

Leave of Absence

Friday, October 13, 2000

HOUSE OF REPRESENTATIVES

Friday, October 13, 2000

The House met at 1.30 p.m.

PRAYERS

[MR. SPEAKER *in the Chair*]

LEAVE OF ABSENCE

Mr. Speaker: Hon. Members, apart from those Members who have already got leave of absence, I have received communication from the Member for Ortoire/Mayaro and the Member for San Fernando East who have asked to be excused from today's sitting. In the case of the Member for San Fernando East, it is from today's sitting that he has asked to be excused and, in the case of the Member for Ortoire/Mayaro, it is for a further period of five days from the 13th, which is today. The leave of absence which they seek is granted.

PAPERS LAID

1. Report of the Auditor General on the accounts of the National Lotteries Control Board for the year ended December 31, 1997. [*The Attorney General and Minister of Legal Affairs (Hon. Ramesh Lawrence Maharaj)*]
2. The Betting Levy Board Administrative Report for the period November 1989 to June 30, 1990. [*Hon. R. L. Maharaj*]
3. The Betting Levy Board Administrative Report for the year ended July 01, 1990 to June 30, 1991. [*Hon. R. L. Maharaj*]
4. The Betting Levy Board Administrative Report for the year ended July 01, 1991 to June 30, 1992. [*Hon. R. L. Maharaj*]
5. The Betting Levy Board Administrative Report for the year ended July 01, 1992 to June 30, 1993. [*Hon. R. L. Maharaj*]
6. The Betting Levy Board Administrative Report for the year ended July 01, 1993 to June 30, 1994. [*Hon. R. L. Maharaj*]
7. The Betting Levy Board Administrative Report for the year ended July 01, 1994 to June 30, 1995. [*Hon. R. L. Maharaj*]
8. The Betting Levy Board Administrative Report for the year ended July 01, 1995 to June 30, 1996. [*Hon. R. L. Maharaj*]

Papers Laid

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9. The Betting Levy Board Administrative Report for the year ended July 01, 1996 to June 30, 1997. [*Hon. R. L. Maharaj*]
10. The Betting Levy Board Administrative Report for the year ended July 01, 1997 to June 30, 1998. [*Hon. R. L. Maharaj*]
11. The Betting Levy Board Administrative Report for the year ended July 01, 1998 to June 30, 1999. [*Hon. R. L. Maharaj*]

Papers 1 to 11 to be referred to the Public Accounts Committee.

**AMPLIFIED SOUND
(WOODFORD SQUARE)**

Mr. Speaker: Hon. Members, I wish to advise that when I learnt there was going to be activity in Woodford Square, I indicated there was to be no amplified sound while this House was in session. This has been brought to the notice of the authorities and, notwithstanding that, I am hearing amplified sound, which makes it difficult for me to concentrate on what is being said.

In the circumstances, this sitting is going to be suspended while this matter is looked into and we will not resume until such time as that sound is silenced. The sitting is suspended, in the first instance, for 20 minutes.

1.37 p.m.: *Sitting suspended.*

2.05 p.m.: *Sitting resumed.*

**CARONI (1975) LIMITED
(RUM DISTILLERY DIVISION)**

The Minister of Agriculture, Land and Marine Resources (The Hon. Trevor Sudama): Mr. Speaker, I wish to present a comprehensive status report on the Government's efforts to engage private sector participation in the operations of Caroni (1975) Limited, with special reference to the rum distillery division.

Over the last few months, several spurious allegations of irregularity, corruption, and favouritism have been made by the Opposition, and others, with regard to action taken to implement Government's published policy of seeking to induce the private sector to invest in the operations of Caroni (1975) Limited. I trust that this statement will put these allegations to rest.

Mr. Speaker, in an effort to achieve sustained viability of Caroni (1975) Limited, Government agreed, in April 1999, to transform the company into a

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holding company with subsidiaries, and to appoint a technical team of government officials to prepare an implementation plan for the phased private sector participation in the operations of the subsidiaries of Caroni (1975) Limited. The team engaged Caroni (1975) Limited's auditors, Ernst & Young to provide consultancy services, and DeNobriga Inniss and Company, to undertake an assessment of the legal work that might be required.

In order to conform with the Government's policy of openness, transparency, and accountability, and to ensure that the plan was comprehensive and took into account the views of all stakeholders, the team met with each of the representative unions of Caroni (1975) Limited, and the cane farmers' organizations for wide ranging discussions.

On July 21, 1999, the plan was accepted by Government, with the team being constituted as the Project Management Team. It was mandated to implement the plan. Broadly speaking, Mr. Speaker, the plan was divided into two major phases. Phase I required a study to be undertaken to identify:

- (i) the business units in Caroni (1975) Limited that, from a strategic perspective, could operate on a stand alone basis and to be termed "strategic business units";
- (ii) the assets and liabilities of the strategic business units;
- (iii) the employees attached to each of the strategic business units; and
- (iv) the projected income and expenditure of the strategic business units.

The team was required to prepare business plans for each strategic business unit identified. Phase II of the plan envisaged incorporation of the strategic business units identified in Phase I, as subsidiaries of Caroni (1975) Limited, with 49 per cent of Caroni (1975) Limited's interest in the subsidiaries being offered to perspective equity joint venture partners, who were prepared to:

- (a) maintain staff levels for three years;
- (b) expand the business of the subsidiaries;
- (c) create employment opportunities; and
- (d) develop the community and provide state-of-the-art technology.

Pursuant to Phase I of the plan, Ernst & Young, in consultation with Caroni (1975) Limited, reviewed the operations of the company and identified eight

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strategic business units which, in their view, could operate on a stand alone basis. These are: rice, citrus, rum distillery, dairy, beef, sugar cultivation, sugar processing and sugar refining.

Ernst & Young identified the assets, liabilities, and staff of these eight strategic business units and, in consultation with the management of Caroni (1975) Limited, prepared revenue and expenditure projections, and business plans for each unit, based on the assumption that these eight strategic business units were to operate, as I said, as stand alone businesses.

On completion of Phase I of the plan, the Project Management Team reported and made recommendations, to Government based on its findings through the Ministry of Finance, Planning and Development.

On October 06, 1999 Government mandated the Project Management Team to commence Phase II of the implementation plan which included, *inter alia*, preparation of a work programme with respect to the divestment of 49 per cent of the shareholding in three strategic business units, namely,

- (i) the rice project, the citrus project, and rum distillery;
- (ii) incorporation of the above three strategic business units as subsidiaries of Caroni (1975) Limited;
- (iii) engagement of an investment banker to invite bids from potential investors for private sector participation in the subsidiaries; and
- (iv) identification of preferred investors in the subsidiaries, based on their participation in up to 49 per cent of Caroni (1975) Limited's interest in the three subsidiaries and, in accordance with criteria set by government with respect to:
 - (a) maintenance of the employment levels of each of the three subsidiaries for at least three years;

2.15 p.m.

- (b) rental of the lands currently used by the strategic business units to the subsidiary;
- (c) investment commitments to the subsidiary; and
- (d) creation of jobs and maintenance of all union agreements.

Pursuant to Government's decision of October 6, 1999, an investment banker, Citicorp Merchant Bank Limited, was engaged after a process of competitive

bidding. Citicorp was charged with ensuring that the bid process for private sector investment in the three subsidiaries met the highest standards of fairness, transparency and accountability. Accordingly, Citicorp carried out the following functions:

- (1) In consultation with Ernst & Young, Caroni (1975) Limited and the Divestment Secretariat of the Ministry of Finance, Planning and Development, Citicorp prepared an information memorandum giving the background and particulars of each of the subsidiaries. The business plans, financial forecast and statement of affairs prepared by Ernst & Young during phase one of the implementation plan, also formed part of the information memorandum.
- (2) Citicorp placed advertisements for four days in three local daily newspapers beginning January 11, 2000 inviting proposals from prospective investors in the three subsidiaries. In addition Citicorp sent letters soliciting interest to investors both locally and in Guyana.
- (3) Citicorp received all the expressions of interest from prospective investors, and was responsible for distribution of the information memorandum to prospective investors after such investors signed a confidentiality agreement.
- (4) Citicorp coordinated the due diligence exercises which were an option open to all interested investors.
- (5) Citicorp received and coordinated the opening of the bids, and, subsequently, undertook a preliminary evaluation of the bids for the project management team.

I wish to particularly emphasize that prior to the publication of the advertisements, the project management team met with representative unions of Caroni (1975) Limited and outlined its proposed plan of action. The project management team also encouraged the unions to submit bids for shareholding in any of the subsidiaries created subsequent to the identification of the strategic business units. As it would turn out, however, the representative unions did not submit any bids for any of the subsidiaries.

