HOUSE OF REPRESENTATIVES

Friday, June 17, 2005

The House met at 1.30 p.m.

PRAYERS

[MR. SPEAKER *in the Chair*]

LEAVE OF ABSENCE

Mr. Speaker: Hon. Members, I have received communication from the following Members requesting leave of absence from today's sitting of the House: the hon. Lawrence Achong (Point Fortin), the hon. Eulalie James (Laventille West) and the hon. Gillian Lucky (Pointe-a-Pierre). The leave that the Members seek is granted.

PAPERS LAID

1. Report on the Freedom of Information Act, 1999, for the period February 20, 2001 to December 31, 2003. [*The Minister of Trade and Industry and Minister in the Ministry of Finance (Hon. Kenneth Valley)*]

2. Annual audited financial statement of Telecommunications Services of Trinidad and Tobago Limited for the financial year ended March 31, 2004. [*Hon. K. Valley*]

To be referred to the Public Accounts (Enterprises) Committee.

COPYRIGHT (AMDT.) BILL

Special Select Committee Report (Presentation)

The Minister of Planning and Development (Hon. Camille Robinson-Regis): Mr. Speaker, I wish to lay on the Table the Fifth Interim Report of the Special Select Committee appointed to consider and report on a Bill entitled the Copyright (Amdt.) Bill, 2004.

DEFINITE URGENT MATTER
(LEAVE)

Cessation of Payment of Legal Fees of Convicted Killers

Mr. Ganga Singh (*Caroni East*): Mr. Speaker, in accordance with Standing Order 12 of the House of Representatives, I hereby seek your leave to move the adjournment of the House for the purpose of discussing the following matter as a

definite matter of urgent public importance: the alleged unconstitutional proposal emanating from the office of the Attorney General to stop paying the legal fees of convicted murderers.

The matter is definite since it points to a specific report carried in the *Trinidad Guardian* newspaper dated June 15, 2005, under the headline, "No State $$ for convicted killers". It stated, inter alia:

> "The Government is moving to end the payment of legal fees of convicted killers to the Privy Council."

The matter is urgent because of the refusal of the State to pay the legal fees of convicted killers who are *in forma pauperis*, which would prevent them from having access to the Privy Council, the highest court of the land. This denial of access may ultimately lead to their execution without due process.

The matter is of public importance since it deals with contravention of fundamental rights and freedoms enshrined in our Constitution, in particular section 4(a):

> "The right of the individual to life…and the right not to be deprived thereof except by due process of law."

Mr. Speaker: Hon. Members, the leave that the Member for Caroni East seeks is denied. May I suggest that he utilizes Standing Order 11?

OFFENCES AGAINST THE PERSON (AMDT.) (HIV) BILL

Order for second reading read.

The Minister of State in the Ministry of National Security and Minister of State in the Ministry of Trade and Industry (Hon. Fitzgerald Hinds): Mr. Speaker, I beg to move,

> That a Bill to amend the Offences Against the Person Act, Chap. 11:08, be now read a second time.

The HIV/AIDS epidemic is now a global crisis and constitutes one of the most formidable challenges to social and economic development. The disease has now reached pandemic proportions around the world and UNAIDS estimates that over 40 million persons are living with the HIV.

The Caribbean region has the second highest rate, with over 500,000 persons infected. The latest statistics show that at the end of 2003 there were over 20,000

reported cases in Trinidad and Tobago. What is alarming is that 50 per cent of that figure falls within the age cohort 20 to 39 years and 73 per cent between the ages 15 to 24 years.

Quite apart from these statistics, health care professionals have been reporting that numerous HIV positive individuals who are interviewed admit that they became infected through unprotected sexual intercourse with their partners, who may very well have known of their positive status, but who, for one reason or the other, fail to reveal this very crucial fact.

Where pregnancy results from such a liaison, babies are born with the dreaded disease. There have also been numerous media reports highlighting cases where HIV positive individuals wantonly and recklessly infect others. On page 3 of the *Express* newspaper dated December 09, 2003, the headline read: "Nigerian doctor in AIDS spree".

As a concerned Government, we have examined all the known dimensions of this disease and we are prepared to contribute to the fight against its spread on various fronts. In the past, the response to the epidemic was led mainly by non-governmental agencies and international organizations. The Government has now put in place an effective mechanism to ensure a coordinated and multi-sectoral response by appointing a national AIDS coordinating committee. Cabinet appointed this committee in 2003, under the aegis of the Office of the Prime Minister, to facilitate the effective coordination and monitoring of the expanded national response to HIV/AIDS.

In terms of international cooperation, Members would recall that Trinidad and Tobago was one of the first countries selected to test the effect of antiretroviral drugs and this has enabled the Government to access these drugs at low cost. This House may also recall that in our first budget presentation $500 million was allocated to fight the disease over a five-year period in the areas of treatment, research, education and other public health efforts.

Notwithstanding these very important measures, we must be forever mindful that there are individuals who, through their irresponsible and unacceptable behaviour, either deliberately or recklessly place others at risk of infection and the Government is now of the view that, concomitant with our social and public health initiatives, other steps must be taken to combat the spread of this dangerous and dreaded disease. It is in this scenario, Mr. Speaker, that the criminal law undoubtedly has a role to play in protecting the society and punishing those whose conduct contribute in the ways I have described to the spread of this virus.

The Offences Against the Person (Amdt.) Bill, which is now laid before this honourable House, would make it mandatory for a person who knows or who ought to know that he is infected with the virus, to disclose his positive status to any person with whom he engages in intimate or sexual conduct and who, as a consequence, is exposed to the virus and, therefore, exposed to the risk of infection and all that follows as a consequence. The Bill, in essence, seeks to attach criminal responsibility for such reckless behaviour and, in one case, non-disclosure.

There is no gainsaying that the AIDS epidemic is first and foremost a public health issue, and while we agree that non-legislative measures such as education, counselling and the promotion and encouragement of responsible sexual behaviour would be effective in curbing the spread of this dreaded disease, we are also of the view that the criminal law has, indeed, a role to play in stemming the epidemic, by imposing a disclosure responsibility on persons living with HIV, as such persons do pose a significant threat to the risk of transmission and must be held, in our opinion, accountable.

Mr. Speaker, we strongly believe that criminalizing conduct which may be harmful to others is not at all incompatible with other public health measures being pursued to combat the spread of the disease, and that imposing punitive sanctions would at least act as a deterrent and perhaps reflect society's abhorrence of such unconscionable behaviour.

Other jurisdictions have long introduced similar measures in legislation. In Australia, four states have passed legislation in this regard—Queensland, New South Wales, South Australia and Victoria. In the United States, the majority of state legislatures have adopted criminal statutes relating specifically to HIV infection. These statutes only require that the prosecution prove that the prescribed behaviour took place and there is no need to prove actual transmission of the virus.

Within the Caribbean region, two countries have already introduced legislation to deal with this problem. The Bermuda Criminal Code (Sexual Offences) (Amdt.) Act, 1993 provides that where a person, who knows that he or she is HIV/AIDS positive, does a sexual act which involves the transmission of body fluids to another person and does not inform that person that he or she has the disease, is guilty of a sexual assault and liable, on conviction on indictment, to 20 years imprisonment. It is to be noted that a spouse is not exempted in that legislation from those measures. Likewise in the Bahamas, the Sexual Offences and Domestic

Violence Act, 1991 creates a similar offence and imposes a term of imprisonment for five years.

