HOUSE OF REPRESENTATIVES

Thursday, May 04, 2000

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 apart from those Hon. Members of the House who have already been granted leave of absence from today's sitting, I do have a request from the Member for Tobago West who has asked to be excused from today's sitting. The leave of absence which she seeks is granted.

SUNDAR POPO
(DEATH)

Mr. Speaker: Hon. Members, I wish to draw to your notice that it has been announced that one of the country's extremely well known cultural ambassadors, Mr. Sundar Popo, has died. I think that he made a tremendous contribution to the country and that both sides of the House may wish to express condolences.

The Minister of Social and Community Development and Minister of Sport and Youth Affairs (Hon. Manohar Ramsaran): Thank you very much, Mr. Speaker. It is a pleasure for me to say something on behalf of Mr. Sundar Popo. I knew Sundar for quite a long time because my wife was a singer, and we used to share many a great moment with Sundar Popo. Before this, we remember the "Nana and Nanny" tune that he recorded sometime in the 1970s.

As far as I am concerned, Sundar Popo was one of the first East Indian singers in Trinidad and Tobago to cross the cultural barrier, so to speak. His career was one that all Trinidadians and Tobagonians can look back on with pride. He was also one of the first singers to tour almost the whole world, wherever there was Indian singing. He toured Holland, North America, the rest of the Caribbean and even Guyana.

We must note that his songs were recorded by Kanchan, the famous Indian singer, and we are told that his songs are sung by the young people all over India. This is a reversal of what happened in the past where we in Trinidad and Tobago would imitate Indian singers. Here we had the occasion where a Trinidad and Tobago singer was imitated even in India.

I remember touring Suriname once and almost everybody in Suriname who knew anything about Indian culture would sing Sundar Popo songs. Indeed, he was a true ambassador of Trinidad and Tobago. Even last night when I went to his home, there was a television crew from Canada recording the entire proceedings to present to the people in Canada—a one-hour programme on the life of Sundar Popo. This is something we should really appreciate and admire of this person from the rural village of Barrackpore.

I remember growing up, the first time we heard about the place "Monkey Town" was because of Sundar Popo. He, indeed, put Monkey Town on the map of Trinidad, as he put Trinidad and Tobago on the map of the world.

I am sure that when we sit back and recollect the life of Sundar Popo, we could only do it with admiration, because here was a gentleman who paved the way for future artistes to tour North America, Central America and Europe. I am sure that people like Ramrajie Prabhoo, Anand Yankaran and various other singers of the East Indian art form appreciate his life.

Mr. Speaker, I am sure I speak on behalf of the Government and people of Trinidad and Tobago, and both sides of Parliament, when I extend our sincerest condolences to the family, friends and supporters of Sundar Popo. It is my pleasure to mention that on behalf of the Government of Trinidad and Tobago, we are assisting in the funeral arrangements of our dearly departed Sundar Popo.

Mr. Eddie Hart *(Tunapuna)*: Mr. Speaker, it is with great sadness that we mourn the loss of yet another cultural legend in our country, the late Sundar Popo. His career was launched when he participated in the very first year of the people's programme, *Mastana Bahar*, in 1970 and, subsequently entered into a recording arrangement to preserve his local hit composition, "Nana and Nanny". Sundar then went on to create a number of local hit songs, some of which were even re-recorded by India's Kanchan and Babla, a first for any local artiste.

Sundar was a recipient of many awards from various cultural organizations. The highlight being the national awards from the Government of Trinidad and Tobago in recognition of his service to the people of this country.

Sundar Popo has become a household name amongst the people of Trinidad and Tobago and indeed, the Caribbean, North America, Holland and even as far as Mauritius. His illustrious 30-year entertainment span came to an end at the San Fernando General Hospital where he went for his dialysis treatment. On behalf of the Members of this side and, I could probably say the entire House, I extend condolences to the family, fans and friends of the late Sundar Popo.

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

The Minister of Education (Hon. Kamla Persad-Bissessar): Mr. Speaker, I join with others in extending our condolences. As the Member of Parliament for Siparia, Sundar Popo was a constituent of mine and, in my own work as the Minister of Legal Affairs, he played a very important role when we were dealing with copyright laws and the piracy that was taking place.

I want to join with my colleagues and with others in this House to extend our condolences to the family and to say that Sundar Popo will remain the pioneer of chutney music in this country, in my respectful view. He was the first singer to take English lyrics and put them to the beat, the rhythm that came from India. So, it is from that today we have a new art form in the Caribbean, and certainly in the world, that was pioneered, in my respectful view, by Sundar Popo.

We are going to be celebrating Mother's Day very shortly, and one of the most famous songs that Sundar Popo has always done—it is like an anthem for him—and if one sees him singing, one will always remember him singing "Mother's Love". As we celebrate Mother's Day, I hope that his adopted mother and all mothers around will remember Sundar Popo for that song. All of us certainly will remember him, and he will go down in the annals of history of this country, as the pioneer of a new art form in culture.

I thank you, Mr. Speaker.

Mr. Speaker: Hon. Members, I wish to identify with the sentiments which have been expressed on the passing of a national hero who has made a tremendous contribution to a particular art form and who, obviously, was certainly one of the pioneers of a particular type of music known as chutney which we have given to the region and the world.

I am sure that all Members of the House will want me to direct the Clerk to send a suitable letter of condolence to his next of kin on his passing—and one who has certainly been recognized, as the Member for Tunapuna has said, with a national award, to my mind deserves no less than this. So, I certainly join with the House in expressing condolences and the Clerk will send a suitable letter of condolence to his next of kin.

FINANCIAL (MISCELLANEOUS PROVISIONS) BILL
[Second Day]

The committee of the whole House resumed its deliberations on the Bill

[Chairman: Mr. McClean]

Mr. Chairman: Hon. Members, you will recall that the clauses which we need to revisit are 5, 7 and 13 on which the hon. Attorney General promised that he would seek some clarifications and/or explanations which will enable us to return to them today.

Clause 5 reintroduced.

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

Dr. Job: Mr. Chairman, with respect to clause 5(d)(i) after the words "at their option" we are inserting the words "or by both of them in such proportion as they may determine".

1.45 p.m.

Mr. Chairman, at the end of the sentence, there was a query with respect to the words "in respect of each spouse". My technical expert says that we are leaving those words, we are not interfering with those words. Earlier where we were talking about "may be claimed by either one of them" it was not clear because there was the word "each" towards the end there. I am advised that there was a long debate about this, when this Bill was previously debated, and that those words should remain there; both "either" and "each".

Mr. Valley: Mr. Minister, what you would be doing will be increasing the vagueness if you were to leave "each". If you read what you now have, you would see that each spouse may then claim, legitimately—that they are entitled to $18,000.

Dr. Job. That was the intention.

Mr. Valley: But each spouse cannot claim $18,000. The maximum deduction is $18,000. That is what they are sharing. That is the intention. He does not even know what it is.

Mr. Maharaj: Are you sure about that?

Mr. Manning: I want to be a spouse.

Technical Advisor: That is the existing law.

Mr. Maharaj: Perhaps the Member for Diego Martin Central, having regard to his expertise in the Ministry of Finance, can confirm this. I am instructed that the existing law is that each spouse, at the present time, can claim $18,000 on the same residence.

Mr. Assam: $18,000 on the same residence?

Mrs. Persad-Bissessar: That cannot be right.

Mr. Maharaj: That cannot be right.

Mr. Valley: It is $18,000 per residence, that is what it is—*[Interruption]* That is right. But here it is suggesting in the amendment that each spouse can claim $18,000 with respect to the same residence.

Mr. Maharaj: Mr. Chairman, we would have to go with what the technical people are telling us because I understand that there is no doubt about it: in the present system this was done in order to ensure that in respect of this particular heading, there will be $18,000 each for each spouse. I am told that this is the position.

With respect to the amendment clause 5(d)(i) the words:

> "…save that the deduction is limited to eighteen thousand dollars in respect of each spouse."

We have to—

Mr. Chairman: Is there anything else in that clause? Hon. Members the question, therefore, is that clause 5: paragraph (d)(i)(4) stand part of the Bill, except that, in the fifth to last line, after the word "option" and before the word "and" there should be inserted the words: "or by both of them in such proportion as they may determine."

Mr. Valley: Mr. Chairman, I just want to read this. Looking at this clause, even the amendment, and given what the Attorney General has just said—let us see how this works. It states:

> "A deduction under subsection 3 in respect of the residence may be claimed by either one of them…"

It can only be claimed by one of them.

> "…at their option, or by both of them in such proportion…"

Now, tell me—we have just said that each person is now entitled to $18,000. Does it mean—in such proportion as they may determine—that each of them could now claim $18,000? But if they decide that only one of them can claim it, that one claim is limited to $18,000?

> "Where a person and his spouse occupy as a residence land and improvements owned by both spouses jointly, a deduction under subsection (3)(a)…"

I do not know whether we have looked at the deduction specified under subsection (3)

> "…in respect of the residence may be claimed by either one of them…"

The deduction for the residence is not $36,000 it is $18,000 as we know it.

> "…by either one of them, at their option…"

If they elect that, they are limited to $18,000, or it can be claimed by both of them, in which case each of them—but what do the words "in such proportion" mean? Do you understand? If you are saying that each of them is now entitled to $18,000, first of all—*[Interruption]*

Mr. Manning: Proportion does not arise.

Mr. Valley: Proportion does not arise, nor would they want to exercise option "(a)" which is "one of them".

1.55 p.m.

Mr. Chairman: The wording actually says the deduction is limited to $18,000 in respect of each spouse.

Mr. Assam: If, in fact, each spouse is limited to $18,000 and your mortgage interest is $33,000, one can claim $18,000 and the other one can claim $15,000 in whatever proportion you want. Or one can claim $17,000 and the other one can claim the rest. That is provided that both of them are entitled to $18,000 each and if it comes up to $35,000, one can claim $17,000 and one can claim $18,000, or whatever proportion out of that they wish to claim, if, in fact, both can claim $18,000. That is what it means. They can divide it into whatever proportion they want provided that the mortgage interest is in excess of the $18,000. That is all. That is not rocket science at all.

Mr. Manning: You were going good until you talked about rocket science.

Mr. Maharaj: Mr. Chairman, it confirms that the Minister of Trade and Industry is very experienced not only in trade matters, but is very experienced in financial and tax matters.

It seems that that was the view which was given. There can be no doubt from what is shown that each spouse can claim $18,000, therefore it would seem that if the maximum of each spouse is $18,000, you are saying that if it is $36,000 involved and you are depending on the proportion, they can work that. That seems to be the policy. If that is the policy, I cannot do anything.

Question put and agreed to.

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

Clause 7.

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

Mr. Valley: Mr. Chairman, there was a difficulty with clause 7(9) and (10). Clause 7(10) seems to imply 7(9) and why would you have (9), if there is (10)?

Dr. Job: We have families that are in some kind of common-law union and clause 7(9) refers to the single-parent case and subclause (10) refers to the case where the families are in conjugal union between parties of whatever nature and you needed to have two separate things to take care of that.

Mr. Valley: Could one therefore claim a deduction under subclause (9) as well as subclause (10)?

Dr. Job: No.

Mr. Valley: Why not? Under subclause (9) I may claim either for myself or my child and then under subclause (10) I claim for other because subclause (9) allows for claim either for himself or his child in respect of tertiary education. I may be at school and my child may also be at school. Under subclause (10) it allows also for himself, his spouse, or his child, so under subclause (9), I may have a claim for myself and under subclause (10) I make the claim for my child. What stops me from doing that?

Dr. Job. If you read subclause (9) carefully there is nowhere spouse is mentioned.

Mr. Valley: I am not claiming for my spouse.

Dr. Job: If there is to be any clarification, we should insert some word to make it clear that subclause (9) refers to a single parent.

Mr. Valley: Or that you need some proviso at the end of subclause (10) provided that the claim cannot be got under subclause (9) and subclause(10).

Mr. Maharaj: The Treasury Solicitor is going to try to work out something.

Mr. Valley: Mr. Chairman, we had spoken about having a similar benefit for the individuals who were to invest in this security.

Mr. Assam: This is an amendment under Chap. 75:02, and this is fine, but the Member for Diego Martin Central is trying to introduce an amendment under Chap. 75:01 which is not part of the Bill. So unless the Minister in the Ministry of Finance wishes to accommodate that, Chap. 75:02, that is fine but the Member is talking about Chap. 75:01 which is not part of the Bill.

Mr. Valley: Mr. Chairman, in Part IV, the Income Tax Act was Chap. 75: 01. I am talking on principle, I am not talking on sections. I am saying that this is a miscellaneous financial provision which deals with Income Tax Act, Chap. 75:01 as well as 75:02 and I am saying that the amendments suggested for companies are good, but there are individuals also who may get VSEP, for that matter.

First of all, do you agree with the concept?

Mr. Assam: All I am saying is that Chap. 75:02 is okay. There is no objection to Chap. 75:02, but you wish to make an amendment under Chap. 75:01 which went previously.

Mr. Valley: Yes.

Mr. Assam: But you did not do so under Chap. 75:01.

Mr. Valley: I said I am dealing with the principle. I am saying if you find it worthwhile to do this for companies, you may also find it worthwhile to do it for individuals. I agree with you that the appropriate place is Chap. 75:01 and I am merely asking the Minister to take note. Even if it cannot be done now, that he looks at it.

Dr. Job: Mr. Chairman, I take note of it and will consider the merit of the case at a future date.

Question put and agreed to.

Clause 7 ordered to stand part of the Bill.

Clause 13.

Question proposed, That clause 13 stand part of the Bill.

Dr. Job: Mr. Chairman, there was a query concerning the statement which reads:

> "'estimated economic life' means the estimated remaining useful life of the property for the purpose for which it is intended, regardless of the term of lease;"

It was presumed that was in some kind of conflict under Part (c) on page 10 of the Bill where it says that:

> "(c) the lease term at inception, is substantially (that is seventy-five percent or more) equal to the estimated economic life of the leased machinery or plant…"

I am advised that there ought to be no conflict that the two definitions are in conflict with the statement that is alleged to be in conflict with the definition in part (c).

Mr. Valley: Clause 16A (3)(c) says:

> "The lease term at inception, is substantially (that is seventy-five percent or more) equal to the estimated economic life of the leased machinery…"

The estimated economic life is defined as the estimated remaining useful life. Is that not so? That is why we are having difficulty with this clause. The lease term at the inception of the lease is substantially equal to the estimated economic life. Whether the economic life is four or five years, then that is what it is. That is a question of fact. It confuses the issue when it says: "(that is seventy-five percent or more)". I do not know what that means given the definition of estimated useful life. Given the definition, it must always be 100 per cent.

In the definition, you may want to remove the term "remaining".

Dr. Job: We can accept your recommendation and delete the word "remaining".

Mr. Chairman, I beg to move that clause 13 be amended by deleting the word "remaining" in the definition of "estimated economic life" to read as follows:

> "'estimated economic life' means the estimated useful life of the property for the purpose for which it is intended, regardless of the term of lease;"

Question put and agreed to.

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

2.10 p.m.

Mr. Chairman: We still have clause 5 that we are looking at.

Dr. Job: Mr. Chairman, I am saying that we are going back to sections 9 and 10 of clause 5.

Mr. Chairman: Yes, we will go back to clause 5 because there was an apparent conflict with 9 and 10.

Dr. Job: Section (11) would now read:

"For the avoidance of doubt—

(a) a person may not claim a deduction under subsection (9), where a claim is made under subsection (10); and

(b) the aggregate deduction…"

and the rest reads as printed.

Mr. Chairman: One second, you do not have an "a".

Dr. Job: Yes, we have an (a); we said for the avoidance of doubt—"(a) a person may not claim…"—after we are finished with (a) there is a semicolon. And "(b) the aggregate deduction" and the rest follows.

Mr. Speaker: Do you need a dash after "doubt" and before (a)?

Mr. Job: Yes.

Clause 5, as amended, 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 amendment, read the third time and passed.

SEXUAL OFFENCES (AMDT.) (N0. 2) BILL

Order for second reading read.

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

That a Bill to amend the Sexual Offences Act, 1986, be now read a second time.

Mr. Speaker, this Bill comes to this honourable House having got the approval in the other place and, if passed, would enact major reforms relating to the law of sexual offences. The Bill, which is before us, comes as a result of a study done by the Law Commission relating to rape and sexual offences in Trinidad and Tobago. The Law Commission took into consideration the reforms which have occurred throughout the Commonwealth in this field.

The law in relation to rape and sexual offences was reformed in Trinidad and Tobago in 1986 when the Sexual Offences Act was enacted. That Act reformed the law which dealt with rape and sexual intercourse, and which was contained in the Offences Against the Person Act of 1861.

Mr. Speaker, one of the major reforms contained in the Bill is that the Bill would remove spousal immunity. What do I mean by spousal immunity? Under the existing law of rape, a husband cannot be convicted for raping his wife. That is contained in section 4(1) of the Sexual Offences Act of 1986 which states—and I will read the section so that Members will understand it:

> "A male person commits the offence of rape when he has sexual intercourse with a female who is not his wife either—
>
> (a) without her consent…or
>
> (b) with her consent where the consent—
>
> (i) is extorted by threats…"

So, Mr. Speaker, the present law therefore prevents a husband from being convicted of raping his wife. The present law is inadequate and narrowly defined. It is archaic, outdated and, therefore, needs to be reformed.

2.20 p.m.

As I stated, Mr. Speaker, by having the law as presently drafted, it would therefore mean that a husband really has licence to rape his wife and he has complete immunity. The classic statement of this spousal immunity was stated in 1736 by the famous jurist, Hale, and he stated that the common-law rule is that intercourse against the wife's will is excluded from the law of rape by virtue of the fiction of deemed consent by the wife. The concept was that the wife must always, and would always, consent to sexual intercourse with the husband, whether it was obtained by threat, force or otherwise. So section 4(1) of the Sexual Offences Act merely reproduces what the common-law position has been.

However, Mr. Speaker, throughout the Commonwealth there has been increasing dissatisfaction with regard to spousal immunity. It is felt, Mr. Speaker, that spousal immunity of the husband is archaic, unjust and unequal treatment of the sexes. The rationale is artificial; it is based on the fact that the husband has a proprietary right over the wife and that she is a sexual object. The Law Reform Commission of Canada in 1978 said that spousal immunity reflected an outlook no longer capable of rational assessment.

In most common-law jurisdictions, the common-law position has been eroded either by reform of statute law or by judicial decision. Mr. Speaker, the marital rape exemptions have been removed completely in counties like Victoria, New South Wales, Western Australia, Queensland and Tasmania. In New South Wales, under the Crimes Act, that has been removed. In Canada, spousal immunity was abolished in 1982 by the Criminal Law (Amdt.) Act. What this Bill attempts to do is make the offence gender neutral, if I may use the expression. I would say that clause 4 of the Bill is repealed—clause 4 repeals the existing section 4 of the 1986 Act and in effect creates a new section on rape.

So, Mr. Speaker, clause 4 of the Bill would, therefore, remove the spousal immunity of the husband and it says that:

"Subject to subsection (2), a person commits the offence of rape when he has sexual intercourse with another person—

(a) without the consent of the complainant where he knows that the complainant does not consent to the intercourse or he is reckless as to whether the complainant consents; or

(b) with the consent of the complainant where the consent—

(i) is extorted by threat or fear of bodily harm to the complainant or to another;

(ii) is obtained by personating someone else;

(iii) is obtained by false or fraudulent representations as to the nature of the intercourse; or

(iv) is obtained by unlawfully detaining the complainant."

Clause 4(2) states:

"A person who commits the offence of rape is liable on conviction to imprisonment for life and any other punishment which may be imposed by law, except that if—

(a) the complainant is under the age of twelve years;

(b) the offence is committed by two or more persons acting in concert or with the assistance or in the presence, of a third person;

(c) the offence is committed in particularly heinous circumstances;

(d) the complainant was pregnant at the time of the offence; or

(e) the accused has previously been convicted of the offence of rape, he shall, in addition, be liable to twenty strokes with the cat-o'-nine-tails.

(3) The Court may order a person who is convicted of an offence under this Act, to pay to the complainant adequate compensation which shall be a charge on the property of the person so convicted."

So, Mr. Speaker, in addition to where the normal offence of rape occasions a sentence of life imprisonment, where rape is committed to cover instances which are mentioned in clause 2, such as committed against a person who is under the age of 12, *et cetera*, that person would be liable to life imprisonment for the remainder of his natural life and to strokes with the cat-o'-nine-tails. In addition, the court can order the person to pay compensation and that compensation would be a charge on the property of the person who is convicted. It makes it quite clear in subclause (4) that this right to compensation under this section does not prevent the person from claiming compensation in any other court of law in respect of the matter. It also states that, whatever compensation is awarded by the court in the criminal matter would be taken into consideration when the court has to consider a further award.

Mr. Speaker, the other aspect of this Bill is that there is a new offence known as grievous sexual assault. Under the law of rape as it is today, what happened is that in order for rape to be committed, penetration of the penis into the vagina had to occur. However, the offence of rape does not cover instances where persons can take objects and place them into the vagina or other parts of the body of the complainant or the victim and—[*Interruption*] I did not know my words were causing some—[*Interruption*]

Hon. Member: He is nervous. [*Interruption*]

Mr. Speaker: Order, order.

Hon. R. L. Maharaj: Mr. Speaker, I wish to assure this honourable House that the Members on this side of the House are very familiar with the contents of this Bill, so if there is any nervousness I am sure it will come from the other side. I notice, Mr. Speaker, that as soon as I started to make my contribution and I spoke about the removal of spousal immunity, the hon. Member for Diego Martin Central left the Chamber. [*Laughter*] I know, however, that is no indication of

lack of support for the Bill because in the other place both the Opposition and Independent Senators supported the Bill, so I wanted to be very fair to the Opposition.

Mr. Speaker, under clause 3 of the Bill "grievous sexual assault" is defined and it consists of where there is:

> "the penetration of the vagina or anus of the complainant by a body part other than the penis of the accused or third person as the case may be;"

Mr. Speaker, one has to be very frank in matters like these. There have been several cases that have come up in the courts. There are also cases in which the victim has been subjected to many kinds of conduct which are covered under grievous sexual assault and because of the law being inadequate, the law is impotent to deal with this situation because it does not constitute rape. It also would mean:

> "(b) the penetration of the vagina or anus of the complainant by an object manipulated by the accused or third person, as the case may be, except when such penetration is accomplished for medically recognized treatment.
>
> (c) the placing of the penis of the accused or third person, as the case may be, into the mouth of the complainant; or
>
> (d) the placing of the mouth of the accused or third person as the case may be, onto or into the vagina of the complainant."

So what this law is going to do is put this type of conduct on par with the conduct of rape. So that if anyone or a group of persons would do this thing to any person, if convicted, the person or persons would have to face the same kind of punishment as they would face for rape.

Mr. Speaker, I should mention that in respect of rape, in addition to the question of imprisonment and strokes with the cat-o'-nine-tails and in addition to compensation, where a person is convicted of rape and it is found that there is a question as to whether the person who is convicted had AIDS and passed this disease to the victim, the question of additional compensation would arise or can arise and there can even be orders to have the person medically examined. So the court is given the powers to order medical examinations in these circumstances. Clause 34E states:

> "(1) Where a person is convicted of an offence under the sections to which this section applies, the Court shall require that the person be medically examined.

(2) Where upon such examination it is found that the person examined is suffering from the Human Immune Deficiency Virus, or any other communicable disease, information to that effect shall be given promptly to the virtual complainant and the person examined."

This information obviously would be confidential.

"(4) Where it is found upon examination that the complainant has contracted HIV or any other communicable disease the court, upon application by the complainant and upon being satisfied on a balance of probabilities that the complainant contracted the disease as a result of the offence, may order the defendant to pay to the complainant compensation in addition to any amount ordered under section 3(5)."

Because as you know it may be a person who does not have money but it can be people who have property and, therefore, the court would have the power to order the compensation accordingly.

Mr. Speaker, the Bill also provides for increased punishment for offences relating to sexual offences and one would see that from clause 7 of the Bill there are increased sentences for matters relating to sexual offences. I am sure Members would be familiar with that, but there are several other sexual offences apart from rape. Therefore, in considering the punishment to be awarded in respect of rape, the Law Commission took the opportunity to deal with those matters.

I may mention also that, in respect of the spousal immunity, which is being removed, the Bill also takes into account the Cohabitational Relationship Act which has been passed and, therefore, the offence of rape will not be limited to a husband against a lawful wife but can also be committed against a cohabitant within the definition of the meaning of the Cohabitational Relationships Act of 1997. That is provided for in clause 3 of the Bill.

2.35 p.m.

Mr. Speaker, another major change of the law, in respect of the Act, deals with the question of the obligation of persons who are aware of this sexual abuse to make a report to the police. We have been told that there are many cases of sexual abuse and sexual offences which people are aware of, and these matters are not reported. In clause 18 it states:

"(1) Any person who—

(a) is the parent or guardian of a minor;

(b) has the actual custody, charge or control of a minor;

(c) has the temporary custody, care, charge or control of a minor for a special purpose, as his attendant, employer or teacher, or in any other capacity; or

(d) is a medical practitioner, or a registered nurse or midwife, and has performed a medical examination in respect of a minor,

and who has reasonable grounds for believing that a sexual offence has been committed in respect of that minor, shall report the grounds for his belief to a police officer as soon as reasonably practicable.

(2) Any person who without reasonable excuse fails to comply with the requirements of subsection (1), is guilty of an offence and is liable on summary conviction to a fine of fifteen thousand dollars or to imprisonment for a term of seven years or to both such fine and imprisonment.

(3) No report made to a police officer under the provisions of subsection (1) shall, if such report was made in good faith for the purpose of complying with those provisions, subject the person who made the report to any action, liability, claim or demand whatsoever."

Mr. Speaker, it really places a statutory obligation on persons who are in charge of minors and who have access and dominion over minors and they are aware of these matters to report such abuse to the police, and there would be criminal liability for such.

Mr. Speaker, there have been reports by the police of sexual abuse of minors, whose parents or guardian refuse to allow them to assist the police in bringing the perpetrators to justice. The result of such refusal is that the matter comes to an end and the accused persons escape the judicial process. The police have reported that in some cases, parents forbid abused children from speaking to the police, and often refuse to co-operate with the police in procuring the necessary evidence.

Mr. Speaker, clause 18 of the Bill which repeals section 31 of the Act, substitutes a new section which should make it mandatory for a parent, guardian or person with custody charge, care or control of a minor—as I mentioned—and other persons to report these matters to the police as soon as possible. Although the amendment would compel a person to report a sexual offence committed on a minor, it does not assist in any way with the expediting of the matter through the judicial process. So although it does assist, it does not go far enough.