Mr. Speaker, the above is a background of the steps taken in the preliminary process with respect to the invitation for private sector participation in all three subsidiaries mentioned above. I now wish to turn to the Rum Distillery Strategic Business Unit which became the subsidiary, Rum Distillers of Trinidad and Tobago Limited.

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On Tuesday February 22, 2000, the deadline date for submission of tenders, two bids were received for participation in the rum distillery subsidiary: one of the bids was from Angostura Limited. It should be noted that the statement of affairs included in the information memorandum, which was utilized by the investors to bid for the 49 per cent shareholding in the rum distillery, listed the rum stocks as \$44 million, and a management valuation of total assets at \$72.7 million. This was a preliminary evaluation based on the available records.

Citicorp was responsible for preparing an initial evaluation of the bids for consideration of the project management unit. Having considered the report of Citicorp, the project management unit recommended that Angostura Limited be deemed the preferred bidder. On May 31, Government accepted the broad recommendations of the project management unit, but indicated that although Angostura Limited should be deemed the preferred investor for the rum distillery strategic business subsidiary, the negotiations for the price of the 49 per cent shareholding in the rum distillery subsidiary, Rum Distillers of Trinidad and Tobago Limited, should be guided by a valuation report of its rum stocks, which should be prepared by a rum specialist using the results of a rum count undertaken by Ernst & Young.

I wish to emphasize that the decision to have a valuation report prepared by an independent rum specialist was made by the Government back in May 2000. In order to fulfil the mandate issued by the Government, the project management unit asked Caroni (1975) Limited to vary Citicorp's contract of engagement to allow Citicorp to engage professionals to assist the project management unit with the negotiations for the private sector participation in the rum distillery subsidiary.

Subsequently, Citicorp engaged the services of Ernst & Young, Caroni (1975) Limited's auditors, to undertake a stock count of the rum stocks of the rum distillery subsidiary. After several efforts to identify a rum specialist the project management team decided to secure a high volume rum trader to undertake the valuation of the rum stocks. Three international high volume traders were identified:

- (1) Delevante & Associates of Canada;
- (2) E & A Sheer B. V. of the Netherlands; and
- (3) The Main Rum Company of the United Kingdom.

They were required to submit proposals for the valuation of the rum stocks and an outline of their experience. Two of the above companies: E & A Sheer B. V. and

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the Main Rum Company decided to submit a joint proposal. Caroni (1975) Limited and Angoustura Limited registered no objection to any of the above companies undertaking an independent evaluation.

On August 10, 2000, the project team considered a report and recommendations of a subcommittee, and agreed that the Main Rum Company of the United Kingdom would be the preferred valuer, and Citicorp was instructed to engage this latter company to undertake the valuation of the rum stock of the distillery subsidiary, while Ernst & Young would be responsible for undertaking the stock count on which the valuation would be based.

A few days later, by mid-August, the Main Rum Company commenced the valuation exercise. However, while this exercise was in progress, a report appeared in the *Trinidad Guardian* of September 9, 2000, in which the Opposition leader, Mr. Patrick Manning, claimed that the rum stocks of Caroni (1975) Limited were valued at \$922 million, with details of the number of casks and their respective values. In particular, mention was made of 65 casks of a specialty rum valued at \$315 million, which is more than one third of the total value he placed on all the rum stocks—65 casks at \$315 million.

Mr. Manning claimed that this was the finding of an unnamed valuator. He never proceeded to provide the name of this ghost valuator.

Mr. Imbert: "Why you does lie so?"

Hon. T. Sudama: Mr. Speaker, let me emphasize that access to the rum stocks of Caroni (1975) Limited, for the purposes of valuation, can be had only on the authority of the management of Caroni (1975) Limited. Such authority was given to the Ernst & Young company, officers of the Customs Division of the Ministry of Finance, Planning and Development, and, lastly, to the representatives of the Main Rum Company.

The statement in the newspaper further reported Mr. Manning as saying:

"...the 'Caroni scam' could replace the Airport Expansion Project as the number one corruption project undertaken by the UNC Government."

I want to repeat that:

"...the 'Caroni scam' could replace the Airport Expansion Project as the number one corruption project undertaken by the UNC Government."

Mr. Speaker, we now have in our possession the report of the independent valuation by the Main Rum Company Limited. The report stated, *inter alia*, that

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organoleptic evaluation of 139 samples sent by Ernst & Young has revealed a number of barrels below average quality, some of poor quality, and others of bad quality. Ten out of the 139 samples were considered by the tasting panel to be of unacceptable quality. The report further went on to note that the variations in alcoholic strength between the figures shown by Ernst & Young on the samples and those measured by E & A Sheer B. V. were, in some instances, as much as 15 per cent.

The covering letter from the Main Rum Company stated in the final paragraph as follows:

“We confirm that in our view the value of the 18,533 barrels of aged rum notified to us by Ernst & Young is, at current market prices, TT \$20,489,091.”

I wish to repeat that:

“We confirm that in our view the value of the 18,533 barrels of aged rum notified to us by Ernst & Young is, at current market prices, TT \$20,489,091.”

Hon. Member. Tell that to Reeza! [*Crosstalk*]

Hon. T. Sudama: In light of the above, Mr. Manning’s precipitate and unverified statement, which obtained widespread media coverage—and, of course, I wish they would give this statement similar coverage—could only have been made with the intent of fomenting hysteria about alleged corruption. It was a calculated attempt to create mischief and mayhem, to undermine investor confidence in the country and create obstacles to the process of inviting private sector participation in the operation of Caroni (1975) Limited and, thus, to oppose attempts to make the company viable. It was, by any assessment, an irresponsible and mischievous statement.

Mr. Speaker, I have outlined the process by which the decisions have been arrived at, and the transparency of that process. I have also listed the organizations involved and their role. The statement of the Leader of the Opposition is calculated to impugn the integrity not only of the exercise, but of the members of the organizations involved, whether it is the project management team of public servants, the employees of Ernst & Young, Citicorp or Caroni (1975) Limited and the independent valuers.

Mr. Speaker, I trust that the country is now enlightened on this issue, and this statement should put an end to further speculation on the valuation of the aged rum stocks of Caroni (1975) Limited—that speculation instigated by the Opposition and its leader.

CONSTITUTION (AMDT.) (NO. 3) BILL

Bill to amend the Constitution of the Republic of Trinidad and Tobago [*The Attorney General and Minister of Legal Affairs*]; read the first time.

ARRANGEMENT OF BUSINESS

The Attorney General and Minister of Legal Affairs (Hon. Ramesh Lawrence Maharaj): Mr. Speaker, we had indicated on Monday that we would do the committee stage of the Integrity in Public Life (Amdt.) (No. 2) Bill and the Constitution (Amdt.) (No. 2) Bill. By agreement with the Opposition Chief Whip, having regard to the numbers, we would not be able to do the Constitution (Amdt.) Bill today, but we can do the Integrity in Public Life (Amdt.) (No. 2) Bill.

INTEGRITY IN PUBLIC LIFE (AMDT.) (NO. 2) BILL

Order for second reading read.

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

That a Bill to amend the Integrity in Public Life Act be read a second time.

Question proposed.

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.

Clause 5.

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

Mr. Imbert: Mr. Chairman, is this an attempt to deal with clause 43?

Mr. Maharaj: Yes, and it was put under section 16 where it more appropriately belongs.

Mr. Chairman, I beg to move that clause 5 be amended as follows:

5 Delete. Substitute the following clause:

“Section 16 5. Section 16 is amended by deleting subsection amended (3) and substituting the following subsections:

(3) An enquiry under section 15 or an investigation under Part V may be held in relation to—

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- (a) a person who within the meaning of this Act, ceases to be a person in public life or a person exercising a public function; and
 - (b) a person who was a person in public life under the former Act.
- (4) In this section ‘former Act’ means the Integrity in Public Life Act 1987 repealed by section 43.”

Question put and agreed to.

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

Clause 6.

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

Mr. Imbert: Mr. Chairman, in the context of the Bill, section 7, we were taking out “House of Parliament” and asking the commission to report to the Director of Public Prosecutions. Does this mean that no junior officer of the Director of Public Prosecutions office could institute an investigation?

Mr. Maharaj: Under the existing law, only the Director of Public Prosecutions can issue—it has to be a fiat by the Director of Public Prosecutions.

Mr. Chairman, I beg to move that clause 6 be amended as follows:

6 Delete. Substitute the following clause:

“Section 21 amended 6. Section 21 of the Act is amended by repealing subsection (5) and substituting the following subsection:

(5) No prosecution of an offence under this Act, other than an offence under section 20(5), may be instituted without the written consent of the Director of Public Prosecutions.”

Question put and agreed to.

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

Clause 7 ordered to stand part of the Bill.

Clause 8.