One may ask why similar legislative measures are not being taken towards other communicable diseases. The reality is that other diseases are non-fatal and treatable with drugs. AIDS, on the other hand, is an almost always fatal disease and has already, as I indicated earlier, reached, in our view, pandemic proportions. This view is, to my mind, supported by the statistics.

One must also note that the Bill is not aimed at discriminating against those who suffer from AIDS, nor is it intended to discourage persons from coming forward for diagnostic testing and treatment. It simply provides for penal sanctions where one's conduct, as I have described, is intentional, purposive and clearly negligent, in the non-legal sense of that word.

Mr. Speaker, may I also point out that because of the nature of the disease, the offence is not one of transmission as it would be difficult and at times even impossible, to prove that transmission actually took place. This is because the virus has a hibernation period of up to five, and some people say, ten years; and though one may engage in intentional conduct as hitherto described, one may not necessarily be responsible for transmitting the disease. The creation of an offence of transmission would plunge prosecutors into obviously murky waters of having to establish a causal link between the alleged act of infection and actual infection.

For this reason the offence created is merely one of exposure to the risk of transmission, so that the offence is committed whether or not the victim is actually infected, whether or not transmission actually occurs, and whether or not prophylactics are used. The conduct of the accused, in failing to inform his hapless partner, to reveal his status as positive, is being targeted and, in our view, ought to be punished. Actual transmission is not the essential ingredient of the crime, rather criminal liability is attached to the accused person on the basis that he exposed another recklessly or intentionally to the risk of infection.

Mr. Speaker, it is clearly not unreasonable for a society to establish clear parameters as to the type of behaviour which it is prepared to tolerate and to punish conduct, which is clearly antisocial and outside the bounds that the society with its common morality, as defined, is prepared to tolerate and accept.

Mr. Speaker, this very carefully drafted Bill has the potential, in our view, to protect our society from further or unnecessary spread of this disease. It will not only attach criminal responsibility for the non-disclosure, but will also create the

offence of negligent transmission where an individual or institution supplies any tissue or body fluid to a person and that person becomes infected due to gross negligence on the part of the individual or institution. Such a measure is intended to encourage the highest standards and tremendous precaution in medical procedures. It is well known to us that in the world, persons have been infected with HIV on account of blood transfusions. It is that we are concerned about in this measure, and it is that with which we intend to deal, as I have just outlined. Although one would expect the risk of HIV transmission through blood transfusions conducted in a hospital environment to be non-existent due to the screening and treatment of blood products, it may not be wise to adopt a too-complacent attitude. We take the view that the legislation and measures we are proposing would impose the Parliament's and society's views that the highest standards ought to be observed in those medical procedures, even at our national institutions.

Let me, before I proceed, give a couple examples of this. In France, in 1992, over 4,000 persons contracted AIDS as a result of transfusion of HIV-infected blood by hospitals to a few persons, much less than 4,000. In other words, where the screening process is negligent, the victim pool becomes very wide.

Clause 2 of the Bill would amend the Offences Against the Person Act, Chap. 11:08, by inserting, after section 18, two new sections, that is to say, sections 18A and 18B. The new section 18A creates the offence of intentional or reckless exposure of another to HIV infection. The offence would be committed where a person who knows or ought reasonably to know that he is HIV positive, engages in conduct with another without informing that person of his HIV-positive status. Conduct in the context of these measures includes intimate conduct with the person, the transfer of blood, tissue or organs, or the transfer or any intravenous or intramuscular drug paraphernalia, which the infected person has utilized since he had knowledge of his HIV infection.

That, of course, deals with drug users who share needles, knowing that they are so infected. Of course, as we said, we recognize that a number of non-legislative measures are being put in place and we must continually seek other measures that would assist in dealing with this serious problem.

Conviction on indictment for intentional exposure would carry with it imprisonment for 10 years, while conviction for the offence of reckless exposure would make one liable to imprisonment for seven years. If a victim dies as a result of either intentional or reckless exposure, then the Bill provides for the offence of manslaughter to be proffered against the accused.

One would observe that it is a defence for the person charged under this section to prove that he informed the victim of his status and that the person consented to the conduct in question. So, it would be for the accused to prove that he had informed the victim, the virtual complainant, as we would say in a trial process, of his status, and that person consented to the conduct.

The new section 18B creates the offence of negligent transmission. As mentioned earlier, this offence is committed where an individual or corporation supplies for transference or actually transfers to a person blood, tissue, organs, et cetera, and the transferee becomes infected with HIV due to gross negligence. In this case, the individual or corporation would be liable to a fine of $500,000 and the court is also empowered to revoke the operating licence of the corporation. This is intended no doubt to encourage our health care professionals to exercise the highest standards of care against the spread of infection in undertaking certain medical procedures.

Mr. Singh: My concern with that is that, obviously, there is need for a certain time frame for the public sector or the private sector health institutions to put certain infrastructure in place to deal with that issue, having regard to the punitive nature. Have there been discussions with the various providers to deal with an issue of that nature?

Hon. F. Hinds: Thank you very much for your intervention. I would respond by saying two things: this Government never proceeds on the basis of failing to consult with stakeholders in matters as important as the measures before us. [*Desk thumping*] In addition to that, your suggestion that we should offer those corporations an opportunity to put their houses in order, if I may be permitted a colloquialism, is worth considering, but you must bear in mind that, as we speak, they are engaged, in some cases on a commercial basis, in the practice and they ought to have had their house in order *ab initio*.

Having said that, I will continue. You will have your chance. Mr. Speaker, I conclude, to give Members of this House, including my friends on the other side, every opportunity to make their contributions to these important measures, in the national interest.

Mr. Speaker, this Bill suggests that the law can play a proactive role in seeking to change underlying values and patterns of social interaction, which create vulnerability to the threat of HIV infection. It has the potential to complement and reinforce other policy initiatives and these should not be overlooked. Our challenge as legislators is to recognize the wider need to address,

not only what might be termed HIV-specific issues such as education, research, et cetera, but also to attack the underlying social factors which deprive individuals of the power to protect themselves.

Mr. Speaker, the law has a protective role to play and I ask Members of this honourable House to see this Bill, among other things, as a mechanism, indeed a strategy for promoting and protecting individual rights, and as one small step in the furtherance of our fight against the spread of AIDS.

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

Question proposed.

2. 00 p.m.

Dr. Hamza Rafeeq (*Caroni Central*): Mr. Speaker, I rise to make a contribution in this debate on a Bill to amend the Offences Against the Person (HIV) Act, Chap. 11:08. I must confess that I was a bit disappointed in the presentation of the Member for Laventille East/Morvant. I thought he would have given us an appreciation of the extent of the problem that we have in Trinidad and Tobago, as far as this problem we are talking about today is concerned. The only thing that he mentioned is that there was a headline in the newspapers saying: "Nigerian doctor in AIDS spree". If this piece of legislation is in response to that, bringing legislation to deal with the misdeeds of one person is certainly out of place and wrong.

