

*Leave of Absence**Thursday, May 11, 2000***HOUSE OF REPRESENTATIVES***Thursday, May 11, 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 Members of the House who have already got leave of absence, I have received communication from four Members of the House who have asked to be excused from today's sitting. They are: the Member for Arouca North whose brother has died and is being cremated today; the Member for Arouca South; the Minister of Foreign Affairs; and the Member for Diego Martin East. The leave of absence which they seek has been granted.

**CONDOLENCES****(PATRICK CASTAGNE AND VERNON GILBERT)**

**Mr. Speaker:** Hon. Members, while I am on my feet, I would simply wish to express to the hon. Member for Arouca North my condolences, and I am sure the condolences of Members of the House, on the passing of his brother.

Notwithstanding what has appeared on one of the newspapers a few days ago on the question of the honourable House not doing anything on the passing of the author of the National Anthem, Mr. Patrick Castagne, I do wish to formally bring to the notice of this honourable House, the death of Mr. Patrick Stanisclaus Castagne who made a contribution to this country. Both sides of the House may wish to express condolences on his passing.

**The Minister of Trade and Industry and Consumer Affairs (Hon. Mervyn Assam):** Mr. Speaker, on behalf of the Government, we would like to express belatedly, our condolences to the family of the late Mr. Patrick Castagne who passed away recently and was interred yesterday. It is well known that Mr. Castagne was an outstanding figure in Trinidad and Tobago and, indeed, we mourn his passing for many reasons. As I said, when I made some remarks on the passing of Superintendent Prospect, we seem to be having in our midst, death stalking the land, particularly in the area of those icons who have made contributions in the field of culture and music within recent times and the late Mr. Castagne is no exception. It is well recorded that Mr. Castagne was the

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author of the National Anthem of Trinidad and Tobago, which all of us proudly sing, and which all the musicians proudly play on occasions when we assemble to do the country's business.

Mr. Speaker, Mr. Castagne was also the author or the composer of other pieces of music. The most well-known favourite is—something of a Christmas carol—*Kiss me for Christmas* and this song is well known and played every Christmas. Few of us, perhaps, realize that the composer of this beautiful song was the late Mr. Patrick Castagne.

Mr. Castagne was also well known for being a family man. As you know, family values have been under attack in this country for many reasons; because of modernization, urbanization, globalization; and women have had to enter the workplace and because children have been left unattended from time to time—no fault of the parents, strictly economic imperatives. Perhaps, it is because of the shift system—and this is not a criticism of the government that introduced it perhaps, it was necessary at the time in order to come to terms with school places. The shift system had to be introduced and a lot of children are left unsupervised; some have to leave school at midday and others start at one o'clock and so forth. All these factors have contributed to deterioration in family life with the consequent negative impact on family values. Mr. Castagne has had the reputation of being a family man and he was also a sportsman of some sort. Mr. Castagne was also part of the private sector and he played his role, I believe, in marketing, in one of the private sector firms in this country before he went abroad and emigrated for a while.

Mr. Speaker, we on this side mourn his loss; we mourn the loss of another person who has contributed and who will be immortalized in this country for the contribution he has made. I am sure our National Anthem would last forever and ever as long as we are a nation. I expect that we will be a nation forever and ever and we would like to express these condolences to the immediate family and relatives of the late Mr. Patrick Castagne. *[Desk thumping]*

**Mr. Speaker:** Hon. Members, I neglected to say and, perhaps, this may be a useful point at which to do it, in that one Member from each side may wish to speak on both matters. It has been brought to my notice that another death that we have had that affects this Parliament is that of Sen. Vernon Gilbert, who was a former Senator at the start of this Parliament in 1995 and did in fact serve in that capacity from November, 1995 to May, 1997. So again, I draw this to the formal notice of hon. Members who may wish to express condolences.

**Hon. M. Assam:** Mr. Speaker, I rise again to express, on behalf of the Government, our condolences on the passing of the late Sen. Vernon Gilbert. I did not know Sen. Gilbert too well, although I had seen him perform from time to time whenever I visited the House to which he belonged. I am sure, in the area which he came from—and I believe it is in the South—he made a very valuable contribution to the social and community life of his particular district.

Mr. Speaker, you know, although politicians have been reviled and although we disagree with each other in terms of, perhaps, philosophical or ideological positions, or even in terms of policy positions, when one decides to serve in public life it is always at great sacrifice to one's health; to one's financial well-being; to one's recreational life; and even more so, at the expense of one's family life. The long hours that someone who is in public life has to put up with in order to discharge his or her responsibilities in an effective way require that kind of commitment. Therefore, anyone who has accepted voluntarily, whether at the elected or appointed level, to serve in this Chamber or in the other, must be commended for such sacrifice and such public-spiritedness. Such a person was the late Sen. Vernon Gilbert and, therefore, we on this side would also like to extend our deep and sincerest condolences to the family, friends and close relatives of the late Senator.

Mr. Speaker, thank you.

**1.40 p.m.**

**Mr. Edward Hart (Tunapuna):** Mr. Speaker, at the last sitting of this House, I did make mention of the passing of the late Mr. Pat Castagne, and I hate to repeat myself. However, Mr. Pat Castagne left his footprints on the sands of time. As I said, he was a true patriot and he will be sorely missed.

I must agree with the Member for St. Joseph that it seems that almost on a weekly basis we have to be here expressing our condolences, but this is how it is, and on behalf of the Members of this side of the House, we would like to extend our heartfelt condolences, belatedly as it is, to all his immediate relatives and friends, and to the many supporters. As we said earlier on, may his soul rest in peace.

**Mr. Martin Joseph (St. Ann's East):** Mr. Speaker, I rise to place on the record the party's condolences on the passing of Sen. Vernon Gilbert. As you indicated, Sen. Gilbert served in the other place during the period 1995—1997 as a PNM Senator.

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He was an engineer by profession, having worked at Texaco, Tesoro and Petrotrin. He was the live wire of the People's National Movement in the Ortoire/Mayaro/Rio Claro area. He was a member of the general council and was the chairman of numerous committees of the People's National Movement—the party he served conscientiously and with commitment and dedication. We mourn his passing. He will be greatly missed, and we send our condolences to the family and friends of the late Vernon Gilbert.

I thank you.

**Mr. Speaker:** Hon. Members, I can hardly add to the sentiments that have been expressed concerning the late former Sen. Vernon Gilbert and Mr. Pat Castagne. The names are mentioned here, first, because one served in the Parliament of this country and secondly, because the other made a sterling contribution to this country, even giving it its National Anthem. I, therefore, associate with the comments on both sides of the House and I would direct the Clerk to send suitable condolences. I do not consider them as belated as has been said by the Member for Tunapuna and I do not subscribe to the views expressed by a newspaper. Accordingly, I would direct the Clerk to send suitable letters expressing the condolences of this House to the next of kin of both persons.

#### ANTI-PERSONNEL MINES BILL

Bill to give effect to the convention on the prohibition of the use, stockpiling, production and transfer of anti-personnel mines and on their destruction in Trinidad and Tobago, brought from the Senate [*The Minister of National Security (Sen. Brig. The Hon. Joseph Theodore)*]; read the first time.

#### PAPERS LAID

1. Second Status Report on the Implementation of the Death Penalty in Trinidad and Tobago—March 2000. [*The Attorney General and Minister of Legal Affairs (Hon. Ramesh Lawrence Maharaj)*]
2. The Annual Report of the Venture Capital Incentive Programme for the Financial Year ending September 30, 1999. [*Hon. R. L. Maharaj*]
3. Report in respect of the Activities and the Audited Financial Statements of the University Students Guarantee Loan Fund for the year ended December 31, 1998. [*Hon. R. L. Maharaj*]

*Papers 2 and 3 to be referred to the Public Accounts Committee.*

## ORAL ANSWERS TO QUESTIONS

## Sale of Government Houses

**56. Mr. Fitzgerald Hinds** (*Laventille East/Morvant*) asked the Minister of Public Administration:

- (a) Would the Minister indicate how many houses owned by Government were sold between January 01, 1996 and March 30, 2000?
- (b) Would the Minister indicate the purchaser, price and location of each house sold?
- (c) Would the Minister further indicate in detail the procedure adopted for the offer and sale of each unit?

**The Minister of Public Administration (Sen. The Hon. Wade Mark):** Mr. Speaker, in response to part (a) of question No. 56, the number of houses owned by Government which were sold between January 1, 1996 and March 30, 2000 is as follows:

- (a) The number of houses sold through public auction and completed is 19.
- (b) The number of houses sold through public auction where the 10 per cent down payment was made is 14.
- (c) The number of houses sold to public officers completely, or that have been completed is 27.
- (d) The number of houses sold where public officers have made 10 per cent down payment is 12.

The total number of houses sold to date is 72.

Mr. Speaker, as it relates to part (b), close to 72 properties have been sold.

**Mr. Hinds:** Mr. Speaker, in respect of part (b), it would satisfy the Member if that aspect was circulated rather than read, since the number is 72.

**Mr. Speaker:** It is up to the Member. You have heard what he said.

**Sen. The Hon. W. Mark:** I have no problem. As it relates to part (c) of the question, Mr. Speaker, Cabinet agreed that the sale of Government quarters be conducted through public auction with an upset price and with an initial deposit of 10 per cent being required, the balance to be paid within three months.

The procedure is as follows:

- (a) Identification of the property for sale.

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- (b) Survey plans must be received.
- (c) Valuation reports must be received.
- (d) Approval of sale by the Central Tenders Board.
- (e) Appointment of auctioneer by the Central Tenders Board.
- (f) Advertisement for sale by public auction.
- (g) Viewing of property by interested parties.
- (h) Holding of auction on appointed day.
- (i) Payment of 10 per cent of purchase price by successful bidder.
- (j) Signing of agreement by successful bidder.
- (k) Completion of sale in 90 days.
- (l) Preparation of deed by the Chief State Solicitor's Office.
- (m) Signing of deed by the President of the Republic of Trinidad and Tobago.
- (n) Handing over of the said deed.

As it relates to sale of Government quarters to public officers, Mr. Speaker, Cabinet agreed that a public officer who is eligible for Government quarters and who is at present in occupation of quarters with proper authority, be given the first option to purchase the quarters which he or she occupies. The selling price of the property should be not less than that recommended by the Commissioner of Valuations, and the Property and Real Estate Services Division of the Ministry of Public Administration should undertake the sale of Government quarters in collaboration with the Chief State Solicitor.

The procedure for sale to public officers is as follows:

- (a) Property must be identified.
- (b) Survey plan must be received.
- (c) Valuation report must be submitted.
- (d) List of properties to be sold for approval by the hon. Minister identified.
- (e) Letter of offer to the occupant must be submitted.
- (f) Offer of acceptance within 14 days of the date of that letter being issued.

- (g) A 10 per cent down payment to be made 21 days after date of letter of acceptance.
- (h) Signing of the agreement.
- (i) Completion of sale within 90 days.
- (j) Preparation of deed by the Chief State Solicitor's Office.
- (k) Signing of the deed by His Excellency, the President of the Republic of Trinidad and Tobago.
- (l) Handing over of the deed.

**Mr. Valley:** Mr. Speaker, I wonder whether the Minister could inform the House when the public officers in the Diamond Vale area would qualify for purchase of those properties—the former army properties.

**Sen. The Hon. W. Mark:** Mr. Speaker, that matter is receiving the active attention of the Minister of Public Administration, and we are hopeful that by the end of this year we should have that settled and satisfied.

**Mr. Sinanan:** Hon. Minister, you indicated that there were 17 contracts that were still pending. Of those 17, could you indicate whether the time has passed in any of those and, if time has passed for the completion—the 90 days—what action has the Government taken and, have there been any forfeitures of deposits?

**Sen. The Hon. W. Mark:** Mr. Speaker, I will have to research that and report back to Parliament.

**Mr. Valley:** When?

**Sen. The Hon. W. Mark:** As soon as possible.

#### **Award of Scholarship (Degree in Geography)**

**58. Mr. Fitzgerald Hinds** (*Laventille East/Morvant*) asked the Minister of Education:

- (a) Would the Minister please indicate whether Government's policy to award scholarships to teachers and other persons to pursue BA degrees in geography at UWI, Jamaica is still in force?
- (b) Would the Minister indicate how many persons were granted scholarships under these arrangements during the period January 1996 and December 1999 and could she indicate what was the Government's objective in facilitating such training?

- (c) Could the Minister state whether the Government's objective was achieved and if not, could she provide reasons for the failure?

**The Minister of Education (Hon. Kamla Persad-Bissessar):** Mr. Speaker, the policy to award scholarships to teachers to pursue the Bachelor of Arts degree in geography at the University of the West Indies, Jamaica, I am advised is still in force. Between January, 1996 and December, 1999, 12 teachers have received scholarships under this policy.

Government's objective in facilitating such training is to increase the number of persons suitably qualified for the teaching of geography in secondary schools. Government's objective is being achieved, but not fully. As we know, there are several vacancies for geography teachers, the difficulty being that geography is not offered by the University of the West Indies at the St. Augustine campus.

The Minister of Education has instructed that secondary system requirements for specialist geography teachers be reviewed so as to determine what shape the scholarship programme should take.

**Mr. Hinds:** When the policy was shaped, how many scholarships did the Government intend to offer? Was that total amount achieved?

**Hon. K. Persad-Bissessar:** I do not understand.

**Mr. Hinds:** The question is, when Cabinet took the decision to send teachers to train in the business of geography, how many scholarships did the Government plan to award?

**Hon. K. Persad-Bissessar:** Mr. Speaker, I will have to get further research on that because his question did not seek that information. I do not have it with me. What I do know, pertinent to what he has asked, is that 12 scholarships have been awarded based on that policy. I do not know what the plan was at some point in the past.

**1.55 p.m.**

**Commission of Inquiry  
(Terms of Engagement)**

**59. Mr. Fitzgerald Hinds** (*Laventille East/Morvant*) asked the Attorney General and Minister of Legal Affairs:

- (a) Would the Attorney General indicate the specific terms of engagement for the services of the three Members of the Commission of Inquiry appointed to inquire into the administration of justice?



- (b) Could the Attorney General state the projected cost of 'expenses' to be incurred by the state in respect of these Commissioners and give an indication of the various items of expenses?
- (c) Could the Attorney General indicate the source of these funds?

**The Attorney General and Minister of Legal Affairs (Hon. Ramesh Lawrence Maharaj):** Mr. Speaker, as this honourable House is aware, Members, from time to time, have expressed dissatisfaction with the credibility and state of the administration of justice in Trinidad and Tobago. This dissatisfaction has also been expressed by members of the public and in editorials in the media from time to time.

The hon. Chief Justice, at the opening of the current law term, made serious allegations which can have the effect of eroding public confidence in the administration of justice. These public allegations must be investigated by an independent commission of inquiry.

Pursuant to the decision of Cabinet, the commissioners were sworn in by His Excellency the President, on April 13, 2000. The commission comprises:

The Right Honourable Lord Mackay of Clashfern, Chairman;

Dr. L. M. Singhvi; and

Dr. Austin Amissah, President, Court of Appeal, Botswana.

Mr. Speaker, Lord Mackay was the previous Chancellor of the United Kingdom, and as Lord Chancellor, he was head of the Judiciary of the United Kingdom, and as such was involved in the management of the administration of justice in the United Kingdom. He also sat as Lord of Appeal, both in the Judicial Committee in the House of Lords, and in the Judicial Committee in the Privy Council. Apart from having a distinguished career as a lawyer at the bar, he had a distinguished career as a Judge. He recently headed a Commission of Inquiry into the Administration of Justice in Mauritius. In that role, he undertook and completed the task modernizing and streamlining the justice system of Mauritius.

Mr. Speaker, Dr. Singhvi is internationally recognized as an expert in human rights and, in particular, in matters pertaining to the independence of the legal profession and the independence of the Judiciary. He is the author of the *United Nations Universal Declaration on the Independence of Justice*.

Dr. Amissah is the President of the Court of Appeal in Botswana. In addition to being the President of the Court of Appeal in Botswana, he is recognized by the

Commonwealth, by virtue of his being a member of the Commonwealth Judicial Panel.

The three commissioners, upon agreeing to serve, made it clear that they would not requisition any fees for their services, but instead they regard their assignment as an opportunity to serve the Commonwealth, in particular the people of Trinidad and Tobago.

If the state had to pay for these services, the cost would be substantial when compared to other commissions of inquiry. At present, the state is required only to pay for the expenses incurred in having the commissioners and their wives in Trinidad and Tobago for the period of time that they would be here to serve. This honourable House is advised that whilst the commissioners are not sitting, the commissioners are still performing duties in relation to the commission where they live. However, those services are not at a cost to the state.

Mr. Speaker, the projected cost of expenses to be incurred by the state in respect of the commissioners who would be accompanied by their wives is \$860,393.85, made up as follows:

	APRIL	JUNE
Airfare	\$249,743.91	\$214,699.15
Accommodation and meals	\$130,644.85	\$114,319.54
Ground Transportation	\$57,280.90	\$58,425.50
Stipend	\$18,270.00	\$17,010.00

Mr. Speaker, this honourable House is informed that as with all other commissions of inquiry, the expenses of the Commission of Inquiry would be met from the relevant allocation under Head 13, Office of the Prime Minister.

**Mr. Manning:** Mr. Speaker, a supplemental question. I wonder if the hon. Attorney General could explain to this honourable House, what was meant by “stipend” in the statement and at what range is a stipend payable and to whom is this stipend payable?

**Hon. R. L. Maharaj:** Mr. Speaker, it is common that when officials travel or if they travel in relation to where no fees are charged, in relation to whilst they are at the particular point, an allowance is given to cover ordinary expenses. The stipend is for the commissioners. *[Interruption]* I do not have it with me. I could undertake—*[Interruption]* It is a *per diem* that is paid. But I can get it and I can supply you with it. It is a very nominal figure.

**Mr. Valley:** Mr. Speaker, another supplemental question to the Attorney General. Could the hon. Attorney General inform the Parliament whether all the legal procedures have been completed for the sitting of this Commission of Inquiry?

**Hon. R. L. Maharaj:** Of the sitting or the legal procedures?

**Mr. Valley:** Yes. Publication in the *Gazette* and everything and so on.

**Hon. R. L. Maharaj:** Mr. Speaker, if the hon. Member has a problem that any particular matter has not been complied with, I would be prepared to ask. The presumption must be that all the legal procedures have been completed.

**Mr. Valley:** Mr. Speaker, would the hon. Attorney General inform the House whether the Order—which I understand is necessary—for the sitting of the commission has been published or gazetted as yet?

**Hon. R. L. Maharaj:** Mr. Speaker, I can undertake to find out from the Secretary of the Commission and I can pass the information to the hon. Member.

**Mr. Sinanan:** The Attorney General indicated that, I think it was, \$57,000 was paid for ground transportation. Would that be ground transportation in Trinidad only, or in the United Kingdom where, I think, most of the commissioners are?

**Hon. R. L. Maharaj:** Mr. Speaker, it would include that people have to go from one airport if they have to change a plane. That would have to include all of that.

#### IMPLEMENTATION OF THE DEATH PENALTY IN TRINIDAD AND TOBAGO

**The Attorney General and Minister of Legal Affairs (Hon. Ramesh Lawrence Maharaj):** Mr. Speaker, on January 22, 1999 I made a statement in this honourable House, and I also laid on the table, a Status Report on the implementation of the death penalty. In that statement I explained the problems which the Government faced in carrying out the death penalty in the wake of the Privy Council's decision in *Pratt and Morgan*. The Government has since implemented the death penalty. Ten persons convicted of murder, sentenced to be hanged by the court, have been executed.

Apart from the execution of Glen Ashby in 1994, these 10 executions were the first to be carried out by the state in almost 20 years. But the execution of Ashby gave rise to international concerns. At the time of his execution, he had a

constitutional motion pending before the Court of Appeal and he also had a petition pending before the United Nations Human Rights Committee.

A commission of inquiry appointed by the Organization of Commonwealth Caribbean Bar Associations in cooperation with the Caribbean Human Rights Network to inquire into the circumstances leading up to and surrounding his execution, later expressed the opinion that Ashby's hanging was illegal. The commission, which consisted of a team of West Indian and British jurists, in a 201 page report, concluded that they were satisfied that sufficient evidence existed to cite the then Attorney General, the hon. Keith Sobion, for contempt of court. Ashby's execution was also described by the United Nations Human Rights Committee to be an illegal execution.

When this Government took office, it recognized that the non-implementation of the death penalty was a matter of grave public concern. The Government also recognized that, in light of the Ashby matter, all steps must be taken to ensure that the implementation of the death penalty was in accordance with due process of law.

The Government recognized that delay in the hearing and determination of murder appeals, and in the hearing and determination of applications before the two international human rights bodies, inevitably lead to the time frames laid down by the Privy Council in *Pratt and Morgan* being executed. The condemned person merely had to misuse these processes so that the time frames were exceeded, and the convicted person would be guaranteed a commutation of the death sentence. Convicted murderers were making a mockery of the law and the justice system.

Condemned persons were showing open contempt of the criminal justice system and virtually hijacked the criminal justice system. Public confidence in the law and criminal justice system was being shaken and undermined.

Time frames for the hearing and determination of appeals by condemned persons had to be complied with by the Court of Appeal and the Judicial Committee of the Privy Council, if the death penalty was to be implemented. To assist in achieving this objective, the Government, among other things, took the following steps:

1. Passed laws for the appointment of four additional High Court Judges and three new Justices of Appeal.
2. Created clerical and administrative positions to provide appropriate support staff for these additional positions.

3. Made available modern technology to the Judiciary to assist in taking notes of proceedings in court.
4. Took steps to upgrade facilities of the Supreme Court.
5. Took steps to provide judicial research assistance for judges to assist them in research.
6. Agreed upon the request of the Chief Justice to the establishment of a court administration department to assist the Chief Justice in the administration and management of the Judiciary.
7. Set up an *ad hoc* case management unit within the Ministry of the Attorney General and Legal Affairs to monitor death penalty cases.

**2.05 p.m.**

Mr. Speaker, the objective was to render all possible assistance to the Judiciary so that appeals before the Court of Appeal and the Privy Council would be heard within the time frame. Representations are made by the Government to the two international human rights bodies for them to dispose of applications by convicted murderers within the said time frames.

These two bodies, the Inter-American Commission on Human Rights and the United Nations Human Rights Committee were not prepared to give any undertaking that they would comply with the time frames made by the Privy Council for the hearing and determination of death penalty matters. Both the Attorney General and the Minister of Foreign Affairs held consultations with them in an effort to persuade them to comply with the time frame laid down in our law.

Mr. Speaker, the human rights bodies were not prepared to give an undertaking to that effect or to put any process in place for our law to be complied with. The Government carried out 10 executions of condemned prisoners although they exercised all their rights of appeal, their right to file collateral proceedings and although they made applications before the two international human rights bodies in an attempt to use these appeal processes and applications to escape the death penalty.

Mr. Speaker, the Government carried out the death penalty although some regional and international human rights groups assisted condemned prisoners to promote delays in the hearing of the application before the two human rights bodies. These groups conducted an international smear campaign against the

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Government of Trinidad and Tobago, they were involved in this action although they knew that international law permitted Trinidad and Tobago to carry out the death penalty. These groups were also aware that according to international law, the carrying out of the death penalty by the Government was not a human rights issue, it is a criminal justice issue falling within the jurisdiction of the state.

Mr. Speaker, the Judicial Committee of the Privy Council has held that the death penalty is not unconstitutional. The United States Supreme Court has held that the death penalty is not unconstitutional. We never hear of any broadsides being delivered by the regional and international human rights groups against the United States of America Government when a convicted murderer is executed in the United States of America, a relatively routine occurrence in that country.

Amnesty International, in particular, targets the governments of what it describes as Third World Countries with a clear intent of punishing those countries that carry out the death penalty. We saw convincing evidence of this last week on International Press Freedom Day which was observed on May 03. Amnesty International published a statement which was clearly intended to discredit the Government of the Republic of Trinidad and Tobago in the international community. It is instructive however, that on the day of Amnesty International's press release which was marked by blatant and obvious inaccuracy, two of the country's three daily newspapers which published editorials on the International Press Freedom Day asserted that press freedom is alive in Trinidad and Tobago.

Some of these regional and international human rights groups have no interest in the welfare of societies such as Trinidad and Tobago which they relentlessly seek to defame. These groups and their lobbies have no respect for our Constitution. To serve their own ends they will override this country's Constitution while the entire society is placed at risk as convicted murderers, shielded behind these human rights groups and their lobbies, escape the death penalty.

Mr. Speaker, it is well known that condemned persons generally allege before the two human rights bodies, that is the Inter-American Commission on Human Rights and the United Nations Human Rights Committee, the same issue which the Privy Council found to be without merit. It is also well known that these human rights bodies are well aware that they do not have any jurisdiction to overrule the judgment of the Court of Appeal and the Privy Council.

The human rights groups which encouraged application by condemned persons to the human rights bodies are purely concerned in saving the lives of the

condemned prisoners even if that means disregarding the rights of the victims and the public interest. The Government recognizes that in the absence of specific law, it could not be guaranteed that in all capital cases that the time frame would be complied with to permit the state to implement the death penalty. The Government, therefore, introduced in Parliament legislation known as the Constitution (Amdt.) (No. 2) Bill 1998 to specifically provide that convicted persons could not escape the death penalty merely because they have appeals pending before the Court of Appeal, or application before the two human rights bodies or that the time frames as laid down by the Privy Council were exceeded. The Bill would also have made it impossible for condemned prisoners to use prison conditions or delays which occurred before their trial and conviction or the fact that they were not given the opportunity to appear in person before the Mercy Committee and other matters which have no bearing on their guilt to escape the death penalty.