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

Mr. Maharaj: Mr. Chairman, I beg to move that clause 8 be amended as follows:

8 Delete. Substitute the following clause:

“Section 32 amended 8. Section 32 of the Act is amended in subsection (2) by deleting the words ‘two hundred and fifty thousand dollars and a term of imprisonment not exceeding five years’ and substituting the words ‘five hundred thousand dollars and to imprisonment for ten years.’”

Question put and agreed to.

Clause 8, as amended, ordered to stand part of the Bill.

Clause 9.

Question proposed, That clause 9 stand part of the Bill.

Mr. Maharaj: Mr. Chairman, I beg to move that clause 9 be amended as follows:

9 Renumber clause 9 as 11 and introduce the following clauses:

“Section 35 repealed and replaced Protection of information 9. Section 35 of the Act is repealed and the following section and Part Heading substituted:
35.(1) The records of the Commission and any information revealed by a witness or by the production of documents, shall not be disclosed, other than to such extent as may be necessary for the purpose of proceedings in any Court relating to a charge under this Act, Prevention of Corruption Act or any other written law.

(2) Any member of the Commission and any person in the service of the Commission who discloses or attempts to disclose to any person other than a person to whom he is authorised under the Act, any information or evidence received by the Commission under this Part, shall be guilty of an offence and liable on summary conviction

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to a fine of two hundred and fifty thousand dollars and to imprisonment for five years.”

Question put and agreed to.

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

Clause 10.

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

Mr. Maharaj: Mr. Chairman, I beg to move that clause 10 be amended as follows:

10	Section 41	10. Section 41 of the Act is amended by
	amended	deleting paragraph (1)(f).

Question put and agreed to.

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

Clause 11.

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

Mr. Maharaj: Mr. Chairman, I beg to move that clause 11 be amended as follows:

11 (as renumbered) Insert after item 9, the following item:

“10. Permanent Secretaries and Chief Technical Officers.”

Question put and agreed to.

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

Preamble ordered to stand part of the Bill.

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

House resumed.

Bill reported, with amendment.

Question put, That the Bill be now read the third time and passed.

Mr. Maharaj: Mr. Chairman, in the light of the majority needed, we need to take a vote.

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The House voted: Ayes 27

AYES

Maharaj, Hon. R. L.

Panday, Hon. B.

Persad-Bissessar, Hon. K.

Lasse, Dr. The Hon. V.

Griffith, Dr. The Hon. R.

Humphrey, Hon. J.

Sudama, Hon. T.

Maraj, Hon. R.

Rafeeq, Dr. The Hon. H.

Job, Dr. The Hon. M.

Khan, Dr. F.

Singh, Hon. G.

Nanan, Dr. The Hon. A.

Partap, Hon. H.

Mohammed, Dr. The Hon. R.

Ramsaran, Hon. M.

Sharma, C.

Valley, K.

Imbert, C.

Robinson-Regis, Mrs. C.

Narine, J.

Hart, E.

James, Mrs. E.

Bereaux, H.

Joseph, M.

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Hinds, F.

Nicholson, Miss P.

[Cellular phone rings in the Public Gallery]

Mr. Speaker: Do you think you will be able to find it?

Gentleman, you may not be used to this place, but that instrument is not permissible to make that noise in here. Please take it off so we would not have that sound again.

Hon. Members, the result of the voting is 27 for, none against and no abstentions.

Question agreed to.

Bill accordingly read the third time and passed.

ARRANGEMENT OF BUSINESS

The Attorney General and Minister of Legal Affairs (Hon. Ramesh Lawrence Maharaj): Mr. Speaker, the Government would like to proceed with Bill No. 1 at this time which was in progress on the last occasion.

Agreed to.

MISCELLANEOUS LAWS BILL

[SECOND DAY]

Order read for resuming adjourned debate on question [October 11, 2000].

That the Bill be now read a second time.

Question again proposed.

The Attorney General and Minister of Legal Affairs (Hon. Ramesh Lawrence Maharaj): Mr. Speaker, on the last occasion, I was trying to show that notwithstanding the fact that prosecution under this legislation is not on a daily basis, the fact of the matter is that it is on the statute books and there have been prosecutions from time to time. Quite apart from that, it is on the statute books which in effect, institutionalizes in some form, discrimination against the Baptist and Orisa faith.

Mr. Speaker, I had mentioned on the last occasion that at the present time when the Orisa faith, and sometimes the Baptists have to have services under the existing legislation, they have to apply for permission because of the playing of

drums and the use of the musical instruments as part of their religious observances. The mere fact that that is so, I thought it would have attracted the conscience of the Opposition to say that, notwithstanding the fact that they are not daily prosecutions, it is a matter which is an injustice to the Baptist and the Orisa community and even the Rastafarian community and other communities which are affected by it, and on that fact alone it should be supported.

Mr. Speaker, on February 15, 1993 there was an Arima man on an obeah charge and I am reading from the *Trinidad Guardian* which says that an Arima man yesterday appeared before magistrate Mark Wellington charged with practising obeah with intent to intimidate persons. Aaron Jones, 43 from Eastern Main Road, Arima is also charged with endeavouring to obtain \$10,000 from another man by fraudulent means recently. Jones was not called upon to plead as both charges were laid indictably.

Police tendered cutlasses, a garden fork, chain, crosses and other objects as evidence in the matter. Jones was remanded to appear in custody.

2.45 p.m.

These were matters which have been used in the religious procession.

Hon. Persad-Bissessar: When was that?

Hon. R. L. Maharaj: This was in 1993.

After that incident in the Parliament of Trinidad and Tobago, there was a Motion to debate a Joint Select Committee Report on Public Holidays, and the hon. Member for Arouca South—I think it is important for me to put it on record—in response—talked about the PNM administration which gave the holiday for Eid and which gave the holiday for Divali. I do not think we should look at that, because we are not looking at which Government has given holidays. Mr. Speaker, what we are saying is that these are injustices which ought to be corrected.

Mr. Speaker, I would like to put on record that the PNM, in Government, has been against granting a holiday for the Baptist community. In the other place when there was a debate on “Public Holidays”, the PNM’s position was that the Baptist community, as far as they were concerned, March 30 should be declared a public festival to commemorate the listing of the prohibition of the Spiritual Baptist Shouter Movement and that the birth date in June, as far as the Orisa faith is concerned, should be a public festival. And the position of the Opposition then, now the Government, in the Parliament, was that the Baptists should be granted a

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holiday and steps should also be taken for the Orisa faith, at the appropriate time, after discussion, to see whether a holiday should not be given to them as well.

Everything does not happen overnight, and the fact of the matter is that the PNM objected to a public holiday for the Baptist community. As a matter of fact, the PNM said that Arrival Day—which was supposed to be Indian Arrival Day—should be used for the Baptist community because they arrived and everybody arrived; and they say that it should be used also for the Orisa faith because they arrived and everybody arrived. Mr. Speaker, when this Government took office this Government said, “No, that is unfair, Arrival Day is a different day. It is for Indian Arrival Day and Baptist Day is for the day in which the Baptists were liberated.” That is how they got their Liberation Day in the celebration of this holiday. *[Interruption]*

Mr. Speaker: Order, please!

Hon. R. L. Maharaj: Mr. Speaker, March 30, 1951 is the day on which the obnoxious and wicked Shouter Prohibition Ordinance 1917 was repealed. Although that Ordinance was repealed, when that Shouter Prohibition Ordinance was enacted, shortly thereafter there were laws which restricted the Shouter Baptist Movement, and these are some of the laws which have still remained on the statute books. What the late Archbishop Elton Griffith has been asking for, is that these laws be removed. As a matter of fact, this was the struggle for religious and cultural freedom and for equity and justice of the Baptist Faith. We, therefore, should not look at this in the context that there are no prosecutions regularly. The way we should look at it is that we should take steps to have them removed completely from the law books, and that is what we are doing.

Another issue was raised—and it is very unfortunate—in a way which would give the impression that on the one hand, we are trying to solve some of the discriminatory practices against the Baptists, and the Orisa, but on the other hand, the Government was, in effect, discriminating against Nigerian nationals coming to Trinidad and Tobago. This again is untrue. I want to put on record what are the facts.

When this administration came into office it met many laws which were discriminatory, but, obviously, the Government could not deal with all the laws at the same time. This Government met a 1976 law which was passed by a PNM administration, and the Immigration Act and Regulations was passed and the law was amended in 1976, and it is under that law that the Chief Immigration Officer is exercising powers which they say are discriminating against Nigerian nationals.

According to paragraph 1 of Section 9 of the Immigration Regulations of 1976, Chap. 18:01, it states:

“An Immigration Officer may, on granting admission to Trinidad and Tobago of a person, who falls within one of the categories described in section 9(1)(c) to (i) of the Act, require that such person furnish security either in the form of a deposit made with the Comptroller of Accounts or by execution of a bond...set out as Form 2 with one or more sureties, in the discretion of the Chief Immigration Officer, and the amount thereof shall be a sum sufficient to cover the cost of the repatriation and other incidental expenses of such person.”