Mr. Speaker, AIDS is a serious problem in Trinidad and Tobago. It is not only a health problem; it is an economic and development problem. If this were not such a big issue in Trinidad and Tobago, I would say this Bill is hilarious, laughable and humorous. Because, in the light of the serious issues we have in our society today; we have 160 murders committed in Trinidad and Tobago for this year. We have had over 30 kidnappings for ransom in Trinidad and Tobago.

Mr. Ramnath: What? Shame on you all man.

Dr. H. Rafeeq: That is what we should be debating. These are the issues that the Government should be talking about. What the Government has brought is a Bill to determine who is having sex with or without condoms. That is basically what we are debating here today.

Over the last three and one-half years, we have had over 850 murders in this country. We have had over 100 kidnappings for ransom. We have had millions of dollars being paid in ransom money. We have had robberies that are reported— [*Interruption*]

Mrs. Robinson-Regis: We have people who are intentionally killing people?

Dr. H. Rafeeq: I will deal with that. You are too hurry man!

Mr. Ramnath: Do not get him vex!

Dr. H. Rafeeq: We have robberies on a daily basis in almost every community in Trinidad and Tobago. We have murders that are not reported on the front pages of the newspapers anymore. Kidnappings are no longer reported on the front pages. There are robberies that are not reported in the newspapers because they are so common in Trinidad and Tobago, at this point in time and we have violence in schools. What is the Government's track record on those issues? How many have been detected or solved? Even though the Prime Minister said that the crime is only a temporary situation it keeps increasing. This Government does not seem to have a clue on how to deal with crime. That is what we should be talking about today.

Today, with this Bill, we are creating a new category of crime. When people have intimate relations with others and they do not use protection or disclose their HIV status, we are criminalizing that.

I want to warn this Government. I am doing it very sincerely, because we are just as concerned about the HIV epidemic as anyone else. I want to warn this Government that if the purpose of this Bill is to stem the spread of HIV/AIDS in Trinidad and Tobago, this Bill will be counterproductive to that effort. I will tell you why during the course of my contribution. Stigmatization and discrimination, as far as HIV/AIDS patients are concerned, is a serious problem and this Bill will only seek to aggravate that issue. [*Interruption*] Yes, I am reading my notes. Do you have a problem with that?

Mr. Ramnath: He was not reading what other people wrote. He is reading what he wrote, by hand.

Dr. H. Rafeeq: This Bill seeks to create a new offence. One of the offences is if a person is exposed to the HIV virus and as a result of that exposure, the person dies, then the person who is accused can be charged for manslaughter.

When someone is charged for manslaughter, it gives a certain kind of comfort for the accused to know that there is integrity in the judicial system, even up to the Privy Council. It gives that person the comfort to know that there is integrity in the system; that he can go to the police; the police is involved, there is integrity there; the director of Public Prosecutions is involved, there is integrity there; the

Magistrate is involved, there is integrity there; the High Court is involved, there is integrity there; the Appeal Court and the Privy Council are involved.

Mr. Ramnath: Thank God those white people in England, yes.

Dr. H. Rafeeq: When a person is charged for manslaughter or murder and that person reaches as far as the Appeal Court, most times, for most people, their financial resources have been depleted by that time. From this Act, the person can be charged for manslaughter. We should have integrity in the system so that we can go up to the Privy Council to get justice. Remember, this is not an easy matter to prove. Remember, there will be no witnesses in this issue. There will be no witnesses as to whether the person actually informed his partner about his HIV status. There are no witnesses. There are only two persons involved. It would be one person's word against the other person. When the Privy Council is no longer available to people who cannot afford to go to the Privy Council, then the entire system of justice breaks down.

If what was reported in the newspapers a couple of days ago, as the intended policy of this Government; that they are refusing to pay the lawyers of persons who cannot afford to pay lawyers to go to the Privy Council, then they are putting the Privy Council out of reach of poor people.

Mr. Singh: Denying access; contravention of the Constitution.

Dr. H. Rafeeq: So, Mr. Speaker, if it is the Government's policy to deny poor people access to the Privy Council and only allow people such as drug lords who are very rich to access the Privy Council, then the administration of justice in this country has broken down.

Mr. Ramnath: They want to abolish the Privy Council?

Dr. H. Rafeeq: This Government is creating or has created a society of violence. They now want to institutionalize violence in the society, where they want to hang people without due process.

We on this side are saying that we do not agree and we will not support the action by the Government not to pay lawyers who will represent people at the level of the Privy Council.

There are other issues I want to deal with, as far as this Bill is concerned but I wanted to get that one out of the way. One effect of this piece of legislation, if it is passed and implemented, would be that it would increase the prison population.

When people are charged and found guilty, there are no fines in this Bill, they will have to go to prison and the prescribed sentence is seven years and for manslaughter it is life imprisonment. As I said, one of the effects would be an increase in the prison population of persons who are infected with HIV/AIDS. Our question, therefore, will be: "Are our prisons adequately equipped to take care of the increase in the HIV-positive population?"

Mr. Speaker, we know that the prison conditions are deplorable. Recently, one of the prison officers, representing the Prison Officers Association, was making the point that there is a serious shortage of prison officers. He was also talking about the prison conditions. The infrastructure is inadequate. I want to ask that the Minister, in his response, tell us whether persons who are HIV positive will be housed separately or together with the rest of the prisoners; whether they will be integrated in the rest of the prison population? Are they going to be protected from other prisoners who are serving their sentences? We read from time to time that there are fights and scrapes in prison where people get cuts, bruises and abrasions. How are these things going to be dealt with? Once someone is infected with the HIV virus and his skin is broken by way of a cut or abrasion, that person is at risk of spreading the disease, not only by sexual but physical contact, because the blood is there. How are you going to deal with people like that? Are the prisoners who are HIV positive and are going to be imprisoned, will they be stigmatized and discriminated against, even while they are in prison? Are they going to be cared for or are they going to be left to die? Remember, if someone has full-blown HIV/AIDS and that person is given a sentence for approximately 10 years, that person is really given a life sentence, in most cases, because that person can die in 10 years. Is the Government going to treat this person, or leave him in prison to die?

What about transporting prisoners from the prison to wherever they have to go for their cases, will they be transported separately or together with other prisoners? What about these issues? How will they be protected? We have heard that there is a lot of homosexual activities in the prisons. How is the Government going to control the spread of HIV/AIDS in the prison, having now put a whole population of HIV/AIDS patients in prison? What about the medications and treatment? We know that some people in this country are getting antiretroviral drugs for the HIV virus; those who are suffering from AIDS. They have to be administered this from time to time and they also have to have blood tests and

other kinds of treatments, what about all of these? Are provisions made for all of these when these people go to prison? These are some of the questions that I would like the Minister to answer in his response.

What about the prison officers themselves, are they trained to handle and deal with HIV-positive prisoners? Are these prison officers going to discriminate against those who are HIV positive? Will the prison officers take a special interest in these HIV/AIDS patients, knowing that sometimes their needs might be special? As I said before, these are some of the issues that we will have to confront when there are HIV-positive patients; patients who have full-blown AIDS going into the prison.

At this point in time, even as we speak, we know that there is an increase in the incidents of tuberculosis (TB) in Trinidad and Tobago. There is an increase in the incidence of tuberculosis all over the world and Trinidad and Tobago is no exception. For many reasons, of course, we have cases that are now resistant to conventional treatment. We also have patients who are not complying with their schedule of treatment. Tuberculosis and HIV are related. When someone has HIV, especially when they have AIDS and their immune system is compromised, they can easily be infected with tuberculosis. To properly manage HIV, you also have to be able to properly manage tuberculosis. The facilities for managing TB in Trinidad and Tobago are woefully inadequate.