Mr. Speaker, the Bill did not become law because the Opposition Members voted against it. The Government has been prevented from carrying out the execution on Darren Thomas and Haniff Hilaire. The facts of the brutal murders for which they have been convicted are well known. Both Thomas and Hilaire exhausted all their rights of appeals and they filed constitutional motions which went to the Privy Council. The grounds upon which the applications before the Inter-American systems are based are substantially the same which the Court of Appeal and the Privy Council rejected as being without merit. The Privy Council, having stayed the execution of these two persons pending the determination of their application before the Inter-American System has, in effect, permitted some 38 other prisoners who are similarly circumstanced to use this ploy to prevent the state from considering executing them.

These 38 cases were filed by convicted prisoners before the withdrawal of Trinidad and Tobago from these two human rights bodies. The application of Darren Thomas has been pending in the Inter-American system for a period of two years and one month to date and Haniff Hilaire's application has been pending for two years and seven months. No indication has been given by this human rights body as to when, if ever, these applications will be finally determined.

Mr. Speaker, notwithstanding the obstacles which are placed in the way of the Government in implementing the death penalty, it is determined that the lawful penalty for murder must be carried out in accordance with the law. The Government has a constitutional duty to take all necessary steps to ensure that it is

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carried out in accordance with due process of law. To this end, the Government intended to apply to the Privy Council to have the stay in the case of Thomas and Hilaire removed. The Government believes that the Inter-American system has had sufficient time to complete these matters so that the state can again consider its right to implement the death penalty in these cases.

Whilst the Government was engaged in the process to remove that stay, the Jamaican Death Penalty Appeal of *Neville Lewis and Others v. Attorney General of Jamaica* was listed for hearing before the Privy Council. The Government of Trinidad and Tobago and the Government of the Bahamas intervened as parties in that appeal. The Privy Council is again examining in that appeal the principles of law which it decided that governments must follow if they wish to carry out the death penalty.

Mr. Speaker, the Government of Trinidad and Tobago is represented in that appeal and it hopes that the Privy Council will decide in favour of the Government. That case is likely to have bearing on the steps governments will take to carry out the death penalty. The Government of Trinidad and Tobago will obviously want to consider that matter before it proceeds to apply to the Privy Council to lift the stay of execution in the case of Thomas and Hilaire.

Hon. Members would recall that this honourable House was informed of the steps taken by the Government to get the human rights bodies to comply with time frames and their refusal to take steps to comply with our law. The Government took steps to withdraw from the American Convention on Human Rights which took effect from May 26, 1999. The Government was prepared to remain a party to that convention, but with a reservation that the commission would have no jurisdiction to hear death penalty cases. However, the Inter-American system does not permit the Government to be party and to have such a reservation.

In respect of the United Nations Human Rights Committee, the Government was advised that the United Nations system permitted Trinidad and Tobago to withdraw from the first protocol to the International Covenant on Civil and Political Rights and to re-accede to it with a reservation in death penalty cases. Accordingly, on May 26, 1998, the Government withdrew from this protocol and re-acceded to it on the same day with a reservation in death penalty cases.

Mr. Speaker, the United Nations Human Rights Committee however, on deciding on the admissibility of the case of Rawle Kennedy, a condemned prisoner from Trinidad and Tobago, held on November 2, 1999 by a majority of



nine votes to four that Trinidad and Tobago's reservation in death penalty cases was invalid and of no effect. It was pleasing to note, however, that the minority view appreciated all the difficulties faced by Trinidad and Tobago in having accepted an international obligation under the Optional Protocol which, since the decision in *Pratt and Morgan*, could now result in the Constitution of Trinidad and Tobago being breached as a result of the human rights body not complying with this judgment.

Trinidad and Tobago had to decide whether to withdraw completely from the First Optional Protocol, or whether to continue to be a party and, therefore, accept the competence of the United Nations Committee in death penalty matters. Since applications before these human rights bodies take an unreasonably long time and condemned persons continue to use delays before these bodies to escape the death penalty, the Government was left with no alternative but to withdraw completely from the First Optional Protocol. The Government deposited its Instrument of withdrawal with the Secretary General of the United Nations on March 27, 2000.

Mr. Speaker, I wish to make it clear that withdrawal from these bodies does not adversely impact on the enjoyment of fundamental human rights in Trinidad and Tobago. Persons in Trinidad and Tobago have the right to seek redress against the state for breaches of their fundamental rights and freedoms as guaranteed by sections 4 and 5 of the Constitution. Section 14 of the Constitution imposes a duty on the Supreme Court and the Judicial Committee of the Privy Council to investigate and adjudicate in respect of any allegation made by a person in Trinidad and Tobago that his rights have been, are being or are likely to be infringed by any arm of the state, whether by Parliament, the Executive or by the Judiciary. In fact, in recent years, it has only been prisoners under sentence of death who have submitted petitions to the human rights bodies.

It must also be remembered that these decisions of the human rights bodies are not binding on governments but are mere recommendations which governments can reject or accept.

Recently in a 1999 United States Department of State Human Rights Report on Trinidad and Tobago, it was stated that the Constitution provides for an independent Judiciary and the Government respects this provision in practice. The Judiciary provides citizens with a fair judicial process. The report also stated that the Constitution provides for a right to a fair trial, and an independent Judiciary vigorously enforces this right.

Although Trinidad and Tobago is no longer a party to the Optional Protocol, it remains a party to the International Covenant on Civil and Political Rights. As

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such, it is still under a duty to prepare detailed reports on a periodic basis for submission to the United Nations Human Rights Committee on the steps it has taken to promote and respect the enjoyment of human rights set out in that covenant. These reports must also state what actions have been taken in respect of convicted murderers. The Government is questioned by the same United Nations Committee on these reports and if the actions of the Government fall below international standards, the country can be made to account.

Similarly, Mr. Speaker, although Trinidad and Tobago has withdrawn from the American Convention on Human Rights, it is still subject to scrutiny by the same Inter-American Commission on Human Rights under the American Declaration on the Rights of Man, in respect of any matter which the commission thinks may contravene human rights. The only difference, by withdrawing from these two bodies, is that there is no right for individual petition.

It should be noted that there are over 90 countries in the world which are in the same position as Trinidad and Tobago, in that they also are not parties to the First Optional Protocol. These countries include the United States of America, the United Kingdom, India and some Caricom countries such as Belize, Dominica, Grenada, St. Kitts and Nevis and St. Lucia.

**2.20 p.m.**

In respect of the American Convention on Human Rights, Trinidad and Tobago is in the same position as a number of other countries including the United States of America, Canada, the Bahamas, St. Lucia, St. Kitts and Nevis, Antigua and that of Guyana.

Mr. Speaker, you would recall that the Government of Trinidad and Tobago took steps to fix time frames for these two human rights bodies to comply with the time frames laid down by the Privy Council decision of *Pratt and Morgan*. The Privy Council ruled that the Government of Trinidad and Tobago had no jurisdiction to fix these time frames. Even though by not complying with the time frames, the human rights bodies were contravening the law as laid down by the Privy Council.

The position, therefore, is:

- (1) These human rights bodies are not prepared to complete these matters within the time frames, given that time frames in death penalty matters form part of the laws and the constitutional requirements of Trinidad and Tobago.

- (2) These human rights bodies have refused to follow the given time frames as laid down by the Privy Council in *Pratt and Morgan*.
- (3) These human rights bodies are in open contempt of our laws by refusing to determine these matters within the given time frames.
- (4) The Privy Council has ruled that if condemned murderers have applications pending before these bodies the Government cannot execute them.
- (5) The Government attempted to get Parliament to enact the Constitution (Amdt.) (No. 2) Bill, 1998, so as to prevent these abuses of the Constitution and our laws by convicted murderers who use these human rights bodies to frustrate our Constitution and our law. But that Bill was not supported by the Opposition and therefore, did not become law.
- (6) The Government is awaiting the Jamaican appeal case, which is before the Privy Council of Neville Lewis and others against the Attorney General of Jamaica, before it proceeds to apply to the Privy Council to remove the stay of execution in Thomas and Hilaire, which decision would have effect on the other 38 cases.

Since 1998, His Excellency, acting on the advice of the Minister of National Security, has commuted the death sentences passed on 23 convicted murderers. All these prisoners were convicted before the present Government took office, and had suffered delays in having their appeals heard, causing the time frames in *Pratt and Morgan* to be exceeded. The total number of death sentences which have had to be commuted by the state since that case of *Pratt and Morgan* now stands at 73.

From the statistics set out in the report which has been laid—that is the status report—as at March, 28, 1999, there are currently 69 prisoners under sentence of death in Trinidad and Tobago. Of these 69 prisoners, 14 prisoners have appeals pending before the Court of Appeal; 19 prisoners have appeals before the Judicial Committee of the Privy Council; and 39 prisoners have appeals outstanding before the Inter-American Commission and the Inter-American Court on Human Rights.

The recent tendency of condemned prisoners to re-petition the Judicial Committee of the Privy Council for a second time has resulted in some prisoners having petitions before both the Inter-American Commission on Human Rights and before the Court of Appeal or the Privy Council. Therefore, that should be borne in mind in looking at the statistics.

The Government is, however, conscious of the cause being made by the European countries and some international human rights organizations for the abolition of the death penalty. The Government of Trinidad and Tobago maintains that the question of whether capital punishment should be abolished is a matter which is solely the responsibility of individual governments and parliaments. International law recognizes this principle.

The Government has, however, given consideration to the law of murder being reformed. In 1996, the Government introduced measures to categorize murder into murder one; murder two and murder three, so that only murder one would carry the death penalty.

The public consultation supported the call for the withdrawal of the Bill. It was felt that the existing law of manslaughter, provocation and of diminished responsibility *et cetera*, provided adequate measures to ensure that all killings do not result in the death sentence. The Government is considering the re-introduction of this Bill in an amended form.

The Government also recognizes that there have been several calls made for the introduction of other modes of execution, other than death by hanging. To this end, Cabinet is considering a report prepared by the Law Commission on other measures of execution including lethal injection.

It is crystal clear that there is a need for Parliament to enact the Constitution Amendment (No. 2) Bill, which was introduced in 1998, and which the Opposition voted against. The Government is considering the re-introduction of this Bill in Parliament, so that Parliamentarians can again have an opportunity to put a stop to persons sentenced to death escaping the punishment prescribed by law.

This law, if passed, would among things, give a maximum time frame to the human rights bodies to complete the hearing of these applications. The criminal justice system cannot be hijacked by persons who are convicted of murder. We cannot allow the criminal justice system to be manipulated so that the mere passage of time, in judicial processes, can cause sentences to be reversed. The criminals and those who are convicted then become the Court of Appeal.

Mr. Speaker, I am sure that if Parliament gets another opportunity to pass this law, the people would want the Opposition to support this Government in preventing condemned murderers, after exercising all their rights of appeal, and all their rights of redress under the Constitution of Trinidad and Tobago, from

using the two international human rights bodies to deny the people of Trinidad and Tobago the right to have the death penalty carried out.

Thank you very much, Mr. Speaker.

#### ARRANGEMENT OF BUSINESS

**The Attorney General and Minister of Legal Affairs (Hon. Ramesh Lawrence Maharaj):** Mr. Speaker, I have two Ministers here, but the Minister of Works and Transport would like to present his Bill, so I would proceed with Bill No. 3 first.

*Agreed to.*

#### TRINIDAD AND TOBAGO CIVIL AVIATION AUTHORITY BILL

*Order for second reading read.*

**The Minister of Works and Transport (Sen. The Hon. Sadiq Baksh):** Mr. Speaker, I beg to move,

That a Bill to establish the Trinidad and Tobago Civil Aviation Authority and for other related purposes, be now read a second time.

Mr. Speaker, the Civil Aviation Division which formerly functioned as a department of civil aviation is a department of the public service established with the responsibility to administer and regulate national and international civil aviation in accordance with standards and recommended practices and procedures established under the International Civil Aviation Organization (ICAO).

The activities of the division are:

- (1) The provision of air traffic services including search and rescue within an airspace of one million square miles extending from and including the entire group of Caribbean islands out to the eastern reaches of the Atlantic Ocean.
- (2) Dissemination of aeronautical information of concern to pilots and other air-traffic authorities on a broad international basis.
- (3) Training of air-traffic controllers to a graduate level including the issuance of proficiency ratings to controllers.
- (4) Personal licensing of pilots, flight engineers and aircraft maintenance engineers.
- (5) Registration of locally registered aircraft.

- (6) The promotion of air-worthiness control by the approval and monitoring of aircraft maintenance standards for locally registered aircraft.
- (7) The provision of flight operational standards.
- (8) The investigation of aircraft accidents and incidents.
- (9) The granting of or withholding of approvals for the establishment of helipads and airports in Trinidad and Tobago.
- (10) The establishment of flight-safety standards at airports.
- (11) The maintenance of telecommunications and air-navigation equipment are to be used in several locations in Trinidad and Tobago.
- (12) The determination and issuance of journey permits to commercial non-scheduled aircraft operators in the charter operations.

**2.30 p.m.**

Mr. Speaker, the idea of a civil aviation authority and the establishment of such an authority is not new. In fact, as far back as 1991 the government of the day saw it fit to publish a statement on national aviation policy in Trinidad and Tobago. Under the heading, "Policy on Institutional and Administrative Framework" it stated, and I quote:

"Having regard to the objectives of the Aviation Policy, the rationalization of the institutional framework is an area requiring urgent action. It is necessary to streamline the administrative/institutional arrangements to ensure enhanced coordination and faster response times. In consequence, it is the policy of the Government:

- To establish, as a matter of urgency, a single, autonomous (National) Civil Aviation Authority comprising Divisions that generally respect the separateness of roles and functions of the Civil Aviation Division, the Airports Authority of Trinidad and Tobago, the Air Transport Licensing Authority and the Secretariat of the Standing Bilateral Negotiating Committee, respectively.
- That the proposed (National) Civil Aviation Authority...be the responsibility of the Minister with responsibility for Civil Aviation.
- That the revenues of the proposed Civil Aviation Authority include, *inter alia*, all revenues, taxes, fees and charges imposed for the use of the Aviation System as a whole."

At this time, Mr. Speaker, it is appropriate to remind this honourable House that this Government, in its *Medium-Term Policy Framework 2000/2002* document has stated and I quote:

“Over the next triennium Government will continue to pursue strategies for the further development of air, sea and land transport.

With respect to air transport, Government is at present pursuing the development of an Aviation Policy to guide growth in the Aviation Sector. Government will also undertake...institutional restructuring of the Civil Aviation Division and revision of the air transport legislation to foster increased efficiency and safety in the aviation environment.”

Mr. Speaker, I would like at this point to stress in this honourable House that taking into consideration the stated policy as far back as 1991 and the stated policy of this Government in its *Medium-Term Policy Framework*, we are presenting in this House a Bill that will, in fact, provide the Department of Civil Aviation with the autonomy to ensure that we develop the aviation sector.

Ever since the United Kingdom established its Civil Aviation Authority in 1982, more and more of the numerous ICAO member states have removed their civil aviation departments from the confines of their respective civil service structures and created autonomous statutory authorities. Australia created its Civil Aviation Authority in 1988. New Zealand established a Civil Aviation Authority in 1992. South Africa enacted a Civil Aviation Authority Bill as recent as 1998. Here in the Caribbean, Guyana has just recently established its Civil Aviation Authority and Jamaica has also done so.

With all this in mind and desirous of reengineering the Civil Aviation Division in order that it conduct its business to its full potential, the Ministry of Works and Transport held various consultations with the division staff and reviewed the results of various organizational studies done over the years. There was also liaison with other regulatory bodies within the Caribbean, particularly Jamaica, as well as the British Civil Aviation, to identify the best organizational structure suited to the needs of the Trinidad and Tobago environment. Mr. Speaker, there was general agreement on all fronts that the mechanisms—legal, administrative and otherwise—necessary for the transformation of the division into an authority had to be identified and explored.

To this end—[*Interruption*]

**Mr. Valley:** Mr. Speaker, through you, I wonder, Mr. Minister, whether you can outline for us, to give us perspective, what do you see as the needs of Trinidad and Tobago in the area of civil aviation at present. This is so as to give us a better appreciation of the legislation.

**Sen. The Hon. S. Baksh:** Mr. Speaker, I will do so. There was general agreement on all fronts that the mechanisms—legal, administrative and otherwise—necessary for the transformation of the division into an authority had to be identified and explored.

To that end, Cabinet agreed that an implementation team be established, charged with the responsibility of the reorganization of the division. This committee comprised the following membership. Representatives of each division of the Civil Aviation Division; the unions representing the staff of the division; the Airports Authority of Trinidad and Tobago; the Aviation Safety Oversight and Regulation Implementation Committee and the private aviation sector. The committee was also charged with the responsibility of undertaking the organizational review of the division in order to outline the new organizational structure, job specifications, staffing options, salary ranges and other ancillary matters.

Mr. Speaker, at every opportunity before the Chief Parliamentary Counsel (CPC) got involved in the final draft there was consultation. Workshops and retreats were held to gauge the feelings of the division staff and others, not only as to the Bill's contents but also as to their feelings as to such a radical change from the public service into an authority. While the CPC underwent the final vetting of the Bill, comments were still being received and considered by the Ministry of Public Administration and the Chief Personnel Officer and all interested parties. At all times during the preparation of this Bill, there has been wide and active participation. We developed this entire framework based on the changes taking place in the international civil aviation arena. In fact, we were guided by the great strides made worldwide, in terms of the aviation sector generally, and in keeping with the international aviation organization's development of best practices in terms of the aviation sector.

The growth of the aviation sector worldwide continues to make it necessary to reshape the legislation and the response time in terms of developing aviation. In 1998 scheduled air traffic increased by 8 per cent. The world's airlines are estimated to have carried 1,448 million passengers as well as 26 million tonnes of cargo. The corresponding increase in total passenger kilometres performed was 12 per cent in Latin America and the Caribbean alone compared with 4 per cent



increase in the Middle East axis. The top 25 airports in the world, in terms of passengers throughout handled nearly one billion passengers in 1998 as well as 10.7 million commercial air traffic movements. Airline revenues reached nearly US \$300 billion for the first time, resulting in the best financial result since 1947. These results translated into a corresponding profit increase in the Caribbean and Latin America of 3.8 per cent. Aircraft orders went up by 23 per cent resulting in an ever-increasing backlog of unfulfilled orders, indicative of how the demand for aircraft capacity is growing in the Caribbean, Latin America and globally.

Mr. Speaker, as the Member enquired, given our strategic geographical location as the gateway to the Americas, it is necessary that we create a local hemispheric aviation sector in Trinidad and Tobago that shall, in addition to local civil aviation services and regulation, offer services to such external markets as repairs and overhaul of aircraft and components, the manufacture of aircraft components and subassemblies, logistical support, ground handling, fuelling, consultancy services and other ancillary services. At the same time, while Government ensures that the local civil aviation sector mirrors the expansion and growth taking place globally, it must develop the safety standards necessary and develop the responsive nature through a civil aviation authority to be able to respond to the needs of the aviation sector.

In fact, Mr. Speaker, it is the duty of the Government to ensure that Trinidad and Tobago possesses the capability to ensure that our civil aviation activities comply with the highest levels of safety standards in accordance with the international standards and recommended practices and other requirements under our obligation as a member state of the International Civil Aviation Organization. For the benefit of the Member on the other side, in fact I did not plan to go into it but, as he requested, the International Civil Aviation Organization and our role within that particular organization is something that we need to monitor on an ongoing basis because it is that organization that will, in fact, assure the international carriers of our capability to ensure that we maintain the type of safety standards that are absolutely necessary in the aviation sector.

On December 6, 1944, 52 states signed the Convention on International Civil Aviation in Chicago. After notification by 26 states, ICAO officially came into being in 1947. Later that year it became a specialized agency of the United Nations linked to its Economic and Social Council. Trinidad and Tobago became party to the Convention in 1972. The aims and objectives of ICAO are:

- to ensure the safe and orderly growth of the international civil aviation;

- to encourage the arts of aircraft design and operation for peaceful purposes;
- to encourage the development of airways, airports and air navigational facilities;
- to meet global needs for safe, regular and efficient air transport;
- to prevent economic waste caused by unreasonable competition;
- to ensure that the rights of contracting states are fully respected with regard to the operation of international airlines;
- to avoid discrimination between contracting states;
- to promote safety of flight in international air navigation; and
- to promote the general development of all aspects of international civil aviation.

Mr. Speaker, ICAO achieves all of these through the issuance of the following—one, standards: These are the specifications necessary for safety and regulation of the international air navigation to which member states will comply; and, two, recommended best practices—such specifications that are desirable for the interest of safety, regularity or efficiency of international civil aviation to which member states will endeavour to conform.

Again based on the request of the Member for Diego Martin Central, I would give some further clarification in that during the last decade ICAO has placed great emphasis on the ability of civil aviation authorities of member states to comply with standards and recommended practices, especially with regard to safety. To this end, Mr. Speaker, ICAO has sent special audit teams to various member states in order to assess their civil aviation systems with a view towards gauging their ability to comply with ICAO standards and recommended practices. Trinidad and Tobago has been among the states visited by ICAO and the FAA. Around that same time, the American Federal Aviation Administration saw it fit to launch its own programme of inspections. In fact, they put their own unique spin on their assessment process and they categorized states into three groupings based on their ability to adequately comply with ICAO standards.

**2.45 p.m.**

Mr. Speaker, Trinidad and Tobago ultimately in 1996 received favourable assessments by both the FAA and the ICAO. In fact, Trinidad and Tobago is one of

only a few countries that, in fact, attained category one status according to the FAA, and that is their most favourable grouping. However, both auditing bodies identified areas within which there was room for improvement.

Mr. Speaker, in taking cognizance of the recommendations of both the ICAO and FAA for our civil aviation system to be counted as fully compliant with the highest level of ICAO's standard recommended practices the following had to be established and both organizations stated quite categorically: the updating of our civil aviation laws and regulations, and the establishment of an autonomous civil aviation authority.

One can see that the adoption and total compliance with these ICAO standards and recommended practices dovetail nicely with the aims and objectives of our Government's aviation policy and the overall improvement of the country's civil aviation system. I do not feel that it is necessary, after giving that prelude, to give the explanation as to the global aviation environment as it relates particularly—

**Mr. Valley:** Mr. Speaker, I thank the Minister for giving way. I am asking for the needs as seen by the Government of Trinidad and Tobago. I am not really speaking about the ICAO and these other areas. I feel certain that they would set their standards with respect to safety. I know the Minister has touched on it briefly but if he had considered that aspect—I mean you spoke about the repair and service to other countries and so on and that is what I had in mind—and exactly what is the plan for civil aviation other than the safety area because, obviously, that is one aspect of it. I think the ICAO and so on would take care of that by their standards, but I am talking really about positioning.

**Sen. The Hon. S. Baksh:** Mr. Speaker, when I deal with other Bills that will, in fact, deal with the civil aviation or the aviation policy of the Government of Trinidad and Tobago, I will deal with those aspects. This particular Bill deals with the establishment of the Civil Aviation Authority, which is mainly responsible for the creation of a safe environment for the aviation sector to ensure that we, in fact, do establish the type of autonomous body that will be able to respond in a very timely manner to the changing needs of the aviation sector especially as its lease is compliance with the ICAO and FAA requirements for safety and efficiency in the environment within which we regulate.

Mr. Speaker, in fact, when I state the roles and responsibilities of the Civil Aviation Department as it is now, you will see all the areas for which it is responsible. It is mainly, in fact, responsible for establishing and ensuring that

safety standards are met and the recommended best practices of the International Civil Aviation Organization and FAA are met. It is also to ensure that we are in a position to establish a safety oversight and inspection authority in terms of the inspectorate which we recently established. In fact, that is the background on which we establish this particular piece of legislation.

As I pointed out, in terms of the Government's overall policy for the aviation sector, it is one not different to the economy of Trinidad and Tobago as we continue to ensure growth in the economy and in every sector. The aviation sector is another area that we do not want to leave like it was left before. The Government wants to provide the environment, regulatory and safety requirements to ensure that civil aviation and the aviation sector grow, in particular.

Mr. Speaker, the aviation sector is that sector which we have targeted for growth. It is an area in which the Government sees great opportunities, as we continue to provide the type of airlift infrastructure to satisfy the needs of 21st Century Trinidad and Tobago. The Government will continue to update all the legislation necessary to provide that type of improvement.

Mr. Speaker, this Bill seeks to create conditions of operations that shall make the department responsible for civil aviation ultimately self-sufficient with an additional capacity to finance growth and development. This Bill also seeks to enforce sound management and financial practices to ensure that obligations to ICAO and the public are met; to strengthen the department's capability to regulate civil aviation and in so doing ensuring the highest levels of compliance with ICAO's standard and recommended practices.

Mr. Speaker, through the process of institutional reform the division shall be given independent and legal status thus subjecting it to the same legal requirements as private firms. The new authority shall be subjected to the rules of corporate governance rather than the existing official mode of governance. The new authority shall have more autonomy and flexibility to conduct its business in the ever-changing commercial field of international civil aviation.

Part II of the Bill establishes the Trinidad and Tobago Civil Aviation Authority as a body corporate at clause 5. The functions of the Civil Aviation Authority are set out at clause 6; the powers of the Civil Aviation Authority to do everything necessary for the performance of those functions at clause 7. The cumulative effect of those provisions shall be to focus the objectives of the Civil Aviation Authority and create a corporate structure that shall be capable of efficiency and flexibility.

