

*Leave of Absence**Friday, March 21, 1997***HOUSE OF REPRESENTATIVES***Friday, March 21, 1997*

The House met at 1.30 p.m.

PRAYERS[MR. SPEAKER *in the Chair*]**LEAVE OF ABSENCE**

Mr. Speaker: Hon. Members, I wish to advise that I have received communication from the Member for Laventille East/Morvant, who has a death in his family and was excused from today's sitting.

DEFINITE URGENT MATTER

**Atlantic LNG Company
(Discrimination of)**

Mr. Hedwige Bereaux [*La Brea*]: Mr. Speaker, earlier today, I wrote to you requesting the opportunity to raise under Standing Order 12 (1) and (2), a definite matter of urgent public importance, to wit, the illegal and discriminatory hiring practices being carried out at the site of the liquefied natural gas plant which is being constructed at Point Fortin in the Ward of La Brea and the refusal by Atlantic LNG Company, its agents and contractors, to hire persons from Point Fortin and its environs.

The matter is definite because it involves discrimination against the people of Salazar Trace, Point Fortin—in the constituency of La Brea and its environs—by denying them job opportunities in favour of persons from as far afield as Venezuela, in respect of menial unskilled employment.

It is urgent because while this state of affairs persists, the people of Point Fortin in the southwest peninsula—where the unemployment rate is higher than the national average—continue to live beneath the poverty line and are deprived, unjustly, of opportunities to earn a living.

It is of public importance because large tax incentives, state lands, and other facilities have been contributed in order to make the Atlantic LNG project a success. The failure of the promoters of this project to honour their obligations to the nation and, in particular, to the people of Point Fortin and its environs, is a matter which is of importance and interest to the public.

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Moreover, when such breach includes the breaking of the law, by hiring undocumented aliens, namely, Venezuelans without work permits, to do tasks which thousands of Trinidadians and Tobagonians are qualified and willing to do, then the public interest is at stake.

Thank you.

Hon. Speaker: Hon. Members, I am not satisfied that this matter qualifies, and therefore, I deny leave.

FINANCE COMMITTEE

The Attorney General (Hon. Ramesh Lawrence Maharaj): Mr. Speaker, I beg to move,

That this House now resolve itself into Finance Committee to consider matters relating to the 1996 Accounts.

Question proposed.

Question put and agreed to.

Mr. Speaker: Hon. Members, before the House goes into Finance Committee I do have to advise all persons other than Members of the House, that the Standing Orders do not permit strangers being present when the Finance Committee is meeting. In the circumstances, I am constrained to ask that the House be cleared for that period while they are in Finance Committee.

1.37 p.m.: *House resolved itself into Finance Committee.*

1.55 p.m.: *House resumed.*

The Minister of Finance and Minister of Tourism (Sen. The Hon. Brian Kuei Tung): Mr. Speaker, I beg to advise that the Finance Committee has met and has considered matters relating to the 1996 accounts and the Finance Committee will submit a report to the House on Wednesday, March 26, 1997 at 1.30 p.m.

PRINCE ADE TOCUMBO SIJUWADE

Mr. Speaker: Hon. Members, before we get to the next item on the Order Paper, I wish to indicate to the House that we do have seated in the distinguished persons gallery today, a distinguished visitor in the person of Prince Ade Tocumbo Sijuwade who is the son of the Ooni of Ife. [*Desk thumping*] Our distinguished visitor has been here because he was one of the guests at the recent swearing-in of the President and I simply wish to welcome him to this distinguished place.

COMPANIES (AMDT.) BILL

Order for second reading read.

The Minister of Legal Affairs (Hon. Kamla Persad-Bissessar): Thank you, Mr. Speaker, I beg to move,

That a Bill to amend the Companies Act, 1995, be now read a second time.

Mr. Speaker, new companies legislation is a very important component in the strategy to improve and enhance the investor-friendly climate of Trinidad and Tobago and to make our nation a leading financial centre. Bearing this in mind, Government has embarked on modernization of our laws and infrastructure with reference to those dealing with business activity, as this Parliament has recently witnessed the passage of a series of laws relating, for example, to the field of intellectual property.

Whilst we are doing this in terms of legislation, the entire package of legislation has gone through this Parliament. We are also witnessing a burgeoning of economic activity in Trinidad and Tobago, in my respectful view. In order to expand and encourage that, Mr. Speaker—a positive and welcome trend—there is no doubt that we need to have modern companies' law which will treat with the challenges of the contemporary business world and which will address the needs and concerns of the people of Trinidad and Tobago, as well as that of potential investors. At the same time, the law must be in clear and simple language, and simple to administer and interpret as far as that is possible.

We recognize that the new legislation, in spite of all that we have done to simplify it, will pose challenges to all of us in some form or fashion. Many of the challenges will impact, to a great extent, on the main regulatory agency called upon to administer the legislation. This is the Registrar General's Department, specifically the Companies Registry of that department. There is an ever increasing demand for the services provided by the Companies Registry which, in itself, is some measure of proof of the expanding economic activity in our country.

Mr. Speaker, you will be happy to know that there are, at this time, approximately 25,000 companies incorporated under the existing Companies Ordinance, and this number has been increasing by 1,500 to 2,000 each year. The Registry, however—despite this increase in companies being incorporated—has been burdened by a lack of sufficient and appropriate human as well as other resources. Whilst we bring this new legislation into place, at the same time the infrastructure must be developed

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within the functioning of the Companies Registry in order for that Act to be administered and regulated efficiently. Work is proceeding at that Registry to deal with the increased work load and Government has embarked on a very comprehensive, institutional strengthening and modernizing programme for that Registry including, increased and appropriate staffing, automation and other equipment.

At the beginning of this year the hon. Prime Minister indicated very clearly that 1997 would be a year for action and we are very happy that a piece of legislation that has gone through three Governments will finally come on our statute books, and I speak of the companies legislation. As Members would know, this piece of legislation has been in the pipeline for many, many years, and I would indicate when it started and give a short history of what took place, because the import of the legislation that is before us is important to understand. The main purpose of this Act that we are dealing with now, and of the 1995 Companies Act, passed in the Parliament but not yet proclaimed, is to provide an up-to-date, comprehensive and practical law to govern the activities of companies operating in Trinidad and Tobago.

The importance of the Act, Mr. Speaker, cannot be overstated and some persons have said that the Companies Act is like a Constitution for companies. In the same way that the basic law of our society is the Constitution; in the same way the companies legislation, as amended, would provide basic law and a sort of Constitutional framework for companies operating in Trinidad and Tobago. It must be remembered that in our country today, and elsewhere, the limited liability company is the principal form of business association for carrying out economic activity and investment, and it is essential to the economic well-being of practically every nation on earth.

2.05 p.m.

It provides a mechanism through which investment is made, jobs are created and revenue is generated for the betterment of society. The importance of this Act lies not only in its applicability to local entities, but also to the ability of the country to attract foreign investment. It is part of the policy of the Government to attract direct investment into this country, as well as local investment, to assist in our general economic development. We can only do this within a stable and fair legal framework, and one of the pillars of such a framework would be the companies legislation.

Mr. Speaker, whilst our present Ordinance has served us well up to date, it is very clear that it must be updated, and modernized, so as to increase the attractiveness of Trinidad and Tobago to that foreign investment that we want, and establish a firm legal foundation for expanding our economy.

This Companies (Amdt.) Bill 1997 has proved necessary in order to introduce a wide variety of technical and practical amendments found to be required in the new Companies Act of 1995 which was passed, subject to proclamation, in November 1995. That Act adopted an entirely new system of company law to replace the companies ordinance, and that companies ordinance as you may well know, was based on the 1929 United Kingdom legislation, definitely out of date, Mr. Speaker.

Mr. Speaker, the 1995 Act, as far as I am advised, has been in the making since 1987—this is why I said it has gone through three Governments—under the then NAR government. Thereafter, a draft bill was submitted to the NAR Government in 1991 on behalf of a committee of private professionals, and it was based on the Canadian Business Corporations Act, and a document known as a Caricom Working Draft, and a new Barbados Companies Act. Before being passed into law Mr. Speaker, the 1995 Act did not appear to have received the close analysis and review that was necessary by the professionals versed in the practice of company law, and that was felt to be essential before the law could be proclaimed.

Mr. Speaker, earlier bills had been presented to the Parliament in 1993 and 1994, and joint select committees were appointed each year to review them. Those joint select committees in 1995 proceeded to review the Bill clause by clause. It completed work on another piece of the legislation, the Securities Industries Bill, but it was obliged to report that it had not been able to complete its work on the Companies Bill. That 1995 Bill however, was passed as indicated in the Parliament.

Mr. Valley: Could the Member kindly point to the section where the committee reported that it was unable to complete its work?

Hon. K. Persad-Bissessar: Certainly. I will do so before the end of the reading. To the credit of the then Government Mr. Speaker, at that time when the Bill was passed in November 1995, the then Government gave an undertaking that it would not be proclaimed until certain amendments had been made and in fact the events of 1995 thereafter, caused some uncertainty again as to whether the new Government would continue with the 1995 Act or whether we would repeal

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that and bring an entirely new piece of legislation. It took us some time to give consideration to that matter, and then we decided to continue consultations because there had already been a great deal of consultation on the new companies law.

We were concerned Mr. Speaker, that on proclamation of the Act, it should work properly in every respect, and to this end the Legislative Review Committee of Cabinet co-opted a sub committee, a selection of practising lawyers and accountants who assisted us with their comments and who have helped us to produce the Bill that is presently before the Parliament. Mr. Speaker, I would like to record Government's gratitude to all those who have worked on this amended Bill and several of them are with us here today.

In particular, I would like to thank and pay tribute to the Chamber of Commerce and the representatives who served on the committee: Mr. Gerald Furness-Smith and Mr. Mark Ramkerrysingh. We also had the assistance of Mr. Timothy Hamel-Smith, Mrs. Stephanie Daly, Miss Ira Lakhan, Mrs. Judy Chang, Mr. Andrew Johnson, Miss Susan Harrysingh, Mr. David Collins, and from the Ministry of Legal Affairs, Mr. Robert Chee You. The assistant registrar in charge of the Companies Registry, Mr. Francis Sandy, and Mr. Ian Macintyre, a draftsman from the Ministry of the Attorney General. All these persons were meeting from January of this year, Mr. Speaker, and put in a great deal of work in order to produce the Bill that is the subject of this debate.

Mr. Speaker, in looking at the Bill it is clear that it covers a very wide range of amendments, mostly of a very technical nature. Time will not permit us to go into a full explanation with respect to each of the amendments, and the explanatory note does give a sort of synopsis of those. I will attempt, in the time here, to explain the principles which governed our work in preparing this Bill, and to give some illustrations of some of the more important amendments and the practical effects. Certainly, if there are others that I may not have spoken on—specific amendments—that Members want us to explain, I would be very happy to do so.