The amendments which I intend to circulate, would insert four new clauses after section 31 to deal with the problem. Section 31(a) would make it an offence where a person prevents a minor from giving a statement to the police or testifying in proceedings relating to a sexual offence. Section 31(b) would admit

in a trial of evidence, a written statement made by a minor by another person, on behalf of a minor upon dictation of a minor. This would therefore allow the matter to proceed, even where the minor is prevented from testifying at the trial. In the amendments there are the normal safeguards which are given in respect of other kinds of matters in which statements are admitted at a trial for a judge to consider all the circumstances, before he admits the statement in evidence. Obviously, if he admits the statements in evidence, he would have to give certain directions to a jury or to himself. Section 31(c) and (d) would contain certain procedural provisions which are designed to facilitate the proceedings relating to the admission of evidence of a statement made under section 31(b).

Mr. Speaker, another major amendment of this Bill is to address some of the complaints which have been made about section 32 of the Act, over the last few years. The Sexual Offences Act prohibits the press from printing the name of the complainant after the person is charged for the offence. That is to say, if Mr. "B" is charged for an offence involving a sexual offence against a complainant, when the accused person is charged it would be wrong for the press to print the name of the victim.

What has happened is that there is a lacuna in the law, in that when the offence occurs and before the person is charged, if for some reason the name of the victim is known to the media—there have been instances where the media prints the name of the victim and, therefore, the fact that the law states that the name of the complainant cannot be printed after the accused is charged, it means to say that the law has been circumvented in certain circumstances and really defeats the intention of the law.

Mr. Speaker, clause 19 of the Bill would remedy that effect and ensure that from the time that the report is made—it is drafted in such a way that from the time the offence is committed, the name of the victim cannot be printed. What clause 19 also does is that it removes the restriction which the media had in printing the name and the photograph of a person accused of a sexual offence.

What has happened under the Sexual Offences Act of 1986 is the Parliament decided to place the accused persons of sexual offences in a special category. For whatever reason, they determined that even if a person is charged for murder, his name and his photograph can be printed, but a person who is charged for rape or a sexual offence, his photograph and name cannot be printed. That has operated as a ban or a muzzle on the media in printing the names of persons who are charged for these offences.

In fairness to the Parliament, the legislators of the time and the government at the time, one of the overriding concerns was—it was said that an allegation of rape and sexual interference is very easy to be made and, therefore, you could have persons charged and their photographs and names printed and then after they are acquitted, the acquittal would not be able to remedy the damage which has been done to the family or to the accused persons.

This matter has been looked at over a period of time and it was felt that the time has come to put the law on an equal footing, because the same arguments can be used in respect of other offences. For example, it can be said that you can have allegations made to the police and police can act on evidence and charge a person whether for murder or whatever it is, and there can be damage to the person who is charged. But it was felt that when one balances the rights and public interests, public interests demand that the media should not suffer this disability and that the media disability is not really the media disability but is the public disability of the right to publish the information.

2.45 p.m.

Mr. Speaker, the other major matter—reform in this Bill—deals with the question of notification and mandatory reporting in respect of sex offenders. Under Part III of the Bill one would see:

> "(1) A person shall be subject to the notification requirements of this Part where—
>
> (a) he has been convicted of a sexual offence to which this part applies and he has been sentenced to a term of imprisonment;
>
> (b) such sentence has been commuted; or
>
> (c) he has been convicted of such offence, but has not been dealt with for the offence.
>
> (2) The court before which a person is convicted of an offence shall, upon passing a sentence, or dealing with the matter in any other manner, specify the period of time during which the convicted person shall be subject to notification requirements in accordance with the following table…"

Under the table it gives a description of the offence for which the person would have been convicted and then it says that a person who is convicted in respect of these offences, a court can make an order for the person to continuously report to the police station for a period of time.

Mr. Speaker, the purpose of this—and it has been used in other jurisdictions including the United Kingdom and other Commonwealth countries—is for the police to be able to know where these offenders are; that is to say, the persons who have been convicted. What this does is give the police some idea as to where these people are and the police would be able to know how to monitor these activities. It has been found that many of the rapes have been committed by repeat offenders.

Mr. Speaker, I know that anyone who is familiar with this topic and the problems which have arisen in respect of these matters would recognize that, for some time now, there have been problems in respect of these kinds of matters. In order to assist this honourable House I think I should let the Members have some idea of the statistics in relation to these matters. From the police we have been provided with statistics as they relate to the committing of sexual offences for the period 1995—1999.

The statistics can only be summed up in one word: "alarming", bearing in mind that they constitute only the statistics in respect of matters which have been reported. They would not include those cases in which the victims are too terrified of reprisals, devastated or ashamed of the burden the stigma carries, to come forward and report the matter.

The statistics show that with the exception of the years 1996 and 1999, which exhibited minor declines of .14 per cent from 1995, and .96 per cent from 1998, respectively, the number of sexual offences committed between 1995—1999 has shown a marked increase with a total of 2,166 offences. Of these offences, approximately half of them, that is, 1,063 were rapes. Of these offences, 1997 and 1998 seem to have been a bumper year for these types of crimes, with 1997 leading the way in the number of attempted rapes—five; females under 14 years—135; females 14—16, 100; sex with males under 16—four; while in 1998, there were 250 rapes, 82 incidents of incest, and sex with an adopted minor—39; and sex with mentally subnormal persons—two.

Mr. Speaker, these types of increases and these statistics would really demonstrate that the persons who are offenders and who are potential offenders really need a wake-up call. One recognizes that legislation, itself, cannot only deal with these matters, but I think that Parliament's duty is to make laws. One of the important purposes of laws, insofar as laws deal with matters relating to the criminal justice system, is that they must provide the necessary legal framework in which persons who commit offences should be prosecuted and the aim should be to convict the guilty and free the innocent. The law should send a signal that those who commit these offences would meet the punishment of the law. Appropriate law acts as a deterrent.

Mr. Speaker, I beg to move.

Question proposed.

Mrs. Eulalie James (*Laventille West*): Mr. Speaker, I thank you for the opportunity to contribute to this important debate that seeks to bring about some changes in our laws as they relate to sexual offences in our country. We on this side are always willing to support any legislation that seeks to deal with the high incidence of violence in our society, as long as that piece of legislation is brought in a proper form and has the necessary safeguards that would redound to the benefit of the citizens of our beloved country.

The Bill before us today, which seeks to amend the Sexual Offences Act of 1986, raises some complex matters that involve some very delicate issues. In taking a deeper look at its contents, we would like to record some concerns. In fact, we feel that there is a need for more consultation in order that a wider cross-section of views could be solicited from women's groups, non-governmental organizations, and even religious organizations. Further to that, the Bill should be referred to a Special Select Committee to facilitate further discussions on the provisions. What will emanate from all of this is a really good law that will be fair and balanced in the interest of the society at large.

Mr. Speaker, as a female Member of Parliament, I would be the first to support any measure that will bring about greater protection for women in our society. In fact, I had been a victim of a hold-up by bandits some years ago while performing my lionistic duties, but I was able to fight them off; lucky for me they had no weapons. [*Desk thumping*] So as a woman I am aware of the many levels of violence we are exposed to, and it is a matter of serious concern to all of us.

It is not always the passing of laws or the mere fact of bringing a Bill to Parliament and passing it that would give us the solution we seek. Mr. Speaker, we had the experience, not too long ago, when the Domestic Violence Bill was updated and passed in Parliament and notwithstanding all the public hue and cry about new domestic violence legislation, what we continue to see daily in newspaper reports and so forth is the growing and worsening crime situation with so many murders continuing to take place within the context of domestic violence situations.

[MR. DEPUTY SPEAKER *in the Chair*]

So many families are in crisis: wives and children are being murdered, husbands committing suicide. Even yesterday in the *Newsday* on page 5 we note: "A boy, 6, hacked to death, mom critical" by someone who went to interfere, probably, with the mother. The mother is still in the hospital in a critical condition.

Mr. Deputy Speaker, as I continued to look at this Bill, I did some research in the *Grollier Academic Encyclopaedia* to see what they had to say on rape. I came upon this article on rape and criminal justice, which I would like to read.

> "The origin of rape laws can be traced to the widespread belief that women are the property of men. A female was first considered the property of her father to be bartered for in marriage. Because her virginity was valued as the principle asset, rape was considered as theft. Once a woman was married she belonged to her husband; rape then was treated as a crime against the husband's exclusive sexual rights to her. Because marriage gave these rights to the husband legally, it was not possible for him to rape his own wife."

Today, we note that things have changed, these laws have evolved. Not only Trinidad and Tobago, but other countries have updated their laws. But marriage is a sacred thing; we all view it as sacred. By introducing the concept of marital rape, however, it is necessary to ensure that there is a balance in what is being done, or attempted, and also to ensure that there are safeguards in it as well. I just want to give an example: a wife who monitors her unfaithful husband daily can use these provisions to her advantage. She may use it to get back at her husband: in other words, she can set him up. How can we prove that he did or did not rape her; it is her word against his, hence the reason we are asking for certain safeguards to be included in this provision.

We seek to bring legislation to this Parliament to deal with these kinds of issues. It seems, from looking at this Bill, that the intent is to create stiffer penalties. This probably came about as a result of the cries coming out of the society that women feel there is need to increase the penalties in order to deter those who may be tempted to commit the crime.

3.00 p.m.

Mr. Deputy Speaker, there are arguments for and against, and our position is that this legislation alone will not tackle the serious problems that exist. We ought to look at the sociological aspect as well in that we do not only look at the act, but also at the underlying causes that may bring out this type of behaviour. We know in poor families they may have one room and they may just have a curtain to block off the one bedroom, and you know, children are open to all sorts of scenes, sexual and otherwise. These things have some effect on the children.

Perhaps the time has come when we as legislators do not just draft legislation to jail people and throw away the key, but to ensure that mechanisms are in place that will offer some kind of rehabilitation, psychological or other. Mr. Deputy Speaker, I am in no way advocating that the perpetrator must not be dealt with seriously according to his deeds or misdeeds, but rather, these matters can be dealt with on a case by case basis.

Just recently, we had the case of the policeman who was sentenced to eight years for his crime. The judge, after hearing all the evidence was able to exercise his discretion in the matter. Maybe we should have more faith in our judicial system. And so, Mr. Deputy Speaker, we do not agree that we should have one type of punishment for every act of rape.

The new clause 4 speaks of a person who commits the offence of rape as liable on conviction to imprisonment for life—which can be interpreted to mean for his natural life—and, in addition, be liable to 20 strokes with the cat-o'-nine tails. Mr. Deputy Speaker, I take the example of a 19-year-old. If we put this 19-year-old in jail for life for rape, we are saying to that young individual, "You are condemned and you are going to live with this situation for the rest of your life". The reality of the situation is that we have closed the door on him for good. We have told him "That is it for you. There is no hope for you. No opportunity for you to change or rehabilitate. Grow old and die in jail!"

Mr. Deputy Speaker, as it relates to 12A where the police officer may take into custody or arrest without warrant a person who has committed, or who the police have reason to believe has committed, an offence under the sections outlined in the Bill—how can we be certain that the police officer is able to determine whether the individual did, in fact, commit the crime or whether it was a set-up? We are also of the view that police officers, male and female, should be specially trained to handle matters with specific reference to rape. The act has a psychological effect and can be very traumatic for the victim and, sometimes the line of questioning and so forth can add to the trauma.

Clause 18 states that section 31 of Act 27, 1986 is repealed to be replaced by the new section 31(a) which, in essence, speaks of one having reasonable grounds for believing that a sexual offence has been committed in respect of a minor:

> "…shall report the grounds for his belief to a police officer as soon as reasonably practicable."

While we agree that this is necessary, we view the fine and term of imprisonment, which is $15,000 or seven years in prison, as a bit harsh and, maybe the Attorney General may wish to have a look at this.

As it relates to the victim contracting HIV or AIDS resulting from the incident of rape, no amount of compensation or money can take away the fact that death is imminent. Perhaps this act can be looked upon as attempted murder or murder, as the case may be. This situation is very frightening and it is our fervent hope that this Government will continue to work feverishly in not only abating the prevalence of this deadly disease but also in finding its cure. We are losing too many of our young people.

Mr. Deputy Speaker, when we examine all the facets of this Bill, we believe that education has a very important role to play in all of this, particularly as it relates to our young boys and girls. Our children are becoming sexually active at a very tender age, and the time has come when we must no longer sweep the subject of sex education under the carpet, but deal with it intelligently. In schools, it should form part of the curriculum. To this end, we need to train people to impart the relevant information. Remember, if we do not educate them, they will find out one way or another and, therein lies the problem.

At a very early age, we must teach boys to have a greater respect for girls. This must begin in the home. Fathers, sons, brothers—and menfolk in general—of this nation need to respect the girls and the women.

In summing up, Mr. Deputy Speaker, we support the purpose and intent of this Bill before us. We on this side are of the view that some of the areas highlighted and the concerns raised should be given some consideration. Mr. Deputy Speaker, I thank you for giving me the opportunity to make this short intervention. *[Desk thumping]*

The Minister of Education (Hon. Kamla Persad-Bissessar): Mr. Deputy Speaker, I thank the Member for her contribution on this Bill. I am uncertain, and I mean no disrespect to her, whether at the end of it she is saying she supports the Bill or does not support it.

Mr. Valley: In principle.

Mrs. Persad-Bissessar: We thank the Member for telling us what the Hon. Member intended to tell us—that she supports it.

Mr. Deputy Speaker, I rise in total support of this Bill. It is a Bill that makes a very wide range of reforms to the law as it relates to sexual offences. Only this morning, I was reading the newspaper and I was fortified in my view that the time is long overdue for these reforms in the law with respect to sexual offences. I read from page 3 of the *Trinidad Guardian* of today:

> "Law student gang-raped:
>
> A law student was gang-raped and her boyfriend severely beaten in San Juan on Monday night, when they were attacked by five masked gunmen.

> Police said as the couple sat in their car around 9.30 p.m., a vehicle with heavily-tinted windows stopped in front of them and five masked men jumped out.
>
> One of the men smashed the window on the driver's side with a stone and ordered the 25-year-old boyfriend out.
>
> The attackers kicked him about the body before robbing him of cash and jewelry. They then dragged the law student into the back seat and drove to a lonely road in Mt. Hope, where they gang-raped her at gunpoint.
>
> After the ordeal, the traumatised woman flagged down a vehicle and was taken to the St. Joseph Police Station."

Investigations are ongoing.

Mr. Deputy Speaker, in today's *Newsday*, the same story is carried on page 3, but on page 4:

> "Two get jail and strokes for rape and buggery:
>
> Two men convicted of rape and buggery will each receive 15 strokes with the birch in addition to being jailed for ten and 15 years.
>
> The sentences were handed down by Justice Hubert Volney in the Port-of-Spain Second Assize Court yesterday, on Patrick Wellington and Kelvin Persad.
>
> The men were also sentenced to two 12-year jail terms each, for two counts of aggravated robbery.…"

Mr. Deputy Speaker, the Hon. Attorney General read the statistics obtained from the Assistant Commissioner of Police in charge of crime, Mr. Grant, and it is very clear—and those statistics only give the report with respect to incidents that are reported to the police—that there are numerous instances that never reach the police and are never reported to the police. So, these statistics are, in fact, on the downside of what could really be taking place. They are an underestimate, as it were, of what is taking place.

Because of the very nature of the crime, in many instances many victims do not come forward. Sometimes when we see there is an increase in the figures, for example, the figures presented, we see that in 1996, the total number of sexual offences reported were 295, but we see in 1997 it was 514. It appears that there is an increase, but again, it is an increase in the reports. It is not necessarily an increase in the number of incidents. So, in 1998 there was a total of 572 and in 1999 there was a total of 476 sexual offences reported.

Mr. Deputy Speaker, our sympathy goes out to that law student who was gang-raped on Monday. I remember not too long ago when another student at the university was raped and the whole trauma that took place. There was a big meeting on the campus. I have had cause to meet with that student in other ways and to give assistance to her in other ways which I would not go into today. The point is that the victim's life was so affected—the student gang-raped by five men—that given the existing law, the penalties are not severe enough to match the severity of the crime.

If we look at what is being proposed in the Bill with respect to penalties, we will see that there are exceptions for where it is that several persons conspired together and acted in concert to commit the crime. If we look at clause 4 of this Bill, it says:

> "4. (1) Subject to subsection (2), a person ("the accused") commits the offence of rape when he has sexual intercourse with another person ('the complainant')—
>
> (a) without the consent of the complainant where he knows that the complainant does not consent to the intercourse or he is reckless as to whether the complainant consents; or
>
> (b) with the consent of the complainant where the consent—
>
> (i) is extorted by threat or fear of bodily harm to the complainant or to another;
>
> (ii) is obtained by personating someone else;
>
> (iii) is obtained by false or fraudulent representations as to the nature of the intercourse; or
>
> (iv) is obtained by unlawfully detaining the complainant.
>
> (2) A person who commits the offence of rape is liable on conviction to imprisonment for life and any other punishment which may be imposed by law, except that if—"

The exceptions are important, because what is being proposed is that where these exceptions arise, in addition to the terms of imprisonment, other things should happen. So for example, where the complainant is under the age of 12 years—Mr. Deputy Speaker, I do not believe that there is anything more heinous than rape committed on a minor or infant under the age of 12 years. There is nothing more traumatic or heinous. It says where:

> "(b) the offence is committed by two or more persons acting in concert or with the assistance or in the presence, of a third person;

(c) the offence is committed in particularly heinous circumstances;

(d) the complainant was pregnant at the time of the offence; or

(e) the accused has previously been convicted of the offence of rape,

he shall, in addition, be liable to 20 strokes with the cat-o'-nine tails."

Mr. Deputy Speaker, in addition to the term of imprisonment, the cat-o'-nine tails. We see here, strokes are being given to these gentlemen, as reported in the *Newsday*, "ordered to receive 15 strokes". It is now being proposed that it be increased to 20 strokes. Of course, the term of imprisonment has also been increased.

3.15 p.m.

Mr. Deputy Speaker, what is also very interesting about the reforms being proposed in this Bill are the provisions that are being made for the protection of children in the country. Again, I said before and I think everyone will speak with abhorrence for any crime committed against children or for sexual offences committed against or on children.

For us children are the wealth—as Pastor Dottin always says: they are the flowers of the nation. They are our future. It is so frightening that this brutality of sexual offence is often committed by persons who hold the children in trust, in their hands. For example, sometimes it is a friend who visits the family home. Sometimes a relative, a caregiver, taxi driver or teacher is the person who may be involved in committing that sexual offence. The persons who had the duty to look after the child, and the responsibility of ensuring the safety of the child, often times, they are the very persons who commit the most heinous offence of rape or sexual abuse on a child.

It is very important that we give added protection to our children. Yes, the law is to give added protection to women in the society, but it is also for giving added protection to children in our society. So, for example, clause 7 of this Bill increases the penalty for sexual intercourse with a female between the ages of 14—16 from five years to 12 years for a first offence and 15 years for a subsequent offence. Already a minor cannot consent—a person under 14 years cannot consent—to sexual intercourse. It is a statutory rape, in the existing law, if someone engages in sex with someone under 14: that is what is called "statutory rape". That is already in the law. What we have done now is for those between 14—16 to increase the penalty there. Of course, the penalty for rape, as we have said, has been increased to life imprisonment, and where the person is under 12 years old, for the cat-o'-nine tails to be inflicted as well.

I am talking about protection to children being accorded in the provisions of this Bill. Clause 8 seeks to increase the penalty for incest between an adult and a person older or younger than 14 years from 10 years now to life imprisonment.

Incest, Mr. Deputy Speaker, if we pick up the newspapers we see—I read one, I think it is today or yesterday—where a father is alleged to have had a daughter by his daughter. So his grandchild is in fact a child of himself and his daughter. With respect to incest, again, we have increased the penalties for this, from where the person is older or younger than 14 years, from 10 years to life imprisonment. As we said life imprisonment is defined in clause 3 to mean: imprisonment for the natural life of the person.

Mr. Deputy Speaker, clause 17 of the Bill also gives further protection for children. Basically what clause 17 does is to put in a new section.

> "29A. The provisions of section 19B of the Administration of Justice (Miscellaneous Provisions) Act, 1996, applies *mutatis mutandis*, to proceedings under this Act."

What that does is to pave the way for video-recorded statements of a child into evidence in the court. Mr. Deputy Speaker, you could well imagine for a child who may have been subjected to such a crime, to give evidence in court is very traumatic, difficult, and sometimes it may be very difficult to get that child to actually give the evidence that you need. Given circumstances outside the courtroom, the child may be able to give that evidence on video and it can now, through this provision, be allowed into a court of law.

You will remember earlier in 1996, this Government brought to Parliament the Administration of Justice (Miscellaneous Provisions) Act which made it much easier for children who are victims of sexual or other abuse, to give evidence without feeling terrorized or traumatized by the experience. That Act amended the Children Act, so that where there is a risk to life or when neglect or abuse is alleged, the unsworn deposition of a child may be used as evidence in a court. Additionally, in serious cases a child may give evidence and be cross-examined via video recording. This means that the already traumatized child does not have to stand in court and face the alleged abuser who again, would be an adult at most times: who would be a person in authority, who will have that further deleterious effect on the child in question. What clause 17 seeks to do is to allow these new provisions from the Administration of Justice (Miscellaneous Provisions) Act 1996, to be imported into this particular piece of legislation.

Clause 18 of this Bill also gives a further kind of protection to children. I am very pleased with that provision and I commend it, because it now makes it mandatory for certain classes of persons to report cases of suspected child abuse, and failure to do so would constitute an offence. Clause 18 is amended and reads as follows:

"31.(1) Any person who—

(a) is the parent or guardian of a minor;

(b) has the actual custody, charge or control of a minor;

(c) has the temporary custody, care, charge or control of a minor for a special purpose, as his attendant, employer…"

Mr. Deputy Speaker, most important—

"…or teacher, or in any other capacity, or

(d) is a medical practitioner, or a registered nurse or midwife, and has performed a medical examination in respect of a minor,

and who has reasonable grounds for believing that a sexual offence has been committed in respect of that minor, shall report the grounds for his belief to a police officer as soon as reasonably practicable…"

and a person who fails to so comply is guilty of an offence, is liable on summary conviction to a fine of $15,000 or imprisonment for seven years, or to both fine and imprisonment. Mr. Deputy Speaker, this is an exceedingly important clause in safeguarding minors in our society from those predators who may wish to take advantage of positions of authority and trust that they may hold.

We have heard in our school system—I have heard—and I have said this before. I received an anonymous letter from a group of persons, signed "concerned persons", who are alleging that in a particular school—I will not divulge the name at this time because the matter is being investigated by the police—that there is a gang of persons within the school, at the level of teachers and administrators who, for years, have been sexually molesting and harassing children within that school. When we got that letter it was sent to media houses in this country. One such media house sent the letter to me and I had it immediately referred to the police for investigation. I will not name the school that is alleged, because I will not want to hamper investigations that are taking place.

Here we have persons in authority: adult persons, caregivers. We have read only recently of the mentally handicapped boys. Allegations are being made that they are being subjected to the ministrations of perverts in homes where they are put for care, through thinking that they are persons who are responsible. These are the persons who perpetrate crimes of this nature.

I am saying I highly commend those provisions of this Bill, which give added protection to the children of our nation. Clauses 7, 8, 17 and 18 all seek to do so. Clause 4 generally, in increasing penalties for rape, also gives that added protection to our children.

Mr. Deputy Speaker, yes this is definitely protection also for women. I was very happy when the Member for Laventille West said that she would commend any law that would give greater protection to women. There is no question that this piece of legislation seeks to give that protection to women. This is not all that is needed to protect either women or children in a society. Remember the law is not only for women, because rape is gender neutral, it can be rape against a man.

Whilst rape has been a crime that has been perpetrated on women, the Act does not discriminate that it could be men or women who are victims. I am saying that the removal of spousal immunity is exceedingly important. Whilst we may share the Member's concern for persons using the new legislation, should this become law, to set up their spouses, as the Member seemed to be saying: because spousal immunity is removed, which now means that a man can rape his wife, previously a man could not rape his wife. There was a fiction of what was known as "deemed consent"; in other words, a woman always consented, was deemed to have consented to having sexual intercourse with her husband.

3.25 p.m.

What about those cases? I am sure we are familiar with them especially in domestic violence matters where you are legally married to a person, but you are not living in the same house or you are separated. Would the law protect such a husband who would go to where his wife is if she has left him and rape her? No.

In 1986, I recalled this was a matter for debate in this Parliament and I am very pleased to see that whereas in 1986, the consensus of the Parliament could not be obtained to remove spousal immunity—that immunity which gave husbands the right to have forced intercourse and, therefore, to have legal rape as it were, because of the immunity they were granted in the law. Thus far, the Senate has given its full support for the removal of spousal immunity for this very piece of legislation and I trust that this House would do likewise.

I return to the point that spouses may use this to set up their husbands when the husband did not in fact rape them. That is something that would always be there in any crime. There will always be that set-up situation. Again, we can only trust and put measures in place to ensure that the justice system and due process of law are followed. That is the balance. The due process of law is there and, therefore, we can only hope for justice to be carried out when the allegations are made and the charges come forward. It would be wrong and totally out of place in this day and age to continue to allow spousal immunity to prevent men from being brought to justice for rape of their wives whether that wife is legally married or one who lives in a cohabitational relationship with him.

That is another major important relationship, the Cohabitational Relationship Act, the cohabitant being given protection here as well. For too long we have neglected cohabitants, although we know that is a reality in our society and has been a reality in our society, so again that protection is given for those who are cohabitants.

I support the removal of spousal immunity, and the Member for Diego Martin Central is back. I remembered when the Attorney General was piloting the Bill, he said, as soon as he spoke of spousal immunity and the removal of it, the Member for Diego Martin Central left the Chamber. I am happy to see he is back, and I know he will give full support to prevent any such excuse in the law from allowing rape to be perpetrated.

Mr. Deputy Speaker, we have seen the various clauses that are being put forward. Clause 4 makes the offence of rape now gender neutral. This is a highly progressive step. It reflects the sensitizing of people to the crimes that are being perpetrated against our men and boys in this country as elsewhere; it demonstrates that this legislation is attempting to achieve the balance; it is providing a mechanism through which men also have recourses—and it is not just female law. This is people law, in that it acknowledges the existence of crime both against male and female members of a society. So sexual offences are not gender exclusive, and as a people, we need to accept and acknowledge this.

As the Attorney General pointed out, clause 4 speaks of compensation and so this again is another innovation for compensation to be paid, and it is exceedingly important because that compensation can be used for meeting medical expenses, and assisting the victim in rehabilitation after the offence.