Part III of the Bill makes provision for the establishment of the board, its composition, and the appointment of its director general. The board will be appointed not only for its knowledge of civil aviation, but in other areas such as management, human resources and commercial skills. It shall have the responsibility for the business of the Civil Aviation Authority. However, it is still recognized that the Minister with responsibility for civil aviation has the overall responsibility for setting policy and goals through the issuance of directions while leaving the detail planning and implementation to the administration. This part provides for the appointment of a director general whose role shall be to oversee the day-to-day management of the Civil Aviation Authority. In effect, this implements the broader policy as laid down by the board.

Parts IV and V of this Bill make provision for the proper financial planning and management of the Trinidad and Tobago Civil Aviation Authority by means of the establishment of corporate plans set around a legislative time frame and containing such criteria as outlined in clause 15; the proper keeping of accounts and records according to established accounting principles; the proper auditing of those accounts and records; and the annual laying of such reports as public record in the Parliament.

Provision here is also made in Part V for the Authority to source financing from other areas but only through the explicit approval of the Ministry of Finance and subject to its terms and conditions.

**2.55 p.m.**

While the Civil Aviation Authority is made exempt from the applications of the Central Tenders Board Ordinance, provision is made for absolute transparency in the awards made under clause 24.

Part VI of the Bill makes provision for the employment of staff and the payment of superannuation benefits. The board is empowered to employ staff as required allowing the present staff to exercise the following options: to transfer to the CAA or remain in the public service.

Mr. Speaker, we saw it necessary to offer the best possible options to the staff at the division. This Part also deals with the handling of the pension scheme. All superannuation benefits shall be effective from the date of a person's employment with the Civil Aviation Authority. However, within two years, the CAA has pledged to establish its own pension plan in order to provide for its employees.

This Bill establishing the Trinidad and Tobago Civil Aviation Authority is the first in a series of legislative measures intended to bring our statutory framework

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up to ICAO's standard and recommended practice. A companion Air Navigation Bill is in a well-advanced stage of preparation in order to ultimately repeal our Colonial Air Navigation (Application of Act) Order 1952. CANO 1961 which, itself, was replaced by the Civil Aviation Order 1995, is presently being revisited in order to produce our own Trinidad and Tobago Aviation Regulations that shall be in accordance with joint aviation requirements that are slowly but surely gaining worldwide acceptance—the establishment of an autonomous Civil Aviation Authority. Through this Bill, a start has been made to the ultimate modernization of civil aviation in Trinidad and Tobago.

Mr. Speaker, the establishment of the Trinidad and Tobago Civil Aviation Authority is but the first important step in laying the foundation and the framework for the improvement and development of the aviation sector here in Trinidad and Tobago. Our Government recognizes the importance of the provision of airlift infrastructure to facilitate growth of this particular sector, not only to satisfy the needs and requirements of linking Trinidad and Tobago to the rest of the world, but also playing our role in the development of the regional aviation sector to take our rightful place in the world of nations.

Mr. Speaker, I beg to move.

*Question proposed.*

**Mr. Kenneth Valley** (*Diego Martin Central*): Mr. Speaker, for yet another time, we on this side have to complain about the apparent lack of public policy by the Government. While we are sure that there is always an individual agenda, either the Government does not have a public agenda, or fails to share it with the national community.

Let us look at the legislation before us. What we have is a situation where the Department of Civil Aviation that functions out of the Ministry of Works and Transport—at present, we are simply taking it out and making it a statutory authority under the pretext that it will improve the efficiency of the organization.

We are told by the Minister that yes, the Government has an overall aviation policy, but we will hear about that policy some time later on. Now, we look at the Bill and find that it sets up the company and talks about the functions, and so forth. The Minister ended, however, by stating that this is the first step with providing the infrastructure for the improvement of the aviation sector for the general growth of the economy of Trinidad and Tobago.

Quite frankly, I tried on a number of occasions to prompt the Minister to share with the Parliament more along that line, because to me, that is what is important.

The international organizations would ensure that whether it is a department or a separate company, statutory authority, they would maintain a certain quality standard. They are going to push that organization to best practice, but I think it is important that the Government, in setting up this authority, should consider its own agenda, because that is what we were doing in 1991. The Minister spoke about how this went back to 1991 and yes, it is correct, but when we were looking at the whole thing, it was in a much wider context.

Quite frankly, we were looking at establishing Piarco as an alternative hub into and out of Latin America. The Minister touched on part of it, but somehow could not go further as to opportunities available to a country such as Trinidad and Tobago, given our strategic location. Yes, we can, and that is the emphasis that we ought to be looking at; not simply reading the clauses in the Bill and setting up an organization. Anybody can set up an organization. What is important is the vision. What do we want out of this? What is our bottom line? [*Desk thumping*]

That is what I attempted to get from the Government, because quite honestly, I do not think it is sufficient for the Minister to come to Parliament and simply read the Bill. We can do that. We would really appreciate if when the Minister comes here, if he has it, share with us. What is that vision? What do we want other than the safety requirement? Because, as far as I am concerned, we are a small cog in the machine with respect to that. The international organizations will push us to best practice. What can we get out of it? What is our public agenda? How can we ensure? As a fact, this authority may not have the mandate to do it, but how could we so organize that, ensuring that Piarco becomes a hub into and out of Latin America?

Mr. Speaker, we have Belém in Brazil, which is really two and a half hours from Piarco. But if someone in Belém wants to go to New York, that person first has to go south to São Paulo and then fly north. If we can develop Piarco as an alternative hub to Miami, it means that a person can get to Piarco and get to New York with a much quicker time.

There are opportunities available with respect to transport, to do with the carrying of goods into South America, Mr. Speaker. It is that thinking, to use our strategic location to position Trinidad and Tobago as the centre of this part of the world, that led us with respect to our initiative with BWIA and Liat. Mr. Speaker, I would forever believe that we have made serious errors in that whole BWIA/Liat deal. I am one of those who has gotten so much licks on that whole BWIA transaction. Sometimes I just shake my head and say that is public life.

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If only we would consider that there are acres of diamond in our backyard in South America; that while we think of the tourists from the north enjoying the Caribbean, there could also be tourists from the south, because they also have winter in the south. What is important is that they have winter at a different time of the year to the winter in the north, so we can benefit from the winter in the north in one period, and then benefit from the winter in the south in another period. All with a view to developing our tourism industry. [*Desk thumping*]

If only we can understand that there are acres of diamond in our backyard, and if only we will turn around that chair—Mr. Speaker, I remember actually forcing BWIA to start flying to São Paulo. They did a few flights and had to stop, because obviously, BWIA alone cannot finance the development of the South American market. That requires the active co-operation of the tourism sector in the Caribbean, the governments of the Caribbean and yes, the airline.

That myopia from which we suffer, we look only to our own. We still complain today that Caricom is a failure. We talk about the ACS, failing to realize that as the ACS becomes a reality, that as the free trade of the Americas becomes a reality, Caricom, per force, must become more integrated. It must move to that single market.

We are getting involved in a series of concentric circles with Caricom being at the centre, and we need, Mr. Speaker, to start really taking that leadership role in the Caribbean. I am saying it is not too late to turn around. The whole arrangement between BWIA and Liat is supposed to be a strategic relationship. The concept was that BWIA would do long haul and Liat the short haul. That is why it was important for us that BWIA had a certain interest in Liat; a significant minority interest—30 per cent interest, so that they can really direct the airline along a certain path. Venezuela to Trinidad; even Colombia to Trinidad, Liat can do those short flights. Today we hear that BWIA and Liat seem to be in yet another fight and, as a fact, one of them will fail, given the capacity requirements, and so forth.

It hurts, I must admit, because I remember Carib Express. I remember the fight we had with Carib Express. I remember being at a Caricom meeting where we had six Prime Ministers around the table who wanted no part of the Liat transaction that Antigua and Trinidad and Tobago had forged, but they had no option but to sign the agreement, because they had a vested interest in Carib Express. We got that deal going and then people started fighting once more in the Caribbean, as they are prone to do, and that seems now to be going apart. It seems we do not have a vision. We do not know where we want to go.



This morning I was at a funeral and Father Winston Joseph—I must say here now, Mr. Speaker, that I think Trinidad and Tobago, and especially the Anglican community, is making a terrible mistake by failing to realize the worth we have in Father Winston Joseph and allowing him to leave Trinidad and Tobago. I think it is an injustice done to an admirable human being in Trinidad and Tobago—someone who has served this country well.

**3.10 p.m.**

Father Winston Joseph this morning was making the point at the funeral that, we must never be concerned about what we are going through, but where we are going to. At any point in time, we may feel that things are hard and it is a struggle, but if we keep sight on where we want to go, and see this as merely part of the pain that one may have to go through to get there, then we would have the energy and commitment to continue going. Never consider what we are going through, consider where we are going to—the concept of vision.

It is said that the caterpillar, before it becomes a beautiful butterfly, must go through the cocoon. Yes, we are going to have problems. Yes, we would think, from time to time, “But oh God those people in the Caribbean, I cannot deal with them.” Let us at all times consider where we want to go and the benefits especially to a country like Trinidad and Tobago.

I am asking the Minister that, yes we are setting up this organization, we have no problem. I feel that the statutory authority, coming out of the bureaucracy, might be the best thing for this, but let us go further. Let us think about really trying in our aviation policy—and it is not going to happen overnight—to establish Piarco as an alternative hub into and out of South America. Whether it is to Europe or North America it can, in fact, be.

It is all part of that airport development. We cannot do things in a vacuum. We need to see the connections between things and really move to that next level of development.

Mr. Speaker, we simply wanted to make those comments, hopefully, to sensitize the Government of that need or, if they were to share it with the population, because I think sometimes we get comments from the population because the population is not sensitized to where the leaders in society want to take the society. There would be fights—“Man doh worry with them Jamaicans or dem Antiguan” and so on. Let us understand that in this little five million place we call Caricom, given what is happening in the world, as a fact, one day we are going to get up and just realize that we have one government in Caricom.

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We tried federation, it toppled down, it did not work. We have people, business bringing people together. People would bring people together. As we move in trade to the Association of Caribbean States and to the Free Trade Association, that single market and economy must become a reality. When you get there, the next logical step would be, really, unity in the politics. In other words, not only a single market and a single economy but also a single government as a reality—the next logical step. It may not happen in your lifetime, Mr. Speaker. I hope it would happen in mine, as a fact.

I would have hoped also that when the Minister was giving us all this information with respect to the growth in passenger traffic and all these sorts of things, that he would have given us some insight concerning what is happening in Trinidad and Tobago. How does he see the opportunity for a country such as Trinidad and Tobago? What part can we play? I am saying that if we have not thought about it—and I think they have, because the fact that he has considered using Trinidad as a repair hub is to be commended—but I am saying we can go much further. We need to look for the linkages between the airlines in the Caribbean; specifically I feel BWIA and Liat. I think it is not too late to put some sense in those people's heads and try to get them back together and also to lobby the tourism sector—there are other governments in the Caribbean—and let them know that the South American market is an important market to develop, but they also have to put something in the pot.

I thank you, Mr. Speaker.

**Mr. Eric Williams** (*Port of Spain South*): Mr. Speaker, I thank you for recognizing me. I apologize to the House; I almost missed this very important debate, for various reasons. I am glad I made it in time, because there are a few things, in addition to what the hon. Member for Diego Martin Central spoke about, that we need to explore in this legislation.

I am also sorry that the Member for Diego Martin East could not be here because I know that this approach is not unfamiliar to him in his previous capacity as Minister of Works.

Mr. Speaker, for some time now, several of the pilots in BWIA—at least certainly local pilots—have been trying to find ways to approach various Ministers of Works to change some things about the law and the way we license pilots and our aircraft maintenance mechanics and so on.

[MR. DEPUTY SPEAKER *in the Chair*]

Mr. Deputy Speaker, in the past, as I understand it, most of the Ministers of Works previously would defer to the technocrats in this particular matter as indeed in other matters. It seems that in this case, we have decided to go a different route. This Government, in its typical fashion that we have become accustomed to, is seeking to do what it has done with a number of other projects, in an attempt to change the culture, but in an attempt that—if we just ask a few questions—may raise some questions as to the intent and the purport. It requires a simple majority. In the other place we helped to dot the “i”s and cross some of the “t”s.

I think there are indeed some things that need to be explored in this debate because this Minister of Works and Transport is the Minister of Works and Transport who attempted—after the PNM demitted office—to give us a highway going to San Fernando and had the—*[Interruption]*—our tax dollars at work, yes—history-making opportunity of having to fire a contractor. In typical public relations manner, he said: “Well, in the past, nobody ever fired any contractor but we can do that.” The contractor failed miserably in something that was one of his landmark projects.

Ever since then, we on this side always tend to take a second look at what this Minister does, particularly since my colleague from Laventille and myself saw him tramping up and down Laventille Hill talking about “A new dawn breaks in Laventille.” Mr. Deputy Speaker, I am told by some of our constituents that some Members on that side spent a fair amount of money in Laventille. Let them keep doing that, they will indeed go broke trying to do what they have been seeking to do. So we take a second look, always, at what this particular Minister is doing.

Mr. Deputy Speaker, I am advised that the Minister set up an implementation committee to look into this whole area of civil aviation. What seemed like a good thing, is that the Minister put two ex-captains from BWIA on the implementation committee, as I understand it. I could be wrong and the Minister would correct me. As I understand it, he did not tell the House a whole lot about how we arrived at this, so we are free to speculate. Hopefully, he will clear the air on some of these issues.

Mr. Deputy Speaker, let us take a look into some of the issues behind pilots in this country, and lead back to how we arrived at this legislation which was recommended, in large part, by some pilots—at least with some good advice from them.

Apparently in Trinidad and Tobago—as has been pointed out by the Member for Diego Martin Central, and as we all well know—BWIA has one of the most enviable records of safety of any airline in the world today, albeit that it is a small airline. We have not had any serious accidents of the types that we hear of in the news from time to time. We expect, as a people, that that will continue.

**3.20 p.m.**

The reason for this is because BWIA and, in fact, all locally registered pilots and aircraft mechanics, are faced with qualifying to some of the most stringent standards that are available in the industry today. Indeed, those standards have their genesis in the British system of administering aviation.

Mr. Deputy Speaker, pilots as I understand it, are required in that system to take, over a period of time, upwards of nine examinations. As I understand it again, there are several grades of pilots in the industry. There are the student pilots, or as people in the industry would say, the jargon goes, SPLs, there are the private pilots, the commercial pilots and then there are the airline transport pilots or the captain of the aircraft. So it is intuitive to understand what that is all about.

A student pilot is somebody who is learning to fly; a private pilot is somebody who has a licence and can fly light aeroplanes and so forth; a commercial pilot is somebody who has a higher licence to fly commercial planes, but not as captain of the plane, maybe the first officer, the flight engineer and so forth. Then there is the highest level which is the airline transport pilot. To obtain that licence, I will give us an idea of what they have to do.

They have to take three examinations one by one; performance; then loading, how you load an aircraft; and human performance and limitations. What is human performance and limitations? It is how the human body will perform under conditions of stress or in-flight-type arrangements. One can look on the Internet and find all this information. If you go deep-sea diving or do some strenuous activities that may impair your ability to fly an aircraft, this kind of training allows the pilots to understand what the limitations of the human body are. The first thing they have to do to obtain their commercial pilot's licence, to get to that stage that is beyond student pilot and private pilot, they have to take a step to understand performance, to understand how you load an aircraft and to understand how the human body functions.

Beyond that they have to take six more examinations, but the thing is they have to take them all at the same time. These examinations are as follows: the use of radio aids, the use of instruments, flight planning, how you navigate, the theory

of meteorology so you understand weather patterns and so forth. When I am flying the pilot says we are going up to 33,000 feet and will be getting into the jet stream and it will take us a little faster so we are going to pick up some speed and get there half an hour ahead of time. All those kinds of things they need to understand—how the weather works and so forth. When they see clouds ahead they know it is going to be bumpy and how to get around them. Those are the kinds of things we expect our pilots to know.

So they have the theory of meteorology and then they have a practical aspect of it. The thing about these six examinations, as I say, have to do with British standards of preparing pilots. They must take all six at the same time. The three before, those they could take one at a time, but these six have to be taken at the same time. If you pass three, that is considered a partial pass and you can repeat. If you pass less than three you have to take the entire thing all over again. Bear in mind these are very important examinations, the kinds of things we expect pilots to know.

Mr. Deputy Speaker, in this Bill we are seeking to give this new Civilian Aviation Authority the ability to set its own standards and examinations. Do you know what the word is in this industry among pilots? The word in the industry is that we are going away from this British standard to something that is more akin to the US standard, to the FAA standard.

Mr. Deputy Speaker, that may sound quite benign, except of course, many of the accidents we hear about in flights, unfortunately, happen in a particular part of the world. Pilots who are qualified under the North American system, the FAA system which is quite good for the United States of America, can only be licensed to fly planes registered in the United States of America. If they seek to fly an aircraft that is licensed in Trinidad and Tobago, pilots who qualify in the United States of America have to retake—they get a provisional licence. As I understand it, BWIA may have a shortage of a captain and may want somebody from the United States and they apply to the relevant authority and may get a provisional licence for that person. I am not entirely familiar with the entire process, but that is the gist of it. Worse also, if they want to go to the United Kingdom, they have to take this examination to become fully qualified.

Mr. Deputy Speaker, our pilots have gone through this process and they are marketable anywhere else in the world because they would have met this high standard, but apparently the pilots find these examinations are too difficult. I am advised that in the past, one of the reasons that the Minister of Works and

Transport prior—I refer to the technocrats in the ministry on this—is because there has been a discussion as to whether or not we are watering down the brandy as it were, we are lowering the standards.

That reminds me, in this House we have faced this type of arrangement before. You will recall we debated in this House a Bill that had to do with the dentists and in that debate it was pointed out by one of the participants that a close relative of a Member of one of the Houses of Parliament is a dentist, and you yourself, Mr. Deputy Speaker, as a person in the medical field, would have been aware of the issues surrounding that whole dentistry debate. There was a problem that students, who came out of the School of Dentistry, were unable to pass the examinations set by the board of dentistry and as a result, there was a hue and cry to lower or change those standards. We said lower, the Government said change. I wonder if the new system that was proposed is in operation. I have not heard too much about it since we left this debate, but the bottom line is: students were failing and as a result of what appeared to be representation—the “ole” talk then was that a certain young man who was a dental student who had failed the examination and is related to a Member of one of these Chambers was telling his friends in dental circles that Daddy was going to get the law fixed. This was the word we heard. This was the word that was on the ground and it was reported to me on several occasions by several persons.

Mr. Deputy Speaker, here we were faced with that situation where these were the things that were being said in the dental circle. We recently heard a debate in legal circles about the Hugh Wooding Law School and its inability to handle the load of students who need to come through that process to obtain their legal certificates. *[Interruption]* The Member for Couva South is saying his father would fix that too. That is what he is saying. The fact is, that in the legal circles, people are saying exactly what the Member for Couva South just said. So again, as a person in public life one hears these things, one sees legislation, and one sees certain things happening and when one hears these things throughout the system from persons who, on the surface of it, appear to be quite reputable and quite knowledgeable in the society, one has to pause and wonder.

I wonder if, in this change from the high British standard to the United States standard, there is any relative of any Members of either of these two Chambers—and I sincerely hope not—who may be a student pilot in the United States of America who may have to face these examinations as a pilot. Because with this Government, every time they do something that appears to be innovative, we have discovered that they look for the “What’s in it for me” “WIIFM”, “factor.

This same Civil Aviation Authority that has to function and deal with the airport—I have been to several airports, as we all have—and when they are building a new airport you always see them build several things associated with that new airport. They build a new tower, parking facilities for the aircraft, new entrances to the airport and all those kinds of things that have to do with administration of civil aviation.

In the course of looking at this airport project and its relationship into all of this, I have discovered that this Government with the \$1.1 billion that is going to be spent on the airport, they are not building a new tower for the air traffic controllers and worse yet, we are expanding the airport so that we have a North American type arrangement with wings and the elevators and ramps and so forth. Do you know what they have to do abroad? They usually build a tower for the ground controllers, the people who tell the aircraft where to park. The idea is that they must be able to see over the entire facility so that they can tell aircraft No. 1 to go around to gate No. 2 and be careful for that one and so forth.

Mr. Deputy Speaker, I understand that the technocrats in the ministry and the airport designers have recently realized that the ground controllers will not be able to see around the airport because they are not building a new tower for the ground controllers, and they are trying to figure out now how to do it, and the figure I am hearing is in the order of \$15 million to \$16 million additional; another “WIIFM” clause to put in ground controllers.

### **3.35 p.m.**

What is scandalous about that in itself, is that when a similar tower was built for the Tobago airport it cost \$600,000, but here we are talking another \$15 million to \$16 million. I wonder to whom that contract will go? Another “WIIFM” clause! So when we look at things that surround aviation and this particular honourable Minister—*[Interruption]* That is another issue too. They are not moving the tank farm to fuel the aircraft; and also they are not moving the fire station. The firemen went to the press saying that they are spitting blood, and are suffering in the dust, and there is no thought to move them. Do you know what else, Mr. Deputy Speaker?

When we build this terminal and we have all these additional planes coming in, the Civil Aviation Authority would be licensing people and providing policies, do you know that the fire station is going to be downwind of the terminal? So that not only will it be dust, when the terminal starts, it will also be aircraft fumes. Do you know that there is a reason the fire station was put on the other side of the

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runway from the current terminal? It was so that they would be away from that. In addition to that, the runway is extended now, so that we would be getting larger aircraft and more of them, so one would have thought that you would put the fire station not only up-wind but towards the further end of the runway.

If a plane is in distress, and it is coming in with an emergency landing—let us say they cannot get all the preparations in place, the plane would be coming in to land, it may get to the runway and it will move along the runway, but guess what? *[Interruption]* No, our fire officers are on the landing side. So that while the aircraft is skating going up the runway, you could see the firemen trying to run in to their tenders, to run behind the plane to catch it. This is the brand new airport that we are building. So we do not have any way to properly guide—*[Interruption]* Yes, a new terminal. That is right, because it would not be opened fully. It would be a museum for students to walk through. *[Interruption]*

The advice received on this Bill, if it is that there is some relationship of persons who are student pilots, it seems interesting that this Minister and this Government has chosen, in these circumstances, to move ahead with this legislation which has always been put to the technocrats because the advice that had been given is; stick with the high British standards. We have established that one of the things this Government is about—they are talking quality nation: they talk the talk but when you look at anything they do, it is always a way to try to cut a corner. No standards at all! In fact, we are lowering the entry level at every turn. And we are talking “quality nation!”

We are faced with a situation where the approach that is being taken is fraught with danger. The advice that we are receiving in moving ahead with this and empowering this association to do the things that we are empowering it to do, may not have been fully thought out, but this requires a simple majority. At this point, our job is to point these things out.

I hope also that the gentleman who, I believe, was a former Senator in a previous dispensation, who has a management position at BWIA, and who claims to have a familiar relationship with a certain Minister; and who has been boasting to all his colleagues in BWIA and so on, that he will be the new director general of this organization, I only hope that that is not so. It seems that people cannot contain themselves. The individual may not, in fact, be properly qualified to do this, but this Bill says that the Minister—

**Mr. Hinds:** Friends and family.



**Mr. E. Williams:** Mr. Deputy Speaker, we continue to look, and people continue to talk in this small society of ours about the “WIIFM” clauses that go into legislation that this Government brings before us. *[Interruption]*

**Mr. Hinds:** Water for all, imagine that.

**Mr. E. Williams:** Yes, Mr. Deputy Speaker, it is true, this Bill is not about water for all. That is another subject that is near and dear to my heart, water for all. The WASA station is next door to the airport. I wonder if they will have water too—at the rate he is going. *[Interruption]* Mr. Deputy Speaker, they are getting a bit agitated. They are loudly proclaiming that they are not agitated. Those who live—*[Interruption]* not in glass houses, but to mix the metaphor—in newly renovated wooden houses should ensure that there is water in the neighbourhood in case there is a fire. *[Desk thumping]*

In addition, when one looks at some of the clauses in this Bill; when you look at the powers of the authority, clause 6(1), in general, says:

“The Authority has the power to do all things necessary and convenient to be done for, or in connection with, the performance of its functions specified in section 5.”

Section 5 talks about:

- “(a) to regulate, in accordance with this Act or any other written law—
- (i) civil aviation operations in Trinidad and Tobago territory;
  - (ii) the operation of Trinidad and Tobago aircraft within and above Trinidad and Tobago territory;
  - (iii) the operation of maintenance...”

and all those things that it is supposed to carry on.

One of the things that clause 6(2)(a) can do is that:

- “(a) with the approval of the Minister, take up and subscribe for or otherwise acquire shares in any company or form or participate in the formation of a company;”

In other words, this Civil Aviation Authority which, by the way, Mr. Deputy Speaker, would be outside the ambit of the Central Tenders Board and, much like NIPDEC, where we could change a clause in the tender rules, say, from “plural” to “singular” and “he” could mean “she” and so on. This can take shares in any

company. I think I heard that BWIA might be going public soon. BWIA might be putting its shares on the market in the very near future.