One of the major objections to the 1995 Act, as it stood, was the ambiguity in it, with respect to its application to all existing companies referred to in the 1995 Act as former-Act companies. The Act appears to require such companies to comply with the provisions of the Act immediately—that was the 1995 Act—and to be subject to its provisions although they did not have to be continued under the Act for a period of two years. On considering that, it appears that it would have

been better to permit such companies to continue subject to the former Act, until they are continued subject only to a small number of the new provisions which would apply to them at once, and which are noted in paragraph 2 of the explanatory note. Clause 185 of the Bill amends accordingly.

This ambiguity for existing companies is further illustrated by the position in relation to companies limited by guarantee formed under our Companies Ordinance. No provision was made for such a company under the new Act, and it would not have been able to be continued under the new Act, since it provided that if not having a share capital—which is the position in most of those cases—they would have to be continued as non-profit companies, and for that status, in most cases, they would not have been able to qualify. Our amendments now permit such companies to be continued as said companies, and to be formed under the new Act as required.

Mr. Speaker, it seemed unfortunate that we seemed to abolish a mechanism, which had been found to be useful in practice and we felt that there would be no harm in permitting continued flexibility in this respect. In this and other respects, our guiding principle in preparing the Bill has been one of common sense, and what provisions would have caused the least disruption in business life and in company law practice. As illustrations I would point to some of those.

One of those had to do with the doctrine of constructive notice, and not applying to charges registered under Part VI of the Act. The amendment in clause 14 of the Bill, states that the abolition of the doctrine of constructive or presumed notice will not apply to charges registered under Part VI of the Act.

Section 24 of the 1995 Act abolished this doctrine of presumed notice under which persons dealing with a company were presumed to have notice of any corporate documents filed with the Companies Registry. This caused injustice because persons dealing with the company would be presumed to have fully read and considered the small print in the Memorandum and Articles of Association. But whilst this amendment—abolishing of the doctrine of presumed or constructive notice—is a major feature of Canadian law, that law does not appear to have been part of our system of registration of charges, which is an important mechanism for enabling companies to get credit and give their creditors some assurance that when they have filed the notice of their security they have full priority in respect of it.

2.15 p.m.

The effectiveness of such a provision depends to a considerable extent on the doctrine of presumed notice of such register of charges which the 1995 Act was

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abolishing. The result would have extraordinary confusion with respect to companies charges and great difficulties for companies securing credit, or the continuance of the credit arrangement. There seemed little point in our law requiring such a register which no one would have been obliged to check, so we have made amendments accordingly.

Another illustration was with respect to the definition of “debenture” in the 1995 Act, which is important because new and elaborate provisions are made requiring deeds of trust and other formalities, in respect of debentures. That definition was so wide that it would have included not only the kind of security instrument for the protection of long-term lenders to a company, but also routine instruments, such as cheques, promissory notes, bills of exchange and letters of credit. We have amended that as shown in clause 311(i) accordingly, Mr. Speaker.

Similarly, the definition of “Special Resolution” has been amended, clause 3(s). In the 1995 Act, it was changed to exclude a resolution signed by all shareholders without the necessity of a meeting. There seemed to us no point in changing the existing practice, so we have proposed to restore it, and that is contained in clause 3(s) of the Bill.

The framers of the 1995 Act, Mr. Speaker, considered that only individuals should be directors, perhaps, out of concern, to enforce higher standards now required of directors. We were advised, in our consultations, that this would cause considerable inconvenience in practice and it seemed that there were sufficient provisions in the law to pursue any liability of directors against a limited liability company. It is noted that the advice has been confirmed by the Barbados experience, where they amended their law in 1991 to allow companies to be directors. Therefore, clause 32 of our Bill accordingly amends section 64 of the 1995 Act by inserting the words “a body corporate”, thereby allowing limited liability companies to hold directorships on other companies.

Section 107 made far-reaching changes within the 1995 Act with respect to share transfers, from which it appeared that doubt would be cast on existing rights of shareholders in private companies to restrict such transfers, and this has been generally corrected by suitable amendments to section 107. Clause 47 of the Bill amends accordingly.

The present 1995 Act, Mr. Speaker, insisted on a trust deed for any issue of debentures, including a single debenture, so as to secure a routine bank overdraft.

This we thought unadvised and should be corrected. We have done so by an amendment to section 282 as shown in clause 102 of the amended Bill.

We also found that the new 1995 Act, while imposing up-to-date provisions, applied sometimes elaborate provisions to all companies, indiscriminately, without regard to the type of company. For instance, section 125 of the 1995 Act imposes a requirement of shareholders' lists being prepared before every annual general meeting. In the case of small, non-public companies, this—from the advice given to us—would appear to provide no additional protection, but would have placed a burden on a very small company. Clause 55(A) and (B) propose that this requirement should be restricted to public and larger companies with 25 or more shareholders.

We also propose to make amendments to the provision of section 143 of the Act, to limit the complicated, new, proxy requirements to the same companies, that is companies which are public companies and have more than 25 shareholders. Clause 59 amends that accordingly.

Thus, we are saying we have made this distinction between the public companies and those with 25 or more shareholders, as versus the smaller companies of less than that number and non-public companies, so that the burden on them would not be as great as that for the public and larger companies.

The provisions relating to external companies in Part V Division 2 of the 1995 Act dealing with the registration of foreign companies conducting business in Trinidad and Tobago, we are advised, might be misunderstood as appearing to discriminate against such companies and to impose considerable extra burdens, so those provisions have been amended and radically redrafted accordingly. This means that foreign companies were being required to carry out certain duties under this statute that were not required by local companies, and we felt that this would be discriminating against such companies. The penalties associated with external companies, as well, have now been equated to those of local companies. Nevertheless, as at present, the law relating to those companies is not precisely the same for the foreign companies as for local ones and provision is made for the public protection which has not been interfered with. Therefore, while some of the provisions have been equated, there are still differences between the requirements for foreign companies, that is, the external companies, and the local companies.

The time in which such a company may be continued under the new Act has been extended from one year to 18 months. Under the 1995 Act the external

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companies had one year within which to comply to be continued under the new legislation, and local companies had a period of two years, the requirement has now been changed.

Mr. Speaker, we have also borrowed some provisions from the companies laws of other jurisdictions because it was believed that they provided good precedents for our legislation. For example, in clause 38 of the Bill, provision is made that no shares may be issued unless first offered to the shareholders of the company, unless otherwise provided in the articles. We were advised that this provision could have proved a considerable embarrassment to the development of Trinidad and Tobago as an international financial centre, because it made no provision as to how such offer should be made, and the laws of some other countries, particularly, the United States, imposed penalties on offering shares through the posts which do not apply to their security laws. It seemed sensible, therefore, to adopt the up-to-date provisions of the United Kingdom Companies Act, which address this problem, requiring that such offers be made only to an address in Trinidad and Tobago.

It should also be noticed that the Act provides in various respects for firms to be auditors or secretaries of a company. A firm is not, in itself, a legal entity or a person known to law and it appeared necessary for proper provision to be made for it to be subject to criminal penalties in the same way as any individual, auditor or secretary, offending against the Act. Clause 184 of the amending Bill introducing Section 517(A) is adopted from the United Kingdom legislation.

We have also tried in the amended Bill to assimilate, as far as possible, some of the provisions of the Canadian Business Corporation Act. It would be noticed, for example, in paragraph 5 of the explanatory note of this Bill, that in many cases we have assimilated the language of the Canadian Act. We have done this basically because we believed that we would be able to benefit from the jurisprudence that would be available under the Canadian legislation and, therefore, there would be recourse to that jurisprudence in interpreting and dealing with our legislation. Although the Act is generally, clearly modelled on the Canadian provisions, we found that in every section where the Canadian provisions could be adopted, the language had been altered apparently, merely sometimes for the sake of establishing a difference from the foreign law and sometimes without fully understanding the purpose of the Canadian sections being copied.

2.25 p.m.

This seemed to be misconceived and unless we found good grounds due to local conditions not to adopt the Canadian language, we have reverted to the precise wording used in the Canadian Business Corporations Act. This we were advised, would allow the legal practitioners and others who would be using and interpreting the legislation, to have access to Canadian authorities whether in terms of precedents, textbooks and other commentaries which would provide them with some guidance in dealing with questions which would undoubtedly arise. Whilst the Bill adopts, as I said, generally the new Canadian provisions, including the imposition of considerably stricter liabilities on directors, section 104 of the 1995 Act did not adopt the slightly more generous Canadian provisions for indemnity by a company of its directors. This, in the circumstances, seems to be a mistake and we have proposed an amendment accordingly to have this corrected.

We have also retained some of the provisions from our existing law, that is, the existing Companies Ordinance. With respect to that existing law—the Companies Ordinance Chap. 31:01—it is repealed by the 1995 Act and is to continue to be enforced only in respect of former Companies Act for a limited period. The framers of the Act proposed that we should adopt the modern and up-to-date provisions of the Canadian Act and the Caricom working draft. The explanatory note to the bill for the Act stated that in respect of the winding-up provisions, because this provision worked well, they would be retained—that is, the provisions within our existing Companies Ordinance. Notwithstanding that statement, a close examination finds that a very large number of changes were made to the existing law in this respect, all of which were found to be unjustified. (Paragraph six of the explanatory note). This Bill, therefore, re-establishes the existing law and practice in those respects which are of course, very technical areas.

It was also found, Mr. Speaker, that changes were made in the existing law with respect to registration of charges, although those provisions were generally continued. In the absence of very clear explanations why an existing law or practice was undesirable, we saw no reason for it being changed and in all those cases we have reverted to the existing well-established language so in that sense we would have least disruption to the legislation and those who practise in that area of the law.

Mr. Speaker, the regulations for the Companies legislation have been drafted and would be laid very shortly in Parliament so that those will be ready to go. We

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are hoping that once we could get the approval of this honourable House when this legislation is passed, we would be able to have it proclaimed in April of this year. It is our respectful view—and I am sure that Members of this House would agree—that the new legislation is long overdue. As I have said, we have been operating on 1929 legislation.

In the other place, Mr. Speaker, I made it very clear that this piece of legislation and the proclamation of it, when it becomes law finally, would be the result of the work that has been carried out by the former NAR administration, by the former PNM administration, culminating in work done by the present administration. So that it has a long history; it has been the subject of wide consultation in our respectful view; it has gone through the academics, the lawyers, the accountants and the auditors—all those persons who would have to deal with this area of the law—and we feel that it is more than time that we have modern and up-to-date legislation with respect to companies in this country.

It is also our view that any piece of legislation is not fixed in stone; it can be amended. We envisage that as this new legislation comes on stream, as we work with it on a day-to-day basis, it may become necessary to make further amendments, but it is our respectful view that we should not delay further but that we should have new legislation on the statute books and deal with any difficulties that may arise after proclamation as those arise, and if they arise.