Mr. Speaker, this is a law administered by the PNM administration from 1976, and it was on the statute books up to the time this administration got there, and it gave to the Chief Immigration Officer, not to the Minister of National Security, not to the Attorney General, not to any member of the Government, but gave to the Chief Immigration Officer, the sole authority to determine whether security bonds and cash deposits should be entered into in order to protect the taxpayers of Trinidad and Tobago.

In the regulations, where the Chief Immigration Officer is given the sole authority for the administration of the security bonds and cash deposits, he, therefore, in the exercise of his authority and responsibility and as the holder of that office from 1976, from the inception of the Regulations, established a listing of countries with the sums required for nationals of each country. That listing and that sum is what has been under the PNM administration. Mr. Speaker, I have the listing with me and it includes two pages of several countries with the amounts. It includes Algeria, Argentina, Austria, Australia, Afghanistan, Angola, Barbados, Barbuda, Bermuda, India, England, Jamaica, Korea, Liberia, and it goes on. It is too long to read—and the amounts.

Mr. Speaker, I know that the Minister of National Security would be making a detailed statement on this matter. But I want to say from the information I have got, that in respect of this listing and the countries and the amounts, these sums have been imposed upon persons and in respect of countries. From the listing it shows some varying from \$38,000 for New Zealand to \$1,000 for Grenada. So that it is not a situation where the Government of the day has decided that it is going to discriminate against Nigerian nationals and target Nigerian nationals.

The framers of the law in those days, in their wisdom, saw it fit to place this provision in the law to save the taxpayers of Trinidad and Tobago from the

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burden of having to bear repatriation expenses for foreign visitors who, after being admitted, are unable or unwilling to pay the cost of returning to their homeland.

The law gives to the Chief Immigration Officer, the discretion to impose the security bond requirement on employers who bring in expatriate workers and their dependants. Whether it is a large establishment like BP Amoco, a small shop or a religious institution. I am told that, over the years, individuals brought in by these establishments have been required to have coverage of a bond or cash deposit, regardless of their country of origin: be it Grenada, India, or the United States of America.

One sees that both on an individual basis and even from the employer's point of view. I am informed that in lieu of a security bond, Government ministries and agencies have been given the option of providing a letter of guarantee to the Chief Immigration Officer for any expatriate employee they may bring into the country. The record would show, I am told, that as recent as 1999, before the Eastern Regional Health Authority had decided to exercise this option, one of their expatriate employees, Dr. Balagi Manduru of India, was required to post a security bond in the sum of \$21,000. In the case of the University of the West Indies, the contract includes a clause whereby the University guarantees repatriation expenses for their expatriate employees.

Mr. Speaker, where is the evidence that any particular grouping or person is being targeted? I am informed, through the Ministry of National Security, that generally short-term visitors are not required to provide security except in cases where there is a risk that they may become a charge on public funds. I am also told that it is instructive to note that individuals from within the Caricom communities are swift in providing tickets for friends and relatives who find themselves facing deportation. The German, the English, the United States of America, Canadian, French, Chinese, Dutch, Indian Foreign Missions in Trinidad and Tobago have also come to the assistance of their nationals. I am told that Nigerians holding residence in Canada, United States of America, and the European countries are not affected by this decision. Also, professionals coming out of Nigeria, who have been issued work permits by the Ministry of National Security to work with private establishments or the Government of Trinidad and Tobago are covered by the employer.

It is, therefore, unfortunate that the bond requirement for all persons, as administered by the Chief Immigration Officer, in which Chinese are coming out

of China, Indian nationals are coming to visit families in Trinidad and Tobago and Nigerians, all have to face the same discretion as given by the law.

2.55 p.m.

Mr. Speaker, I think it is a serious attack on the public service for the Opposition to attack public servants in this way, especially when they know that they have passed the law and that the law was being administered in the way in which they knew it was being administered. How can they use an important and serious debate like this, in which the Baptist community and the Orisa faith are being liberated and emancipated from the shackles of a law which has been tied around their necks as a yoke for all these years? The Opposition had an opportunity to remove these disabilities, yet they come to this honourable House to give the impression that there is discrimination in this field, when it is a naked attack on the public service. Mr. Speaker, I beg to move. [*Desk thumping*]

Question put and agreed to.

Bill accordingly read a second time.

Bill committed to a committee of the whole House.

House in committee.

Mr. Maharaj: Mr. Chairman, there are three lists of amendments in which we had tried to take into account all that had been said on the other side.

Mr. Chairman: Let us make sure that we have the three sets of amendments.

Mr. Maharaj: Are there two or three?

Mr. Chairman: I have two. Are there any others?

Mr. Maharaj: There was one today.

Mr. Chairman: So there is a second supplemental?

Mr. Maharaj: Is this the one you have, Mr. Chairman, the second one or the third one?

Mr. Chairman: I have this one.

Mr. Maharaj: This one?

Mr. Chairman: No, no, no; I do not have that. This is the one I have. I do not have that one.

Mr. Maharaj: Okay, do we have an extra copy?

Mr. Chairman: Hon. Members, there is the list of amendments, then there is a supplemental list of amendments and then there is a second supplemental list. Do you have them?

Assent indicated.

Mr. Chairman: Okay, they have them.

Clause one ordered to stand part of the Bill.

Clause 2.

Question proposed, That clause 2 stand part of the Bill.

Mr. Maharaj: Mr. Chairman, there is an amendment to clause 2. Can we number these so we will have an idea what we are referring to?

Mr. Chairman: Regard the original list of amendments as list one, the supplemental as two and the second supplemental as three.

Mr. Maharaj: Mr. Chairman, on list one, I beg to move that clause 2 be amended by deleting the word “Second” and substituting the word “Third”. It is typographical.

Question put and agreed to.

Clause 2, as amended, ordered to stand part of the Bill.

Schedule.

Question proposed, That the Schedule stand part of the Bill.

Mr. Maharaj: Mr. Chairman, I beg to move that the Schedule be amended in terms of the circulated draft. I do not—what is the position? Do we have to go to each one? Because there are several amendments.

Mr. Chairman: Just go through them. We will deal with them.

Mr. Maharaj: Mr. Chairman, I beg to move that the Schedule be amended in respect of line seven by inserting after the word “head” the words “or official”.

Mr. Imbert: Mr. Chairman, the Bill related to sections but the amendments relate to lines in the Schedule. Could you ask the Attorney General to relate the lines back to the sections in the Bill?

Mr. Maharaj: It would be section 102 of the Summary Courts Act.

Mr. Imbert: That is what line seven would be?

Mr. Maharaj: Yes. If you look at the 102, instead of just having “religious head” you are having “of any religious head or official”. So it would read:

“Where, in any document in any proceeding under this Act, it is necessary to state the ownership of any...building set apart for religious worship or of anything belonging to or being in the same, it shall be sufficient to state that such...building, or such thing is the property of any religious head or official officiating therein without naming him or them.”

And that is to be substituted for:

“...any clergyman or minister officiating therein or of the churchwarden or churchwardens of such church, chapel or building...”

Mr. Imbert: Yes, but the point I am making is, you have here “line 7, “line 67” and so forth, but the Bill has section 42, section 43 and so forth, and its very difficult to relate the lines to the Bill. Do you follow where I am coming from? So it is not clear exactly what you are amending. If you could, could you say “section 102”, “section 2” or “section 43”?

Mr. Maharaj: Mr. Chairman, section 102—[*Interruption*]

Mr. Imbert: That is the first one.

Mr. Maharaj:—of the Summary Courts Act, Chap. 4, No. 20, we are deleting the words “clergyman or minister” and substituting the words, “religious head or official”. If you want I will say we are deleting the words “or of the church warden or church wardens of such building”.

Mr. Imbert: No, no, that is not the point I am making. I understand each one on this one, but there are several amendments to come. On each one, if you could tell me which section it relates to—[*Interruption*]

3.10 p.m.

Mr. Maharaj: Okay, fair enough, right. In section 2 of the—sorry, section 43 of the Summary Offences Act, we are deleting the words, “any religious head” and substituting the words “any religious head or official”. Mr. Chairman, I think I made an error. It is not section 42. Section 96 is deleting the word “minister” and substituting the words “any religious head or official”. Are you with me? Mr. Chairman, this is to take in the submission that “religious head” might not be sufficient. So, in section 27, after the words “religious head” we also have the words “or official”. In section 27(b) we are also including the words “or official” after the word “head” and that deals with the amendments in respect of document one.