**3.45 p.m.**

Is there anything in this Bill that would suggest that this Civil Aviation Authority ought not to take shares in an agency over which it has some interest or some authority? That would be a conflict of interest and there is nothing in here, other than to say, with the approval of this Minister. As some of my colleagues tell me, that is something we ought to look at very carefully. [*Desk thumping*] There is nothing in here, Mr. Deputy Speaker, that would say that.

In fact, when one looks at clause 14, it says in 14(a) in particular, but let me read 14(1):

“Every member and the Director General shall on appointment or annually thereafter, submit to the President a declaration that—

- (a) he has no pecuniary interest in any business entity regulated by the Authority.”

He, the individual:

“he has no pecuniary interest in any business or any body corporate carrying on any business ...; and

he will not engage in any business...”

Maybe it is in here and maybe I missed it, and I hope the Minister can enlighten us, but the authority itself, if it chooses to invest in shares in BWIA, may itself as a body corporate have a pecuniary interest in an organization over which it has authority and maybe if we were to pass this into law we may be creating a lacuna, a term with which we have become very familiar because this Government is seeking to fill every lacuna, every window of opportunity as it were. They are seeking to fill all. [*Interruption*] Yes, some of them said they have not taken a vow of poverty. So we are also seeking, Mr. Deputy Speaker, to change the culture of how we administer the civil aviation authority.

At clause 7(1) it talks about the performance of functions and exercise of powers. It says:

“In performing its functions and exercising its powers, the Authority shall regard the safety of aviation as the most important consideration.”

Well, Mr. Deputy Speaker, given what I discussed before, in this clause we are talking the talk and the Minister in his presentation spoke all about safety and

high standards. Indeed, that is in keeping with all the talk about quality nation which, of course, as we have already pointed out, is in keeping with all the talk about schools by September, water for all by a certain time, you know, all those kinds of things. They are talking the talk. But if you change from the professional standards, the British standards, which have served us very well and indeed—I understand the British authorities are beginning to do the exams here again. I think, from what I am hearing in the wind, the exams are either happening now or are coming up fairly soon. [*Interruption*] Mr. Deputy Speaker, you know, that Member for Oropouche across there who likes to go—who seems to be oblique and obtuse...

In clause 7(1) we are talking the talk about safety but indeed the word in the industry is that we will be moving to a standard which is less stringent than the standard that has served us. I would like the Minister to enlighten us as to what, in effect, will be the new standard. Give us some information so that we may have some comfort, rather than leave it up to our understanding and to some of the discussions that are taking place in the industry. Because you see, Mr. Deputy Speaker, notwithstanding some of the advice that the Minister is receiving, there is genuine concern in the flying community, the community of persons involved with piloting aircraft and so on.

Again, let us go back to clause 14(1) where it talks about a pecuniary interest. We already started this, on this slope, Mr. Deputy Speaker, by having persons—now, this being a small country, it is hard to find people who are knowledgeable in all these things. However, the advisors you put into the system are themselves pilots of the local airline who appear to have, some of them, a vested interest in moving away from the stringent standard which they have always hated but which, of course, makes them marketable to Singapore Airlines and to Saudi Arabian Air and even British Airways. We have put them into the system to give the advice.

Indeed, on checking, I understand that several retired persons are now under contract as some of the, I believe they are called, examiners, the people who are the ones in charge of looking after the nitty-gritty of these things. I just wonder, when we talk here about—pecuniary speaks about monetary, but I wonder about a sort of internecine relationship between persons who are closely associated with BWIA and its high standards but also with the formation of the law.

Why I raise this point, Mr. Deputy Speaker, is there was a recent financial crisis in the world, among the Asian Tigers, out of which we are now coming.

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Part of that crisis came about because of a loss of confidence in the financial systems of some of these Asian countries, but also, what was behind that was the fact that, over the years, a culture of relationships was developed between the regulatory agencies and the banks, especially so in Japan. So much so that government regulators, it was open knowledge that as soon as they wished to leave the government service they would quite often go and obtain employment in a bank which they had been regulating at certain terms and conditions, and also the reverse was taking place.

Here we have a situation, Mr. Deputy Speaker, where we are being advised internally by persons who, as I understand it from folks in the fraternity, would like to see the back of the high standard to go to another standard, and they are the ones who are advising us on the law. I just raised the point because in the law we are careful to talk about pecuniary interest, but the point is that from the genesis of the law we already have an internecine relationship with persons who have a vested interest in seeing change of this type occur in the industry.

There are some real concerns among us, so much so that I understand recently our civil aviation system was subject to an audit by an international body, I think it is called the International Civil Aviation Organization. They recently audited those individuals currently in the Government's employ who give effect to some of the things that this new body will have to take over from. My understanding in all of this is that there are three key areas. I believe when we spoke here in clause 3 of the Chicago Convention and all the protocols and so on and all the annexes, there are three annexes that were audited fairly recently, and I hope that the Minister can tell us about that.

Annexe 1, as I understand it from looking at how this Chicago Convention and all the protocol and all those things are set up, is the one where the pilots are examined. As I have discovered from my brief odyssey, Annexe 6 is the one that looks at flight operations, I believe it is called, and Annexe 8 looks generally at the airworthiness of the aircraft. It sounds a little technical and I had to read a fair amount and try to distill, to understand a little of what it was about. Well, basically the first annexe speaks for itself, that is where pilots get their licence. Annexe 6, the one about flight operations, that is where you look at how the pilots fly the plane, whether they push the right button in the right sequence, how they do this, how they do that.

Quite often I have seen, when I am on a flight, usually an older gentleman comes on board the plane and very quietly goes into the cockpit and he sits there,

and at the end of the flight I see him come back out and he leaves. I understand that is what those persons do. They go, they sit in the cockpit and they look at how the pilots fly the plane. Then Annexe 8 has to do with airworthiness. In other words, they are the people who look at how the mechanics do what they do, whether they maintain the aircraft properly and, as I pointed out before, Mr. Deputy Speaker, all of this currently adheres to British standards.

I understand that in the recent audit by the International Civil Aviation Organization there appears to be conflict and a misunderstanding of the various roles and functions of the persons who are doing what they are supposed to be doing. Indeed, Mr. Deputy Speaker, I understand from, again, the fraternity of fliers in the country, word is that the “fellas” who see about flight operations, the retired pilots and those who are on contract, they are very concerned and have been talking loudly about licensing of pilots.

Now, the “fellas” who do flight operations, they are supposed to be concerned with how people fly the planes because, once they get the licence, well of course I understand, as with everything else, they should be recertified. They check up on you ever so often. You must land and take off a certain number of times. Sometimes we have seen planes circling for no apparent reason and just landing and some of that is pilots getting their time. I understand that these “fellas” were going into the area of licensing of pilots. Now, these are retired pilots, as I understand it, from BWIA. I am not saying that they do not know what they are doing or they are incompetent or whatever.

**4.00 p.m.**

Mr. Deputy Speaker, the point is that they are going on and on about an area that is near and dear to their hearts, which has to do with how pilots get their licences. Several pilots coming out of the BWIA system would like to move away from the current standard. So one sees a thread coming through of persons, who are now close advisors to the Minister in these matters and seem to have a particular agenda, as it were, not necessarily that it is nefarious but it is an agenda, a particular opinion.

**Mr. Deputy Speaker:** Hon. Members, the speaking time of the hon. Member has expired.

*Motion made,* That the hon. Member’s speaking time be extended by 30 minutes [*Mr. F. Hinds*]

*Question put and agreed to.*

**Mr. E. Williams:** Thank you, Mr. Deputy Speaker and hon. Members. I do not propose to take all of the 30 minutes. I would like to wrap up so that we could, maybe, hear the Minister.

**Mr. Hinds:** We do not want to hear him.

**Mr. E. Williams:** This is a democracy. We will hear him and he will have his say. Mr. Deputy Speaker, there are enough matters in this legislation. If one does any enquiry in and around the flying fraternity, there are enough concerns among those persons who ensure your and my safety when we are in the air. There are enough concerns about those who are the guardians, as it were, or who have an interest in this matter and would like to see us maintain the high standards we had, and currently have, that would suggest that some of the philosophy that has informed this legislation, may not be in the long term, in our best interest; in fact, rather, may not be in the stated interest of this Government of providing us with a quality nation. Mr. Deputy Speaker, indeed, in the Minister's presentation of the Bill—and I heard some of it and from what I have been able to glean from the rest of his presentation—the hon. Minister has not given us a broad understanding of the philosophy and the policy issues that have informed him on this Bill, other than those which Members on this side have been able to glean.

It would have been a great opportunity also—and we want to provide that again when the Minister is wrapping us—for the Minister to tell us, for instance, when in fact, the airport—

**Mr. Hinds:** The terminal building.

**Mr. E. Williams:** —the terminal building will be opened.

**Mr. Hinds:** It would be nice for him to tell us that. *[Interruption]*

**Mr. E. Williams:** I am reminded that the Parliamentary Secretary told us it would be August 31, 2000. Mr. Deputy Speaker, indeed, there was a movie I saw once called: *Towering Inferno*. People were invited to the opening of this hi-tech building with all the latest and greatest things in it, and the fact of the matter was that the building was not ready for the purpose that all the invitees were invited for. So, printing of invitations is a relatively inexpensive exercise compared to the building of a \$1.1 billion terminal. *[Interruption]* If I were the Member for Caroni East, I would concentrate on getting 100 per cent water rather than having to drink his words and having school children still laughing about the fact that the Member wants to build a desalination plant in Trinidad. I just came up from south and there is water everywhere, rain all over the place—water for all. *[Desk thumping]* *[Interruption]*

Mr. Deputy Speaker, we wait with bated breath for the hon. Minister to address us, if he can, on some of our concerns which I have already pointed out and which are shared, not only by Members on this side; and not only by members of the wider community; but indeed, by quite a number of persons in the aviation fraternity who have to give effect to some of this. Not the least of which are those persons whom I notice would be offered one of three options, which are:

- (a) either you stay in the public service;
- (b) you take voluntary separation; or
- (c) be absorbed into the new organization.

Mr. Deputy Speaker, in checking with persons who are involved with personnel matters, the “people” side of things, I understand that no VSEP plan is currently being worked on, or contemplated. I understand that word in the industry is that quite a number of persons who are currently employed in this system are concerned that they may not have a job to go to, once this legislation is passed. I think it would be a wonderful thing for the hon. Minister to allay the fears of some of the hard-working citizens—I gather they are hard-working citizens because they keep us safe in the air; they make sure the planes are well maintained and so forth. It would also be a wonderful opportunity for the Minister to address some of those people issues which may assist in maintaining a high *esprit de corps* among those individuals.

[MR. SPEAKER *in the Chair*]

Mr. Speaker, as was the case, when we debated the matter that had to do with the postal service and also the Public Utilities Commission, understandably, there was fear of the unknown. When one sees these provisions in the legislation; and one is aware that there are no contingency plans that are being put in place one begins to fear the worst about what may become of oneself. So, in addition to all these issues, we are asking that the hon. Minister allay the fears of those individuals. That would be so vital in giving full effect to this legislation.

Mr. Speaker, with those few words, I wish to thank Members of this honourable House and you, Sir, for allowing me to participate in this very important debate. I thank you.

**4.10 p.m.**

**Mr. Martin Joseph** (*St. Ann's East*): Mr. Speaker, I wish to make a brief intervention on this Bill to establish the Trinidad and Tobago Civil Aviation

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Authority and for other related purposes. I am going to focus just on some areas of the legislation that raise some concerns; some were raised by the hon. Member for Diego Martin Central and my colleague, the Member for Port of Spain South.

Mr. Speaker, the Minister, in presenting this piece of legislation, put it in the context of trying to provide this entity with a greater amount of autonomy in terms of discharging its function. I am sort of taken aback by saying more autonomy in one breath, but at the same time, when we look at the specific aspects of the legislation, it seems to me as if the authority is being restricted in terms of its ability to really exercise autonomy.

The Minister was saying that the legislation is supposed to be anchored against the background of current governance of efficient and effective organizations. Mr. Speaker, I will quickly go to areas where it seems contradictory in terms of really efficient and effective management of organizations in this current environment. I go to Part IV which deals with the question of planning and management.

The board is required to present specific strategic plans for the Minister's approval. Mr. Speaker, I am not aware of organizations that report to a Minister being required to do so, especially since there is a board. The Minister provides the overall policy direction for the Government so that the board is aware of the overall policy direction of the Government and the board is given the authority to go ahead and shape its day-to-day operations to ensure that overall policy guidelines are adhered to.

This piece of legislation, in my humble opinion, seeks to let the Minister almost micro-manage the entity. For example, it says here at clause 15(4):

“The Board shall keep informed the Minister about—

(a) significant changes to the plan; and”

First of all, let me go back up to clause 15(1) and (2):

“(1) The Board shall prepare a three year corporate plan in respect of the Authority which shall be submitted to the Minister.

(2) The plan may be revised at least once a year and up to sixty days before the end of the first year of the plan.”

Look at the level of the involvement that the Minister is required to be engaged in. It is almost like micro-managing. It goes on at clause 15(5):

“The plan shall include details of the following:

(a) the Authority's operational environment;



- (b) the strategies of the Authority;
- (c) performance measures of the Authority.”

This represents a greater amount of involvement of the Minister in the operation of this entity, and it contradicts the Minister's statement that the intention is to provide the entity with a whole lot more autonomy.

Mr. Speaker, I want to amplify on what my colleague from Port of Spain South indicated. Here is another contradiction. This Government is on record as seeing the Central Tenders Board as a hindrance. The Member for St. Augustine is on record as saying that if he had his way, he would do away with the Central Tenders Board, the only entity that provides some checks and balances on the way in which public funds are expended.

He is on record as saying “Do away with the Central Tenders Board”, and we have seen instances where it is convenient to the Government that they bypass the Central Tenders Board. Now they are putting in legislation doing away with the Central Tenders Board so that it will give them more authority in terms of how they deal with finances but, on the other hand, they are asking the Minister to literally approve a strategic plan to review a plan every six months. So, we are seeing the inconsistency with respect to the legislation. I would like the Minister, in winding up, to explain how it is they are talking about providing this entity with more autonomy, yet at the same time, they want to micro-manage, because all we have to look and see is “micro-managing”.

Every organization has to develop a strategic plan in order to ensure it develops goals and objectives and it plans the appropriate strategies to guide the organization, to ensure its long-term viability, and so forth, but I do not expect that a Minister of Government will want the level of detail that this piece of legislation is now saying the Minister requires.

I am saying, Mr. Speaker, it contradicts the whole question about the autonomy that we want to give the organization. I would like to get some explanation and I think we need to underscore the contradiction. Again, I am saying that doing away with the Central Tenders Board is something this Government has been preaching from the first day it came into office. Its spokesman has been especially the Minister of Housing, the Member for St. Augustine. We see now it is creeping in, in terms of the doing away of the Central Tenders Board.

Part VI deals with the issue of staff. I am not going to regurgitate what the Member for Port of Spain South has indicated and delay this honourable House. What I am concerned with, however, is the employment of persons for specific tasks which is clause 27(1). Here again, let me just underscore again, it says here and I think it is worthy to read the entire clause:

“The Authority may employ any person, to perform such tasks that the Authority considers necessary for the due performance of its functions and exercise of its powers under this Act, on such terms and conditions as are agreed between the Authority and the person and subject to such maximum limit of remuneration as the Minister determines.”

Not the board! I would not want to be a member of this board. I will say let the minister run the place! They do not need a board!

What about the role of the representative employee body in terms of determining terms and conditions? Does it mean, then, that these people are going to be coming in on contract? I think we need some kind of explanation as it relates to this clause 27(1). Mr. Speaker, it represents also, another tendency we have seen as it relates to this Government's approach to governance, especially at the corporate levels. That is the emphasis on contract individuals, because contract individuals—we saw a copy of a Cabinet Note that literally says Ministers must now sign off on anybody employed, not just in their ministries, but extending their tentacles into other areas.

Again, it is the question of control, control, control. One has to ask why. And we know why, because then it means that they control the employment process. They can determine who they want to bring into the various organizations.

Again, Mr. Speaker, two aspects of the concern here, as it relates to the employment of persons. First, the question of why it is we are talking about remuneration levels set by the Minister. What is the role and function of the board in terms of administering the day-to-day activities of this entity? Also, the question of the employee representatives in terms of determining terms and conditions of employment of persons. Would there be any role for them in this particular process? I do not know.

Mr. Speaker, we look now at the Second Schedule. I may be wrong, and if I am wrong I stand to be corrected. I think it is the first time I am seeing legislation that outlines the procedures of the conduct of meetings of the board—conduct of proceedings by the board. I mean, Mr. Speaker, it says:

## “Meeting of Board

1. The Chairman or, if for any reason the Chairman is unable to act, Deputy Chairman—
  - (a) shall, not less than once every two months convene such meetings of the Board as are necessary for the efficient conduct of its functions; and
  - (b) shall, on receipt of a written request signed by not fewer than four members, convene a meeting of the Board.”

Do we need to spell out all of these details in terms of the proceedings by the board? The convening? It goes on:

“2. The Minister may at any time convene a meeting of the Board by written notice to the Chairman.”

We normally talk about the quorum. Somebody is asking me what is wrong with this—the Minister of Labour and Co-operatives, of all persons.

Mr. Speaker, listening to the Minister presenting this legislation, he indicated that this was supposed to be advanced legislation. That is what he said. It was supposed to be modern legislation which was supposed to put this cutting edge on management and leadership governance in organizations. The cutting edge of management and leadership and governance in corporate organizations is to provide the broad framework in which the organization is supposed to operate, and allow the organization to operate. That is why there is a board. That is why they appoint the board. The board has the policy direction of the Government which has a responsibility to ensure that the board stays within those corporate policies.

Mr. Speaker, I had the opportunity at one time to be the chairman of a board of a state enterprise. The Government set the policy, but I am not aware of all these details in terms of how the board is supposed to operate. So, if it is supposed to be modern legislation, one cannot in one breath be saying that we are proposing modern legislation designed to ensure that the organization is more autonomous and, at the same time, require the Minister to literally micro-manage the

organization, because this is micro-managing the organization, as it relates to the legislation.

As I have indicated, there is contradiction even within itself, because here one is talking about removing from the Central Tenders Board to give the organization more autonomy in terms of its financial things but, at the same time in other areas, they are continuing to constrain the organization.

Mr. Speaker, I would hope that the Minister will inform this honourable House about what I have raised in terms of some of the specific areas, and I have referred specifically to the legislation. I have referred to Part IV which deals with the whole issue of the planning and management, the contradiction in terms of the planning and management and the requirement to provide the board with the overall policy direction and allow the board to ensure that it develops whatever is necessary to ensure that the overall policies are implemented successfully.

That, against the background of requiring the board to develop strategic plans, and keeping the Minister informed about the specifics of the strategic plan. The Minister might as well develop the strategic plan. The board shall prepare a three-year corporate plan. The plan may be revised at least once a year and up to sixty days before the end of the first year of the plan.

Mr. Minister, I am reading here and I do not know if this is a typo at clause 15(3):

“The first corporate plan shall begin no later than six months after the commencement of this section.”

I may be dense, but I do not know if it is a typo. I do not understand.

**4.25 p.m.**

The point that I am making, Mr. Speaker, is here we have put in legislation all the specifics—interestingly, Mr. Speaker, what happens if the whole question about corporate strategic planning changes? Is it necessary that we would have to come back now at some of these specifics? Here the plan shall include details of the following:

- “(a) the Authority’s operational environment;
- (b) the strategies of the Authority;
- (c) performance measures of the Authority;
- (d) review of performance measures against previous corporate plans;”

I wonder which previous corporate plans we are talking about? Anyhow—

“(e) analysis of risk factors likely to affect aviation safety...”

The point is that the entire details of the strategic plan—

Like I said, Mr. Speaker, the point is—there is the Minister’s response to the corporate plan. I quote:

“16(1). The Minister shall respond to the Board in respect of a corporate plan, submitted in accordance with section 15, within sixty days of receipt of the plan, failing which the Board shall be entitled to proceed with the plan as submitted.”

Bureaucracy; measures to continue to tie down the operations of the organization. Like I said, it contradicts the Minister’s statement: that this legislation is supposed to be modern, advanced legislation that is the cutting edge of corporate governance. I am saying that he cannot in one breath be saying that this is the case and in the other breath putting in place mechanisms to hamstring the operation of the organization and the apparent contradiction with respect to removal from the Central Tenders Board.

Mr. Speaker, with these few words—what about the Second Schedule? I did mention the question about the Second Schedule where it outlines, almost in detail, the way in which the board is supposed to conduct its business. I wonder what would happen if the board decides to miss one of the steps in terms of the proceedings at the meetings?

With these few remarks, Mr. Speaker, I thank you very much. [*Desk thumping*]

**Mr. Speaker:** I call on the Minister of Works and Transport, but it is just about tea time, so that we will suspend the sitting for half an hour.

**4.29 p.m.:** *Sitting suspended.*

**5.02 p.m.:** *Sitting resumed.*

**The Minister of Works and Transport (Sen. The Hon. Sadiq Baksh):** Mr. Speaker, when I began my presentation, by the end of it, hearing the Member for Diego Martin Central, I in fact realized that we are not at variance in terms of the development of this particular piece of legislation.

Then the Member for Port of Spain South—I must forgive him because he was absent then—in fact questioned some of the things that I did in fact clear up

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very early in my presentation. However, because he actually raised them, I feel it is necessary, for his benefit, to state the position that the Civil Aviation Authority is not a novel, nor new idea. In fact his colleague, the Member for Diego Martin Central, seems to be well aware of this particular piece of legislation.

Since 1991, the Government of the day saw it fit to publish a *Statement of National Aviation Policy for Trinidad and Tobago* under the heading: “Policy on Institutional and Administrative Framework.” I quoted in my presentation then and I need to quote again. This is a quotation from the 1991 document:

“Having regard to the objectives of the Aviation Policy, the rationalization of the institutional framework is an area requiring urgent action. It is necessary to streamline the administrative/institutional arrangements to ensure enhanced coordination and faster response times. In consequence, it is the policy of the Government:

- To establish, as a matter of urgency, a single, autonomous (National) Civil Aviation Authority comprising Divisions that generally respect the separateness of the roles and functions of the Civil Aviation Division, the Airports Authority of Trinidad and Tobago, the Air Transport Licensing Authority and the Secretariat of the Standing Bilateral Negotiating Committee, respectively.”

Mr. Speaker, I know that the Member was not present during that time and that would have eluded his attention. I am sure now he would realize that with respect to this particular piece of legislation—although it came about in 1991—discussions would have been held long before that.

Notwithstanding that the distinguished Members, in their contributions, put forward what they saw as problems with the Bill, at the same time, they brought forward the rationale for the Bill.

Mr. Speaker, the authority would be responsible for that section of aviation which deals with regulation of the aviation sector. As such, this is the responsibility of the state. Under the International Civil Aviation Organization, the regulation of the aviation sector is a state function. As such, this responsibility cannot be just handed over in its entirety, without the proper checks and balances in place to ensure that the safety of the aviation environment cannot be divorced from the responsibility of the state.

### **5.05 p.m.**

Mr. Speaker, the sections quoted by my colleagues in each instance, while it places the responsibility on the authority, it also places a concomitant, or in fact,

greater responsibility on the state through the Minister and the ministry. In fact, the rationale for developing a strategic plan and putting specific time lines by which they must be reviewed, and in the absence of its review, that it will be able to be adopted by the authority, is in fact placing not only the authority, but also the responsibility of the state to ensure that the aviation sector continues to be regulated and therefore not compromising the safety of airlines and passengers.

Mr. Speaker, my hon. colleague stressed the role of the Minister without identifying that it is, in fact, the role of the state in translating Government's policy. I would hope that the proper transference of stated Government policy is not in fact what they are referring to as micro-management. It is not the intention of the Minister nor the ministry to micro-manage this autonomous authority and this must be done with the expressed guidelines established by the International Civil Aviation Organization. It is not something you can just develop and exercise without the proper guidelines in place, because we are dealing mainly with the safety of people who utilize the services of our airline.

In relation to the recent ICAO audit, the audit report, which I can allow any or all of my colleagues to view, indicates that some of the inefficiencies and inadequacies surrounded the need for the legislation which we are now presenting here, as well as the need for the organizational change to improve the efficiency and decrease the level of bureaucracy which has a direct impact on response time in a highly dynamic sector.

Mr. Speaker, in developing this piece of legislation, it would have been done with the concurrence and on advice from the International Civil Aviation Organization and we would have taken guidelines and patterned it in line with several other civil aviation authorities formed recently both in the Caribbean and in other parts of the world, in particular, the Jamaican Civil Aviation Authority.

On the issues of pilots, which is an operational function that is carried out at present and is not substantially changed or altered by this Bill with regard to the issue of moving away from present standards, all the signatories of the International Civil Aviation Organization Convention, including the United Kingdom and Trinidad and Tobago, adhere to the same standards.

Mr. Speaker, the Member for Port of Spain South tried in some measure to make it appear that Trinidad and Tobago is the only state moving away to come in line with the establishment of the said practices in terms of the licences for pilots. This is a standard adhered to by both the United Kingdom and Trinidad and Tobago and all other ICAO contracting states. This legislation, and the companion

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air navigation legislation will seek to allow us to provide better implementation of ICAO standards. That is it basically. This legislation was developed in line with ICAO standards to ensure a shorter response time: it was developed on model legislation by other ICAO contracting states.

In addition to that, on the question of voluntary separation as raised by the Member for St. Ann's East, I would like to categorically state that yes, we do have excellent employees at the department of civil aviation, in fact, in all other sections of the Ministry of Works and Transport. Notwithstanding that, in the development of this particular piece of legislation, we have made provisions for voluntary separation, that at a policy level, the final level in terms of the quantum for the separation would be conducted with the Chief Personnel Officer and a recognized body representing workers in terms of developing any separation package.