In addition, Mr. Speaker, we have already started putting into place, mechanisms in terms of public education—if I may use that term—with respect to the new legislation. It is new, not because we are just going to have it passed and proclaimed, but new in the sense that it is based on the jurisprudence of the Canadian legislation, largely. We have been accustomed, in this jurisdiction, to legislation in the area of company law based on the United Kingdom model, so that there is going to be that kind of change and, therefore, it would be necessary to have as far as possible, seminars and public education with respect to that. I have already started discussions with the Chamber of Commerce and the accountants who have all agreed to assist us in hosting a one-day seminar to start with, in the month of May with respect to the new Companies Act.

Mr. Speaker, I trust that Members of this honourable House will understand the importance of this legislation.

Mrs. Robinson-Regis: Mr. Speaker, before the Minister concludes, I just wanted to point out that she was not very specific with regard to time for the

regulations and it is very clear that if the regulations are not in place, then the legislation cannot operate. So can we get some more clarification on that?

Hon. K. Persad-Bissessar: I thought I had done so and I apologize if I did not. These are, in fact, the regulations. They are all fully drafted and would be laid in Parliament before proclamation of the legislation and I have said that the legislation is to be proclaimed in April of 1997. I know that we have given a date before. I remember questions being filed in this Parliament, and we have said last year that we would want to do it by September. I remember having said that, but when we started the consultations, there was so much that was coming from the consultations—so many suggestions for changes and amendments—that we had to go through that consultative process to ensure that we would have legislation that would work and that the persons who practise in that area and who use that area of the law, would have been satisfied with what was eventually put into place. So we took that time and it is my respectful view that the amending Bill is technically sound, the 1995 Act with these amendments will be technically sound and we can get it to work.

The decision that we had to make was whether we would cast away—and I was saying, there was a great deal of concern as to the fact that the 1995 legislation was based on the Canadian model and not on the normal United Kingdom model. There were many who were advocating that we should throw away the 1995 legislation completely and draft again to bring back a United Kingdom model, and we weighed the pros and cons of that. With so much work already gone into the 1995 Act—and as I said, two governments had already spent so much time, effort and energy in drafting that—it was felt by the Members of the committee and the consultations that we had, that it was best not to throw away that work, but instead, to make the amendments appropriately and keep the legislation as it was. The persons who had raised concerns with respect to that very issue that we were now adopting the Canadian model instead of United Kingdom model, as I said, have gone through this thoroughly and they have indicated that they are satisfied with the amendments that are in place.

I would like, again, to ask this honourable House to join with us in thanking the Members of the committee, the Chamber of Commerce, Mr. Gerald Furness-Smith and all the others who have worked tirelessly on this.

There are two ladies to whom I would like to pay special tribute for their work on the legislation. One is Mrs. Judy Chang, who was originally a member of the joint

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select committee. She has been with this legislation from the first day and she has not left it alone; she has stayed with it and worked with it. So I ask you to join with us in thanking her. [*Desk thumping*]

2.35 p.m.

Mrs. Stephanie Daly has contributed a great deal of work on this particular piece of legislation. What she has done for us—and I had indicated that we would have copies in the Parliament—was to take the 1995 Companies Act which, in itself, was a very bulky document, together with the 1997 amendments and made a consolidated version. Of course, this is not the official copy but I have been speaking with the hon. Attorney General and members of his office and they have indicated that the Law Commission would move apace to have the official consolidated version, because it will become very difficult for those who have to practise in this area of the law if we operate with the 1995 Act and then the 1997 amended Bill which would become an Act as well.

As I said, Stephanie Daly has been very kind to put in place a draft consolidated version. I thank Mrs. Daly for her work on this and, of course, all the other members of the committee who have worked. They are: Mr. Gerald Furness-Smith, Mr. Philip Hamel-Smith, Mr. Timothy Hamel-Smith, Mrs. Stephanie Daly, Miss Ira Lakhan—I mentioned Mrs. Judy Chang and her special work on this legislation—Mr. Andrew Johnson, Miss Susan Harrysingh, Mr. Francis Sandy, Mr. Ian Macintyre, Mr. David Collins, Mr. Mark Ramkerrysingh and Mr. Robert Chee You. I thank all these people very much and I trust that with their comments and suggestions we would be able to have this Bill passed in this honourable House.

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

Question proposed.

Mr. Kenneth Valley (*Diego Martin Central*): Mr. Speaker, I want to start where the hon. Minister ended because I want to add my words of congratulations to the team which has worked on this amendment Bill, and more importantly, those persons who have been associated with this legislation throughout the time. As a fact, our quest for new companies legislation dates back to somewhere around 1971 and not really 1987. There were various false starts in 1993 and 1994. We got to the point where we got Bills to the Parliament. On both occasions, those Bills lapsed and in 1995 when the Bill was reintroduced, we took the position that it should go directly to a joint select committee of the House which worked on the legislation and the Bill was passed in October of 1995.

There was some urgency with respect to the matter because we did not want that bill to lapse once more. The Parliament legally had to be prorogued by October 14 of that year, and given that the committee finished its work only in August/September of that year, there was some urgency in getting the Bill passed.

I interjected the Minister on a point of clarification with respect to the point she was making that the committee reported that it was unable to complete its work, and though the Minister undertook to come back to that point before the end of her contribution, she has not, so one has to assume that she would do it in her winding up.

For the purpose of the Parliament, perhaps I should put on the record the report of the committee with respect to the Companies Bill, 1995. I should make the point that the committee considered two Bills at that time, the Securities Industry Bill as well as the Companies Bill. With respect to the Companies Bill, the committee had this to say:

“Throughout its deliberations on the Companies Bill, 1995, Mr. Ian Macintyre, Parliamentary Counsel, one of the persons involved in the drafting of this Bill, was present.

Although your Committee has dealt with the Companies Bill, 1995 to the best of its ability, there were severe limitations on the capacity of your Committee to treat with certain issues because of:

- (a) the highly complex and bulky nature of this Bill;
- (b) at no time did your Committee have the benefit of the full breadth of talent that comprised it.

Report and Recommendations:

Your Committee wishes to report that it has completed its deliberations on the Securities Industry Bill, 1995 and the Companies Bill, 1995 and recommends that these Bills be accepted by the House of Representatives and the Senate, subject to the amendments listed in Appendix I and Appendix II respectively.

The Committee further recommends that in a period no longer than 9 months from the Bill’s passage, that Government bring amendments to Parliament that would arise from practical concerns in its implementation.”

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One notes, quite clearly, that the committee at no time stated that it did not complete its work. The committee made the point that, yes, there were certain constraints. The fact is, with respect to the Companies Bill, there were some eight sittings. I was a Member of that committee and I can tell you, Mr. Speaker, I attended eight sittings, but there were three Members on the other side—the Opposition at that time—and not one of them could have boasted of attending all sittings. As a matter of fact, one was ill; one attended three sittings, and I think one spent more time in Guyana than in Trinidad and Tobago. But they just did not attend the sittings so the committee did not have the full breadth of the talent available to it.

Note also, Mr. Speaker, nowhere in the committee's report did the committee state that they will not proclaim the Act and there were certain amendments to be made. What the committee said was that given the operations of the Bill, or over that period, as a fact, there were some issues of a critical nature. I think Minister Mottley, in piloting the Bill, made the point that some issues of a critical nature may arise; something that we did not pick up, so that we would not proclaim the Bill at the time but we would give an undertaking that it would not be proclaimed until April 1, 1996 so as to allow whatever adjustments to be made.

The fact that the Minister has taken a year longer is not really critical in the scheme of things. I would be the first to admit that, given the history of this legislation. I am informed also that the people who have to use this legislation: the accountants, lawyers, and so forth, are now happy. I must say I am extremely pleased that those who were on the parallel line, that is, wanting the English precedent to continue, have now agreed that we should hitch our wagon to this part of the world and follow the Canadian precedent as our neighbours are doing, given that we are talking about the ACS, the free trade of the Americas, and so forth. Given that we are really concentrating on this part of the world, it makes good sense to hitch our wagon to the Canadian precedent. I am glad that they have now accepted that fact.

As the Minister said also, there would be further amendments. As this Act is proclaimed and as issues go to court, and so forth, things which no committee can consider sitting in a room, would come to light. So that, yes, we know that we are going to be back here making amendments as we go forth. But as I said, when that debate was completed in 1995, I was extremely pleased that, in fact, after some 30 years, we were getting modern companies legislation on the books.

2.45 p.m.

Mr. Speaker, it is not simply that we had been operating under the 1929 legislation. That 1929 legislation, itself, is based on an 1862 precedent. So, really there is that need for modern companies legislation for all participants whether they be accountants or lawyers who are for the English or Canadian precedents.

So, Mr. Speaker, I am extremely pleased that we are moving to proclaim this legislation come April, but there are other issues, of course. When we postponed, deferred or delayed the proclamation of the Act last year, the then Minister of Finance, Mr. Mottley, made the point quite clearly that other than things cropping up that were of a crucial nature, the government had many administrative things to do; meaning that it had to put its administrative house in order. There was an IADB loan to assist with the administrative upgrading and one hopes it is in the works and is going to be ready for the operation of this legislation. In other words, one hopes that we are working with a jigsaw; while we are putting this piece in place, the Minister is ensuring that the administrative infrastructure is in place. I would hope that is so.

Mr. Speaker, I make the point, however, that while the modern companies legislation is an important element in the infrastructure for investment—and this is what it is—we need modern companies legislation so that the business people would know the rules of the game; there would be protection for investors, minorities and so forth. It is important to understand that modern companies legislation is in itself not a sufficient condition for attracting investment and I hope that the Government looks at the other critical elements.

Mr. Speaker, one of those, obviously, is in the area of trade agreements. If we want to attract persons to locate in Trinidad and Tobago, then we must be able to tell them that we have favourable trade agreements with the countries around us. I am amazed that even though Caricom has now accepted the Exceptions Agreement—and that was some time ago—when we demitted office in 1995 I thought we were there. *[Interruption]* You are really taking over the Minister of Trade and Industry's work. I thought we were there. Caricom approved that agreement shortly thereafter, but it is almost one year. I know Venezuela and Colombia are ready.

Mr. Maraj: That is going on all now.

Mr. K. Valley: But it is a whole year. The point I am making is that the pace of implementation seems to have slowed. All I am saying is that if we want to

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attract investment we have to put the other pieces of the puzzle in place. I am glad that is going on, but let us speed it up. Colombia and Venezuela are ready and we hope that we would have those agreements rather quickly.

Mr. Speaker, there is also the area of business confidence and one sees it in the slide of our currency. That is the function of a number of things: a function of overall government operations—the kind that is in Trinidad and Tobago at present. It seems to me that kidnapping is now becoming a norm in Trinidad and Tobago, and if we are to attract investments we have to know that business confidence has increased.

For example, when one sees that even though our foreign exchange is increasing but the supply available for trading purposes is decreasing so that the dollar is deteriorating, one knows that something is wrong and one has to address that problem. We have to deal with that. One also has to look at the area of domestic savings. If, in fact, in our policy prescriptions we are putting things in place that are going to be disincentives to domestic savings, as was done in the last budget, then obviously we are not providing a platform for investment.

