things. Obviously, Sen. Mark.

Sen. Mark: I am sorry.

Mr. Vice-President: You know the rule with the phones so just make sure it is quiet while the Member is contributing. You also have five more minutes, Sen. Roberts.

Sen. A. Roberts: The hon. Attorney General comes here to tell the population that the Opposition is stopping the Government’s crime-fight and this anti-gang legislation is going to solve crime. We are saying that crime must be fought on many avenues including education. [Desk thumping] You cannot cut education, you cannot cut opportunities, you cannot cut MIC, you cannot cut sport funding, you cannot cut everything that gives people opportunities to thrive and then say you bring “ah Bill to lock up and hold people” for as long as you want while you try to charge them under different definitions to take away their freedom. Crime is not fought by one piece of paper.

In this Bill—and I do not believe I have five minutes. I mean, Mr. Vice-President, you could see all the points that are still here to be made but let me say,
one of the most frightening parts of this legislation is about harbouring a criminal, harbouring a gang member and takes out the word “knowingly”. We all know parents try with children. Some parents may have tried to discipline a child, “try to bouf them, even take ah cane, ah guava whip and give them licks” even though we do not advise that. They would have taken away “dey PlayStation” or taken away “dey phone”, ban them from going out to play football and children get through the window, they sneak out, they go out and they do wrong things. This Bill says that if a child does that and so called joins a gang, even though in a clause it says there is nothing to prove—the Government or the State must not prove that you have signed a gang sheet, you are wearing gang colours, a gang is in a certain area. An entire paragraph stating that the prosecution has to prove nothing about being in a gang, because we all know nobody signs a paper and a document to say I am a gang member.

But then lo and behold, a child could be caught in a gang and be charged. His mother could then be charged and face 25 years in prison because the hon. Attorney General changes the principle of innocent until proven guilty to guilty until proven innocent. So a mother now is being charged under this as harbouring, supporting, giving support “if she cook pelau, if she give money to this child who was going out” without her knowledge and going and getting involved in gang activity and is charged under this legislation, the mother can so be charged and then has to go before the magistrate and prove and give mitigating circumstances. So the mother has to say, “You know, I tried since this child was eight”. “Ah bouf him, ah give him licks, I punish him, I banned him and he still continued.” You know what will happen? The magistrate could mitigate from 25 years down. So let us say you were a very good mother, you will not get 25 years under this legislation, you will get eight years.
This legislation is draconian, it is rushed, it makes no sense and in 30 minutes, I cannot possibly go through all of the clauses here because this law is drafted and written by someone who does not understand the law, by a government that is not connected to the ground and it is going to suffer people at the hands of a police force that the Commissioner of Police is trying to clean up and it can be made, utilized to abuse the constitutional rights of people. We have some amendments to make and I guess at committee stage, we will make them and hopefully the hon. Attorney General would listen. But it is a former Leader of the Opposition who said and I paraphrase:

Anytime a government resorts to blaming the Opposition for its failure, that Government ceases to be part of the solution and is instead part of the problem.

[Desk thumping] The hon. Keith Christopher Rowley, Leader of the Opposition at that time. I leave you, Mr. Vice-President, with those words and I ask the Government to remove this draconian legislation. Anti-gang legislation is necessary but one that can be utilized to get and deal with the crime scourge rather than suppress and oppress the rights of citizens of the Republic who are innocent. God bless. [Desk thumping]

The Minister of Agriculture, Land and Fisheries (Sen. The Hon. Clarence Rambharat): Thank you very much, Mr. Vice-President. The mere fact that we are here today on this Bill for the second day demonstrates that this Government is quite prepared to take responsibility for the solution in relation to crime. We are not running away from our responsibility and the track record of the Government from 2015 to 2020 demonstrates that as a government, we have looked at the issue of crime and we have addressed several aspects of it including this one. And I will come back to that.
Mr. Vice-President, this is what gangs are about. It should not be a mystery. Anybody living in Trinidad and Tobago, if you have never travelled, the average citizen of this country is an expert on gangs. And I will tell you the culture of gangs is nothing new to us. It is not brand new. Gangs are about increased violence. Gangs are about increased killings. There is no way to dress it up. You could quote Mandela and Mahatma Gandhi all day, there is no way to make gangs pretty and to force upon this country the need to continue protecting them. Do not hide behind parents who are unwilling to take responsibilities in their own homes. Do not hide behind landlords across the country.

I do not know where all of you live but I could tell you. In Felicity, for example, a quiet community. Sen. Singh is from there. Very, very quiet community of Felicity. When I lived in Chaguanas, I saw Felicity develop into an apartment community harbouring complete strangers, many of whom were involved in crime. In fact, I was shocked, Mr. Vice-President, one night when the police gunned down four men in St. Thomas Village which is right on the edge of Felicity, four men in a car. Gangs bring murders and if you want to deal with the murders, you have to deal with the gangs. There is not a piece of legislation in any jurisdiction dealing with gangs that did not address at the same time the issue of firearms.

And, I remember, Mr. Vice-President, when we were debating the legislation to deal with bail and firearms, it was just before Christmas 2019, and I stood up and I said to the country and to the world that I know for a fact that we had young men in this country who were walking with ARs “down dey pants” and I demonstrated how they were doing it and I warned that it was only a matter of time before somebody pointed an AR and just touched the trigger and levelled some people in this country. And I said that is the only time we will start to think about these automatic weapons of war seriously.
And when I took my Christmas vacation that year, I read in the newspaper, it was Old Year’s Day 2019, a lady from Las Cuevas waiting on the taxi stand on Charlotte Street—Charlotte and Park I believe, the taxi stand for Las Cuevas, and somebody pointed an AR at that taxi stand and killed that woman, leaving her husband and children waiting on her. She had just finished working in Port of Spain and most likely collected her weekly pay, had gone to the grocery and bought things for Old Year’s night and she was on the wrong side of an AR. Now we are talking about gangs. Gangs are about firearms and if you want to take the guns off the streets, you have to deal with the gangs and there is no way to make that pretty. There is no way to “pretty up” that.

And you have to stop hiding. You talk about the hon. Attorney General, I will tell you just a few of the things that he has brought to this Parliament. Gangs bring increased pressure on law enforcement officers. Resources that could be used elsewhere have to be used on tracking, tackling. You think prosecution of gangs is an easy thing? Go to Canada and ask them.

I mentioned the name before, Selwyn Romilly. Selwyn Romilly I said the first black person to be appointed a judge in British Columbia province, the first to be appointed to the superior court and the second to be appointed anywhere in Canada. I talked about him in the context of his two-year trial, presided over a two-year trial against the Hells Angels, millions of dollars it cost to prosecute. No one was convicted because of the difficulties, including all the constitutional issues, in gathering evidence and prosecuting these cases. Gangs put pressure on your law enforcement officers.

The justice system, well, with gangs come firearms and murders and everything else, conspiracy and attempted murders and everything else, money laundering. So if you want to have an efficient justice system, you have to put an
end to the criminal-making machinery and the manufacturers of criminals in this country are the gangs. That is why they call it a criminal organization, you know. And the word “organization” is not used accidentally or loosely, this is well organized. Gangs are a business. It is an enterprise and they have to be dismantled, they have to be stopped. They are manufacturing criminals who end up in our justice system. And the reason the courts are overwhelmed and as a country, we have to be building courts, outfitting courts, hiring staff. The reason is because the existence of gangs and not today.

Gangs put pressure on the financial system. How many times we have to come to this Parliament to deal with compliance, with CFATF and FATF and to deal with anti-money laundering, to deal with financial crimes? And none of you could say that a contributor to that and a significant contributor to that is this called criminal enterprise, criminal organization and gangs.

And the last thing is that once you have gangs, you have increased corruption: your Customs, your Immigration, your police service, your politicians. Every corner of the society, gangs have to buy their way and pay their way for people to turn a blind eye to people to assist. So if you are serious about violence, killing, firearms, law enforcement, the justice system, the integrity of the financial system and putting an end to corruption, you must deal with the gangs. What else have you offered us to deal with them? [Crosstalk] What else have you offered us to deal with them?

And, Mr. Vice-President, we are not alone. We are not alone in dealing with this. You go to the UK, Brazil, Canada, the US, Australia, New Zealand, South Africa, Jamaica that you have quoted so much. That is the way it has evolved and we have tried to do, just like our colleagues on other Bench, we have tried to deal with it and this Bill is the way that the Government believes that we are going to be
able to deal with it.

And I say gangs are not new. Gangs are not new in this country and I think I had quoted it before when we were dealing with anti-terrorism, I had taken you back to *The New York Times* publication of May 17, 1975 and headline was:

“Militant Is Hanged by Trinidad After Long Fight for Clemency”

And Abdul Malik was a gang leader. Abdul Malik was a gang leader, you could dress him up however you want. A gang leader running a criminal organization and he was hanged for the murders of Joseph Skerritt and—not for Gale Ann Benson’s murder but for Skerritt. And you know even as a law student and long before that, because during the Abdul Malik trials, my parents were clipping all the newspaper articles and we were reading it. And when I read the part about Malik telling Abbott and Chadee to “dig ah hole”, to “dig ah hole and kill somebody and throw them in there and if you doh do that”, you will end up in there. Well, that stuck with me for so long which eventually evolved to this discussion on duress as a defence to murder because in my mind, there could not be a greater duress than what Abbott and Chadee faced. They were eventually sentenced to 20 years in prison.

So that this concept—and if you want to go earlier, you could go to the Poolool brothers, 1960s. They were running a criminal organization and they were gang leaders. They were gang leaders. And if you want to go before them, the greatest of them all that we have created is Boysie Singh. Boysie Singh whose criminal activities and criminal enterprise was on the land and sea because there are so many stories of Boysie Singh as a pirate and so many Venezuelan bodies that ended up in the ocean at the hands of Boysie Singh.

So our country and dealing with crime, criminals, criminal enterprise and criminal organizations, it is nothing new but we do not have, unlike the rest of the
world, no matter what you say, I have not heard anybody point specifically to how we deal with the issue of gangs without this piece of legislation. Because, of course, you could have taken Dole Chadee’s property after he was hanged, after. We need law to deal with people while they are alive and we also need law to deal with assets that are not taken on account of a conviction but assets that are connected to criminal enterprise. That is the difference between what we have and what happened under Dole Chadee. Dole Chadee had to die for that to happen.

And, Mr. Vice-President, nobody could say that the Government has not been dealing with the solution. My colleagues on the Opposition Bench like to come and say, every time we are debating this Bill, they want us to bring something that is not here, but none of them have referred to the fact that—I will say what they normally—this works in tandem with a lot of work that has already been done and I did not have to dig deep, it just took a few seconds and will tell you this works with bail and I am happy to hear, Sen. Roberts, that you are looking forward to bail legislation and that you will support us.

5.50 p.m.

This deals with trials. And among the issues we have addressed in relation to trials, the judge-only trials—and most people said in here—my friends were saying that it will never work; well it has worked. Evidence legislation, right now—right now, we are dealing with further improvements to the evidence process to bring back something that we did not bring in the Bill that was passed recently, witness anonymity, because gangs, witnesses and witness anonymity work together. Because you talked about striking terror, and so on, you talked about all of that. And the only way we could protect witnesses, the only way we could protect those witnesses that the court determines—the court, not the Government—that the court determines, should be protected, is by introducing witness anonymity into our
legislation. DNA, we brought the regulations. We perfected the legislation. We brought the regulations, hired the staff. That works with gangs. Electronic monitoring, it works with gangs; anti-money laundering, as I said before, forfeiture, civil forfeiture and most importantly, in that line of financial instruments, unexplained wealth.

If you do not believe—because I always wonder. I have always wondered about these people who are involved in criminal enterprise, they must have wealth. I do not know why they would do it. They must have wealth and what becomes of them when they die? Where is this wealth? Who is holding it? Which bank? Which bed? Which bedroom? Where is it held? Which box? And unexplained wealth is a very important and very powerful piece of legislation to deal with that, even when they are operating in their criminal enterprises. You do not have to wait for them to die or disappear. Even as they operate their criminal enterprises, you can attack their wealth, once it is connected with criminal activity.

So, Mr. Vice-President, this is not extreme because when you go through the jurisdiction, every jurisdiction does what is appropriate. For example, if you go to the Canadian province of Alberta; Alberta has the strictest anti-gang legislation in the context of law that tells you what you cannot wear. You cannot wear clothing associated with gangs. You cannot wear anything. It tells you—it goes so as far as to say bars are required to refuse service to persons who are known gang leaders. It goes so far as to ban gang leaders and gang members from entering certain enterprises. And, of course, it is very strong forfeiture law.

What we have here today is no different in its structure from what other jurisdictions have grappled with—what they have. And no matter how you colour it and dress it up and coat and gallery, the fact is that this country, this Bill is the cornerstone of something that does not exist at this time in our law, which is the
opportunity to break, dismantle, discourage, prosecute, convict persons who are involved in gangs. This is the Bill to do that.

And, Mr. Vice-President, the Bill has 20 clauses and the most important part of it is that area from clause 5 to 14, where the offences are created. And going back to the contribution of Sen. Welch, you must, in dealing with gangs—I understand in your opening, Sen. Welch, I understand what you were saying about having offences which deal with how—the terror sometimes that gangs reign on a community and those things. I understand that fully. But you know what? In the absence of nothing, we have to deal with what is set out in the Bill, and those are the issues of membership of the gang, coercing, retaliation for persons not joining the gangs; the issue of counselling, harbouring, concealing, recruiting, tipping-off. And we could argue all day. We could argue all day about knowingly and mens rea, and all— we could argue all day. But I think that—and I have seen the amendments that are proposed—there is no argument that those issues, harbouring— in the committee stage, we will have our opportunity to go deeper into the language used. But I tell you that there is absolutely no way that you could deal with gangs, without dealing with those persons who provide food, comfort, coverage and protection to gang members. You have to deal with them. There is no way to not—and if it is a parent, you have to deal with them.

Because you see it on the television and you see it on the media. The police on the one hand saying “known criminal” and “so many convictions”, and this and that, and the other, and the parents crying and saying, “He is a good boy”. It is not a joke. It is not a joke, because that lady waiting, having worked through the Christmas period and on Old Year’s day, wanting to close the night off with her husband and children and the children waiting—you know, I grew up in Rio Claro and I know what it is like for my mother to leave home and travel down to Princes
Town, you know, to buy something and travel to Sangre Grande and buy something. And go to Sangre Grande in a store to buy something and “yuh” waiting home for her to come back. “Yuh” waiting for her to come back home. And you know what it is like for those children, Old Year’s night at the hand of a criminal, a gun-toter. What use do you have for “ah AR in yuh pants?”

We have the power. “Is ah good thing we pass de legislation. We have power yuh know. This is not ah courthouse. Ah say dat many times.” I have no doubt in my mind. This is not a courthouse, you know. As a legislator, I am called upon to do what I could do. And we could argue we could discuss in the committee stage but we must leave here tonight at some point, having done for the citizens of this country, what we believe we could do today.

I do not want to leave this to a joint select committee. There is no need to. “What you going to go” in the Joint Select Committee and deliberate upon? “What you going to do?” I am not leaving this to another day. Because you cannot tell me, you want to deal with murders, firearms, financial crime, corruption, drugs, violence; you cannot tell me you want to improve the living circumstances, it is not a—and “doh feel is no hotspot and rural communities, yuh know. Is everywhere, everywhere”. And people say they do not feel safe. When you are going home and people on the block—people make you uncomfortable. You get to the point where you “cyah even travel in ah taxi or a PH”. So now we have to introduce pepper spray so we would spray each other.

Listen, if we break these gangs, we will be on the road to making Trinidad and Tobago a safe place. But you need courage.

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

**Sen. The Hon. C. Rambharat:** You need courage to be able to do that, and today is not the day for constitutional warfare. Who does not like it, could go to the court
house. This is not the day for constitutional warfare in the Parliament. This is for you to decide because I still have a few years—I think I still have a few years, because I will come back somewhere and tell you that you did not deal with the gang, so you could not deal with the violence in your community, the firearms, the murders, the pressure on law enforcement, the financial crimes, the burden on the judicial system and the corruption in our society. Mr. Vice-President, I thank you. 

[Desk thumping]

The Attorney General and Minister of Legal Affairs (Hon. Faris Al-Rawi): Mr. Vice-President, section 53 of the Constitution says that we convene ourselves as a Parliament to make laws for the peace, order and good governance of our society. Section 2 of the Constitution says that the Constitution of the Republic of Trinidad and Tobago is the supreme law.

I wish to thank all hon. Senators for their contributions to this legislation, for their considerations. I did get the opportunity to tell Sen. Welch that I thoroughly enjoyed his contribution because it provided a very interesting perspective on the theory behind law, and it was good to hear his contribution, as it was to hear all hon. Members.

We have had discourse over two days and our issues can be crystalized into several headings. We have been asking ourselves: Why pass the law? Sen. Roberts said that this is rushed law and why are we rushing, and then went on, in a polar opposite, to say Trinidad and Tobago is in panic, and there is no public order, as he read the preamble. He could not quite figure out which way he was going. That is not uncommon.

The position is: What is the state of Trinidad and Tobago, within the context of section 13 of the Constitution? Why do I reference section 13? In making laws for the peace, order and good governance of Trinidad, we must make laws that are
proportionate. And the closest example to what proportionality means is set out in section 13 of the Constitution, where laws must be reasonable in a society such as Trinidad and Tobago.

Now, I have heard a number of hon. Senators refer to the laws in Jamaica. The Jamaican law is something that I think is of use to us but something which we must cast in the context of what our society treats with.

[Madam President in the Chair]
And Jamaica has produced its Criminal Justice (Suppression of Criminal Organizations) Act. They create offences of forming or establishing organizations.

A—“‘criminal organization’—is—“any gang…”—et cetera—“(formally or informally)…”

that has as one of its purposes the commission of one or more serious offences…”
And serious offences are basically all of the wide range of offences in the Schedule. And they go to say:

“A person shall not form or establish a criminal organization.”