You would have seen a couple of days ago in the newspapers when the commissioners from the Commission of Enquiry into the Health sector visited the hospitals, they were given a whole litany of woes, as far as Caura Hospital is concerned. Treatment, that is drugs, and personnel are inadequate and the testing, one of the most important things in dealing with TB, is not adequate. While you are treating patients with TB they must be tested on a regular basis at regular intervals and those facilities are woefully inadequate at the Caura Chest Hospital. With the increase in HIV/AIDS and TB, we are sitting on a veritable time bomb, as far as these are concerned, if these issues are not addressed and dealt with as quickly as possible.

This Government's response to HIV/AIDS—I would like to deal with some of the things they have done so far. The Minister mentioned that in the 2002/2003 budget the Prime Minister announced that in five years the Government will be spending $500 million to deal with the HIV/AIDS issue. Sometime later that year, I think it was in January 2003, I asked the Minister of Health how, and on what programmes, were those moneys to be spent on an annual basis. He gave an

answer that went something like this: The first area is prevention. In year one, 2003, the plan calls for expenditure of US $4 million; year two, US $4.3 million; year three, US $4.2 million; year four, US $4.3 million and year five, US $4.5 million.

The second priority is treatment: year one, US $9.6 million; year two, US $11.2 million; year three, US $10.8 million; year four, US $12.3 million; year five, US $14.6 million and other areas of expenditure would have been advocacy in human rights, surveillance and research, and programme management and coordination.

What that amounted to, when calculated in TT dollars was that in 2003, TT $96 million was supposed to have been spent. In 2004, $112 million went towards the AIDS programme. In 2005, $107 million; in 2006, $114 million; and 2007, $126 million, bringing a total of $500 million. That was the expenditure that was supposed to have been incurred from 2003—2007, to make up the $500 million that the Prime Minister promised in the budget of 2002.

What has been the reality? In the first year 2002/2003, they spent $2 million and they were supposed to have spent $96 million. In the second year they allocated $10 million but they spent approximately $5 million. They were supposed to have spent $112 million. In the third year, which is this year, they are supposed to spend $107 million but they have been allocated approximately $15 million. For the three years, the programme called for an expenditure of $316 million and so far they have spent lest than $20 million. I know the Minister of Health will be responding in a while and I hope he gives us up-to-date figures on the amount of money that has been spent. The figure is nowhere close to the $316 million that was supposed to have been spent from the $500 million that the Prime Minister spoke about. When will the rest of money be spent? Is this just another hollow promise?

The Prime Minister also mentioned, in his budget presentation of 2002, that there will be built in Tobago, I want to use the correct words, a first class state-of-the-art AIDS testing facility where people can walk in and be tested for HIV/AIDS; a walk-in facility. Mr. Speaker 2002, 2003, 2004, have passed and we are in the middle of 2005 and nothing has been done so far. In the 2004/2005 budget, which was read in October 2004 no money was allocated for this testing facility. I thought that in the midterm review that we did last week, moneys would have been allocated to construct that facility. Nothing was allocated.

What was allocated was $100 million to the THA towards the construction of the Tobago Hospital. We know the kind of overruns and scandal that that project

is turning out to be. The Minister of Health told us that the budgeted cost was $195 million. I really want to get from him what was the original budgeted cost. I understand that it was in the vicinity of $120 million. They have already spent $179 million, which means that there is already a cost overrun of $60 million. The Minister did not want to tell us. I hope that he has time to reflect on it. I hope today he will tell us how much work has been done on the Tobago Hospital. When he answered on the last day he said that they were still doing an appraisal of the works that were done and that he would give us at a subsequent day. We do not know how much work has been done at the Tobago Hospital. What we know is that the sum of $180 million has been spent so far on a project that was supposed to have cost $120 million. Our understanding is that only the foundation has been laid so far. You can tell us.

Mr. Ramsaran: Landate Complex finished?

Dr. H. Rafeeq: What has been this Government's track record on dealing with HIV/AIDS so far? I told you about the expenditure. The Government said that it would give all the money. In truth and in fact, they are way below what should have been spent. The Government has set up, the Minister mentioned it, the National AIDS Coordinating Committee in the Office of the Prime Minister. They have set up this under the leadership of Dr. Amery Brown is it? It is Dr. Amery Brown. What they have done so far is that they have continued the mother-to-child transmission of HIV/AIDS, which was a programme that was started by the previous administration. They have continued that, which is good. They have continued the treatment with antiretroviral drugs. I think the Member for Laventille East/Morvant should get his facts straight, as far as that is concerned, that is, that it was the government of the UNC that negotiated with the drug companies to get drugs at a cost of 10 per cent of the original cost. We were able to negotiate with the drug companies to get a reduction of 90 per cent, as far as HIV/AIDS antiretroviral drugs are concerned. The Member for Diego Martin East recognized, because he did allude to that in his previous incarnation as Minister of Health.

The government of the UNC was involved in negotiations for the Global Fund; as a matter of fact, Trinidad and Tobago was one of the leaders in the Caribbean, as far as the Global Fund for AIDS was concerned. We were involved in negotiations with the World Bank. They received money from the World Bank for this. When you put all of this, we would like to know from the Minister of Health or the junior Minister of National Security what exactly has this Government done, as far as HIV/AIDS is concerned, in addition to the programmes

they inherited from the UNC? We also want to know, I said that this is a serious problem and we are just as concerned, from the Government what are their targets, as far as dealing with HIV/AIDS is concerned? Do you have targets? Are you monitoring these targets on a regular basis? We understand that they do not have targets as to how much they want to reduce AIDS over a period of time; whether it is one year, two years or three years. The National AIDS Coordinating Committee, we know, is not fulfilling the mandate for which it is appointed. One of the reasons for that is that again they have put square pegs in round holes.

I would like the Minister to tell us how Dr. Amery Brown was selected for that job. I want him to tell us whether that particular job was advertised, whether Dr. Amery Brown and others responded to advertisements, whether they were interviewed, who were the other persons interviewed for that job, and how was he selected to head that committee? We would like to know that. Was he handpicked by the political directorate to deal with that particular job?

Another issue I want to briefly mention because others will be speaking on this in greater detail some time later on, what is the Government's policy as far as AIDS in the workplace is concerned? There are other Members of the Opposition who will be speaking on that.

While the UNC was in office we developed a comprehensive policy document on AIDS in the workplace after a series of consultations with all the stakeholders, employers, employees and trade unions. What are the rights and obligations of persons who are infected with the HIV virus, as far as the employers are concerned and what are the rights and obligations of the employers, as far as dealing with their employees who are HIV positive? Can workers who are HIV positive be dismissed because of their HIV status? Can they be discriminated against, as far as promotion and transfer are concerned, because of their HIV status, or can potential employees be bypassed because of their HIV status? I do not know what the policy of this Government is, because we have not seen any policy documents on this side, as far as AIDS in the workplace is concerned. We want to know what the policy of this Government is as far as AIDS in the workplace is concerned.