Mr. Chairman, in respect of document 2, in section 43 from line 17, we are deleting the words "...and, subject to the Corporal Punishment Acts, may be sentenced to undergo corporal punishment; and, if a female, may, during such imprisonment, be kept in solitary confinement not exceeding three days at any one time and not exceeding one month in the whole, as such Magistrate shall direct."

Mr. Chairman, there is where we are removing corporal punishment for this offence and solitary confinement for a female who has committed an offence under this Act.

In respect of the third document, in section 43, the Opposition made the point that we should try and get a more precise word. In section 43, the whole rationale for the offence is that if any person by any "false" or "fraudulent means", so we are substituting the word "fraudulent" for "false" because "fraud" already has a definition in law, and the same applies to section 43 in the marginal note. So that deals with the three lists of amendments.

Mr. Imbert: We had also asked you to look at your amendment to section 27(b), where I had made the point that it is very difficult to define when a person is going to or returning from a performance. What is the time span for that?

Mr. Maharaj: There is already the existing legislation, which deals with the going and coming and that is not uncommon in determining. It is on their way to or on their way from.

Mr. Panday: You cannot arrest a parliamentarian on his way to Parliament and that sort of thing.

Mr. Imbert: But you see, the point I made is, you are saying here "...about to engage in, or is going to perform, or is returning from..." A person could avoid prosecution or whatever by being continuously returning from, going to or about to engage in.

Mr. Maharaj: These matters are determined by evidence. The court is not God. *[Interruption]* If, for example, an official is going to perform a burial ceremony, there must be a burial.

Mr. Imbert: Is this only to deal with burial ceremonies? It talks about religious services as well.

Mr. Maharaj: I am just using burial as one of the examples, but it must be that he is going to a religious service.

Mr. Imbert: Let me give you an example. Someone goes to conduct a religious service in another place, and then comes to his home and conducts a religious service in his home, that person is always going to or coming from a religious service.

Mr. Panday: Then he is a very religious person.

Mr. Imbert: We are talking about persons who are “up to no good”.

Mr. Panday: That person is a very religious person.

Mr. Maharaj: There is the ordinary law dealing with assault and battery, but these laws have been put there so that if someone obstructs a person in the performance of religious duties, that is a special offence and it will be dealt with in a special way. These laws have been on the books all the time—they have to be there—but the question would be determined upon evidence. If, for example, the police were going to charge somebody, the police would have to get the evidence. I think we have to trust the police service that if somebody was being frivolous and misusing this law they would be able to detect it.

Mr. Imbert: They will probably have to wait until that person falls asleep.

Mr. Panday: Not a bad idea.

Mr. Imbert: I just find it is far too open.

Mr. Maharaj: As a matter of fact, as the hon. Prime Minister said, somebody could say they are coming to Parliament but they could be going somewhere else first.

Mr. Imbert: No. I am familiar with that law. You cannot stop someone from coming to Parliament. You cannot arrest someone on the way to Parliament, but you cannot arrest someone as soon as he or she leaves Parliament. [*Interruption*]

Mr. Panday: If that person is coming to Parliament, he has left his home.

Mr. Imbert: No, seriously, I think, with respect to parliamentarians, you can arrest a parliamentarian on his way to Parliament.

Mr. Panday: From where?

Mr. Imbert: From wherever, but when he leaves Parliament and steps outside—

Mr. Panday: No, he does not leave—he stays here to carry your argument to the logical conclusion. He sleeps here, he does not leave, so he frustrates the law by living in Parliament thereafter.

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Mr. Imbert: No, I think, Parliament has to be in session.

Mr. Panday: This person will have to carry on a continuous religious service—continuous. [*Laughter*]

Mr. Imbert: I was just making the point, okay? If you think it will not happen I have no problem with that.

Mr. Maharaj: Mr. Chairman, I must congratulate the Member for Diego Martin East for studying when a Member of Parliament can be arrested and under what circumstances he can be arrested on his way to or from Parliament. [*Laughter*]

Mr. Imbert: No, once you leave Parliament they could hold you. Once you go outside they could hold you. [*Interruption*] I see a certain Member is not here.

Question put and agreed to.

Schedule, as amended, ordered to stand part of the Bill.

Long title.

Question proposed, That the long title stand part of the Bill.

Mr. Maharaj: Mr. Chairman, I beg to move that the long title be amended as follows:

“Delete the word ‘religions’ and substitute the word ‘religious’”

Mr. Panday: The church has always been regarded as a sanctuary.

Mr. Imbert: Yes, I know.

Mr. Panday: And people can really go into a church even though they have committed a criminal offence. The church has to be regarded as a place that is sanctified in some kind of way.

Mr. Maharaj: Mr. Chairman, the Prime Minister having said that, I hope the Member for Diego Martin East would not go and live in the church now. [*Laughter*]

Mr. Imbert: Not me, somebody else.

Question put agreed to.

Long title, as amended, ordered to stand part of the Bill.

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

3.20 p.m.

House resumed.

Bill reported, with amendment; read the third time and passed.

OFFENCES AGAINST THE PERSON (AMDT.) (NO. 2) BILL

Order for second reading read.

The Attorney General and Minister of Legal Affairs (Hon. Ramesh Lawrence Maharaj): Mr. Speaker, the essential intent of this Bill is to create three categories of murder and to restrict the imposition of the death penalty to convictions for capital murder. Murder 1 or capital murder would include the following types of murders: murder of a member of the security force, a prison officer and a judicial or legal officer acting in the execution of his duties; the murder of a witness or juror or the immediate family member of either; felony murder, in furtherance of a felony involving violence; murder committed by means of a bomb, contract murders, especially heinous murders; and murders involving genocide.

Mr. Speaker, the above types of murder all share the distinguishing feature of one or more aggravating elements, that from a sentencing perspective, totally justifies the mandatory imposition of the death penalty. On the other hand, there are killings which technically, according to the relevant criminal law definition, fall to be classified as “murder” although the justice of the case does not merit such a charge because of the presence of various mitigating factors.

There are three obvious examples which plainly illustrate the point. If I deal with the point under the question of provocation, evidence of the deceased person provoking an accused is capable of reducing an initial charge of murder to one of manslaughter. That reduction, however, can only occur as a result of a jury verdict since the test for provocation is a statutory one.

Section 4A of the amended Offences Against the Person Act, Chap. 11:08: and the statute expressly stipulates that the second stage objective test for provocation, the reasonable man test, is one determined by the jury. Accordingly, even if the police or the Director of Public Prosecutions detect evidence of provocation in a murder investigation, this normally cannot be legitimately taken into account at the charging stage, since the law specifically says that an important aspect of the provocation issue is one to be determined by a jury. This smarts of a certain unfairness to an accused who has to go through the rigours of a trial for murder without bail, when there is the strong possibility that he might be convicted for manslaughter on the basis of provocation.

Mr. Speaker, the legal history of Trinidad and Tobago is full with cases where the police may have found that there would have been the question of a killing done by provocation, and provocation, as most lawyers would know, is that if someone kills someone because he was provoked to the extent that a reasonable man would be provoked, subject to the principles of the law, the judge would direct the jury that these are matters which they can take into account and they can return a verdict of manslaughter in that the killing was under the stress of provocation.

Mr. Speaker, the other example is domestic violence killings. In these killings, there is quite often an element of cumulative provocation and the criminal law now recognizes the existence of the battered wife syndrome. It was recognized before in the United Kingdom, but I think the case of Indrani Ramjattan in Trinidad and Tobago showed that the Court of Appeal here has recognized that syndrome, that cumulative provocation.

Those are certainly mitigating factors and should properly be taken into account at the charging stage. Under the present law, they cannot, and this creates an artificially and unreasonably stark choice between a charge of murder, which might appear draconian but which is legally accurate, or a charge of manslaughter, which is legally inappropriate but fully consonant with the broader justice of the case.

Mr. Speaker, the other category, to give examples, would be killings done in self-defence. The relevant principle is that the state, consistent with the burden of proof, must negative the issue of self-defence. It can accomplish this *inter alia* by relying on the use of more force by the accused than was reasonably necessary to defend himself. If there is clear excessive force used, the appropriate charge is one of murder; however, there may be marginal cases where the force used is *prima facie* excessive, but not very unreasonable. So, having regard to all the surrounding factors, in such cases, a charge of murder is made and all the procedural rigours it entails may not fairly and justly represent what the justice of the situation requires.

In instances like these, whether it is provocation, whether it is the battered wife syndrome, domestic violence killing where the killing is done in self-defence, it would give to the state the option now where the investigation shows that there are these matters, instead of charging for murder, to charge for either Murder 2 or Murder 3.

Mr. Speaker, these three examples, therefore, demonstrate that the justice of a case sometimes demands a charge of a lesser degree than murder. The problems

in such cases arise where the relevant principles of criminal law stipulate that the charge should be one of murder and not manslaughter. The Bill protects the safeguard that in all these matters, the DPP still has a sole discretion to determine matters. He can even approach a judge where he is in doubt and get a ruling from the judge.