“A person who contravenes subsection (1) commits an offence.”
In other words, the Jamaican law creates what can be characterized as strict liability offences.

Is there a preamble in the Constitution that can help the Jamaican law? No. Because Jamaica can pass any law without a constitutional majority and we must be therefore careful when we draw reference to other laws. It is the same reason why the Jamaican law does not have a sunset clause. It is the same reason why the Jamaican law posits a very wide berth of offences, unlike our law, which is much narrower. It is the same reason why in the United States of America, where you are not looking at a constitutional issue of the type that we have, because they have an
exception to their Constitution for national security, that the definition borrowed from the United States—and I say this to Sen. Seepersad—does not fit Trinidad and Tobago’s model.

And when we look at the issue of constitutionality of our laws, and what we are doing today, let us go to the rubric we have. So Sen. Lutchmedial raised the issue of empty statistics. Sen. Lutchmedial said to us that we do not have statistics. And then we heard the hon. Senator make reference to the fact that we do not know what the facts are. Sen. Roberts went in, is there a national statistics office to—no. We have the Commissioner of Police and the Crime and Problem Analysis Unit of the TTPS, called CAPA, that gives the statistics. They are an independent entity under an independent hand. The Commissioner of Police has the full and sole autonomy to run the police service under the Constitution of the Republic of Trinidad and Tobago. And therefore, I find it unacceptable that we look at the statistics coming from the Commissioner of Police and are jaundiced about it. Because it is the Commissioner of Police who has said, in relation to the efficacy of the suppression and deterrence factor of anti-gang law, that we have had a 58 per cent fall off in gang membership; that we have had a 40 per cent fall off in the number of gangs. It is the CAPA analysis that has said that we have had the lowest statistical output in 20 years for serious crime. It shows in the lowest statistical output in 65 years in motor vehicle offences and traffic deaths; 65 years. And therefore, I do not buy the argument, most respectfully, that there are not statistics.

Let us get to the issue of convictions. Does anybody recall that for the last year we have had no jury trials in Trinidad and Tobago? Does anybody factor that whilst we have close to 100 charges for anti-gang offences—and contrary to what Sen. Roberts said, we had anti-gang law until November 29, 2020. Is it lost upon us that for one-year trials have not proceeded with juries? Is it lost upon us that the
DPP had a difficulty produced in the reports in filing indictments? So we cannot look to convictions. We can look to the suppression and the deterrents. But let us look to what Trinidad and Tobago is about.

The anti-gang law effectively does two things. It creates, number one, a collective criminality. Because it is true you can charge an individual for a principal offence such as wounding, assault, breaking and entering, robbery, rape anti-terrorism. You can charge an individual for an inchoate offence, which is the conspiracy to do something or things on the side of the offence. But the anti-gang law allows two or more people to be charged in collective criminality, and that is very novel.

Because, in Trinidad and Tobago, are we going to accept that we want three people? Why three? What is the magic in three as opposed to two? Why not four? In Trinidad and Tobago, we have seen the law that says where two or more people are involved in a gang, tied into criminal activity called “gang-related activity”, which is in reference to a Schedule and the Schedule includes offences which all capture mens rea, they all have the elements of crime that capture both the mental intention and the act, we are saying that two people is enough. What is it borne, by way of results in 10 years? In 10 years, we have seen, with the introduction of anti-gang law, that we have had a 60 per cent fall off in gang membership.

Are we at the position today where we are saying look, we do not need anti-gang law? Are we saying in Trinidad and Tobago, the ability to communicate on WhatsApp, on a telephone, by way of instantaneous communication is going to disappear tomorrow and then we are back to the gangs of New York or the gangs of Laventille or the gangs of San Fernando?

You see, Madam President, I am a representative of the people. I stand in this House as an elected Member of the Parliament in the House of
Representatives, and I can tell you this, for the 10 years, going on 11 years, that I have been in electoral politics and in the Parliament combined, two people is enough for my constituency. Because the disruptive force allows the dispersion of the people involved in the element.

Madam President, submissions came from the Law Association, and the Law Association said in its commentary, and I thank them for their commentary, they raised a few issues. They raised the issue of the definition. They said that there was some degree of circularity in making a reference to the Schedule. They then went on to say that they believed that one would lean towards the offences being strict liability offences and that you required a mental intention and that without the mental intention being there, that you would be skirting an issue of constitutionality that they felt was offensive. They then went on to talk about warrantless searches, and then they went on to speak about detention provisions. Those are the provisions that they, in a nutshell, dealt with and they circulated it to all Members.

I had the opportunity to speak with Mr. Mendes of Senior Counsel, the President of the Law Association. I asked my own counsel, Mr. Gilbert Peterson of Senior Counsel, to speak what Mr. Mendes and they did, and Mr. Mendes indicated, as is reported to me, that he now holds a different position in respect of detention. He has acknowledged that I intend to make the amendments to the warranting of searches. There are no warrantless searches. And we have a difference of view in relation to whether there is a mental intention in the law. We have a difference of view as to whether there is a circularity.

So permit me to address these issues. I can say now I have taken the advice after Mr. Fyard Hosein of Senior Counsel as well, in relation to the constitutionality of these laws that we bring and Mr. Hosein had said, in clear
position, that he is absolutely confident that this law can be brought with a simple majority.

In answer to Sen. Deyalsingh, who said he feels as if he was cheated effectively that Suratt has done him out of the constitutional requirement for a three-fifths majority. I would just like to caution the hon. Senator, you need a three-fifths majority if you are going to infringe a right in such a way that the Constitution says you require it. Not every law requires a three-fifths majority or a deeper form of entrenchment exception. So there is no position of being cheated out. It is either it is required or it is not. It is why we have brought laws before with three-fifths majority clauses.

For the record, we propose that this law, and we submit that this law requires no three-fifths majority, because we have removed detention for longer than 48 hours, which is the standard common law in on our country, so said in Banfield, et cetera, numerous decisions. That is now trite law.

We have said that we will not have unwarranted entry, which the previous law had, which Sen. Roberts poured scorn on, as if the hon. Member was not a Member of the House that passed it in 2011.

We have said, in relation to the matters of the Law Association’s points—we now say the very interpretation section in the Bill, a gang is two or more people involved in gang-related activity. Gang-related activity is defined in the Bill in a very special and careful way. And we in fact propose an amendment, which would be circulated shortly, to improve upon the definition, and it is a protection. We say:

"gang-related activity’ means…”—and we will adjust this—

“an attempt to commit the offence;

the aiding...abetting…

conspiracy….
listed in the First Schedule, which a gang leader or gang member plans, directs, orders, authorizes, or requests:”

Why do we have the gang leader and the gang member planning, directing, authorizing, or requesting? Because we do not want just any, as Sen. Welch put it, two-by-four criminals together to be caught. It must be in the enterprise of a gang. And you cannot be planning, directing, ordering, authorizing or requesting without a mental intention.

We also say that when you get to the concept of applying the law, we accept, as Mr. Justice Bereaux said, that there is no slam dunk in this. There must be positive evidence put to a criminal standard. The prosecution has an obligation to prove, by proof beyond reasonable doubt, in accordance with the classic case of Woolmington v the DPP where there is a presumption of innocence, et cetera, and that the proof and the criminal standard is applied— you have to prove that you are a gang member. This is not a unilateral contract like Carlill v Carbolic Smoke, where your mother can give you a card at Christmas time in a box and say: “Congratulations, you are now a member of Rasta City gang”, and you accept it. This is a position where you must have the intention, a rolled up mens rea in actus reus. Now, is that something which is unknown to our law? No it is not. In the inchoate offence of conspiracy, the actus reus demands that you have knowledge. So what I am saying is, respectfully, already known to the laws of Trinidad and Tobago.

When we look to the operation of the sections that the Law Association has pointed out, allegedly without mens rea, I respectfully beg to differ; not only because the mens rea is rolled up in the actus reus, but when you look to the defences, we specifically say that it shall be a defence if you prove that you did not know or that you could not reasonably know.
Stick a pin. Sen. Welch raised a very interesting point saying that that civil standard ought not to have place in this law. Respectfully, I would ask my honourable colleague, for whom I have great regard, to consider the following, we want to lower the burden of proof to a civil standard for the defendant, not for the prosecution. Let me explain that. We are saying that it shall be a defence for a person, in the circumstances they are facing, charged with an offence under that subclause, if he proves that he did not know or suspect or had reason to. In other words then, we are putting a presumptive effect known to our Constitution, section 5(f)(ii), where they say that the reversal of a burden is not an unconstitutional thing. It is said in black and white in our Constitution.

We then lower the standard for the defence by saying, on a civil standard, a balance of probabilities, the reasonable standard applies. It then returns to the prosecution to have to go and prove beyond reasonable doubt. And therefore, we are providing a protection, at the same time, whilst we provide proportionality to the law. So proportionality to the law is provided, number one, by making a certainty of offences. Why? We put it in the Schedule. We create offences in the Act that are certain and we refer to a limited bunch of offences in the Schedule. We do not do like Jamaica and say all offences of the wide type that they refer to. Because, in my respectful view, that would be too wide a berth and we would be skirting on constitutional issues.

Secondly, we create proportionality because we require mens rea in the commission of gang membership or gang leadership, and certainly, in respect of gang-related activity.

6.20 p.m.
Thirdly, we provide for a presumption and a civil standard or a lower standard for the defence to achieve, which is again known to our law and is well-accepted. Now, let us get to the issue of—Madam President, what time is full time?

Madam President: 6.31.

Hon. F. Al-Rawi: Thank you. Let us get to the issue of a sunset clause. I have heard hon. Senators say let us put a sunset clause. I thank my team at the AG’s Office for looking at the issue of sunset clauses. And there was a very useful article produced by John Ip of the Faculty of Law of Auckland, New Zealand, who ran through the origin of sunset clauses in modern legislation, specifically pinpointing it into the multifarious issues post-9/11 in counterterrorism legislation. And one can always say you can hearken back even to the Northern Ireland experience, as we know, happened in the English perspective. But effectively, the study demonstrates that sunset clauses, aside from modest improvements to the availability of information, sunset clauses achieve little. They do not decrease the chances of meaningful reconsideration and make the initial adoption of exceptional powers more likely.

I want to point out to hon. Senators, Sen. Deonarine in particular, the Dangerous Drugs Act. The Dangerous Drugs Act—something we have amended many times—has a very interesting clause in it. It is section 59B, “Joint Parliamentary Committee”. So there is no sunset clause in the Dangerous Drugs Act. There is section 59B of the Dangerous Drugs Act, which establishes, in law, the requirement for a joint select committee of Parliament. And that I find quite interesting because it is not that the Parliament did not do it before. The Parliament inserted in that law, the requirement that a joint select committee be established to consider the Dangerous Drugs Act from time to time. It never happened.
We have a joint select committee on National Security. We have other joint select committees that are capable of reviewing the laws. We now have the Judicial Education Institute, we have the Sentencing Commission, we have a host of remedies that are in effect to review the laws. But I want to honestly ask, 10 years after the birth of anti-gang laws in 2011, what could we not want in perpetual anti-gang laws? What is wrong with collective criminality, that has been proven by the Commissioner of Police an independent entity to work? Why do we need an 18-month sunset clause? A five-year sunset clause. Look at what the sunset clause has purchased for us.

Anti-gang law 2011, expired 2016. Opposition said no, it collapsed; 2017, they said no; 2017, they said no; 2018, they eventually said yes; 2020, they said, no; 2016, 2017, 2017, 2018, 2020, five times in five years we have been doing this dance in the Parliament to purchase what, most respectfully? What have we purchased by debating whether we require anti-gang laws? Have the courts poured any judicial scorn on the law? No. Are there nearly 100 charges in the courts? Yes. Has the Commissioner of Police said that the law is working statistically? Yes. Is this law intended to be the panacea and the magic bullet for all of the crimes in Trinidad Tobago? No. But I thank Sen. Rambharat for connecting the dots.

Beneficial ownership, mandatory share requirements, demonetization of cash, amendments to the Proceeds of Crime Act, civil asset forfeiture, judge-only, increased divisions of court, Criminal Division, Family Division, Children Division, Civil Division, audio-visual hearings, virtual evidence, Criminal Procedure Rules. Do we look as if we have put all our eggs in one basket? No. We have not. We have taken the most aggressive approach if we are honest about it. We have taken the most aggressive approach to crime fighting in the history of legislatures in Trinidad and Tobago.

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Doubling the Judiciary, 129 new courts. We have just opened the public defenders’ division. We are nearly up to 253 people ready to plead guilty to murder felony. When last did you hear that, hon. Senators? When we get to the case law, I noticed that the Law Association put forward the case of *BC Motors Vehicle Reference* 1985 2 SCR. And I want to state for the record that they fell short, in quoting from the law. They did not reflect upon the dicta, which said effectively—

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

**Hon. F. Al-Rawi:** Five minutes. Thank you, Madam President. They did not quote from the dicta which said that the general rule applicable to criminal cases is actus non facit reum nisi mens sit rea; the Latin maxim that you need to have your mens rea unless the statute either clearly or by necessary implication rules out mens rea as a constituent part of the crime. The court should not find the man guilty of an offence against criminal law unless he has a guilty mind; they went that far. But they did not go as far as page 515, and I quote:

“I am therefore of the view that the combination of imprisonment and absolute liability, violates s.7 of the *Charter* and can only be salvaged if the authorities demonstrate under s.1 that such a deprivation of liberty in breach of those principles of fundamental justice is, in a free and democratic society, under the circumstances, a justified reasonable limit to one’s rights.”

They left that out. And I think that that is a dereliction of duty to have left out the qualifier to say that you require a mental intention, strictly.

More particularly, they have also omitted the Privy Council’s decision in *Nurse v The Republic of Trinidad and Tobago*, and *Canserve Limited v The Republic of Trinidad and Tobago* 2019 UKPC 43; the judgment delivered on the 28th of November, 2019, which sets out in particular, *Gammon (Hong Kong) Limited v Attorney General of Hong Kong* 1985, the dicta done there, and very
importantly, in the leading case, on determining whether statutory offences require mens rea, *Sweet v Parsley* 1970 Appeal Case 132. And in looking at the five elements of what constitutes whether a mens rea is to be implied into law that does not expressly state it, they have left out the highest court of appeal in Trinidad and Tobago’s dicta, which materially assist us today and goes directly against the submissions of the Law Association. And I say that without fear of contradiction that perhaps if my colleagues at the Law Association had more time, maybe they would have reflected upon this.

Let me make it abundantly clear, I have the greatest regard for my colleagues, and accept that they may have been in constrained circumstances, but I want to urge them to have a view of the Nurse case at the Privy Council, which assists us squarely in setting out the five limbs which can be viewed as making sure that our, on the face of it, strict liability offences, genuinely have the mens rea element. Because we are looking outside of the Act, to the State of Trinidad and Tobago, to the proportionality of the law, and to the fact that the reference to the definition of gang-related activity, and gang leader and gang membership, and then the reversal of burden, and the use of knowledge and also the fact that the inchoate offences for conspiracy involve a rolled up mens rea, actus reus provision, all demonstrate that there is mental intention in these offences and therefore, we do not trip any constitutional measures.

We have amendments proposed, Madam President, to clause 3, to clause 4, to clauses 5, 7, 11, 12, 13,15, 16, 19 and the First Schedule. We have taken on board some of the submissions made by learned colleagues, we welcome the interrogation at committee stage, and I end by expressing my profound gratitude to all hon. Senators for an excellent debate. Last words are, the responsibility is ours. We are the letter and word of the law in terms of casting it. And Trinidad and
Tobago looks to us to protect them, to make laws pursuant to section 53 of the Constitution for the peace, order and good governance of our society. This being proportionate law with a 10-year history, without judicial criticism and with proven statistics from the independent voice of the Commissioner of Police. I beg to move. [Desk thumping]

Question put and agreed to.

Bill accordingly read a second time.

Bill committed to a committee of the whole Senate.

Senate in committee.

Madam Chairman: Attorney General.

Mr. Al-Rawi: Madam Chair, it turns out that the CPC staff—because they, like me, are not included in the Senators circulation of material. We have not received the amendments of other Senators.

[Madam Chairman confers with Clerk]

Madam Chairman: So I am told that CPC has its own file on the Rotunda.

Mr. Al-Rawi: We do not have access to rotunda as non-members, so I do not know how that is possible.

Madam Chairman: No, I am being told that CPC has access to the Rotunda, they have a file.

Mr. Al-Rawi: We do not.

Madam Chairman: But we will deal with that separately.

Sen. Mark: Yes, Madam Chair. We would need all the amendments circulated.

Madam Chairman: Sen. Mark, the amendments have been—are on the Rotunda, so all Members can access the amendments. And they were emailed to all Members as well.

Sen. Mark: Madam Chair, we do not have access to these things right now.

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Madam Chairman: Sen. Mark—

Sen. Mark: So it might have been on the Rotunda—

Madam Chairman:—I think I have said it very, very early in this Session. We talked about the fact that we were moving towards a more paperless environment and therefore, we have been emailing all of the amendments and the amendments are also on the Rotunda.

Sen. Mark: You have emailed it, you said? We have not seen that email.

Madam Chairman: I would ask all Members to check your email and you will see that the amendments have been emailed to each Member.

Sen. Mark: You know in a democracy, “you have choice eh”? It does not mean that because we have Rotunda, we “cyar” ask for paper. We could ask for paper.

Madam Chairman: Hon. Senators, we have amendments proposed by the Attorney General, amendments proposed by Sen. Vieira, by Sen. Seepersad, Sen. Welch, Sen. Lutchmedial. Okay? Attorney General, ready?

Mr. Al-Rawi: Yes, please. Thank you, Ma’am. Thank you for the circulation of the paper copy as well.

Clauses 1 and 2 ordered to stand part of the Bill.