Mr. Speaker, our Government is about creating jobs, and in this particular division of the department of civil aviation if every single employee does not accept to go into the new authority, we would not need any voluntary separation. It is not an area that is overstaffed, it is not an area that will dictate that we rightsize or downsize. It is an area which is highly specialized and as such, although we are committed to allowing people to either choose, if they so desire, not to go into the new organization, in fact, they will be entitled to voluntary separation subject to the agreement between the Chief Personnel Officer and recognized bargaining body for every employee. Suffice it to say that if one applies for it, it would be available, but it is not something that is a prerequisite for the formation of this particular authority.

**Mr. Williams:** I thank the Minister for giving way. Just a suggestion in terms of being pro-active. Could you communicate that to the members of staff? Because I remember as I had pointed out when we had another debate, there was a lot of rancour back and forth because people were uncertain as to how that would happen.

**Sen. The Hon S. Baksh:** Mr. Speaker, I take the suggestion from the Member for Port of Spain South, although I know that in the development of this particular piece of legislation, representatives from every section of the department participated in it. I have no doubt that there will still be an exception, and I would take the appropriate action to inform people of the opportunity to go voluntarily and be compensated based on agreement with the Chief Personal Officer and the representative of the respective employees.



Mr. Speaker, the Member for Diego Martin Central did, in fact, raise some very important issues as to the philosophical under-pinning of the aviation sector in Trinidad and Tobago and I noted with great concern his discussion based on the need for cooperation between specifically LIAT and BWIA, and I must tell him I agree fully.

In the global aviation sectors those entities in terms of airlines that do not seek to come together will not be able to withstand the challenges in the aviation sector. I support that particular view, it is the only recipe for the development of the aviation sector and those who do not want to cooperate will find themselves in a position where it might even seriously impinge on the possibility of success.

Mr. Speaker, as we provide the airlift infrastructure for the development of the aviation sector—the aviation sector did not start yesterday, it started a long time ago and the Member for Diego Martin Central, in fact, played an important role in the further development of the aviation sector by the privatization of BWIA [*Desk thumping*]. As BWIA was privatized it gave us the opportunity to build on a 58-year history, a history of good record in terms of safety and now being able to reach out to make a 30-year old dream of making BWIA a regional carrier a reality.

We in this Government are extremely proud to take the aviation sector to the next level, to take it to cruising altitude. It took off and we are now in a position to take it to cruising altitude although we need to look out for clear air turbulence. We will not be sidetracked in terms of the aviation sector as we develop to make sure that Trinidad and Tobago is not left behind. Based on that, since the ministry has the responsibility for BWIA, I assure the Member for Diego Martin Central that cooperation between BWIA and LIAT is always something on the agenda for the ministry. It does not always satisfy the new corporate needs of a private entity, in that they will be looking mainly at the bottom line and not the service for the entire region.

In addition to that, as we provide the airlift infrastructure, we are seeing renewed interest in the aviation sector in Trinidad and Tobago, in that only recently, the Air Transport Licensing Authority granted licence for Air Jamaica to operate in Jamaica and Port of Spain.

We also see Eastern Caribbean Express applying and being granted licence to operate in the Eastern Caribbean linking Trinidad and Tobago—Tobago in particular—to the rest of the world. We are seeing a new movement in terms of Caribbean Star, another airline registered in the United States of America and Antigua, applying to fly to and from Trinidad and Tobago.

Basically, we are building an aviation sector taking into consideration the needs of Trinidad and Tobago and the Caribbean to stay in touch with the rest of the world and the region in particular. Those areas and those things that were considered stumbling blocks in the past we are using them as building blocks for the future. Because as we develop the airlift infrastructure—and I want to address some of the points raised by the Member for Port of Spain South in terms of saying as we develop the Piarco 2000 Project we did not envisage the need for a ramp control tower and we did not consider the need for all the other ancillary services including fire services and all those things.

I want to assure this honourable House that the ramp control tower is a reality at Piarco 2000. Two areas which we did not consider before were the extension of a high-speed runway and after holding discussions with the Department of Civil Aviation and the Pilots' Association, we saw it as an absolute necessity for the extension of a parallel high-speed taxiway and turn off and we took that into consideration after consultation with these relevant bodies.

**5.20 p.m.**

We also took into consideration the points raised by the Director of Civil Aviation in terms of a ditch that runs parallel to the runway, and we took the necessary action to have it moved further back so that it will not pose a problem that was not there before. In addition to that, the dust problem raised by members of the community surrounding the airport and the fire services is a real problem. It is extremely difficult to construct anything and not have some inconvenience. Basically, you cannot expect to enjoy an omelete and not crack an egg. It is not possible—just not possible.

We are committed to the relocation of all the residents of Oropune. *[Interruption]* Yes, a long time. In fact, on behalf of the Government of Trinidad and Tobago, I must apologize to the residents of Oropune because they were actually held in abeyance for decades. We started construction and four years later they are not properly relocated. I want to assure this honourable House and the national community that we would do everything possible to have them relocated in a manner that would be acceptable to all concerned.

In addition to that, the firemen had to endure—like lots of people—and they have endured it well. It is something that we are very concerned about. I visited only this morning and we are in the final stages of the paving to the apron area, the high-speed runway and the taxiway. So that would reduce considerably the amount of dust. Notwithstanding that, we are committed to ensuring that the

strategic location of the fire service is in accordance with the International Civil Aviation Organization.

Again, every single activity, every single positioning, and every single improvement that we do at airports around the world, is really governed by the International Civil Aviation Organization's dictates. They inspect regularly; they come on a regular basis to make sure that all the procedures are put in place.

We must understand that for many decades, in fact, as early as 1962 the United Kingdom CAA performed, on behalf of the Government of Trinidad and Tobago, the responsibility of air-worthiness inspectors. In fact, the Member for Port of Spain South in his contribution tried to show this. We made a commitment in 1962 to train people to be able to take over safety oversight and the inspectorate.

It was this Government and this Minister who had the privilege to dismantle the United Kingdom CAA almost 40 years after it was supposed to be dismantled. We had that undertaking. In 1962, it was one of the colonial activities performed by the United Kingdom that we undertook that they should provide training for locals and then hand it over. It just did not happen, like many other things, but we took on the responsibility. We got local people to be able to fulfil that function and we are extremely pleased, as we continue to modernize the aviation sector; as we continue to ensure that we utilize all the resources of the people of Trinidad and Tobago to the benefit of all, that as we provide the aviation infrastructure in Project Piarco 2000, that we use it as an opportunity to further diversify the economy, thus encouraging tourism; encouraging trade; encouraging development of the aviation sector in all the areas, including training of people at all levels.

For years, we would not have seen or even thought about the expansion or nobody believed that BWIA would one day expand. I must say that the Member for Diego Martin Central always saw that as a possibility to see it expand. Today we are seeing that BWIA is expanding its wings and flying to many other destinations worldwide. Seven years ago when Air Caribbean came on to the air bridge people could not have envisioned Air Caribbean flying to Jamaica, Miami, Toronto and, ultimately, the United Kingdom.

This piece of legislation and the reorganization of the department of civil aviation into an autonomous civil aviation authority is but another building block in the aviation sector that would ensure its continued growth and development. We have only just begun in terms of getting things in place.

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In addition to that, another point raised is the non-relocation of the tank farm at Piarco Airport. We really did not see the relocation of the tank farm as an urgent matter in the redevelopment of the Piarco 2000 Project, and I will tell you why. Storing aviation fuel at Piarco, having it barged from Pointe-a-Pierre to Beetham and then trucked across to Piarco is something that we cannot continue well into the future. It is important, if we have to develop the aviation sector, to ensure that we, in fact, establish a proper pipeline from the refinery at Pointe-a-Pierre to Piarco. The rerouting of the lines now for the hydrants from the present tank farm to the northern section of the runway to the present terminal, will facilitate the future development of aviation and the future development of the hydrocarbon resources, in terms of bringing aviation fuel by the line piped from Pointe-a-Pierre to Piarco, so then we will be able to compete. Mr. Speaker, we really cannot tolerate—

We already have a situation where you go from Piarco to Barbados—Sir Grantley Adams International Airport; they took Trinidad money and built a new airport; if you go with TT \$20 they would laugh at your play money. They take aviation fuel now from Pointe-a-Pierre then go to Barbados—Sir Grantley Adams International Airport—and sell it cheaper than we could sell it here. Why? Because they barge it from Pointe-a-Pierre straight to Barbados—Sir Grantley Adams International Airport. That is the kind of situation. So there are people now operating in Trinidad but purchasing bunker in Barbados. We cannot allow that to continue.

Now is the time to ensure that as we develop the aviation sector; as we develop the legislative and the administrative framework to ensure the development of the aviation sector that we, in fact, run a pipeline from Pointe-a-Pierre to Piarco, not with projects clogged in it, but a real pipeline to be able to send jet fuel from Pointe-a-Pierre to Piarco.

Mr. Speaker, with these few words and answering these questions, I beg to move.

*Question put and agreed to.*

*Bill accordingly read a second time.*

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

*House in committee.*



the discretion, whether the Minister or otherwise, that the company could even contemplate, for instance, taking up shares in a company over which it has authority, as is the case of BWIA which is about to go public?

**Sen. Baksh:** Mr. Chairman, clause 14 is actually the check and balance that is in place to ensure that the authority cannot get involved in any area that they are really responsible for regulating.

**Mr. Williams:** No, no, please. Clause 14 refers to individuals, the director general, or any other member of the board, but what 6(2) is contemplating is that the authority itself can take shares in a company or it can participate in the formation of a company. As I am pointing out, let us take the example, then, of BWIA, which is about to put its shares out publicly. From this, the authority itself can purchase shares in BWIA and that would be a contradiction.

**Mr. G. Singh:** But I think “with the approval of the Minister” gives it the necessary kind of check and that Minister—in this case it may be Cabinet. The point is that, in terms of governance, it provides the authority with a measure of flexibility even if it may want to form a company or some kind of thing to carry out the daily affairs of the airport.

**Mr. Williams:** No problem with that necessarily on the surface of it, but should you not put a proviso in here that says it may not take shares; in other words, it may not have a pecuniary interest—the authority itself—in a company over which it may have authority? You see, for instance, let me give an example. If, for instance—[*Interruption*]

**Mr. G. Singh:** You are regulating someone.

**Mr. Williams:** For instance, if there is need, say, for more catering services to the airport and the authority wishes to encourage entrepreneurs, because the Minister of Tourism is going all over the place conducting programmes, the authority may take an interest in forming some catering company, but it is not regulating those persons, whereas, in the case of an airline, which is traded publicly, the authority has a regulatory function over such a company.

**Mr. Valley:** Why would a regulatory body want to form a company?

**Mr. G. Singh:** No, I think in principle you do not want to participate as a shareholder in a company that you could regulate. I think we may have to—[*Interruption*]

**Mr. Williams:** If we could insert something here that says that—[*Interruption*]

**Mr. G. Singh:** We should find the necessary form of words that reflects that.

**Mr. Valley:** I mean, even if you are a regulatory body, why would you want to have shareholding in another body? This is a regulatory body. The whole purpose is to set standards and so on. Why would you want it to get into that type of business?

**Sen. Baksh:** Really what took place here, it is part of model legislation that was used for other things and it might have found itself into—*[Interruption]*

**Mr. Valley:** This is the whole point. When they are writing the companies legislation now they put anything, they allow you to do anything.

**Mr. G. Singh:** Let us move ahead whilst they consider it, Mr. Chairman, subject to your leave.

**Mr. Chairman.** So you want clause 6 deferred?

**Sen. Baksh:** Yes, so they could look at it.

*Clause 6, by leave, deferred.*

*Clauses 7 to 11 ordered to stand part of the Bill.*

*Clause 12.*

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

**Sen. Baksh:** Mr. Chairman, I beg to move that clause 12 be amended in terms of the circulated draft as follows:

“12(1)                      Insert after the word ‘Authority’ the words ‘under the principle of good corporate governance’.”

*Question put and agreed to.*

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

*Clauses 13 to 16.*

*Question proposed, That clauses 13 to 16 stand part of the Bill.*

**Mr. Joseph:** Mr. Chairman, clause 15 subclause (3) where it says that the first corporate plan shall begin no later than six months after the commencement of this section, is that—*[Interruption]*

**Mr. G. Singh:** You want clarification of the section?

**Mr. Joseph:** Yes.

**Mr. G. Singh:** Well, on the face of it, there appears to be a three-year corporate plan and the plan will be revised, as you can see, at least once a year and then the commencement is six months after, but I am advised that there is a staggered enforcement of the Bill.

**Sen. Baksh:** Different section, 2(a). This provision does not come into effect on assent but on proclamation.

*Clauses 13 to 16 ordered to stand part of the Bill.*

*Clause 17.*

*Question proposed, That clause 17 stand part of the Bill.*

**Mr. Williams:** One minute, Mr. Chairman, in clause 17(2)(b), we are talking about all of the persons who could provide money to the new civil aviation authority fund. What is contemplated by having private individuals contribute to the funding of a state regulatory agency? I am not certain why one would contemplate allowing a private individual or a corporation, for that matter. While, yes, we are looking for funding but let us say, for instance, a corporation which itself has a pecuniary interest in one of the areas that the authority regulates, the authority may or may not know this, but it contributes funds to the authority, could that be conceived as a conflict of interest?

**Mr. G. Singh:** Mr. Chairman, I think the words, “private individuals” lay to the merit of the suggestion made by the hon. Member for Port of Spain South for the deletion of the words, “private individuals”.

I beg to move that clause 17 be amended accordingly, by the deletion of the words, “or private individuals”. We are in agreement with your suggestion with the words “or private individuals”. Corporations, they may have some kind of—  
[*Interruption*]

**Mr. Williams.** But again just to make sure that there is no conflict of interest, you may want to—[*Interruption*]

**Mr. G. Singh:** Yes, of course, so we will delete the words, “or private individuals”.

**5.45 p.m.**

**Mr. Williams:** Mr. Chairman, one minute, again, may I just make a suggestion in that same clause just to say that these organizations may not themselves have a pecuniary interest. I do not know if that is a gray area because



for instance, a corporation might be a bank and that bank may be BWIA's banker, as an example, just for us to consider what we are saying here.

**Mr. G. Singh:** I think in the normal process of governance, if one is putting something into the fund and there is a pecuniary interest, and if there is basically an agenda, therefore, good governance should ensure that you pick—that money is precluded from entering into the system.

**Mr. Williams:** Mr. Chairman, again, we are saying the same thing, except that we are not putting anything into the law, we are speaking to the spirit of the law, but in the letter of the law we have left it open to allow that to happen. It may be a lapse. *[Interruption]*

**Mr. G. Singh:** We have discussed the recommendation you have made and we felt that by virtue of the way the Civil Aviation Authority is governed that aspect will be taken care of. Fears of whether or not you can take money from those with a pecuniary interest are dealt with.

**Mr. Williams:** Mr. chairman, for the record, I still think it is something that is of concern.

**Mr. Sinanan:** The same principle would apply for a corporation.

**Mr. G. Singh:** According to how the authorities function, they will get funding from international organizations, bilateral or multilateral organizations, and corporations. They may provide services to corporations and they can extract a fee from—okay. Generally, you will not find that with a private individual, and I can understand the necessity for that but not from corporations. Pecuniary might leave it to interpretation such that they would not be able to get any kind of money. It is subject to all kinds of interpretations.

*Clause 17, as amended, ordered to stand part of the Bill.*

*Clauses 18 to 23 ordered to stand part of the Bill.*

*Clause 24.*

*Question proposed, That clause 24 stand part the Bill.*

**Mr. Valley:** Mr. Chairman, clause 24(1):

“The Authority in the performance of its functions is not subject to the provisions of the Central Tenders Board Ordinance.”

Mr. Chairman, we are defeating the whole purpose of the Central Tenders Board Ordinance which was set up to take care of matters such as these.

**Mr. Maharaj:** Is it a common thing in statutory authorities?

**Mr. Valley:** No. That is not true. I mean, I just checked. The Public Transport Service Corporation, for example—and I think you would have looked at quite a number of them. I think it is only in the case of the National Insurance Property Development Company (NIPDEC) and the Trinidad and Tobago Electricity Commission (T&TEC) and organizations such as these. *[Interruption]* Clause 24 is not taking effect but would have these. Could we then say the tenders rules—I think we need to at least see these tenders rules. *[Interruption]* Mr. Chairman, this section is not coming into effect immediately.

**Mr. Maharaj:** We could say, “until the board makes rules that approve”.

**Mr. Valley:** Yes. Okay, we can do that. That is good “until the board makes rules to approve” by whom?

**Mr. Maharaj:** The rules are normally approved by Cabinet and you lay the document in the Parliament.

**Mr. Valley:** Will it be laid in the Parliament?

**Mr. Maharaj:** I do not see it here but we could probably put that.

**Mr. Valley:** Yes. I do not mind. At least, “laid in Parliament”. Even if it is for a negative resolution, it was laid in Parliament. All right. Give us notice. Okay.

*Clause 24, by leave, deferred.*

*Clause 25 ordered to stand part of the Bill.*

**5.55 p.m.**

*Clause 26.*

*Question proposed, That clause 26 stand part of the Bill.*

**Sen. Baksh:** Mr. Chairman, I propose the following amendment to clause 26(1)(a):

Delete the word “voluntarily”.

**Mr. Williams:** Mr. Chairman, if we delete “voluntarily”, then it says here, “retire from the public service”. What is the difference? Because in the Minister's winding up, he spoke about the option of an individual to voluntarily retire, but we also said, essentially, that there is such a shortage of these persons, we do not contemplate losing any of them through this route. If he could just explain the reason for removing “voluntarily retire”?

**Sen. Baksh:** People do not really voluntarily retire.

**Mr. Williams:** In terms of retirement age.

**Sen. Baksh:** This one deals with retirement.

**Mr. Williams:** In other words, you are not putting any Voluntary Separation Employment Package (VSEP) in place?

**Sen. Baksh:** We do have a VSEP in place. This one deals only with retirement.

**Mr. Williams:** This (1)(a) would have been the (VSEP). Clause 26(2) says “Where an officer exercises option under section (1)(b)”, which is to transfer to the authority from the public service, and (c), remain in the public service. Then (a) now is “retirement at retirement age”. By removing that, we may be removing the option, as you pointed out, of the individual who may wish to voluntarily retire. This is what the Chief Personnel Officer (CPO) and the recognized association would have been working out.

**Sen. Baksh:** Mr. Chairman, I think it will not make a real difference to leave it in there. I withdraw the amendment.

*Amendment withdrawn.*

*Clause 26 ordered to stand part of the Bill.  
Clauses 27 to 31.*

*Question proposed, That clauses 27 to 31 stand part of the Bill.*

**Mr. Joseph:** Mr. Chairman, I have a query with respect to clause 27, the question about the set remuneration as determined by the Minister. Why are they moving towards the Minister setting the level of remuneration?

**Mr. Maharaj:** The present policy is that the hiring of persons on contract is for the Minister's approval. This only applies to contract workers. The present practice and policy in Ministries is for contract workers—

**Mr. Joseph:** But, Mr. Attorney, there is nothing in here that specifically implies that it is contract.

**Mr. Maharaj:** Apart from the persons who are transferred from the public service, the other persons would be those on contract. In other words, the Minister retains the option in relation to persons who are not transferred from the public service posts. They have to be filled—and how they are filled otherwise—because the Minister has to be politically accountable for what happens in it.

**Mr. Joseph:** On a point of clarification, are you saying that all future employment there will be on contract? Are you saying then that the policy is going to be anybody they are going to employ will be contracted workers?

**Mr. Maharaj:** It must be contract. How will it otherwise be? Persons who have to be employed in the public service will be employed by the Public Service Commission. The Public Service Commission will be able to transfer people. Is that not how it is? And there is no guarantee of permanent employment.

**Mr. Sinanan:** Is it that any new employee in the authority will be employed on a contractual basis?

**Mr. Maharaj:** Yes, it seems so to me. Otherwise, the only other persons who have guaranteed service are public servants, teachers, police officers, judges, magistrates. Not Ministers and Speakers. *[Laughter]*

**Mr. Chairman:** I am very conscious of that.

**Mr. Joseph:** So, why is the Minister the person who is responsible for determining the remuneration?

**Mr. Maharaj:** Who do you suggest determine it?

**Mr. Joseph:** The board. Why not the board?

**Mr. Maharaj:** And when one wants to answer questions, one will bring the board to Parliament?

**Mr. Joseph:** No, Mr. Attorney General. We want to put some kind of distance because of the kind of politics one will tend to interpret in terms of the Minister.

**Mr. Maharaj:** Do you want me to bring a lot of legislation which is similar to this and which was passed during your term?

**Mr. Sinanan:** No. Forget the past.

**Mr. Maharaj:** It does not really matter which government is in power. If one has to be accountable for something, one must be able to have control over it.

**Mr. Sinanan:** Would there be any objection to say that the remuneration should be fixed by the board, with the approval of the Minister?

**Mr. Maharaj:** If one reads it carefully it says, such terms and conditions as agreed between the Authority and person and subject to such maximum limit of remuneration as the Minister determines". So, what the Minister does really is fix the maximum limit.

**Mr. Chairman:** I think it is commonplace in several pieces of legislation to put a ceiling. The board can go ahead and do things, but if they want to go above a certain level, then they have to get the approval of the Cabinet which is done by the Minister. That is what they are saying here. “Subject to such maximum limit as the Minister determines”. I am sure that is in the National Insurance Board Act.

*Question put and agreed to.*

*Clauses 27 to 31 ordered to stand part of the Bill.*

*Clause 32.*

*Question proposed, That clause 32 stand part of the Bill.*

**Sen. Baksh:** Mr. Chairman, I propose the following amendment to clause 32:

Insert after subclause (4) the following—

“(5) All duties and functions carried out by the Department of the Ministry responsible for Civil Aviation immediately before the commencement of this Act shall from the date of commencement be carried out by the Authority.”.

*Question put and agreed to.*

*Clause 32, as amended, ordered to stand part of the Bill.*

*Clause 33 ordered to stand part of the Bill.*

*First Schedule ordered to stand part of the Bill.*

*Second and Third Schedules ordered to stand part of the Bill.*

**Mr. Williams:** Mr. Chairman, just one question with regard to the Third Schedule. Apparently I do not have the entire Bill, so I want to ask a question. These posts, as they exist now in the public service, are they going to have the same designation in the new authority, or are they going to change all of that?

**Sen. Baksh:** Change it.

**Mr. Williams:** Because I notice here they have a male airport attendant and a female airport attendant. It is time to change that.

**6.10 p.m.**

*Clause 6 reintroduced.*

*Question proposed, That clause 6 stand part of the Bill.*

**Sen. Baksh:** Mr. Chairman, I beg to move that clause 6(2)(a) be amended as follows:

“At the end of ‘company’, insert the words:

‘provided that such subscription or acquisition is not in relation to a company regulated by the Authority under this Act.’”

**Mr. Williams:** Yes, I agree with that.

*Question put and agreed to.*

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

*Clause 24 reintroduced.*

*Question proposed, That clause 24 stand part of the Bill.*

**Sen. Baksh:** Mr. Chairman, I beg to move that clause 24(1) be amended to read:

“The Authority in the performance of its functions shall not be subject to the provisions of the Central Tenders Board Ordinance. However, until such time as the Authority makes its own tendering rules, approved by the Minister and subject to a negative resolution of Parliament, the Authority shall observe the provisions of the Central Tenders Board Ordinance.”

**Mr. Williams:** Yes, that is acceptable.

**Mr. Maharaj:** If you say “published”, it could be published in a handbill. Should we say “published in one daily newspaper”? Why not say “published in the *Gazette*”?

**Sen. Baksh:** Mr. Chairman, I wish to make a further consequential change to clause 24(2): “Delete from—

‘The Board shall, with the Minister’s approval....contracts and those’ and insert the words: Tendering rules made pursuant to subsection (1), shall govern the conduct of the award of tenders and related matters and shall be published in the *Gazette*.”

*Question put and agreed to.*

*Clause 24, 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 amendments, read the third time and passed.*

**DEOXYRIBONUCLEIC ACID (DNA)  
IDENTIFICATION BILL 1999**

*Order for second reading read.*

**The Minister of National Security (Sen. Brig. The Hon. Joseph Theodore):** Mr. Speaker, I beg to move,

That a Bill to provide for DNA forensic analysis, to include a DNA report as evidence, to provide for the use of DNA testing to determine parentage, and other related matters be now read a second time.

**6.20 p.m.**

Mr. Speaker, the House will note that this Bill requires a three-fifths majority of the Members of the House as there are certain provisions of the Bill that are inconsistent with sections 4 and 5 of the Constitution. The primary purpose of this Bill is to establish a legal framework wherein DNA forensic analysis can be used in the investigation and prosecution of criminal matters. It will permit the obtaining of a tissue sample or body substance from a detainee or an arrestee, with consent or with a court order, and allow for the analysis of these substances by the Forensic Science Centre. The results of such analysis can then be submitted as evidence in criminal proceedings.

The Bill contemplates the creation of a DNA database within the Forensic Science Centre and a DNA Board to monitor its operation. The sections of the Bill with which I will deal will identify the relevant clauses that address these matters.