Mr. Deputy Speaker, one very interesting innovation, and again very welcome in the law has to do with the new offence that is created and that is of grievous sexual assault which involves a sexual violation of a woman with the use of objects or body parts other than the penis, and this offence is now being put on an equal footing with that of rape. Clause 5 seeks to provide for this new offence and again, it is closing a lacuna that was in the law where such offences could have been perpetrated, but one could not have been able to have the kind of penalties for such a very serious offence which is equally traumatizing and humiliating to anyone as would be rape.

Mr. Deputy Speaker, I support this Bill fully and I ask hon. Members to support it as well. Let us remember when the hon. Member spoke about education she said we cannot just do this. This is not the only thing we are doing, and in fact, if you will recall this Government from 1996 has put into place not one, two or three pieces, but several pieces of legislation which had made it very clear that we are giving greater protection to women in the society and we can remember when the Administration of Justice (Miscellaneous Provisions) Act in 1996, and the Maternity Protection Act in 1998 gave women both in the public and private sectors equal rights to having maternity benefits and the guarantee of a job when they return after taking maternity leave.

[MR. SPEAKER *in the Chair*]

Prior to that, there was no statutory duty in the private sector to provide maternity leave and benefits to women who were employed. The Legal Aid and Advice (Amdt.) Bill as well, you will recall was also one that was very important for women and children in the society because it accorded for legal aid, and the Act as we know, has now been proclaimed. There has been some controversy as to its proclamation. It is definitely clear that the Legal Aid (Amdt.) Act is proclaimed and, therefore, we can now obtain legal aid for applications on the Family Law Act under the status of the Children Act, and under the domestic violence cases which were things you could not get legal aid for before.

In fact, in the Family Law Guardianship Act, the matters were dealing with the custody of children, access to children, maintenance for children and in all of these, there was no recourse in terms of legal aid for those who would have needed them most. In the cases of the Children's Act and the Domestic Violence Act—for all these we have been able to put measures in place. The Domestic Violence Act itself has been amended. The Cohabitational Relationship Act, 1998 is a very novel piece of legislation. You will see that since then we have been moving into all pieces of legislation to ensure that cohabitants are given rights for their cohabitational relationships so that Act, a very novel piece of legislation, catered to our particular historical and social needs to provide access to justice for persons who had no such justice before.

I recalled when we were doing that, it was said that there were over 40,000 persons living in cohabitational relationships. It was estimated that in the ’90 census over 80,000 persons, 40,000 couples were living in such union and that Act was to allow persons in a cohabitational relationship to make a claim to the court for maintenance for a period of up to three years for themselves, and until their children are age 14 and over. Those claims could not have been made, so whereas you might have spent 10—20 years in a stable relationship with someone, you would not have been able to claim maintenance and to apply to the court for maintenance.

Mr. Speaker, there is also before the Parliament, the Distribution of Estates (Amdt.) Bill which will seek again, to give to women a proper share in the distribution of estates and give to cohabitants that share as well. So I am saying that we have had within the Parliament from 1996, a series of pieces of legislation which deal with greater protection for women and children and, therefore, this one is another in that series.

On the issue of education, law always is not the beginning and the end of it, hon. Member for Laventille West. Parliament makes the law, that is why we are here. Section 53 of the Constitution, if I recall correctly, says that Parliament may make laws for the order, peace and good governance of the nation, and that is why we are here. We are making law. Parliament cannot necessarily legislate for what goes on privately in a home in terms of children and their upbringing, but what we can do is give this further protection to the women and children and education would always be a tool that we must use in dealing with any sphere and area of life. So yes we agree with you, but the law is also important. The criminal law is exceedingly important, it sets the framework. If you break the law, then you serve the penalty for it and that is what this is about, to bring stricter penalties, to create wider categories and to give greater protection to women and children.

Thank you, Mr. Speaker.

Mr. Fitzgerald Hinds *(Laventille East/Morvant):* Mr. Speaker, the Member for Siparia reminded us that it is not a matter of one or two pieces of legislation that the Government has brought to this Parliament to improve the lot of women. This is an election year and I see that statement purely in the context of electioneering. I listened to the Member for Siparia. She comes often, and in the best language she can find, and in the sweetest tones tells us all the wonderful things she could think of about her Government, the UNC Government. At the end of the day, what is the reality?

Mr. Speaker, I represent the constituency of Laventille East/Morvant as it is known, and many of my colleagues will share the experience that I will now relate. I have observed that many women and perhaps more and more women are suffering because of the economic and social circumstances that exist in Trinidad and Tobago. *[Desk thumping]* Unemployment appears to be on the way up again and many of these women are housewives, many are wives, common-law wives, and many depend on the males to provide them with sustenance, and many support their husbands and relations—if I may say so—in maintaining themselves in the home.

Unemployment in the country affects women; we hear little about that. We know that last year the Government had allocated a certain amount of money—$25 million—to assist single women and nothing was done about that. So to come here to try to tell us that the Government has done so much to improve the lot of women in this country smacks of a kind of deceit that will not fool the Member for Laventille East/Morvant at all. *[Desk thumping]*

However, the Government in this legislation widened the categories of offences. It created a new offence and improved the sentences that are to be applied in the event that one is convicted of the offences under this legislation. While the Government does that, the Member for Siparia, yet again, told us in response to the Member for Laventille West, that the question of the possibility of bad convictions and allegations made by women including wives without foundation, and the possibility of men being convicted upon that evidence, will always be there. She said so, and she glibly said that all we need to do is put things in place to make sure that is minimized. While she said that glibly, the question must be asked, what is being put in place? All they put in place is more and more legislation and they content themselves with that, but in reality, nothing significant is being done.

Why do I say this? The due process of law is not a static concept. What represented due process in 1945 and 1948 is quite different from what represents due process in 1998 and the year 2000. If due process, as we understand it, is what it represents today, but that due process is not adequate to ensure that persons who have not committed crimes are not found guilty of them, then what are we doing? The real challenge is not to say it as glibly as the Minister did, but to think and work out solutions to, in fact, ensure that persons are not wrongly convicted, particularly in offences such as these where that is more likely than in many other cases. I want to make it quite clear that I hold no brief for sex offenders and certainly not for potential sex offenders, or indeed not for past sex offenders. Make it quite clear.

Mr. Speaker, I filed a question in this Parliament asking the Attorney General and Minister for Legal Affairs—*[Interruption]* I did not call any name, you know. I simply said past sex offenders.

Mr. Speaker, I want to make it clear that I filed a question in this Parliament and I asked the Attorney General in that question whether he was aware that there is a shortage of forensic analysts and document examiners at the Forensic Sciences Centre. Of course, I have not yet had responses. The reality is that many sex offence cases, and cases where the need for forensic analysis, and evidence of the experts exists, they are either thrown out after a period of time, or the case is weakened because of the shortage, or it is postponed and so it goes. Delays for which, sometimes the wrong persons and institutions are blamed by the very Attorney General.

Mr. Speaker, the forensic process is not perfect and I venture to think that it may never be, but there exists in this world what we know as DNA testing, and while we saw legislation passed through the Upper House on this matter, today as it exists, no court can make reference to DNA testing or the information arising therefrom because it is not yet the law of Trinidad and Tobago.

As it stands today, and the Member for Siparia alluded to it, all that is necessary is for a woman to go to Constable John or a police station and say that Mr. "X" or "Y" sexually interfered with, assaulted or raped her. Invariably, she would be sent to be tested medically. Sometimes this is done days after the day of the alleged offence and very often, the medical examination does not assist in the conviction or the prosecution. Oftentimes no human spermatozoa is discovered, there are no breaks in the skin around the vagina, there is no evidence of force and, therefore, the medical report does not assist in the prosecution and conviction. In any event, the Minister knows that that evidence only assists by way of corroboration of the *viva voce* evidence of the virtual complainant as she gives her evidence in the court.

3.40 p.m.

So that is not necessary. It only assists where that is possible. It means, therefore, that a man can be convicted; and in fact, it means, therefore, that the evidence of the woman that he did X and Y to me, without my consent, is good enough for a conviction. If he did it; too bad for him. There must have been cases in human history where he did not do it. *[Words expunged]*

Mr. Speaker: I want to say to the Member that this is a sensitive and serious debate, and I do not appreciate, and it should not be, that you should put yourself at a level where, with all that has been said and the like, you appear to be vulgarly attacking a Member of the House or the Prime Minister. That is quite wrong! There is a limit to what one could say and you do not have to descend to those depths. I order that what has just been said be expunged. I warn you, if you continue in that vein, I will stop you! That is quite wrong! It is unnecessary!

Mr. F. Hinds: Mr. Speaker, I agree entirely with you, but I can assure you that I was doing no such thing.

Mr. Speaker: I have ruled on the issue and I am very happy to hear that you are not doing it, but that is not necessary now. I have spoken.

Mr. F. Hinds: Mr. Speaker, I think it is only proper that I give you the assurance that I was doing no such thing.

Mr. Speaker: Hon. Member, you can come to my Chambers and apologize if you want, afterwards. We have dealt with the issue, I ask you, please, continue on the Bill.

Mr. F. Hinds: Mr. Speaker, whatever is said in this Parliament is recorded for all time.

Mr. Speaker: I ask the Member, please, to continue with his contribution. The issue that I have just raised, is closed. *[Pause]*

Mr. F. Hinds: I need to be reminded where I was, Mr. Speaker. *[Laughter]* Indeed, however, let me attempt to catch stride and to speak again. As I was saying, this is the type of offence, where all that is required is the allegation or allegations of a virtual complainant. The point I was about to make—yes, I have gathered my thoughts—was that while in this legislation, new categories of offences have been created, and stiffer sentences have been imposed, or are to be imposed, for example, the Bill says, life imprisonment means exactly that: that the person found guilty and so sentenced, must spend the remainder of his natural life in prison. The point I wish to make is, that is harsh and serious, indeed.

If it is that the man is justifiably found guilty, then so be it. But what about the possibility of a man being convicted and sentenced to life imprisonment, to remain in custody for the remainder of his natural life, if, in fact, he did no such thing. That is possible.

So that while we seek today to improve the category of offences, and make the sentences more severe, nothing is, in fact, done to improve the forensic process to ensure that we really minimize the possibility of that. Therefore, I am suggesting that before we move to sending people to prison for the remainder of their natural life, we should put in place the best available technology, in respect of medical examination, and that is, the DNA testing. That is the point I am making.

3.50 p.m.

So that the Government is, in a sense, putting the cart before the horse and, as the Attorney General is wont to do, bring Bill after Bill, pass Act after Act in this House and nothing is really done except to make the criminal justice system much more severe where it is possible, and fanciful where it is not possible. So it enhances his résumé.

The Minister of Education, the Member for Siparia, boasted about all of that legislation, but on the ground, in the actuality, the thing is worse than it was or, at best, there is no real improvement. So that one would have hoped to see commensurate improvements in the forensic process to ensure that the due process of which the Member for Siparia spoke was more trustworthy and at its optimum, applying the best available technology in today's world before we went on to make the sentences more severe as we have described. Not to mention, of course, staffing problems in that department.

I sat in the court only recently and saw two serious fraud charges dismissed simply because of the absence of forensic staff to give the appropriate evidence. While that is the case at the forensic department, and one has to wonder whether this is not deliberate, we know in the Attorney General's office he had, at one time very recently, as many as 37 contract officers receiving significant pay packets, better than they get down at Rienzi Complex for their campaign, and at the same time the staff at the forensic science centre is suffering from overwork, and the courts and the system of justice are delayed and thwarted because of shortage of staff. Those are the realities.

The Attorney General came here today, shamelessly I would describe it, and told us that in an effort—and this is the two-facedness of that Government—to justify the need for more offences, new offences, and in an effort to justify the need for improving the sentences, making it more severe, he came here today and read a list. What did the list tell us? That sex offences are on the increase. That is the very Attorney General and the Prime Minister who campaigned in 1995 on a

platform of dealing with crime. He comes here today [*Desk thumping*] shamelessly and admits that rape, sex offences, are on the increase and, to exacerbate the problem and to put salt into the wound, the Member for Siparia comes after him and tells us that even the statistics and the figures that he read are an underestimation because they are, in fact, under reported. If you needed an apology, that requires an apology because it is evidence of the abject failure on the part of the Government in respect of dealing at least with sexual offences. [*Desk thumping*]

So that, notwithstanding all of the pieces of legislation of which the Attorney General and the Member for Siparia boast, he came today to assure us that, at least in the category of sex offences, it is on the increase. The Member for Siparia bored us a bit by reading from the newspapers about all the various offences that she would have gathered from the newspaper. We do not need that. We have said that we agree that this is a serious state of affairs and things ought to be done. What we are trying to do today is to ensure that good law is put on the books and administratively, in terms of executive action, the best is being done to resolve the problem in the reality, not with legislation, not with talk. So let it not be said that we are not supporting this legislation. Let it not be said that we are proposing to be soft on sex offenders or any lawbreakers. That is not the case. In fact, we wish many more of them in the past were convicted. Trinidad would have been certainly better off.

Mr. Speaker, in respect of this severe sentence of natural life, which is quite deserving if a man rapes a woman, I wondered, as I listened to the Attorney General, whether we ought not to consider the application of this in all cases. What do I mean? In respect of the offence of murder, if a man or a person is under the age of 18 years, he will not be hanged in accordance with our law and Constitution. He will be sentenced to a term of imprisonment at the state's pleasure. Yet we consider killing of another human being, unlawful killing, murder, to be as serious as, if not more serious—well, let me say as serious as the offence of rape. So something is a little strange about that, because the principles of equity flow through my mind as I thought about it and I wondered. Look at this hypothesis.

Two or three persons are convicted for the offence of rape. One is 16 years or 17 years of age and the other is, say, 50 and the other 55. They are all sentenced to a term of imprisonment for the remainder of their natural lives. In a strange way equity does not operate in there because one little fellow stays in there for a much longer time, if you look at the natural course of things, than the other two.

Again, the principles of equity in sentencing troubles me in this regard. So that I wonder whether the Attorney General might not wish to apply his mind more closely to the possibility of establishing something of a minimum or an upper—yes, a minimum age limit in respect of the application of the sentence of natural life.

In this regard the Member for Laventille West made a very important point. I know some of my colleagues, heartless as they are on that side, may balk at the suggestion I would now make, but, Mr. Speaker, I am guided by the words of Matthew, Chap. 5, the Beatitudes. "Blessed are the merciful for they shall attain mercy". That is a principle that we got from the Bible and I have no doubt that it is replicated in the Bhagvad Gita. I have no doubt that it is replicated in the Qur'an. I have no doubt that it is replicated in the Torah. It is a principle. "Blessed are the merciful" and, therefore, what God said is that even if an individual commits the most heinous crime, as far as God is concerned we should exercise mercy. But temper justice with mercy. [*Desk thumping*]

However, in accordance with the law of this land, particularly as it is applied by that Government, it seems as though mercy is a forgotten and forlorn concept. I am not saying that we should be sympathetic and soft on sex offenders; not at all. But as the Member for Laventille West pointed out, think of the situation where a 17-year-old is put in prison for the rest of his natural life because he was convicted, sometimes as the first offence, for the offence of rape. I want to deal with that because I have dealings with young men who have appeared before the court in offences such as these and I as a parliamentarian, as an attorney-at-law, as a man, as a human being, question them sometimes and try to get into their minds to find out what would cause a man, or a boy sometimes, to behave in that antisocial, hostile, violent and unlawful manner. I wonder and I question them sometimes. [*Interruption*]

Member for St. Joseph you appear soft across the board, so do not tell me I am being soft on them. [*Interruption*] I say, Mr. Speaker—[*Interruption*]

Mr. Speaker: Order please. Order. Order please. Order please.

Mr. F. Hinds: Mr. Speaker, I say—[*Interruption*]

Mr. Assam: You exposed yourself, boy.

Mr. F. Hinds: Not at all. Not at all. [*Laughter*] Mr. Speaker, what I say is simply this. Oftentimes in my inquiry it turns out, and I may be wrong in my analysis, that these young men, driven by their natural urges, human urges, are

sometimes mindless of the seriousness of their actions at a point in time. They go to a party or they go to some fete. They will have been permitted to buy alcohol—Sunday, public holiday, this Government made that law. They are half drunk. Some of them make use of narcotics, and you know they are influenced by some of the horrible and the nasty scenes we have from the cable television and the other videos that are easily accessible to them in this society.

They have, in their hands, guns and other weapons, most of which are not manufactured, made in Trinidad and Tobago, but they come in. They use drugs, like cocaine, which is not made in Trinidad and Tobago, but it comes in. I maintain the view that it is hardly possible for these kinds of items to come into the country if the state agencies are not either downright weak, negligent or sometimes involved. [*Interruption*] Well, if you have borders—[*Interruption*] I am making no accusation. If you have borders and you have guards and you have customs officers at the ports and you have police officers and you have coast guard officers. [*Interruption*]

Mr. Speaker: Order please. Order please.

Mr. F. Hinds: I say, Mr. Speaker, that these items are not manufactured in Trinidad and Tobago. Logically they come in. It must logically be that either our border security is weak, we are negligent or sometimes participatory. It has to be one of those. If you can give me any example of it coming in that does not fall into one of those categories, I shall retract my statement. So in some ways one comes to understand that the 17-year-old or the 16-year-old who would have acted as terribly as he did, may have been under, if you like, a bit of an influence from things outside of his and obviously perhaps outside of our own control as a society, and he finds himself behaving in that antisocial manner.

He finds himself before the court to answer the serious charge of rape and oftentimes it is only then that he realizes the implications of what he may have thought was good fun because he learnt it at 1.00 a.m. on the cable television in his home, all interspersed with lovely alcohol advertisements making the whole scenario on colour TV look good. Then he is influenced by it and he behaves in that way and then we come down on them and say, "Crucify him. Jail him for the rest of his natural life". I am only wondering whether we should not have a second look at that before we proceed. That is all I want to say on the matter. It is a matter for the Attorney General because we have become accustomed to making useful suggestions and having Bills rammed down the Parliament's throat, notwithstanding. But we are listing those bits of legislation and, as soon as we have an opportunity, we shall rectify them.

4.05 p.m.

Mr. Speaker, I noted well in clause 4(1) of the Bill it says:

> "Subject to subsection (2), a person ('the accused') commits the offence of rape when he has sexual intercourse with another person ('the complainant')—"

Now, this is a new development. Previously, the offence of rape was by a man of a woman. The Member for Siparia got up and boasted. The Member told us—and I want to quote her—she said that this is a most progressive step and the offence of rape has now become gender neutral. The Member described it as "a progressive step". Well, that is questionable. I would have thought that the Member for Siparia or the Member for Couva South would have demonstrated to this Parliament some kind of evidence to justify society's movement to that progressive—as she calls it—condition.

Mr. Speaker, as far as I sense it, the people in this country generally hold the view that sex is between men and women. In the generality, we feel—and I think the consensus of public opinion is that same-gender sex is not generally accepted. While we accept that same-gender sex exists in this society—as it exists in perhaps all others—the general consensus is that we do not frown on sex between a man and a woman but we do on same-gender sex.

So when the Minister comes to tell us that this is progressive, I would have thought that she would have sought by way of some statistical justification to demonstrate to us that society has gone to that, but no such thing from the Minister or the Member for Couva South—typically UNC. They are elitist in there orientation. They conjure up their ideas and impose them on the country without sensing the consensus of the people of this country—all of the time.

Mr. Speaker, this year, in one of Calypsonian Crazy's songs—"In Time to Come"—he dealt with this in one of the lines. He said there seems to be a subtle acceptance of same-gender sex.

Mr. G. Singh: He also said that the PNM would have an Indian leader. *[Interruption]*

Mr. Speaker: Order please!

Mr. F. Hinds: I will simply ignore the Member for Caroni East. As I was saying, it means, therefore, on the current construction of this Bill a man can rape a woman and a man can also rape a man.

Mr. Speaker, now, we saw a new offence: "grievous sexual assault" which has to do with an offence other than the offence of rape. I do not want to describe it. If it is that the Government is saying that now a man can rape a man, and the other offence deals with the other body orifice or orifices—grievous sexual offence—then we are talking about the anus. If that is the case, what has become of the offence of buggery? It demonstrates that this Government stands for nothing; represents nothing; they are not confined to or guided by any principles; they are not guided by jurisprudential thought—they do not think things through. I have said before, it appears as if the Attorney General simply "gets a vaps"—when he travels as he often does to find commissioners or otherwise in England. The Attorney General listens to what obtains for the law there and he excitedly and gleefully decides to impose it on Trinidad and Tobago.

Mr. Speaker, homosexuality is not an offence in the United Kingdom. In 1967 it was made legal. That is not the case in Trinidad and Tobago. That is not consistent with the mores and the morality of the citizenry at large. *[Interruption]* I will not. Please, in a moment. The Attorney General must tell us if now a man can rape another man what will become of the offence of buggery? When will the offence of buggery be committed upon a man? The Attorney General must tell us that, but he did not think that through. The Attorney General just comes here with a Bill. He must tell us.

Mr. Speaker, in respect of clause 3 of this Bill which is the definition clause, it deals with the offence of "grievous sexual assault" and it says:

> "(a) the penetration of the vagina or anus of the complainant by a body part other than the penis of the accused or third person as the case may be;"

So that is clear and it is self-explanatory. Clause 3(c) says:

> "the placing of the penis of the accused or third person, as the case may be, into the mouth of the complainant;"

That too is self-explanatory. In respect of clause 3(d)—Member for Siparia—it seems to deal only with the offence by a man upon a woman. Have a look at it. It seems to be excluding the possibility of a woman in respect of a man in light of 3(a) and 3(c). *[Interruption][Laughter]*

Mrs. Persad-Bissessar: Read clause 3(d) and you will see how foolish the question is.

Mr. F. Hinds: I am not being ungracious but I will deal with it.

Mrs. Persad-Bissessar: You will deal with it?

Mr. F. Hinds: I will deal with it. While I take the point that the Minister has made, still look at it from the other way around. Anyway, we will deal with it more fully in the committee stage. I think it would be more appropriate at that point so we will come back to it.

Mr. Speaker, we noted in clause 4 (3) of the Bill it says:

> "The Court may order a person who is convicted of an offence under this Act, to pay to the complainant adequate compensation which shall be a charge on the property of the person so convicted."

Now, we have introduced into this Bill a civil concept of compensation.

4.15 p.m.

While the offence is a criminal offence and he can be punished, as is the dispensation in the criminal law, we are now seeing an element of compensation introduced. So in addition to being punished, there is now a charge against him if he has the requisite means and, therefore, he could be made to pay compensation.

I wonder aloud whether, in a case like that, a victim would really—I do not know if there is any suggestion that the victim would probably want compensation from someone who violated her person in the context. But it is the will of the Government; they have expressed it in subclause (3) and there is where it goes. [*Interruption*]

Mr. Speaker, I am not having any fun. I do not know what the Member for Couva South is laughing about. The Member for Siparia reminded us that in previous legislation it was made possible for the use of video-recorded evidence of children, in certain offences, and this Bill introduces that yet again. I suggest, and I would like the Attorney General to tell us whether there has been any case in which this has been applied in Trinidad and Tobago, to date. I venture to think there has been none.

The reason for that is not because the offences have stopped being serious; they continue to be. More and more children, as they admitted, are being attacked and assaulted in these ways by men in the society. But the fact of the matter is, it has not been done, because the facility does not exist, and this is the point I am making. It is all well and good to come here with new and innovative legal measures and to establish the legislative framework, as the Attorney General likes to tell us, and as the Member for Siparia reassured us. But the reality is: there is no facility to video-record evidence of the child in any police station in Trinidad and Tobago today.

So they come glibly and they boast in the Parliament and outside, and win political mileage, at least, so they think; but when you look at it closely they are not paying the price. They will not invest a cent on videos in the police stations; at least, not to date. Meanwhile, they are unable to account for significant amounts of public funds in other departments, and nurses must be on the walk, as a result.

Mr. Speaker, I call on the Government to ensure that in swift order this legislation has meaning, by securing the presence of video-recorded facilities in every police station in Trinidad and Tobago. Until such time, they should withdraw it—[*Interruption*]—or give us an assurance today that by the 15th of this month or the 1st of next month, the stations would be so supplied.

Mr. Speaker, it is a reality in the minds of many in this society that if you have a lot of money, if you have some power, from wherever it is derived, that the law works in favour of those persons. Many people tell me on the street, and sometimes I take pains to explain to them that this is not the case. Members of our society feel that once you are big and rich and famous the law does not always apply with the same force upon you as it would upon the small man. That is what they think; that is what they believe and, therefore, there are cases where people are charged for certain offences, including these types of offences and they are able to draw the procedure out. At the end of the day, nothing comes of it and the victim's complaints go, in his or her view, unattended.

It is a matter that the Government would want to take note of and do whatever it can to cause the citizenry of this country—justice must not only be done, but it must appear and be believed to be done. People must have confidence in the system, and it is very difficult under the governance of the UNC—very difficult.

The Attorney General attempted to deal with the question of publication of the name and the photograph of an accused person. He said that in fairness to the legislators in 1986, when the current legislation was passed, they felt—it was the view that the allegation of rape was an easy one to make and it was difficult to displace, and all the vagaries around that and all the difficulties. Therefore, they should protect the accused from having his name bandied about in the press. The Attorney General in his strange mind interpreted this to be a bar on the media. He said that no longer must the media be restrained from being able to publish this.

This was not done to give the media any boon or benefit; the media could take care of themselves. As a matter of fact, when they do, the Government is highly offended. This was designed to protect the accused, so to justify removing that protection by using the name of the media, particularly, coming from the mouth of anybody on that side, smacks of deceit and, in principle, it is wrong, because the media was not part of the consideration, as such. The idea was to protect the accused. All the media did was to tell the nation, spread the news, but it was to protect him, in the first place.

The Attorney General said that in the offence of murder, which he deemed in that case to be more serious, a man's name and photograph could be published. So he accepted, in that context, that murder was a more serious offence than a sex offence. If he was correct, then he would agree with me in respect of the point that I had previously made, where a murder accused and convicted person under the age of 18 years would not be hanged, why should he—and he would be sentenced to a term of imprisonment at the state's pleasure—why should he now be put in for rape for the remainder of his natural life? He must grapple with that.

The point I am making is this, in the case of a murder where the man is acquitted, the man would live in his community, he would be known to members of his community and they may have been aware of the fact pattern in respect of the murder. It may have been a fight or a one-off situation, in most cases, and someone died. He was charged, tried and acquitted. They would not possess a long-term ongoing fear about this man, as to whether he would kill again, generally speaking. They would have known that this was a one-off incident.

If we had evidence that it was a tendency, like if the fellow had some deformity of mind, then he would have been dealt with during that trial, in a certain way, and taken out of society. In respect of the charge of murder and the acquittal of murder, it does not hold. If it were a larceny, people in the area would know. You burglar-proof your house, you can do things to protect yourself from a known thief in the area or even from strangers who come into your community.