Clause 3.

Question proposed: That clause 3 stand part of the Bill.

3 A. Delete the definition of “gang-related activity” and replace with the following new definition:

“gang-related activity” means any of the offences listed in the First Schedule which a gang leader or gang member plans, directs, orders, authorizes, or requests including:

(a) an attempt to commit the offence;

(b) the aiding, abetting, counselling or procuring

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of the offence; or
(c) conspiracy to commit the offence;”;

B. In the definition of “law enforcement authority –

(a) in paragraph (f), delete the word “and”;
(b) insert after paragraph (f), the following new paragraphs:

“Chap.15:03 (g) Special Reserve Police established under the Special Reserve Police Act;

(h) the Municipal Police Service established under the Municipal Corporations Act;

(i) the Police Complaints Authority established under the Police Complaints Authority Act;

(j) the Strategic Services Agency established under the Strategic Services Agency Act;

and”;

(c) renumber paragraph (g) as paragraph (k).

**Madam Chairman:** So we have an amendment to clause 3 circulated by the Attorney General, by Sen. Welch, by Sen. Seepersad. Attorney General, will you go through your proposed amendment?

**Mr. Al-Rawi:** Yes, please, Madam Chair. Madam Chair, we propose that the definition of “gang-related activity” be amended. That is the first amendment. We propose that this amendment be as circulated. We are lifting the requirement that the gang leader or gang member plans, directs, orders, authorizes or request. We are lifting it from the shoes, which is the tail end of the original definition, up into the chapeau, so that it is made abundantly clear that you have to have that direction. It adds, without a shadow of a doubt, the fact that there is a mental
intention in this. It was taken as a result of the observations coming from the Law Association and from hon. Members on the Independent Bench, that we could do with some improvement. And therefore, taking heed of those requests for amendments, we propose a reformatted version of “gang-related activity” because it dovetails into a gang member, a gang leader, and the very concept of the offences set out into the Bill.

We propose, Madam President, as well, that we amend the definition of “law enforcement authority”. Law enforcement authority is used in a couple of ways in the Bill. We propose that we add to law enforcement authority, special reserve police, municipal police, the Police Complaints Authority, and the SSA. And that is specifically because we, number one, want to capture any one of those entities, in addition to the traditional ones that we have in the police service, Customs and Excise, Board of Inland Revenue, defence force, prison service, supplemental police, any other agency of state, we want to capture them if they themselves are gang members.

6.40 p.m.

Why? Under the SRP legislation, they have the power of police. The municipal police have the power of police. The PCA investigates the police and have certain investigative aspects. So we want to, number one, if they are themselves, in the body of the act, committing gang-related offences, we want them included.

The second aspect is that we want them to also be protected by clause 7, which is the retaliation action. We want to make sure that these people, who are investigating or causing, are not the victims of any retaliation action. We do not propose any amendment to clause 15, as it relates here, and I say that in answer to something that came up in the debate, because that stands the same. It is a police
officer, common “p” common “o”, may arrest without warrant. That came from the law that has stood on the books for 10 years, minus the couple of months when the law did not sit. So that is the rationale for the inclusion of law enforcement authority and the amendment in a broader sense, and the amendment to gang-related activity. Thank you, Madam.

**Madam Chairman:** Any questions or comments? Sen. Seepersad.

**Sen. Seepersad:** Madam Chairman, I think I had asked the Attorney General if he could explain how “conspiracy to commit an offence” as defined in subclause (d) under “gang-related activity”, would be applied to the Trinidad and Tobago’s courts? Because I was not sure how that would work. Thank you, Madam Chairman.

**Mr. Al-Rawi:** It would be applied exactly the way it is and has been for centuries. Conspiracy is not a new inchoate matter. So it is a part of the existing law, and has been since we received laws into this country; conspiracy. Conspiracy is an act that requires a certain involvement of mental intention to participate. So it is not intended to be anything other than the existing law.

**Sen. Seepersad:** So is it that like two or more persons would be tried together? I was trying to understand.

**Mr. Al-Rawi:** Well, gang-related activity is tied to a gang. A gang requires two or more people.

**Sen. Seepersad:** So that there will be one trial—sorry, through you, Madam Chairman, I am sorry. So that there will be one trial with several defendants?

**Mr. Al-Rawi:** Perhaps. If they could lay charges against several defendants, it may very well be the case. It is no different from, for instance, multiple people standing on a charge for murder, or multiple people standing on a charge for kidnapping. It is not uncommon, in a joint enterprise or where people are charged for a principal
offence as well as being involved in it, in what we call an inchoate offence. Those are things that are on the side of the principal offence: aiding and abetting, conspiracy. All of those things are tied into principal offence. The rule is that you usually have multiple people brought together in a trial that involves many people at the same time. So the answer is yes.

**Madam Chairman:** Sen. Vieira? Oh, sorry, no. Just one second. Sen. Seepersad?

**Sen. Seepersad:** Just forgive me, I am just trying to be clear. So that, regardless of your level of involvement in the crime, you all will be tried together and it would be like an equal responsibility attributed to everybody?

**Mr. Al-Rawi:** Well, let us be clear. You just said, “regardless of your level of involvement in the crime”. This is not “the crime”, it is multiple crimes. So the law recognizes a multiple version of events. You can be the person that committed murder, you could be the accessory to murder, you could be the driver to the car who knew what was going on, you could have been a person who was involved in assault and rape. You may have done the assault while the rape was going on, and it all arises out of one event or one circumstance and therefore, the prosecution would decide how those matters would proceed. And then it gets even more complicated, because they may decide to lay charges indictably or summarily and then apply the rules to have the management of the trial together.

**Sen. Seepersad:** Okay. Thank you.

**Madam Chairman:** Sen. Vieira?

**Sen. Vieira:** Thank you, Madam Chairman. Just to assist, Senator. Conspiracy is also a common law offence. The key element of any organized criminality or any conspiracy is agreement. That is the key, agreement. Now, organized crime in our jurisdiction tends to be prosecuted under the umbrella of conspiracy charges. But there is an inherent weakness, in that conspiracy charges tend to be narrow and
they fail to reflect the myriad offences that are the hallmarks of organized crime. So what this definition does, is it ties in all the different types of offences. It keeps the conspiracy. But I am very much in favour of this.

Madam Chairman: Sen. Lutchmedial?

Sen. Lutchmedial: Madam Chairman, I just want to point out that in several trials in the event that you feel that you would be prejudiced, so there is nothing in the Bill that removes that. Correct? And if you have multiple charges against different people, there is nothing here that would prevent the severance of your trial from someone who is charged with a lesser or a less serious offence as opposed to the more serious offences under the Bill. Correct, AG?

Mr. Al-Rawi: Yes, thank you so much. And I would just refer, if you look to the administration of justice preliminary inquiries Act, which we intend to proclaim shortly, all of that was mapped out: summary, indictable, multiple, different charges, how you deal with the sufficiency hearing when you are dealing with indictable matters and there may be summary matters at the same time. So Sen. Lutchmedial is perfectly correct. I thank her for the assistance and it is intended that it can be managed in the multiple ways that are possible.

Madam Chairman: Sen. Lutchmedial?

Sen. Lutchmedial: Yes, one other point, Madam Chairman. AG, the widening of the definition of “law enforcement authority” would also be applicable to clause 14 with tipping-off.

Mr. Al-Rawi: Yes, thank you.

Sen. Lutchmedial: But—well, no, not thank you, because I have a little bit of a concern—

Mr. Al-Rawi: Sure.

Sen. Lutchmedial:—in terms of “knows or suspects”. If you know or suspect, for
example, that someone from the SSA is, you know, acting or proposing to act, it is a very, very wide clause, especially when you have authorities here that are not—you are capturing authorities that are not traditionally law enforcement authorities who may be undertaking—so, for example, I could suspect that the SSA might be listening to my phone calls, and I could inform someone who I might be speaking with that the SSA is listening to our phones. Does that qualify as tipping-off and create an offence under this clause?

**Madam Chairman:** Well—

**Sen. Lutchmedial:** It is a little—

**Madam Chairman:** Yes, but you are dealing with clause 14.

**Mr. Al-Rawi:** No, she is dealing with law enforcement authority.

**Sen. Lutchmedial:** No, sorry. The widening of law enforcement authority in clause 14. **Madam Chairman:** I know. I know that. We are dealing with the definition, but you are also asking how it impacts.

**Sen. Lutchmedial:** Yes, Madam Chairman. So I am a little concerned that widening that definition of “law enforcement authority” with the application to clause 14 makes it extremely, you know, burdensome and I think a little bit draconian in terms of the burden that would be placed on persons on how easily someone can be innocently—I know that the “knows or suspects”, but even that is very low standard for someone—a trap for someone to fall into with non-traditional law enforcement authorities.

**Mr. Al-Rawi:** So, Madam Chair, if I can? So the tipping-off works both ways; intra and external. So tipping-off is intended—and we have borrowed the language from section 51 of POCA—and all of the bodies, PCA, SSA, have secrecy provisions; those that are outside of the traditional police aspects. So they are all bound by secrecy. That is the first point.
The second position is that this is a criminal offence to be proved at a proof beyond reasonable doubt standard, so that the tipping-off itself would have to be prosecuted by proof beyond reasonable doubt. So “knows or suspects”, which is the same language as POCA and all of the other amendments, must be qualified by the burden and standard of proof requirements for a criminal trial. And for those reasons, I think that we are safe.

**Sen. Lutchmedial:** Understood. When we get to clause 14, I would probably propose the reference, but understood.

**Sen. Mark:** Madam Chairman, I would like to ask the Attorney General, under law enforcement authority, with the Minister of National Security having the power to direct the Commissioner of Police as it relates to section 6 of the Special Reserve Police Act, how would this inclusion of the Special Reserve Police impact on this whole matter that we are dealing with here? Because I wanted to ask the Attorney General, when the Government intends to amend that law, so that the influence of the Minister, in law enforcement, could be significantly removed and, as he has indicated, make the police more independent of the politics in that regard? So this is an area of concern.

**Mr. Al-Rawi:** Sure. Well, Madam Chair, the first point is that I do not buy the argument that Sen. Mark sold in the debate. I did not have a chance to address it. But what I can say, in the context of the question is, section 15 of the Act, which is where the police have the powers to operate, which was the old section 16 of the 2018 law, and then which also existed in the 2011 law, is the same power. The police have the power to act and the SRPs have the power to act. I believe it is section 17 or section 18 of their parent law.

The second aspect is, it is arguable that the 2006 amendments to the Constitution took care of that. So I do not know, if yet, the implied repeal
argument or implied amendment argument will prevail. In any event, as Minister Young informed the Parliament today, there is now a life question before the courts on this very issue, and I think it prudent that we await the outcome of the court’s determination on these matters which will assist Parliament as to which way it ought to go, if at all.

**Madam Chairman:** Sen. Vieira?

**Sen. Vieira:** Thank you. I understand Sen. Mark’s concern about the police and perhaps, the Minister making some sort of intervention or giving instructions, but the section is not just about the police. It includes the Board of Inland Revenue, the defence force, the prison service and any other agency of the State in which investigative powers are lawfully vested.

**Madam Chairman:** So, hon. Senators, the question is that clause 3 be amended as circulated by the Attorney General.

Sen. Seepersad, you have a proposed amendment to clause 3?

**Sen. Seepersad:** Yes, Madam Chairman. Attorney General, through you, Madam Chairman, I thought the definition in the Bill was narrow and I did some research. I understand what you were saying about some of the things did not apply because it was a US definition, but we tried to amend it to fit with the Trinidad and Tobago’s situation, and I am asking that you consider amending the definition of “gang”. You could make it two, it does not have to be three, but at least be more specific in what is termed a gang.

**Mr. Al-Rawi:** Madam Chair, I thank the hon. Senator for the recommendation. This was the subject of fulsome consideration in the Joint Select Committee in 2010 where the experts came in and looked at the positions. And I would like to say as well that the United States Embassy hosted a consideration of our anti-gang laws in Trinidad and Tobago. We brought in the judicial centres and prosecutors, et
cetera, from the United States, all of whom said that our law was eminently better drafted than theirs, as a matter of fact, because it allowed the court to consider the circumstances. You noticed we were very careful in our definition to say that the court ought not to be bound by the manner in which it was cast. They allowed for the circumstances to evolve.

There is a very important principle in legislative construction and drafting that the law should continue to speak. So what we did is to identify the characteristics of the mischief for the court to consider that aspect. Respectfully, this definition which is very North American and very, you know—makes sense in their jurisdiction, is one that would cause extreme difficulties in Trinidad and Tobago, because we will be casting the manner in which gangs are determined, to the methodology described here. And in those circumstances, I would respectfully defer from agreeing or not agreeing with the submission made.


Sen. Vieira: [Inaudible] Madam Chairman, we are talking about clause 4?

Madam Chairman: We are talking about clause 3.

Mr. Al-Rawi: The definition of “gang”.

Madam Chairman: The proposed amendment.

Sen. Vieira: Okay, I will defer.

Madam Chairman: Sure. Thank you. Sen. Seepersad?

Sen. Seepersad: Madam Chairman, I will withdraw—[Inaudible]

Madam Chairman: Thank you very much. So your proposed amendment is withdrawn. Thank you.


Madam Chairman: Sen. Welch, you have also proposed amendments to clause 3?
Sen. Welch: Yes, Ma’am. It is contained in the circulation that was sent around. In my view, it takes care of and takes account of the present Bill, but it expands it as well. So it is not a limiting proposal, but a proposal that expands it beyond what the Attorney General contemplates, which speaks—the Attorney General’s contemplation speaks to offences and specifically, offence. However, this proposed amendment expands it to cover the real life situations in which gangs are also understood and that is, for example, in (b)—there is a “(b)” that I propose which speaks to:

“persons who...participate therein”— either—“(individually...or collectively) issue threats or engage in violent conduct to create fear...”—intimidation—“exert power or gain influence in communities or over other persons...”—et cetera, which is the reality of what actually takes place. And in B I have:

“...the planned, ongoing, continuous or repeated participation or involvement in any serious offence.”

So even if it is not an offence which is covered by the Schedule or which is not contemplated by the Schedule, this expands the definition to any serious offence, and it also speaks to a wider sort of involvement, not just proof of actus reus or mens rea, but it captures anyone who is involved in planned, ongoing, continuous involvement. And that is how actually, from what I gather on the streets and understanding, that is how gangs operate in communities. So, as I said, this is not a limitation on the Attorney General’s proposals, but it includes it and expands it to cover situations which I think may not necessarily be contemplated.

Mr. Al-Rawi: Madam Chair, I thank my colleague for thinking as widely and as profoundly as he has, and I thank him for the circulated draft. If I could put the following on the table for consideration, we have 100 matters in court, in relation to pretty much the same definition that we offer now. We have not had judicial
criticism, but also we have not had the benefit of judicial reflection as to where we may or may not be wrong. I loathe on the floor of this Parliament, right now, to accept a fundamental change in the definition in light of the fact that we have existing matters before us. And then—and I accept, of course, the fact that nothing affects the matters as cast under the old law, because it is trite law that the old law would continue to be as it was cast.

But the second point that I would put on here now is that even though these things are designed as inclusive and not exclusive, and even though they are designed as alternatives, the problem with the multiplicity of elements, described in the manner that we have from our drafting perspective, causes me a little bit of concern. It is something that can, right now—and other Members will know from previous Parliament that when I give an undertaking, I do keep it. I undertake to go back to have a look at this in deeper form, and let me say why. We are specifically looking at the issue of gangs in prisons. It is something that was raised in the debate and it is very real position. And gangs in prisons have to be looked at, because we are looking at how we detain people in a prison and how we remove them from the prison environment.

So our intention was, should this law see successful passage in the Parliament, we were going to come with a second round of amendments. But we were very interested in receiving judicial reflexion on what the law is, for the last 10 years as cast. I recognize the bona fides of what my colleague has put forward. I think it is very intriguing, but I do not feel qualified, at this moment in time, to agree with that or to advise the Government to agree with it, because there are too many moving parts that I would want to have consultation upon. The consultation usually includes going to the DPP, going to the TTPS and the Law Association on the moving parts of the equation. So, respectfully, I would like to come back to it if
that is okay.

**Madam Chairman:** Sen. Welch?

**Sen. Welch:** Yes, that is fine, Attorney General.

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

**Madam Chairman:** So, are you withdrawing your proposed amendment?

**Sen. Welch:** Yes.

**Madam Chairman:** Thank you very much. So the amendment as proposed by Sen. Welch to clause 3 is withdrawn. *Amendment [Sen. E. Welch] withdrawn.*

**Madam Chairman:** Hon. Senators, the question is that clause 3, as amended, now stand part to Bill.

*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.

In paragraph (f), delete the word “and” and replace with the word “or”.

**Madam Chairman:** Attorney General?

**Mr. Al-Rawi:** Madam Chair, we felt that we should use the disjunctive “or” as opposed to “and” in clause 4. Clause 4 is:

“For the purpose of this Act, it shall not be necessary to show…”—certain things—“when the gang’s existence can be demonstrated by other admissible evidence…”—which is what I was raising in answer to Sen. Seepersad’s amendment a while ago.

So “or” in drafting perspective includes “and” but “and” does not include “or”. So we went with the drafting preference of “or” as opposed to “and”, and that, quite simply, is intended to allow for the iterations to stand either together or individually.
Question put and agreed to.

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

Clause 5.

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

Delete the proposed subsection (3) and replace with the following new subsection:

(3) A person who commits an offence under subsection 1(b), (c) or (d) is liable on—

(a) summary conviction to imprisonment for ten years; or

(b) conviction on indictment to imprisonment for twenty years.

Madam Chairman: Attorney General, you have amendments?