Recently, you may have read it in the newspapers, a laundry worker at the Port of Spain Hospital was dismissed, because she was discovered to be HIV positive. It is only after the intervention of several persons, including Prof. Bartholomew, the matter has been sorted out. There is discrimination in the

workplace, as far as HIV is concerned and we want to know what is the Government's position on HIV/AIDS in the workplace.

Having said all of this, this legislation will not help the problem. In dealing with HIV/AIDS there are three important initiatives that must be taken into consideration; there are many but there are three very important ones that must be taken into consideration. The first one is education across the board, both in the formal and informal sectors.

The second one is that all steps should be taken to reduce or remove the stigma and discrimination, as far as HIV/AIDS patients are concerned at whatever level.

The third one is care and support for people who are living with HIV/AIDS. I would like to briefly deal with these three and to tell the Government if these three are dealt with there will be no need for this piece of legislation which it has brought here today.

Mr. Speaker, I want to quote from Prof. Rex Nettleford, who was the Vice Chancellor of the University of the West Indies. He said: "If as has been said, the HIV pandemic could well be Planet Earth's worst weapon of mass destruction endangering all of humankind, then the Caribbean in its newfound vulnerability needs to engage in a preemptive strike against ignorance, denial, stigma and discrimination which are themselves most effective agents contributing to the spread of AIDS. "

That is what Prof. Nettleford said and that is true. He put the first one here as ignorance. We need to educate people as far as this virus and the spread of it is concerned. So far, there is no literature that has been written by anyone who knows about the spread and control of HIV/AIDS that supports this type of legislation. Nobody who knows about HIV/AIDS supports this kind of legislation. We know, and the Minister pointed it out, that AIDS is no longer gender specific. It is no longer confined to the homosexual community; it is now heterosexual. The increases in incidents are among men but are also very high among women of childbearing age. As he mentioned, the Caribbean has the second highest incidence in the world.

Education is extremely important and education must start at the level of the primary school. If we have to make any dent in the HIV/AIDS epidemic in Trinidad and Tobago then education, as far as HIV/AIDS is concerned must start at the

primary school level. We cannot wait until children reach secondary school or after secondary school to begin to educate them about AIDS; it must start at the primary school level.

We know that the near eradication of diseases such as typhoid, yaws and malaria was a result of information that was flooded to the primary school system. Because of that, these diseases were brought under control and even eradicated. It is extremely important to start the education of HIV/AIDS at the primary school level. There are still people in this country—we must not be complacent and feel that everybody knows about HIV/AIDS—who feel and sincerely believe that if they have sex with a virgin that their AIDS will be cured. There are people who believe that.

Mr. Singh: That is very prevalent in Tobago.

Dr. H. Rafeeq: There are people who believe that if they have a certain kind of diet they would not get AIDS; such as if they eat curry. That also is not true. Remember, India has four million persons who are infected with the AIDS virus. There are people who believe that if they contract AIDS—

Mr. Valley: I wonder if the Member would give way? I wondered whether the Member could provide us with the information that he knows that these four million persons with AIDS in India in fact eat curry?

Dr. H. Rafeeq: Mr. Speaker, I know that the Member for Diego Martin Central is a lover of curry but I want to tell him that would not protect him. [*Laughter*]

There are people who contract AIDS and who feel that if they go and get some kind of herbal remedy they will be cured.

Mr. Ramsaran: "Yuh" have to dip it in the curry.

Dr. H. Rafeeq: That also is not true. There are people who believe that if they contract AIDS and invoke some kind of obeah they will be cured. There is need for public education because there are many persons who are still in this paradigm.

On the other hand, there are people who believe that they can get AIDS from shaking hands, using one another's pen and books, hugging, kissing, toilet seats and towels. There are still people who believe that. There is a lot of ignorance in this country still, as far as the spread of HIV/AIDS is concerned. Whether we like it or not, admit or not or condone it or not, we must understand and believe that

there are many primary school children who are engaging in sexual intercourse. There are many more secondary school children who are engaging in sexual activity, but there are also primary school children who are engaging in sexual activity while they are still in primary school.

It must be recognized that formal education is largely the province of the young; the category is at greatest risk of becoming infected with HIV. There is also a growing body of evidence which suggests that education empowers individuals to make the proper choices. What has Trinidad and Tobago done? What has this Government done, as far as educating people where HIV/AIDS is concerned? There was a conference in Cuba on November 15, 2002 which was attended by the Ministers of Education from the Caribbean. I want to read one paragraph of the commitment they made at that conference. I quote:

> "We, Ministers of Education in the Caribbean recognizing the potential of HIV/AIDS to deplete the human resources needed for sustainable development in the Caribbean, reassert the determination of our Governments to fight the epidemic.
>
> We recognise that Education is integral to the fight against AIDS, and that the disease will not be overcome without the full involvement of the education sector.
>
> In this light:
>
> - we acknowledge that more could be done through the education of teachers and students to prevent the spread of HIV;
> - we affirm that there is need to provide support and care to affected educators and learners;
> - we recognise that creative measures are needed to reduce the impact of the epidemic on our education sectors. "

The final paragraph states:

> "We commit ourselves and our Ministries of Education to a heightened and concerted response to HIV/AIDS, beginning from this moment and continuing until, through education and other means, we have entered a world without AIDS."

This was signed by the Ministers of Education of the Caribbean including Sen. The Hon. Hazel Manning, Minister of Education of Trinidad and Tobago. What

has been done to further these initiatives so far? What has been done so far in the formal education system? What has been done to further these initiatives? Does the Ministry of Education have a policy for dealing with HIV/AIDS and education and has this policy been disseminated? Has the Ministry of Education developed a code of conduct and procedure for dealing with aspects of HIV/AIDS among the staff and school population? Does the Minister of Education show a clear commitment to the proactive management of HIV in the education system? I am not talking about having a walk once or twice a year; I am talking about sustained effort. Is there an education sector/HIV strategic plan? Does the Ministry of Education have a unit responsible for the implementation of that plan with clearly defined responsibilities? Does the curriculum make provisions for these things?

Mr. Ramnath: No, Montano worried about too much Indians in UWI and you have not disciplined them.

Dr. H. Rafeeq: Mr. Speaker, these are the responsibilities of the Ministry of Education. I want to make the point.

Mr. Ramnath: I will make a big issue of that, because you all are a racist government!

Mr. Speaker: Order!

Dr. H. Rafeeq: The responsibility for dealing with HIV/AIDS is not confined to the Ministry of Health; it involves all ministries. It is as wide as all ministries, but certainly the Ministry of Education has an integral role to play, as far as the prevention or spread of HIV/AIDS is concerned.

Mr. Ramnath: The Privy Council. You would never get my vote to remove those white people, never.

Dr. H. Rafeeq: As I mentioned, education must not only be in the formal sector, the primary and secondary schools, it must be elsewhere as well. It must be for those people who do not attend school and the older population. What about the pan yards, the workplace, the churches, the mosques and the temples? AIDS education has to be taken throughout. It cannot only be left to the Ministry of Health.

Mr. Ramnath: Panday gone too?

Dr. H. Rafeeq: The Ministry of Health also has a critical role to play in educating the population.

Mr. Ramnath: That is my leader.

Dr. H. Rafeeq: When you put all of these together: dealing with education in the school system and in the informal system, you deal with stigma, discrimination, care and support and there will be no need for this kind of legislation.