What is different about a sex offence and why I suspect that the protection given was necessary, the accused may be a teacher and he teaches in a co-ed school. An allegation would be made, he would be charged and acquitted and he must continue teaching young ladies in the nation's schools. What I am trying to say is that there is a difference because of the nature of the offence. It is not so easy to detect and the question of trust for that man from the community, in the future, is a grave one, indeed.

Mr. Speaker: The speaking time of the hon. Member has expired.

Motion made, that the hon. Member's speaking time be extended by 30 minutes. [*Mrs. C. Robinson-Regis*]

Question put and agreed to.

Mr. F. Hinds: Thank you very kindly, Members, for extending my time.

Mr. Speaker, I was attempting to deal with this question to demonstrate the difference with a sex offence. Let me demonstrate what exists in the prison system in the United Kingdom. When a man is convicted for a sex offence in the United Kingdom he is deemed to be, I think they call it, a section 37 or a section 47 prisoner. He is kept separate and apart from the remainder of the prison population. He is protected even in jail, because in that society, somehow or the other, all the other convicted felons and criminals treat the sex offender differently.

A man may come in for murder, for larceny or any other offence, he stays in the general prison population, but once it is a sex offence he is kept apart, because in their culture they treat them differently. They would beat him to death in the prison, if they catch him; that is a reality. If the Attorney General paid close enough attention, he would have known that. I call that in aid to demonstrate, at least, in that context, why the sex offence is treated differently from all others.

The people in the community, when a man is accused—many fellows put in their defence in court that they were having ongoing relations with the victim in the matter, but on one particular occasion the victim's mother, aunt, guardian or some teacher, would have found out; and the embarrassment caused to the victim and the urgings of the guardian, parent or someone else, sometimes urges them to make a formal report and then the process begins. Because of the rules of evidence, oftentimes, a lot of those kinds of evidence are unable to come out in the court and, therefore, the accused's defence is strictured and the court never has a chance, in many cases, to hear a lot about what went on outside of the immediate facts in the case. So the risk is grave.

The protection that was given in 1986 deserves further consideration before we just wish it away. Because of the nature of the offence, the way that the society views the offence and the possibility of someone committing the offence quietly, without obvious detection, people would lose trust in that man. If, in fact, he was acquitted and if, in fact, he did not commit the offence, and the thing is published, it could affect his job and his standing in the community, and that is why he was given that protection. So for the Attorney General to come here today and use the media to justify removing it, does not make sense, in my humble view. I think we need to look more closely at it. The effects are graver on the acquitted person, in the circumstances.

Mr. Speaker, I agree with my friend from Laventille West that these are serious matters requiring serious analysis. We are in support of any measures to bring offenders to justice, even now that the Government has admitted palpable failure in this regard. We call on them not to just make legislation to sound good and to enhance the Attorney General's résumé. I see that whenever he signs his name he proudly writes "SC" meaning, of course, "Senior Counsel.MP" and I always wonder what that dot represents. Some letter, it appears, is missing, every time I see it. I see the advertisements on the newspapers for the Commission of Inquiry, very expensive advertisements. The whole nation wanted it. [*Interruption*]

Mr. Speaker, as I close, I want to ask the Government to ensure that the forensic process is, in a *de facto* sense, improved and to consider the things we have said as we on this side support that. Improve the lot of police officers and provide the police service with the 1,000 vehicles that the Assistant Commissioner of Transport deems necessary to fight crime, to protect us all in Trinidad and Tobago.

Mr. Speaker, I thank you.

Mr. Speaker: Hon. Members, the sitting is suspended for half an hour.

4.30 p.m.: *Sitting suspended.*

5.00 p.m.: *Sitting resumed.*

The Attorney General (Hon. Ramesh Lawrence Maharaj): Mr. Speaker, in this debate, I think I would be correct in saying that the Opposition said that in principle they support the policy contained in the Bill, but they had reservations in respect of some of the matters. The matters they said they had reservations about were very few, but in relation to the Bill itself, other matters were raised, and I think it would be important for me to deal with some of the other matters so that the parliamentary records would not reflect any inaccuracy.

In response to the hon. Member for Siparia, the Minister of Education, the hon. Member for Laventille East/Morvant, in effect, tried to make out that she was not justified when she said that the administration had, in effect, made great contributions to the rights of women, and the Member dealt with the question of unemployment. Mr. Speaker, the facts are that under the last administration, the unemployment rate was 19 per cent, and under this administration, the unemployment rate is 11.7 per cent; a difference of 7.3 per cent.

Mr. Speaker, how could the hon. Member for Laventille East/Morvant say that this administration did not do anything about the unemployment of women? If it is that the unemployment rate has been reduced, it would surely mean that a school student would recognize that women would have benefited from this. To say that this administration did not do anything to promote the rights of women is really not correct, and I would have expected that the hon. Member for Laventille East/Morvant would have directed his attention to some of the important issues raised in the Bill, insofar as its legal and constitutional aspects were concerned.

The hon. Member for Laventille West talked—as a matter of fact, I think I would like to pay tribute to her, because her contribution was the one which I regard as representing the voice of the Opposition. *[Desk thumping]* Her contribution was very structured; a contribution of substance in which she, in effect, stated the policy of the Opposition in relation to this measure, and she quite rightly said that she was very concerned about some of the matters which she raised.

I want to give the Member the assurance that I do agree with her. I recognize that this Bill—and I said so—cannot solve the problems that we have, and there ought to be other measures. What I am saying is that the Government has been doing other things, but these are problems which will come and we will have to find ways and means of increasing the resources for the solution of the problems.

The Member raised a very important point, Mr. Speaker. She said that yes, it is good to have compensation if the person has contracted AIDS, but recognizing also that in that situation, it can be very little help to a person who has contracted AIDS, obviously recognizing what the law can do—it must do its maximum.

She said that probably certain things should be done for the law to make it a criminal offence—whether it is murder or manslaughter—to deal with this problem. I want to tell her that what she has said is very important. As a matter of fact, this is a matter which I asked the Law Commission to draw its attention to and to investigate. It was only last week they came up with a proposal and I am getting a draft Bill done. In relation, I am taking it to Cabinet, because it seems to me that the law must be reformed in order to make it a clear criminal offence if a person knowingly has AIDS and has a relationship with another person, causing that person to contract this disease which can result in his death.

Although it is said now that the person can be prosecuted for manslaughter, there can be difficulties. One can still establish it, but the fact is that there can be difficulties with the evidence. I think if it is made a statutory offence in the sense that I have mentioned, then probably that also can act as a deterrent.

Mr. Speaker, I am very indebted to the hon. Member for Laventille West for this contribution that she has made and I wish to give her the assurance that what she said is very plausible. As a matter of fact, what she said, Mr. Speaker, is something which is really attracting the attention of several other governments and they are trying to find ways and means on the one hand of dealing with the social problem, but on the other hand, dealing with matters which would cause a deterrent for people contracting AIDS.

I wondered whether the Member was becoming a lawyer, because she raised the important points which I think any lawyer, especially one who had some practice in the criminal courts, would raise, but not being a lawyer, she raised some points which I found very interesting. For example, the Member raised the point in which she said that one had a situation in which the compensation—and as one will recall, we passed a Compensation for Victims law which is in the process of being implemented—can help to ease some of the trauma the victims will have. That compensation would come from the state to help them.

The point that she raised apart from the compensation and trauma is the question of witnesses and victim support. That is a matter on which I have had discussions with the Director of Public Prosecutions, because one of the matters in which the criminal justice system seems to be lacking is the concentration on finding ways and means to assist witnesses and victims. In some prosecutions offices, there are victim-support units in which there would be a unit to counsel witnesses, to help victims, to tell them the importance of giving evidence, to try to allay their fears and to provide support for them.

What really happens sometimes is that it appears as though the state uses the witness, uses the victim, gets the conviction and forgets them. Something has to be done in order for the state to have machinery which would provide assistance for these victims even after the case is finished. For example, it is not easy for a victim of rape to go to court and give that evidence because it is a mental trauma. After the victim gives that evidence and the person is convicted, that does not mean to say that the trauma is finished, and the state should find a way to provide assistance to those witnesses and victims. Mr. Speaker, we certainly take the points which the Member has made.

What I found very astonishing is the submission by the hon. Member for Laventille East/Morvant where he said that to have this law removing spousal immunity in relation to rape can cause injustice. To use his words, he says that on the mere allegation of a wife, one can have this situation where the injustice can be done. Mr. Speaker, that statement displays ignorance of the justice system and of the prosecution system.

What it does is amount to a serious attack on the administration of justice: the judiciary, the magistracy, and the police. It does, because one knows that what happens in all these matters is, first, there is an allegation that an offence has been committed. The person makes a report to the police. The police are not supposed to go right away to lock up the person and charge the person. One may have that because in all police services there are good police officers and bad police officers. Whether it is the United States, England, Trinidad and Tobago, Malaysia, it is in all parts of the world.

So, here it is that we are dealing with a matter in which we are putting in law a protection for women to ensure that husbands do not use their wives as property in order to just have sex with them at their beck and call; to use force on them in order to give their bodies to them. That has nothing to do with the law of marriage. No one can show me that the law of marriage means that it gives a husband the right at any time to force his wife to have sexual intercourse with him. What this does is say that a person who does that can be prosecuted for rape.

So, if there is such a report, the report is made to the police, the police would have to investigate, there can be medical examination, and then what happens is that based—

5.15 p.m.

Mr. Manning: I thank the hon. Attorney General for giving way. I wonder if the Attorney General would agree, that if in circumstances of marriage, a report is made to the police on an issue of that nature in fact, what is being signalled is that the marriage is irretrievably broken down. Do you agree?

Hon. R. L. Maharaj: Mr. Speaker, there may be several circumstances. I do not know whether that would be a circumstance or not. The fact of the matter is, that we cannot only think of an accused person. I do not think that anybody in this Parliament knows more about accused rights and person-charged rights than I. Nobody. *[Desk thumping]* Mr. Speaker, I do not think anybody in this Parliament has fought and has advocated—with the greatest respect, Mr. Speaker. I am dealing with the Opposition, I am leaving the Speaker out of this. I am not like them. I do not think anybody in this Parliament knows about human rights and advocating rights for accused persons more than I do.

Mr. Speaker, when I used to do that, I was also advocating for the rights of victims, but they on this side of the House used to attack me for standing and talking up for accused rights. *[Desk thumping]* I am seeing it today and I am happy about it. Let me inform the Member that the police investigates it. I also do not think that anybody in this Parliament has had the privilege of seeing all sides of the law as I have. *[Desk thumping]* Mr. Speaker, I have seen the law as a student, as an accused person, as a litigant, as a lawyer, as an advocate, and even as a prisoner, nobody in this Parliament has had the privilege of having that opportunity of seeing the law. Mr. Speaker, I know what it is when they fabricate and maliciously do things, and I see them still doing it.

Let me come back to the ignorance—*[Interruption]* Yes I know you know Mervyn Hall. He took Mervyn Hall and put him in a hotel and gave him $500 a week. He knows Mervyn Hall.

Hon. Member: That is all.

Hon. R. L. Maharaj: Mr. Speaker, I would not talk today about Mr. Manickchand. The house that the Member sold to Mr. Manickchand and the car that he sold to Dole Chadee, I would not talk about that—

Mr. Speaker: Order please!

Hon. R. L. Maharaj: Mr. Speaker, I know about all the kinds of things that one can have the state resources being used for. They can be used for good purposes and they can be used for bad purposes.

This honourable gentleman got up in this House and said: "Great injustice could be done, because by the mere allegation of a wife, a husband could be put in all this great jeopardy." Well he has attacked the Police Service of Trinidad and Tobago.

Hon. Member: Of course.

Hon. R. L. Maharaj: He is saying that the police service is incompetent. He is saying that the police service will deliberately, on the mere allegation of a wife, under this law—that is in effect, what he amounts to be saying—go and just lock up husbands. That is what he says. Not only has he attacked the police service, he has attacked the Director of Public Prosecutions because, according to the Constitution of this land, the Director of Public Prosecutions can, in any criminal case, discontinue any prosecution at any time. What is he saying? He is saying that the institutions that we have in the country cannot protect the rights of people. Is he also saying that he does not trust the courts because these people can go through the chute and grave injustice can be done? Here it is he got up here —in one breath he wants to support it but in another he does not want to support it.

Mr. Speaker, I think that he must face the challenge. He said we need more study and more time. The last piece of legislation which attempted to deal with this matter was in 1986. From 1986 to now is, how many years? It is 14 years. For 14 years this thing has been agitated. Before this Bill came in final form to the Parliament—after that it was still amended in the other place—there were discussions with women's groups, organizations involved in law and justice and police. This thing has been on the agenda. To say that any government which is serious about equality of treatment cannot turn a blind eye and have a deaf ear to the rights of women; cannot come and use arguments which would show that people want to be soft on crime and rapists to deal with a situation like this. The Opposition has to make up its mind.

They will have to decide today whether or not they want to support. If they do not want to support it, they must vote against it, but do not come and say: "We are supporting the Bill" and from half past one or 2 o'clock to now, to the tea break still talking about the Bill. What is it that they do not support? In one breath they say "Yes we support it, and for the rights of women I want to ensure that these women are not raped." But on the other hand they are saying: "We must think about it more. It needs more thought."

Mr. Speaker, what happened to them, they do not know what they want to do. The right hand does not know what the left hand wants to do. As a matter of fact, Mr. Speaker, do you know what I was amazed about? I was amazed that the Member for Laventille East/Morvant knows everything about buggery. He was able to talk at length about buggery but he does not know the law relating to buggery. I do not understand it. He knows everything. He could make the distinction but he does not really know the law about buggery.

Mr. Speaker, any lawyer would know, that in respect of buggery, if two males consent to have sexual intercourse it is buggery. Buggery is committed when two males consent to have sexual intercourse. Rape is committed, under this, when they have sexual intercourse without the other's consent. That is the distinction. There is no overlapping. Under this law, the punishment for buggery has been increased.

Mr. Speaker, that is why in the United Kingdom, it is said if males consent to having sexual intercourse in their homes, it is not a criminal offence. Is the hon. Member for Laventille East/Morvant asking us to change the law so that we will make people immune from a buggery charge, if they have consenting males in their homes? If it is that he wants to make a case for consenting males who have buggery in their homes, I would say, we would consider it, but not right now. I notice that he gave me a sign that he does not want that.

Mr. Assam: One got the impression that he wants it. *[Laughter]*

Hon. R. L. Maharaj: Mr. Speaker, I do not know what the hon. Member for Laventille East/Morvant wants. All I can tell him is if—*[Interruption]* or does not want. Thank you for the amendment; or does not want. I am indebted to the hon. Member for San Fernando East who would know further about these particular matters than I would know. *[Laughter]*

Mr. Manning: I am speaking on behalf of the Member for St. Joseph.

Hon. R. L. Maharaj: Mr. Speaker, this due process that the hon. Member for Laventille East/Morvant—Mr. Speaker, when he was talking I said I saw a bit of the Attorney General in him: talking about due process of law. Here it is he talked about due process of law changes from time to time. Mr. Speaker, I agree with him: that in these matters you must have due process of law. When an accused husband is charged after whatever investigation, he is not going before a jury to get convicted. There is a charge and a preliminary inquiry, then you have a committal and it goes to the High Court—there is a judge and jury. Then there is the appeal process right up to the Privy Council. So if the person is innocent, the person has all the safeguards. So how could he give the impression that due

process of law can be threatened with such legislation—that on the mere allegation people can be put in jeopardy? Then he came with an example and said a person under 18 years cannot be sentenced to hang if he is convicted of murder, and imagine a person 18 years of age would be in prison at the President's pleasure and in respect of it.

5.25 p.m

Mr. Speaker, Trinidad and Tobago acceded to the Convention on the Rights of the Child and one of the matters of the convention is that a person under 18 years cannot be executed and that is the law of the land. If the Opposition wants that law changed, they can make a request, file a motion and we will consider it, but the fact of the matter is that a person who is convicted of rape will have life imprisonment, and if the rape is an aggravated rape, it will be life imprisonment for his natural life.

As people know, and I think the hon. Member as a lawyer would know that even if the court sentences you to life imprisonment for your natural life, under the Constitution, the President has the power to stop that at any earlier time and the system that operates is that you have reports from the prison which go to the Mercy Committee.

Mr. Hinds: I thank the Minister for giving way. We are here to make the law. Are you saying that we must make the law and hope that at the President's discretion after that, the thing works in a particular way? Is that what you are saying? We have a duty to make the law in the way we want to make it here and not hope that the President will act in a certain manner in the exercise of his discretion after.

Hon. R. L. Maharaj: Mr. Speaker, I get the impression that the hon. Member of Parliament is saying that when these people can commit offences like grievous sexual assault and take objects and put them into women, and there are three and four of them doing it, and they are repeat offenders, and they have sex with minors that the law should not be that they should be liable to imprisonment for their natural life; I am saying that this does not take away the safeguards in the Constitution.

Mr. Speaker, I do not understand what they want. Is it that they want us to remove this and put 25 or 30 years, 40 years? Tell us. You have not told us what you want. Under your administration, life imprisonment meant 10 years. We took a decision that life imprisonment does not mean that, and administratively we have changed that. In the law, life imprisonment means life imprisonment, but

there has been a practice—and this is just to avoid whatever doubt there is—so life imprisonment means life imprisonment. Imprisonment for your natural life, it cannot be for your unnatural life. Life imprisonment, sentenced to be served for your natural life.

Mr. Speaker, that is why in all the legislation coming, it has been making it clear that life imprisonment means for your natural life so that there can be no administrative direction at any time by any government that life imprisonment could be 10 or 15 years. What has to happen is that if a person is sentenced to life imprisonment by the judge, that person after 15—20 years can apply, and depending on the records and the kind of person, the Mercy Committee can consider it. This does not take away the powers under the Constitution, but the ignorance which has been displayed in this matter is phenomenal. This Bill has been on the table for a very long time, and they say they have no objection to the Bill, but they make these statements.

Mr. Hinds: Am I to understand the Attorney General as saying that in effect, after this law is passed, if a judge sentences a man to life imprisonment meaning natural life, it is still possible that he will serve 10 or 15 years and not necessarily the life sentence? If that is so, what then is really to be achieved by the legislation?

Hon. R. L. Maharaj: Mr. Speaker, in Trinidad and Tobago, over the years, even under the last administration, even though judges sentenced persons to life imprisonment for the rest of their life, they developed a practice over the years whereby after 10 or 15 years, an application could have been made and the Mercy Committee could have recommended and at the present it is an executive decision where the President acts on that recommendation of the Minister. We know that there are people who committed murder in this country and, after, it was changed to manslaughter and they served 10—12 years and then left the prison.

Mr. Speaker, there was no justification for that matter. Since he has asked me I will tell him. There was no justification for that. This administration took legal advice and the situation has been changed. That is why even when a death-row prisoner, if his death sentence has to be commuted, it is not done in a way in which after 10 or 15 years he can automatically leave because of the practices. I am saying that even when a judge sentences someone, even if he is sentenced for life, with the death sentence, the Executive, through the Mercy Committee and the President, has the power to commute that. So whether it is sentence for life imprisonment, natural life, death sentence, the Constitution gives the power to do that.

As to whether it would be exercised, I do not know. But I am saying that the law provides a machinery that if, for example, in a particular case even if a person was sentenced to life imprisonment for his natural life—the Member talked about a young man and the institution provides that those matters can still be looked at after the event; not the judge, he will be out of this—to look at the behaviour in prison. The state still has a machinery by which it could prevent that person from serving life imprisonment. That is well known.

Mr. Speaker, to come here and make it emotional to say that you could have a young person who can be influenced by this and by that, and get into difficulties with one offence and end up in jail for his natural life, and this kind of harsh law and what is needed is education, has no foundation. We are not talking about that, we are talking about a measure in which the court would have the power to do that and to say that it means natural life. When the judge says that, whoever has to deal with this at the appropriate level will have to know that was the feeling of the court. That is the law and, therefore, if it has to be commuted, that will have to be taken into account.

Mr. Speaker, they talked about the statistics. If it is that there has been an increase in rapes over the last few years and an increase in sexual offences, how could they blame the Government for that? Does the Government get involved in that? Yes, the Government is politically accountable and it will tell you what it has done in relation to crime, but it is not all crimes that have increased.

The statistics show other crimes have decreased. This is a serious Bill, it is not a Bill for politicking. It is a Bill in which the woman's person has been violated, the law has been impotent, there has been inaction on the part of the last administration to make these reforms and, as a result of not doing so, many women have suffered. Having had all that, let us try to see what we can do to assist in getting things right. This is not to make cheap politics because no party is going to benefit from this, this has to do with people.

Mr. Speaker, the next matter that was raised was about the media and we were wrong to say this would not benefit the media—I do not know—and trying to give the impression that this administration should be the last administration to talk about the media. I do not want to go into all the incidences the Member for San Fernando East, while in Government, and his Minister of Works and Transport and everybody had with the media. I do not want to go into that, it is well-documented. If the hon. Member for Laventille East/Morvant is saying that a

government is not entitled to criticize the media and to correct stories, and not entitled to say freedom of expression with respect to the media, let him say so, but the records would reveal what the PNM in Government did. How did that come into this? This measure had to deal with two things: one, to remedy the law in which the press can print the name of the victim even before the accused is charged. So we are trying to remedy that defect.

5.35 p.m.

And the other thing it has to deal with is that in respect of persons charged for rape, they have made it an exception which has been preserved in our laws. So I know that the Member for Laventille East/Morvant is familiar with obscene language cases. He does obscene language cases regularly. *[Desk thumping]*

If a man is charged for obscene language, his photograph and his name can appear in the papers. So if he is charged for obscene language; if he is charged for having a dog which bites —and you have to prove scienter and all kinds of things, his name and photograph could appear in the newspapers. If he is charged for wounding, larceny, careless driving, for any offence, his name and photograph can be put in the papers. But if he is charged for rape, his name and photograph cannot be put in the papers.

All these people's names could be put in the newspapers before they are convicted, but for rape, his name and photograph cannot be put in the newspapers before he is convicted. Why? Because we want to protect the man; we want to protect his innocence. So what happens? We do not want to protect the man who is charged for other offences? Why do we want to protect the man? In most cases, he is charged for having sexual intercourse with a woman or interfering with a woman. Why do we want to perpetuate the discrimination against women, by preserving a law like this which offends equality of treatment? *[Interruption]*

Mr. Manning: Mr. Speaker, I thank the hon. Attorney General for giving way. The society views rape and crimes of that nature in a very different way from the way in which they will view obscene language or a traffic offence. That is the reason. *[Desk thumping]*

Hon. R. L. Maharaj: Mr. Speaker, is the hon. Member saying that he is opposed to this law? *[Interruption]*

Mr. Manning: "You talk nah man."

Hon. R. L. Maharaj: You need to tell me. What is the position of the Opposition on this?

Mr. Manning: Mr. Speaker, just let me assure the hon. Attorney General, that the fact that we would support the legislation does not mean to say that we support every clause in the legislation. *[Desk thumping]* We have a responsibility, as the legitimate Opposition, to voice our views on aspects of the legislation that we do not like even if we support the legislation. And we can only hope that we have a sensitive enough Government that would take into account what the Opposition says, so that at the end of the day we end up with good law. That is what we are after. *[Desk thumping]*

Hon. R. L. Maharaj: Mr. Speaker, I am so indebted to the hon. Opposition Leader for having said that. It shows, quite clearly, he is against this provision. He is against this clause. He deserves the right to express his view. He is against this clause—if he supports this clause I would expect him to get up and say he supports this clause, which tries to remove the inequality of treatment against women. *[Interruption]*

Mr. Valley: Mr. Speaker, I am against the clause advertising an accused before conviction in rape cases.

Hon. R. L. Maharaj: Mr. Speaker, I have not given way to the Member.

Mr. Valley: I thought he had given way. He had invited us, Mr. Speaker.

Mr. Speaker: But an experienced parliamentarian like the Member for Diego Martin Central will know that if even he gave way, and he continued to stand, you have no business standing. You have made your point. The damage has been done, and you know that what you did is not right.

Hon. R. L. Maharaj: Mr. Speaker, I notice that this fight for leadership is taking place right here. I said that I would give way to the hon. Member for San Fernando East, the Opposition Leader, and then the Member for Diego Martin Central gets up and said, "I! I am against it." So he said "that no matter what he says, I am against it."*[Desk thumping]* But I want to tell him that he showed that he is man in front of his leader. I invited the Member for San Fernando East to express his view, and the Leader of the Opposition sits down—very experienced—he knows that this has consequences. He knows that this thing has to be well thought out. That he cannot get up and say something like that. He has to reserve his political strategy.

Here, the Opposition Chief Whip says, "to hell … I am not concerned with him"—I am sorry, Mr. Speaker, I withdraw that. That was a slip. I do apologize, Mr. Speaker. Here, the hon. Member for Diego Martin Central says, "I am not

concerned with him—whether he sits down or gets up," because he knows that two men cannot stand up at the same time in that kind of position. *[Laughter]* So that one knows—from a political point of view—one of them would have to stand up. He wanted to show that he is the *de facto* Leader of the Opposition! *[Desk thumping]*

It is very significant. He is saying that whatever the party says, "I say so." He did not get up and say, the Opposition view is so. He is saying that whatever the party says, "I say so." He is a real "I" man, Mr. Speaker. *[Laughter]*

Mr. Assam: Just like the Member for Laventille East/Morvant. *[Laughter]*

Hon. R. L. Maharaj: Mr. Speaker, the Member for Laventille East/Morvant is an expert on softness. He talked about soft when he was speaking and now he is talking about socks. Anything that is soft he seems to be an expert in.

I am trying to deal with what he has said about this matter. *[Interruption]* The point about the media is that if, as the hon. Member for San Fernando East said, when he got up at the right time and made the right intervention at the appropriate time, and in the appropriate way, he said that a person charged for obscene language and a motor vehicle offence, that it is how the society regards it, and that is his main consideration. Let us examine that. How the society regards it, that an innocent man can be accused, and then he gets off. Then the society would regard it as being linked to the offence.

Mr. Speaker, that is what happens with all other offences. Whether the person is in public life; in private life; whatever the position is. That is how it happens. That is one of the risks the society has to take in serving the public good. As a matter of fact, in making laws and taking decisions, one has to recognize that it is not a perfect society. That nothing is perfect. There would be errors, as a matter of fact. Judgments of the court would tell you that the justice system is not an infallible one. Governments are not infallible. People make mistakes. The police would make mistakes, but the important thing is that there are institutions to prevent those errors from happening. That is why where the institutions—in respect of the justice system—are not functioning properly, they are being looked at from time to time. If you do not look at these systems from time to time, the risk for ordinary people can be increased.