So, Mr. Speaker, while we are pleased that the companies legislation would, in fact, now be proclaimed—and we are not even complaining about the year longer it has taken; because as I said, in the normal course of things that is a short time—given the history of the legislation I am asking, however, that the Government pays some attention to these other critical areas so that we can really get our investment moving.

I say this because if we are to deal with the issue of poverty and other social issues, we have to be more income-generating as a country. Because, while we delay on these things, it means that we are also delaying in dealing with the dispossessed, the poor and so forth and that is my concern. When we do that, obviously, there is a correlation with crime.

Mr. Speaker, I also think we need to pay a bit more attention to bringing the ordinary man into the mainstream. On the question of the concept of entrepreneurship and the cottage industry, what has been happening with the Export Trading Company? When the Export Trading Company was established, one thought that company would feed from the community organizations and find markets externally so that the people in the community would get involved in the mainstream of business also.

Mr. Speaker, I ask that the Government pay some attention to getting the communities involved with whatever they can do, and using the mechanism of the Export Trading Company to market the products externally. I say these things because, as I said, the whole purpose of our being here, as I see it, is to ensure that systems are in place so that the standard of living of all of us can be improved; more particularly, that we can assist the poor and dispossessed.

We on this side have no problem with this legislation. More than that, we are extremely happy that we are moving to the proclamation of this legislation and one hopes that very soon we would see the appropriate Minister coming to this House with the new investment legislation.

Again, when we demitted office there was legislation in the works which I have heard nothing about during the course of the last year and four months. Again, it is all agreed that we need new investment legislation, and moving away from the concept of a Foreign Investment Act, we have signed bilateral investment treaties. One expects the investment legislation to mirror those agreements, but there is need for that legislation. Mr. Speaker, one hopes that the Government will also see it fit to bring that legislation to Parliament in the near future.

With these few words, Mr. Speaker, we on this side lend our support to the legislation before us.

I thank you.

2.55 p.m.

The Minister of Trade and Industry and Minister of Consumer Affairs (Hon. Mervyn Assam): Mr. Speaker, I will be very brief in lending my support to the amendment to the Companies Act, 1995. We, on this side of the House, are very pleased and delighted that we got this total support from Members opposite. I have been equally advised that in the other place the support was just as unanimous. I am extremely happy that we have reached this stage because as the Minister responsible for Trade and Industry, it is another very important step forward in the modernization of Trinidad and Tobago. This modernization started with the NAR administration in 1986 and continued with the PNM administration from 1991—1995. It is to their credit after many years of attempting to bring together modern company legislation, because as it has been said, we had been operating on the 1929 legislation for a long time which was modelled on the United Kingdom Act. However, the United Kingdom has revised and updated its legislation several times. We have been very much tardy in doing so.

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I am not here being immodest. When I was President of the Trinidad and Tobago Manufacturers' Association in 1977, which is exactly 20 years ago, I was a member of the committee together with Judy Chang and many others—lawyers, and accountants—looking at ways and means of updating and modernizing our Companies Act. Today, after 20 years, although my inputs may have been minuscule and insignificant, I am very happy I was part of that process and not only part of the process of doing research and making inputs, but I am today part of the team that is putting into law such a very important milestone in the Companies Bill of Trinidad and Tobago. It is a very huge Bill. Although the amendments are small, when consolidated we have an enormous Bill of 524 clauses to digest for particularly the layman and the uninitiated. And, it may be very necessary for the various relevant institutions like the Trinidad and Tobago Manufacturers' Association, the various Chambers of Commerce, the various professional bodies like the Law Association, the Accounting Association, the Association of Internal or External Auditors, whatever they are called, to be holding seminars and symposiums to start educating our companies, particularly small and medium enterprises in this country, as to the implications and the import of this Bill, particularly with respect to the responsibilities of directors.

I remember attending a seminar some time last year where this was undertaken but there is need for ongoing education and ongoing exposure as Trinidad and Tobago becomes a modern, liberalized and globalized economy, and having the most modern legislation in tune with the world and in tune with the responsibilities of our membership in the World Trade Organization, and other such international organizations.

I also want to respond, and I think the Member is entitled to make the comment, but it is important and incumbent upon me to inform this honourable House and, by extension, the national community and the Member for Diego Martin Central, who made a comment on the Export Trading Company. The Export Trading Company was intended to be a joint venture between Government and the private sector. Unfortunately, only very few members of the private sector have come forward, to date, in order to support this very important organization. This organization has been strapped for cash, particularly equity, and it has been somewhat held back in the developmental work and in the production activities.

I would like to advise this honourable House of a number of important but very positive developments. The Export Trading Company was responsible for the Expo of April 1996. If any Member of this House was present and any member of

the public attended this international exposition, it was a resounding success in many ways. Not only in terms of its financial success, but in exposing Trinidad and Tobago's manufacturers at all levels—small, medium and large companies—to other purchasers and buyers from different countries. The Export Trading Company (ETC), through this exhibition, attracted 30 foreign countries who participated at this international exposition. That is the first positive *[Interruption]* The Member for Diego Martin Central was absent when I was saying that the Export Trading Company was responsible for organizing, hosting and executing the exposition which was held at the National Stadium in April, 1996.

The second is the Export Trading Company has developed a brand name called "Buccaneer" which has been patented. There are 27 products under the Buccaneer label which we are exporting to Canada, the United States, the United Kingdom and some Caricom countries. Some of the products will also find themselves on the shelves of our local supermarkets. It consists of a whole range of jams, jellies, cordials, pepper sauce and so forth.

Mr. Valley: Mr. Speaker, I am aware of the Buccaneer brand. That was started in my time. What I am interested in knowing is whether anything has been done at the community level to have that further linkage between the communities and the Export Trading Company.

Hon. M. Assam: Mr. Speaker, the Member for Diego Martin Central is so impatient. If he would give me a chance to develop the point and to report on the Export Trading Company, he would have his answer. That was the second point I was making. Irrespective of whether it happened in his time or not, is irrelevant. The point is this is what has happened and nobody here is taking kudos or praises. The Export Trading Company has achieved that.

The third point is that we have developed a line of swim wear which is outside of the range of the Buccaneer. That line of swim wear is going very well and is being sold in places like Sweden, the United States, the United Kingdom, France, Monaco and other places.

The Export Trading Company is attempting to develop, in collaboration with the private sector, a new venue for holding its international expositions, and I keep my fingers crossed that such a facility, hopefully, should be ready for the exposition in April, 1998 where there should be a permanent exposition ground and a permanent exhibition hall; there is going to be the Free Zones Company with a facility and there will be a certain kind of synergy existing among free zones,

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EXICO, TIDCO and the Export Trading Company and the Small Business Development Company.

In order to create these synergies, I held a networking session with all 13 of the organizations reporting to the Minister of Trade and Industry and Minister of Consumer Affairs last year.

As a follow up to that I have requested Cabinet to get the various companies which impact very much on the fortunes of the export trading zones to be represented on the board. These companies are TIDCO, EXICO, the Free Zone Company and the Small Business Development Company which are to be represented at the highest level. The export centres, the spin-offs of the Small Business Development Company which are connected to the Ministry of Community Development, Culture and Women's Affairs are feeding the products which are developed and manufactured into the export trading zones.

3.05 p.m.

More than that, there is a production unit where we give contracts to farmers, small craft people and agricultural entrepreneurs. They work for us. All this is done under specifications and formulae so that they can be harmonized and there would be a similar quality and standard of product which becomes the Buccaneer line. We are incorporating small businesses and cottage industries into the efforts, thrust and export promotion of all the products which are manufactured and sold under the Buccaneer label of the export trading company.

I thought it was important for the Member for Diego Martin Central to know that it has gone beyond the time when he was the minister responsible for that company. We are trying to use the instrumentality of the joint venture capital company system to inject new funds and create further synergies with the Small Business Development Company to give a greater fillip to the export trading company. Before long the export trading company would be in the forefront of creating export improvements in Trinidad and Tobago, thus giving an opportunity to the cottage, micro and small business sector.

With these few words, I thank the Members opposite for supporting this Bill because it puts Trinidad and Tobago at the forefront of modern company legislation. It enables us to attract investors, to be part of international commerce and give that degree of uniformity and comfort to put the kind of framework that the Minister of Legal Affairs is putting in place in terms of the registry. From

henceforth, companies in Trinidad and Tobago could operate in an environment in which they feel comfortable and professionalism would prevail.

Thank you.

Mr. Barendra Sinanan (*San Fernando West*): Mr. Speaker, I rise to make a brief intervention in this debate on the Companies (Amdt.) Bill. Whether the journey started in 1971, or 1987, the fact of the matter is that the journey of modern companies legislation has been long. I congratulate the hon. Minister of Legal Affairs, the Member for Siparia, who has had the honour to bring this legislation to a climax.

I do not wish to concentrate on the contents of the legislation. This has been reviewed for many years by experts in the field such as accountants, lawyers and businessmen. In my contribution to this Bill I would focus on the Companies Registry. Legal practitioners, accountants and all those who have to use the Companies Registry complain daily about the inadequate space, trained staff and basically, its condition. In this building there is the Land Registry and that, too, is in need of modernization.

When the Minister of Works and Transport spoke during the budget debate, he indicated that the library complex would be enhanced and enlarged and, that the extra space would be rented commercially. It is clear to me and all those who use the facilities of the Land Registry and the Companies Registry at Frederick Street, that we need very large accommodation for both. To say that the Companies Registry is but a hole in the wall is being generous, because that is exactly what it is. It is no use complaining about the lack of action by previous administrations to improve that. I was happy to hear the Member for St. Joseph intimating that we must be progressive and look forward. I am throwing out a challenge to the Government to do something urgently with respect to the Land Registry which is housed at this building and the Companies Registry.

In thinking about the regulations, the hon. Minister may wish to consult those practitioners and other members of the public with the necessary expertise with respect to what can be done to improve the situation at the Companies Registry. Mr. Speaker, I do not know if you have been there. There is a long passageway off Frederick Street and one has to go down a narrow passageway to get to the Registry. At times there can be vagrants and one can be accosted or robbed there. My information and experience are that there is no full time security. That building is about 2400 sq. feet. There may be a fire vault. It is too small. In modernizing

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our laws we need to have the appropriate infrastructure to accommodate and complement the passage of these laws.

It takes a considerable amount of time to locate a file at the Companies Registry. There is a spindle system where the names of companies are listed. I think it is similar to the Kalamazoo system. Very often one may not find the name of a company on the spindle because a clerk or member of the public might have removed it. If the name cannot be found, it means that one has to check about three indices to get that name. It takes too long to locate the file of a company.

In terms of seating accommodation for the clerks who use the registry, it is woefully inadequate. My information is that there is one Registrar of Companies. If, unfortunately, that Registrar is not at the Companies Registry on any given day, no important decision can be taken. One has to wait until the Registrar is present to get a decision.