Under the proposed Bills, mitigating factors such as the existence of provocation and excessive force in some situations can be legitimately taken into account at the time of charging the person. The category of Murder 2 includes special circumstances, cases that do not fall into any particular category but where, having regard to the nature and circumstances of the killing, the DPP can exercise his discretion to prosecute for Murder 2. Murder 2 also includes killing by gross negligence, recklessness and mercy killing.

The category of Murder 3 would encompass situations of provocation, negligence and causing death by reckless driving. The advantages of the Bill are as follows: it will introduce a greater element of fairness into the system; it will help streamline the prosecution process; it will introduce consistency and uniformity at the charging stage of these in respect of killings; and it will help streamline some resources so that only what is really necessary would be invested on normally extensive and expensive murder prosecutions.

Mr. Speaker, there was also a circulated amendment to the Bill which, in effect, is to implement the Haig Convention on the Civil Aspects of International Child Abduction. Trinidad and Tobago deposited its instrument on June 4, 2000. This Convention seeks to afford the protection to children who are under the age of 16 years and who have been habitually resident in the contracting state immediately before the breach of custody or access rights occur. The Convention requires that the state set up a central authority to assist in securing a prompt return of abducted children.

This honourable House would recall that the Children's Authority Bill was passed and the Children's Authority was set up as the central authority. The amendment before us in respect of this Bill also seeks to give effect to the Convention. Under section 54 of the Offences Against the Person Act it states:

“Any person who unlawfully, either by force or fraud, leads or takes away, or decoys or entices away or detains, any child under the age of ten years, with intent to deprive any parent or guardian, or other person having the lawful care or charge of the child, of the possession of the child...is liable to imprisonment for five years.”

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Mr. Speaker, the act further provides protection to girls and women up to the age of 18 years, but that is in specific circumstances. Boys over the age of 10 years, however, are afforded no further protection under the Act in that regard. To bring the Act in line with the Convention, it becomes necessary to amend it to raise the age of protection from 10 years to 16 years, thereby affording both boys and girls up to the age of 16 years, the protection of the Act. A further amendment to the section would also remove the protection afforded to a father in respect of removing his child from any person having the lawful custody or care of such child. Mr. Speaker, the amendments before this honourable House seek to achieve these objectives.

I do not propose to be long in this debate, so I beg to move the second reading of this Bill. *[Interruption]* I am told that in respect of the Constitution (Amdt.) Bill, we have the required numbers and I wonder whether the House would stand down this stage of this Bill so that we could deal with the committee stage of the Constitution (Amdt.) Bill?

Mr. Speaker: Yes, indeed. Hon. Members further proceedings on the Offences Against the Person (Amdt.) Bill will accordingly be stayed and on the Constitution (Amdt.) (No. 2) Bill, the House shall now go into committee.

3.35 p.m.

CONSTITUTION (AMDT.) (NO. 2) BILL

Bill committed to a committee of the whole House.

House in committee.

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

Clause 4.

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

Mrs. Robinson-Regis: Mr. Chairman, could I just ask a question? I do not know if I have the wrong piece of legislation but in the document that I have, it says:

"Section 138 is amended in subsection (2)—

(a) by repealing paragraph (a) and substituting the following paragraph;"

Then it says:

"(a) in paragraph (a), by deleting the words "Permanent Secretaries..."

Is that correct?

Mr. Maharaj: Yes. That is what we had agreed.

Question put and agreed to.

Clause 4 ordered to stand part of the Bill.

Preamble ordered to stand part of the Bill.

Mr. Maharaj: Mr. Chairman, can I ask that we do not report the Bill to the House yet because although we thought we had the required number, they cannot find Mr. Imbert.

Mr. Sudama: Check in the forest with the "douens".

Mr. Maharaj: I am sorry to do this. I do apologize. If we could go back to the other Bill and as soon as he comes, we can get this out of the way.

Mr. Chairman: Would somebody care to check the washroom?

Mr. Maharaj: The Member for Arouca South volunteered to check the washroom.

Mr. Chairman: No. No. We are looking, not for a female; we are looking for a male.

Mr. Maharaj: You were right. There is an amendment. It may not be that section.

Mrs. Robinson-Regis: Was it circulated?

Mr. Maharaj: No.

Mr. Chairman: Could you circulate it now?

Mrs. Robinson-Regis: Attorney General, if it were circulated, perhaps there is a copy.

Mr. Maharaj: Do you want us to revert to the other matter? Could we revert to the other matter and then come back to committee stage.

Mrs. Robinson-Regis: Would we also revert to this particular clause?

Mr. Maharaj: We are checking to see if there is anything. I do apologize, Mr. Chairman.

Mr. Chairman: Hon. Members, the question is that further consideration be deferred of the committee stage of this Bill.

Question put and agreed to.

House resumed.

Mr. Speaker: Hon. Members, we now revert to the Bill to amend the Offences Against the Person Act, Chap. 11:08.

OFFENCES AGAINST THE PERSON (AMDT.) (NO. 2) BILL

Hon. R. L. Maharaj: Mr. Speaker, I was just about to move that the Bill be read a second time.

Question proposed.

Mr. Fitzgerald Hinds (*Laventille East/Morvant*): Mr. Speaker, I am quite happy to have an opportunity to make a short contribution to a Bill to amend the Offences Against the Person Act, Chap. 11:08.

Mr. Speaker, the law of murder, as it stands in Trinidad and Tobago, is still a common law offence. When we put into our legislation what was the common law of England and the principles derived therefrom—of course, new case law developed as the years went ahead, some local, some regional—in large part, we followed the common law of England in respect of some elements of it.

I simply want to remind the Attorney General that law does not operate in abstract. I found that his presentation was very mechanical, very legalistic, very matter of course, very cut and dried, with little relevance as he presented it, or attachment to the reality in our society today. Murder is much more than a legal definition surrounded by legal principles, applied and analyzed by lawyers and judges with input from the jury. Murder is a serious matter in the daily lives of people of this country.

Notwithstanding the Prime Minister's claim that crime, including murder, has gone down in Trinidad and Tobago, the reality is that in the communities, people live in fear on a daily basis. It is well known, apart from a few home-made weapons, so to speak, that guns are not manufactured in Trinidad and Tobago, nor is cocaine. The coca plant is not grown here and, everyone understands that the cocaine trade is responsible for much of the crime that we see in our society and, specifically, murder.

Mr. Sudama: What about "ganja"?

Mr. F. Hinds: Mr. Speaker, just to reinforce the point, at page 14 of the *Newsday* of Friday, October 12, 2000—today's date—I read with some interest under the caption "Arrest soon in Sumairsingh case", that "police officers investigating the shooting death of...former Chairman of the Mayaro/Rio Claro Regional Corporation, are optimistic of making a breakthrough in the murder investigations."

"This was revealed..."

And I am quoting.

"...by Police Commissioner Hilton Guy yesterday."

Only yesterday.

"Guy said he was briefed by investigators recently and told they were following a certain line in the investigation and a breakthrough could come any time now. Guy said the investigation into the shooting death was continuing full speed ahead and had not been shelved."

The imminence of the impending breakthrough is a matter of concern for all of us in this House because it was the first time in this country that there was a clearly identifiable and demonstrably political killing and I speak with a measure of sadness.

I listened to the news yesterday and learnt, from my listening to the news, that one of our colleagues in this House, whom we all know and whose name, unfortunately, was mentioned in this investigation, was relieved of his office yesterday by his political leader, the Prime Minister. That brought a measure of sadness to us all.

Mr. Speaker, when we deal with the business of murder, we know well, and the Attorney General knows from the Dole Chadee and his gang case that went sometime ago, it led to 10 of the gang members being hanged in the short space of one month—a historical feat if it could be called that in the context of Trinidad and Tobago and, probably, the world—10 in one month.

We saw in that case, and the Attorney General knows, Dole Chadee was one of those who was hanged, but he was not present at the scene of the murder; he was not the trigger man or one of the trigger men; but the law is such that he was complicitous and he was found guilty because he, according to the evidence in the case, was the mastermind behind it.

3.50 p.m.

It is quite clear that when we have a murder, in other words, sometimes there are those behind who encourage, drive and “egg on”—to use colloquialism—those who eventually commit the act. There are many times culprits behind the scenes—of course, society recognizes and punishes the one who does the act, and oftentimes, those who encourage the bad behaviour, those who create the climate that gives rise to that kind of antisocial behaviour, sometimes go unpunished, or unnoticed.