Why should the press be prevented from (1) printing that a person who is charged for rape is charged? And why should the press be prevented from (2) taking a photograph of the person who is charged for rape? I could understand if that was the law for other offences. But do not tell me that I am going to make an exception for the offence of rape.

The hon. Member for Laventille East/Morvant spoke about matters which should—I thought at one time he was supporting the Government on this inquiry into the administration of justice, because he was talking about persons who could be convicted; that the person has to do this; that the person has to do that; and suppose the person goes and there are deficiencies in the system. Well, I am telling him that I am happy that he said so. He talked about the colour of the accused; the class of the accused, and justice must be equal. That is what the present Commission of Inquiry into the administration of justice is about.

Therefore, he has, in effect, showed that he recognizes that there are deficiencies in the administration of justice and that they should be corrected and examined. The administration of justice has to do with law reform; has to do with all sorts of measures. He even talked about the inconsistency in sentencing. That is an important aspect about the administration of justice. And I agree with him. It appears to the public that in certain cases, people can get life sentences, and other persons from different strata of life can get high sentences. That is a serious matter. And I want to tell him that the statistics would show that there are gross inconsistencies in sentencing.

As a matter of fact, he went further and made a very serious allegation and probably a pertinent allegation. He said, "there is the perception in the society that justice is only for the privileged." By that he is saying there is a perception that the poor are denied justice. That is a serious allegation. *[Interruption]* Well, we have an inquiry into the administration of justice. If there is a perception in the society that justice is only for the rich, that is a very serious matter. It means that the administration of justice is being undermined and we are being subverted. It means that public confidence in the administration of justice is being lost. Therefore, it justifies Government's action in having the system looked at in all its contexts. *[Interruption]*.

I have taken note of what he said. I intend to apply to get a copy of the *Hansard*. I intend for it to be part and parcel of the contribution that I make before the Commission of Inquiry, to show that in the Parliament of Trinidad and Tobago, the Opposition has recognized that there is a perception that justice is only for the rich. *[Desk thumping] [Interruption]* I am sure that he knows that he can go before the Commission of Inquiry and explain that. *[Interruption]*

He stood up there and gave the impression that this administration—he attacked; he criticized the hon. Member for Siparia and Minister of Education, in respect of the rights of women. He talked about the DNA legislation. The

records would show that during the last administration, representations were made to it, that if you want to strengthen the investigative machinery of the police; if you want to ensure that guilty persons are convicted, you need to take steps to create a legal framework, so that DNA evidence can be taken and made available to the courts. The last administration did nothing about it.

This administration caused a study to be done. A bill was introduced, it has been the subject of study by a parliamentary committee; a new bill has been passed in the other place and it is now before this Parliament. The hon. Member for Laventille East/Morvant comes to criticize this administration for not taking steps about DNA evidence.

The last administration—and he pegs that as not taking steps to protect the rights of women. He also seems to have forgotten that the women of the country were knocking at the door of the PNM administration. The law of domestic violence was inadequate to deal with the situation, and the Government must take steps to reform the law, to give greater rights to women who have been subjected to these abuses.

5.50 p.m.

It was this administration which took steps in order to have law passed. When we came here they wanted to dilute it and because we needed their support they diluted it. They made all sorts of points about police not having the right to go into a home and that if a woman is being brutalized and could be killed the police must get a warrant, *et cetera*. Mr. Speaker, the hon. Member for Laventille East/Morvant got up today and he talked about shamelessness, and about two-facedness. He got up in this Parliament in the face of the media because he wanted to gallery and he thought that they were going to print what they print before tea because they will be here before tea. He got up and he said, in the light of that cogent and compelling evidence that this administration took steps to do that, that this administration did not do anything to protect the rights of women.

Mr. Speaker, I do not know if the hon. Member understands what is the meaning of shame. Does he need me to get a dictionary to read it for him? No, no. A lawyer must know the meaning of shame. We do not need a legal dictionary for that. That does not need a legal dictionary, that needs an ordinary, small-sized dictionary if the Member has to go to a dictionary. What else does he say? He talked about people at a disadvantage and that we have not done anything. He talked about the justice system.

Mr. Speaker, the lawyers and poor persons were knocking at the door of the PNM asking them to improve the Legal Aid Act and to pass law so that more experienced lawyers can appear for poor persons; so that the person in Mayaro does not have to travel to Port of Spain or to San Fernando to get legal aid approval; decentralize the legal aid; put duty attorneys in every district so that justice will be accessible to poor people, so that the law and justice would not be a law and justice for the rich, but must be a law and justice for the poor. What did the PNM do, Mr. Speaker? Like Alice in Wonderland they said, "and I wonder and I wonder and I wonder". They did nothing. [*Interruption*] They did nothing and here it is their concern is whether it is "do" or "did" but they did nothing. Here it is they are harping on the semantics of whether it is "do" or "did", but they did nothing. Mr. Speaker, I could go on and on, but let me give him two more.

He talked about the justice system, talking about safeguards of a person charged. Mr. Speaker, we knew, the country knew, everybody knew and the hon. Member for Laventille West knew and still knows today that you cannot have a proper—[*Interruption*]

Mr. Speaker: Order please, order please.

Hon. R. L. Maharaj: She knew and she still knows. Mr. Speaker, anyone in this country would know that there can be no justice system if, when people are charged for crime, the victims do not have money to help them in the interim until the court process is finished. So the Opposition filed a motion in the Parliament when the last administration was in office, to take steps to have a compensation for victims of crime Bill, because you have to protect victims and witnesses—knocking on the door of the PNM in order to protect the rights of women. Who are the people who would suffer most when you have these things? Women and children.

We said that, for example, in rape cases, when the victims suffer they do not even have money to go to doctors and to get psychiatric help. We knocked on the door of the PNM. We banged on the door. We mashed up the door—the political door—in order to get it, and they turned a deaf ear and a blind eye. It was this administration which caused the compensation for victims of crime Bill to be enacted and in a short while it will be implemented. As a matter of fact, when the Bill came here, what did they want to know, "Where you will get the money to implement the law? Do not have this law. We want to know how much money. Where are you going to get it?"—causing obstructions in the way in order to achieve, so that the rights of poor people can be protected.

Mr. Speaker, then what happens again? He came here today in this Parliament, on such an important measure which has all these legal issues, innovative issues, new issues, radical reformation, a revolution in the law with respect to the law of rape and sexual offences. You are going to have a legal framework in which, when people after they are convicted and when they are released, based on the order of the court you are going to have them monitored, they would have to report to police stations, you have all these innovations and he does not talk about those things. What he talked about was that in the Attorney General's office—he asked the question but he has not got the answer yet—there are 37 contract officers working and they are getting more pay than in Rienzi Complex.

Well, Mr. Speaker, let me respond to that. During the last administration the Ministry of the Attorney General had several vacancies to the extent that the state could not function efficiently because lawyers who had to be appointed by the Judicial and Legal Service Commission were not appointed and, therefore, there were cases in the Magistrates' Court and in the High Court where the state's interests were jeopardized. When this administration took office, steps were taken to assess the situation. The records would reveal that these matters were brought to the attention of the then Attorney General and the Government, under the last administration, and nothing was done. The position which was taken was, "If the Judicial and Legal Service Commission does not appoint legal officers, we could do nothing about it".

So, under the Constitution of Trinidad and Tobago, the Cabinet is given the responsibility for the administration of the country, subject to laws being passed and Parliament passing laws, *et cetera*, but a commission is not appointing people for years, not promoting people, posts are vacant, lawyers cannot be found to do cases in the court, and the Government folded its arms, closed its eyes, put a sheet over its head and even went to sleep—political slumber.

When this administration took office they said, "Yes, representations were made to the Judicial and Legal Service Commission. No action was forthcoming". Well, if it is that this Attorney General is guilty of misconduct because he and the Government took steps to have legal officers appointed to prosecute in cases where there was money laundering, drug trafficking, murder, things involving the Magistrates' Courts, *et cetera*, in order to protect the rights of the people, then I want to be guilty of misconduct again, Mr. Speaker. If it is that legal officers had to be appointed in order to strengthen the state's representation in the courts in order to be able to see about the rights of the people of Trinidad and Tobago, and the last administration did not do it, they went to sleep, then I would say that the last administration is guilty of misconduct, Mr. Speaker.

Mr. Manning: Mr. Speaker, I thank the hon. Attorney General for giving way on yet another occasion. I tell him that it is highly commendable that his Government chose to go the way of contract officers to satisfy what he calls a deficit among the lawyers in the Ministry of the Attorney General. I wonder if he could be kind enough to let us know how many lawyers have been appointed in that Ministry on contract?

Hon. R. L. Maharaj: Mr. Speaker, there is a question in the Parliament for the quantum but I am on the principle. We will give you that answer and we will tell you how many you had, how many chances you had to do it and what you did not do. I promise you, you will get all those answers. We will show that, by having them, how the rights of the people of Trinidad and Tobago have been safeguarded. We will show him that his government sat, saw death penalties being commuted and it needed lawyers in order to try to prevent that from happening and then there were lawyers put in there and units were created so that the death penalty was implemented in Trinidad and Tobago. [*Desk thumping*]

I would show from the record that they allowed the law to be undermined and subverted and they allowed criminals to have a field day in Trinidad and Tobago because they took the position that, as a Cabinet, as a government, if the Judicial and Legal Service Commission does not appoint legal officers they must not appoint. However, Mr. Speaker, although they took that position with lawyers, the Cabinet, under his administration, appointed a public relations officer from Canada to come to Trinidad and Tobago, a Mr. Tilley, in order to promote the activities of the hon. Member for San Fernando East as Prime Minister. He was employed on contract yet the hon. Member for Laventille East/Morvant got up and asked about contract workers. He probably does not know how many contract officers were appointed under the PNM administration and for what they were appointed.

I am indebted to the hon. Member for Laventille East/Morvant for raising this issue because I want to know why the Cabinet of Trinidad and Tobago from 1991 to 1995 saw the law slipping away from the people, saw people's rights being trampled upon but did nothing to solve the situation. So, Mr. Speaker, I am happy to have had this opportunity of responding to some of these matters, but I think that all of us in this Parliament would agree, let us forget the politics in this matter—this matter does not have any politics—and get down to the Bill. Mr. Speaker, I beg to move. [*Desk thumping*]

Question put and agreed to.

Bill accordingly read a second time.

Bill committed to a committee of the whole House.

House in committee.

Mr. Chairman: Hon. Members, there is a list of amendments to be moved by the Attorney General; the list is circulated. I take it that everybody has a copy of this. It begins with clause 18.

6.05 p.m.

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

Clause 3.

Question proposed, That clauses 3 stand part of the Bill.

Mr. Hinds: Mr. Chairman, with respect to clause 3(b) and 3(d). It appears to me that—and I was told during the debate that part of the human anatomy mentioned here in the last line does not appear in respect of a male. Okay? The point is, I was suggesting it appears one-sided in a sense that it deals with an offence that affects only an action taken against a woman but previously, the offence has been made gender neutral. If that is the case, how do you justify in respect of clause 3(b) more similar type of offence in respect of clause 3(d)?

Mr. Maharaj: Mr. Chairman, the intention of the Bill is to deal with this as "grievous sexual assault" that is to say, if the mouth of the accused or third person as the case may be is put by force onto or into the vagina of the complainant, because all those matters from clause 3(a) to (d) are "or, or, or, or."

Mr. Hinds: It means that in respect of (d) that offence could only apply as against a female.

Mr. Maharaj: Yes, because only a female has a vagina.

Mr. Hinds: I know that.

Mr. Maharaj: A male may have but I do not know. *[Laughter]*

Mr. Hinds: That is not the point I am making. I am saying that offence can only be committed against a female.

Mr. Maharaj: For this offence, we are not equating the man's corresponding organ at the back to be that of the same thing as a vagina. *[Laughter]* Do you understand?

Mr. Hinds: Mr. Chairman, go ahead! That is all right.

Question put and agreed to.

Clause 3 ordered to stand part of the Bill.

Clause 4.

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

Mr. Chairman: The Member for San Fernando West.

Mr. Sinanan: Hon. Attorney General, may I get some clarification on clause 4(4)(3)?

> "The Court may order a person who is convicted of an offence under this Act, to pay to the complainant adequate compensation which shall be a charge on the property…"

Firstly, how is the charge on personal property to be recorded?

Mr. Maharaj: We understand that it has to be real property and will be provided for by registering against the property in the Red House.

Mr. Sinanan: This does not say that.

Mr. Maharaj: No, we could have regulations to deal with that.

Mr. Valley: What really is clause 4(b)(iii)?

Mr. Maharaj: Sorry?—

Mr. Valley: Page 7. Clause 4(b)(iii)—

Mr. Maharaj: —"…with the consent of the complainant where the consent— is extorted by threat…obtained by false or fraudulent representations as to the nature of the intercourse;" if he impersonates somebody—

Mr. Valley: No. No. That is clause 4(b)(ii). I am talking about clause 4(b)(iii).

Mr. Chairman: We know, of course, that the student definition of rape was referred to as "the four Fs" and one of those "Fs" is fraud. There are indeed cases in the law of intercourse by fraud. If I remember rightly I think there was a case of *Williams* in which a choirmaster convinced one of the young girls that if this happens her other voice would be more melodious. *[Laughter]*

Mr. Valley: Okay? *[Interruption]*

Mr. Maharaj: Mr. Chairman, thanks very much. There could be for example, a doctor who thinks that it has to be done for medical attention but it is really fraud. *[Laughter]*

Mr. Manning: Or somebody's property could be somebody else's?

Mr. Valley: That is clause 4(b)(ii) "…false or fraudulent representation as to the nature of the intercourse;"—the purpose or reason?

Mr. Maharaj: As to the nature or purpose, because you could have different kinds of situations for intercourse. People could say that this is good for you and lull them for example, to do all sorts of things. *[Laughter]*

Mr. Valley: But I know it is always good for you. *[Laughter] [Interruption]*

Mr. Maharaj: I do not mind putting "nature and or purpose of the intercourse."

Mr. Valley: I just do not know what it means.

Hon. Member: By fraud! *[Interruption]*

Mr. Maharaj: We actually took it from another piece of legislation.

Mr. Valley: It does not matter. I just do not know what it means.

Mr. Maharaj: I would leave it so.

Question put and agreed to.

Clause 4 ordered to stand part of the Bill.

Clauses 5 to 17 ordered to stand part of the Bill.

Clause 18.

Question proposed, That clause 18 stand part of the Bill.

Mr. Maharaj: Mr. Chairman, I wish to amend clause 18 as follows:

"Obstructing prosecution	31A Where a person prevents a minor from— (a) giving a statement to the police; or (b) testifying, in proceedings relating to a sexual offence, he commits an offence and is liable on summary conviction to a fine of twenty thousand dollars and to imprisonment for a term of ten years.
Admissibility of minor's	31B. (1) Without prejudice to any other written law,

statement	where the Court is satisfied that a minor is being prevented from giving evidence and where a statement is made in any written form or manner by a minor, or written in any form or manner by another person on behalf of the minor, and upon the dictation of the minor, that statement may be admissible in a trial as evidence of any fact of which direct oral evidence of the minor would be admissible. (2) The Court may admit into evidence the following statement made by a minor: (a) a statement made to and written by the police; (b) a statement made in the form of a statutory declaration; (c) a statement written by the minor herself; (d) a statement written by another person on behalf of a minor who cannot write. (3) The following provisions shall have effect in relation to any written statement of a minor tendered in evidence under this section: (a) The minor shall state her age and that an adult of her choice was present with her when it was made; (b) If the statement is written on behalf of a minor, it shall be signed by both the minor and the person who wrote it and it shall be dated; (c) if the statement is written on behalf of a minor who cannot write, the person who wrote the statement shall read it to the minor before she puts her mark or thumbprint on it and it shall be accompanied by a declaration of the person who wrote it that it was read to the minor and that she appeared to understand it and she agreed to it; (d) if the statement is written on behalf of a minor who cannot read, the person who wrote the statement

	shall read it to her before she signs it and it shall be accompanied by a declaration of the person who wrote it that it was read to the minor and she appeared to understand it and she agreed to it; (e) if the statement refers to any other document, the copy of the statement given to any other party to the proceedings shall be accompanied by a copy of that document or by such information as may be necessary in order to enable the party to whom it is given to inspect the document or a copy of it. (4) The prosecution shall give a copy of the statement to any other party to the proceedings ten clear days before the prosecution tenders it into evidence. (5) Any document or object referred to and identified in a written statement tendered in evidence under this section shall be treated as if it had been produced as an exhibit and identified in Court by the witness. (6) A minor whose written statement is tendered in evidence under this section shall be treated as a person who had been examined by the Court.
Statements in documents that appear to have been prepared for purposes of criminal proceedings or investigations	31C.(1) Without prejudice to any other written law, where a statement, referred to in section 31B, appears to the Court to have been prepared for the purposes of— (a) Pending or contemplated criminal proceedings; or (b) a criminal investigation the statement shall not be tendered in evidence in a trial without leave of the Court, and the Court shall not give leave unless it is of the opinion that the statement ought to be admitted in the interest of justice. (2) In considering whether the admission of a statement under subsection (1) would be in the interest of justice, the Court shall have regard –

	(i) to the contents of the statement; (ii) to any risk or unfairness to the accused, or if there is more than one accused to any one of them, if it is likely that the statement can be controverted and the person making the statement does not attend to give oral evidence in the proceedings; (iii) to any other circumstances that appear to the Court to be relevant. (3) A written statement mentioned in this section shall be tendered in evidence by the prosecution anytime before the prosecution closes its case against the defendant— (a) if the statement is written by the minor, by the prosecution submitting the statement to the Court; or (b) if the statement is written on behalf of a minor, by calling the person who wrote the statement to put the statement into evidence. (4) Where a statement is tendered into evidence under subsection (2), it shall be read to the Court, and the defendant is entitled to challenge its admissibility before it is admitted into evidence. (5) Where the defendant exercises his right under subsection (4), the Judge or Magistrate shall conduct a *voir dire* and decide whether the whole or any part of the statement is admissible into evidence.
False written statements tendered in evidence	31D. A minor who, in a written statement tendered in evidence under section 31B wilfully makes a statement material in those proceedings which he knows to be false or does not believe to be true commits an offence and is liable on summary conviction to committal to the Youth Training Camp or some other similar institution for one year.”

Mr. Chairman, hon. Members would recall that on the floor of the House, I indicated that we were inserting these clauses in order to provide where persons prevent a minor from giving statement to the police for testifying in proceedings and to make that an offence and also it will be admitted into evidence a written statement giving to the court, the power to consider and to decide whether the statement should be admitted, having regard to all the circumstances. The court would be able to determine on the fairness of the evidence.

6.15 p.m.

Mr. Assam: Is there not a typographical here: "where a person prevents a person a minor"?

Mr. Maharaj: Where a person prevents a minor?

Mr. Assam: You have the word "person" twice.

Mr. Maharaj: It should read, "Where a person prevents a minor". My copy has "Where a person prevents a minor". Thank you.

Clause 18, as amended, ordered to stand part of the Bill.

Clause 19.

Question proposed, That clause 19 stand part of the Bill.

Mr. Valley: Mr. Chairman, on the amendment to clause 19, I think the hon. Attorney General would want to look at this, once more. The amendment appears to allow for the publication of not only the accused, but also of the complainant. Perhaps, we ought to look at it. I have just gotten the parent Act. Clause 19 states:

> "Section 32 of the Act is amended by—
>
> (a) inserting before the word 'After' occurring in line one of subsection (1), the words 'Before or';"

So it is now going to read:

> "Before or after a person is accused of an offence under this Act no matter likely to lead members of the public to identify a person as the complainant or as the accused in relation to that accusation shall either be published…"
>
> The purpose of the protection in clause 32(1) is:
>
> "…no matter likely to lead members of the public to identify a person as the complainant or as the accused in relation to that accusation shall either be published…"

Mr. Maharaj: We are protecting the complainant. So if you notice, we have deleted "or as the accused" and in (p) of the Act we deleted "in the case of an accused after he has been tried and convicted of the offence". We are only protecting the complainant.

Mr. Valley: But you see the logic, Mr. Chairman. The point I am making is that the section saw that there was need to protect from publication both the accused and the complainant, because by the identification of one, implicitly, you may be identifying the other. In the case of incest, for example, it is highly likely—and there seems to be good reason, given the points made by the Opposition where even in the case of the accused, you may not want to do so. What you were attempting to do is to leave the accused out there and still protect the complainant, but by protecting the complainant and allowing the accused to be identified, you may implicitly be identifying the complainant.

Mr. Maharaj: Mr. Chairman, in fairness to the hon. Member for Diego Martin Central, this is a matter which has been studied since 1986 and even before that and those points have been advanced. In relation to a matter to be published, you cannot get away from the fact that sometimes if you publish the photograph of a person who is a husband charged for rape—you cannot, say, publish "for rape against his wife", because then you would be identifying the complainant. You cannot, say, publish for a person charged for incest against a particular person; they would know that it is probably related to some children. You cannot identify the complainant.

The rationale for all this, as the hon. Member would know, is that this section also went before the court in relation to saying that it is not reasonably justifiable in a society that has proper respect for the rights of the individual. Even though the Sexual Offences (Amdt.) (No. 2) Bill was passed with a specified majority, the court has the right to strike it down. There was a case in which there was a certain decision and the matter is on appeal and there was certain advice given. So apart from the constitutional implications, we are convinced that it is not reasonably justifiable in a society which has a proper respect for the rights of the individual.

It has gone through study. We have had different opinions, but at the end of the day, the Government made that policy decision that there should be no exception, in that, if you are going to have exceptions for rape and not have exceptions for any other offence, it promotes inequality. Well, you are entitled not to buy it.

Mr. Manning: Are you saying that the court still has a right to strike down legislation even though it was passed with the requisite majority?

Mr. Maharaj: Yes.

Mr. Manning: In what circumstance?

Mr. Maharaj: Under section 13 of the Constitution of Trinidad and Tobago, which says that even though the Parliament passes legislation with a specified majority, the court has the power to strike it down as being not reasonably justifiable. In other words, the Constitution made the court, not the Parliament, the final arbiter in deciding whether a matter is reasonably justifiable. It has happened that the court did that in a matter when Mr. Martineau was Attorney General, a matter with some land, and it went to the Privy Council. I cannot remember the name of the Act, but there is precedent where the court has done that in Trinidad and Tobago. So the court has that power.

Mr. Valley: I am asking you to read how that clause would read now and see whether you are achieving your purpose.

Mr. Maharaj: We went through it in the Senate and we will go through it again.

Mr. Valley: No problem.

Mr. Maharaj: Which clause is it?

Mr. Valley: Clause 32(1), first of all. Let me read it and you tell me. It would now say:

> "Before or after a person is accused of an offence under this Act no matter likely to lead members of the public to identify a person as the complainant in relation to that accusation shall either be published in Trinidad and Tobago…"

Therefore, it would seem to me that the case cited, like the case of incest, for example, where by showing the accused in the newspapers could identify the complainant; our purpose here would not be achieved.

Mr. Maharaj: Incest would be as against a class of persons, but you would not identify the particular complainant. Incest could be as against a child or other relationship and so forth.

Mr. Valley: I am a father, I have one girl child who is 11 years old, you show my picture and you charge me for incest—

Mr. Maharaj: The law does not deal with individual cases, it deals with a matter of general principle.

Mr. Valley: Let us just continue please. In section (a) you have deleted the words "or the accused" in the second line of paragraph (a). Subsection (a) says:

> "where, on the application of the complainant…"

That is how it is now going to read—

> "the Court directs…"

You are protecting the complainants.

> "that the effect of the restriction is to impose a substantial and unreasonable restriction on the reporting of proceedings…"

Mr. Maharaj: The court can consider in the public interest to remove the restriction.

Mr. Valley: So you want to protect the complainant, he or she is now free to say—this is the person who was raped—yes, you can publish.

Mr. Maharaj: No, the person cannot say, "Yes, you can publish." The person can go to court, make an application and the court would consider all the circumstances and whether it is in the public interest to remove the restriction.

Mr. Valley: Coming back to a major objection, Mr. Chairman, my feeling is, I think it is still valid that given the fact that in Trinidad and Tobago we still believe that one is innocent until proven guilty, given the view held by society as a whole, against this type of crime, I think it would be in the public interest that until the accused is convicted that we continue the protection implied in section 32 of the parent legislation.

Mr. Maharaj: Is that the position of your party?

Mr. Valley: That is the position of the party.

Mr. Maharaj: I just wanted it on record. I regret, I told you that it is a matter of policy and we decided that. We looked at all these issues, the matter was raised in the other place, we looked at it and we have decided that it is in the public interest to do that.

Mr. Manning: Because it is the only circumstances in which you have to treat it in a particular way, that is to say that the identity is not revealed before conviction and it happens only in one class of case; that it is discriminatory and, therefore, not proper, we do not accept that point of view; but that is just for the record.

Mr. Maharaj: We will put on the record that we have considered that, that we have had discussions in the other place and with groups, that we have considered the overall public interest to demand that the media and the public be given this right and the victims be protected, accordingly, and that the complainant would have the right to go to the court and the court, in the public interest, can determine whether the restriction can be moved.

Question put and agreed to.

Clause 19 ordered to stand part of the Bill. [Crosstalk]

6.30 p.m.

Clause 20 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 amendment, read the third time and passed.

DISTRIBUTION OF ESTATES (AMDT.) BILL

Order for second reading read.

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

A Bill to amend the law relating to the distribution of the estates of deceased persons, be now read a second time. What this Bill attempts to do is put into law some reforms to redress some of the inequalities and deficiencies which have existed in the law of succession and in the distribution of the estates of deceased persons.

[MR. DEPUTY SPEAKER *in the Chair*]

Mr. Deputy Speaker, when someone leaves a will, the will is supposed to represent what the person who made the will, the testator, wanted to do with his property upon his death. The normal principle is that what is contained in the will would, in effect, constitute the directions in respect of the estate of the deceased person.

Over the years, it has been found that even though a person may leave a will, that person may not reasonably provide for persons whom any reasonable tribunal would expect that person to consider to provide for. Therefore, Parliament started to intervene to have what is called "statutory disposition" to supplement the request of testator or what is contained in the Bill. There were instances where people would be given the right to apply to the court to say that the testator did not reasonably provide for those persons.

Under the existing law in Trinidad and Tobago, we have the situation where the class of person is the spouse of that person and minor children. It used to be lawful minor children, but then we had the Status of Children Act and that was extended to children who were not lawful—that is to say of lawful marriage—but still had to be minor children.

Mr. Deputy Speaker, our present law is that it is only where a spouse or a child who is a minor child was considered to be a dependent, and if that person was left out of the dispositions, that category of persons can apply to the court for relief. In 1981, it was recognized that this was inadequate and the Parliament passed a Succession Act which extended that category of persons to remove the restriction of minor children and to even include a common-law spouse, but the common-law spouse was restrictive, meaning it was limited to where one had a single person having cohabitational relationship with another person.