3.15 p.m.

This legislation is very comprehensive and voluminous. I hope that the Government will put some system in place, if it has not already done so, to train those clerks who staff the Companies Registry. In the case of the paper which is used in filing documents—articles, returns and so forth—perhaps we need to look at standardization, simply because the quality of paper over the years has deteriorated and, with the constant use of these books, the paper is torn and the writing faded. Perhaps the ministry can get some technical advice in terms of standardizing paper so that it would last some length of time.

Mention was made of the work of Mrs. Stephanie Daly in consolidating the amendments with the principal Act. There are 186 clauses in the Bill before us, which is approximately one-third of the sections into the Act. I am indeed happy to hear that the Law Commission will soon be looking at consolidating the amendments in the Act, on disk. This is very progressive, hon. Attorney General. It would be very difficult in the short time for practitioners to keep cross-checking. I hope that the Law Commission will soon address this matter of having the amendments and principal Act consolidated.

In closing, let me also pay tribute to and thank all those who have worked on the various committees—the accountants, the lawyers, the business organizations. I think that without their input we would not have been successful in bringing this Bill to Parliament. It was indeed very generous of these people to give of their time, free of charge, to exercise that civic-mindedness which today augurs well for

our country. I wish to support this legislation and, again, congratulate the Minister of Legal Affairs.

The Minister of Legal Affairs (Hon. Kamla Persad-Bissessar): Mr. Speaker, I thank hon. Members on both sides of this House for their support on this amending Bill and to take a few minutes to answer some of the concerns raised by the Member for San Fernando West.

I am advised by the Registrar of Companies that there is a police officer on duty at the entrance to the Companies Registry most of the time. We can certainly look into this since this is a point that the Member has raised.

The Member spoke about difficulties with the spindle and I am to inform him that computerization is now in progress. We are computing business names and the names of companies at the moment.

Whilst we did not make provision within the statute itself for paper, regulation 3 talks about standardization. The Member has raised a matter of serious concern, and that is, the whole location and layout of the Companies Registry. The hon. Member might be relatively new to this business, but one has to say that after all the years his administration was in office, the Companies Registry is in the condition that he has so aptly described. It will take us some time—*[Interruption]* I am not being ungenerous, I am just saying that I do understand. However, we also need to understand that it is not a situation that has now arisen. It has arisen over time and we will be taking steps to address that matter. The Registrar at present is dealing with modernizing that registry. We do have proposals to relocate the registry, but I am not in a position to give a date by which it will be relocated. Hopefully, some of the problems that the Member has identified will be taken up.

I thank him for the suggestion that practising attorneys assist with some of the difficulties that we experience. We have had the benefit of the assistance of some of them and we welcome the suggestions of those who would like to give them.

Finally, once again, I thank members of the committee. I dealt with two ladies who were particularly helpful with this Bill. There were also two gentlemen who worked exceedingly hard. I also thank them. They are the Assistant Registrar of Companies, Mr. Francis Sandy, who, together with the officer from the Chief Parliamentary Counsel's Department, Mr. Ian Macintyre, have worked really hard in drafting the Bill, in the first place, and then taking it for that consultation. It was pointed that Mr. Macintyre has been involved with this legislation for a very, very long time.

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I join with other Members of the House in thanking those who have been working at it over the past years. I beg to move.

Question put and agreed to.

Bill accordingly read a second time.

Bill committed to a committee of the whole House.

House in Committee.

3.25 p.m.

Clauses 1 to 13 ordered to stand part of the Bill.

Clause 14.

Question proposed, That clause 14 stand part of the Bill.

Mrs. Persad-Bissessar: Mr. Chairman, I propose that clause 14 be amended as follows:-

Delete the words "Part VI" and substitute the words "Part IV".

Question put and agreed to.

Clause 14, as amended, ordered to stand part of the Bill.

Clauses 15 to 55 ordered to stand part of the Bill.

Clause 56.

Question proposed, That clause 56 stand part of the Bill.

Mrs. Persad-Bissessar: Mr. Chairman, I propose that clause 56 be amended as follows:

Delete the word "articles" and substitute the word "by-laws".

Question put and agreed to.

Clause 56, as amended, ordered to stand part of the Bill.

Clauses 57 to 188 ordered to stand part of the Bill.

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

House resumed.

Bill reported, with amendments, read the third time and passed.

PROTECTION OF NEW PLANT VARIETIES BILL

Order for second reading read.

The Minister of Legal Affairs (Hon. Kamla Persad-Bissessar): Mr. Speaker, I beg to move,

That a Bill to provide for the protection of new varieties of plants and for matters incidental thereto, be now read a second time.

Mr. Speaker, the purpose of this Bill is to establish a system for the protection of the rights of persons who have bred, discovered and developed new plant varieties.

In simple terms, conventional plant breeding involves the identification of such useful characteristics in different plants, those that complement each other, and marrying the plants to produce a new plant with both the characteristics desired. Plant scientists describe this as a crossing of the plants—a word, I am sure, I see the Member for Diego Martin Central finds most amusing. Specimens of this new plant, exhibiting the desired balance or ratio of the required characteristics are then selected and reproduced, until a reliable and significant percentage of the offspring exhibits the desired balance, ratio or characteristics.

Mr. Speaker, some of us may be very familiar with the breeding work done with pigeon peas in Trinidad and Tobago. Traditional Tobago pigeon peas were once produced on plants that flowered in time for us to harvest between Christmas and carnival. These plants kept growing almost to the height of small trees. Dr. Royes of the University of the West Indies discovered a variety of pigeon peas down the islands that stopped growing while they flowered and produced the peas. This meant that the plants stayed shorter for a longer time. He, therefore, began to breed a new variety of pigeon peas. The problem with that was we could only get the fresh pigeon peas during the one season. Mr. Speaker, the Member for Diego Martin West could, probably, tell us a little more about this.

3.35 p.m.

Dr. Aryanagam, also from the university, selected varieties from India that bore peas at any time of the year and so he bred new varieties that were called dwarf pigeon peas.

I am advised that the Ministry of Agriculture, Land and Marine Resources and others at the university have made contributions to this effort and work is still

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continuing. There are many other examples that could spring to mind with respect to plant breeding. Trinidad and Tobago selected hybrid varieties of cocoa which have an international reputation for disease resistance just as our cocoa beans have a reputation for their flavour. These varieties were the celebrated life's work of Dr. Freeman, a dedicated breeder.

Sen. Prof. Kenny, in his contribution, supported the Bill by showing his hand as a gentleman of many talents, confessing that he had bred a new variety of orchid in Trinidad and Tobago. He also drew our attention to another feature of the Bill supported by an example, but I shall refer to that later.

Mr. Speaker, it is important to note that the combining of these useful characteristics in plant breeding is not really an art, but a process. There is very little known about this natural process. Considerable time, effort and dedication are, therefore, required to examine large numbers of plants in different conditions to produce a new and useful plant variety. Once the new variety has been brought into existence, and a plant is sold to someone else, the purchaser also acquires the potential to multiply the plant without further recompense to the plant breeder. One way for the creator to try to ensure that he receives sufficient return on his investment of time, effort and resources, would be to set a very high price for the new variety in the original sale. However, it is unlikely that there would be anyone who could afford the price that would have to be paid. The breeder would be discouraged at his loss and none of us would have the benefit of the advantages promised by his new variety.

Most people try to spread the cost of their research over as many transactions as possible, for as long a time required to cover their costs and, at least, to make a reasonable return on their creative effort. In order to accomplish this, the creator needs to be protected from the unauthorized production for the purposes of commercial marketing, the offering for sale and the marketing by others for a sufficient period of time to allow these transactions to occur. We need to create intellectual property rights for plant breeders and grant them a monopoly over the activities just mentioned for a limited time, so that the state gives this kind of protection for plant breeders.

Through the intellectual property system, the Government also allows wide legitimate access to the new variety; diminishes what could be a major disincentive to intellectual effort in this area and avoid duplication of expensive research by requiring public disclosure of information on the new variety. In fact, this is the

whole basis of intellectual property legislation that we have spoken about before. This has to do, specifically, with plant varieties, that is to say, a balancing of the rights of the creator of the product versus the distribution, dissemination of the knowledge with respect to the intellectual product to bring it into the public domain, so that others could have the benefit of that information and creativity.

The intellectual property law gives it that weighing and equity so the creator has a limited period to exploit all the rights for sale, marketing and the distribution of his product for a limited time. Thereafter, it goes into the public domain so that others could develop it and come up with further new varieties.

Mr. Speaker, that is the essence of the legislation here today; to give the protection to the plant breeders and, at the same time, to allow for—on the expiration of the limited period—others to have the benefit of the creativity. In doing the legislation, there were many issues that we had to consider in deciding the form that it should take. One of these, and most important for us in Trinidad and Tobago, is the traditional practice of farmers saving a seed from one crop for the production of the next; when they plant and harvest they would keep the seeds to put into the other crop.

Internationally, there was considerable pressure to remove the farmer's privilege, as it is known, and to require them to purchase new seeds for each crop. The reasons for this pressure are not only commercial, but technical. Complete replacement of seed crop for each crop is recommended, for example, in India, when using hybrid varieties which exhibit significant hybrid vigour. However, for other crops, the recommended replacement for seed is usually five years. As I said before, in Trinidad and Tobago our farmers tend to use their seeds, each crop. This means that the farmer could minimize the input cost of his planting material for his next crop if he is allowed this farmers' privilege. It was, therefore, important that the rights defined for the plant breeder do not prevent farmers from carrying on with this traditional practice so that we have retained that farmers' privilege.

There is also what is known as a breeder's exemption. Breeders, too, have easy access to new plant varieties so that they could carry on the work of continuous improvement. Traditionally, plant breeders have accessed genetic material freely and have often co-operated in the distribution of genetic material for the development of new varieties. If Dr. Freeman and others had no access to plant varieties from other countries they may never have had the successful results that they have achieved.

The rights provided for breeders to allow them to receive just recompense for their efforts, should not prevent other breeders from having the privilege of using that material to improve it even further. The scope of the rights allowed by this legislation is, therefore, restricted to commercial transactions involving the material concerned so that the breeders would still have that exemption. The farmers' privilege, therefore, and the breeders' exemption, as they are known, are thus not affected by the new legislation. Farmers and breeders alike could continue to use material in the traditional manner.

There is also a concern with respect to the developments in biotechnology over the last decade. This has shortened the time required for unauthorized large-scale exploitation of the work of the conventional plant breeder. While its application in plant breeding is not yet as deep or as widespread as anticipated, those areas into which it has encroached are being completely redefined. Genetic engineering currently allows a desirable characteristic to be transferred from one plant to another and this is done in plants which would not, normally, have been compatible with the first plant.