Offences Against the Person Bill
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I have said before, in this House: No government can be blamed for crime. No criminal, or potential criminal would go to any normal Member of Parliament or Minister of Government and say: "I intend to commit a murder tomorrow, what is your opinion?" Unless, of course, as has happened in the past, in human experience, that politician may be complicitous. It is not correct to blame any government for crime, because it is almost a spontaneous thing. Very often, government officials would never know what a man intends to do tomorrow, or late this evening.

I have said, and I maintain, that while the UNC, as a government cannot be held responsible for the crimes we have in this country, it is my contention that the conduct of the United National Congress in government, and several of the individual members, and the Government's conduct over the last five years is such that it creates, in my view, an atmosphere, the circumstances, in which crime in our country seems to proliferate.

I have had to spend moments telling a young man who seems to look at the Government's behaviour for justification for his antisocial behaviour. Let me give you an example, I spent at least 20 minutes correcting him and telling him that he must not behave in that manner because he feels that justification. I spent time dealing with that. He said to me: "I am hungry, I have no money to take care of myself and my children, and dem big politicians and dem tiefing, and corrupt. What am I to do? If the priest could play, who is me?" While that may sound far-fetched for Members of this House—at least I hope—this is some of the thinking that is proliferating in our society: when misguided, young people look and see not dignified examples, but bad behaviour on the part of persons in high places.

Mr. Speaker, I want the Minister of Education, the Member for Siparia, to remember and recognize, if she does not already recognize it, as she deals with the important business of education, that education is not only a formal process: the learning and teaching that takes place in the schools, universities and colleges, education is also very informal: where people see certain behaviours and adopt them. I urge better behaviour on that basis.

With respect to the law of murder, as this Bill seeks to deal with it, the Attorney General alluded to the fact that oftentimes, there is a clear recognition that the act or acts that led to the killing that eventually would find itself before the court would be such that right-thinking members of the society, manifest in the jury in the particular trial, may feel that the sentence of death ought not to be passed upon the accused or convicted person. The law is such that, once the jury finds a man or woman guilty of murder, the sentence of death is mandatory: the

judge has no discretion in the matter; he applies the sentence of death. Therefore, it is in recognition of that, that Jamaica and other countries in the world, including the United States of America, categorized murder: first degree, second degree, and third degree, and as we say here: Murder 1, Murder 2 and Murder 3. It recognizes that where there is a killing, there is some measure of concern for the circumstances and to protect persons, to some extent, depending on those circumstances.

The Attorney General and the Prime Minister, the Members for Couva South and Couva North, were well known in this country to be hard line abolitionists. The *Hansard*, newspaper reports, other writings, and speeches reflect that the Prime Minister, the Member for Couva North, and his colleague, close friend and Attorney General, were abolitionists: they were dead set against the death penalty. Suddenly, that philosophical position that they seemed to have imbibed and lived with, was thrown out of the window.

The Attorney General now has the unenviable record of hanging 11 people in one month in this country. A bloody mess it was, but it was. Of course, the Attorney General argues that he did it on the basis of the law. He argues, further, that when he was defence counsel, acting in his private capacity—and he defended persons who were charged for the offence of murder, he appealed and went through all the constitutional motions, he also went to the Privy Council, Amnesty International and others for help, he fought to defend them—he did that as defence counsel. Now he is the defender of the public interest, as Attorney General, he has to take another view.

What the Attorney General does not tell us, and what his colleagues do not appreciate—this subtlety, is when he spoke in this House, he did not speak in this House as defence counsel, he spoke as a Member of Parliament. When he speaks as a Member of Parliament, and he condemns the death penalty, and comes back here and gives it full support, we have an opportunity, yet again, to see the two-facedness of the Attorney General. He will have trouble convincing any sensible listener of the sincerity of his ways. We know that they speak with forked tongues on every issue, including this.

4.00 p.m.

He often calls on us to apologize for various things, but he will have to live with his own thoughts, and he will have to one day try to right or to explain to this country that turnaround, that 180 degree spin around on an important philosophical issue such as this. He may never achieve it, but I wish him well nonetheless.

Mr. Speaker, clause 3 of the Bill recognizes Murder 1 and defines it:

“(a) the murder of—

- (i) a member of the security forces acting in the execution of his duties or of a person assisting a member so acting.”

I hope the Attorney General is aware, and he should be, that we have a situation in Trinidad and Tobago today where oftentimes police officers in the execution of their duty are not dressed in uniform. You have a situation as well where the criminal elements in the society have gone to people's homes at 4 o'clock in the morning and other times and shouted "police, police" and when persons respond, as they normally would to the call of the police, they find that they are under a vicious attack by what turns out to be assailants or bandits. When we say that a person is going to be charged for and could be found guilty of Murder 1 if he kills a member of the security forces, these are matters that we have to take into account, and the state has its responsibility in these matters.

It is not simply for us to pass legislation and hope that it will work well. We have a duty to ensure that we send the right signals, and the other arm of the state, the Executive, also has an obligation. Mr. Speaker, in other countries—and to a lesser extent here—we have seen that even when police officers are operating in plain clothes sometimes they carry clear marks to indicate to onlookers that they are members of the police or other security forces. This is an important issue, because in a trial it will arise as a matter of fact to be determined whether the individual, who is now accused of shooting a member of the security forces, typically the police, was or was not aware that they were police officers. Therefore, we need to ensure that the police service is properly equipped as they carry out all their duties, and I submit, in any event, they are not.

Only recently it came to my attention that the police service in this country made application, if you like, to the Government for a certain sum of money to arm and equip itself with various necessities to carry out its function, and this was rejected by the Government. I think it was rejected flatly by the Government because it claimed not to have the money; I think it was about \$3 million.

Mr. Singh: That is not true!

Mr. F. Hinds: The Member for Caroni East is saying that that is not true; that is not the report that I got. Anytime I hear this Government saying that it does not have money, I have a serious problem with that, because we know that the public debt skyrocketed for the last five years from \$18 billion to \$30 billion, the last \$5

billion having been borrowed in the last one year. One bank must be warning the Government about its wanton wastage and spending and over-borrowing in order to do that. We need to look at that.

Mr. Speaker, in subclause (b) it says that it will be Murder 1 if it is:

“the murder of any person or the immediate family member of that person for any reason directly attributable to—

- (i) the status of that person as a witness or party in any pending or concluded criminal proceedings;...”

So this measure seeks to deal with the question of witness killing in this country, a phenomenon that has become far too common for the good of our society; witness killing. The description of that ugly phenomenon is self-explanatory, but just in the event that it is not entirely clear: it is a situation where the key witness in a murder case, for example, the chief witness for the state, is killed in order to prevent prosecution—to pervert the course of justice. I am sure that this is well known to the Prime Minister and the Attorney General; very, very well known.

The people in this country are not foolish; I know the Government think that they are, but as I walk the streets of this country, the people have a view on the business of witness killing, what is responsible and when and where it started, but it is an ugly phenomenon. I am proud and happy to see that it is given some further attention here, and I hope that those who perpetrate it will meet with the consequences as this law envisages.

Mr. Speaker, at (c) it says:

"any murder committed by a person in the course or furtherance of an arrestable offence involving violence;"

As I alluded to a while ago, in the Dole Chadee case—yes, I see the Member for Couva North and Couva South laughing; maybe they think that this matter is a joke, but I know that they know it is not. The law of joint enterprise is the relevant law in this regard, and the law simply stated is as follows: where two or more persons embark upon a joint exercise, a joint enterprise, acting in concert—if you like—to commit the crime of murder, even if one is not the trigger man, he, by virtue of that participation in the joint enterprise, can be charged for murder and convicted and sentenced accordingly. It deals with the business of accomplices.

Mr. Speaker, lawyers in the criminal field—and that does not mean criminal lawyers, *per se*, it means lawyers who practise criminal law, like me—

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[*Laughter*—I am hearing the Member for Couva North. I am hearing the crude tones of the Member for Couva North. His tongue has been getting him into trouble very, very often within the recent past, and the judges of the High Court have demonstrated quite clearly that talk from the Prime Minister is not coming cheap, it cost him \$750,000 at a time. He is saying that he does not know how he would pay it, but we know that he knows how he would pay it. We know that he knows how to pay; that is not a problem, we know that. [*Crosstalk*] We know that.

Mr. Speaker, as I was saying before I was disturbed, that it has happened on occasions that people in custody, who are under investigation as accomplices in these crimes, have made confessions to the police because they wrongly believed that since they did not apply the wound or squeeze the trigger, they could not be convicted for the offence of murder. So on that basis they are more inclined to give a statement of confession to the police, only to discover, as the law is applied, that they are as guilty of murder as the trigger man.

Mr. Speaker, this raises the question of ignorance of the law. It was once said, and it is still said, that ignorance of the law is no excuse, but those words are subject to serious scrutiny today. I was travelling along the Priority Bus Route yesterday and I stopped as I approached, what we call, the zebra crossing. While I stopped my vehicle to allow the pedestrians to cross, a vehicle that was travelling behind me simply overtook and sped past, putting the lives of the pedestrians at risk. This was in the Beetham area, in my own constituency.