This Bill was first introduced in the Senate where it went to a select committee and, after extensive consideration, certain amendments were proposed to the Bill. These amendments were incorporated into the present Bill which then found approval in the Senate and now lies to the consideration of this honourable House.

The main consideration that the committee addressed was the rights of the individual and the matter of how a sample is to be taken and by whom. There were concerns that specially identified persons should conduct the sample taking. There were also major concerns about how the samples are to be packaged and transported to the Forensic Science Centre. All these matters were addressed in

the amendments and the Bill now deals with the issue of the rights of the individual and the care to be taken of the sample, once it has been given.

In Trinidad and Tobago, as far as DNA analysis is concerned, the Forensic Science Centre presently has the capability to do DNA analysis. This came about over the last two years and the centre has been engaged so far in proficiency testing on samples submitted to the centre by Collaborative Testing Services Inc. of Virginia, United States, and a database of the population has also been compiled and this should be completed by June of this year.

The centre has also been stockpiling equipment and chemicals in preparation for the commencement of DNA analysis in its laboratories. The centre has acquired all the reagents, chemicals and physical equipment necessary for DNA typing of blood or body fluids, using the PCA method of analysis.

With the passage of the Bill, the centre hopes to integrate fully DNA typing with case work, also during the course of this year. The new Bill establishes, as well, an independent body to monitor the powers and duties given to the Forensic Science Centre. This is in an effort to ensure that standards for the proficiency of conducting DNA forensic analysis are maintained and upgraded and to oversee any research conducted in the area.

This was another area of concern—that there must be some group of specialists who can monitor the activities of the Forensic Science Centre to ensure that the standard of testing meets international standards. I will go through some of the clauses of the Bill which deal specifically with points of issue.

**Mr. Valley:** Mr. Minister, before going through those clauses, could you just tell us what we are trying to do with this Bill?

**Sen. Brig. The Hon. J. Theodore:** We are hoping to achieve the use of DNA analysis to deal with cases in the judicial system to ensure that the information provided, of a scientific nature, would be difficult to challenge. Now, DNA testing is carried out in one other country in the Caribbean, Jamaica, and we have this relationship, as I mentioned, with Testing Services Inc. of Virginia, U.S.A.

The intention is to ensure that a police officer will be given the grounds and protection to request a sample. The Bill says that a sample cannot be taken arbitrarily but the person must be asked and must agree to give a sample. *[Interruption]* I take the point you made just now. I am coming to that.

**Mr. Valley:** What is the problem now encountered in the courts and why is this the solution?



**Sen. Brig. The Hon. J. Theodore:** I do not think it is the absolute solution, just the solution available to us at this time. The problem in the courts has to do with the proof of felony having to come through witnesses. There is also the matter of the cross-examination of the witnesses, the availability of the witnesses, the truthfulness of the witnesses and to depend entirely on witnesses, creates a problem in the system where, if the witness is not available, the prosecution would have difficulty.

What will happen here with DNA analysis, it would widen the authority of the investigator to collect, preserve and present scientific forensic evidence. Right now, blood is taken at a crime scene and we do not have a law which allows for DNA testing for other samples. This Bill will give the investigator the authority to collect evidence under stipulated circumstances.

Such evidence is able to stand up well to cross-examination and is not subject to the vagaries and unpredictability of human testimony. This, in essence, is why we need to bring our forensic science testing up to date, so that the evidence that is available to us, which is not utilized at this time, can be used to go to court to assist in proving a case against the accused.

The procedure will result in these issues. Forensic DNA testing will have the effect of totally excluding certain suspects; and by that I mean if several persons are tested, through a process of elimination, one can discount certain suspects. Those cases where further investigations and laying of charges may have otherwise ensued may have a shorter life span.

DNA findings may also prompt persons to enter guilty pleas due to the result of DNA testing and this will probably contribute towards freeing up the schedule in the court. This Bill also proposes to amend the Evidence Act and the Status of Children Act, Chap. 47:01. The Evidence Act will be amended to include a DNA report among documents admissible in criminal proceedings as evidence of the facts stated in it without proof of the signature or appointment of the government expert responsible for its preparation. This is explained in the section.

The amendments proposed will be to the Children Act and they are to be replaced by the definition of blood samples, blood test and tester currently used in the sections of that Act with DNA samples. DNA forensic analysis, qualified person and tester in sections 13 to 17 where scientific evidence is admissible in the issue of paternity—I would touch on some of the major sections.

“‘qualified person’ means a registered medical practitioner, or a person registered under Part II or III of the Nurses and Midwives Registration Act acting under the supervision of a registered medical practitioner;”

Another important definition is that of tissue sample.

“‘tissue sample’ means a sample of blood, saliva or hair taken from a person, and includes a swab taken from any part of that person’s body.”

Some clauses also deal with when a request can be made and the consent must be written and, if someone decides to withdraw their consent, that, too, must be in writing.

Where a request is made under clause 6(1), a tissue sample shall not be taken from a person unless he gives his consent in writing as provided for in the prescribed form in the presence of both the police officer and a Justice of the Peace.

Other clauses which take into consideration the right of the person deal with the right to consult. A person shall have the right to consult with and have present an attorney-at-law, or an adult of his choice before consulting to the taking of a tissue sample.

Clause 14 deals with information to be given to the person. There is also the problem of the individual being told clearly beforehand why one wants a sample, and what is to become of it. I quote:

“Where it is intended that a tissue sample shall be taken from a person detained, arrested or charged for an offence, a police officer shall, before making a request and in the presence of a Justice of the Peace, inform the person—

- (a) of the grounds for requesting it;
- (b) of the nature of the procedure by means of which it is to be taken;
- (c) of the purpose for which the tissue sample is required;”

And all the details concerning the purpose for which the sample is being sought.

This Bill also puts into law all the procedures rather than simply having these being dealt with by regulations. The law ensures that the rights of the individual are observed.

There is also part of the law telling us how a qualified person who takes a sample or bodily substance from another person, how that person is to ensure that

certain procedures are followed. It is taken in circumstances affording reasonable privacy to that other person, that it is not taken in the presence of any other person whose presence is not necessary for the purpose of taking the tissue sample or bodily substance and the taking does not involve more visual inspection than is absolutely necessary.

Basically, throughout the Bill are safeguards for the rights of the person.

Clause 41 states:

“41(1) The Minister shall appoint a board (hereinafter called ‘the DNA Board’) comprising of not more than five members, including a molecular biologist, a population geneticist, a forensic scientist, or a pathologist, and a member of the legal profession, each of whom shall be of at least ten years standing.”

The board would have power to ensure that the science centre conducts itself to the international standards.

Clause 43 states:

“43(1) Subject to this section, a tissue sample or a bodily substance, as the case may be, shall be destroyed by the Forensic Science Centre as soon as it has fulfilled the purpose for which it was taken.”

### **6.35 p.m.**

Generally, where under subsection (8), a tissue sample or bodily sample is to be destroyed, the person from whom the tissue sample or bodily substance as the case may be was taken, is entitled to witness its destruction.

In general terms, the Bill has taken into account the rights of the individual and the need to ensure that the movement of the sample is done in regulated circumstances in order to avoid challenges in court that the samples may have been tampered with or the sample may have become tainted because of poor packaging or some lapse when it was being transported. This proposed legislation seeks to bring crime-fighting technology in Trinidad and Tobago into the 21<sup>st</sup> Century. It attempts to provide the legislative framework to harness national security resources by placing mutually dependent responsibilities on the police service and the Forensic Science Centre.

Mr. Speaker, I beg to move.

*Question proposed.*

**Mr. Hedwige Bereaux** (*La Brea*): Mr. Speaker, I wish to join the debate on the Bill to provide for DNA Forensic analysis, to include a DNA report as evidence, to provide for the use of DNA testing to determine parentage, and other related matters.

The hon. Minister of National Security told us that when this Bill becomes an Act it would bring the crime-fighting techniques utilized in Trinidad and Tobago well into the 21<sup>st</sup> Century. You know, we always go into the various techniques and whatnot and they say we cannot discern the trees from the forest sometimes, and we leave out very minor things. I am very sorry if I appear to be picky in this matter.

In the Explanatory Note, on the second page says: “these notes form no part of this Bill.” I would really like to correct that. The hon. Member for Tobago East speaks about persons who do not understand the English Language as teachers, and I just want to correct that. Pardon me, if I do it in the way in which I have done it. This DNA testing—I am not a scientist or my knowledge of natural science is very limited. The first time I heard anything about DNA testing was in the O. J. Simpson case, and here we are saying now that we are going to have DNA testing—I see the scientific name here—maybe somebody who is qualified in it would go into the name for me, but I want to know this—we are saying we have DNA and it will now facilitate giving evidence in court and so on. I understand that it is to give evidence in criminal cases where, at the scene of the crime, they would take some blood samples, or when you want to prove paternity in certain cases, rather than get blood tests as before, which could normally tell you that the person could not be rather than the person was.

I would have liked, and I would still like—since we are fortunate on the opposite side to have, at least, two medical doctors there—somebody to get up and explain to this honourable House what a DNA test is. What are the margins of error in the test? Tell us in this honourable House, why it is better than a blood test?

I paid very close attention to the O. J. Simpson trial and I listened to the lawyers deal with that DNA testing. I heard the evidence that was given in that trial in respect of DNA testing and if we are being asked here in this honourable House to pass this Bill, I think we have to start from here. We have to start from first principles to educate us or, at least, allay any fears that persons, like myself, would have had in respect of how the test is taken. What is being done and all the education which they gave to the judge and the jury in respect of the O. J.

Simpson trial, that may or may not have satisfied them. We need to know that. Do not just come and tell me about DNA testing. I am not ready for that.

I do not want the hon. Minister to tell me anything about what they did or did not do in the other place. I have become much more educated than I was, maybe two to three years ago, since I started to go into those criminal courts and listen—not to take part—as the hon. Member for Nariva likes to tell me about what I can or cannot win in court, but just by listening and seeing the circumstances of the accused from time to time. How many times do you find that the presumption of innocence is breached? How many times do you find the rights of the citizens being eroded and abused by persons in authority? I want to be clear.

So the first thing is that they have got to explain this thing. This definition means absolutely nothing to me and it can mean nothing to anybody who is concerned that here it is now, there is a certain test that has now come out to be the best thing since sliced bread. I know this Government and everything is good for them—I am sorry, if I appear to be stretching a little. There was a Miss Universe contest that was going to bring in thousands of thousands of visitors to Trinidad and Tobago and as a good friend of mine said, if visitors came they stayed with the Ministers. So I am saying if we are going to talk about the testing that is spot No. 1. *[Interruption]* I will ignore the hon. Member.

#### **6.45 p.m.**

Mr. Speaker, as I was saying, the next thing we were told is that we have all the chemicals there, we have this, we have that, and we have all the apparatus and whatnot. Is it apparati or is it apparatus? I was just addressing my good Latin friend to ask him, but we have all the apparatus there, Mr. Speaker.

Having said that we have it in the Forensic Science Centre, we know what really happens, and I will tell you my experience at the Forensic Science Centre. A simple testing of weed, a plant that is suspected to be marijuana, *cannabis sativa*, it takes nine months just to do that, so that one can proceed with a possession case. I am not talking about a big one for, say, possession for the purposes of trafficking.

There was the question of people making bush rum, “babash”, “sky chief”, however you care to call it, Mr. Speaker. For the police to have that tested and brought to the court in Point Fortin—I see the Member of Parliament for Point Fortin looking at me. *[Interruption]* But he is not looking at me, he is hearing a good discourse. As I was saying, a simple thing like that took almost a year. I mean, anybody knows it is simple to do that. A form three child could test and say

*Deoxyribonucleic Acid (DNA) (No. 2) Bill*  
[MR. BERAUX]

*Thursday, May 11, 2000*

whether or not it is illegal, whether or not it is “babash”, yet it took the state almost a year. I could name the case too, you know. Because they had a good lawyer, I won it, very simple. So, Mr. Speaker, as I was saying it took almost a year. How then is the hon. Minister going to convince this honourable House that this Bill which he has brought, asking for us to do a number of things and allowing the police to do a number of things to persons such as invade their privacy so much and deal with their person in a particular way, is going to bring our technology into the 21<sup>st</sup> Century?

Now, let me go further. So we are saying we know how long it takes and they make no apologies for it because once your client receives bail they postpone the case for three months because they do not know where you could get it, and then you go for another three months. So do you know what is happening now, Mr. Speaker? All anyone has to do, if one has a case in respect of anything that necessitates going to the forensic centre, whether or not one is guilty one pleads not guilty because one then has time to collect money to pay the fine. That is what is happening in court, if we do not know. So now that I have the hon. Minister here, maybe he could deal with that.

We have even further to go, Mr. Speaker. It is known that there are staff problems in the forensic centre. When Dr. Chandulal is not doing something, or they are not trying to get rid of him or not trying to recognize or refusing to recognize the qualifications of Dr. de Vignes, they are doing a number of other things. To go or not to go, to recognize or not to recognize, that is the question of Dr. de Vignes. Where the discrimination and the difficulty come in, they present themselves right on the other side in the presence of certain persons who are involved in the medical council where they have attacked him. But I am not going to deal with that at this point in time, Mr. Speaker.

If we are going to deal with DNA in this country, and it is so important and expected to do so many good things for crime and technology in respect of making crime-solving easier, we need to be sure that we put the mechanisms in place to carry out these tests. *[Interruption]* No, well, you do not worry, I am here because the people put me here, Mr. Minister, and you are here because your boss put you here. That is a difference. You see, my bosses are the people and the constituency of La Brea and as long as they allow me to be here I will be here. *[Interruption]* I say my bosses. You could add him to one of them too.

I am dealing with DNA testing and I wanted to point out, Mr. Speaker, before I was so rudely interrupted by the Member for Arima, that we are doing a number

of things. Then we are going to tamper with the Evidence Act, we are going to do a whole series of things, all of which will impinge on the lives of people and question the courts. This thing is really important because there was recently a situation where in the United States we heard about, I think it involved Bill Cosby, where some woman came around and decided that she was his daughter, and these facts can go towards dealing with things like inheritance.

Now, the one good thing about it is, if it is what people say it is, it could save the courts a lot of trouble in respect of errant fathers, Mr. Speaker, or we will be able to directly prove who they are. However, we want to know the element of error involved in it. I know this Bill was discussed in the other place in a select committee. This Bill is too important for the Minister, unprepared as he is, to tell us, "Well, you know, they checked in the other place on the rights of the individual and we are sure that, based on what we have put here, the rights of the individual will be protected".

I have no doubt that in the other place they intended to protect the rights of the individual. We on this side, regardless of what is done anywhere else, have a direct responsibility to our constituents and I, unfortunately or fortunately, have seen too many injustices perpetrated on the poor and on persons who are less able to protect themselves. I have decided, and we believe, that we have to be real careful. You see, this DNA testing thing almost brought down a President of the United States of America. You may recall, Mr. Speaker, a certain lady, who is alleged to have had some kind of liaison with President Bill Clinton, saved a dress and then they came and checked DNA to determine if that was his sperm. They did it.

In a place like Trinidad and Tobago where there are all kinds of tricks being played, dirty and otherwise, and since this country appears to be bringing in, Mr. Speaker, experts in dirty tricks, and also others from abroad, to take part in our elections and other activities, I want to make sure that when we pass Acts we close all the holes, all the lacunae. I do not want to go on because I believe, from the points I am making, the direction in which I am heading is quite clear, that we need in this House to refer this Bill to a select committee. [*Interruption*]

Well, Mr. Speaker, they may be able to make noise if they want but this Bill must be referred to a select committee, otherwise, do you know what you could do? You could vote there and then run over here and vote here, or you could wait until after we win to pass it because we will have more votes than you, but that is how you will have to do it. Mr. Speaker, I am not about to give them any *carte*

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*blanche* in this House to bring any law like this with as fundamental a change in the jurisprudence of this country without having perused it very carefully.

I say again, it is an affront to tell me that the Senate approved it. We are capable here. After we have received the necessary explanation and had the necessary questions answered, of course, we may, with certain changes, be prepared to go along. We want, on behalf of our constituents and those whom we represent, to make sure that whatever goes on the statute books of this country and whatever we vote for is looked at very carefully. Now, however, we need it to be referred to a select committee. Thank you, Mr. Speaker. [*Desk thumping*]

**Dr. Fuad Khan** (*Barataria/San Juan*): [*Desk thumping*] Mr. Speaker, first let me thank you for allowing me to enter this debate on a Bill to provide for DNA forensic analysis, to include a DNA report as evidence, to provide for the use of DNA testing to determine parentage, and other related matters. I am very happy to speak after the Member for La Brea. He, being a lawyer of some note—I think he won a couple of cases recently—it basically shocked me to understand the small amount of knowledge he possesses in terms of DNA, so I shall try to elucidate him on a medical aspect.

Mr. Speaker, DNA is the short form of a term called deoxyribonucleic acid. Deoxyribonucleic acid exists in a place in the human cell, because we are all made up of cells, in the nucleus. [*Interruption*] I am coming to something. It exists in the nucleus and it is found only in the nucleus surrounded by a membrane called the nuclear membrane so it does not seep into a part of the cell called the cytoplasm which has something called ribonucleic acid, RNA.

### **7.00 p.m.**

In this nucleus there is the genome or the genes of the body such as chromosomes *et cetera* and this whole thing is made up of different proteins. The proteins are like something called adenine, guanosine tyrosine and cytosine, four major proteins combining together in different molecular structures spiralling around each other to form the DNA.

Mr. Speaker, people have said that no two people (DNA) are alike. It is not unlike the fingerprints on your hands. However, when one does DNA testing, one attacks the DNA in the form of a chemical substance, a chemical maceration but it is not that of what we call chromosome mapping. Chromosome mapping is determined by what we call the autosomes in the body and its sex chromosomes. Autosomes determine how we look, such as the Member for La Brea [*Laughter*] and the sex chromosomes tell us what sex we are. Fortunately, that could be



changed physically. *[Interruption]* I am speaking to you Member for La Brea because you asked all the questions.

Mr. Speaker, the Member for La Brea wants to know why DNA and not a simple blood group *et cetera*. I will digress from DNA before we go into the testing. Deoxyribonucleic Acid (DNA) is found in every single cell of our body such as skin cells, hair cells, saliva, semen and blood cells *et cetera*. Blood samples are taken; semen samples are taken; saliva samples are taken; rectal samples or swabs are taken; and hair samples are taken. What this does in a victim—I will come to the testing afterwards—is leave contaminants in the other body—you could take any sample of semen, let us say, in the vagina, rectum or mouth; saliva on somebody's clothing—as the Member for La Brea quite rightly said, a blue dress nearly brought down a President as a result of his fear of what the DNA test would have shown, due to semen and/or sperm cells presence.

Mr. Speaker, I do not know if you all saw this movie. There was a lieutenant in an army that supposedly killed his wife and three children but he was acquitted—because it was 20 years before the onset of DNA—based on evidence at that time. The father of the girl, his father-in-law, always believed he did it. When DNA testing came into its own, he reopened the case and he had taken different paint and vanish samples from the house itself and he got them to test the blood on it. He found that two things were there, the ABO system which is what we use for blood. We are either A, B, AB or O which are only four systems; and rhesus, and there are very small groups of cells such as minor cells that we can use, but the DNA area was able to pinpoint that it matched the son's-in-law's DNA, and in such a manner the case was re-opened and the lieutenant in the army was convicted of the murder of his family.

Mr. Speaker, what really happens? Do we look at DNA as a foolproof method, 100 per cent accuracy? It is not so. There is an error of about 15 to 20 per cent. There is about 80 per cent positive and 20 per cent negative. The reason behind that is the method of collection and testing. If it is chromosome mapping you could tell to a very high degree, more positivity. This is a very early set of testing and as one said in the O. J. case they did not want to take it because they argued that it was not a legal entity *et cetera*.

The reason behind it is that if the DNA from the tissue samples match, it is more likely that it will be this person who is guilty or not. If the DNA does not match, automatically one starts to think the persons could be acquitted or not because if you do not have a match of DNA you cannot be the assailant. So what DNA testing really does, it gives you another method of approach rather than the

archaic blood compatibility, the ABO system, to tell this could be the person, in view of all the evidence taken as a whole. This is because of the method of testing are for DNA. The cells of the person or the specimen such as semen *et cetera* are taken, washed and macerated. The material is suspended in what is called a liquid medium. What is commonly used is what is called ascending chromatography. You put a piece of filter paper and leave it in a solution. What happens is like a capillary action, everything rises. It goes up to a certain time and what you do is stain it using certain stains. As a result of it one is able to see banding of different proteins based on the molecular weight, the heavier ones move slower and the lighter ones move faster in the medium. So you get different protein levels and what you do now is map it against what is there and you get similar protein on similar people.

Mr. Speaker, so one could say deoxyribonucleic is 80 per cent accurate and these two DNA samples match in semen, saliva, rectal swabs and hair *et cetera* because everything has a DNA. Whatever you do has the DNA of that person and it does not change. You cannot change the DNA of a person. So using this chromatography method you are able to tell, as they say, beyond that 80 per cent accuracy that this is a sample from the accused and it matches the accused.

Mr. Speaker, let us take, for example, a rape victim. A young lady comes in—I was the DMO at that time so I remember it—beaten and bruised and she said she was raped. We examined everything and made sure it was documented, but here comes the time now to take samples. You take saliva samples; fingernails; blood smears that the victim may have, pieces of it; take the clothes and put it in a little bag and carry it off and you also now take a vagina either swab or pipette, and you basically take the semen and put it in a little container or you put it on a slide. What we do here right now is what is called the ABO testing. If you take this random sample in here it is most likely that at least, let us say, 60 per cent of us will have the same blood type so that does not work. It does not make sense, but you could go to a higher level of smaller blood but half of us do not have it.

With these samples you spread it out and take it to the forensic lab and it is there for forensic analysis. The technicians will do the chromatography, shake it *et cetera* and what you do now is take it and map it. You map the proteins and the ascending whatever it is. Now this legislation also gives the right of court orders if after 12 hours somebody does consent, if there is the suspect, you could take samples from them by means of a court order and match them. So if there is semen analysis and sperm heads with their DNA, and this gentleman's sperm matches the mapping, at least with 80 per cent accuracy, one could introduce this

evidence in court together with other things; whatever the lady says—whatever it is—and say, this person's DNA matches; these are the circumstantial evidence, so it is most likely him and the jury makes a decision, and this is how it goes.

It is another tool in the armament of crime fighting. It is a tool that we need because, as it says, it is an advancement on the ABO comparability system; it is an advancement to be used in crime fighting as they say for rape—which is what we are into these days—a lot of rapes—and we can determine exactly, at least 80 per cent, together with other evidence. If somebody scratches someone, under the fingernails, you could take the epidermis of the skin which is found. If somebody scratches you there, it stays under the skin and one could check that DNA to see if it matches the semen. If hair samples are left back in the area you could take the hair samples and check them.

**7.10 p.m.**

All in all, the legislation attacks a higher level of crime fighting versus the ones we have today. I will tell Members quite honestly, a lot of rape accused get away, not because they did not do it, but because the evidence that would have actually nailed them for doing the crime was not there. As a result of that, there are people who are around the place with a lifetime of scars from rape because our system failed them. Our system is the one from 40 years ago being used today, when there are other systems.

I have realized that we need legislation to take some samples from somebody, because there are people—the accused—whom, when I had to take samples from them, refused. If they refused, I could not touch them. This is what the police told me and it was true. They could charge me for bodily assault. They did not have to give it. Now with this legislation, they have to, because after 12 hours of refusal, at clause 8(2), one is deemed a refusal. So, one can get a court order from a Justice of the Peace, read them their rights and deal with the problem. What else could they do?

With respect to errant fathers, how does one do it? One takes a sample. A lady recently accused Mick Jagger of the Rolling Stones. He tried to deny it until they took DNA samples. He was guilty, of course, and he has to now pay child support. If there was not DNA mapping and DNA analysis, he could have gotten away, because tonnes of people have the ABO system, and so does he. We are utilizing a new resource for crime fighting, and very soon, I think, the system is not only DNA, but we may go into chromosome mapping. With the level of crime we have, the sophistication of crime nowadays, we have to be on top of these

criminals. So, any help we can get to help the police and the crime fighters, it is one for them rather than one against them.

Different aspects, different people, different movements and different things could happen. It could determine parentage. There are many young people who come to me after their spouse goes away and turns around and says it is not his child. How does one deal with that? We send them to different hematology labs and they say they do not do testing like that here. It does not stand up in court. We send it to Miami and, after we get the results, we try to pressurize the father by saying that he could get in trouble because it matches. However, if we did not have legislation, he could say it does not make any sense, but with it now, he is liable to take care of the offspring that he fathered due to a system that we have introduced into our country's legislation which will determine and take care of errant fathers.

With respect to incest victims, somebody could deny it and we could once again use chromosome mapping. As I told Members, it is 80 per cent accurate.

**Mr. Bereaux:** Are you saying that DNA and chromosome mapping are one and the same?

**Dr. F. Khan:** We are approving DNA enzyme mapping. Chromosome mapping is a higher level. It could be used eventually, but I do not think it is specific as necessary. It is only good for research purposes right now.

Mr. Speaker, this, basically, is the medical aspect of the Bill, itself. If one goes through the other aspects of the Bill, clause 7 allows the police officer to prevent destroying or contaminating any evidence. As I said, fingernails, clothing, panties, panty shields, socks, whatever. Take all the victim's clothing together with the bodily swabs and samples and put them in a bag. The only one little thing I would like to recommend, and I spoke to the Attorney General, is that tissue sample should include semen rather than just a swab, because sometimes one can actually take semen from a person by way of a pipette, and that would give the legislation total accessibility to all bodily fluids.