Mr. Al-Rawi: Yes, Madam Chair. Madam Chair, Sen. Heath and also Sen. Vieira and Sen. Welch, all referred to the incongruity of the summary offences alone. I had also piloted the fact that we felt at the AG’s Office that the six-month limitation on summary offences was not appropriate, and we had proposed the creation of hybrid offences for the matters set out in clause 5 of the Bill. For those reasons, we have proposed the deletion and the replacing of the language at clause 3, and we allow for both summary and indictable routes to be options available to the prosecution which would allow us, in the mixed basket of offences, to consider how people, who may be involved in multiple matters, can be treated in a more productive way.

Question put and agreed to.

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

Clause 6 ordered to stand part of the Bill.

Clause 7.

Question proposed: That clause 7 stand part of the Bill.
In the proposed subsection (3)—

(a) in paragraph (e), delete the word “or”;

(b) insert after paragraph (e), the following new paragraph:

“(f) his father-in-law, mother-in-law, brother-in-law or sister-
in-law; or”;

(c) renumber paragraph (f) as paragraph (g).

Mr. Al-Rawi: Madam Chair, we propose an amendment to the concept of relative. Relative did not capture, in the Trinidad and Tobago concept, father-in-law, mother-in-law, brother-in-law or sister-in-law which, quite frankly, is unusual, because many people live with their in laws, et cetera, and may very well be members of the same household. So for those reasons we propose an amendment to definition of “relative” to broaden the definition in keeping with that which obtains in other laws, for instance, the integrity in public life or other positions which may apply when you look at the lateral spread of the laws. That, in effect, is to allow for the anti-retaliatory action to prevail in a wider circumstance.

Question put and agreed to.

Clause 7, as amended, ordered to stand part of the Bill.

Clauses 8 and 9 ordered to stand part of the Bill.

Clause 10.

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

Madam Chairman: We have amendments circulated by Sen. Welch and Sen. Vieira to clause 10. Sen. Welch?

Sen. Welch: Yes. The proposed amendment to clause 10 is in respect of clause 10(b) where it is said:

“(1) A person who...(b) has in his possession a bullet-proof vest firearm, ammunition...which he ought reasonably to know
would be used.”
And my contention is “ought reasonably to know”, those words ought to be replaced with “knows”. So instead of it being “ought to know”, who actually knows would be so used if guilty of an offence.

Madam Chairman: Any other comment on the amendment as proposed by Sen. Welch? Attorney General.

Mr. Al-Rawi: So, Madam Chair, 10 provides—in 10(1)—for an (a) and (b). You use—so, therefore, you clearly have knowledge, because you are using the thing. And (b) is you have in your possession:

“…in the commission of a gang-related activity, commits an offence…”

Subclause (2) provides for the defence for a person and therefore, this now crystallizes the fact that there is knowledge, which is my position on the rolled up mens rea and actus reus being involved; the mental intention together with the act. So, as it currently stands, we had specifically put that:

“It is a defence for a person charged with an offence under subsection (1)(b)…”

That is only possession, because it is not relevant to (a):

“…that he did not know”—so that is a clear position of knowledge—“or could not reasonably have known…”—that means, in the circumstances.

What it provided was a wider berth for defence from our perspective at a civil standard as well. So that we did not put upon the defendant too high a hurdle to cross.

7.20 p.m.

We kept it at the much lower balance of probability standard in civil offences and we sought to specifically widen the opportunity to say, “Well, look, I may not have known but in all the circumstances I could not reasonably have
known in these circumstances. It was hidden in a bush. It was hidden in a bag. It was in a suitcase that I never opened from many years. Somebody dropped it.” So from our perspective it provided a greater protection. So in those circumstances we genuinely prefer to keep it there. I did understand the submission as raised by Sen. Welch in his contribution but—I do not want to say “wedded”, but I think it is a protection that is being offered and I am sort of hesitant to dilute it.


Sen. Nakhid: Hon. Attorney General, if he proves—

Madam Chairman: Sen. Nakhid, there is no reason to stand, we are in committee.

Sen. Nakhid: If he proves that he did not know, how does he disprove a negative? I do not understand that. Can that be explained?

Mr. Al-Rawi: I apologize, Madam Chair, CPC’s department had me on an enquiry. I sincerely apologize to my colleague. Would you mind repeating the question, please?

Sen. Nakhid: Of course. It says here:

“If he proves that he did not know…”

You are asking someone to prove he did not know or could not reasonably have known?

Mr. Al-Rawi: So, Madam Chair—thank you to Sen. Nakhid—the reason that we used the word “proves” is to put the burden upon him so the statute must be clear. The usual rule post Woolmington v DPP and the golden thread in 1935 was that it is the prosecution’s obligation to prove something. Using the word ‘proves” puts the obligation upon the defendant to the prior 1935 UK position. So we are putting the burden upon the defendant to prove a certain circumstance but we are putting it at a much lower burden. So there is nothing unusual about that but I do understand the question.
Madam Chair, I have been advised by the Acting CPC that we ought to consider an adjustment to the language in 10(b), and that ought to be that we include the word “knows or” in what is in the existing 10(b). It is not in the circulated amendments but having heard Sen. Welch’s contribution the acting CPC believes that we ought to adjust clause 10 in subclause (1) that exists there in subparagraph (b). If I could just say it so that hon. Members could understand what I am saying. So if we look at clause 10 of the Bill:

“(1) A person who-

(b) has in his possession a bullet-proof vest, firearm, ammunition, or prohibited weapon which he”

We insert here now:

“knows or”

And then it continues:

“ought reasonably…”

So:

“…which he knows or ought reasonably to know would be used,”

And that is because if you turn the page, we get down to the shoes at the top of the page; that is at page 8, we used these words:

“...did not know or could not reasonably have known...”

So it is to harmonize the provisions in the wider context. It is sort of a halfway house principle into what has been submitted and it is specifically to remove any ambiguity as it relates to the application of the defence as it applies to (1)(b). So I do not know if you would permit me to put that.

Madam Chairman: Well, we still have to deal with Sen. Welch’s proposed amendments. Sen. Welch.

Sen. Welch: Yes. Madam Chair, while what the Attorney General has said may
harmonize it with the proposal, with the defence where the same language is used, it does not take away from the point which I have raised. Because once you have “which he knows or ought reasonably to know” remaining in there then it means that a person who actually does not know is captured by this provision. And the fact—because if he says, “I did not know”, then he can still he caught by, “He ought to have known”. Now the fact, Attorney General, that it is a defence for him to prove if he can prove that he did not know. The fact that that is a defence does not change the fundamentals of the argument at all, because first of all a person at the close of the prosecution’s case a person is advised, “You have a right to remain silent and let the prosecution prove its case, you do not need to go into the witness box.”

In this case if he does not go into the witness box, then he cannot prove that he does not know so he would be automatically convicted—he would be automatically convicted based on the elements of this offence which do not require knowledge on his part. And if I may add one further point, Attorney General, you indicated that the shifting of the burden, you treated it somewhat a bit casual, but the shifting of the burden is a very serious thing, putting it on him to prove that he does not know. That is treated as an exception in the criminal law where the burden is placed on a defendant. And when it is done it is usually not in these circumstances, it is in circumstances perhaps such as possession of a firearm where you need a licence. If you are found with a firearm, then the burden is on the defendant to show that he had a licence.

In those circumstances it is acceptable to show that—the burden is on the defendant to show that he comes within an exception, but this is not an analogy with the firearm situation. This is a situation of the traditional law which requires mental elements for an offence and where the mental element is required as part of
the definition of the offence. The burden, historically, and with very little exception is placed on the prosecution and it is not an impossible burden because from all the circumstances you may be able to demonstrate knowledge. This is a fundamental shift of principle.


**Sen. Vieira:** I will deal both with Sen. Welch’s submission and also my amendment because they are inter-related. First of all I disagree with Sen. Welch. I think I agree with you that you should have no, “which he knew or ought reasonably to know would be used”. You have to have the two elements, but if you just had “which he knew”, then you would be putting an impossible burden on the police because let us not lose sight of the seriousness of the situation. Here is someone in possession of a bullet-proof vest, an assault weapon, ammunition; he can say, “Well, yes, I had these things but I never thought it would be used for unlawful activity”, and now how do you prove what was going on in his mind. And that is why I brought the amendment that I did because I think in fact we need to actually shore up the provision by having a presumption.

Now, presumptions are normal. There are rules of law relating to the legal burden of proof. They result in an inference. My presumption, my amendment does not preclude the defendant’s right to run the defence that, “I did not know”. It is a rebuttable presumption and the accused can establish on a balance of probabilities that the presumed fact is incorrect. But to say that you have to prove that he knew that he had these prohibited items and that he knew that they would be used unlawfully, I think is way too high.

**Madam Chairman:** Sen. Lutchmedial.
Sen. Lutchmedial: Madam Chair, the issue here with including “ought reasonably to know”, when you keep that and then you keep the reversal of the burden I have a difficulty with accepting that this could be done by way of simple majority. That is the first thing. The second thing is that I think “knows”—I agree with Sen. Welch, but the problem here with creating as well it is a strict liability offence that Sen. Vieira is proposing where the presumption is there, you are violating the presumption of innocence. You are essentially taking away that presumption of innocence and automatically doing it.

We have to take into account that possession. When you have constructive possession, for example, would apply here as well just as it applies with dangerous drugs and firearms. And when you have someone and you are charging them for constructive possession and you have a low standard as, “he ought reasonably to know”, and you shift that burden onto the defendant, as we have done with subclause (2), my position is that that cannot be done by simple majority. You are violating the presumption of innocence.

Madam Chairman: Sen. Mark and then the Attorney General.

Sen. Mark: Madam Chair, in the 2018 legislation this same provision was contained and because we were reversing the burden of proof and allowing the defence to plead that they did not know which was capsizing the constitutional provision that says that one is innocent until one is proven guilty, we required a special constitutional majority in this piece of legislation because we were reversing that burden that has been well established in our country and in our Constitution. So we have a serious reservation with this particular imposition without the qualified constitutional requisite majority where you are tampering with the constitutional right of an individual. So I think this is an area that we have some reservations about, Madam Chair.

Sen. Richards: Thank you. Madam Chair, it would be considered trite now because I am not legally trained, but through you to the Attorney General, does “in his possession” mean on his person or in his immediate surroundings? How is it interpreted in law?

Mr. Al-Rawi: Possession is a wide concept, it can be a constructive possession, it can be actual possession, et cetera. Madam Chair, you are ready for me to respond?

Madam Chairman: Yes, Attorney General.

Mr. Al-Rawi: So, Madam Chair, I liked Sen. Vieira’s proposal. He was very kind enough to indicate quite early that he was thinking of the presumption and I went right back to the Firearms Act, section 5, where the presumption of possession is brought about in the absence of lawful excuse. And lawful excuse sought of captures the breadth of “knowing or ought reasonably to know”, because it is a lovely term of art that is used in the Firearms Act which I find, you know, broader than knowledge, et cetera.

My caution with accepting the presumption is on the constitutional aspect. Even though section 5(2)(f) clearly says that reversing the burden is not something which is offensive to the Constitution, it is set out in our Constitution and that is the case. I was a little bit cautious about the presumption as opposed to a defence being called upon because it is up to you to put the defence. You can stay silent. You can put the prosecutor to achieve the burden and never achieve it, so it did not infringe upon the right to remain silent aspect which is why I was more inclined towards a defence as opposed to a presumption in the absence of a special majority request, because it is clear that the Opposition will not give us a special majority.

In those circumstances, I have to err on the side of constitutionality which is why I prefer to go with the concept of a defence. The sole mischief before us now
is, would I improve constitutionality by removing “or ought reasonable to know”? There are two ways of looking at that and I want to get it right. I am not wedded to one view or now, I am just letting you know what is in my mind. Is it narrower or more expansive to have “or ought reasonably to know” from a defence perspective? To me it seemed to be more in the defence’s favour to have “or ought reasonably to know”, because it could take care of the circumstantial evidence showing that you did not know as opposed to the subjectivity. Even though it may be a subjective/objective analysis of the intention in the person’s mind, I thought that “or ought reasonably to know” was wider. It may be that Sen. Welch in his experience has a different point of view, and I of course welcome his views if you will allow it, Madam Chair.

So I would prefer to maintain the defence as opposed to presumption only on the basis of the simple majority passage, but I would welcome, through you, some amplification as to whether which direction it ought to be? Is it wider a defence provision for “or ought reasonably to know” or is it narrower and should we therefore go with just “knows”?


Sen. Vieira: So two things, as much I would love my “presumption” because I think it would be a great aid to the prosecution of these offences, I will withdraw it because I understand your desire not to run afoul of the constitutionality requirements. And secondly, and certainly what you are saying in relation to 10(2), I think it is more favourable to the defence if he can say, “could not reasonably have known”, so certainly I think that that expands the defence’s position.


Mr. Al-Rawi: Could I ask for Sen. Welch’s view?

Madam Chairman: Well—
Sen. Welch: Yes. Before I express my view specifically on that aspect, I would just want to say, insofar as Sen. Vieira expressed the view that it places an unreasonable burden on the prosecution to prove knowledge, it really is not an unreasonable one. Because knowledge is based on inference from all the circumstances and as we say in the criminal law, you do not have to lift a man’s—his scalp to see what his knowledge or intention is. If you caught him in circumstances with a bullet-proof vest or ammunition or a firearm and he is passing it onto somebody who is a gang leader and gives them it with certain words and shortly after it is used, et cetera, the prosecution is entitled to use that to infer knowledge. That is how knowledge is proven from the totality of the circumstances, circumstantial evidence, or from something he might have said while he had it in his possession.

So it is not an unreasonable burden at all. It is just like with murder or any offence where you are required to proof intention. You prove intention from the nature of the acts you have done. So I do not think it is unreasonable at all to put in the requirement of knowledge as part of the prosecution’s case, as part of the definition of the offence. It is something which is typically done and it is not at all unusual.

Secondly, with respect to whether it is wider, any time you create more than one alternative that allows a defence, it is wider of course because you are giving a person various alternatives. You have made out a defence if you prove you did not know or alternatively you could not have known, et cetera, et cetera, et cetera. The more alternatives you have as a defence it is wider. So that is the simple answer to that. That is the simple answer to that question.

Madam Chairman: Attorney General.

Mr. Al-Rawi: I took the opportunity to pull up the Dangerous Drugs Act and the
Firearms Act, albeit that we are not comparing apples with apples necessarily but I was looking at the width of the exception. So in the presumption under section 5 of the Firearms Act you have “lawful excuse” and “lawful excuse” is certainly a wide berth, much wider than just knowledge. Right? Your excuse can be anything, it just has to be lawful; not legal, but lawful. And in the Dangerous Drugs Act—well, we have now come down to that whole concept of possession being constructive or actual and the ability to having knowledge being imported. The reason why I am cautious about jumping at it is the need to ensure that Parliament in its wisdom was wider than just knowledge. So I am fearful that if we remove, “or ought reasonably to know”, that we would be confining ourselves to one berth of classic knowledge and then relying upon the courts to construe the meaning of knowledge and the strictness of that procedure.

So I feel a sense of discomfort in the removal of the position. I have also not had the opportunity to consult upon it and then I am also faced with the position of 10 years of charges under the Act. Now, nothing wrong, we could change the law today and the old law will prevail in respect of charges that have been instituted under the old law, but all of my alarm bells are ringing right now to say, “Go and consult on the issue of berth.” I do not know if my colleague would accept the undertaking which I am prepared to give, to look at it and to consult on it. I am definitely going to come back with a second amendment for the matters that I have already indicated.

The TTPS did indicate that they wanted to sit down and have some more discussions and usually we sit with the DPP and the Law Association on these matters. I do not know if my colleague would accept the undertaking that I would like to have a look at this so that I can get it right. I do not want to on the floor of the Parliament go against something which my gut tells me is going to be a
whittling down of perspective. Not that I do not trust my colleague who has years of experience in the criminal arena which I certainly do not have, but that I feel the need to be cautious.

**Madam Chairman:** Sen. Welch, are you pursuing the amendment?

**Sen. Welch:** Madam Chair, if I am to understand that the Attorney General is giving an undertaking to have a look at this, then in those circumstances it would not be pursued. If that is what I understand him to be saying otherwise I hold a very strong view on it and would wish to pursue it.

**Mr. Al-Rawi:** So, yes, Madam Chair, I was hoping to persuade my colleague, not that I am bound to, meaning that I accept that he may differ with my point of view. But I accept what my colleague is saying from his perspective but I feel compelled to have some deeper consultation on the issue.

**Madam Chairman:** So just for the record, Sen. Welch—Attorney General, he is asking if you are giving an undertaking to review the particular issue.

**Mr. Al-Rawi:** Yes, most certainly, I am giving a very clear undertaking. I apologize if I did not say it clearly.

**Madam Chairman:** Sure. So, Sen. Welch, in light of that are you pursuing your amendment?

**Sen. Welch:** No, Madam Chair.

*Amendment [Sen. E. Welch] withdrawn.*

**Madam Chairman:** Thank you very much. So your proposed amendment to clause 10 is withdrawn. Sen. Vieira, you also indicated that you were withdrawing yours. Thank you very much. Attorney General, you have a slight amendment to make to clause 10. I believe it is at (b)—

**Mr. Al-Rawi:** Yes, Madam Chair.

**Madam Chairman:**—where we are inserting the words “he knows or”.

**UNREVISED**
Mr. Al-Rawi: Yes, Madam Chair.

Madam Chairman: “knows or”, correct?

Mr. Al-Rawi: Yes, Madam Chair, that is correct.

Question put and agreed to.

Clause 10, as amended, ordered to stand part of the Bill.

Clause 11.

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

In the proposed subsection (1), delete the word “.” and insert the words “or on conviction on indictment to imprisonment for twenty years.”

Madam Chairman: I believe that there is a proposed amendment by Sen. Lutchmedial, Sen. Welch and the Attorney General. Sen. Welch.