Recently, we have been reading about the genetic engineering that has taken place with the goat and sheep. We have seen all of these things happening elsewhere. This, too, has been happening in the realm of plants, ensuring that the characteristic is expressed reliably and still requires the input of a plant breeder, despite all the computerization and biotechnology that are taking place. Related techniques allow the identification of a particular characteristic in a plant even if that characteristic is not obvious to the eye.

3.45 p.m.

Again, the plant breeder is needed to draw that characteristic in a useful and stable manner. Tissue culture techniques accelerate the screening and multiplication processes dramatically, but the good breeder is still required to select the right plants to repeat the process again and again in creating new plant varieties. It appears, therefore, that these techniques of bio-technology have so far provided additional tools for the breeder, but they have not yet reduced the complex interplay of genes and the need for good plant-breeding skills.

Mr. Speaker, when Sen. Prof. Spence spoke in the other place, he pointed out an area that may require the close attention of the Intellectual Property Office that would administer this legislation. That has to do with current plant-breeding technology that will allow the creation of a variety with all the important

commercial characteristics of an existing variety; perhaps one protected under this Bill, but which may be differentiated by some other characteristic of little or no commercial importance. This new variety may, itself, be protectable. We need again to monitor the balance between the rewards of a monopoly and the stimulation of competition.

Another area we had to consider was the whole area of bio-diversity. In Trinidad and Tobago, I am sure Members will all agree, there is a large degree of bio-diversity for this very small island and this presents a major advantage for the plant breeder here. There is a large pool of genes that will give the breeder great scope for finding compatible plants with desirable characteristics. There is also a chance of discovering useful mutations. What we need to do here then, in Trinidad and Tobago, and what the Bill seeks to do, is protect this resource advantage and, we have already supported the convention on biological diversity and the convention restricting the trade in endangered species.

Now, when we dealt with this Bill in the other place, Sen. Prof. Spence brought for us a photograph of the double chaconia and, in that way, in a sense, demonstrated the tragedy of the loss of the double chaconia being credited to Trinidad and Tobago, because there was obviously nothing in place. In fact, this legislation is the first of its kind in Trinidad and Tobago to give this protection to plant breeders, Mr. Speaker.

Sen. Prof. Spence indicated to us that the tree was discovered by two citizens of Trinidad and Tobago—Mrs. Atteck and Mr. Ayoung—on a hike throughout forests. Mr. Ayoung, we are advised, took a cutting back to his colleagues in the agricultural department of the university. They in turn used the international horticultural science network to try to determine if it was indeed the new variety that they thought it was, and the news was that this plant had never been found anywhere before. So, the double chaconia was first found in Trinidad and Tobago, I am so advised by Sen. Prof. Spence.

Fortunately for us, these persons were able to propagate the single cutting because, when they returned to the spot where the original tree stood, there was now, we are advised, a beautifully cut road in place of that tree. The tree had been cut down by workers who were putting a road into place so the original tree from which the cutting was taken has been lost forever. It is fortunate for us, as I say, that these two people took the cutting and propagated it.

Now, we know that the single chaconia is the national flower of Trinidad and Tobago but, as Sen. Prof. Spence went on to point out, the single chaconia is found widely in the tropical forests of Central and South America and Trinidad and Tobago is not thought to be the centre of its origin. It is the view, however, that the double chaconia originated here in Trinidad and Tobago. It was first discovered here and the first work on propagating it was successfully carried out here in Trinidad and Tobago. In fact, Sen. Prof. Kenny was suggesting to us in the other place that we may want to consider the question of whether it should be the double chaconia being the national flower, because that was peculiar to Trinidad and Tobago and definitely a Trinidad and Tobago creation.

Mr. Speaker, that information received from Sen. Prof. Kenny, clearly highlights another of the issues that faced us in framing this legislation. How do we reward the discovery of useful mutations within the concept of intellectual property? The mere discovery such as that by Miss Atteck and Mr. Ayoung is not considered to be the kind of intellectual effort required for the new plant variety to be considered their intellectual property, because they discovered it, they took a cutting and propagated it.

To add to the complexity, most mutations are found not within the biodiversity but, on plantations of high breed varieties, for example, the planting material which is most likely to be bought from a plant breeder. The farmers who might discover such mutations often do not have the knowledge or resources to carry out a sufficiently extensive breeding and marketing programme to benefit commercially from a mutant variety.

In examining the issue, it was felt that the most useful solution to be encouraged is for the discoverer to initiate sufficient development work to establish an intellectual property claim and then surrender this claim for due consideration to the established breeder who would have the appropriate system to make it widely available. Had this law been in place at the time, Mr. Ayoung and his colleagues at the university could have agreed, when they were working, to apply jointly for ownership, should their work on propagating that solitary cutting been adjudged sufficient to be called development of that variety.

This legislation refers to new plant varieties that have been bred or discovered and developed as one of the conditions for protection.

Another issue that had to be addressed in providing for breeders' rights is the application of the intellectual property concept of novelty to forms of life. There is

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a school of thought, Mr. Speaker, and tremendous debate is going on on this, that believes that patent legislation can be used to protect new plant varieties; patent legislation, as distinct from separate legislation for plant varieties. This school of thought is defeated mainly through the consideration of novelty, since the re-arrangement of that which already exists in both form and function is innovative but cannot be considered to be sufficiently novel to qualify under patent legislation. It was for this reason the Patents Act, 1996 did not need to specifically exclude the patenting of plants or other forms of life within it.

Another equally important issue is that under the patent legislation, full disclosure of the invention is required in the application for protection of intellectual property but, the complexity embodied in plant life, or any form of life, would make it impossible, and certainly impractical, for that kind of criteria to be met in applications for plant protection of even the simplest forms of life. That is why it is decided that we needed to have legislation for protection of new plant varieties as separate from patent legislation.

3.55 p.m.

There is another very important point that we had to decide, Mr. Speaker, that had to do with the membership of the international union for the protection of new varieties of plants. With all the changes that have been taking place internationally, and the way plant varieties are valued and traded, it is very important for Trinidad and Tobago to participate in the discussions that determine those factors. These discussions take place in two arenas: the World Trade Organization level, and we are already a member of that, and at the level of the International Union for the Protection of New Varieties of Plants, abbreviated UPOV.

In order to ensure our continued participation in world trade, Trinidad and Tobago has already agreed to protect plant breeders' rights with legislation which complies with the Convention for the Protection of New Plant Varieties, as revised in October 23, 1978. The revision of the convention is still available for accession. The latest revision that took place in March 1991, broadened the scope for protection of breeders in two significant ways. It broadened the range of acts that require the authorization of the breeder to include multiplication, conditioning for propagation, any form of marketing, importing and exporting, and stocking for any of these purposes. Secondly, the 1991 Convention extended the range of materials protected, to varieties that are considered to be essentially derived from a protected variety, and varieties that are not clearly distinguishable from the protected variety.

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The 1991 revision of the Convention, also eroded farmers' privilege to use their harvested material in the traditional manner, so that the decision as to whether we should accede to the 1978 Convention, or the 1991 Convention, was exceedingly important. If we acceded to the 1991 Convention, we would not be able to retain the farmers' privilege that we have spoken about. The 1991 Convention also introduced an optional exception to the breeders' rights. It specifically refers to the use of propagated material by farmers. It confined its use to material produced on their own holdings and to be used only on their own holdings. It also included a significant proviso to the privilege that allows it to arise within reasonable limits, and subject to the safeguarding of the legitimate interests of the breeder.

So it was our view Mr. Speaker, that Trinidad and Tobago should participate in the framing of intellectual property legislation in this area, whereby joining International Union for the Protection of New Varieties of Plants, and that we should do so by accession to the 1978 Convention and not the 1991 Convention. If we went with the 1991 Convention, we would be restricting traditional practices that could have taken place here and are continuing to take place here. We would have placed greater restriction on our farmers and our breeders. So that, this legislation that we have drafted is in keeping and in conformity with the requirements for accession to the 1978 Convention. Should we receive the passage of this legislation, and the support of the Members of this honourable House, we would still be in time to accede to the 1978 Convention, which is the preferred convention for Trinidad and Tobago, in our respectful view.

Mr. Speaker, at this point I would like to indicate that through the *ad hoc* committee reviewing legislative requirements, the Ad Hoc Committee to review intellectual property laws, consultation took place for the drafting of this Bill, with all the relevant interest groups, during the course of the work by the Ad Hoc Committee. Prior to the actual drafting of the legislation, the views of local experts were sought in this area and an arranged opportunity was made for them to meet with the Deputy Director General of the International Union for the Protection of New Varieties of Plants, a gentleman by the name of Mr. Barry Greengrass. This group of experts included representatives from the Ministry of Agriculture, Land and Marine Resources, the University of the West Indies, the Research Station of Caroni (1975) Limited, the Association of Professional Agricultural Scientists of Trinidad and Tobago, and others. There was general agreement amongst the interest groups in the 1978 Convention, that it was in the greater current interest of Trinidad and Tobago to accede to the 1991 Convention.

After the legislation was drafted, before it was introduced into the Parliament, the Bill before us was sent to a wide range of interest groups for their comments. Amongst these interest groups were the Agricultural Society, the Horticultural Society, the Orchid Society, Floral Exporters of Trinidad and Tobago Limited, Kairi Blooms Limited, Undercover Limited, Wyatt and Company Limited, Caribbean Chemicals and Agencies Limited, the Institute of Social and Economic Research, the University of the West Indies, the Ministry of Agriculture, Land and Marine Resources, the Institute of Marine Affairs, and a number of individual scientists. The responses we received from these groups were considered by the Chief Parliamentary Counsel's Department, and the Ad Hoc Committee to review intellectual property law, and adjustments were made according to the comments that we received through these consultations.

Mr. Speaker, I thank all those who have contributed to the drafting of this Bill and I look forward to the debate on it, and the suggestions and comments from Members of this honourable House with respect to the Bill that is before us. I would like to place on record, thanks to Mr. Malcolm Spence of the Intellectual Property Registry who assisted us tremendously with work in this area and, of course, with preparation for our brief in this matter. Mr. Spence of the Intellectual Property Registry, Miss Nazina Kadir of the Intellectual Property Registry also offered her assistance, and the members of the Ad Hoc Committee to revise intellectual property laws. Mr. Speaker, I thank all those who contributed for their comments and suggestions on a Bill that is exceedingly technical in nature, and which is the first of its kind in Trinidad and Tobago, to give protection to plant breeders.

I beg to move. [*Applause*]

Question proposed.

Dr. Keith Rowley (*Diego Martin West*): Mr. Speaker, I rise to make a short intervention in this debate, to support the country's effort to protect the work of those persons in the scientific field who, by their endeavours, have done, or would in the future, provide us with new varieties of plant material.

Mr. Speaker, maybe 15 or 20 years ago, this might not have been an important debate and, in fact, what this matter brings to the fore are the kinds of things that we are being called upon as a small country to get involved in. Because, in the last five years, the world has changed so dramatically, if we do not do things like this which we are doing now, we would be left behind.