**Mr. Bereaux:** Before you go on, are you saying that in order to match it properly you need to match not only the blood, but that you need more than one substance?

**Dr. F. Khan:** One could use one substance, because it is the same DNA. However, if one has more than one matching, like hair, semen, fingernails, epidermis and saliva, the case is closed. So, one gets a real response as a result of that.

The legislation continues and it also protects the right of the individual who is being sampled, by means of allowing him or her to get his samples taken and his rights heard in front of a Justice of the Peace and the police officer.

Clause 13 tells all the questions that one needs to ask. One must tell the person one is sampling, the type of bodily substance, the grounds for requesting, and so forth, and it keeps going down.

Clause 14 talks about “in front of a Justice of the Peace”. If one continues through the legislation, it tells about a DNA bank, like a fingerprint bank. Once one has the DNA, one can store it in a bank in different mappings. So, if these persons are known criminals, one can automatically catch them from this area, as we have fingerprints.

We have been looking at this type of analysis over the last few years. Once they have a better system, they will make it 100 per cent foolproof. Nothing is 100 per cent, not even PSA test one takes for prostate cancer. It has an inaccuracy of about 15 per cent, so it is only 85 per cent specific, but we still determine prostate cancer based on the PSA levels.

When one uses the DNA analysis and matches them together, there is a high index of suspicion that the person is guilty. If there is no match at all, proteins are totally different, one has to look elsewhere. If someone is innocent or guilty, he could make a case to get off because it does not match. Putting these systems into place would just basically—I cannot see it not helping our crime fighters, and the legislation itself protects the person sampled, the accused or innocent.

My recommendation with respect to the legislation is that I think this is the way of the future and, eventually, I think we may use fingerprints as well as DNA banking to determine people's movements and their identification. There is another thing that they have, where using the iris of the eye and combining everything together, one could determine a total response to crime fighting.

With these few words, Mr. Speaker, I would like to recommend to the Opposition the need for passing such legislation to help our police and the people of our country in crime fighting.

Thank you, Mr. Speaker. [*Desk thumping*]

**Mr. Barendra Sinanan** (*San Fernando West*): Mr. Speaker, I make a brief intervention in the Bill before us and wish, immediately, to thank the hon. Member for Barataria/San Juan for elucidating the medical aspect. Yes, I heard him when he said that the DNA testing is not an exact science but, like all other

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sciences, there is a degree of uncertainty. I think he mentioned the figure of 80 per cent. It is a better position with DNA that we have now, but that is not my concern.

Members opposite have not indicated to us—I think the Minister did say that the forensic science lab is now stockpiled with equipment and chemicals, and my colleague from La Brea made reference to the people to operate the system. I would imagine, listening to the hon. Member for Barataria/San Juan that this would, perhaps, be an exact science and one cannot take an untrained or unskilled person to carry out these tests.

Recently, we have read in the newspapers, and it is determined in the courts every day, that cases are postponed simply because there is no personnel at the forensic science lab to carry out these tests in an efficient and timely manner—not so much efficient, but more so a timely manner. For that reason, cases are adjourned for months and years.

Nowhere in the presentation of the Minister or anybody else opposite was anything mentioned as to whether the forensic science lab has the required staffing at the appropriate levels. That is my concern about this Bill, because certainly, we have seen rape cases, murder cases, and so forth, being adjourned because people are not there at the forensic lab to determine in a speedy manner the results of tests sent to be determined.

I want the Minister to assure the House that in passing this legislation, it does not come like several pieces of legislation before us in terms of the implementation process. I want him to assure this House that yes, we have sufficient personnel at the forensic science lab and yes, they are properly trained to carry out these tests and yes, we will be getting results on a timely basis. I did hear him mention some company in Virginia, and I am not sure about the relationship between our forensic science lab here and the company there; whether they are working in concert, whether the people in Virginia are training our people here or, if when this Bill is passed and implemented, tests will be sent to Virginia to be checked. If that is so, what proposal does the Government have to have people trained locally? Because I think it is really a good thing to have.

We are passing legislation here to deal with DNA, we have a forensic science lab in Port of Spain and we are sending the samples to be determined in Virginia.

**Dr. Khan:** There are new machines now that we could use where we take the sample itself and there is a liquid to dissolve it. We put it on the machine itself and the read out pattern comes out. Kodak has a machine like that where one can match them together.

**Mr. B. Sinanan:** I would imagine that we would have a similar type machine here. The Minister did say that we have the machines there, stockpiled and liquids and so forth. I am not on that. I am on the personnel; the people who will do the testing. If we are going to gather the swabs and the samples, to then ship them to Virginia to be tested—

**Sen. Brig. Theodore:** Mr. Speaker, to avoid any misimpression, what the Forensic Science Centre has been doing while they are waiting to get official clearance to do DNA testing is that they have been engaged in proficiency testing on samples submitted to the centre by Collaborative Testing Services Inc. We got the samples from Virginia, it was a try-out and then they went back. So, they were really honing their skills and practising without cases being put to them. That was to develop the skills. When I am winding up, I will let the Member know about who is there to do the tests.

**Mr. B. Sinanan:** This is what I wanted to know. We have the personnel here and what is happening here is that prior to the passing of the legislation, the company in Virginia is familiarizing our personnel here as to how to go about the evidence.

**7.25 p.m.**

I am glad to hear that because, as I said, it would really have been strange to have the legislation passed, have a lapse here in Trinidad and to send the thing to Virginia to be tested.

I would really want the Minister to assure us that we would not—in certainly the short, medium to long term—be in the position with DNA testing as we are with, say, testing of narcotic substances or to identify rape victims. It is a sad case for the Judiciary and the administration of justice when you have one arm of the state not supporting the other arm of the state, in terms of the judicial process.

Once the forensic science laboratory—and that process in terms of DNA testing—can complement the judicial process, in order to deliver speedy justice, I think that is what, as country and nation, we need to aim at.

I would wish the Minister to assure this House that there are personnel—whether they be Trinidadians or foreigners there for the time being, at the forensic science laboratory—who would be capable of doing these tests and submitting them on a timely basis, not 8 months, 9 months, 10 months or a year down the line.

With these few words, Mr. Speaker, I await the clarification of the Minister and I thank you for your attention. [*Desk thumping*]

**The Attorney General and Minister of Legal Affairs (Hon. Ramesh Lawrence Maharaj):** Mr. Speaker, in discussion with the Opposition Chief Whip, we would want to adjourn the debate on this Bill to tomorrow.

*Question put and agreed to.*

*Debate, by leave, deferred.*

#### DEFENCE (AMDT.) BILL

*Order for second reading read.*

**The Minister of National Security (Sen. Brig. The Hon. Joseph Theodore):** Mr. Speaker, I beg to move,

That a Bill to amend the Defence Act Chap. 14:01, be read a second time.

The situation as far as it concerns this Bill stems from the fact that Trinidad and Tobago declared itself an archipelagic state in 1986, in accordance with the United Nations Convention and the Law of the Sea, held in Montego Bay, Jamaica on December 10, 1982.

We had at that time, Act No. 24 of 1986, which declares Trinidad and Tobago an archipelagic state. As a result of that, our seaward boundaries changed. Whereas our territorial seas were measured from the coastline outwards, with an archipelagic state, the archipelagic waters are determined by drawing lines to the extremes. For instance, a line from Point Galeota will go up to Tobago; from Tobago down to the offshore islands off the Northwestern Peninsula; from there to Point Fortin and then across back to Cedros. That being the case, it was found by the coast guard that the Defence Act, which dealt with their ability to patrol our waters, excluded this new area. The territorial waters were then measured from the archipelagic baseline outwards.

All in all, what has happened here, Mr. Speaker, is that these baselines, having joined the extremities, meant that the breadth of the territorial sea—the contiguous zone, the exclusive economic zone and the continental shelf—shall be measured from the archipelagic baseline. The establishment of these baselines affected the area in which the coast guard could exercise its jurisdiction.

I will point out why this is so. In the Defence Act section 6 states:

“An Officer, Petty Officer or man in command of any unit of the Coast Guard, in any case where he has reasonable cause to suspect that any vessel is engaged in any unlawful operation whatever within the territorial waters of Trinidad and Tobago, may stop and board and search, with any assistance, any



and every part of such vessel and if he thinks it necessary may direct such vessel to proceed to such place as he may specify.”

Mr. Speaker, there is only mention of territorial waters in the Defence Act.

If we have a look at Act No. 24 of 1986, we will see under section 7:

“Measurement of territorial sea, contiguous zone, exclusive economic zone and continental shelf

7. The breadth of the territorial sea, the contiguous zone, the exclusive economic zone and the continental shelf shall be measured from archipelagic baselines drawn in accordance with section 6.”

The coast guard is then affected by section 28, where it says:

“The persons to whom subsection (1) applies are:

(a) members of the Trinidad and Tobago Coast Guard;”

These members of the coast guard can:

- (a) stop and board, inspect, seize and detain a foreign fishing craft,
- (b) seize any fish and equipment found on board the foreign fishing craft; and
- (c) arrest the master and crew of any foreign fishing craft, in the exclusive economic zone, the territorial sea, and the archipelagic waters, and may also institute such criminal proceedings against them, as may be necessary to ensure compliance with the Act and the Regulations.”

In essence, Mr. Speaker, what has occurred is that Act No. 24, having been promulgated, gave the coast guard the additional authority, now that our territorial seas have been redefined. But the Defence Act, which governs the coast guard, did not take up that amendment. In effect, what the Ministry of National Security is attempting to do today is to ensure that the Defence Act keeps in line with the Archipelagic Waters and Exclusive Economic Zones Act.

The object of the Defence (Amdt.) Bill is to regularize this position. The Bill, after the short title and interpretation clause at clause 3, seeks to amend section 6 of the Defence Act, to empower the coast guard to exercise jurisdiction, not only with respect to the territorial waters of Trinidad and Tobago, but also its archipelagic and/or internal waters. This amendment is being sought to validate all acts and things done under the Defence Act, as if the amendment had come into force at the commencement of the Archipelagic Waters and Exclusive Economic Zones Act No. 24 of 1986.

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Perhaps I ought to explain that the coast guard has been bringing this to the attention of this administration and previous administrations. I think it was a lack of understanding as to what the Archipelagic Waters and Exclusive Economic Zones Act meant, and how it affected the coast guard. I have brought a sketch with me, if any Members of the House may wish to get a visual, to understand what I am talking about. In effect, the archipelagic waters extend from Trinidad through Tobago, to the five islands, back to the southwest corner of Trinidad and Tobago, and across the south. That is the area that is excluded from the Defence Act. The territorial waters, instead of being measured from the coastline, is now measured from these baselines which have been laid down by the Act.

All in all, Mr. Speaker, I trust if there are any queries as to what this means, I will be able explain to hon. Members. As I said, I brought a sketch in case there is any doubt as to what the new definitions mean.

Mr. Speaker, I beg to move.

**7.35 p.m.**

*Question proposed.*

**Mr. Eric Williams** (*Port of Spain South*): Mr. Speaker, I think I can say on this side we agree with the purport and the intent of the Bill. I have a couple of comments with regard to the coast guard.

Do we have the vessels to patrol our waters? I recall shortly after the Government came into office, that we put several of our vessels in dry dock seeking to repair them locally rather than sending them back to the manufacturers in Sweden, and to date, my understanding is that those vessels are not in the water. I hope that is not true. I want to get that cleared up.

Also, many of our sailors who can man some of these vessels that were manufactured abroad are reaching the age of retirement and I just wonder as to the situation preparedness of our coast guard to effectively patrol our seas.

One other issue, I know we are using a different baseline, we are also in negotiation with Barbados as to where we draw our boundary, but at the same time, the Ministry of Energy and Energy Industries is about to conduct a deep-water survey and they have published a map that draws a boundary for their survey between Trinidad and Tobago prior to us going to the negotiating table and one wonders if that puts us in a situation of compromise in terms of our negotiations with Barbados because the Barbadians could easily present our map which is available internationally and say: you have drawn a line which says this

is as far east as you wish to explore. Whereas, we may wish to negotiate a different result other than the map that has been put into the public domain.

Again, I think it has bearing on our status as an archipelagic nation and it seems we may not be working entirely *in sync* on that particular matter. This is an issue that has been raised by members of the International Petroleum Community who are aware of these negotiations and who wish to explore on this side of the border or on the Barbadian side. As it is now, all of the Barbadian water is under lease to Conoco. Conoco also has some acreage position on the Trinidad side and they are in the process of mapping with all the data they have from Trinidad and all around Barbados.

Clearly, that is germane to the task which we are now legislating to enable our coast guard to effectively control our archipelagic waters. If the Minister could comment on those two issues, I would be grateful.

**The Minister of National Security (Sen. Brig. The Hon. Joseph Theodore):** Mr. Speaker, I thank the Member for Port of Spain South for his contribution. I think it is very valid and I actually anticipated some questions about the state of the coast guard because it is of concern to all of us.

Yes, the two fast patrol boats which came from Sweden, CG 5 and CG 6, were put for repairs near the hangar in Chaguaramas. The major repairs on CG 6 are finished, but when the engines were opened up to do a top overhaul as they call it, it was found that more work would need to be done. This has been the main cause of the delay, and there is some electrical wiring to be done. We anticipate that CG 6 will be going back into the waters in a few months' time. I really do not know exactly. You know how it is with these repairs, one thing leads to another and we have gone way past our original completion date already.

CG 5 which is the one to the front—our problem is that we kept going back to see if we could get a more economical price to repair this boat. We have come to the conclusion that it is not economically sound to spend the kind of money that is being requested to fix that boat. We are going to put CG 6 back into the water. We had put out bids for other fast patrol boats, again, the prices are quite prohibitive when a boat is being built at the shipyards. So we are looking around to see what there is in the water where we could approach a firm or a seller with a view to acquiring another boat to match CG 6 and put CG 5 away.

Mr. Speaker, the other vessels which have all been repaired, consist of—actually, if we take the two fast patrol boats out, we have two 82-foot cutters, 10 launches and 5 fast interceptors that are in operation. Two of the launches are at

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Hart's Cut undergoing maintenance. You will find we never try to keep all our assets in the water at the same time, unless there is an emergency because we have developed a maintenance programme—and Members are aware of the problems of lack of maintenance for boats and vehicles and we are addressing that.

Basically, at Staubles Bay there are three launches and two interceptors; at Hart's Cut, just after the hangar by Anchorage—I think more people would be familiar with Anchorage than Hart's Cut. At Hart's Cut, there are two launches undergoing maintenance and two other launches which provide support to the prisons, immigration and the police.

At Galeota and Tobago, that is where the two 82-foot cutters are, and at Cedros, Galeota and Tobago, each location has one launch and one interceptor. You will find that in Tobago there are actually three vessels because Charlotteville has already been declared a port, so one has to patrol that area, and at Piarco we have two Cessna aircraft, two Piper Navajoes and two Merlin C-26 aircraft.

Again I will share this with you, that the intention with the Merlin C-26 aircraft is to have at least one fitted with surveillance devices. Basically, this is the position and the boats are functioning, and they are patrolling our waters.

A far as the baseline goes, you would see that Tobago is included and I have seen maps of what the energy sector has put out, where they have their areas and I really cannot comment on that right now. I am also aware that the Ministry of Foreign Affairs is negotiating a fishing agreement with Barbados and I believe shortly we will be doing one with Guyana. This is what the law has determined with the Archipelagic Act and by bringing the coast guard in line, we now ensure that should they choose to board and search a vessel, there would not be the risk of what they do being challenged in court. I am glad to say that the coast guard is functioning.

The Member did mention their training and some of the coast guard officers coming up to retirement. Many of them have spent much of their time on land over the last couple of years and they are being put to sea as often as possible. The arrangements were made a few years ago with both coast guard and the regiment to have intakes over three or four years. That is still progressing and if it is a shortage has occurred because of the two 82-footers that came down—the Ministry is doing a survey right now and looking at our manpower requirement and I will have to go back to Cabinet to seek an increase, but it would not happen

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immediately, it is something that would be projected perhaps in the next financial year.

That being the case, I hope I have answered your questions and the Members understand the reason for this small amendment.

Mr. Speaker, I beg to move.

**PROCEDURAL MOTION**

**The Attorney General and Minister of Legal Affairs (Hon. Ramesh Lawrence Maharaj):** Mr. Speaker, I beg to move that notwithstanding the hour, this House continue to sit until the completion of this Bill and for us to seek leave to withdraw the Bill to amend the Corporation Tax Act and to continue Bill No. 5 on the Order Paper.

*Question put and agreed to.*

**DEFENCE (AMDT.) BILL**

*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 to 4 ordered to stand part of the Bill.*

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

*House resumed.*

*Bill reported, without amendments, read the third time and passed.*

**7.50 p.m.**

**CORPORATION TAX (AMDT.) BILL**

**(WITHDRAWAL)**

**The Attorney General and Minister of Legal Affairs (Hon. Ramesh Lawrence Maharaj):** Mr. Speaker, before the hon. Minister of Agriculture, Land and Marine Resources gives way, can I seek leave of the House in respect of Bill No. 4 entitled, "An Act to amend the Corporation Tax Act, Chap. 75:02." Mr. Speaker, the measures contained in this Bill were also contained in the Financial (Miscellaneous Provisions) Bill which we dealt with a few days ago. In those circumstances, it is really a duplication and, therefore, I seek leave to withdraw this Bill under Standing Order 61.

*Bill, by leave, withdrawn.*

## ARRANGEMENT OF BUSINESS

**The Attorney General and Minister of Legal Affairs (Hon. Ramesh Lawrence Maharaj):** Mr. Speaker, before the Minister of Agriculture, Land and Marine Resources gives way, by agreement, there is a Senate Amendment to Motion No. 2.

*Agreed to.*

## EDUCATION (AMDT.) (NO. 2) BILL

## Senate Amendment

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

That the Senate amendments to the Education (Amdt.) (No.2) Bill, 1999 listed in the appendix, be now considered.

*Question proposed.*

*Question put and agreed to. .*

*Clause 7.*

*Senate amendment read as follows:*

7	Delete the clause and renumber subsequent clauses.
Renumbered Clause 8	In the penultimate line substitute the word “affirmative” for the word “negative”.

**Mrs. Persad-Bissessar:** 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.*

## AGRICULTURAL SMALL HOLDINGS TENURE BILL

*Order for second reading read.*

**The Minister of Agriculture, Land and Marine Resources (Hon. Trevor Sudama):** Mr. Speaker, I beg to move,

That a Bill to reform the law with respect to tenure and occupation of small holdings used for agricultural purposes by private and state-regulated bodies; to regulate the relationship between landlord and tenant in respect of such holdings, and for other related matters, be read a second time.

The Agricultural Small Holdings Tenure Bill that is before us seeks to achieve a number of things. It seeks to promote agricultural land management and administration in Trinidad and Tobago. It seeks to provide statutory protection to the relationship of landlord and tenant of agricultural holdings of 20 hectares or less. It seeks to cover land belonging to private individuals, statutory boards and corporations, for example, Caroni (1975) Limited, and to provide security of tenure that can be used by the farmers as collateral to obtain loans for agricultural projects from institutions such as the Agricultural Development Bank (ADB).

Current land tenure practices in a large number of cases make it difficult for lands to be used as collateral to access credit for farming. The Bill also seeks to repeal the old Agricultural Small Holdings Tenure Act and the Agricultural Contracts Act, regarded as inadequate, outdated and cannot be rationalized in the face of changing global, economic and agricultural trends. It seeks to provide a dispute resolution mechanism and a disposition of land belonging to state-regulated bodies to small-scale farmers.

However, the Bill does not cover state agricultural land, which is subject to standard agricultural leases. The need for statutory provisions was seen as necessary as against the reliance on common law provisions. It will also enable transactions to take place more expeditiously, and with fewer recourses to the court. For years it was felt that the existing law did not adequately meet the needs of the stakeholders. It did not provide the kind of security of tenure and the certainty associated with it, that the tenants of small agricultural holdings needed.

Landlords also felt that the law was written in favour of the tenants who, once in possession of a parcel of land, could only be evicted with the greatest difficulty and that this unduly restricted rights of ownership. The time had come to bring legislation into the 21<sup>st</sup> Century to reflect a less restrictive interplay of market forces in determining the rental and other values of agricultural land. There was also the need to make provision for remedy for breaches of the tenancy agreement.

The following guidelines were applied to the drafting and preparation of a revised Agricultural Small Holdings Tenure Act. The purpose of this Bill before us was to provide a standard body of law to which landlords and tenants could look, in interpreting and enforcing leases. The Agricultural Small Holdings Tenure Bill before us should establish norms which would apply to all leases which come under the purview of this Bill. Legislation must include the legal requirements of lease formalities that need to be observed in creating a valid lease, and restrictions and dispossessory proceedings must also be included in the new Act.

The issues of assignment in subleasing must also be dealt with as well as arbitration and the circumstances under which disputes between landlords and tenants should be dealt with in special courts.

In 1998, when the first draft of the Bill was put out for public comment, statements were received from Caroni (1975) Limited, among others. Other institutions which commented were the Agricultural Development Bank; the Agricultural Society of Trinidad and Tobago, the Horticultural Society; and the Valuers Association of Trinidad and Tobago, as well as certain farming groups.

The comments were reviewed and, where found acceptable, appropriate amendments were made to the draft provisions. In September 1998, the revised draft of the Bill went to the Chief Parliamentary Counsel and subsequently to the Legislative Review Committee. At this stage the issue of compensation payable to aggrieved parties was raised. This is a new concept. As a common law, compensation for damages to agricultural land was minimal if it existed at all.

The Bill would also facilitate the distribution of land, particularly of large state landholders like Caroni (1975) Limited, and will play a significant part in the divestment exercise about which we have spoken. Some of Caroni's main concerns with the earlier draft—which have been addressed—was on the issue of statutory tenancies being created when a tenant held over or remained in possession after the expiry of the term of tenancy, and the issue of what length of tenancy term should be the focus of registration under the legislation.

### **8.00 p.m.**

With respect to the former concern, a tenant can hold over only for the length of time it takes him to reap his crops or for a six-month period, whichever is more reasonable. The second concern was dealt with by leaving it up to the parties to mutually agree as to the term of tenancy and not have the legislation stipulate.

One other interesting aspect of the legislation is the provision that all disputes arising out of the relationship of landlord and tenant can be taken to the land tribunals being set up under the recently passed Land Tribunals Act. An aggrieved party can still go to the Magistrates' Court for an eviction order or to the High Court for damages to be assessed as a result of a tenant remaining in possession, but all other matters may be brought to the land tribunals for a speedier and more efficient disposition.

I want now, Mr. Speaker, to address briefly the issue of some major differences between the proposed Agricultural Small Holdings Tenancy Act and



the existing legislation. The type of land that the existing legislation covered was called agricultural land and meant any arboreal plantation, banana land, cane land, market garden land or rice land. The new legislation covers any land used in the practice of agricultural husbandry, therefore it would include land used for horticulture or land let for the practice of agricultural projects such as aquaculture.

On the issue of security of tenure, the existing legislation provides for the term of the tenancy, which depends on the type of agriculture to be carried out, and the term could never be shortened. With the new legislation the parties can fix any mutually agreed term. In the existing legislation a tenant was statutorily entitled to a renewal for a light term and similarly at the end of an extended term. This constituted some hardship for the landlord. The new legislation has removed the statutory entitlement which could have continued *ad infinitum* and the new proposed legislation now provides for the tenant to exercise his option to renew within the time stipulated in the contract. The contract of tenancy is deemed to have been terminated on the date of the expiry of the contract. A new provision is that the landlord, upon expiry of the term, shall not evict a tenant until the tenant is given time to reap his crops or complete his agricultural project, for example, an aquaculture project, or the parties have agreed to compensation or for a period of six months after a period of six months has elapsed. Either party can go to the tribunal if there is failure to agree or an extension is required.

Mr. Speaker, a practice, which is very common in Trinidad and Tobago today, is for an owner to let a party into possession of a small holding for agricultural purposes without any written instrument regarding this relationship. Such an arrangement under the new legislation will be deemed to be a contract of tenancy from year to year or month to month, depending upon how long the tenant was given to be on the land. In the new legislation the term “practice of good husbandry” has been updated to the use of good agricultural practice. Included in the definition is the practice of soil conservation techniques to prevent soil erosion, the extent and use of toxic chemical substances for pest and disease control and whether methods used are commensurate with maximum economic gain and environmental sustainability.

A great part of the existing legislation is devoted to the establishment of the agricultural tribunals, the powers, duties and appeals of pieces of legislation. Presently, agricultural land disputes are taken before the three agricultural tribunals set up in the Magistrate districts of north, south and Tobago, which are headed by the senior Magistrate of each district. Matters that come before the tribunals are usually delayed as, of course, with the workload of the Magistrates

and so on, these matters have to be dealt with in conjunction with other magistracy duties. However, as at February 1999, 37 matters were before these agricultural tribunals. The Tobago tribunal had not been functioning since 1993 and the chairman has only been appointed last year. With respect to the new legislation, all disputes can be brought before the new land tribunals being established, as I said, under the recently passed Land Tribunals Act.

On the issue of compensation, Mr. Speaker, this was not dealt with in the existing legislation but it was felt that because compensation for agricultural damage was non-existent or very minimal in common law, that some statutory provision and force should be given to this matter. Most of the issues on assignment and subletting are similar in both pieces of legislation. One innovative provision of the new legislation should be noted here. If any party intends to leave Trinidad and Tobago for a period exceeding six months, he or she must appoint an agent to represent his or her interest as this avoids the problem of absentee landlords and tenants.