Sen. Welch: Yes. Madam Chair, this is similar to the previous amendment, instead of simply “harbours” I am seeking to have the insertion of the word “knowingly” before “habours”. That would be the first amendment. And then I have proposed—if that amendment is allowed “knowingly harbours”, and that means that it is on the prosecution to prove knowledge then that would be in consistent with clause 3, and clause 3 which says:

“It is a defence for a person charged— to prove— “...that he did not know...”

In those circumstances clause 3 would have to be deleted logically and I have proposed a new clause 3 altogether which deals with a submission I made during the course of my contribution, and that is:

“In the case of a dwelling house it would be a defence for an owner or occupier of the said house to prove that the person he has been harbouring has been ordinarily and continuously resident at the said dwelling house as part of the household.”
And the reason for that being, it is the same point I made during my contribution, which is if you have a family that has been living together, ordinarily living together, a mother and her children or a mother and her husband and let us say one of them becomes—so she has been providing shelter, let us say one of them becomes a gang leader, they would not be in violation of this section simply because they continue to have their familiar relationship existing. In other words, you would not be required to put your child out basically if you can satisfy that this has been the case and that is where he has been living even before he became a gangster, or whatever is the case.

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

Sen. Vieira: Thank you. Well, I would like to support Sen. Welch’s amendments. It also dovetails with concerns that were raised by Sen. Nakhid and Sen. John. So “knowingly harbours a gang leader”, I support that. And in regard to Sen. Welch’s substituted paragraph 3, I would like to add where he has:

“…that the person he has been harbouring”

I would say, “is a relative”, because we have defined what “relative” is or:

“has been ordinarily and continuously resident at the said dwelling house”.

Mr. Al-Rawi: Madam Chair—

Madam Chairman: Just one second. Sen. Lutchmedial as well.

Sen. Lutchmedial: Chair, the amendment that I proposed is—well, I think identical or almost identical to what—

Madam Chairman:—first—where?

Sen. Lutchmedial: To the first one.

Madam Chairman: Yes.

Sen. Lutchmedial: And I support the proposed substitution. I had just put in to delete subclause (3), but I support the proposition by Sen. Welch for this proposal.
Madam Chair, what has been put forward by Sen. Vieira, if I got it correctly, it would be that the “owner or occupier of the said house prove that the person he has been harbouring is a relative or has been ordinarily resident”?

**Sen. Vieira:** Yes.

**Sen. Lutchmedial:** I do not know that it would add anything to put in that he is a relative. Sometimes we have living situations where many people who may not fall within the definition of “relative” tend to be living on the same premises because we have those situations occurring where on one premises you could have multiple types of structures and so on where people are resident. So I think that the proposal by Sen. Welch, that the person has been “ordinarily and continuously resident”, I do not know, “and continuously resident” if that is a bit too strict but I accept the amendments.

**Sen. Vieira:** Except to say what we want to do is to avoid people having to give evidence against their children or their parents or their spouses. And so the person might not have been ordinarily resident and living there but has come in now looking for some kind of shelter and you are now put in an untenable situation is that if you do not rat on and turn on your relative you could be facing criminal charges, and so that is with the context in which I put the two.

**Madam Chairman:** Attorney General.

**Mr. Al-Rawi:** Madam Chair, I accept the introduction of the word “knowingly” and the deletion of the defences because they would collide, both for 11 and 12, I can say upfront. All of my alarm bells are ringing however with respect to “safe harbour”.

7.40 p.m.

We are in a society that is grappling with crime. We joke about, “He was a good boy”. We know that there is criminality. We know that parents are being
asked to intervene right now into supervision. What is happening on the ground, I can tell you, is that people that are involved in gang activity at present leave home because they know that being at home is a risk to parents, et cetera. So what we are seeing is a scattering of the criminal element, and a positive obligation upon society to say, “Listen, if you know your child is in criminality, there can be no safe harbour”, because we are talking about gang-related activity, and a gang leader is the person that—

**Madam Chairman:** Attorney General, we just have to do a procedural.

**Mr. Al-Rawi:** Sure.

**Madam Chairman:** Hon. Senators, the Senate will now resume.

_Senate resumed._

**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, inclusive of the matters on the adjournment.

*Question put and agreed to.*

**Madam President:** Hon. Senators, we shall now resume the committee stage.

**ANTI-GANG BILL, 2021**

_Committee resumed._

**Madam Chairman:** Attorney General, I had interrupted you.

**Mr. Al-Rawi:** Thank you, Madam Chair, apologies. I accept that we would be moving to a safer constitutionality with “knows”, removing the defence aspects. It is consistent with bettering constitutionality. It is different from the odium that we express for firearms and ammunition, et cetera, above, which is why we kept the defence, subject to my undertaking to look at it again. In this case here, we are
dealing with the fabric of the society and the family. So you ought to know you are harbouring somebody or concealing someone. Let us raise that standard. Let us put the obligation on the prosecution to prove that you knew it.

But the good boy principle—“he was a good boy”. The people that we know to be businessmen on one day and after they are murdered, they are gang leaders; that is what concerns me. We have a societal rot in the fabric of our society and we want, from a policy perspective, to put the obligation upon people to say that there is no safe harbour if you are a gang member or a gang leader. You have an alternative, do not prejudice your family, move out.

If we raise the constitutionality by saying that you ought to know you are harbouring someone, “Look, I did not know”. You did not prove that I knew on a balance—not on a balance of probabilities, but on proof beyond reasonable doubt. I think we are safe from that enough. I would respectfully ask if we can instead only take the “knowingly”, deletion of the subclause (3) in 11 and 12, because I had made the same submission in relation to clause 12, and Sen. Welch has also proposed it for clause 12, but I am very, very, very cautious in light of what society is doing right now to provide the—if you remember those games we used to play as children when you are on base and you are safe, when you could not play catch because you were on base. We want no base.

**Madam Chairman:** Sen. Welch, are you pursuing B of your proposed amendment to clause 11?

**Sen. Welch:** Madam Chair, if I may just have a second.

**Madam Chairman:** Sure.

**Sen. Welch:** Yes, Madam Chair. I feel sufficiently strongly about this proposal with respect to clause 11.

**Madam Chairman:** Sure. So we will treat with Sen. Welch’s proposed
amendment. We will treat with it in two parts.

*Question, on amendment, [Sen. E. Welch] put and agreed to.*

**Madam Chairman:** Hon. Senators, the question is that clause 11 be amended as circulated by Sen. Welch at B, 11 B—

**Mr. Al-Rawi:** The reason why I hesitated is that I do accept the deletion of clause 3. It is the substitution bit that I am asking for pause on.

**Madam Chairman:** Well, that is why we have to treat with it as he has it here and, if anything, depending on what the vote is, we will then treat with a further amendment.

**Mr. Al-Rawi:** Understood. So for the record I do propose to delete clause 3, in keeping with what Sen. Welch has proposed.

**Madam Chairman:** Sure, but we are treating with the amendment as circulated by Sen. Welch for clause 11 at B of his proposed amendment.

*Question, on amendment, [Sen. E. Welch] put.*

**Mr. Al-Rawi:** No, respectfully.

**Sen. Mark:** Division.

**Sen. Richards:** Just to be clear, if I could, Madam Chair. We are voting on accepting A and rejecting B?

**Madam Chairman:** You are voting on B now; A has already been accepted by the committee.

**Sen. Richards:** Thank you.

*The Committee divided: Ayes 13  Noes 16*

**AYES**

Mark, W.

John Ms. J.

Lutchmedial, Ms. J.
Nakhid, D.
Lyder, D.
Roberts, A.
Deyalsingh, Dr. V.
Deonarine, Ms. A.
Seepersad, Ms. C.
Teemal, D.
Thompson-Ahye, Mrs. H.
Dillon-Remy, Dr. M.
Welch, E.

NOES
Khan, F.
Gopee-Scoon, Mrs. P.
Rambharat, C.
Sinanan, R.
Hosein, K.
West, Ms. A.
Browne, Dr. A.
Mitchell, R.
de Freitas, N.
Singh, A.
Sagramsingh-Sooklal, Mrs. R.
Bacchus, H.
Lezama-Lee Sing, Mrs. L.
Bethelmy, Ms. Y.
Richards, P.
Vieira, A.

*Question, on amendment, [Sen. E. Welch] negatived.*

**Madam Chairman:** Sen. Lutchmedial, could we just proceed to yours for some housekeeping. I know that at your 11(1) it is the same amendment that has already been accepted. Attorney General, you have indicated that you are deleting subclause (3)?

**Mr. Al-Rawi:** Yes Ma’am.

**Madam Chairman:** So Sen. Lutchmedial, would you therefore withdraw your amendment?

**Sen. Lutchmedial:** Yes.

*Amendment [Sen. J. Lutchmedial] withdrawn.*

**Madam Chairman:** Thank you. Attorney General, you also circulated an amendment, and then you have a further amendment to make?

**Mr. Al-Rawi:** Yes, Madam Chair. We propose the creation of a hybrid offence here, as indicated in the course of my debate, so that we are not constrained only to the summary offence, and that is the reason for what is circulated at the amendment for clause 11. We accept Sen. Welch’s good counsel that we ought to include “knowingly” into the mens rea, and therefore that would collide with the defence option in subparagraph (3). Therefore, we propose that subparagraph (3) be deleted.

**Madam Chairman:** Hon. Members, the question is that clause 11 be amended as circulated by the Attorney General, and further amended by deleting subparagraph (3).

*Question, on amendment, [Mr. F. Al-Rawi] put and agreed to.*

*Question put and agreed to.*

*Clause 11, as amended, ordered to stand part of the Bill.*
Clause 12.

*Question proposed:* That clause 12 stand part of the Bill.

**Madam Chairman:** Sen. Welch.

12  A. In subclause (1) by inserting the word ‘knowingly’ after the word ‘who’;
B. By deleting subclause (2); and
C. By deleting subclause (3).

**Sen. Welch:** With respect to clause 12, I have recommended that at 12 subsection (1) the word “knowingly” be inserted before “concealed”. So it reads: “A person who knowingly conceals”. Presently, the Bill just reads, “a person who conceals”.

Secondly, I have proposed the deletion of subclause (2) and subclause (3). Subclause (2), for the reasons which I had submitted during the course of my contribution. It imposes on a person, and this is any person, a passerby as I said, a neighbour, a regular worker. In response to an enquiry from a police officer as to the whereabouts of the gang leader, if the person does not reveal the whereabouts to the police officer, despite knowing, that person is criminally liable under the section. So it means that you concealed—not only if you deliberately conceal and hide someone, but simply a failure to respond to a police officer constitutes concealing a gangster. That is what that amounts to, and it is the same with respect to subsection (3):

“...if, in response to an enquiry from a police officer in connection with the investigation,...he does not reveal information to the police officer, despite having knowledge of the plans, participation in or commission of the offence.”

I see the Attorney General wishes me to—

**Mr. Al-Rawi:** Sorry to interrupt. I want to thank you and I agree. If I could say
why, it would help to just go a little bit faster.

**Sen. Welch:** Indeed, if you agree I would—

**Mr. Al-Rawi:** Yes, I agree. I will tell you this, I had not thought of, until you raised it, the constitutional tripping of the right to remain silent. It was only in your contribution that it really came home at me in the deeper context. So I want to thank you for assisting us to improve the constitutionality for a simple majority basis. I think that we would certainly have been tripping the right to remain silent, and I want to thank Sen. Welch for pointing that out.

What it would mean, Madam Chair, is that in clause 12 that we should be deleting (2), (3) and (4), because Sen. Welch had not asked for subclause (4) to be deleted, but it collides with the “knowing”.

**Sen. Welch:** Indeed.

**Mr. Al-Rawi:** So what we should do is to really delete subclauses (2), (3), (4), and to obviously remove the (1), so it would just become clause 12, and then it is subject to an amendment that I propose to make. But I want to thank the hon. Senator for his position.

**Sen. Welch:** You are welcome, Attorney General.

**Sen. Mark:** We also have an amendment.

**Madam Chairman:** Well, the amendment as proposed by Sen. Lutchmedial has at (1) it is the same, and at (2) it is deleting subclause (4). So Sen. Lutchmedial, will you withdraw yours and then we will just incorporate it?

**Sen. Lutchmedial:** Yes, Chair.

*Amendment [Sen. J. Lutchmedial] withdrawn.*

**Madam Chairman:** Could you add a D? Sen. Welch, can we just add a “D” to your proposed amendment?

**Sen. Welch:** Add a—sorry, Madam Chair?
Madam Chairman: We will just add a “D” to your proposed amendment, your amendment as circulated to clause 12, and we will add a “D” to say, “by deleting subclause (4)”.

Sen. Welch: Yes.

Madam Chairman: So, hon. Senators, the question is that clause 12 be amended as circulated by Sen. Welch and further amended as follows:

By inserting “D” which would read, “By deleting subclause (4).”

Question, on amendment, [Sen. E. Welch] put and agreed to.

Madam Chairman: So the amendment as proposed by Sen. Welch and further amended has been accepted.

Attorney General, you have an amendment to clause 12?

Mr. Al-Rawi: Yes, please, Madam Chair.

In the proposed subsection (1), delete the word “.” and insert the words “or on conviction on indictment to imprisonment for twenty-five years.”

Just to keep to what I had proposed in the debate which is that we make it a hybrid offence in the manner circulated. Just for the record to say that, having accepted the very prudent and sensible recommendations from Sen. Welch, the 12(1) would disappear. It would just be section 12, and you said it. So having deleting (2), (3) and (4), 12(1) would become 12. I am just putting it for the record so that they would know how to capture it. I do not know if it needs to be amended per se.

Madam Chairman: I think that we can go with the amendment and I think the cleaning up takes place afterwards.

Mr. Al-Rawi: Madam Chair, thank you.

Question, on amendment, [Mr. F. Al-Rawi] put and agreed to.

Question put and agreed to.

Clause 12, as amended, ordered to stand part of the Bill.
Clause 13.

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

**Madam Chairman:** Attorney General.

Delete the proposed subsection (3) and replace with the following new subsection:

(3) Notwithstanding subsection (2), a person who -

(a) on the premises of a school or a place of worship; or

(b) within five hundred metres of a school or a place of worship,

recruits a child to a gang commits an offence and is liable on conviction on indictment to imprisonment for twenty-five years.”

**Mr. Al-Rawi:** Thank you, Madam Chair. We propose that clause 13 be amended because we had unwittingly left out recruiting inside of the school, as opposed to just within the precincts of the school. So on a review of it, before we came to the piloting of this Bill, we had recognized that we ought to include inside the school. That effectively would keep us in tandem with the Dangerous Drugs Act, et cetera, which is not only in the precincts but also inside of the school.

*Question put and agreed to.*

**Clause 13, as amended, ordered to stand part of the Bill.**

**Clause 14 ordered to stand part of the Bill.**

**Clause 15.**

*Question proposed:* That clause 15 stand part of the Bill.

**Madam Chairman:** Attorney General.

**Mr. Al-Rawi:** Yes, Madam Chair, thank you.

A. In the proposed subsection (3), delete the words “A police officer may enter without a warrant and search” and replace with the words “A police officer may with consent enter and search”; and

UNREVISED
B. Insert after proposed subsection (3), the following new subsections:

“(4) Where a person refuses to give consent under subsection (3), a police officer may apply for a warrant to search a place or premises not used as a dwelling house if he has reasonable cause to believe that a gang leader, gang member, or a person whom he has reasonable cause to believe has committed an offence under this Act may be found in that place or premises.

(5) A Magistrate may issue a warrant to a police officer authorizing the police officer to enter and search a place or premises not used as a dwelling house if he has reasonable cause to believe that a gang leader, gang member, or a person whom he has reasonable cause to believe has committed an offence under this Act may be found in that place or premises.”

We had observed and had flagged very early in the debate in my piloting, that the version that was printed unfortunately did not capture what we had approved. There is no way that we could have recommended a warrantless entry into premises. Therefore, we propose the amendment as circulated, so that you will always have either consent, and in default of consent you must have a warrant for the entry into premises. Therefore, that is a proposed amendment to subclause (3) and, obviously, the new subsection (4) is to take care of where there has been no consent granted for entry, that you would have to go and seek a warrant from a judicial officer.

Question put and agreed to.

Clause 15, as amended, ordered to stand part of the Bill.

Clause 16.

Question proposed: That clause 16 stand part of the Bill.

UNREVISED
Madam Chairman: Sen. Lutchmedial, you have a proposed amendment?

Insert:

(c) Provide an extract of the entry in the station diary made under (b) to the person detained or his Attorney-at-Law

Sen. Lutchmedial: Yes please, Madam Chair. We were proposing that in clause 16(3) the inclusion of a subclause (c), that the extract referred to, that an extract of the record referred to in paragraph (b), be included and disclosed to the person who is detained. The reason being that, if the person is to be able to properly exercise their right under subclause (7), to make an application showing why the detention order should be discharged, they ought to be informed of the reasons initially for their detention and have it in writing so that they can approach the court for any sort of discharge further on that could be made.

It is extremely burdensome to convince the courts to discharge an order. Even if you were to come before the court on a habeas corpus, it would assist, and I think it is very important to balance here. When a person is being detained they should at least have a physical record and recording of the reasons. As much as it is in the law that it must be recorded, I do not see any reason why that should not be disclosed to the person who is so detained.

Mr. Al-Rawi: May I?

Madam Chairman: Attorney General—Sen. Lutchmedial, you also have other amendments to clause 16?

Sen. Lutchmedial: You want me to go through? Okay, sure. In subclause (4), we are proposing the deletion of the “ex parte”. The reason being, the court always has a power to entertain an ex parte application, but where you put it in the law that the automatic method of going before the court is ex parte, you shift the burden upon—well, you give the court the option, of course, to convert to an inter partes,
but in my experience that causes delay. Where you are working with a time frame here, what would happen is that the police would go ex parte. The court has to consider what the police have put on oath as the evidence, and the court then decides whether or not it wants to hear the other side, and convert the hearing to an inter partes hearing.