I want to say a few words on the issue of stigma and discrimination, as far as HIV/AIDS is concerned. This is a very, very serious problem. Fear of discrimination prevents people from acknowledging that they are HIV positive. People do not want their status to be known because of the stigma that is associated with HIV/AIDS and because of the discrimination against persons who are living with HIV/AIDS. They do not want their HIV/AIDS status to be known.

Fear of discrimination and the stigmatization also prevent people from seeking treatment after they have a confirmed diagnosis of HIV/AIDS. They do not want to seek treatment again, because of the fear of discrimination.

Fear of discrimination stops people from using condoms and adopting any other preventative behaviour. It prevents people from being tested even if they suspect that they might be HIV positive. They do not want to be tested because they know the stigmatization of the disease and the discrimination that might come their way.

Mr. Hinds: I would like to hear you go over again, the responses to the fear of stigmatization. I just want to get you very clear.

Mr. Ramnath: You would not learn anything.

Dr. H. Rafeeq: I will go over it slowly, Sir.

Fear of discrimination prevents people from acknowledging that they are HIV positive. Even if they know that they are HIV positive they do not want to acknowledge that because of the stigmatization and fear of discrimination in the community. It prevents people from seeking treatment even when they know they are HIV/AIDS positive. This is a small country and people who seek treatment might have to go to the public authorities and their status can be known. It prevents people from seeking treatment even though they know they are HIV positive, even if they know that treatment is available because of the fear of discrimination. It stops people from using preventative measures.

Mr. Hinds: That is the problem

Dr. H. Rafeeq: You will deal with that in your winding up.

Mr. Hinds: You are saying that the fear of discrimination and stigmatization prevents people from using condoms? That is what you are saying?

Mr. Singh: No!

Mr. Hinds: That is what he said! That is the problem. That is the recklessness.

Dr. H. Rafeeq: I am saying that and you will deal with that in your winding up.

Mr. Hinds: That is the point.

Dr. H. Rafeeq: Mr. Speaker, it also prevents.

Mr. Hinds: He said that! That is what we are dealing with.

Mr. Singh: No!

Dr. H. Rafeeq: Yes I said that. It also prevents communities, families and partners from providing education, support and care for people who are HIV positive. It negatively affects the quality of care provided to HIV-positive patients.

Finally, it prevents the national authorities from getting the true picture. This is not an exhaustive list; stigma is real.

For those people who are affected by HIV/AIDS, the stigma and discrimination is real for them. I do not know if you recall, Mr. Speaker, some years ago, I think it was in 1994/1995 thereabouts, when the former Attorney General, Selwyn Richardson was alive and it was alluded to in one of the weekly newspapers, I think it was the *TnT Mirror,* that Mr. Richardson was suffering from AIDS. He took the matter to court. When he went to court he made a startling statement. He said that his close relatives, his niece, who once used to hug, kiss and shake hands with him before, were no longer doing that because it was said that he had HIV/AIDS. He was making the point that that stigmatization and discrimination was real for him because people believed that he had AIDS and they would not hug, touch or kiss him. From then to now, 1995 to now, very little has changed as far as the stigmatization of HIV/AIDS is concerned.

As far as discrimination is concerned, there are only two countries in the Caribbean that have passed laws legislating against discrimination; one of these is the Bahamas. They have put theirs in the Employment Act. That deals only with discrimination, as far as employment is concerned.

In Bermuda, they have put it in their Human Rights Act to include HIV/AIDS in its definition of disability as a prohibited ground for discrimination. No other

Caribbean country has any legislation dealing specifically with discrimination against persons living with HIV/AIDS.

Many diseases in the past have been stigmatized. We have had leprosy, TB and even cancer being stigmatized but with education, these diseases are now accepted. That is why I say that education is extremely important.

Mr. Ramnath: "Yuh" get the point, Hinds?

Dr. H. Rafeeq: In November 2004, there was a conference held in St. Kitts/Nevis. The theme of the conference was: "Reducing Stigma and Discrimination Related to HIV/AIDS". The participants were politicians, both from Government and Opposition, health professionals, persons from the media, faith-based organizations, business, labour, prominent artistes, sportsmen and, of course, people living with AIDS. The purpose of that was to deal with discrimination and stigma and to chart a way forward for dealing with AIDS. That was a very useful conference and it is unfortunate that the Ministry of Health in Trinidad and Tobago was not represented at that conference, even though they were invited. It was a very, very important conference. I was fortunate to attend the conference on behalf of the Leader of the Opposition. It was a very useful conference. It was very unfortunate that the Ministry was not represented.

If stigma and discrimination continue then people will continue to lie low. People will not come forward and get tested for their disease and be treated for the disease, once the stigmatization and discrimination continues.

The Minister mentioned some states in Australia having passed legislation to deal with the issue that he is dealing with here today. I want to quote from Justice Michael Kirby, from the High Court of Australia. This is what he had to say in this respect.

> "AIDS makes us angry. But in law we must be rational. We must take as our guiding principle for law something more than the creation of a response to a dangerous epidemic. We must look for effective and just laws that contribute to slowing the spread of AIDS.
>
> It is trite to say that law cannot be a panacea for all social ills. Before invoking the rough instrument of the criminal law we must be sure that it will have some impact on the problem at hand. We must also be satisfied that, on balance, the use of criminal law will not be counter-productive and that it will not do more harm than good. "

These criteria have certainly not been fulfilled, as far as this particular piece of legislation is concerned.

Now, I want to—[*Interruption*]

Mr. Ramnath: "Rahael, yuh get yuh shipment of drugs boy?" Not yet? "Ah watching de papers here."

Dr. H. Rafeeq: Finally, I want to deal with why we on this side are saying that this law will be counterproductive. I have a press release from UNAIDS. As you know, UNAIDS is the leading advocate for global action on HIV/AIDS. It brings together eight UN agencies in a common effort to fight the epidemic: the United Nations Children's Fund (UNICEF), the United Nations Development Programme (UNDP), the United Nations Population Fund (UNFPA), the United Nations International Drug Control Programme (UNDCP), the United Nations Educational, Scientific and Cultural Organization (UNESCO), the World Health Organization (WHO), the International Labour Organization (ILO) and the World Bank.

Mr. 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. G. Singh*]

Question put and agreed to.

Dr. H. Rafeeq: We are here until 10 o'clock. We have eight more speakers on this side. Thank you very much, Mr. Speaker, and I thank Members of both sides of the House.

I would like to read this press release into the record because it is very pertinent to the subject we are dealing with today. This was July 2002. The headline of it is:

> "Avoid Using Criminal Law for HIV, says new UNAIDS Report
>
> Countries should generally refrain from using criminal law to deal with conduct that carries the risk of HIV transmission, according to a new report released today by the Joint United Nations Programme on HIV/AIDS (UNAIDS). Instead, they should use public health laws accompanied by appropriate safeguards for human and civil rights.
>
> The *Criminal Law, Public Health and HIV Transmission* report calls for considered, reasoned approaches by law-makers in using criminal law to

prevent HIV transmission. It also stresses that any legal response to HIV must be informed by, and be consistent with, international human rights principles.