The proposed Bill is divided into seven Parts and I will briefly indicate the contents of these Parts. Part I deals with preliminary matters and includes a definition section as clause 2. Phrases such as “contract of tenancy”, “good agricultural practice” and “small holding” are some of the terms given meaning and definition under the legislation. Part II makes provision for the tenure and duration of tenancies. Clause 5 deals with the term of the contract to which the Bill applies, that is, any term agreed to by the parties.

Clause 8 provides that when a tenant remains in possession beyond the date of expiry of the term of the tenancy, either the landlord or the tenant can apply to the land tribunal for a determination of extension of the six-month period that is allowed under clause 7. Clause 9 provides for a tenancy to be implied where a person is let into possession and occupies a small holding for a period of one year. The contract shall be deemed as a tenancy from year to year and for a period less than one year as a tenancy from month to month.

Part III, consisting of clauses 10 to 16, deals with the operational rights and the obligations of the parties to the contract of tenancy. The format and content of the contract are dealt with. Key clauses such as an option to renew and what denotes good agricultural practice are given prominence. The issue of registration is also covered. Part IV, with clauses 17 to 19, deals with the issues of assignment and subletting. Any assignment of the tenancy cannot be done without the consent of the landlord and such consents cannot be unreasonably withheld. Part V,

consisting of clauses 20 and 21, deals with the determination of the contract of tenancy by the landlord without notice or by a notice to quit where the prescribed circumstances exist.

Part VI, covering 16 clauses, deals with the issue of compensation to either party of a contract of tenancy. These clauses dictate the extent of recoverable damages as in clause 23, for example, and assessment by the tribunal is in clause 24. The other issues dealt with are, a measure of short-term or long-term improvements, the consequences of failure to obey the awards as in clause 36 and the award being a registered charge on the small holding as is dealt with in clause 38. Part VII deals with miscellaneous provisions. Clause 39 provides that an aggrieved landlord may recover damages in High Court for loss resulting from the neglect or refusal to deliver possession while clause 40 provides for an eviction order to be brought in the Magistrates' Court. The Bill also seeks to repeal the existing Agricultural Small Holdings Tenure Act, Chap. 58:53 and the Agricultural Contracts Act, Chap. 63:50.

The Agricultural Contracts Act, enacted in 1925, was an elaborate, unwieldy and seemingly unilateral piece of legislation whereby a person called a contractor would enter an agreement to be let into possession of a parcel of land by an owner for the purpose of bringing the land so let into cultivation or for extending cultivation on the land in accordance with the terms of an agreement. It covered all such agricultural agreements except those relating to the cultivation of sugar cane. There was no security of tenure for these types of contracts. The contractor was totally at the mercy of the owner as the contract denoted what type of plants could be cultivated, within what time frame, how many drains had to be dug and the pruning and trimming of trees could not be done except with the permission of the owner in writing and under his discretion. At the end of the contract period the contractor had to pay the owner a stipulated sum for any missing tree.

It is no wonder that persons have stayed away from the use of this statutory contract over several years and, therefore, Mr. Speaker, we feel that this law should be taken off the book. The new legislation also provides in the Schedules a complete contract of tenancy, a model that can be used as a specimen by the parties, notices to quit by either party and lists, pursuant to clause 29, as to what constitutes long-term or short-term improvements for which a tenant would be compensated.

Mr. Speaker, the rationale for bringing to Parliament and proposing this new Bill is to promote and regulate tenure and occupation of agricultural holdings of private individuals and state-regulated agencies below the statutory limit of 20

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hectares. The institutional and legislative reform that is hoped to be achieved by this Agricultural Small Holdings Tenure Bill is expected to significantly contribute to the establishment of a more facilitative system for transactions in agricultural land and would be more attractive to the private sector and to create a system of tenure with more balance and greater equity between the rights of landlord and tenant. Mr. Speaker, I beg to move. [*Desk thumping*].

*Question proposed.*

**8.15 p.m.**

**Mr. Kenneth Valley** (*Diego Martin Central*): Mr. Speaker, this legislation seems to be taking away the right of the individual to contract on his own; this legislation seems to be making it mandatory for landlord and tenant with respect to small agricultural holding to be bound by the legislation and while there is no requirement in the legislation that it would be passed by the specified majority. I draw your attention to clause 14 of the legislation. First of all, the Explanatory Note states clearly:

“Clause 14 would prevent the parties from contracting outside of the Act.”

Mr. Speaker, we are aware that our Constitution provides for the right to property and to deal with our property in any way we see fit. This clause seems to be interfering with that. When we look specifically at the legislation, clause 14 says:

“...any term in a contract of tenancy whereby the tenant or landlord purports to contract out of this Act, or the effect of which would be to contract out of this Act, is void.”

I have had discussions behind the Speaker’s chair with the Attorney General and I think he has given a commitment to look at this. I want to propose that we defer for further consideration of this legislation. There seem to be a number of clauses here that smack of an approach that is, really, contrademocracy. It talks about contracts entered into before this Bill or rather, I should say, contracts which fall under the existing Act would now fall under this Bill. The terms of this Bill are different.

Mr. Speaker, I am wondering if we contracted on certain terms and conditions, it seems to me that those conditions ought to subsist, until such time that the contract is ended. For example, if I entered as a tenant an agreement under the old Act for some period—notwithstanding the implementation of this new Act—I should still have the benefit of the clauses in the old Act, until my

contract comes to an end, and then I have a choice, it seems, either to contract on terms and conditions acceptable between landlord and tenant or use this Bill as default provisions. That is what it seems to me that man must have the right to contract for his property.

Mr. Speaker, there are statutory provisions but they would come into play only as default provisions. In other words, if there is no contract, well, then it is assumed it is implied that the parties would accept the conditions in this Bill, but two parties must be able to agree to anything under the sun with respect to property.

Now, there are some other clauses in this legislation that bother me. First of all, I go to clause 10. There is a suggested amendment to clause 10, which seems to really simply worsen the problem. In clause 10(4) it says that if one fails to register a contract of tenancy within some stipulated period, that person would be punished. It seems to me, again, that perhaps if it is not registered within a particular period then, of course, the Land Tribunal would not take it into consideration. *[Interruption]* I see I am correct.

Mr. Speaker, the original legislation spoke about extension of the time required. The amendment talks about the Land Tribunal not taking it into consideration. So at least the amendment seems to be some improvement on what the original provision stated.

Clause 19 provides for a punishment to a tenant who fails to appoint an agent if he is out of Trinidad and Tobago for a period of six months or longer and a fine of some \$2,000. Again, I do not know. I have a landlord and I am a tenant, that is our business. I cannot understand how the state can get involved in that to say it wants to convict me to pay a fine of \$2,000. I do not understand why we are getting involved in people's business.

Mr. Speaker, I made the point, I think it was last week, that we are seeing this rush to pass legislation, obviously, so that one can go out and say. "Listen, we have passed legislation", but we have to pass legislation that will work. We are doing things here that really do not stand a hope in hell of being implemented.

When one looks at this Bill and you see, first of all, that it is supposed to come into force on proclamation by the President; now one knows that could be one month or 10 years. *[Interruption]* I do not know what the Government intends to do with this Bill.

Clause 20 says:

“A contract of tenancy may, notwithstanding any period of tenancy stipulated therein, be terminated—

(a) by the landlord without notice—”

—on certain conditions. What this is saying, it does not matter what my landlord and I agree to, okay; this Bill would terminate our relationship getting involved in people’s business.

Mr. Speaker, I made the point early this week that we need less and less governance, not more and more, okay. I mean, really, if one is looking at a default provision, fine—who want to rely on this, that is up to them—but allow mankind to make their own arrangements.

Clause 24 deals with compensation and it says:

“Notwithstanding any terms and conditions in a contract of tenancy making either party to the contract liable to pay liquidated damages or a penalty in the event of a breach of contract, neither party is entitled to recover, in consequence of the breach, any sum in excess of the damage actually suffered by him.”

Mr. Speaker, okay, that may be a perfectly reasonable clause, but you cannot stop individuals from agreeing to terms in a contract. If you believe that, listen the landlord would be acting from a stronger position and, therefore, you want to protect the tenant, then you are required to come to the Parliament with a Bill that seeks a specified majority. If we say that is reasonable in the circumstance to offer this level of protection to the tenant, then we would agree.

In spite of the fact, that I know there is a haste to pass legislation to clean up the Order Paper, I want to let the Government know that we on this side are all too willing to clean up the Order Paper, because we know that the Government wants to prepare for election and we want the Government to bring it as soon as possible. *[Desk thumping]* So whatever help we can give you in getting to that election we would, but we want in the interim to pass good legislation. I suggest again that we defer further consideration of this Bill until the Minister can clean it up.

Mr. Speaker, I thank you. *[Desk thumping]*

**8.25 p.m.**

**Mr. Hedwige Bereaux** (*La Brea*): Mr. Speaker, I was waiting to see whether anybody on the other side was coming forward. The Agricultural Small Holdings

Tenure Bill, like the Agricultural Small Holdings Act—usually in legislations of this kind, there is a desire to protect the weaker party in the transaction. The hon. Minister surprised me a bit. I heard him deal with the Praedial Larceny Prevention Bill which was brought and, which will soon be an Act, and I was a bit surprised to hear the change in the tone of the thrust of his argument. On previous occasions, and I quite expected that, he would move on the side of the weaker party. But here today, I noted that he seemed to be more concerned with the side of the landowner. That surprises me, Mr. Speaker, because in most instances we find that the weaker party is usually the tenant.

I expected him to deal with some more protection for the tenant, but what he came here with today was more a question of tenants, because of the nature of the various rights to renew the tenancy, using the agricultural leases to make the land—when the landlord rents the land, the way in which the Agricultural Small Holdings Act is structured, it makes the landlord almost unable to get back his land. Nobody wants to be in that position, Mr. Speaker, but also, one realizes that unless there is some security of tenure in respect of agricultural small holdings, one will, in effect, destroy agriculture by persons less able to own land.

Take, for instance, if one is speaking about cane land. There is a certain ratoon period, so if one has cane land, one cannot have cane land for a year. All one does is plant canes now and somebody else will benefit from the ratoon period. The previous Act sought to deal with that to some extent. I am not so sure that he has explained fully what will happen. Let us say that one has a tenancy today, which would normally be 12 years or what have you. That tenancy, from what I gather, would now immediately change, and I think it would become a tenancy from year to year. I am not too certain on that, but I would like his explanation.

So, Mr. Speaker, it seems we have gone the other way around. We have not looked at another thing and I thought he might have looked at it in the Bill. Normally, when landlords try to get rid of tenants, what they do is raise the rent. I have heard of all the things that can be done by landlords in order to prevent tenants from staying on the land, and I am not hearing any effort made to ensure that the rent is not raised in a manner that is unconscionable so as to get the tenant out.

Like my colleague, the Member for Diego Martin Central, I have a serious problem with some of the points raised in this Bill. I am going to move from one to another, but let us look at clause 18:

“(1) A tenant shall not sublet a small holding without the prior written consent of the landlord.

(2) The consent referred to in subsection (1) shall not be unreasonably withheld.”

I know, to some extent, there is a definition of what is unreasonable, but I would have preferred to see some kind of listing of what could be considered unreasonable. Normally, in contracts, one would put to a tenant of good reputation and financial backing, standard in terms of agriculture, as it is an agricultural holding.

The other question—and I think this is totally unacceptable and should not find itself in the legislation—is clause 19(1) that was referred to by the Member for Diego Martin Central. It reads:

“Whenever a tenant intends to leave Trinidad and Tobago for any period exceeding six months, he shall—

- (a) appoint an agent...
- (b) inform the landlord, in writing, of his intention to leave and his agent's name and address; and
- (c) forward to the landlord concomitantly with the information referred to in paragraph (b), the agent's letter consenting to be the tenant's agent.”

Then, here comes the blow at 19(2):

“A tenant who contravenes this section shall be liable upon summary conviction to a fine of two thousand dollars.”

I have a contract with the person, I am a tenant in respect of land, I breach the contract, I have now committed an offence. We are creating a criminal offence for this? Are we now becoming a communist state, Mr. Speaker? Please, where are we going? I want to appeal to the hon. Attorney General and the hon. Member for Caroni East, and the hon. Member for Siparia and ask them, where does a breach of a tenancy agreement now become a crime?

What is going on in this country? If one has a conviction, it is a conviction that would hamper one from jobs and a number of other things. What is criminal in failing to appoint an agent? This is slavery! This is worse than indentureship, and the Member should know. His foreparents were indentured and he is putting back some of the same people into indentureship.

**Mr. Sudama:** This is stupid!

**Mr. H. Beraux:** Not stupid! What is wrong with you? Mr. Speaker, where on earth is the juristprudential basis for this? It cannot be! This is a disgrace on



the statute books. An offence! I want you all to understand. Politics is one thing, but I am saying, here is a situation where somebody has rented some land. For some reason or another, he goes away, has not appointed an agent, we do not say that insofar as that is concerned, there is breach of the covenant and, as such, the landlord is entitled to take back the property. No, we do not say that. We do not say he is entitled to pay double or triple rent. We go and say, Mr. Speaker, that he has committed an offence. What moral turpitude, what danger to the community has he committed? I am strongly opposed to this. It cannot happen! One has to stop somewhere.

Look at something, Mr. Speaker. One has a debt in the bank and one does not pay the debt. What can the bank do? One goes away and comes back, one is sued by them, they collect one's money and, if one has property, it is taken. They do not say that one has committed an offence. I am appealing to all that is decent on the Members of the other side, because this is ridiculous. People owe millions and they do not pay. Of course, it becomes a civil liability. I do not like to criticize public servants, but any lawyer who did this should be jailed, because that is a criminal act. I make no apologies for saying it. They should be jailed!

Mr. Speaker, there is crime and there is a civil liability. Criminal responsibility and a civil liability, the two things are separate. I have heard no explanation as to why not, just failure. It is not like failing to report an accident. It is not like failing to take care of a child who is in one's care and custody. This is just failure to appoint an agent.

Quite frankly, I am ashamed of the Member for Oropouche. I have my difficulties with him, but I never expected this from him. I expect him to be the champion of the tenant, and even if he is not the champion of the tenant always, I expected him—when he came with the Praedial Larceny Prevention Bill, although I had difficulty with it, it appeared to be typical of him, but look at this! It cannot be.

Mr. Speaker, as I say, I condemn this thing strongly, because every single principle in respect of what law stands for and what is criminal in law and non-criminal, this crosses all those boundaries. How could we justify this? What is the mischief which is so grave that causes one to make a criminal of a person when the only thing that person has done is fail to appoint an agent? He goes away for six months, maybe comes back in the seventh, and he is convicted.

**Dr. Griffith:** You are not making sense. You are a big lawyer!

**Mr. H. Breaux:** You do not worry with that. Just give me a chance.

**Mr. Speaker:** I suggest that you not be tempted. Just continue to make your contribution.

**Mr. H. Breaux:** Mr. Speaker, I am speaking to you. The person who spoke to me is the Member for Arima and we know how sensible he is. He is a brilliant man, but I am speaking a little above his level. I am really concerned about this. We go down to the other one: “Determination of contracts of tenancy”, which states.

“A contract of tenancy may, notwithstanding any period of tenancy stipulated therein, be terminated—

(a) by the landlord without notice—”

Here is what he could be terminated for:

“(i) where the tenant is convicted of—

(A) larceny of agricultural produce and livestock;

(B) being in possession of agricultural produce or livestock stolen or unlawfully obtained; or

(C) malicious damage to the property of the landlord.”

I agree with (C), Mr. Speaker, but in order for (A) and (B) to be valid, it is my view that it should be in respect of the property of the landlord, or in respect of bringing stolen property onto the rented property.

**8.40 p.m.**

It cannot be if you go to Toco—as bad as stealing may be—and steal up there and you are convicted, but is renting land in Chaguanas, and they say because you are convicted up there, and it is agricultural produce, your tenancy is terminated. I do not think that you can carry it that far—

“...additionally of unlawful possession in that area.”

You may want to say: “if in the terms of clause 18(2): “...not unreasonably withholding an assignment.” If a man has been convicted of stealing or unlawfully receiving agricultural produce, and somebody comes and says: “I want to assign my agricultural tenancy to you” a person could say “ole tief, tiefing agricultural produce, ah doh want you”. But in respect of saying that you are going to terminate his tenancy here, and stealing is not with respect to the landlord or landlord’s property. You do not want to have a man renting next to you, and stealing from you, or in the area and bringing stolen property on your

premises or facilitating stealing in the area. You do not want something like that but there has to be some proximity. There has to be a question of, what we say in contract law, privity of contract. There must be some kind of privity involved.

Clause 20(1)(ii) states:

“where the tenant sublets or assigns a small holding without the consent of the landlord previously obtained in writing.”

I think that is a fair measure, Mr. Speaker.

Clause 16 states:

“The landlord of small holding or any person authorized by him may—

- (a) after serving one day’s notice; or
- (b) in a natural disaster or civil strife, without notice,

enter upon the holding or any part thereof for the purpose of fulfilling any obligation of good management or for making any inspection thereon that may reasonably be required for the purposes of this Act.

“The landlord after serving one day’s notice”—

—the power of re-entry. I think although the marginal note has no legal bearing on the Bill itself, the landlord’s power of re-entry—we normally call that “re-entering and taking possession of”—is more like the landlord’s power to enter the premises for the purpose of taking care of it. I am in support of that particular measure, Mr. Speaker. As I said earlier, it would seem that this Bill is more to see about the landlord, as opposed to the tenant.

Clause 24 which was also referred to, and which also has a legal problem states:

“Notwithstanding any terms and conditions in a contract of tenancy making either party to the contract liable to pay liquidated damages...”

I am going to deal with liquidated damages first. Liquidated damages is a genuine pre-estimate by the parties of a contract, as to the damages which would flow from a breach. It follows, as you know, you cannot tell me if both parties sit and determine that as a result of “X” breach, you will pay so much money, and now you are saying you cannot collect it, once it is liquidated damages.

If you tell me there is a figure of penalty and you cannot collect that penalty, you are only entitled to recover the money you have actually lost for the damages

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you have suffered, I say fine, a penalty in law is not recoverable anyhow. So let us scratch out penalty or take off liquidated damages and leave penalty. But you cannot say if the parties to a contract get together and decide that there is a sum which will be paid, in the event certain events occur, it is really not the province of legislation to interfere with that. Mr. Speaker, when we put these things into an Act of Parliament, we need to have very good reasons for doing it and say why is that required.

Let us look at clause 22(2) which states:

“Where the tenant of a small holding receives notice to quit and neglects or refuses to deliver up possession accordingly, the landlord may, by action of the High Court, in addition to an order for eviction, recover from the tenant, damages for the estimated loss resulting in the ordinary course of events, for the neglect or refusal to deliver up possession.”

We are talking about these six-month tenancies and whatnot, and you have six months to reap your crops.

I believe if we are to deal with agriculture, and to encourage agriculture—whereas you need to protect the rights of the landlord—there must be some measures to protect the tenant, otherwise what will happen, you will find shortly a number of persons who were previously renting lands no longer occupy such lands and, in a measure that was intended, to some extent, to help in effect, would not do what it was intended to do.

Now we come to the registration of tenancies. The hon. Minister, when he introduced the Bill, indicated that it was a Bill in order to provide for a place to register tenancies in order to enable parties to use their tenancies as security for a loan. We register titles in Trinidad and Tobago. When one has a deed of whatever, one goes to the registry and puts that registration in. If one has a lease, is the Minister saying that the registration in the office—this registration, I think will take place in the district revenue office—will take the place of registration in the Red House in the Registration of Deeds Department? Is it intended to do that? If that is the case, I think we are still looking at some more legislation in order to regulate that registry. In fact what we are doing is creating a parallel registry and there would be things which need to be done in order to do that.

**8.50 p.m.**

You will register it there and where would you put the mortgage? There is only a registration of tenancies. So when you decide to use your tenancy to

hypothecate or in any way encumber your tenancy, where will that encumbrance be lodged? We only have as I see in the legislation—maybe I have overlooked it—a place for registering tenancies, there are no provisions for registering the encumbrances or releasing such encumbrances or in any way discharging them. So we have to be careful when putting such things on the record that we also look at the other activity that would flow therefrom.

The attempt at providing a draft agreement is a very good idea, it is a draft, but it should not be seen—and I hope it is not—as the agreement, and I expect that if the right people are drawing up these agreements they would eventually seek to put more detail in them from time to time.

It says that you have a tenancy from year to year, but we know there is a law governing tenancies from year to year in Trinidad and Tobago. This Bill has not indicated that it would in any way replace the law as it now stands with respect to tenancy from year to year and notices so involved. Are we to understand that there is provision that an agricultural holding can have a building on it for the occupation of the tenant and any additional building which is used for housing the agricultural activity?

I am seeing nothing here in this Bill about building on agricultural land. I will tell you what can very well happen and what has happened from time to time. You will find persons rent land for agricultural purposes and they end up usually putting one building on it. Sometimes there are those that have no building on them, but usually because of the same praedial larceny, the tenant of agricultural land would find the necessity to put another building on it. That tenant gets old, his son marries and he puts another building on the side. What is the regime that would govern that activity? I am not seeing anything here which suggests that no building will go on it, or only one building will go on it. Is this one of the situations which we are leaving for the parties themselves to come to a decision? Which they very well can, but you are going to have the problem of agricultural land. Is it now considered a breach of provision of the tenancy if a building is on the land and when will agricultural land cease being agricultural land?

Mr. Speaker, at least the effort of bringing the Agricultural Small Holdings Tenure Bill, the law that will govern such holdings to modernize it is fine, but this Bill needs some cleaning up. I am a bit surprised about some of the philosophy behind the Bill in respect to how it has shifted. You know, you have a view of the philosophy of some people and then suddenly you realize they have moved a little. This is not a movement alone. It appears to be a complete about face but,

most importantly, I believe that the provisions of clause 19 of this Bill and, in particular, clause 19(2) are totally unacceptable.

Thank you.

**The Minister of Agriculture, Land and Marine Resources (Hon. Trevor Sudama):** Mr. Speaker, I will be brief because when I listened to the contributions on the other side, two things came to my mind and they are: I do not think they read this Bill, and secondly if they did read it they did not understand what the import of this Bill is trying to achieve.

I have to raise some fundamental questions here. The Opposition seems to be questioning the whole basis of law as if the Government has no authority to make law and everything should be a free-for-all and we should deal with everything by contracts and agreement between one another. I want to tell you that law is promulgated mostly to regulate the relationship between people and organizations. If you are saying that we should have no law to regulate relationship between landlord and tenant and let it be a free-for-all, then you are saying we should repeal this Act.

When this Act was originally established and passed, there seemed to be a need to regulate that relationship, because if you do not, the very same intention that you have to protect the weaker from the stronger, if you do not regulate, then obviously the person with more money who is most likely to be the landlord would be in a stronger position in an unregulated environment.

Sometimes when you listen to those on the other side it sounds as though landlords have no rights. We are saying that the duty of a government is to look at what is happening in the society and if there is need to correct an inequity, the Government should do so, but it also has a duty under existing law to protect the rights of all, including landlords. If they want to take away the rights of landlords, they must go to the public and say so.

This Bill is to clarify the rights and regulate the relationship between landlord and tenant so when you get into this environment—this is why the Bill was originally put in place, because it was felt that in a free-for-all, one party is more likely to be disadvantaged. Therefore, when you enter into contract, you are entering into the leasing or tenancy of a small holding on the knowledge that there is a certain amount of certainty on which you are contracting and your rights and obligations are defined in this and you have recourse to a tribunal or a court, and this is what this Bill is all about.

Mr. Speaker, the Member for Diego Martin Central says we are taking away the rights of an individual to contract on his own. We are not taking away his rights. The individual enters into a contract for whatever duration because it is not stipulated here, and in that contract there are certain rights and obligations. If you do not have that, every time there is a dispute you will have to go to the court to determine your rights and obligations. For every area of dispute, that would have to be done. We thought in bringing this legislation, we were giving a greater deal of flexibility to the issue of contracting between landlords and tenants.

Mr. Speaker, I think there are a number of misunderstandings here and I want to emphasize a point which relates to agriculture and agricultural production. One of the key factors of production in agriculture is the usage of land and the flexibility in the transferring of land. One of the reasons obligations have to be satisfied, and landlords have to have their rights protected, is that there could be a situation where a tenant is on the land, not engaged in good agricultural practice, allow the holding to run down, engaging in things, environmentally degrading activity, all sorts of things. The landlord's property loses value and yet at the end of the day, because of the conditions of the previous Act, you could not evict him. He would say I have a 25-year-old tenancy, you cannot do me anything under this Act, and when time comes for renewal he gets another 25-year tenancy and at the same time there is no flexibility, no right of the landlord to have his property to put to other proper agricultural usage.

#### ADJOURNMENT

**The Attorney General and Minister of Legal Affairs (Hon. Ramesh Lawrence Maharaj):** Mr. Speaker, I beg to move that this House do now adjourn to Friday, May 12, 2000 at 10.30 a.m.

We will complete the debate on the Dangerous Dogs Bill, the DNA Bill and also this Bill. We have the Dangerous Dogs Bill and the Judicial Review Bill and we will do the Motion on the Order Paper dealing with the rules of the Supreme Court.

*Question put and agreed to.*

*House adjourned accordingly.*

*Adjourned at 9.05 p.m.*