What we have done here is that we have extended the category of persons to include a cohabitant under the Cohabitational Relationship Act, any child of the deceased, not limited to a minor child, and any person—it could be a nephew or any other person—who was dependent at the time of the death.

So, what this Bill attempts to do is that if there was a testator who had a person living with him and the testator showed he wanted to provide for that person who was financially dependent, but he left a will which excludes this person—before, as I said, it was only a lawful spouse who could apply or a minor child. Under this Bill, it will open up that category to a cohabitant who can apply to the court to make an order that out of the estate there should be financial provision. It will have to be a cohabitant who falls under the definition of the Cohabitational Relationship Act. It could be any child of the deceased; not necessarily a minor child, and it could be any person; whether a nephew or any other person who was dependent upon this person and who, from the intention, it can be shown that the person must have been in the contemplation or ought to have been in the contemplation of the deceased person's mind.

What the law did was decide that it was going to intervene. As I said, parliaments have decided to do that and, as lawyers would know, it started under what is known as the Inheritance Family Provision Act which a lot of the Commonwealth countries legislated. Just for the records, from the research it showed that it started as far back as 1908 and it was implemented in the United Kingdom in 1938. That is to say, the principle of the court looking at a testator's disposition, looking at the persons who he was supporting, who it was likely that he should address his mind to support, and for the court intervening on the authority of Parliament to make financial provisions for persons who were dependent on the person.

All this Bill does really is to extend that category to, in effect, give effect to what the Parliament had considered to be done since 1981. That Succession Act was not proclaimed, and the only difference with that Succession Act and what we are doing here with this category is that we are using the definition of common-law spouse as in the Cohabitational Relationship Act.

Mr. Deputy Speaker, I would not go into the 1981 reform package and as to why that Act was not proclaimed, but we do know that Succession Act provided that this category of persons as contained should be extended. That basically deals with the Bill. One would see that in clause 2 of the Bill we have the definition sections and then in clause 3 of the Bill, we deal with the administration of estates.

Mr. Deputy Speaker, when a person dies without leaving a will, it is said that the person dies intestate. When the person dies intestate, under the existing law we have a situation where there is a rule that if the person has a lawful spouse, that person can apply for the administration of the estate and there are intestacy rules which would give to the spouse one-third share, and the other part of the estate would be distributed equally to the children.

What has happened is that this Distribution of Estates Bill seeks to amend Part VIII of the 1981 Succession Act and the Administration of Estates Ordinance so as to provide relief for people, both in relation to who have not been considered in respect of the will of the testator and, also, to provide for fixed rules with respect to intestacy.

Mr. Deputy Speaker, one will see that we have taken the liberty of defining the meaning of “kin” and “next of kin”, and under clause 24 we, in effect, expressly stated what are the intestacy rules to make them very definite. We also see that in 26(a), it deals with instances where the intestate leaves no spouse, no issue, no cohabitant, no parent and it shall be held in trust for the next of kin. It expressly states what should be done.

Mr. Deputy Speaker, there was an amendment done in the Senate and I ask Members to note that, because, in effect, in respect of the spouse under the Cohabitational Relationship Act, it deals with notwithstanding section 24, where an intestate dies leaving a spouse and cohabitant and the intestate and his spouse were, at the time of his death, living separate and apart from one another, only such part of the estate as was acquired during the period of cohabitation shall be distributed to the cohabitant subject to the rights of a surviving spouse and on any issue of his intestate.

What we have done in the Senate is that where there is a surviving spouse and there is a common-law spouse—if I may use that expression—the common-law spouse would get only what was acquired by the husband during the time that relationship existed and would not get any other part. We also put in a clause that there must be a time frame for the filing of these claims and at the committee stage we will move an amendment in order to make that clearer.

So, Mr. Deputy Speaker, having taken the cue from the Hon. Member for Diego Martin Central in which he said the Opposition will be supporting the Bill, I will still have an opportunity to respond, but these are basically the matters which this Bill would do. It would try to redress these inequalities and differences which have occurred over the years and, also, to put the law in conformity with some of the changes which have occurred in the Parliament.

Mr. Deputy Speaker, I beg to move.

Question proposed.

Mrs. Camille Robinson-Regis *(Arouca South)*: Mr. Deputy Speaker, as the Member for Couva South rightly indicated, we essentially have no difficulty with this legislation, especially given the fact that the legislation is basically in the same genre as Act No. 15 of 1981 and Act No. 17 of 1981.

Mr. Sudama: What? What word is that?

Mrs. C. Robinson-Regis: Do you have a difficulty with that word: g-e-n-r-e?

Hon. Member: No. It is a nice word.

Mrs. C. Robinson-Regis: As I said, it is in the same genre as those pieces of legislation which were enacted by the People's National Movement government at the time.

Mr. Deputy Speaker, we are of the view that as society progresses, the laws of the particular country must reflect what is taking place in the society. We are clear in our recognition as Act No. 15 of 1981 and Act No. 17 of 1981 indicate that our history has been one which sets us, to some extent, apart from other countries, even though there are several countries which have enacted similar legislation, but we are clear in our recognition that we do have situations where there are cohabitational relationships and, consequently, provision must be made for persons in those types of relationships.

6.45 p.m.

As Act No. 15 of 1981 stated—if I may be permitted to quote the long title of that Act. It says:

> "An Act to define and regulate the authority of parents as guardians or their minor children, whether or not born in wedlock, their power to appoint guardians, and the powers of Courts in relation to the guardianship, custody and maintenance of minors and related matters."

Mr. Deputy, Speaker, the definition of "minor child" is

> "'minor child of the family' in relation to the parties to a marriage or to unmarried persons…"

Additionally, Act No. 17 of 1981, short title: "Status of Children Act" and the long title, which is instructive:

> "An Act to remove the legal disabilities of Children born out of wedlock."

Section 3.(1)(a) of that Act states, I quote:

> "the status and the rights, privileges and obligations of a child born out of wedlock are identical in all respects to those of a child born in wedlock;"

Mr. Deputy Speaker, I raised these pieces of legislation to indicate that if a society, and if a Parliament, is really attempting to make laws which reflect the social mores of a particular country, these are the kinds of laws which will, in fact, be enacted by Parliament. At one time children born out of wedlock had certain disabilities which were attached to them, through no fault of their own, because of the circumstances of their birth.

The People's National Movement is clear in its view, as these pieces of legislation clearly indicate, that we must be part of a society and part of a Parliament that will, in fact, enact legislation which reflects what is happening in the society. In circumstances like that, Mr. Deputy Speaker, we essentially have no difficulty with supporting the legislation which is before the Parliament at this time.

[MR. SPEAKER *in the Chair*]

The only concern, which we do in fact have—I heard the Member for Couva South indicate—maybe I did not hear him clearly, but what I would like to do is

quote from the clause which we have a difficulty with, Mr. Speaker. It is clause 25, which states:

> "(1) Notwithstanding section 24, where an intestate dies leaving no surviving spouse, but dies leaving a surviving cohabitant, the cohabitant shall be treated for the purposes of this Ordinance as if he or she were a surviving spouse of the intestate.
>
> (2) Notwithstanding section 24, if an intestate dies leaving a spouse and a cohabitant, and the intestate and his spouse were at the time of his death living separate and apart from one another, the whole or such part of the estate as the case may be, as would go to the spouse under section 24 shall be distributed to the surviving spouse and cohabitant in equal shares."

Is there an amendment to that? Thank you.

Mr. Maharaj: In respect of clause 25(2), there is an amendment in the Senate. Do you want me to just read it?

Mrs. C. Robinson-Regis: I would appreciate that.

Mr. Maharaj: "Notwithstanding section 24, where an intestate dies leaving a spouse and a cohabitant and the intestate and his spouse were at the time of his death living separate and apart from one another, only such part of the estate as was acquired during the period of cohabitation shall be distributed to the cohabitant, subject to the rights of a surviving spouse and any issue of the intestate."

Mrs. C. Robinson-Regis: Thank you. Mr. Speaker, I am very happy to hear that because that was the concern that we on this side had. We were of the view that if there is a surviving spouse, clearly it was only right that the part of the estate that was acquired during the subsistence of the marriage, that part should rightly belong to that particular person. Whatever was acquired afterwards, should rightly belong to the cohabitant or cohabitee.

Mr. Speaker, as I said, we are not in the habit of opposing for opposing sake. Particularly, in circumstances where we have a history of passing laws which—when I say we, I mean the People's National Movement—reflect the changes in the society. I can talk about the Muslim Marriage Act which reflects what is happening and which indicates what our society has come to accept as part and parcel of our history and of our norms. We have no difficulty with this particular piece of legislation, Mr. Speaker.

Thank you. *[Desk thumping]*

The Attorney General and Minister of Legal Affairs (Hon. Ramesh Lawrence Maharaj): Mr. Speaker, may I take the opportunity of congratulating the Opposition—whilst it was in government—for passing these laws. My only regret is that it did not have a vibrant member like the Member for Arouca South to have them put into place, since 1981. I am sure if the hon. Member for Arouca South was the Attorney General of the last administration she would have taken steps to ensure that these laws, which were there to give to the rights of women and children, would have been put in place.

Therefore, I would like to pay tribute to the hon. Member for Arouca South for taking this noble position today. I would like to thank her party for putting this law on the statute book. But I would like to criticize the hon. Member for San Fernando East for not making the right choice, to choose an Attorney General who would have been able to take steps to ensure that the laws would have been reformed, and people would have benefited more if he had made the right choice of Attorney General.

I beg to move, Mr. Speaker.

Question put and agreed to.

Bill accordingly read a second time.

Bill committed to a committee of the whole House.

House in committee.

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

Mrs. Robinson-Regis: Mr. Chairman, we have not actually seen a copy of the amendment that was made in the Senate. I know the hon. Attorney General did read it for us and we have no difficulty with it, but we have not actually seen it. This is with respect to clause 3, section 25(2); the amendment that we had a difficulty with and the Attorney General was able to—*[Interruption]*

Mr. Maharaj: Do you want me to read it for you? It states:

> "3. A. Delete proposed section 25(2) and substitute the following:
>
> > '(2) Notwithstanding section 24, where an intestate dies leaving a spouse and a cohabitant and the intestate and his spouse were at the time of his death living separate and apart from one another, only such part of the estate as was acquired during the period of cohabitation shall be distributed to the cohabitant, subject to the rights of a surviving spouse and any issue of the intestate.

(3) A person claiming a share of the estate of a deceased person under subsection (2) shall make an application to the court within six months of the date of the grant of letters of administration.'

B. Insert in clause 36B after the word 'been' the words 'born in his lifetime and had survived him'.

4. Delete and substitute:

Act. No.2 of 1972	'Part III of the Wills and Probate Ordinance, as contained in the Schedule to the Matrimonial Proceedings and Property Act, 1972 is hereby repealed'."

6.55 p.m.

In fairness to the Member for Arouca South, what happened with this clause is that both the Opposition and the Independent Senators had reservations about it and it was felt that it might be sending the wrong signal, and was really unfair because you could have a situation where a wife would have contributed to a great part of the estate, and the husband had gone in the last five or ten years of his life with this other person who may not have contributed to the other part of the estate. She should only be entitled to the part which was acquired during her time.

Mr. Chairman, we wanted to really get an amendment done, but the Chief Parliamentary Counsel's legal officer had some problems in getting it done in time. Would you permit me to read it? It is a short amendment with respect to clause 25(3).

Mr. Chairman, do you have a copy of the Senate amendments to be passed to Mrs. Robinson-Regis? As you would notice in clause 25(3) as amended, a person claiming a share of the estate of a deceased person under subsection (2) shall make an application to the court within six months of the date of the grant of Letters of Administration. It is thought that that could be very misleading and that was redone to make it quite clear what should be done and the proposed amendment reads:

"Delete clause 25(3) and substitute as follows:

(3) A surviving cohabitant claiming a share of the estate of an intestate under this section shall, within twenty-eight days of the death of the intestate, file with the Registrar of the Supreme Court a

notification of interest as the surviving cohabitant and, within three months thereafter or such other time as the Court considers appropriate having regard to all the circumstances, obtain an Order from the Court affirming the cohabitational relationship with the intestate and stating the quantum of the share of the estate to which the cohabitant is entitled.

(4) The Rules Committee shall make rules for matters arising under this section."

The reason for this, if I may explain it, is that we do not want the claims of cohabitants to hold up the estate application and it is hoped that the rules would provide for these matters to be done by an originating process in the Chamber Court so that you will have a quick disposition, but a situation where the cohabitant must file an interest within a period of time. Otherwise you can have a situation where cohabitants come long after, trying to disrupt the estate and there must be finality to it.

This new clause was not done in the Senate so I am deleting that and inserting this new clause 3(4).

Question put and agreed to.

Clause 3(4), as amended, ordered to stand part of the Bill.

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

House resumed.

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

REGISTRATION OF TITLES TO LAND (NO. 2) BILL
Senate Amendments

The Attorney General and Minister of Legal Affairs (Hon. Ramesh Lawrence Maharaj): Mr. Speaker, I beg to move,

That the Senate amendments to the Registration of Titles to Land (No.2) Bill listed in Appendix 1 be now considered.

Question proposed.

Question put and agreed to.

Clause 3

Senate amendment read as follows:

First Column		Second Column
Clause		Extent of Amendment
"3	A.	Delete in the definition of 'Assurance Funds', the words 'section 66' and substitute the words 'section 65'.
	B.	After the definition of 'restriction' insert the following: 'seal' means the official seal of the Land Registry of Trinidad and Tobago."

Hon. R. L. Maharaj: Mr. Speaker, I beg to move that the House doth agree with the Senate in the said amendment.

Question proposed.

Question put and agreed to.

Clause 6.

Senate amendment read as follows:

First Column		Second Column
Clause		Extent of Amendment
	Delete and substitute the following:	
"6 Qualifications for certain appointments	6(1)	No person shall be appointed as a Registrar unless he is an Attorney-at-Law of at least seven years experience in Land Law.

(2) No person shall be appointed as a Deputy Registrar unless he is an Attorney-at-Law of at least five years experience in Land Law.

(3) No person shall be appointed as an Assistant Registrar unless he is an Attorney-at-Law."

Hon. R. L. Maharaj: Mr. Speaker, I beg to move that the House doth agree with the Senate in the said amendment.

Question proposed.

7.10 p.m.

Mr. Barendra Sinanan *(San Fernando West)*: Mr. Speaker, I have a difficulty with the hon. Attorney General's subclause (3). Firstly, he is saying in clause 6(1) that the Registrar must be an Attorney-at-Law of at least seven years' experience in Land Law; the Deputy Registrar of five years' experience in Land Law; but the Assistant Registrar must just be an Attorney-at-Law of no experience, in terms of a number of years, and certainly, no experience in terms of Land Law.

I find this is difficult to accept, in the sense that here it is we are operating a land registry and you can have an Attorney-at-Law appointed to this position with entirely no experience in Land Law. I think we need to have somebody—whether it is of three years' standing—experienced in Land Law. You cannot take an Attorney-at-Law who is not experienced in Land Law and put that person as an Assistant Registrar, bearing in mind, that there is a Registrar, a Deputy Registrar, and there are several Assistant Registrars. So that I am recommending that clause 6(3) be amended to read "an Attorney-at-Law, with at least three years' experience in Land Law".

I thank you, Mr. Speaker.

Hon. R. L. Maharaj: Mr. Speaker, this matter attracted our attention in the other place. It was felt that we may not have all these persons experienced in Land Law, and maybe, we would have to train people. So Assistant Registrars would have to be trained.

In the other place, we have many lawyers, as you know, who are very versed in this field, and it was considered to leave it open to have a training programme with the Assistant Registrars. Having regard to what is happening, you may not get people all experienced in Land Law, so there must be a situation where you can fill the vacancies with people who are not experienced in Land Law, and train them.

Question put and agreed to.

Clause 20.

Senate amendment read as follows:

"Insert the following words at the end of the clause 'or any Act which may repeal and replace it.'"

Hon. R. L. Maharaj: Mr. Speaker, I beg to move that the House doth agree with the Senate in the said amendment.

Question proposed.

Question put and agreed to.

Clause 24.

Senate amendment read as follows:

"Delete in subsection (2) all the words after the word 'issue' and substitute the words 'of such certificate'".

Hon. R. L. Maharaj: Mr. Speaker, I beg to move that the House doth agree with the Senate in the said amendment.

Question proposed.

Question put and agreed to.

Hon. R. L. Maharaj: Mr. Speaker, I do not know if Members of the Opposition have objections to any other clause. If by consent—could we not put all the amendments to each Bill in that form, in order to save time? Mr. Speaker, would you kindly consider granting us leave to do that?

Mr. Speaker: Okay, you can put them all.

Hon. R. L. Maharaj: Mr. Speaker, I beg to move that the House doth agree with the Senate in all the other amendments in respect of the Registration of Titles to Land (No. 2) Bill.

Question put and agreed to.

Clause 25.

Senate amendments read as follows:

"Insert in paragraph (a) after the word 'Number' the words 'and property address'."

Clause 28.

"A. Renumber subsection (3) as subsection (4).

B. Insert the following after subsection (2):

'(3) Where the Registrar rejects an instrument or document and gives notice of rejection under subsection (2), the instrument or document may be resubmitted with the necessary amendment.'"

Clause 30(1).

"A. Delete the words 'Subject to section 33, where any instrument that has been lodged and registered in good faith' and substitute the words 'Where any instrument that has been lodged and registered'.

B. Insert in paragraph (a) the word 'or' after the word 'defects',

C. Delete in paragraph (b) the word 'or'.

D. Delete paragraph (c)."

Clause 31.

"A. Delete subclause (1) and substitute the following:

'Rectification of error or omission	(1) Where an error or omission is in the opinion of the Registrar clerical or administrative in nature he shall make such amendment or alteration to the folio of the Register as is necessary.'"

Clause 32.

"A. In subclause (2) after the word 'sum' in line 3 add the words 'or such security'.

B. In subclause (3) after the word 'sum' in line 3 add the words 'or such security'."

Clause 33.

"Delete and substitute the following:

'Where an instrument that has been registered is alleged to have been obtained fraudulently the Registrar shall on the application of a party to such an instrument or on the application of any person who satisfies the Registrar of his interest in the land enter a caveat and where the Registrar enters a caveat, the provisions of sections 74, 75, 76, 77 and 78 shall apply with such modifications as are necessary.'"

Clause 41.

"A. Delete in subclause (1)—

(i) The words 'functionary. The' and substitute the words 'functionary but';

(ii) the word 'must' wherever this word occurs and substitute the word 'shall'.

B. Delete in subsection (2) the word 'must' wherever this word occurs and substitute the word 'shall'.

C. Delete in subsection (3) the word 'may' and substitute the word 'shall'.

D. Delete in subclause (7) the words 'Registration of Deeds Act,' and substitute the words 'Registration of Deeds Act or any amendments thereof.'

E. Renumber subclause (9) as subclause (10) and insert after subclause (8) the following:

'(9) Where an instrument presented to the Registrar is in a language other than the English Language the instrument shall be presented together with a translation into the English Language certified by a sworn translator.'

F. Delete in subclause (10) the words ‘a justice of peace’”.

Clause 42.

“Delete and substitute the following:

‘Stamp Duty	42. Notwithstanding any other written law the fees payable under this Act shall be paid to the Registrar in such manner as may be prescribed and the Registrar shall issue a receipt for the payment.’”

Clause 66.

“A. Delete in subclause (2) the words ‘offer made by’ and substitute the words ‘decision of’.

B. Insert after subclause (6) the following:

‘(7) A person aggrieved by the decision of the Tribunal under subsection (1) may appeal to the Court of Appeal.’”

Clause 67.

(as renumbered)

“Delete the words ‘section 67(1)’ and substitute the words ‘section 66(1)’.”

Clause 68.

(as renumbered)

“Delete the words ‘section 69’ and substitute the words ‘section 66’.”

New clause 84. The following is inserted after clause 83:

“Repeal of Act No. 24 of 1981	84. The Land Registration Act, 1981 is hereby repealed.”

Question proposed.

Question put and agreed to.

LAND TRIBUNAL (NO. 2) BILL
Senate Amendments

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

That the Senate amendments to the Land Tribunal (No. 2) Bill, listed in Appendix III be now considered.

Question proposed.

Question put and agreed to.

Mr. Speaker: The Prison Service (Amdt.) Bill, 2000 is in the name of the Minister of National Security so we will come back to that.

Clause 3.

Senate amendments read as follows:

"A. In subclause (3) substitute for the words 'seven years experience in Land Law' the words 'ten years experience in Land Law'.

B. Delete subsection (5) and substitute the following:

'(5) The Chairman, the Deputy Chairman and other members of the Tribunal shall be appointed for a period not exceeding five years on such terms and conditions as shall be fixed by the President on the recommendation of the Salaries Review Commission.'

C. In subsection (9) as renumbered—

(1) Delete the words 'subsection (5)' and substitute the words 'subsection (4)'.

(2) Insert after the word 'Tribunal' the words 'for such period as the Chairman may recommend'.

D. Insert the following at the end of subsection (9):

'(10) The terms and conditions of temporary members shall be the same as those of the other members of the Tribunal.'"

Hon. R. L. Maharaj: Mr. Speaker, I beg to move that this House doth agree with the Senate in the amendments to clauses 3, 5, 8, 12 and the Schedule.

Question proposed.

Mr. Imbert: Mr. Speaker, with regard to clause 3(B)(5), why would you want to have a Land Tribunal for five years rather than three years?

Hon. R. L. Maharaj: That is the policy. It was thought that a maximum of five years was a reasonable time but it gives you the power to have them for a shorter period.

Mr. Valley: Is this the Land Tribunal under the Squatters Regularization Act? Is this the same?

Hon. R. L. Maharaj: This is the Land Tribunal which has been set up in relation to do land matters that fall under the Law Reform, dealing with the whole question of having the lands in Trinidad and Tobago regularized in relation to boundaries, *et cetera.* Remember there were three Bills: The Land Adjucation (No. 2) Bill, *et cetera.* That was the policy, and the Land Tribunal was to take all the appeals, and so on, in order to deal with it.

Question put and agreed to.

Clause 5.

"Delete in subsection (1)(b) all the words after the words 'for compensation' and substitute the following—

'under the Registration of Titles to Land Act; and'"

Clause 8.

"A. Delete in subsection (1) all the words after the words 'Registration of Titles to Land Act' and substitute the following:

'the Tribunal shall having regard to all the circumstances of the case and subject to subsection (2) decide on the compensation to be paid which shall be just and equitable.'

B. Delete subsection (2) and substitute the following:

'(2) Before deciding on the compensation the Tribunal may make such investigation or enquiry as it thinks fit in the circumstances.

(3) The Tribunal may order costs in appropriate cases.'"

Clause 12.

"Delete in subsection (2) the words 'and its jurisdiction and powers' and substitute the words 'its jurisdiction, powers and procedures to be adopted by the Tribunal for the hearing and determination of the matters before it by virtue of the transfer of jurisdiction by such Order.'

Schedule Delete the following and renumber the rest of the entries:

'1	Environmental Management Act, 1995 (section8)	Environmental Commission
3	Agricultural Small Holdings Tenure Act, 1999 (section 31)	Agricultural Land Tribunal
4	Planning and Development of Land Act, 1999 (sections 94 and 95)	Planning and Development Board'"

Question proposed.

Question put and agreed to.

7.20 p.m.

LAND ADJUDICATION (NO. 2) BILL
Senate Amendments

The Attorney General and Minister of Legal Affairs (Hon. Ramesh Lawrence Maharaj): Mr. Speaker, I beg to move,

That the Senate amendments to the Land Adjudication (No. 2) Bill, 1999 listed in Appendix IV be now considered.

Question proposed.

Question put and agreed to.

Hon. R. L. Maharaj: Mr. Speaker, I seek leave of the House to deal with Senate amendments to clauses 2, 4, 6, 10, 12, 16, 18 and 19.

Question put and agreed to.

Senate amendments read as follows:

"2 Delete the definition of 'adjudication area' and substitute the following:

"'adjudication area" means an area declared by the Minister to be an adjudication area under section 3;'

4 A. Delete in subclause (1) the words 'seven years' and substitute the words 'ten years'.

B. Delete in subclause (3) the words 'and Recording Officers' and insert the words 'Recording Officers and Survey Officers'.

C. Delete in subclause (5) all the words after the words 'Survey Officers'.

D. Delete in subclause (7) the words 'subsection (4)' and substitute the words 'subsection (6)'.

6 A. Insert in subclause (1)(d) after the word 'claimed' the words 'and the property address'.

B. Delete in subclause (3) the words 'may, if he considers it advisable to do so,' and substitute the word 'shall'.

C. Insert in subclause (4)(a) after the word 'published' the words 'in a daily newspaper at least twice and'.

10 Delete the word ‘begin,’ in the fifth line and substitute the words ‘begin in a daily newspaper and’.

12 A. Insert in subclause (1) (d) after the words ‘servient land;’ the word ‘and’.

B. Delete in subclause (1) (e) the words ‘paid; and’ and substitute the word ‘paid.’

C. In subclause (1) delete paragraph (f).

16 Renumber this clause as subclause (1) and insert the following at the end of this subclause:

‘(2) Where the adjudication officer declares the title of any person as provisional under subsection (1) (d), the title shall become absolute after the lapse of three years from the date of such declaration unless within that period of three years the Court or Tribunal orders otherwise.’

18 A. Delete in the first line the words ‘consist of’ and substitute the words ‘be in’.

B. In subclause (1) (a) insert after the words ‘Demarcation map’ the words ‘including the property address’.

19 Insert after the word ‘notice’ the words ‘in a daily newspaper’.”

Hon. R. L. Maharaj: Mr. Speaker, I beg to move that the House doth agree with the Senate in the said amendments.

Question proposed.

Question put and agreed to.

PRISON SERVICE (AMDT.) BILL
Senate Amendment

The Attorney General and Minister of Legal Affairs (Hon. Ramesh Lawrence Maharaj): Mr. Speaker, I beg to move,

That the Senate amendment to the Prison Service (Amdt.) Bill, 2000 be now considered.

Question proposed.

Question put and agreed to.

Rule 12 paragraph (1)

Senate amendment read as follows:

"Rule 12 paragraph (1)	Insert after the word 'President' the following words 'subject to section 134 of the Constitution'."

Hon. R. L. Maharaj: Mr. Speaker, I beg to move that the House doth agree with the Senate in the said amendment.

Question proposed.

Question put and agreed to.