'There have been numerous cases in which people living with HIV have been criminally charged for conduct risking the transmission of the virus,' said…director of Social Mobilization and Information at UNAIDS… 'But we must be careful to avoid over-reacting based on misinformation and prejudice, and must not resort too quickly to criminal prosecutions. Such situations can lead to a miscarriage of justice and promote stigma and discrimination. '"

That is the point that I was making. I continue:

"The report urges policy makers to consider the potential negative impact of criminalization on HIV/AIDS interventions. For example, branding a behaviour criminal can contribute to the belief that people living with HIV/AIDS are 'potential criminals' and are a threat to the 'general public'. This, in turn, can deter people from getting tested, thereby hindering prevention and care efforts.

According to the report, criminalization could be counter-productive and could undermine public health messages to reduce or avoid activities and behaviour that increase the risk of infection. 'Criminalization may also create a false sense of security among people who are not infected,'…'If there is a criminal prohibition against HIV-positive people, people who are not infected may mistakenly think that this reduces the risk, and that they are protected, if not by behaviour, then by a legal framework. ' Since HIV transmission in many cases happens when people do not know they are infected, a criminal prohibition will be irrelevant in most cases…

Criminalizing the conduct of people living with AIDS could undermine people's confidence…"

This is extremely important:

"Criminalizing the conduct of people living with AIDS could undermine people's confidence in counsellors and the health system if the information discussed with counsellors is not protected from search and seizure by police, or is used as evidence in court.

The report suggests that using properly-crafted public health laws as an alternative to criminal law can often better achieve public health goals.

> Public health laws can be more flexible, allowing health officials to intervene privately on a case-by-case basis. factors underlying risky behaviour such as addiction, lack of information, poverty, or violence can often be addressed more effectively than would be the case when there is a criminal prosecution. Public health laws may also allow for a better balance between individual liberty and protecting the health of the general population, for example through ensuring that individuals who are HIV-positive receive adequate counselling and access to health care services.
>
> By providing a range of recommendations—from protection to privacy, to repealing laws that impede HIV prevention, to ensuring the right to counsel—the authors of the report hope to make legislators aware of the need for sound public policy in this area, rather than legislating ill-considered laws that will be of little use in stemming the epidemic and could make matters worse. "

That is a press release coming from UNAIDS. A range of experts sit before a report such as this is given out by the UNAIDS.

Mr. Speaker, in all my research I have not found any country that has enacted this law and has been successful with it. Belize enacted this some time ago. I was speaking with one of the Ministers from Belize and she said that they are seriously considering repealing it because it is being counterproductive.

In Canada, they enacted a law dealing with the criminalization of Sexually Transmitted Diseases, not HIV/AIDS; this was before HIV/AIDS and they had to repeal that because that was found to be counterproductive.

England enacted what we are trying to have enacted and they are also thinking of repealing it, because they are having great difficulty in implementing this piece of legislation and it is working counterproductive. If this is passed today and becomes law, it will be difficult to implement because the Government will have to prove whether the person knew he was HIV positive in the first place. The Bill says that the person has to know that he was HIV positive. How can you prove that someone knew that he was HIV positive? [*Interruption*] exactly, the only way you can prove that is if you can turn up a result of a blood test that was taken from a laboratory which would say that the person took a test and that he was HIV positive. That has dangers. Some persons take tests and do not collect the result. Even though you have a document saying that this person took an HIV/AIDS test and is positive, he may not know that he is HIV positive. That is the first thing.

The second thing is many persons who go for HIV testing do not give their real names. You would not have a laboratory report in the name of the person who is HIV positive, so you may not be able to get confirmation that he knew that he was HIV positive.

Mr. Speaker, very soon if it is not here already, there are self-administered HIV tests. You can buy a test and take it home and test yourself and find out that you are HIV positive. How are you going to prove that person knew that he was HIV positive? It is extremely difficult to get through the first hurdle; that the person knew that he or she was HIV positive. It would mean that they would have to know that they were HIV positive and that was the means of HIV transmission. A person can have intercourse and the virus is not transmitted, but the Minister said that this Bill deals with exposure rather than transmission, okay. Once you are exposed, then you are guilty. As I said, who will determine whether the person who is HIV positive did not inform his partner that he is HIV positive? Who is to determine that and how will that be determined?

Remember they are there; it is two of them alone. Who will vouch whether he disclosed his status? How is that going to be verified? It would really be one person's words against another. Therefore, if that is so, this legislation is a very serious piece of legislation indeed, because many innocent people can be framed, as far as this is concerned.

Once people are charged; once this is passed and one person is charged many people who are HIV positive will go underground, you will not see them again, they will be involved in activities that can spread AIDS but we will not see them because they will not come for treatment and they will not turn up for testing. Once you charge one person and people realize that this Bill is passed and will be implemented, people will go under. The whole thrust of dealing with prevention and the spread of HIV/AIDS will be lost.

We on this side are saying that this is not the way to go. There is one clause here that we can support; that is the clause that deals with blood transfusion and tissue transplant. We can support that. If it does not exist at this point in time, in law; we can support the enactment of that. In blood transfusion, the institution should ensure that the blood is safe, the tissue is properly tested and it is HIV free, before they are transplanted into other people. We can support that part of the legislation, but as far as criminalizing of behaviour, we have a difficulty with that and it is going to be counterproductive.

I want to reiterate that the way to go is education across the board, from primary school, secondary school, university and across the board in the informal sector, as well as dealing with stigmatization and discrimination. This is extremely important—care and support for the people who are already infected with HIV/AIDS.

I stand here today as a person who has come in close contact with many persons who are suffering with HIV/AIDS. There is a cry out there from these persons who have been infected, that they have been discriminated against, they are being stigmatized and they cannot live a normal life like everyone else with their limitations that they do have HIV/AIDS. Their cry is that they must be given the opportunity to live a normal life like everyone else without the entire society looking down on them and thinking that they are potential criminals and they can go ahead and infect people willy-nilly, because all of them are now branded as potential criminals. Mr. Speaker, we cannot support this piece of legislation.

Thank you very much.

The Minister of Health (Hon. John Rahael): Mr. Speaker, I rise to fully support this Bill which is seeking to amend the Offences Against the Person (HIV) Act, Chap. 11:08 to criminalize the non-disclosure of one's HIV status. I want to repeat that—the non-disclosure of their health status by those infected with HIV to persons with whom they are in intimate contact is unconscionable. It is criminal negligence to knowingly expose someone to the risk of contracting HIV and persons guilty of such conduct must be punished to the full extent of the law.

It is sometimes very necessary to use the law to change attitudes and behaviour which place innocent citizens at risk. This legislation would therefore create a legal responsibility on HIV-positive persons to disclose their HIV condition before engaging in high-risk activities with others.

In this respect, we are not breaking new ground, a number of countries, both developed and developing, have already enacted legislation to outlaw reckless transmission of HIV to unsuspecting partners.

Mr. Speaker, HIV/AIDS is a global epidemic, eating up vital resources of countries across the world with serious implications for their future economic well-being.

3. 00 p.m.

In addressing this global public health crisis, my ministry, the Ministry of Health is continuing to make a significant contribution to Trinidad and Tobago's response through a comprehensive treatment and care plan launched by our Government.

The director of Pan American Health Organization (PAHO) noted in a recent publication that HIV/AIDS has become the biggest threat to human survival in the last 700 years and that important gains made in child health and life expectancy in the Americas are being threatened by this epidemic, which is destroying many of the efforts and investments of past decades.