I have no doubt, since I was not aware of its publication, that the Government painted the road and put these zebra crossings down, with the zigzag lines that go along them, and did not take the time to educate the public as to the meaning of those road signs. While we say ignorance of the law is no excuse, people are ignorant of the reality and what they mean, and, therefore, cannot follow the law. The driver who went past me may very well have been absolutely ignorant. Similarly, the question of the ignorance of the suspect is a matter of grave concern.

Mr. Speaker, clause 3(d) of the Bill says:

“murder committed by means of a destructive device, bomb, or explosive...”

A destructive device in the context of a bomb and an explosive of that generic group, I imagine, is talking about explosives and that sort of thing, but a destructive device could equally be a gun. I would like the Attorney General—I know there is some haste, he wants to get on to the other Bill—to give attention to

this, so that we can look at it. I am being reminded that we will deal with it at the committee stage. That is quite all right. [*Crosstalk*]

Mr. Speaker, I am being distracted by Members from the other side. I know that they do not care. I know that all they are concerned about is maintaining their positions, fooling the electorate and winning the next election, but we have a duty to the people, and we must carry that out. I am being distracted and I urge your protection, Mr. Speaker.

Mr. Speaker: Order please!

Mr. F. Hinds: I have one other point that I would like to raise in respect of this Bill. At subclause (g) it says:

“murder where the deceased was intentionally killed because of his race, religion, nationality or country or origin.”

I have looked at the legislation in some of the states of the United States, as I prepared for this debate, and, certainly the legislation of Jamaica. I have not seen in the general list of the kinds of crimes that are so categorized, and usually described as murder in the first degree, any murder having to do with race, religion, nationality, country or origin.

Just imagine a man kills another, the deceased must be of some race. So what are we going to say, that it was because of his race that the accused killed him?

4.15 p.m.

There is grave difficulty in that and it reminds me very much of some of the language we have been seeing in the so-called Equal Opportunity Bill. The Attorney General found himself in a public squabble with Amnesty International recently, an organization that does a tremendous amount of research in the business of the death penalty, and consequently, matters having to do with murder and other crimes that warrant the death penalty, and there is an aggregation of the types of crimes that would normally be so categorized from around the world. That body does research from around the world; it is a very useful body, but the Attorney General is now placing his attention on them just as he did the Chief Justice and others locally, but that is their style.

Mr. Speaker, we on this side find that that particular subclause has no place in this legislation and we, at the level of the committee stage, propose to raise that with the Government. Those are the comments I propose to make on this Bill, and

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that apart, we on this side support any measure that is designed to bring some improvement to the law of murder as it now stands, and in principle, and in general terms, we support the amendments proposed to the Offences Against the Person Act.

I thank you.

The Attorney General and Minister of Legal Affairs (Hon. Ramesh Lawrence Maharaj): Mr. Speaker, like the hon. Member for Laventille East/Morvant, I have nothing to say.

Mr. Speaker, I beg to move.

Question proposed.

Question put and agreed to.

Bill accordingly read a second time.

ARRANGEMENT OF BUSINESS

The Attorney General and Minister of Legal Affairs (Hon. Ramesh Lawrence Maharaj): Mr. Speaker, we have two committee stages to do and we had agreed to do them by a certain time. We will do the Constitution (Amdt.) Bill first.

Agreed to.

CONSTITUTION (AMDT.) (NO. 2) BILL

House in Committee.

Clause 4 recommitted.

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

Mr. Maharaj: Mr. Chairman, I beg to move that clause 4 be amended as circulated:

- 4 In paragraph (a), by inserting after the words ‘Magistrates,’ the words ‘Permanent Secretaries, Chief Technical Officers.’”

Mrs. Robinson-Regis: Mr. Chairman, we had some concerns which, now that the amendment has been brought, we are satisfied that they are being addressed.

Mr. Maharaj: I think I owe the Member for Arouca South an apology—

Mrs. Robinson-Regis: Could you speak up a bit, I am not hearing you.

Constitution (Amdt.) (No. 2) Bill

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Mr. Chairman: He is saying that he owes you an apology.

Mrs. Robinson-Regis: Oh, I thought he would have said it a little louder, Mr. Chairman.

Mr. Maharaj: I normally talk to the Member for Arouca South very softly, Mr. Chairman.

Question put and agreed to.

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

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

House resumed.

Bill reported, with amendment.

Question put, That the Bill be now read the third time and passed.

The House voted: Ayes 28

AYES

Maharaj, Hon. R. L.

Panday, Hon. B.

Persad-Bissessar, Hon. K.

Lasse, Dr. The Hon. V.

Griffith, Dr. The Hon. R.

Humphrey, Hon. J.

Sudama, Hon. T.

Maraj, Hon. R.

Rafeeq, Dr. The Hon. H.

Job, Dr. The Hon. M.

Khan, Dr. F.

Singh, Hon. G.

Nanan, Dr. The Hon. A.

Partap, Hon. H.

Mohammed, Dr. The Hon. R.

Ramsaran, Hon. M.

Sharma, C.

Valley, K.

Imbert, C.

Robinson-Regis, Mrs. C.

Narine, J.

Hart, E.

James, Mrs. E.

Bereaux, H.

Joseph, M.

Boynes, R.

Hinds, M.

Nicholson, Miss P.

Mr. Chairman: Hon. Members, the result of the division is 28 for, none against and no abstentions. [*Desk thumping*]

Question agreed to.

Bill accordingly read the third time and passed.

Mr. Chairman: Hon. Members, we will now go into committee on the Offences Against the Person (Amdt.) Bill.

OFFENCES AGAINST THE PERSON (AMDT.) (NO.2) BILL

Bill committed to a committee of the whole House.

House in Committee.

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

Clause 3.

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

Mr. Bereaux: Mr. Chairman, I want to be equal to everybody. It would appear that if someone kills the President of the Republic of Trinidad and Tobago, or the Prime Minister, it will not be Murder 1. I think we should put it in there.

Mr. Panday: If it is a calculated murder, is it not Murder 1? Suppose it is a motor car accident and the Prime Minister or the President dies?

Mr. Breaux: If you are not concerned, I am speaking—

Mr. Panday: I want to be equal to everybody else.

Mr. Breaux: I want to be equal to everybody else too, but I believe if we are talking about judicial officers and law officers, and prison officers, we also make laws in this honourable House and elsewhere and some acts which we do in this honourable House are likely to cause actions outside and persons, quite misguided or otherwise, may feel that it is necessary to deal with a Member of this honourable House, or the President, the Prime Minister or the President of the Senate in a manner like that and I believe such an act should be classed in Murder 1. I mean wilful killing of a person and that type of thing; not in a motor car accident, obviously.

Mr. Panday: With due respect, Member, I thought that would be Murder 1 anyway if it is that deliberate kind of killing. Premeditated, deliberate, calculated kind of killing, no matter whether it was the Prime Minister, President, judge or whoever, I thought that was Murder 1.

Mr. Breaux: Here we specify judge. The murder of a member of the security forces, a prison officer, or a judicial officer is specific, since it is particularized.

Mr. Panday: I am not sure what the answer is, but then what do members of the Integrity Commission say?

Mr. Breaux: Well, we can find an omnibus clause to deal with persons in that area.

Mr. Maharaj: Mr. Chairman, the security forces of a country and members of the judicial service of a country are the section you specify and under the omnibus clause in which you have any murder committed by a person in the course of furtherance of an arrestable offence including violence, it would be covered. Then you have any heinous murder, especially heinous, atrocious or cruel, manifesting exceptional depravity, so you in effect cover all the other situations, otherwise you will have to put in other different categories.

Mr. Panday: Members, there is also the question of if you hit someone on the jaw and he falls, hits his head and because his skull is thinner than an ordinary person's skull, he dies. There was no intention to kill him, That I thought would

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have been excluded from Murder 1. Suppose that happens in the case of the Prime Minister or the President, should it be murder?

Mr. Bereaux: Exclude it.

Mr. Panday: I have a very thick skull, I do not learn easily, and a thick skin as well. *[Laughter]*

Mr. Bereaux: Well, you are a politician.

Question put and agreed to.

Clause 3 ordered to stand part of the Bill.

Clauses 4 and 5 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 amendment; read the third time and passed.

ADJOURNMENT

The Attorney General and Minister of Legal Affairs (Hon. Ramesh Lawrence Maharaj): Mr. Speaker, I beg to move that the House do now adjourn to Monday, October 23, 2000 at 1.30 p.m.

Question put and agreed to.

House adjourned accordingly.

Adjourned at 4.30 p.m.