Whether if, by way of you leave it open, the automatic way that you go is inter partes, or you the police, the law enforcement authority, convince the court of why you need to go ex parte. So ex parte should be the exception, where law enforcement has sufficient grounds to say that we need to have this matter dealt with ex parte, and they go before the court ex parte, not make it automatic that they go ex parte. Compare example for judicial review proceedings, is the comparator I was using. Under the CPR, you go automatically ex parte for leave, and then the court must decide whether they want to convert it to an inter partes, having read the papers. Then they must make an order to serve the other side.

If that is the way that it would happen here, you could run into delays that will take you beyond that 36-hour period. So that is why I am proposing that you not include ex parte, but if it is that the circumstances warrant an emergency ex parte application, let the State convince the judge why they need to come ex parte. So that is the proposed amendment to subclause (4).

Subclause (5), Madam Chairman, we wanted to include as an (a):

“the person detained has committed, was about to commit, was committing or interfered with the investigation…”

This goes back to subclause (1) and the reasons for the initial grounds of detention. I do not believe that you should go—when you go before the court asking for further detention, the court should not just be satisfied of the fact that the detention is justified, and that the investigation is being conducted. But the court should also
be required to inquire into the original reason for the detention, and be satisfied that the original reason for detention as set out in subclause (1) is that they are satisfied of those requirements.

So they must be satisfied of three things: that the person was detained in circumstances where he or she has committed, was about to commit, was committing or interfered with an investigation, and then that the further detention is justified, and also that the investigation is being conducted diligently and expeditiously. So that way, the evidence that they are required to put on oath before the court, would cover the reasons and the grounds for the initial detention.

Finally, in subclause (7), I proposed the addition of, after the word “application”, that the application should be made “in the prescribed form”. Later on I suggested that the prescribed form be included in the Second Schedule, because as I said in my contribution, where you are creating a form, an ease of making an application for the extension of the detention order, the application to discharge should apply with equal ease. This is done under POCA, under Proceeds of Crime, Attorney General, section 38. There are prescribed forms both for the application made by the State, as well as the application for the discharge.

It should not be left to the person who is detained to figure out the mechanism through which they must make the application under subclause (7). I think it is more balanced that you have, if you are creating a prescribed form for the State, that the prescribed form also be created for the person detained who could then use it to approach the court to have the further order discharged.

Madam Chairman: Attorney General.

Mr. Al-Rawi: Thank you, Madam Chair. I thank Sen. Lutchmedial for the very succinct and precise explanations offered for her proposed amendments. I think it eminently sensible that the standard rules of disclosure be put into statute and,
therefore, I wholeheartedly agree with the provision of an extract of the station diary. Even though there is a prohibition against it in the Standing Orders, I think it is a prudent improvement of the law. It means that we need to do a small bit of adjustment to the word “and”, in removing it where it is and then dropping it one clause lower.

The bugbear comes about in the ex parte and in the reasons offered for 16(4), 16(5). First of all, we do not propose that the habeas corpus constitutional route is at all diminished. The Constitution provides that you may approach a court at any point after detention or arrest, if you want to call it that—sometimes they are synonymous—and seek to have relief of habeas corpus. This statute is inferior to the Constitution and therefore that prevails.

I have raised the habeas corpus route because we are at the stage of investigation. The investigation and the clause itself as a proposed section, the section must be read as a whole. If I start with 16(1):

“Notwithstanding any law to the contrary...”—and that does not include the Constitution—“a police officer may, without a warrant, detain”—a person—

“for a period not exceeding forty-eight hours,...”

We have now, pursuant to Banfield and numerous other positions, kept ourselves within what the common law recognizes as justifiable detention time:

“...a person whom he has reasonable cause to believe—

(a) has committed, is about to commit or is committing; or

(b) has interfered with an investigation...without charging him...”

After (1), we then go to (2), which says when the time starts, the moment you are arrested or detained. (3), we propose that we agree with the amendment, that we provide the station extract:

“Where a person is detained...the police officer...shall, without
delay...inform him of the grounds...”—because that is their constitutional right.

We will remove the “and” from (a):

“(b) record the grounds for his detention in the station diary.”

And then we would provide an extract of the entry under (b), to the person detained. So the word “and” should come at that point there, so that it reads (a), (b) “and” (c).

**8.10 p.m.**

When we get to (4), “the police officer...has reasonable grounds to believe...”—he shall, and obviously we propose that the concept of further detention be adjusted. It ought not to be further detention, the time should start from the first point. So we agree with that. That will come in a further amendment later, but we had proposed ex parte specifically. If we were to include the reasons suggested by Sen. Lutchmedial, it would not take into account the breadth of what the current investigations may have produced. They may have produced other information which is out-width the scope of subclause (1). So if we were to confine it only to subclause (1), we would be doing an injustice to what current enquiries look like.

What we are proposing is that this further enquiry be done strictly with judicial approval, not in any other circumstances. The reason why we have put ex parte is to indicate that you can go to the judge by yourself, but ex parte in and of itself allows for two other alternatives: ex parte opposed, if the judge says so or inter partes, if the judge says so, because the minute you flag ex parte, it is only to flag that somebody may approach the court by themselves.

In the inherent jurisdiction of the court, ex parte is as a matter of inherent jurisdiction met with ex parte opposed, meaning that the court can call you and say
listen, this has happened, we want to hear what you have to say. Or the court may say look, I am going to return this continued detention inter partes, meaning that both parties are heard. Stick a pin. That now accords exactly with habeas corpus, because in habeas corpus you turn up ex parte on habeas corpus. You call the State to come at that point, nothing stops you from making the application ex parte, but it is then heard inter partes and therefore, what we have sought to do here is to dovetail the inherent jurisdiction of the court and to keep the usual prescriptions of law that is, ex parte opposed and inter partes as the natural flow and consequence of the event.

So for those reasons we support the amendment to 16(3). We disagree with the amendment to the deletion of ex parte because that will erode the manner in which very serious matters are being investigated, and the last thing you would want to do is to now put a statutory obligation for disclosure in the middle of an investigation. Because we are not yet at charge where disclosure then kicks in, we are at an investigating point. And the danger of putting it that way is that you are going to create a statutory obligation which can be challenged at that point, and it would turn the process of conducting enquiries in detention on its head from our point of view.

The last amendment proposed is—well, I think that takes care of the proposed amendments coming—the prescribed form, clause 16(7):

“After the word ‘application’ add ‘in the prescribed form’.”

It is for the reason of a form condescending to information at that point and therefore the ability to now take the statutory positions a little bit further, because we are at the point of investigation prior to charge, that I would be loath to recommend the use of a form in these circumstances. There are many examples in our existing law where the ex parte route is done, interception of communication,
other aspects, but the most important thing is that the due process is preserved. It is a court to decide ex parte, ex parte opposed, inter partes and all subjugated to the constitutional right of habeas corpus which is completely preserved in these circumstances.

**Madam Chairman:** Attorney General, I do not think you dealt with 16(5).

**Mr. Al-Rawi:** Yes, I did, Madam Chair. I said that that would be too narrow a purpose.

**Madam Chairman:** Okay.

**Mr. Al-Rawi:** Because I said that it would not take into account further investigations on material disclosed in the course of the interrogation or detention.

**Madam Chairman:** Sen. Lutchmedial.

**Sen. Lutchmedial:** Madam Chair, in the same way that if new information arises in the course of the enquiry, the State can go before the judge and convince the judge that because of the new information that has surfaced in the course of the enquiry, this application ought to be heard ex parte. You see, this is a simple majority Bill, and once you include here that you can come ex parte, you are running afoul of natural justice and the right to be heard and so on, you could run afoul of it, it could be argued and therefore, it ought not to be that as a matter of course, these things can be done ex parte, you should leave it to the State to convince.

That is why I am saying, so even—there is no difficulty with removing ex parte. It would not compromise a situation where there may be new information coming forward which should not be disclosed. If there is new information coming forward in the course of the investigation that cannot be disclosed because it could compromise the investigation, those are the grounds upon which the State can approach the court and ask them to hear the matter ex parte. It is just a matter of
where you put the burden. Do you put the burden on the State to say why this should be ex parte and deprive the other person of the right to be heard, the person detained? Or do you want to say that this should be a hearing which, as a matter of course if we are still investigating, what you were detained for initially, you will have the right to be heard and then only if there is something that could compromised, we will ask the court to leave you out of this hearing. That is exactly, basically the logic there.

So there is nothing—in the same way that the court has the power to convert it, the court has the power to rule that it can be ex parte, but it should be for the State to convince that the right to be heard ought to be left out and that the person detained ought to be deprived of that right to be heard, Madam Chair.

And further with respect to (5) and the narrowing of it, again, if the person was detained for one thing and then the investigation and the further detention is necessary because of other things that arise in the course of the investigation, well, then we can simply change it to—I do not feel that the grounds of the initial detention—the court has to be convinced that if the grounds of the initial detention are no longer valid, that there is some other reason to hold this person, you are basically saying that you can change and move the goalpost, so that the original grounds of detention, if you say that it would narrow it, you are contemplating a situation where the State cannot convince a judge that the original grounds of detention are still—they cannot convince the court of the merits of those grounds of initial detention, but that there are further reasons and you are coming now before the judge to ask for further detention. If the initial grounds of detention are no longer valid, the person should be released and perhaps if you have other things that arise in the investigation, they must meet that standard that is set out in subsection (1) in order to detain.
Madam Chairman: Attorney General.

Mr. Al-Rawi: Well, Madam Chair, the judge must be satisfied. Whether the judge in the first instance was satisfied within the context of 16(1), in 16(5):

“(5) A Judge may grant a detention order under…(4) for the…”

We proposed a deletion of “further”—for the detention—sorry:

“(5) A Judge may grant a detention order under…(4) for the further detention of the person named…if he is satisfied that there are reasonable grounds to believe that—

(a) the further detention of the person to whom the application relates is justified;”

That is not a capricious move. That is in keeping with the current law. And if we were to accept the recommendations coming from my learned colleague, it is almost tantamount to saying well, before you go for a warrant for somebody, go and seek his view. We are in the course of an investigation where a judge must be satisfied there is a remedy if this is wrong. It is false imprisonment, it is malicious prosecution, there are damages available, but this is tried and tested in the courts of law, that there are reasonable grounds to believe that the continued detention is justified.

So I respectfully do not want to interrupt with what has worked for centuries in the context of a judicial consideration of reasonableness and satisfaction. We have a lot of case law on that basis. So I most respectfully do not agree with the arguments of my learned colleague. We are in the anti-gang law, we are keeping it in the process of the court, we are in due process. We are not alienating any rights because it is a court in the separation of powers principle to consider the Executive mind. The police acting in the capacity of the Executive have to convince a judge that the grounds are reasonable.

Madam Chairman: So at this juncture I will now put the amendment as proposed
by Sen. Lutchmedial to the committee. The Attorney General has indicated that 16(3) is to be accepted, but there is to be a further amendment to 16(3):

By deleting the word “and” at end of (a) and inserting the word “and” after the word “diary” at (b).

Correct?

**Mr. Al-Rawi:** Yes, Ma’am.

**Madam Chairman:** Sen. Lutchmedial, you have gotten that?

**Sen. Lutchmedial:** Yes.

**Mr. Al-Rawi:** So it will be: delete the “.” Insert “;” and “and”.

**Madam Chairman:** Yeah. Hon. Senators, the question is that clause 16 sub (3) be amended as circulated by Sen. Lutchmedial and further amended as follows:

By deleting the word “and” after the word “detention” and by inserting after the word “diary” “;” and the word “and”.

*Question, on amendment, [Sen. J. Lutchmedial] put and agreed to.*

**Madam Chairman:** Hon. Senators, Clause 16 be amended as circulated by Sen. Lutchmedial at 16(4) and 16(5) and 16(7)—

**Sen. Richards:** Madam Chair, if I could. Are we going to separate (4), (5), and (7)?

**Madam Chairman:** Is it necessary?

**Sen. Richards:** For my purposes, yes.

**Madam Chairman:** Okay. So the question is that clause 16 sub—the question is that the amendment as proposed to clause 16 at (4), sub (4) as circulated by Sen. Lutchmedial be accepted.

*Question, on amendment, [Sen. J. Lutchmedial] put.*

*The Committee divided: Ayes 9 Noes 19*  

AYES
Senate in Committee (cont’d)

Mark, W.
John, Ms. J.
Lutchmedial, Ms. J.
Nakhid, D.
Lyder, D.
Richards, P.
Deyalsingh, Dr. V.
Deonarime, Ms. A.
Seepersad, Ms. C.

NOES
Khan, F.
Gopee-Scoon, Mrs. P.
Rambharat, C.
Sinanan, R.
Hosein, K.
West, Ms. A.
Browne, Dr. A.
Mitchell, R.
de Freitas, N.
Cox, Ms. D.
Singh, A.
Sagramsingh-Sooklal, Mrs. R.
Bacchus, H.
Lezama-Lee Sing, Mrs. L.
Bethelmy, Ms. Y.
Vieira, A.
Teemal, D.
Thompson-Ahye, Mrs. H.
Welch, E.

*Sen. Dr. M. Dillon-Remy abstained.*

*Amendment negatived.*

**Madam Chairman:** Hon. Senators, the question is clause 16 at (5), sub (5) be amended as circulated by Sen. Lutchmedial.

*Question, on amendment, [Sen. J. Lutchmedial] put.*

*The Committee divided:* Ayes 10 Noes 18

**AYES**
Mark, W.
John, Ms. J.
Lutchmedial, Ms. J.
Nakhid, D.
Lyder, D.
Roberts, A.
Richards, P.
Vieira, A.
Deyalsingh, Dr. V.
Deonarine, Ms. A.

**NOES**
Khan, F.
Gopee-Scoon, Mrs. P.
Rambharat, C.
Sinanan, R.
Hosein, K.
West, Ms. A.
Browne, Dr. A.
Mitchell, R.
de Freitas, N.
Cox, Ms. D.
Singh, A.
Sagramsingh-Sooklal, Mrs. R.
Bacchus, H.
Lezama-Lee Sing, Mrs. L.
Bethelmy, Ms. Y.
Seepersad, Ms. C.
Teemal, D.
Thompson-Ahye, Mrs. H.

The following Senators abstained: Sen. Dr. M. Dillon-Remy and Sen. E. Welch.

Amendment negatived.

Madam Chairman: Hon. Senators, the question is that clause 16(7) be amended as circulated by Sen. Lutchmedial.

Question, on amendment, [Sen. J. Lutchmedial] put.

Sen. Mark: Division.

Madam Chairman: I beg your pardon?

Sen. Mark: Division.

Madam Chairman: Okay.

The Committee divided: Ayes 7 Noes 23

AYES

Mark, W.
Senate in Committee (cont’d) 2021.03.16

John, Ms. J.
Lutchmedial, Ms. J.
Nakhid, D.
Lyder, D.
Roberts, A.
Deyalsingh, Dr. V.
NOES
Khan, F.
Gopee-Scoon, Mrs. P.
Rambharat, C.
Sinanan, R.
Hosein, K.
West, Ms. A.
Browne, Dr. A.
Mitchell, R.
de Freitas, N.
Cox, Ms. D.
Singh, A.
Sagramsingh-Sooklal, Mrs. R.
Bacchus, H.
Lezama-Lee Sing, Mrs. L.
Bethelmy, Ms. Y.
Richards, P.
Vieira, A.
Deonarine, Ms. A.
Seepersad, Ms. C.

UNREVISED
Teemal, D.
Thompson-Ahye, Mrs. H.
Dillon-Remy, Dr. M.
Welch, E.

Amendment negated.

Madam Chairman: Sen. Welch, I believe you have a proposed amendment to said clause 16.

A. In subclause (4) paragraph (c) by deleting the word “further” and substituting the word “initial”.
B. In subclause (6) by deleting the word “fourteen” and substituting the word “seven”.

Sen. Welch: Yes, Madam Chair. It is a very simple amendment with respect to 16(4)(c). It presently reads:

“…the police officer may, within thirty-six hours of the person’s further detention…”

I have suggested two amendments. I believe one was not circulated. I am suggesting changing 36 hours to 72 hours. I believe that is the one that was not circulated.

Madam Chairman: Are you saying it was not circulated, did you—

Sen. Welch: No. It was not on the amendment.

Madam Chairman: So that you are now proposing that?

Sen. Welch: So I am now proposing it, with your permission.

Madam Chairman: Okay.

Sen. Welch: With your leave.

Madam Chairman: Sure. So could we just—yes, okay. So what is the proposed amendment, Sen. Welch?
Sen. Welch: Within 72 hours.

Madam Chairman: No. Could you just tell me where at 16?

Sen. Welch: It would be on page 12. It is 16, (4)(c) under paragraph (4)(c). There is a paragraph under paragraph (4)(c).

Mr. Al-Rawi: Called the shoes. Yeah.

Sen. Welch: Madam Chair, are you with me?

Madam Chairman: Yes, I am.

Sen. Welch: Yes. So that would change to instead of 36, it would change to 72, and the word “further detention” will change to “initial detention”. And the effect of that is that, if after the initial 48 hours of detention an intention is to be made to apply for a further period of detention, it should be 72 hours from the time the person was first detained, and that is why I have the word “initial” detention. So effectively within 72 hours of the first moment at which the person is detained, an application should be made for that, what would be the 14-day extension, and that is with respect to 16(c).

Madam Chair, there is just one other proposed amendment. Should I go on to that one time as well? It would be in 16(6) or should I wait perhaps for this first one to be discussed first.

Madam Chairman: Did you not circulate 16(6) at B of your proposed amendment?

Sen. Welch: Yes.

Madam Chairman: It is not there? So that you can speak to it. There is an A, B and we have added a C. Correct?