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Like the previous matter which we dealt with and disposed of in very short shrift, this matter should indicate to all of us in this House that we have work to do, we have positions to take in the interest of Trinidad and Tobago, and it has to be done against the background of the opening up of the world's market, and all the implications of that for persons who are involved in all forms of enterprise.

Mr. Speaker, we have been blessed here in Trinidad and Tobago, first being located very close to the Americas, where as you know, there exists tremendous plant diversity. Here in Trinidad and Tobago we too can boast of tremendous natural resources and plant life.

4.05 p.m.

I want to focus on one point that the Minister made which I think is most important here. Insofar as this legislation, when passed and proclaimed, would provide some measure of protection for persons who would be in a position to claim rights, Mr. Speaker, what that would really do is only provide us with recourse in the event that something is produced, some person has a right or a claim to it, and others try to abuse it. Therefore, if there is legislation one can seek recourse by way of showing that a claim has been certified, seeking compensation of some kind, or getting injunctions against persons who would abuse your rights.

Mr. Speaker, you may recall a story told about how the rubber seed got out of Brazil. Natural rubber as it was known, before synthetic rubber was and still is, a major product in the world. It came from a plant in Brazil. The Brazilian Government, seeing the value of that plant and the tremendous, economic benefits that could come from it, sought to prevent it from getting out of Brazil into other areas of the world, even before this kind of matter was before the international community. The Brazilians, very wisely saw that if they could retain control of this plant material it would be of tremendous benefit to them. Apparently though, some persons of another nationality took seeds out of Brazil. The story is told that the seeds were taken out in the shoe heels of a particular operative. The heel were hollowed out and the seeds placed inside and he was able to get out and so forth. The next thing we know, in the world of rubber, there were plantations in Asia and in the British colonies of Malaysia and other places, where it is probably correct to say that those economies benefited more from rubber than the countries where the plant was indigenous.

We also see, from time to time, people being held in airports carrying on their person—in all sorts of strange places on their person—restricted planting material,

some of them endangered species, which they try to take from one place to another. I say this to explain that passed legislation does not mean people would be prevented from taking what is rightfully ours. It would, however, allow us to have recourse in the face of flagrant abuse. The more important point, however, is how it would affect our farmers who use the most traded planting material, namely seeds and cuttings.

It is important, as the Minister mentioned, that we access the 1978 Convention which allows our farmers to continue what they have been doing over the years, which is continue to propagate from their own gardens what they have grown from the seeds or cuttings obtained, maybe, from a purchasing point somewhere. Mr. Speaker, if we are not able to do that, we would find ourselves in a situation where, each time we need to plant, new material would have to be purchased.

Even as we do that, the story does not end there, because the new varieties are usually brought onto the market because they have some superior quality. Insofar as there is competition among farmers in the marketplace, in this world of competition, it is those persons using the higher-yielding varieties who would get better returns. As we protect farmers to allow them to continue to repeat the use of seedlings, seeds, cuttings and new varieties will continue to come into the marketplace. If farmers continue to use their old varieties they would be at a disadvantage.

In fact, in Trinidad and Tobago, we do have quite a significant import bill for planting material and we see the price of those materials continually rising. One of the things we have to face—as this kind of legislation and these considerations become the norm in international trading of agricultural produce and plant material—is higher prices for these items. Persons who have these materials to sell would be able to protect their rights more securely and could, therefore, demand greater recompense within a shorter period of time. Having to acknowledge that, it could be seen that things like tomato and bodi seeds—which, over the years we always imported the new varieties and will continue to do so—would not be done outside of this kind of environment, but in this protective environment and we would have to pay for what we use. The answer to that is to try to breed as much as we can in this country.

Over the years, the breeding of plant material has been largely a developed-country activity, even though most of what has been bred—some of the major produce in the world in food production—comes from tropical and subtropical

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areas. The actual facilities and the capital investment in the breeding programmes are largely in the developed world, and that might explain why those of us in developing countries are seeking, through this and other kinds of measures and conventions, to try to get some benefit out of this. As the conventions and arguments develop and are refined, we take our place in these discussions and hope that eventually we will benefit as we ought to, in some way, from these things.

We do not want to get into the details of taxonomy and so forth, but I think that this is an excellent piece of work. I have looked at it with some care and I am quite impressed by the quality of the work done by the technical people. The Government has covered all the bases which I can think of at this time, but of course, if something crops up in the future, it can always be amended. I join my colleagues on the other side, the Minister and other Members who have paid tribute to the drafters of this piece of legislation, because I think it is a very good piece of work.

Mr. Speaker, we now have to pay attention to whether we could benefit a bit more from this kind of development. A few years ago we focussed on the national research effort, because as the Minister mentioned, stumbling upon the odd mutant that generated some kind of plant material which was attractive and could have been used, is a one in a million situation. To really create new varieties, it requires a tremendous amount of research, personal dedication, sometimes bordering on a labour of love, consistency in budgeting and targeting people who have that capacity and supporting them—sometimes over decades—to be able to develop only one variety which could have some commercial value. Of course, if one does develop it, one has it made, but it requires that kind of effort. In Trinidad and Tobago we should be particularly proud of our record in this matter.

It is very easy for those who are being overly critical without being generous, and without having the information, to say that we have done nothing in this country for agriculture over whatever period of time. But for those who know better, the very fact that Trinidad and Tobago as a small country, a tiny island state like ours, even before we were independent—I think it is about 60 years now—we have been protecting the largest body of germ plasm which represents all the wild cocoa varieties brought out of Central and South America to Trinidad onto Marper Farm. Over the years we have budgeted consistently and kept that body of plant material alive to the benefit of all those persons in the world who use cocoa. One could imagine what that body of planting material means for the cocoa and

chocolate industry of the world. We in Trinidad and Tobago, with a little help from outside, have kept that. Long before it was fashionable to do that, we were doing that here, and I think we should be proud.

Mr. Speaker, that is the kind of background against which we should see this legislation. There are other examples here and there, but in the case of the cocoa situation where we are dealing with long-term trees, we bred some planting material, which require consistent production for them to stay alive. As a boy in Tobago, I could remember we used to plant certain varieties of yams. I am pretty sure if one goes to the market now those varieties would not be seen because they have been, more or less, bred out of existence. I do not know that we are proceeding in a way to enlarge our breeding base as well to protect the successes we have had.

4.15 p.m.

Mr. Speaker, how did we proceed to deal with this situation? We recognized that we were spending a lot of money on research in this country. We should be spending a fair amount in the ministry and the university; we were spending in international agencies that were doing their own research. In 1992/1993, when I had the privilege to run that ministry, we brought together the various people with a view to rationalizing the research effort in this country to ensure that we get the best for the dollar spent because we were spending—if my memory serves me right—approximately \$60 million a year on research efforts in the country. That is not an insignificant sum, but it was being spent in an unstructured way. We got as far as putting a technical team together to advise on how we should proceed to rationalize the research efforts and we were at the stage of talking about a National Research Institute.

I do not know what is happening in the ministry now with that because I have heard nothing about it since I have left there. What I have heard from that ministry is more unpleasant than instructive and productive, but I do hope that the work which was done during that period and that committee's recommendations which were heading towards bringing the research effort together in a rational way, would continue so that the money we spend on research would give us the kinds of returns that could come from that kind of effort. In the context of this Bill, if we do have success in breeding new kinds of plant varieties, whether for horticultural purposes or food production, we stand a very good chance of creating useful varieties and of being able to market them under the protection of this kind of legislation. That is the direction we are going and that is what we ought to do.

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This Bill does not stand on its own; it is another step along the way. We have been walking this road for quite some time and we must continue to do so, but we have to understand where the shortcomings are; we have to understand where we need to alter course, and we have to understand what we want to get out of this Bill and also to appreciate that other persons are doing this as well and if we have to access their material, we will have to pay for it.

Mr. Speaker, in the area of horticulture, as we talk about diversification, over recent years we have encouraged some of our people to go into horticultural production for export. Here in Trinidad and Tobago, we are now producing a fair amount of anthuriums which are being exported to Europe and North America, and we are very pleased about our successes in this area.

What we recently discovered, Mr. Speaker, is that every five to seven years, to get the kind of vigour in the plant material to give us the kinds of return that would warrant staying in business, we more or less have to completely replant our entire outlay. And if that is so, one could appreciate that one or two things can be done. One can either buy new plants from somebody who would sell them at a considerable price protecting his or her rights, or propagate one's own plants. But, according to this kind of legislation, if you propagate your own plants which you bought from somebody else and that person has rights to those plants, you have to pay for that. So that is the kind of environment in which we are operating.

If we consider other situations using planting material like cassava which is grown by just cuttings of the stick; sweet potato which is grown by potato slips, in those cases the farmer can just continue to plant it and the protection remains there as the Minister says—once the farmer accesses it, he can continue to do so under the 1978 Convention. But even if the farmer was not protecting it, it would take quite a lot of policing to go out on the farms to identify and charge a farmer for abusing someone else's cassava stick. It is much easier to take action against a person with a two-acre or five-acre anthurium field using anthurium plants of a variety for which there is a right vested somewhere else, and such a person would therefore have to comply because it is easier to prosecute in that situation. We have to look at the pros and cons of it.

The one recommendation I want to make which was made in the other place by persons who supported the measure, is that we must have the appropriate technical support for this legislation. Mr. Speaker, it would not be sufficient for any Minister to seek to advise himself on this matter. There are too many interests involved; it is

too complex; it is a highly technical field. We do not need to impress anyone that we know everything. What we need is for the Government of Trinidad and Tobago to seek to protect the interest of the people of Trinidad and Tobago through the ministry which covers that area of activity.

The Government must put in place a proper technical team made up of geneticists, taxonomists, lawyers and other skills that impact on this legislation, and that technical team should be able to advance recommendations to the Government and people of Trinidad and Tobago and it should be the function of the Minister and the ministry to be advised by such a group. If we do not do that, then we are 'spinning top in mud' with this material. If we do that we would be properly advised by the technical expertise available to us in this country. One thing I can say for sure is that, for a small country, we have a tremendous pool of highly qualified technical people in the breadth of disciplines required to be able to manage this.

I implore the Government to move expeditiously to put such a technical team in place to be able to allow us to take full advantage of this. To advise us on order, genre or species of plants, we need to be advised about by the appropriate technical people and I am sure that they will give us sound advice based on their expertise and experience, with an eye on the marketplace, and on our own requirements as a country. If we do that, this piece of legislation would serve us in good stead.

Finally, Mr. Speaker, I want to make one point about conservation. The easiest way to protect what the good Lord has given us in this country, is to leave it as it is. That is the easiest way to do it, but that is not possible. We have to interact with it, but as we interact, we need to keep an eye on conservation, especially as we are speaking about plant material. I had the dubious distinction as a Minister of Government, of finding myself in a witness-box in a Court of law as a witness for the state, seeking to protect our resources in the Nariva Swamp. Mr. Speaker, I hope no other Minister will ever find himself in that position. I hope the national community, from the biggest to the smallest, would appreciate that, as a small country, conservation is important to us.