ADVERSE TRADE PRACTICES ORDER

The Minister of Trade & Industry and Consumer Affairs (Hon. Mervyn Assam): Mr. Speaker, I beg to move the following Motion:

Whereas it is provided by section 16 of the Consumer Protection and Safety Act, 1985 (hereinafter referred to as "the Act") that the Minister may consider any recommendations for the making of an Order put forward by the Director of Consumer Guidance and may, if he thinks fit, make such provision in the Order for giving effect to those recommendations;

And whereas it is also provided by section 16 of the Act that such Order shall be subject to the affirmative resolution of Parliament;

And whereas the Minister has on the 20th day of March, 2000 made the Adverse Trade Practices Order, 2000;

And whereas it is expedient that the said Order now be affirmed;

Be it Resolved that the Adverse Trade Practices Order, 2000 be approved.

Mr. Speaker, the Adverse Trade Practices Order, 2000 aims at addressing a number of adverse trade practices carried on in connection with the supply of goods and services to consumers in Trinidad and Tobago. This Order is the first to be made under section 16 of the Consumer Protection and Safety Act, 1985 since its amendment in 1988 as Act No. 22 of 1998. This provision gives to the Minister responsible for consumer affairs the power to make Orders, to prohibit the continuance of those consumer trade practices which are adverse, or to require that they be modified. The Minister exercises his discretion on the recommendation of the Director of Consumer Guidance who has powers, under the Act, to determine whether a particular practice affects the economic interests of consumers.

The intention and expectation is that it would be possible to identify an adverse practice at an early stage so as to recommend and quickly put into effect prohibitive measures and thus eliminate the practice before it proliferates. The director has broad responsibility under section 4 of the Act for monitoring commercial activities in Trinidad and Tobago as they relate to the supply of goods and services to consumers. This is done so it could be used in determining the existence of any consumer trade practice which may adversely affect the interest of consumers. The adverse trade practices which are targeted by this Order, and for which the approval of Parliament is being sought, have been selected on the basis of their serious impact on consumers and their prevalence in the Trinidad and Tobago marketplace.

While the list of trade practices which impact adversely on consumers may be considerable for the purposes of this Act, only those practices which fall within the statutory definition of a consumer trade practice may be addressed by the order-making process. The Act requires, Mr. Speaker, that the practice must not only be in connection with the supply of goods or services to consumers but they must also relate to one of the six matters specified in paragraphs A to F of section 8, namely, the terms and conditions of the supply, the manner in which those terms are communicated, promotion, methods of salesmanship, packaging and methods of demanding or securing payment for goods and services supplied.

There is precedent, Mr. Speaker, in the United Kingdom legislation, for most of these Orders which were considered necessary for dealing with identical practices existing in the environment as far back as 1974 in one case. Prohibition against display of notice containing invalid statement is the first one. The first practice is the continuing use of void exemption clauses. Examples are replete, such as, “No refund”, “No exchange”, “No refund on sale goods”, “Money will not be refunded” and “Credit notes only”. These are some of the displays one sees in shops from time to time.

The Sale of Goods Act of 1895, as amended by Act 11 of 1983, imposes an obligation on a seller of goods to supply goods that are of merchantable quality or fit for the purpose for which they are bought. In the event that a buyer is sold goods of defective quality, he has a right to reject the goods and obtain a refund. Section 9 of the Unfair Contract Terms Act, 1985 deems void any such clause, notice or statement which purports to take away the purchaser’s statutory rights. However, such clauses, though void, are not illegal, so the practice continues of exhibiting shop notices such as those in the examples that I have just enumerated.

The second practice, Mr. Speaker, is very much like the first, except that it is concerned with similar statements published in advertisements, catalogues, circulars, receipts, bills or other documents. There is nothing to prevent a trader from incorporating such a term in his printed sales agreement, for example, with the intention that a customer reading the agreement would mistakenly think that the clause was valid and effective and that, therefore, he had no remedy for the defects if such occurred in the future. Practices of this nature will now be outlawed as a result of paragraphs 3 and 4 of this Order.

The other one is requirements that all terms be included in a contract. Paragraph 5 of the Order targets the third practice engaged in by suppliers, of demanding payment of sums of money from consumers before they, the suppliers, would honour their warranty. The consumer is given a written guarantee containing obligations which the supplier has accepted in respect of the replacement and repair of defective goods. It fails to mention, however, Mr. Speaker, that the consumer is required to pay for inspection of the item before his claim can be entertained.

Relying on the written warranty, the consumer is thereby misled into believing that all that he is required to do is to present his claim and the faulty merchandise to the supplier within the warranty period and it will be repaired and/or replaced according to the terms of the warranty. To his dismay, generally, he discovers that he must first pay out a sum of money before he can find out whether his claim will be considered. The Order therefore addresses, Mr. Speaker, this practice by requiring that a contract which relates to any consumer whose action shall include all terms, conditions, representations, warranties or guarantees including any conditions related to the costs to be borne by the consumer if the goods are to be returned for servicing or inspection or with a view to effecting repairs.

The supplier must state the statutory rights of the consumer. This is the fourth practice, and this is concerned with written statements, furnished by suppliers of goods which purport to set out the rights and obligations of the parties but fail to advise consumers of entrenched rights given under the law. As a result, Mr. Speaker, a consumer may be given a three-month guarantee on a product covering parts but not labour. No mention is made, however, of the fact that, irrespective of the guarantee, if the product should fail, the buyer has the benefit of the implied condition under the Sale of Goods Act referred to earlier in my presentation. The overall effect of this practice is to undermine the consumer’s proper understanding of his legal position. The Adverse Trade Practices Order will require that suppliers give information drawing the consumer’s attention to his statutory rights in addition to his entitlement under the guarantee or warranty.

The fifth, Mr. Speaker, is the display of price and VAT. Paragraph 7 of the Order targets the practice by traders of advertising, displaying or quoting to consumers as the price of goods or services an amount which excludes a sum to be added on account of value added tax. Sometimes goods on display in shops are priced but, when the consumer reaches the cashier or the teller, VAT is added, although the price shown appeared in the first instance to the consumer to be VAT inclusive. In other instances, retail stores publish advertisements with prices that make no reference to the VAT to be added or whether the price quoted already includes this tax. This practice affects the economic interests of consumers in that they are called upon to pay an extra amount and at a time when it may be too late to withdraw from a transaction, particularly when the item has already been consumed, like, for example, Mr. Speaker, a meal in a restaurant.

Paragraph 7 of the Adverse Trade Practices Order deals with this situation by requiring that in advertising, displaying or quoting prices the total sum including value added tax shall be stated very clearly and unequivocally. Given the dynamism of the marketplace, Mr. Speaker, and the ingenuity of some unscrupulous business persons in discovering loopholes in new law in order to deny customers and consumers their rights, the Director of Consumer Guidance is required to continuously monitor the environment for evidence of abuses against consumer interests. It is therefore imperative that legislation keep one step ahead of the market and introduce measures that are timely and relevant. The order-making process must therefore be ongoing and vigilant.

It is therefore the intention, Mr. Speaker, of the Consumer Affairs Division of the Ministry of Trade & Industry and Consumer Affairs to bring to Parliament for its approval, further Orders as often as the market environment dictates and demands. Mr. Speaker, I beg to move. [*Desk thumping*]

Question proposed.

7.35 p.m.

Mr. Colm Imbert *(Diego Martin East)*: Mr. Speaker, may I congratulate the Minister of Consumer Affairs for finally appearing to be doing something useful for a change. I simply have one question regarding the Order that relates to terms of a warranty if the supplier does not indicate clearly all the terms of a warranty, and afterwards tries to charge for labour and so forth. How would the law apply?

I thank you, Mr. Speaker. *[Interruption]*

Mr. Assam: I thought you asked me a question so I was going to answer.

Mr. Imbert: Okay, no problem. *[Interruption]*

Mr. Assam: Oh, you are finished?

Mr. Imbert: Of course.

Mr. Assam: I did not know he was finished, Mr. Speaker, I thought he had asked me a question.

Mr. Speaker: One could understand that. I think he has taken many people by surprise. *[Laughter]*

Mr. Kenneth Valley *(Diego Martin Central)*: Mr. Speaker, I feel I am going to be even shorter than my colleague from Diego Martin East was. *[Interruption]* No, if the Member wants 75 minutes he can get that too. I just wanted to ask the Minister to look at clause 7(i) once more because I do not know whether this is the normal practice. At the retail level, yes, but, for example, a supplier dealing with a wholesaler advertising a price will seldom include the value added tax and simply say, "Plus VAT", or something of the sort. I do not know why we would want to have this requirement that he states the amount of the VAT in money terms. I think he may want to look at that once more. *[Interruption]* No, I am saying that at the retail level, the retail price would normally always include the value added tax. *[Interruption]* In supermarkets? *[Interruption]* If you are saying that this refers to the retail level—*[Interruption]* I do not know which supermarkets you all go to, but they do not include VAT? *[Interruption] [Laughter]* I compliment the Minister, but to make assurance doubly sure can we, in 7(i), include the words "at the retail level"? Where a person who supplies goods—*[Interruption]*

The Minister of Trade & Industry and Consumer Affairs (Hon. Mervyn Assam): This is the easiest passage I have ever had in any matter that I have introduced into this Parliament and for this I am very grateful to the distinguished Member for Diego Martin East and his colleague, the Member for Diego Martin Central. The Member asked one question, that if a supplier does not honour the warranty the person will make a complaint—

Mr. Imbert: Mr. Speaker, the question was if the supplier does not specify in the warranty all of the terms of the warranty and then afterwards tries to get out of it by charging for labour and so forth.

Hon. M. Assam: This is what I am saying. The consumer can make a complaint to the Ministry of Consumer Affairs and the redress section of the ministry will deal with that through our legal department. *[Interruption]* Yes, they will deal with that.

So, Mr. Speaker, I thank Members opposite for recognizing that this is a very good measure and I am very happy that this would redound to the benefit of the consuming public of Trinidad and Tobago.

Mr. Speaker, I beg to move.

Question put and agreed to.

Resolved:

That the Adverse Trade Practices Order, 2000 be approved.

COMMUNITY SERVICE REGULATIONS

The Minister of Social and Community Development and Minister of Sport and Youth Affairs (Hon. Manohar Ramsaran): Mr. Speaker, I beg to move,

Whereas it is provided by section 27(1) of the Community Service Orders Act, 1997 that the Minister shall subject to the affirmative resolution of Parliament make regulations for the performance of work under a community service order, for arrangements for a person to perform such work and for carrying into effect the provisions of the Act;

And Whereas the Minister has on the 8th day of March, 2000 made the Community Service Regulations, 2000;

And Whereas it is expedient that the Regulations now be affirmed;

Be it Resolved that the Community Service Regulations, 2000 be approved.

Mr. Speaker, one of the strategies that the Government is seeking to introduce in its holistic approach to dealing with crime prevention comes with the proclamation of the Community Service Orders Act of 1997.

Mr. Valley: Mr. Speaker, we cannot seem to locate a copy of this regulation. I wonder whether we can get a copy. *[Interruption]* They may have been circulated quite some time ago. Does the Member have a copy he can lend me? *[Interruption] [Laughter]* Could we do that tomorrow?

Hon. Member: Yes.

Mr. Valley: Let him complete his contribution. *[Interruption]* Okay.

Hon. M. Ramsaran: I have a copy. Do you want it borrowed?

Mr. Speaker, community service orders as an alternative to custodial sentences is gaining popularity the world over and has been reaping untold benefits. Community service now operates in 13 European countries and more than 40 countries worldwide. In the United Kingdom the courts were given the power to impose Community Service Orders in 1973, and in 1991 the Criminal Justice Act introduced a new penalty, which combined elements of community services with the probation order. Since its introduction, the combination order has become the fastest growing sanction.

Mr. Speaker, the Community Service Orders Act is a progressive piece of legislation in the area of penal reform and must be seen as such. Trinidad and Tobago is, perhaps, the first territory to proclaim such an Act in the Caribbean although it is my understanding that the laws in Jamaica and Grenada allow for sentences to make community service orders.

Prior to the Community Service Orders Act of 1997 the only option open to the courts for a non-custodial sentence existed by virtue of the Probation of Offenders Act, Chap. 13:51. This Act, in accordance with section 2 states that where a person is convicted on indictment of an offence punishable with imprisonment; and the court is of the opinion that, having regard to the character, antecedents, home surroundings, health or mental condition of the offender; or to the nature of the offence, or to any extenuating circumstances in which the offence was committed, it is expedient to release the offender on probation and the court may, in lieu of sentencing him to any punishment, make a probation order.

7.45 p.m.

As of December 31, 1999 the Probation Division of my ministry had 302 persons under statutory supervision, comprising 239 males and 63 females. Mr. Speaker, 164 of these were over the age of 16 and could have been ordered to do community service as well, if legislation was in place. This mix of probation and community service is what constitutes a combination order. Sir Winston Churchill had this to say of the relative value of probation: “It is much cheaper to reclaim an offender by probation than it is to cure him by imprisonment or penal servitude”.

Trinidad and Tobago, like most other countries, experiences the common problem of the rise in prison population. A report on community service as an alternative to imprisonment in Zimbabwe revealed that the prison population rose dramatically in recent years. This rise was due, to an extent, to economic factors. As the economy of the country weakened, many citizens turned to petty crimes to meet basic needs. In addition, many offenders ordered to pay fines by the courts were unable to do so and ended up in prison.

In 1992, 60 per cent of prisoners in Zimbabwe were serving prison terms of three months or less. The overcrowding condition in prison gave rise to several problems. It also proved very costly to upkeep so many people in prison. The Government, therefore, established a committee to look into ways of improving the situation, reducing the use of custody and introducing more useful and humane penalties.

In this regard, the law was amended in August 1992 to award the option of community service as an option to prison. Offenders convicted of less serious crimes would be offered the option of unpaid work of benefit to the community instead of serving a prison sentence. Reference was made to the Zimbabwe model as the *ad hoc* committee established by my ministry examined the background papers from an international conference on community service held in Zimbabwe in 1997, which was hosted by Penal Reform International and which was attended by a delegate from Trinidad and Tobago. The Zimbabwe model provided the committee with up-to-date information and guidelines in formulating the implementation plan for the community service orders in Trinidad and Tobago and, to some extent, in the drafting of the regulations governing community service orders.

Mr. Speaker, the Community Service Orders Act, 1997 of Trinidad and Tobago was proclaimed on June 1, 1998. Consequent upon passage of the Bill in Parliament, the then Ministry of Social Development established a committee whose task it was to make recommendations for the most effective method of implementing community service. The committee comprised personnel from the Ministry of Social Development, the Ministry of National Security, and the Ministry of the Attorney General, alternatives to custody groups and co-opted others including Professor Cain, when their expertise and experience were required. The Chief Probation Officer chaired the committee.

The specific objectives of the committee were:

1. to formulate guidelines to inform the implementation of the Community Service Orders Act;
2. to develop a workable structure within which community service could be implemented; and
3. to identify appropriate personnel to carry out the objectives of the Community Service Orders Act.

The main purpose of the community service orders is to prevent further re-offending by re-integrating the offender into the community by means of positive and demanding unpaid work; developing the offender's sense of responsibility by setting discipline requirements and reparation to the community by undertaking socially useful works.

Generally, the countries which practise community service orders have cited several benefits, namely:

1. the order enables offenders to repay the community with physically and/or mentally demanding work in a way that makes sense to the public;

2. the order focuses on rehabilitative and restorative measures rather than punitive and retributive aspects;

3. community service orders cost a fraction of prison sentences.

Further, the community service orders may achieve:

1. a reduced risk of recidivism;

2. an increased chance of rehabilitating the offender to acceptable social standards;

3. a reduction in the prison population; and

4. prevent first-time offenders for non-serious crimes from the undue influences of hard-core criminals serving prison terms.

Mr. Speaker, the warehousing of many of our youthful offenders in institutions can be avoided if they have the benefit of community service orders. The community service orders will also enable the wider community to be brought in contact with offenders in controlled and structured ways, which may help reduce the fear of crime and help change the stereotyped perceptions held by the public in respect of offenders. It is felt that in this way the justice system will be taken to the community rather than the community being taken to the justice system.

PROCEDURAL MOTION

The Attorney General and Minister of Legal Affairs (Hon. Ramesh Lawrence Maharaj): Mr. Speaker, I thank the hon. Member for giving way so that I can move a procedural motion. Mr. Speaker, I move that the House continue to sit until the Minister completes his contribution on this Motion and for the Minister of Local Government to make an announcement to seek leave of withdrawal of Motion No. 7.

Question put and agreed to.

COMMUNITY SERVICE REGULATIONS

Hon. M. Ramsaran: The Probation Department has been mandated to administer this programme. In this regard, Cabinet agreed:

1. to the establishment of a temporary community service unit in the Probation Services Division, Ministry of Social and Community Development with effect from October 1999, for a period of one year; and

2. that the said unit be staffed by the under-mentioned personnel: three probation officers; five Clerk Typists; 13 Community Service Officers on contract;

3. in respect of the divisions recorded above, that the immediate steps be taken to fill three existing vacant positions of Probation Officer I, Probation Services Division, Ministry of Social and Community Development;

4. that the five positions of Clerk Typist be re-deployed from within the Ministry of Social and Community Development to the Community Services Unit;

5. to the employment on contract of 13 Community Service Officers in the Community Services Unit for a period of one year, on terms and conditions to be negotiated by the Chief Personnel Officer;

6. to the employment, on contract, of persons as indicated hereunder in the Probation Unit, Division of Health and Social Services, the Tobago House of Assembly, for a period of one year: one Community Service Co-ordinator; one Regional Co-ordinator and one Community Service Officer;

7. that the under-mentioned positions be redeployed from within the Tobago House of Assembly to the Probation Unit in Tobago: one Clerk I and one Clerk Typist;

8. that as a matter of urgency, funds be made available.

It is to be noted that the Ministry of Social and Community Development would submit another note to Cabinet in respect of the long-term arrangements for the operation of the Community Service Unit.

Mr. Speaker, up to this time we have had 13 contract positions for the community service orders and the officers have assumed duties with effect from April 3, 2000. These officers will be assigned to the various magisterial districts and would be responsible for the preparation of pre-sentence reports for the courts, which will be used to guide the court to determine the suitability of the offender for community service. Additionally, they would be responsible for placing the offenders at receiving agencies to perform community service, to liaise with receiving agencies and to ensure compliance with the order of the court. In the event that an offender fails to comply, the onus is on the Community Service Officer to file court proceedings for violation of the community service orders.

Mr. Speaker, public education on the community service orders has been initiated and ongoing. We have continued to train and sensitize the public on the ongoing process, and the role of the media, of course, would be necessary in order to reach the entire population.

Community service orders cannot undertake tasks which should be performed by paid employees; I want to make this point. Typical beneficiaries of community services are: homes for the elderly, youth clubs, community centres, churches, schools, voluntary groups and charities. Community service also helps individuals, for example, elderly people and people with disabilities or mental health problems.

The Act further states that no offender should be ordered to do community service without the benefit of a Probation Officer's report and no work shall be done by any offender without his or her consent. Mr. Speaker, Regulation 13 states that when the offender is a woman or girl, the officer should be, wherever possible, a woman. [*Interruption*]

Mr. Speaker, I just want to put these on the record. It shall be the duty of every organization, group, government department or institution to which an offender has been assigned, to adhere to any instruction provided by the officer regarding the health and safety of the offender at the worksite. It must be borne in mind that no offender, as I said before, would be allowed to do community service without the offender consenting. In the final analysis, it is hoped that the community service orders would improve the employability of offenders, as unemployment and offending are linked. Moreover, unemployment is disproportionately high among offenders.

In closing I wish to state that true justice rests not on equal distribution of pain, but in the equal satisfaction of the needs of the offender, the victim and the community, and this is what will be achieved when the community service orders gain momentum.

Mr. Speaker, I beg to move.

Question proposed.

Mr. Speaker: Hon. Members, it has been agreed by both sides of the House that debate on this question at this stage will be continued tomorrow. We shall now proceed to Motion No. 7 on the Order Paper.

Debate, by leave, deferred.

CREMATION (AMDT.) REGULATIONS

The Minister of Local Government (Hon. Dhanraj Singh): Mr. Speaker, based on concerns raised the last time this matter was before this House, I seek your leave to withdraw this matter.

Motion, by leave, withdrawn.

8.00 p.m.

ADJOURNMENT

The Attorney General and the Minister of Legal Affairs (Hon. Ramesh Lawrence Maharaj): Mr. Speaker, tomorrow we shall first do the Praedial Larceny (Amdt.) Bill and the Summary Offences (Amdt) Bill (Chap. 11:02). Also, tomorrow we will do the Bill which needs some tidying up with respect to the industrial intellectual property laws, and Bill No. 10, the Various Acts (Amdt.) Bill which also needed some tidying up in the other place. These two Bills were done sort of together. Then we will attempt to do the Dangerous Dogs Bill. Mr. Speaker, we shall also complete the Motion of the Minister of Community and Social Development in respect of the Community Service Orders. I also mention that there are three motions on the adjournment.

Mr. Speaker: Hon. Members, there are three matters to be raised. Leave has been granted for these. The first is by the Member for Tunapuna. The adverse effect of the non-intake of students at the El Dorado Youth Camp since its last graduation in 1999 and the non-functioning of other youth camps across the country.

Youth Camps
(Intake of Students)

Edward Hart *(Tunapuna)*: Mr. Speaker, I rise to raise a matter on a motion on the adjournment of the House in accordance with the provisions of Standing Order 11: The matter is the adverse effect of the non-intake of students at the El Dorado Youth Camp since its last graduation in 1999 and the non-functioning of other youth camps across the country.

I feel very hurt that the syndrome of neglect, lack of care, insensitivity and callousness which has characterized this present administration is displaying itself with such clarity in the neglect of the youth and, in particular, the non-intake of trainees at the youth camps since the graduation of the last batch just short of a year ago.

Through you, Mr. Speaker, I would like to ask the hon. Minister why there was no intake of trainees and it is almost a year now with staff at the various youth camps reporting for duty on a daily basis? I would really like him to answer that. Thousands of young people, estimated at about 20,000, leave school every year. Some go to universities, others find some level of employment, but more than half find themselves unemployed and without the youth camps and such training programmes they are left with nothing constructive to do.

On any given day when we drive through the village greens we can see groups of young people huddled together with absolutely nothing to do, nowhere to go. Several of these drift towards deviant behaviour and delinquency and get involved in petty crimes and even major crimes. If we make a random visit to any courthouse we will see the youths coming in droves and in handcuffs, most of them committing serious crimes, as I said. Some get involved in drug abuse and addiction and it destroys their lives. Others get involved in promiscuity and illicit activities and, as you may well know, Mr. Speaker, the disastrous consequences of such activities.

Trinidad and Tobago is among the leaders in the region in the number of AIDS cases reported. In fact, we are now being told that there is little hope for the present 13—25 age group, as within that age group there is such a high incidence of AIDS. We now have to save the youths of the nation!

Mr. Speaker, youth camps were started some 36 years ago under the astute leadership of the "Father of the Nation", the late Dr. Eric Williams, and he projected then that it was a bold step in community integration. He saw the need then to develop in our youths not only marketable skills, but more particularly, an appreciation of the different cultural lifestyles—bringing them together and having them share experiences in the dormitories, in the craft classes, on the sports teams, in the co-curriculum classes and develop friendship and understanding of each other's moves, habits and culture. That is why we are saying that the residential camps are of paramount importance.

In addition, Mr. Speaker, trainees were taught respect for the rights of others, discipline, healthy lifestyles and the civilizing influence of agriculture. Leadership, development and a keen sense of justice also proved useful at these institutions. My understanding is that there has not been any intake of trainees to the youth camps since last year, systematically depriving deserving and needy young people, and also depriving the nation of enhancing the personality and character of our precious young people.

Mr. Speaker, there is great frustration among the staff of these institutions who have to report but have no trainees to relate to in the camps. I cannot help but reiterate that the neglect of our youth so callously done by this uncaring

government is a cardinal error and mistake and has woeful consequences for families, communities and the nation as a whole. We definitely must give a higher priority to our youth and send a signal of our interest that is more positive than this one.

By Cabinet Minute 1095 of May 1999, the following was agreed:

1. Camp to be run by a board of management.

And I ask about public service status.

2. Board of management would have control over income and expenditure, hiring and firing.

3. Workers in excess of numbers need to be redeployed, retrenched or posts abolished.

I ask, what has happened to the staff of the Chaguaramas Youth Camp? Where are they today? What are they doing?

Mr. Speaker, so far, the Ministry of Sport and Youth Affairs has paid the Metal Industries Company in Macoya thousands of dollars to formulate new programmes.

Mr. Ramsaran: How do you know that?

Mr. E. Hart: I must know. I live here in Trinidad and Tobago. I worked at the ministry for years as a games coach and then as the Parliamentary Secretary. I must know. It is no secret. It is my duty to get the information, and everything I say here is factual, through you, Mr. Speaker.

A contract has been given out to repair the dormitory cupboards. No tendering procedure. This is at the El Dorado Girls Camp right by me and I always pay visits to the youth camp. A contract to repair the roof at the youth camp was completed in November or December last year while the daily-rated staff—the carpenters, the handymen, the groundsmen—had to twiddle their thumbs and look on while work was being done at the said camp.

Mr. Speaker, millions of dollars were spent to set up an agro-processing unit in 1994 while we were in government. I ask the question, what has happened to the equipment? Boxes of equipment lying idle! For example, a food processor with a blade cost $5,850; a Croden one-gallon stainless steel blender cost $3,295, and I can go on and on, but the point I want to make is that the agro-processing room is in the same position as it was when we demitted office.

The German government set up the computer lab. It is now closed down. The computer technician who came all the way from Tobago was sent home. The contract was not renewed. This is similar to what they did to Mr. Henry Sealy from Tobago. With respect to the computer programme, Miss Toussaint was also sent home. The day-care nursery which was also set up by the German government was closed down on November 30, 1999. The teacher, Mrs. Andrews, was also sent home before the class of 1996 could take examinations. The guidance counsellor also suffered the same fate.

I would like the Minister to tell us today why since last year at El Dorado Girls Youth Camp, at Persto Praesto and Chatham it is the same story with staff reporting to work and no trainees, but yesterday—it is interesting—I saw in the newspaper, advertisements for the youth camps or the youth development and apprenticeship centres, as they are now known, where they are inviting applicants after almost a year.

What struck me, Mr. Speaker, is that it is an 18-month course they are going to offer them. I believe it is going to be nonresidential. I also suspect that the same programmes which are going to be implemented there are being done at YTEPP. Mr. Speaker, if a girl from Moruga wants to come to the youth camp at El Dorado, does she have to travel on a daily basis?

Mr. Ramsaran: *[Inaudible]*

Mr. E. Hart: You are not in charge of your ministry. I always tell you that. You do not know what is going on. I am saying through you, Mr. Speaker, that it is a cardinal sin to surreptitiously close down these youth camps, and for 10 or 11 months now there are no students, staff is just reporting for duty, as I said earlier on. This is a vexing situation and the youths of the nation are crying out.