Sen. Welch: Yes. Yes. So at 16(6) instead of “fourteen days”, I have suggested seven days for the maximum period of detention. Seeing this as a possible detention without charge, I am thinking 14 days is a bit too long even though there
has been the argument of it is subject to the higher scrutiny, judicial scrutiny at a
higher level. I am still thinking that 14 days is a bit too long, so I am suggesting
seven days would be a more proper and effective period by which the police
should get their house in order and it creates a better balance. So those are the three
amendments I have for clause 16.

Madam Chairman: Attorney General.

Mr. Al-Rawi: Thank you, Madam Chair. I welcome Sen. Welch’s proposed
amendments. A, certainly, the words that we have just put in the 72 hours, I agree
with that as well. I would really like to hear the views of the rest of the Senate on
the 14 versus seven days.

Madam Chairman: Attorney General, if anyone wanted to before—

Mr. Al-Rawi: Because you asked me first.

Madam Chairman:—I called on you, I normally look around to see if anyone
wishes to raise something, so that is why I called on you.

Mr. Al-Rawi: So can I now having heard Sen. Welch in reply, wonder if there is
any other view on the seven versus 14 days?


Mr. Al-Rawi: You agree?

Sen. Richards: I agree with the seven days.

Sen. Lutchmedial:—the seven days as proposed by Sen. Welch. I would also like
to comment on the 72 hours from the time of detention. As it is right now the way
it is worded and I did not propose an amendment to this, but looking at the way it
is worded, of the 36 hours of the person’s further detention, it appears that it is 48
plus 36. I think the Law Association, just for the record, made a comment and they
recommend that the requirement for the ex parte application be made or granted
before the expiry of the 48 hours.

I know that may be a bit short, but I would—it is when you are detaining a person beyond the initial period of detention of the 48 hours which is recognized as common law as reasonably, in order to give the police the opportunity to make an application, I think 72 hours, even 72 hours is a little bit high. So I would suggest that we bring that down perhaps to 36 hours, so that within 36 hours the application be made to—

Sen. Welch: Sen. Lutchmedial, I do not know if it came across clearly from me but I had suggested the word “further”, “further” detention be replaced by “initial”. So I do not know if you took that into account.

Sen. Lutchmedial: And I am saying that based on what the Law Association has recommended and my own view, I think that even 72 hours from the initial detention to approach the court is a bit excessive. So I would like to propose that we look at a middle ground perhaps 36 or 48 hours further, 36 or, you know, something further than that. Because if you have an initial 48 and then you are extending beyond that even up to 72, I think it goes a bit beyond what is reasonable.

Madam Chairman: Sen. Deonarine.

Sen. Deonarine: Thank you, Madam Chair. I just wanted to indicate that I am in agreement with Sen. Welch’s proposal.

Madam Chairman: Attorney General.

Mr. Al-Rawi: Thank you, Madam Chair, for that opportunity—

Sen. Dr. Dillon-Remy: Sorry, Madam Chair. I had my hand—

Madam Chairman: I am sorry, Sen. Dillon-Remy, I did not see. Yes.

Sen. Dr. Dillon-Remy: So the question I have is, are we talking—the 36 hours is beyond the 48 hours. So after—so:
“...beyond forty-eight hours without charge...the...officer may, within thirty-six hours of the person’s further detention...”

So you are going now for another 36 hours? Or is it 36 of the 48?

**8.40 p.m.**

**Mr. Al-Rawi:** So, Madam Chair, if I could lend some assistance. Yeah, so Sen. Welch’s recommendations help us to come out of the confusing language: when do you start, when does the time run, when does it stop. So, I welcome Sen. Welch’s recommendation. What we are proposing the law will say is in subclause (2), your detention starts the minute you are brought into custody, so that is made clear. You have an initial period of detention, that is 48 hours, and what Sen. Welch is saying is that 72 hours after that initial detention—so you just have to deduct 48. In other words then, a day after, go and apply for your further detention.

So, you will not cross three days without a court saying yes or no to your continued detention. And then what Sen. Welch is proposing further is that instead of 14 days’ detention, that you start with seven days’ detention, or you go for seven days’ detention. The reason why I wanted to poll the Senate was to get the appetite for the detention. Bear in mind, arbitrary detention, without special majority, is something that we should abhor. We are fixing that by saying, go and let the judge tell you. So my gut instinct is to say that, let us start with the seven. Let us see what the experience brings about, whether the police tell us or the Judiciary tells us, look, these things are too complicated to do within seven days, and then let us have some data on whether it works or not.

So, I think it would be a step of improving constitutionality if we went to seven days as opposed to staying at 14 days. So in the round, therefore, our proposal is to accept Sen. Welch’s recommendation as is. In relation to Sen. Lutchmedial’s recommendation, which is to put on record what the Law
Association has said, I respectfully disagree with the Law Association’s position because the time frame is just too light. In gang-related matters, you are often looking at multiple persons—obviously more than one because it is a gang—and then secondly, you are very often looking at decrypting or breaking into devices, and then you have to get the unlocking tools, the interception of communication, et cetera. The tighter that timeframe, the more impossible it is to disrupt criminal activity, and therefore, I would recommend that we stick with Sen. Welch’s recommendation. So, I will be withdrawing my proposal if the Senate to accepts Sen. Welch’s.

**Madam Chairman:** So, Sen. Welch, let me just go through your amendment, please, just to get it right, because we have to add some words to your amendment. Okay? So have an A where you are saying to delete the word “further” and substitute the word “initial”, but you are also asking to further amend A by deleting the words “thirty-six” and substituting the word “seventy-two”?

**Sen. Welch:** Yes, Madam Chair.

[Madam Chairman confers with the Clerk]

**Madam Chairman:** So, hon. Senators, please, if I can have your attention? It is difficult to now have to repurpose amendments that have been circulated. So we are just trying to get it right so that we can—so clause 16, Sen. Welch, there will be 16 A(1), which will be (1)—16 A(1):

In subclause (4) by deleting the word, “thirty-six” and substituting the word “seventy-two”.

And then at (2)—16 A(2):

By deleting the word “further” and substituting the word “initial”.

And then at 16 B:

In subclause (6) by deleting the word “fourteen” and substituting the
word “seven”.

Yes?

Sen. Welch: Yes, indeed, Madam Chair.

Madam Chairman: So, hon. Senators, the question is that clause 16 be amended as circulated by Sen. Welch and further amended, as I have just indicated, by inserting a 16 A(1) and (2), and a B—and a 16B, which I had just read out.

Question, on amendment, [Sen. E. Welch] put and agreed to.

Madam Chairman: Attorney General, you are withdrawing your amendment?

Mr. Al-Rawi: Yes, Madam Chair.

Amendment [Mr. F. Al-Rawi] withdrawn.

Madam Chairman: Thank you very much.

Question put and agreed to.

Clause 16, as amended, ordered to stand part of the Bill.

Clause 17 ordered to stand part of the Bill.

Clause 18.

Question proposed: That clause 18 stand part of the Bill.

Sen. Lutchmedial: Madam Chair, we are proposing for clause 18 that the amendment to the schedules be subject to affirmative resolution. Just having regard to the seriousness of the legislation and the far-reaching impact, we feel that it should have more oversight and it should be opened to a debate in Parliament. That is my proposed amendment to clauses 18 and 19(2).

Madam Chairman: Attorney General?

Mr. Al-Rawi: Madam Chairman, insofar as the Second Schedule, which is the subject of clause 18, it is just the form, I respectfully do not think that we need to move the Parliament in an affirmative resolution to amend the form. So I respectfully ask that we not cause that. In respect of—well, we are not at 19 yet, so
I will save my position for that.

**Madam Chairman:** Thank you.

*Question, on amendment, [Sen. J. Lutchmedial] put.*

**Sen. Mark:** Division.

_The Committee divided:_ Ayes 8 Noes 22

**AYES**

Mark, W.
John, Ms. J.
Lutchmedial, Ms. J.
Nakhid, D.
Lyder, D.
Roberts, A.
Deyalsingh, Dr. V.
Deonarine, Ms. A.

**NOES**

Khan, F.
Gopee-Scoon, Mrs. P.
Rambharat, C.
Sinanan, R.
Hosein, K.
West, Ms. A.
Browne, Dr. A.
Mitchell, R.
de Freitas, N.
Cox, Ms. D.
Singh, Mr. A.
Amendment negatived.

Clause 18 ordered to stand part of the Bill.

Clause 19.

Question proposed: That clause 19 stand part of the Bill.

Clause 19(2) substitute “negative” with “affirmative.

Madam Chairman: Sen. Lutchmedial?

Sen. Lutchmedial: Yes, Madam President, again, if you are giving the regulation making power, this is a new provision that was not previously in the law, and particularly in light of the proposed amendment by the Attorney General, where he is imposing a fine for a breach of the regulations, it is anticipated that the regulations would be creating criminal offences. And so, I believe that the oversight is necessary—a higher degree of oversight is necessary and it should be subject to affirmative resolution.

Mr. Al-Rawi: We agree, Madam Chairman,

Madam Chairman: Sen. Vieira?
Sen. Vieira: I was going to ask, what sort of regulations were in your contemplation? Because I am leaning to affirmative resolution.

Mr. Al-Rawi: I agree.

Question, on amendment, [Sen. J. Lutchmedial] put and agreed to.

Madam Chairman: Attorney General, I think you have an amendment to clause 19 as well?

19 Insert after the proposed subsection (2), the following new subsection:

“Chap. 3:01 (3) Notwithstanding section 63 of the Interpretation Act, a person who contravenes Regulations made under this section commits an offence and is liable on summary conviction to a fine of two hundred and fifty thousand dollars and to imprisonment for seven years.”.

Mr. Al-Rawi: Yes, Madam Chair, and it fits in with the agreement to the proposal for affirmative resolution. It is to simply not withstand the section 63 of the Interpretation Act, so the offences could be treated with at a higher category, but we have the protection now of the affirmative resolution for the regulations.

Question, on amendment [Mr. F. Al-Rawi] put and agreed to.

Question put and agreed to.

Clause 19, as amended, ordered to stand part of the Bill.

Clause 20 ordered to stand part of the Bill.

New clause 21.

New clause 21 read the first time.

Madam Chairman: Hon. Senators, the question is that new clause 21 be read a second time. Those in favour say aye—

[Madam Chairman confers with Clerk]
Mr. Al-Rawi: Madam Chair, would you—is it that we normally do the Schedules before the new clauses?

Madam Chairman: New clauses.

Mr. Al-Rawi: Oh, I see. Thank you.

*Question proposed:* That new clause 21 be read a second time.

*Question put.*

Madam Chairman: I think the noes have it.

Sen. Mark: Division.

*The Committee divided:* Ayes 6 Noes 23

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

NOES
Khan, F.
Gopee-Scoon, Mrs. P.
Rambharat, C.
Sinanan, R.
Hosein, K.
West, Ms. A.
Browne, Dr. A.
Mitchell, R.
de Freitas, N.
Senators, the result of the division on whether the new clause as proposed by Sen. Lutchmedial be read a second time, the result of the division is as follows: six Members voted yes; 23 Members voted no, and one Member abstained. So the new clause 21, as proposed, by Sen. Lutchmedial will not be read a second time.

First Schedule.

*Question proposed:* That the First Schedule stand part of the Bill.

First A. In the proposed item 7, after the word “Preventing”, insert the words “gang leader or”; and
B. In the proposed item 9, delete the words “benefit of gang” and replace with the words “gang-related activity”.

Mr. Al-Rawi: Madam Chair, may I withdraw part B of the proposed amendment to Schedule one and circulate by me, and just maintain part A?

Madam Chairman: Attorney General, shall you speak to it?

Mr. Al-Rawi: If you please? Yes, please. So, Madam Chair, we had proposed in the schedule of offences that we amend a gang leader at proposed item 7. Instead of it just reading, “Preventing gang member from leaving”, the Act itself actually says for both; for the gang leader or the gang member. So the Schedule had inadvertently left out the concept of the gang leader leaving, and therefore we propose to harmonize it with what was in the body of the law itself.

Madam Chairman: Hon. Senators, the question is that schedule one be amended as circulated by the Attorney General at—and listed at A of the amendment.

Question, on amendment, [Mr. F. Al-Rawi] put and agreed to.

Question put and agreed to.

First Schedule, as amended, ordered to stand part of the Bill.

Sen. Teemal: Just hon. Attorney General, through you, Madam Chair, I could be wrong but I am not seeing “being a gang member” as a listed offence in this First Schedule.

Mr. Al-Rawi: It is at number 5, “Gang membership.”

Sen. Teemal: No, “being a gang leader”.

Mr. Al-Rawi: A gang leader, that should probably be in. Madam Chair, I thank Sen. Teemal for spotting that. In those circumstances, may I adjust my proposed amendment to the First Schedule, as circulated with paragraph A, and what we should do is to also—so, there should be an A. The new A should be at item 5.

In the proposed Item 5, delete “gang membership” and substitute “being a
gang member or a gang leader”.
That is much clearer than what is there. It should be “being a gang leader or a gang member”. Forgive me, CPC has just asked me to invert it, “being a gang leader or a gang member”.

Sen. Dr. Dillon-Remy: Madam Chair, I have a question. Attorney General number 8, “Counselling a gang leader, gang member or gang”. Gang what?

Madam Chairman: That is at 8, Attorney General.

Mr. Al-Rawi: Is there a question?

Sen. Dr. Dillon-Remy: Yes, what—“or gang” what?

“…a gang leader or gang member…”

What else you can have in a gang?

Mr. Al-Rawi: Well, it may be more than them, the collection of them; the gang.

Sen. Dr. Dillon-Remy: The total—the whole gang?

Mr. Al-Rawi: Yes, so the plain and ordinary meaning would flow.

Madam Chairman: Any other questions or comments?

First Schedule recommitted.

Question again proposed: That the First Schedule stand part of the Bill.

Madam Chairman: Hon. Senators, the question is that Schedule one be amended as circulated by the Attorney General and further amended as follows: There will be an A which will read:

Delete “gang membership” and substitute “being a gang leader or a gang member” in the proposed item 5.

And B:

In the proposed item 7, after the word “Preventing” insert the words “gang leader or”.

Sen. Seepersad: Madam Chair, just a quick question, I am not seeing human
trafficking specifically identified.

**Mr. Al-Rawi:** Item 30, “Offences under the Trafficking in Persons Act”.

**Sen. Seepersad:** Oh, okay. Thank you. Thank you, Madam Chair.

**Madam Chairman:** So, before I re-read the proposed amendments, are there any other questions or comments on the First Schedule? No. Hon. Senators, the question is that Schedule one be amended as circulated by the Attorney General, and further amended as follows—at A, in respect of the proposed item 5:

Delete “gang membership” and substitute “being a gang leader or a gang member; and”.

And B:

In the proposed Item 7, after the word “Preventing” insert the words “gang leader or, and”.

Attorney General does the “and” stay?

**Mr. Al-Rawi:** The “and” will go in A, so it is the A and B. Yes.

First Schedule, as amended, again ordered to stand part of the Bill.

**Second Schedule.**

**Question proposed:** That the Second Schedule stand part of the Bill.

**Madam Chairman:** Sen. Lutchmedial, I think you have an amendment—proposed amendment or proposal.

**Sen. Lutchmedial:** Madam Chairman, the amendment was premised on the earlier proposal of 16(7) which as not accepted, so it would fall. I will withdraw it.


**Madam Chairman:** Thank you very much.

Question put and agreed to.

Second Schedule ordered to stand part of the Bill.

**Madam Chairman:** Sen. Lutchmedial, in respect of the amendments circulated on
your behalf, I see that you included—you sought to include a preamble, but this is really outside the scope of the Bill and therefore I will not be putting it to the Committee.

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

*Senate resumed.*

*Bill reported, with amendment.*

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

**9.10 p.m.**

**Sen. Mark:** Division.

*The Senate divided:* Ayes 24

**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.
Teemal, D.
Thompson-Ahye, Mrs. H.
Dillon-Remy, Dr. M.
Welch, E. [Desk thumping]

The following Senators abstained: Mr. W. Mark, Ms. J. John, Ms. J. Lutchmedial, Mr. D. Nakhid, Mr. D. Lyder, Mr. A. Roberts.

Question agreed to.

Bill accordingly read the third time and passed.

ADJOURNMENT

The Minister of Energy and Energy Industries (Sen. The Hon. Franklin Khan): Thank you very much, Madam President. Madam President, I beg to move that this Senate do now adjourn to Tuesday March the 23rd, 2021 at 1.30 p.m., Private Members’ Day. I am informed by the Leader, the Opposition Bench that he will be continuing the Motion on the speaking time. And I just want to put through you, Madam President, to send out a notice that we plan to meet also on Wednesday the 24th to do the CARIFORUM Bill.

Sen. Mark: To do what?

Sen. The Hon. F. Khan: CARIFORUM.

Madam President: Hon. Senators, before I put the question on the adjournment, leave has been granted for two matters to be raised. Sen. Mark.

UNREvised
Students Access to Online Learning

(Government to Address)

Sen. Wade Mark: Thank you, Madam President. Madam President, I raised this Motion, this matter rather, on the motion for the adjournment dealing with the need for the Government to address the deficiencies in students access to online learning as a significant portion of the student population remains without devices and internet connectivity and cannot access the online learning platform.

Madam President, it is of grave concern and it should be of grave concern to the population and to our nation that tens of thousands of our young people, students have absolutely no access to online learning. In fact, at a JSC meeting recently we were told that there were 46,000 citizens, young people who never even accessed the online learning process or experience. So could you imagine in a society where we have 46,000 young people not being able to access online classes. When you combine that, Madam President, with the fact that many citizens, young people who are able to access online classes, they switch on, they participate once or twice and then they switch off. So the drop off rate is extremely high; the dropout rate is extremely high. We do not have any figures at this time because the Ministry of Education is yet to provide this country with the kind of numbers involved there.