We have heard about the loss of the *Chaconia* plant. That might not have been avoidable since the plant mutated in an area where a road was scheduled to go. You could see that happening, but not wanton abuse of a large tract of important land like Nariva Swamp, or what we see happening on the North Coast now in the

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forest and other areas in the country such as the Aripo Savannah. On the whole question of encouraging people to go and squat wherever they want because it is their God-given right, we have to order our business in this country to say 'no' and say it firmly to some people because some of our citizens do not care, some do not understand. You would be surprised at their reaction when the persons who were slaughtering manatee in Nariva, understood the importance of preserving those animals, they turned around and became the greatest protectors. But it is those who do not care that we have to be careful with.

I am saying to the Government, we need to be fair but we also need to be firm. We need to protect our natural resources so that at the end of the day, we do not lose species and lose our environment of Trinidad and Tobago which is our heritage from Almighty God. I am sure that at the end of day, as we pass Bills like these and enact them into law, if we do the follow-up, create the technical support committees and keep an eye on the international marketplace, protecting our interests out there, we would be able to benefit from this kind of legislation.

I thank you, Mr. Speaker.

4.25 p.m.

The Minister of Agriculture, Land and Marine Resources (Dr. The Hon. Reeza Mohammed): Mr. Speaker, I stand in support of the Bill to protect new plant varieties piloted by the Minister of Legal Affairs, the Member for Siparia.

I would just like to assure the hon. Member for Diego Martin West that the technical committee he has referred to in his contribution is already in place and has already started its work. One of its major functions is to advise the Minister and so the Parliament of Trinidad and Tobago, through the respective Minister, would keep the people of Trinidad and Tobago so informed.

The Government recognizes the significant challenges that will be confronting the national community well into the next millennium which, apparently, is not very far off. As a matter of fact, we are left with roughly 1,010 days before we move into the new millennium. This is in respect of feeding a growing population. The Food and Agriculture Organization estimates that approximately 900 million people are presently suffering from malnutrition and that 15 million children starve to death each year. By the year 2010, it is estimated that the world's population would have increased by approximately 1,500 million.

Now the implications of these statistics for food demand, production and distribution, seem extremely frightening. It is anticipated that the achievement of the desired level of food production globally will depend heavily on increased productivity, largely through the creation of more effective and productive plant varieties.

Trinidad and Tobago recognizes the significance of increased food production and the increased availability of food to the world's population in the context of this scenario of world food security and, indeed, our own national food security. We recognize, too, the important role that plant breeding would play in the development of improved varieties and the increased production and availability of food locally and internationally.

In addition, we should not lose sight of the fact that plant breeding can contribute, through a development of new ornamental and forestry products, to the generation of increased foreign exchange earnings. We are very mindful of that. The Government is, therefore, positively disposed towards such measures as would increase the confidence of the plant breeder to invest his time, finance and intellectual effort, the product and reward of which, are assured and acceptable levels of production.

What is the scenario *vis-a-vis* the local plant breeder and his or her efforts? We have a history, as reiterated by the hon. Member for Diego Martin West as well as the hon. Member for Siparia, of very productive work in plant breeding. Our records indicate very clearly that in the sphere of cocoa research and the varietal development in cocoa, that we, as a very small island, are very well recognized.

I heard the Member for Diego Martin West mention the wide range of varieties of cocoa that we have at the Marper farm. It is a little unfortunate that certain decisions were taken somewhere along the line to contract the operations at Marper farm. This Government, however, is in the process of revisiting that decision with a view to conserving those several different varieties of cocoa that we presently have at the Marper farm.

We have contributed, through our plant breeding programmes, to the development of new varieties of several other crops, such as pigeon peas, paw paw, tomato and bodi, for example. At the level of the farmer, "Pineapple Smith" of Mausica is still held in high regard for his work in the development of local pineapple varieties.

Mrs. Robinson-Regis: Mr. Speaker, on a point of order. I refer to Standing Order 33(6), and I am asking you whether the Member for Princes Town was given leave to read his speech.

Mr. Speaker: That particular Standing Order does, in fact, state:

“Except with the leave of the Speaker, a Member shall not read his speech; but he may read extracts from written or printed papers or books in support of his argument, and may refresh his memory by reference to notes.”

I will allow the Minister to continue.

Hon. Members, the House will now be suspended for 30 minutes for tea.

4.30 p.m.: *Sitting suspended.*

5.17 p.m. *Sitting resumed.*

Mr. Speaker: Hon. Members, I apologize for the fact that we are 15 minutes late in resuming. I regret this.

Dr. The Hon. R. Mohammed: Mr. Speaker, I do not intend to prolong this debate unduly, but during the contribution of the hon. Member for Diego Martin West he mentioned conservation and brought into focus the Nariva Wet Lands. I am to inform the hon. Member, and this House, that it was precisely in the interest of conservation that this Government of national unity removed the farmers from the Nariva Swamp.

In addition to that, the hon. Member mentioned the manatee in the interest of conservation. I am to inform this honourable House that we took the decision to provide, by way of assistance out of the Ministry of Agriculture, Land and Marine Resources, additional surveillance to the Manatee Project in the Nariva Swamp in addition to which we banned all fishing permits in that area where the manatee live and reproduce.

On the question of the turtles, in the interest of conservation, this Government recently took the decision to declare a certain area on the north and northeast coasts, where the turtles normally come in to lay their eggs, prohibited from 6.00 p.m. to 6.00 a.m. during this period of the year.

Mr. Speaker, we as a Government are very concerned about this question of conservation of our species and, moreso, those species which are endangered.

Trinidad and Tobago has, by introducing this legislation, taken the responsible step of honouring—

Dr. Rowley: Mr. Speaker, I thank the hon. Minister for giving way, but before he develops another point—in the context of his Government's commitment to the

preservation of the manatee species in Manzanilla—is the Government considering, or prepared to consider, acquiring the strip of land between the Manzanilla Road and the manatee ponds so as to provide the necessary protection for those animals? That was something which was being considered and it is absolutely essential that those lands be brought under greater supervision if the preservation programme is to succeed. Is the Government considering that now or is it prepared to consider it?

Dr. The Hon. R. Mohammed: Mr. Speaker, in response to the hon. Member for Diego Martin West, the Government has done several things with respect to that Manatee Project, one of which is to increase the number of honorary game wardens who now fall within the purview of the Ministry of Agriculture, Land and Marine Resources.

Yes, we are willing to consider that strip of land he is talking about and, perhaps, bring it under the purview of a sanctuary, if necessary.

Mr. Speaker, by introducing this legislation the Government has taken the responsible step of honouring the agreements while recognizing the future responsibility of providing a supportive and facilitatory environment for the confident and dedicated efforts of plant breeders, both at home and in countries with which we trade.

Also, the International Convention for the Protection for New Varieties of Plants—the UPOV Convention—was signed in 1961 and at that time established the International Union for the Protection of New Varieties of Plants. The convention which came into force in 1968 was revised on three occasions as indicated by the hon. Member for Siparia: firstly in 1972, then in 1978 and yet again in 1991. The 1978 Act of the Convention came into force in 1981 and the 1991 Act, as far as I am aware, is not as yet in force.

Mr. Speaker, the declared purpose of the Convention is to ensure that member states of UPOV acknowledge the achievements of breeders of new plant varieties by making available to them exclusive property rights on the basis of a set of uniformed and clearly defined principles, thereby assuring plant breeders that the product of their intellectual effort would not be exploited to their disadvantage. This exclusive property right is referred to as "plant breeders' rights". To be eligible for protection varieties have to meet three criteria: firstly, they must be distinct from existing known varieties; secondly, they must be sufficiently homogenous; and thirdly, they must be stable and new.

Protection of New Plant Varieties Bill
[HON. R. MOHAMMED]

Friday, March 21, 1997

In February, 1997, UPOV comprised of 32 member states and at present Trinidad and Tobago is being initiated at becoming a member of that union. As a Government we take cognizance of issues that impact on management of our plant genetic resources and we are aware that these resources provide the raw material for the plant breeding and bio technology industries.

Mr. Speaker, we are further aware that the broad issue of intellectual property rights in respect of plant genetic resources need to be looked at as part of a spectrum of other issues. We are alert to the ongoing issues of ownership of plant genetic resources, farmers' rights, access to plant genetic resources and technology and the equitable distribution of benefits to be derived from the export of plant genetic materials.

Mr. Speaker, the framework within which this legislation is set and the intent of the policy that it is based upon, are intended to give a certain degree of protection to those geneticists for their research and intellect.

Therefore, I take this opportunity to commend this Bill to the House and to say that it is a piece of legislation that would augur very well for several subsectors of the agricultural sector.

Thank you, Mr. Speaker.

The Minister of Legal Affairs (Hon. Kamla Persad-Bissessar): Mr. Speaker, I thank hon. Members for their comments on this Bill and for the support from the Opposition.

The Member for Diego Martin West has quite clearly stated one of the major concerns that we had, which was that we must make sure that Trinidad and Tobago accedes to the 1978 convention in order to retain the farmers' privilege so that our farmers would not be put under undue pressure in terms of planting seeds each year.

5.25 p.m.

Mr. Speaker, when this Bill was adopted in the other place, I gave the commitment to that House that there would be certain amendments drafted to the Bill which is now before this House. We are in the process of having those drafted.

I have seen a first draft of it but I would like to have further discussions with our people and, therefore, request that the Bill be deferred to another day. They are purely process amendments which have to do with the relationship between the Patents Act and the procedures to be employed under the Patents Act and under

this Protection of New Plant Varieties Bill. That is to say, that the office being referred to in this Bill is the office of the person referred to in the Patents Act, and the procedures and rules to be followed will be those out of the Patents Act.

Members of the Senate felt that there should have been a stronger linkage between these two pieces of legislation. We undertook to look at it to see if we could have provided that stronger link. We were of the view then, and there are still discussions that, as it stands, the Bill could function effectively. But having given that undertaking we would need more time in which to have that amendment drafted.

Mr. Speaker, with that in mind, I ask that this House resolve itself into committee. We would deal with the Bill at another time as the Leader of the House would indicate. I beg to move that this Bill be read a second time. I thank you.

Question put and agreed to.

ADJOURNMENT

The Attorney General (Hon. Ramesh Lawrence Maharaj): Mr. Speaker, I beg to move the adjournment of the House to Wednesday, March 26, 1997 at 1.30 p.m. On that occasion we will deal with the committee stage of this Bill and also with the report of the Finance Committee which was held today. As I indicated, all stages of the Finance (Supplementation and Variation of Appropriation) Bill 1997 will be dealt with on that day. We also expect to deal with Bills Nos. 10 and 7 on today's Order Paper.

Question put and agreed to.

House adjourned accordingly.

Adjourned at 5.28 p.m.