We spoke about training. If one looks at the UNC Manifesto, one will see on page 21 or 22 what they said they were going to do for youth. They have not done that. I wait with interest to hear from the hon. Minister why no students were taken in since last year.

I thank you very much.

The Minister of Social and Community Development and Minister of Sport and Youth Affairs (Hon. Manohar Ramsaran): Mr. Speaker, I would like to thank the hon. Member for Tunapuna for bringing this issue to the attention of this honourable House and the national community.

The facts pertaining to this issue are as follows: A ministerial committee was appointed by the Minister of Sport and Youth Affairs in November 1998. Mr. Speaker, youth camps, youth development and apprenticeship centres came under my purview in October 1998. A ministerial committee was appointed to review all aspects of the operations of the youth development and apprenticeship centres reported in April, and this report came to me in April 1999. Cabinet accepted the report of this committee in May 1999. It is the same note the Member read from a while ago.

The intake of trainees for the period 1997—1998 graduated between May and July 1999. My ministry has been pursuing the implementation of the recommendations accepted via Cabinet Note 1065 of May 1999 for the improvement of the youth development and apprenticeship centres.

8.15 p.m.

My ministry has also refurbished and reopened five of its youth centres from which youth training is being promoted. These are other than the three youth camps.

Additionally, my ministry has developed a strategic relationship with the National Energy Skills Centre and the Metal Industries Company on the training of young people for employment.

Mr. Speaker, the transfer of the Youth Development and Apprenticeship Centres (YDACs) to my ministry took effect from November 1999. At the time of receiving these centres, I noted the unique opportunities these centres provided for the educational advancement and development of our nation’s young men and women. I also noted the numerous adverse comments which were being made about the institutions. Among those comments were:

(a) the physical decay of the 36-year-old centres;

(b) the high dropout rate of students;

(c) the inappropriateness of the training package which has remained unchanged for over 20 years;

(d) the absence of monitoring and evaluating systems within the training;

(e) the unusually large number of disciplinary problems within the centres; and

(f) a preferential method of distributing agricultural produce at the camps.

Mr. Speaker, I also further noted the existence of several reports on these centres. I would name them:

(i) Report of the Cabinet Appointed Committee to Examine the Youth Camps, Trade Centres and Youth Centres in Trinidad & Tobago, November 1988;

(ii) Report of the Working Committee to Work out Implementation Details for the Restructuring of Youth Camps, Trade Centres and Youth Centres, 1989; and

(iii) Report of an Investigation into the Discipline Problem at the Chaguaramas Youth Camp.

My initial response, as I said before, was to appoint a ministerial committee to review those reports and make recommendations on the way forward for these centres.

Mr. Speaker, the committee found, among other things:

(a) The training programme lacked modern techniques and technology in most part, and does not promote learning through participation nor the principle of empowerment.

(b) There was a high dropout rate of trainees.

(c) The organizational structure and management systems do not allow for the growth and development of the institution.

(d) The financial system does not facilitate profitability or a culture of enterprise.

(e) The resources at the centres are grossly under-utilized.

(f) The existing human resource situation does not match the training needs at the institutions.

Mr. Speaker, the committee submitted its recommendations which are in keeping with the ministry's new thrust to enhance its youth development service as defined in the ministry's Medium Term Policy Framework and Strategic Plan. Some of the major recommendations are outlined hereunder:

(i) The operating philosophy of the centres should emphasize self-worth, self-esteem and self-reliance.

(ii) Programme development should give consideration to national priorities and the needs of the respective community, with a focus on agriculture, light manufacturing, micro-enterprise and services, including information technology.

(iii) A dual system of residential and nonresidential training, the nonresidential component being co-educational.

Cabinet accepted the report and agreed with the recommendations of the Ministry of Sport and Youth Affairs. Following this a transition team was appointed by the Minister to oversee the changeover process. An action plan for the implementation of the restructuring of the Youth Development and Apprenticeship Centres was developed. The focus is on the following:

(i) programme development;

(ii) human resource development;

(iii) infrastructural development;

(iv) management systems;

(v) networking systems;

(vi) post-training support; and

(vii) evaluation systems.

To date Mr. Speaker, I am pleased to report that several initiatives were pursued:

(a) The preparation of new training instruments for occupational training and physical education has been undertaken in conjunction with the Metal Industries Company Limited and the Trinidad and Tobago Defence Force. Focus is also being given to the development of the social skills, health and civic responsibility programmes.

(b) Ongoing discussions are being held with the National Examinations Council of the Ministry of Education and the newly established National Training Agencies, on matters pertaining to certification and standardization.

(c) Training programmes to retool and train all levels of staff to function effectively in the new system have been undertaken.

Mr. Speaker, the ministry was not sitting and twiddling its thumbs. These are:

(i) Institute of Business—Managing Personal Change.

(ii) Metal Industries Company—Train the Trainers Programme.

(iii) Ministry of Sport and Youth Affairs—Computer Information Technology, Registry Procedures; and Secretarial Duties.

(iv) Staff participated in a strategic directional review. They were not at the centres twiddling their thumbs. They were doing a strategic directional review.

(d) Discussions have been held with the Ministry of Agriculture, Land and Marine Resources on a more appropriate land utilization plan for the lands in the care of these centres. The Caribbean Research Institute (CARIRI) has also been invited to submit a proposal for the processing of the products from these centres.

(e) Infrastructural development and repairs to building and equipment are some of our other focal areas of attention.

Mr. Speaker, all the Youth Development Centres were in a state of neglect. Within the last year, my ministry has spent over $1 million to prepare these centres for reopening.

In respect of the agricultural programme, what was found was:

(a) a system of production which was largely uneconomical, and utilizing less than 30 per cent of the available land space at Chatham and Persto Praesto. This non-utilization encouraged the development of a squatter population at Chatham and Persto Praesto.

(b) the non-utilization of trainees in the agricultural production at the centres.

The ministry is, therefore, seeking a greater land utilization programme to involve the young people in agricultural production which, before, was being done by a large number of daily-paid workers, resulting in excessive unit cost of production of the agricultural produce. The produce was being sold at highly subsidized prices. For example; it costs the centres $40.00 to produce a chicken which was being sold for $12.00.

Mr. Speaker, my ministry has been partnering with the National Energy Skills Centre and the Metal Industries Company Limited in the development of training for employment of young people. These programmes are being delivered at the St. Bede's Vocational Institute and the Point Fortin Trade Centre.

The strategic plan of the ministry, Mr. Speaker, promotes training at regional and community-based levels. At the temporary cessation of activities at the centres the ministry stepped up its community-based training at Laventille, Los Bajos, Malick and Woodbrook Youth Facilities. Recently approximately 300 young people graduated from the programmes offered at those facilities.

My ministry, therefore, has been actively planning for the development of these Youth Development Centres, because our wish is to provide facilities which will contribute meaningfully to the lives of our youth.

Mr. Speaker, while we speak, an *ad hoc* committee was set up with the ministries of Sport and Youth Affairs, National Security, the head of the Defence Force and the Ministry of Training and Distance Learning. Within the next couple of days, the ministers and the committee would be meeting to see what we could do to improve the quality of life of our students at these centres.

Mr. Speaker, as I said to the Member for Tunapuna, the ministry has begun the recruitment exercise for a new intake of young men and women. To this end, advertisements have already been placed in the media.

Mr. Speaker, I thank you very much.

8.25 p.m.

Meat Cottage—St. James (Adverse Effects)

Mr. Eric Williams *(Port of Spain South)*: Mr. Speaker, thank you for granting me leave to present this motion on the adjournment.

I received correspondence from my constituents in St. James, particularly in the Agra Street area, that there is in existence a commercial establishment, to wit, a grocery under the name Meat Cottage. I am also aware that this establishment receives a fair amount of patronage from persons in the area, but my constituents who live in the vicinity of the Meat Cottage are complaining, and I will read some excerpts of the correspondence I received.

It was addressed to me, I received a telephone call and there was also a copy of a letter which was sent to the Mayor, the City Clerk, the City Engineer, the Environmental Management Authority, and the Town and Country Planning Division. It says:

> "Information from Town and Country Planning Division is that no approval/permission was granted by them to anyone to construct/operate any business/supermarket since that site/area is for residential purpose. Apparently the Minister in charge granted approval and he should be the person to be 'questioned' about it.
>
> Since then, we the residents, especially those in close proximity with the supermarket have been suffering immensely as the attached letter indicates, especially at night time due to the unreasonable opening hours and its effects."

I will go through what they pointed out. This is the letter which was sent to the aforementioned list of individuals and agencies.

> "We residents of Agra Street, St. James wish to draw to your attention a matter of grave concern, which is adversely affecting us. It has to do with the operation/presence of a supermarket at #3 Agra Street, St. James that opened for business around June 1999.

Some of our main concerns/problems are as follows:

> 1. If permission has been granted for such a business operation in a residential area on a residential site. If so, by which authorities, since no residents were ever informed/consulted."

Mr. Speaker, what is germane to this is that before one has a change of use of property for any area, one must receive the approval of at least six of the residents in the immediate area. What the residents are saying is that they were entirely unaware of this, were neither informed, nor did they ever give their approval to such a thing.

They went on to point out that:

> "2. Serious traffic congestion during both day and night time due to improper parking of delivery vehicles and motorists: wrong-side parking, double parking, blocking of driveways."

In fact, Mr. Speaker, if this continues, then the matter we dealt with a few days ago in terms of the penalty point system—I want to ask the appropriate authority in the Government to park outside that place because they could fill many points against some of the persons who come to this area.

> "3. Very extended opening/business hours are:
>
> 7.00 a.m. to 11.00 p.m.—Monday to Thursday
>
> 7.00 a.m. to 12.00 midnight—Friday/Saturday
>
> 7.00 a.m. to 11.00 p.m.—Sundays and Public Holidays."

So in the middle of a residential area in Agra Street, the residents have to coexist with this particular business activity which is presenting a clear nuisance to them and they feel aggrieved because the area is residential and this business establishment is there and they do not know how it got there.

> "4. At present, an extension to the existing building is in progress and we understand this may be for a Lotto Machine, which will further aggravate an already intolerable situation".

As you can imagine, apart from just persons coming to do their shopping, additional persons would be attracted to the area to participate in the Lotto activities.

> "5. Noise and emission pollution especially at night are mainly due to car alarms going off, loud horns and tempers flaring due to vehicles being trapped in the traffic, loud music from parked vehicles, slamming of doors, engines and exhaust noise, rolling of trolleys, and loud talking of persons which are all very disturbing. As a result, residents are forced to remain awake until almost 12.00 midnight on a daily basis."

Mr. Speaker, clearly, the customers themselves are getting in the way of residents. In a road which is as regulations permit, 25 feet across, and which was not designed for this level of traffic, customers are blocking other customers with all of the attendant human things that happen.

> "6. Garbage Trucks are unable to pass on many occasions; garbage remains or is strewn about.
>
> The above mentioned situation is causing us severe physical and mental hardships. We feel deprived of our right to enjoyment of property (as enshrined in our constitution).
>
> We therefore beg your kind and urgent attention in this matter. Please be kind enough to acknowledge receipt of this letter."

Mr. Speaker it noted that letters were sent to several persons. The City Council looked into the matter and indeed, at the meeting of the Planning and Development Committee of the Port of Spain City Council which then went forward to the statutory meeting of the Council on March 29, item number 6 of those minutes which I have in my possession gives a list of premises where violations exist and there are four properties, one of which is the one at 3-3A Agra Street. It says:

> **"6. <u>List of premises where violations exist.</u>**
>
> 6. Memorandum from the City Engineer, forwarding for the Council's consideration, a list of premises where violations exist with respect to issuing the final notice.

Address	**Violation**
3-3A Agra Street	Unauthorised addition to the existing unauthorised building at these premises."

Mr. Speaker, the premises at 3-3A Agra Street are listed here and the violation is: "Unauthorised addition to the existing unauthorised building at these premises." In other words, for some reason, the proprietors of this establishment sought and achieved permission from someone, in this case, I am being advised that it is the Minister himself, for an illegal or unauthorized addition to a building which itself is already unauthorized.

This begs several questions. First of all, the Town and Country Planning Division as I understand it, gives conditional approval to a building of any type anywhere. If that is denied by the officials of the Town and Country Planning Division, my understanding is that it should go to an appeal board which may or may not recommend that the Minister approve it. Before that happens, as I understand it, the signatures of the residents in the area ought to be obtained and not just the residents, but the owners of buildings in the vicinity are saying that was not complied with; they have no such information.

Secondly, it is based on their own legwork. They have been informed by folks in the Town and Country Planning Division that nothing came to them—they are not aware of it. Then it would suggest that this would not have gone to an appeal board because there would be nothing to appeal. So I would like the Minister, at least, to inform this House whether or not plans were received, if they were reviewed by the Town and Country Planning officials, and whether or not it went to the appeal board, before going to him. Because as it stands now, my information is that none of this happened.

Indeed, another step in the process would have been to forward those plans to the City Council for its approval. From the minutes of the City Council meeting and from my own investigation into the matter, nobody at the City Council seems to be aware of these plans. So it would appear that the building, based on the surface of it, was approved by the Minister in the absence of compliance with any of the regulations that preceded that.

As a result, this unauthorized building with its unauthorized addition is presenting a nuisance to the owners and residents in the area where it is located. Let it be clear that Members on this side, and indeed Members of this House are for small businesses and for enterprise. We want to see our citizens move forward in business pursuits.

Indeed, the Meat Cottage in St. James receives quite a high traffic flow of customers passing through. There is no objection to that. However, it appears that this operation is in the wrong place by actions which appear to contravene all the regulations and I would like to ask the hon. Minister to please clarify if approval was granted—how did it come to be granted, and where are the plans for the

building? Why did he use his discretion, as he is entitled to, when the regulations were not being complied with to approve it and why the residents were not asked for their opinion on the matter? Certainly, it is clear that the City Council has noticed that this building is in violation, so why, in the face of that, was the approval granted for this building?

Thank you.

The Minister of Housing and Settlements (Hon. John Humphrey): Mr. Speaker, the premises known as the St. James Meat Cottage is actually located at No. 3-3A Agra Street, St. James and is used as a supermarket for the sale of a variety of food and beverages. The planning unit which comprises a retail establishment, also includes a property located at No. 4 Agra Street which is a car park facility for the supermarket. The planning unit therefore consists of Lot 3-3A Agra Street stated to comprise 524 square metres, and Lot 4 Agra Street, stated to comprise 425 square metres.

On March 30, 1998, full planning permission was granted by the Town and Country Planning Division for the development of the planning unit. This included the carrying out of structural additions to the existing building on Lot 3-3A, namely a meat shop and a single family residence, and the construction of a car park at Lot 4 to accommodate 21 vehicles. Planning permission was granted subject to conditions which included that permission would remain valid as long as the car park existed.

In accordance with the present land use policy, the site under reference is located in an area which is considered as an area in transition from solely residential to mixed residential/commercial use. Further, the site adjoins the corner property of Agra Street and the Western Main Road which falls within the commercial use allocation of the Western Main Road. Given the close proximity of the subject development site at this commercial use area, provision of the car parking facility for the development proposed and satisfactory arrangements for access to egress from the site, it was felt that the traffic to be generated by the Meat Shop activity would not adversely affect the people of Agra Street, St. James.

However, a complaint was received and an investigation conducted by the Town and Country Planning Division which revealed that the existing development on the site was not in strict accordance of the approved plans. The findings were as follows:

1. Additions have been constructed on to the Western, Northern and Eastern boundaries of the site thereby infringing the building line and offending the set-back requirements.

2. The building was being used as a supermarket and not merely as a meat shop.

3. The floor area of the retail activity which is subject to planning permission exceeded that which was shown on the plans, consequently there has been unauthorized addition to the space approved.

4. The proposed first floor addition for residential purposes has not yet been constructed.

Further investigations have revealed that the hours of the supermarket may also be a contributory factor to the nuisance. In light of the foregoing, the Ministry of Housing and Settlements is of the view that the owner can reapply for planning permission, and if not granted, an enforcement order can be made for the owner to comply with permission granted on March 30, 1998.

In giving reconsideration to this matter, a petition would be sought from affected neighbours. Prior to this motion on the adjournment, this Minister has not been made aware of this complaint, and this Minister had nothing whatsoever to do with giving planning approval, it was given in the Minister's name by the Town and Country Planning Division.

Agricultural Squatters—Diego Martin (Regularization of)

8.40 p.m.

Mr. Speaker: Hon. Members, the Member for Diego Martin Central, on the lack of any arrangement, the Regularization of Agricultural Squatters in the Diego Martin constituency who have occupied state lands for a number of years.

Mr. Kenneth Valley *(Diego Martin Central)*: Mr. Speaker, thank you very much for giving leave to raise this motion. Members would recall that as early as April 1998, the House of Representatives considered and passed an Act, which eventually became Act No. 25 of 1998. That is an Act to protect certain squatters from ejection of state lands and to facilitate their position of leasehold titles, by both squatters and tenants in designated areas, and to provide for the establishment of a land settlement area.

However, Mr. Speaker, an area of deficiency in the Act is the fact that it appears not to have considered agricultural squatters on state lands. This has become a problem in the Diego Martin area, especially in the River Estate and Bagatelle area, where there have been agricultural squatters for more than 25 years. That area, at one time, was vested in the University of the West Indies, an extension area, and they encouraged the people there to grow different crops, they sent them away on courses and so forth. They took part in exhibitions in the Caribbean, and they have been carrying out their agricultural farming in that area for quite some time.

With the passage of Act No. 25 of 1998, and the setting up of the Land Settlement Agency, that agency is saying, "listen, as far as we are concerned, our job is to regularize persons who had a building on site as of January 1998. Further, to regularize other persons in the designated area to the extent that there is spare land.

Mr. Speaker, that has caused a dislocation of agricultural farming because what the Land Settlement Agency is saying is that we are not concerned about agricultural squatters. This area is designated for residential squatters, and they are moving in and having confrontation with these farmers. They are attempting, really, to move in on these persons with their crops, allocating the land area to persons who claim to be landless and so causing problems generally in the area. I am sure this may be happening in other areas also, because I am sure there would be agricultural squatters in other areas on state lands.

I think that there is need for this Parliament or the Government to look at the situation and accommodate these agricultural squatters. They have been here for quite some time; food is extremely important, and while one can grant that the Land Settlement Agency has a certain mandate, perhaps the Ministry of Agriculture, Land and Marine Resources should be charged with the responsibility of working with that Land Settlement Agency in making some type of provision for these agricultural squatters, so that, at least, we would be assured some level of food security.

I thank you, Mr. Speaker.

The Minister of Agriculture, Land and Marine Resources (The Hon. Trevor Sudama): Mr. Speaker, I am very happy that at this very late hour in his term, the Member for Diego Martin Central is concerned about food security after 34 years of his party being in office and they have brought agriculture to its knees in this country. It is very, very gratifying to know.

Land, as we are told, is a fundamental resource for agricultural production and the income-earning capacity of families. This Government recognizes that tenure and regularization can provide incentives for long-term investments in agriculture, thereby leading to increased productivity and profitability, and as a consequence allowing agriculture to play a more meaningful role in poverty reduction, and an improved quality of life in rural areas. May I add that it is this Government that decided to bring to this Parliament, an Act to regularize people on state lands for residential occupation. It is this Government also that brought an Act to Parliament to regularize agricultural squatters.

The policies and actions of this Government— *[Interruption]*

Mr. Valley: Mr. Speaker, I am sorry, I just missed what the hon. Minister said.

Hon. T. Sudama: Mr. Speaker, he would hear it later on. The policies and actions of this Government toward occupiers of agricultural land in Diego Martin are no different from the policies and actions of the Government in other areas in Trinidad and Tobago. In Tobago, the Tobago House of Assembly is making its own arrangements to deal with squatting in that island. While I appreciate the concern of the Member for Diego Martin Central for his constituents, and that concern being expressed six months before an election, one can understand the political urgency on the part of the Member for Diego Martin Central.

I was listening to a programme over the television—*Morning Edition*—in which a resident of Diego Martin Central was complaining that their representative did nothing for them over the years that he was representing them. So I understand the urgency now, coming so soon before an election. Therefore, the policies that we are pursuing will also apply to the Diego Martin area.

The Ministry of Agriculture, Land and Marine Resources manages two programmes that seek to address the issue of regularization of tenure on state agricultural lands. In the first instance, we have the Accelerated Land-Distribution Programme approved by Cabinet in December 1998 to enable the Government of Trinidad and Tobago to meet certain conditionalities agreed to, in the Agricultural Sector Loan Agreement signed in 1996. These conditionalities require, that in order to update the illegal use of state lands, a minimum of 3,600 hectares of agricultural state lands should be divested to private individuals by December 2001, and the act of regularization is an act of divestment.

The Accelerated Land-Distribution Programme commenced in August 1999 after a few hurdles which we had to overcome, and a total of 56 blocks of state agricultural lands amounting to 4,350 hectares are to be distributed and/or regularized. To date, some leases have been granted, and approvals and ancillary operations are in various advanced stages of progress to complete the titling of these 56 blocks within the time frame.

8.50 p.m.

In seeking to bring some equity to persons squatting, primarily for agricultural purposes, Cabinet, in February of 1999, approved a policy for the regularization of agricultural squatters not included in the Accelerated Land-Distribution Programme. This policy provides for the regularization of agricultural squatters who have been in occupation before 1994 and who are practising agriculture at a level acceptable to the Ministry of Agriculture, Land and Marine Resources. In order to execute the policy of regularization of agricultural squatters, the Ministry

of Agriculture, Land and Marine Resources has embarked upon an inventory and database of agricultural squatters as an extension of its state agricultural land information system. To date, this inventory has identified 848 parcels categorized as having no kind of tenancy agreement with the state. This inventory is ongoing. To date, after thorough investigations, approval has been obtained from Cabinet for several of these persons to be granted leases under this policy.

This Government, through the Ministry of Housing and Settlements, has initiated a programme to regularize residential squatters. The Regularization of Tenure State Lands Act, No. 25 of 1998, aims to grant security from ejectment and eventual security of tenure to certain squatters and tenants who occupy designated areas of state land. The Act also provides for the establishment of a land settlement agency and the areas designated are listed in a Schedule to this Act, among which the Diego Martin area is one such area listed in this Schedule to be administered by the Land Settlement Agency. Of course, in this administration the Land Settlement Agency co-ordinates its activities with the Ministry of Agriculture, Land and Marine Resources.

The situation of agricultural squatters in Diego Martin who fall within the Bagatelle/River Estate/Patna Village area has received the attention of my ministry. The Land Administration Division of the Ministry of Agriculture, Land and Marine Resources has identified 62 persons who fall within this land settlement area and the division is working with the Land Settlement Agency towards a resolution that would not disadvantage agricultural squatters while allowing the regularization of residential squatters to proceed. Mr. Speaker, I thought I would put that in a little context and to state that the Land Settlement Agency is working through a policy which it has established where an area is designated as a land settlement area.

Now, in such an area there could be people who are residential squatters as well as people who are agricultural squatters. The policy is that the Land Settlement Agency must undertake a census of the agricultural squatters on the various sites in advance of any announcement being made of its intention to regularize a particular area. Where it is conclusively established that an agricultural squatter is occupying lands in a designated site, the Land Settlement Agency will still “lottify” the lands into residential lots. However, the Land Settlement Agency, in its mandate, reserves the discretion to allocate one residential lot to a farmer if he meets the requirements for such allocation.

In addition, the Land Settlement Agency further reserves the discretion to allow the identified farmer only to continue to farm a portion of land approximating the parcel on which he was previously farming, which parcel is identified by the Land Settlement Agency, and the identified farmer must have been utilizing the land in a husbandlike manner. This discretion will be conveyed to the identified farmer only and will not exceed the time that he is reasonably expected to continuously farm the land. It will be reviewed every six months. This discretion will not be transferable. The Land Settlement Agency reserves the right to recover the entire parcel that is identified for the farmer to occupy with one month's notice of such action if, in the opinion of the Land Settlement Agency after monitoring it, the parcel is not in continuous use by the identified farmer or utilized in a husbandlike manner.

So that, with respect to agricultural squatters, this is the policy that the Land Settlement Agency is pursuing and, of course, it takes a little while to regularize people and the settlement agency is in the process of regularizing agricultural squatters in the Diego Martin area.

Mr. Valley: I know it is not normal but I wonder whether the Minister would simply inform the House what protection these agricultural farmers in the area would be given in the meantime from the Land Settlement Agency which seems to be sending persons who are damaging their crops and, for missing persons, sending people with letters stating that the Land Settlement Agency has given them the piece of land for residential squatting and so forth? What protection can be offered in the meantime while you continue to work with the Land Settlement Agency?

Hon. T. Sudama: Mr. Speaker, protection is offered by the law. Even if someone is squatting on the land, unauthorized occupation, and crops are growing on those lands, you cannot go and damage those crops because you are liable for such damage as an ordinary action in court, because the crops belong to whoever cultivates them regardless of the unauthorized occupation. As I said, we are trying to do this in the most convenient way possible and to identify—because the Member must realize that many people claim to be involved in agriculture and are really not involved in agriculture or are not carrying on proper agricultural practices on the land. Therefore, we have to identify those parcels of land and reserve them for those people who are capable of carrying on proper agricultural practices.

Mr. Speaker, before I end I just wanted to place on the record the fact that River Estate in the Diego Martin area was purchased by the Government in 1981 and there were squatters on this estate. Recommendations to address this matter were made during the term of the PNM government of 1981—1986. There were

then an estimated 25 squatters occupying the land in the area. Some of those have made an attempt at cultivation but only a very few have demonstrated any real ability to produce at even a minimally acceptable level. Most of these squatters appear to occupy the area for housing rather than agricultural purposes and this situation must be regularized in the process of overall development.

In this regard, and based on the information available, the following action is recommended as desirable:

(1) Accommodating in their present location those squatters with demonstrated farming potential and providing a holding of viable size for the production of selected tree crops;

(2) relocating appropriately other potentially productive squatters who cannot feasibly be accommodated—other areas of the estate being developed; and

(3) evicting from the farming area those occupants who have not demonstrated skill or commitment by the level of their agricultural activity.

These recommendations were made to a PNM government during the tenure of 1981—1986.

Nothing was done because, if they had done something then, the problem would not have been here today. When they came back into office at the end of 1991, for four years they continued to do nothing when the Member was the distinguished representative of the people of Diego Martin Central. We now, Mr. Speaker, are trying our endeavour best to deal with this huge problem of squatting, which was a legacy of the PNM government. We are trying to do that and we will do so as humanely as possible. Thank you very much. [*Desk thumping*]

Question put and agreed to.

House adjourned accordingly.

Adjourned at 9.00 p.m.