Madam President, when you look at the whole issue of the number of children who have no access to devices, as well as connectivity, it compounds the situation in our country as it relates to learning, education and advancement for our young people as we look forward to the future of our country. So I have raised this matter today to address this very burning issue and to get from the Government what actions are being taken by the Ministry of Education to address this debacle, this monumental educational crisis that is affecting our young people in this nation of Trinidad and Tobago.
[Mr. VICE-PRESIDENT in the Chair]

So, we also, Madam President, have been advised by the acting President of the National Council of PTAs, NCPTA, one Mr. Clarance Mendoza, where he was indicating that there are many, many, students in this country who are still without devices, consolidating the position that I have advanced. And we have also been advised that many parents who may not be trained in the kind of subjects that these children are exposed to they too are experiencing challenges, particularly in the rural areas or the rural communities where, Mr. Vice-President, you have the lack of devices, you have the lack of connectivity.

So it is important for us to understand why it is we have this high dropout rate in our country and our students who are not accessing for one reason or the other as I have indicated. And, Mr. Vice-President, we know that the Student Support Services is supposed to be addressing the problems faced by these young students and pupils. But there is a shortage or a deficiency or a deficit in resources. So the thousands of young people who are unable to access online classes, who do not have devices, who do not have connectivity, Mr. Vice-President, the SSS is unable to deal with those situations because it is so overwhelming.

Mr. Vice-President, we have a situation where packages are made available and parents are supposed to collect those packages at the various schools. The question that we are faced with is that many parents, Mr. Vice-President, because they are not trained as teachers to really provide their children with the educational guidance, there is in fact a crisis emerging in the education system in Trinidad and Tobago. And therefore I have raised this Motion today to deal with the, what I call the “crisis in education” which, Mr. Vice-President, we need to understand that our children, particularly in the rural communities and the suburban areas, they are suffering, they are experiencing deprivation. There is a lot of socio-economic
challenges. Their parents are not employed and therefore those children are deprived in terms of access to proper nutrition, access to proper health care, access to proper opportunities and facilities because of socio-economic challenges that they are faced with. And, Mr. Vice-President, I have learnt that it is particularly grave when it comes to students in Forms 3 and 4. It is extremely serious.

Mr. Vice-President, I have been informed, the party has been informed that there are many teachers who have not even gotten online, they are not online with their students. So it is not only the students who have not gotten online because of not being interested or not being in a position to be interested, because of socio-economic challenges, but you also have, Mr. Vice-President, where the teachers who are responsible for training and for educating they are not connected, they are not switched on, they are not locked on and these are matters that I believe—

**Mr. Vice-President:** Senator, you have two minutes.

**Sen. W. Mark:**—are important that we need to get some information on, because, Mr. Vice-President, those students today who are not exposed to education they are the ones who may become easily influenced by gangs, gang leaders and become gang members. This is not good for our country and therefore I have raised this matter so that we can get some answers from the Ministry of Education as to how we are going to address those 46,000 students who are not even switched on, they are not online, not to mention the dropout rate that we have within the current system.

So it is a growing crisis in the education system, we need answers from the Government, we need to know what interventions they are going to make, what measures they are going to employ to save our young people from a life of crime, a life of challenges that they are going to experience if interventions are not made.
So, Mr. Vice-President, this matter has been raised to get information, to get clarification, to get answers and to get from the Government what measures are being taken to address this emerging crisis in the education system. I thank you very much, Mr. Vice-President.

The Minister of Public Administration and Digital Transformation (Sen. The Hon. Allyson West): Thank you, Mr. Vice-President. Mr. Vice-President, I am pleased to report to this honourable House on the actions taken by the Ministry of Education given its mandate of “No Child Left Behind” to provide access to all students, to teaching and learning opportunities since the closure of schools in March 2020 due to COVID-19.

In September 2020 based on data collected by the Ministry of Education it was noted that approximately 65,000 of approximately 220,000 students would not have ready access to the online environment. The Ministry of Education therefore instituted alongside the virtual system which allowed over 150,000 students access to teaching and learning, the printed package system that has been done the world over. The Ministry of Education also provided educational materials through various channels via social media on the Ministry of Education’s YouTube Channel, television via Flow, Digital 104 & Analog 4, Digicel Channel 4 and On Demand/Education Folder, AMPLIA Channel 104, Green Dot on Channel 4, radio via Radio Talk City 91.9FM and in the print media via the ECCE pullout in the Sunday Guardian. Mr. Vice-President, it is important to note therefore that students without online access were not left without opportunity for teaching and learning.

With respect to connectivity, the Ministry collaborated with the Telecommunications Association of Trinidad and Tobago, the Ministry of Public Administration as it then was and service providers, Digicel and TSTT to expand
Internet connectivity to all locales. These service providers made Internet access zero-rated to students who access the student learning management system for the three-month period ending July 31, 2021. Based on our continued dialogue, a total of 81 schools, both primary and secondary have been accessed for Wi-Fi connections throughout the TTWiFi service funded by TATT and these schools will receive Internet connections by the planned date of April 12, 2021.

The Ministry also engaged in discussions with foreign stakeholders such as, UNESCO, UNICEF, the European Union and the Development Bank of Latin America, CAF, for the provision of devices for students. In this regard an award has been made for the provision of 350 laptops through funding provided by UNICEF in the amount of US $100,000. Also an agreement has been entered into with CAF and UNICEF for the provision of US $75,000 for the acquisition of 1,000 tablet devices. Tender documents have been prepared to facilitate this procurement exercise.

Mr. Vice-President, through partnership with iGovTT the award has been made to a provider for the provision of 20,000 laptops having completed the RFP process in February of 2021. These should begin arriving in April of 2021. Mr. Vice-President, the tender for the provision of 45,000 MiFi devices for students was sent out to ISPs via iGovTT on January 21, 2021. Tenders closed in February 2021 and the final details are being worked on by the Evaluation Committee. This will deliver connectivity to the homes of those who need assistance providing same.

Further to this, the Ministry of Education reached out to the private sector in August of 2020 encouraging the donation of devices through which 18,122 have been donated to children nationwide out of a total number of 22,442 pledges. This has enabled thousands of our children access to the online environment which is
not in itself a miracle cure for the challenges of education during the COVID-19 pandemic, but provides the best replacement possible for face to face engagement.

Mr. Vice-President, allow me then to summarize the actions of the Ministry of Education, since September 2020 to address directly the lack of access of some students to online learning platforms:

1. Partnership with international funding agencies to provide 1,350 devices for students to connect to the online environment.
2. Facilitating donations of over 18,000 devices and connectivity from the private sector directly to students in primary and secondary schools.
3. Processing the ongoing purchase of 20,000 laptops and 45,000 Mi-Fi devices by the Government to provide to students in need of devices, and
4. Continued dialogue and partnership with the ISPs to provide connectivity to households and schools.

The Government of Trinidad and Tobago remains committed to the process of providing education for the most vulnerable students with the resources available. Even as the Ministry of Education makes significant headway in meeting the device and connectivity shortfall it must be recognized as expressed in many international documents that the best way to ensure the learning crisis presented by COVID does not become a generation of catastrophe is to suppress sub-transmission of the virus and plan thoroughly for school reopening. The actions of the Government to reduce the spread of the virus and create the enabling environment for the partial reopening of schools ongoing as we speak is testimony to the importance of that objective.

With the phased reopening of schools underway and the recognition that online learning is not a panacea for teaching and learning challenges exacerbated by the COVID-19 pandemic, the Ministry of Education is moving ahead undaunted
to surmount the challenges of the day as we continuously strive to provide equitable, accessible, quality education for all learners. I thank you, Mr. Vice-President. [Desk thumping]

**Police Handling of Reports**

*(Government to Ensure)*

**Sen. Jayanti Lutchmedial:** [Desk thumping] Thank you, Mr. Vice-President. Mr. Vice-President, I raised this matter, this Motion on the Adjournment about the need for the Government to ensure that the Commissioner of Police establishes systems to guarantee that reports of violent crimes are being appropriately attended to by police officers and followed up as priority matters, simply because if we do not address our minds to the actions of police officers when reports are made or attempted to be made then everything that we do here in order to address the scourge of crime in this country will be futile.

Mr. Vice-President, I was prompted to file this Motion for the Adjournment because of reports that surfaced following the horrific killing that took place in our country of Andrea Bharatt. A person who died in police custody but was accused of being part of that crime and was arrested and being questioned when his photograph was published, there were several reports surfacing both in the traditional print media as well as on social media that this person had committed offences in the past and that the reports had not received appropriate attention from police officers.

I was horrified to read of one report of a woman who recognized the photograph of that alleged offender and stated that when she went to the police station, because she had been reported missing by her mother having not returned home, the same mother who reported her missing earlier took her to the police station to report that she had been raped but the policeman on duty, and I quote:
Dismissed her with a flick of a wrist.

She went on to recount—another incident where two women alleged that they were attacked by the same person or at least someone resembling him and who they recognized as perhaps being the same offender said, that she was told by a police officer at the station where she went to make the report:

“Allyuh sure is not allyuh man? Another officer said, allyuh sure allyuh ain’t go there to have fun?

The woman with her bruised eyes recounted that both she and her friend were raped by the men”—because it was a group of them.

“A few minutes later, the men said to the police that the women came willingly and agreed to what happened. Her friend started crying and a woman police officer said, ‘doh play you crying there inno’.”

Mr. Vice-President, these reports are only two reports that we know of but we do not know how many more. Of course there is much anecdotal evidence out there of persons, particularly, women who have suffered sexual assault being treated in a manner that deters them from making reports. In both of these cases the woman indicated that they did not follow-up with the police to complete the process of making a report simply because they were too traumatized based on the treatment that they received when they arrived at the police station.

Again, another example. During the course of this debate that we had on the anti-gang amendment, another report surfacing is of a:

“Mum of girl, 8, calls on police to catch Maloney sex predator.”

A woman reports that her seven year old daughter was molested by someone known to them, someone who they later discovered had committed similar offences to other persons in the area. And from June28th last year to now nothing has been done except—even in the face of that family getting independent medical
police reports and attempting to report these matters to the police.

Mr. Vice-President, laws cannot be effectual if the reports of citizens are not being treated with the required level of urgency. Many persons have stood here in the course of the past two days and said that sexual offences, violent crimes, many of them, including the killing of Andrea Bharatt, could have been linked to gang-related activity. Well, what is the purpose of passing laws that would be able to jail persons and charge them for offences related to gang-related activity if the police are not even taking the reports and even if they take the reports they are not taking them seriously. We need to have a system in place whereby reports are received, action is initiated in an appropriate timeframe in order to preserve evidence and those reports are followed up with the appropriate action and then if charges are in fact laid that the prosecution of those offences are followed through.

The ultimate detection and the successful prosecution of crimes depend on immediate collection of evidence of critical evidential value, particularly, with offences of a sexual nature, you want to have the DNA evidence, you want to collect samples which can lead to successful charges being brought and prosecuted before the court. Citizens of this country report that they simply do not know how to cope with the dismissive and flippant attitude that is sometimes meted out to them when they go to police stations in order to make a report. We have a system in place right now where if you make a report you are given a receipt and I have seen so many of those receipts over a period of time and I do not believe that that receipt system really is accomplishing what it was meant to accomplish. It is meant as proof that you have made a report, but is there anyone inside the institution of the TTPS following up on each receipt that is issued, we do not know. And I am respectfully suggesting that that is a failure of the system.

In addition, most of those receipts as they relate to things such as threats to
kill or even if there are threats between family members which might be your
neighbours where there are disputes, they are recorded as information coming to
the police station. That is of no value, it does not record or reflect the seriousness
of the nature of the offence that might be reported and the problem that we have is
that we are reactive and not proactive. So even if someone makes a threat the way
that that threat is—or that the police categorized that threat and the way that they
deal with it could be the difference between saving a life or not. And therefore we
have to have measures in place while someone is tracking and taking corrective
action when certain reports are not treated with the level of importance that it
deserves.

Another report that came to my attention last year, a young mother was
murdered in Penal and later on it surfaced that the offender, a domestic dispute,
got to the police station—the police in the area knew of the couple because of the
history of domestic violence between them, he went by himself to the police
station the day before he murdered that young mother and said that he was feeling
suicidal and could not cope. The police do not take something like that as a report,
it is not reflected anywhere, there is no action but the next day he killed his
estranged spouse and attempted to kill himself. How we deal with reports and
citizens coming to a police station therefore is of great importance.

If we are serious about reducing violent crimes against women we must—
especially those crimes committed against women, we have to have these things
put into place, because women who are sexually assaulted or victims of abuse and
domestic violence lack the wherewithal, emotional strength and sometimes the
resources to follow through with the processes and procedures that currently exist
to report an errant police officer who may be flippant in his attitude and may not
wish to give a report, the attention that it needs.
One would be naive to think that a rape victim treated in the manner that I have just described, as reported in the newspapers, would then proceed to locate the Professional Standards Bureau and make a report and follow-up with the Police Complaints Authority. It is simply not practical sometimes for us to expect that those things would happen unless we take action to make those things or unless the Government ensures that the Commissioner of Police take some action to track these matters and to make reports and complaints more easily accessible to the public whatever process can be put into place. The PCA Complaints Division and PSB and even private attorneys can seek your interest, however it is beyond the capability of many of the victims. And I respectfully suggest that one area that has to be looked at is the ease of accessibility of making complaints against officers when you are not treated with the level of urgency, when you go to your police station to make a report. The *Handbook on police accountability, oversight and integrity*, which is published by the United Nations Office on Drugs and Crime lists dealing with complaints about policing, the receipt investigation and follow-up as a key feature of the criminal justice reform and upholding the rule of law. And it says that:

Because police officers act on the basis of directives, accountability includes responsibility for the direction, control or diligence exercised before and during operations to ensure observance of the law and policies and of human rights.”

**Mr. Vice-President:** Senator, you have one more minute.

**Sen. J. Lutchmedial:** Yes. I would like to recommend, for example, that you have a system whereby apart from being able to make reports that there be some sort of electronic tracking for reports. It is not sufficient that a person makes a report to the police station and it is physically recorded in some document and there is no
ability for seniors. The police service operates on the basis of seniority. They must implement a system whereby seniors as high up as the Commissioner’s office is able to track the progress of reports so that we could have timely and effective investigation and prosecution of matters. Thank you. [Desk thumping]

9.40 p.m.

The Minister of Agriculture, Land and Fisheries (Sen. The Hon. Clarence Rambharat): Thank you very much, Mr. Vice-President. Mr. Vice-President, the Commissioner of Police has advised that through the transformation process, the TTPS has implemented measures and establish new systems and structures with a view to ensuring that all police officers promptly attend to reports of violent crimes. Multiagency involvement also assist with ensuring there is follow-up. So, Mr. Vice-President, these systems and structures also address proper follow-up action protocols and these are now in place.

Mr. Vice-President, some of the specific measures are as follows and they relate to 11 measures in respect of investigators and eight measures in respect of supervisors:

1. All victims are given a receipt and this ensures accountability for each and every report.
2. Statements should as far as practicable be recorded including the first description of the suspects, items taken, and any witnesses.
3. Where medical attention is needed, the investigators are duty bound to ensure the victim is taken for medical attention.
4. A report is submitted to the supervisor highlighting all the available facts and actions taken by the investigator.
5. The investigator engages the services of the Victim and Witness Support Unit where appropriate.
6. The investigator provides feedback to the victim on the status of the investigation. This feedback should be documented to avoid allegations of non-performance.

7. The investigators are tasked to complete an incident report form which reflects all the steps taken throughout the course of the investigations. This allows for transparency of the investigative process and ensures the victim is aware of the steps being taken to address the report effectively.

8. The investigator must assess the solvability rate of the report made. This guides investigators as to what other resources and units are needed to identify the suspect or suspects in a matter, and gather sufficient evidence.

9. And suspects are identified, the Judges Rules. All constitutional rights and criminal procedures are followed when conducting suspect interviews, ID parades, verifications, and all other evidence gathering processes.

10. In instances where sufficient evidence is obtained, the investigators are required to initiate preparation of a case file in accordance with the Criminal Procedure Rules. They are also required to liaise with the legal officer to have a well-structured file for submission.

11. And the last measure, Mr. Vice-President, in relation to investigators, once the matter reaches the court the investigator must attend the court orderly room and court as required.

And then, Mr. Vice-President, the eight measures in respect of the supervisors when they are reviewing reports of a violent crime, they must ensure the following eight things:
1. They must ensure that the investigator adheres to all the processes outlined. Deadlines must be set to ensure proper performance management and adherence to procedures.

2. Report must be reviewed and the supervisor must ensure the recommendations are made by the investigator. Where necessary, the supervisor must provide the investigator with feedback to ensure a comprehensive investigation is done.

4. In accessing the solvability factors identified, supervisor must assist the investigator in accessing resources in using the internal system put in place by the Commissioner of Police.

5. The supervisor must brief and guide the investigators through the proper criminal procedures to interview suspects and turn intelligence gathered into evidence.

6. The supervisor must review and confirm incident reports outlining actions that are taken, and the supervisor must ensure that feedback is provided on the status of the investigation to the victim and that feedback is documented.

7. Supervisor must review the case file preparation processes used by the investigator to ensure a well-structured file is submitted to court; and

8. The supervisor must ensure that the investigators attend the court orderly room and court, and the supervisor must initiate disciplinary action for failure to comply.

In addition to the 11 measures for the investigators and eight for the supervisors, Mr. Vice-President, there is oversight. So whilst the overall investigation is headed by an investigator, support systems and multiple levels of supervisions are in place to ensure that each report that is made is treated equally,
fairly, and all available resources, once applicable to the investigation are made available for a successful outcome of these violent crimes.

Finally, Mr. Vice-President, the Commissioner of Police says, this reporting structure and system allows for integrity of the investigation. The protection of information, evidence, media, and press control which is vital to the successful apprehension of a suspect or suspects. I thank you very much, Mr. Vice-President, and I thank Sen. Lutchmedial for this Motion. [Desk thumping]

*Question put and agreed to.*

*Senate adjourned accordingly.*

*Adjourned at 9.46 p.m.*