Today, UNAIDS reports estimate that some 40 million people around the world are inflicted with HIV. In Trinidad and Tobago that figure is 28,000 or 3.2 per cent of the adult population, plus another 1,000 children.

[MR. DEPUTY SPEAKER *in the Chair*]

The good news however is that the latest figures coming from the National HIV/AIDS Surveillance Unit show that our initiatives to address this public health crisis are beginning to have a positive impact in reversing the incidence of new cases, as well as deaths from AIDS. Like in so many other areas in the health sector, we are making inroads like never before. We are making inroads with respect to the reduction of waiting lists for all categories of surgeries. We are improving our health facilities like it has never been improved before. We are equipping our health facilities like it has never been done before. We are aggressively attacking this HIV/AIDS issue like never before.

The Member for Caroni Central talked about an increase in HIV/AIDS in Trinidad, let me correct the record. In the year 2001, the new cases were 467; in 2002, 418; in 2003, 319 and in 2004, 245; a continuing decline in new cases every year.

Hon. Member: They are getting murdered instead.

Hon. J. Rahael: Since this Government came into power we were able to reduce new cases of HIV in Trinidad and Tobago by about 50 per cent. [*Desk thumping*] So when you talk about increase in HIV/AIDS, that is not so.

With respect to deaths, the number of deaths resulting from HIV/AIDS in 2001 was 262; in 2002, 240; in 2003, 166 and in 2004, 128. We have been able to reduce the incidence of death by over 50 per cent. [*Desk thumping*] That is what we are doing. The Member for Caroni Central spoke about expenditure and how

we said that we were going to spend $500 million; which is accurate. But you do not take money, throw it at a problem, and think that is going to chase the problem away. [*Desk thumping*] Every dollar must have its value. [*Desk thumping*] We are not going to throw $500 million behind a problem, and not ensure we make it effective. We are saying that unlike spending $2 billion on an airport that should have cost $500 million or $600 million, what we are spending is money that is providing results.

So, whatever expenditure we may have incurred, we are showing the results above 50 per cent reduction in new cases from 2001 to 2004 from 467 to 245. I said it was important that I correct the Member for Caroni Central with respect to that. [*Desk thumping*] What does this mean? That our care and treatment programmes are working.

Dr. Rafeeq: Would the Minister give way?

Hon. J. Rahael: I would give way in a minute. So that people living with HIV/AIDS would now have a greater life expectancy—that is the reality. In other words, a diagnosis of HIV is no longer an immediate death sentence for infected persons.

Dr. Rafeeq: I thank the hon. Member for giving way. I just want to find out whether you have the information as you said, you would not throw money after a problem. The Prime Minister said that they would allocate $500 million for the five years. I just want to find out from you, if you have information as to how much money has been expended for the last three years, so far, on HIV/AIDS.

Hon. J. Rahael: No, Mr. Speaker, I do not have that information available to me now. What is important is, whatever that expenditure was, you are seeing results. [*Desk thumping*] That is what is important. Not whether we spend $100 million or $90 million or $110 million. What is important is that you are seeing results for the money we have spent, and throughout the health sector, you are seeing results. [*Desk thumping*] Statistics also compiled by UNAIDS indicate that for the period 1983 to 2004 there were 14,536 cases of AIDS in Trinidad and Tobago, while deaths from AIDS for the same period were 3,273.

The National Surveillance Unit further categorized the data to reveal that 70 per cent of all HIV infections fall in the 15 to 49 age group; 45 per cent of all new infections occur in females, while 70 per cent of new infections in the 15 to 24

age group occur in females. We are therefore seeing that our women, and more so our young girls, are particularly vulnerable to contracting HIV and, for that reason, we cannot afford to relax our efforts. We are going to sustain these encouraging trends. What is very clear is that our care, treatment and prevention programmes are working very well and must be intensified. That is what is clear. [*Desk thumping*]

[MR. SPEAKER *in the Chair*]

One of these initiatives is our voluntary counselling and testing programme, in which we have trained over 300 counsellors; to operate counselling units planned for the Arima health facility, George Street Health Centre and the Family Planning Association offices in Port of Spain and Tobago. We are going to provide counselling for our citizens that are infected with HIV.

Again, the statistics show that the highest incidence of this disease is in the County of St. George—perhaps, Mr. Speaker, because it is the area with the highest population density. We are moving with haste to operationalize our voluntary counselling and testing centre at George Street, which would be fully operational within a month. [*Desk thumping*]

Mr. Speaker, the Ministry of Health recognizes the valuable contribution being made by many partners in the fight against HIV/AIDS. You see, this fight is a fight that we are all committed to, and it is the view of this Government, that by creating partnerships with all organizations and international drug companies, that we are best able to win the fight against HIV/AIDS. We have the diflucan partnership; that is a partnership with Pfizer, the pharmaceutical company. In November 2004, the Ministry of Health launched that diflucan partnership programme. Diflucan is the only recommended out-patient treatment for two of the most common fungal infections associated with HIV/AIDS.

This arrangement will allow infected persons to receive diflucan free of charge, for as long as it is necessary, courtesy Pfizer. That is the partnership we have—the international drug companies working with us, providing the medication for persons who are infected with HIV/AIDS, so that they can access that medication at no cost to the patient; the public and the Government of Trinidad and Tobago. That is partnership! [*Desk thumping*] That is how you negotiate and you create partnership. This arrangement will allow, as I said, infected persons to receive diflucan free of charge. Trinidad and Tobago is the first country in our region to benefit from this partnership programme with Pfizer.

The Ministry of Health has also signed a memorandum of understanding with the Clinton Foundation for the provision of assistance, training and legal advice on AIDS-related matters. So, when the Member for Caroni Central talked about they put certain programmes and signed with certain organizations and when I asked him to name the companies, he could not name them, because it is this Government that had arrangements made with Pfizer to get free drugs and a memorandum of understanding with the Clinton Foundation for the provision of training and legal advice as it is related to AIDS. We are also able to access laboratory equipment and antiretroviral drugs at greatly reduced prices. This is another step to increase the number of persons benefiting from treatment with antiretroviral drugs.

As of May 31, 2005, the number of persons in treatment and care was 2,600, with 1,200 of that number on antiretroviral drugs. This is a developing programme, as part of our support for the WHO/UNAIDS initiative to have three million persons in developing countries on treatment and care by the end of 2005, which they call the "three by five initiative".

Our target—and the Member for Caroni Central wanted to know if we have a plan, what is our target, what is it that we are hoping to achieve and, he said we did not have one, but I do not know where he is getting his information from. Apparently, the contact he has at the Ministry is feeding him false information telling him that we have no target; that we do not know what we are doing, you understand. So, our target is to increase the number of persons in care and treatment by 1,500 annually, with a further 1,500 persons on antiretroviral treatment each year.

We are also going to ensure that 6,000 persons would be in care and another 6,000 would be receiving the antiretroviral treatment by 2008, a total of 12,000 persons. We anticipate that we would have 6,000 persons in care and another 6,000 persons in care and also receiving antiretroviral treatment; that is a total of 12,000 receiving treatment by 2008.

But, given the downward trend in the incidence of new cases that we are seeing today, this target could be very close to the number of persons living with HIV/AIDS at a date even much sooner. We are encouraged by our programmes and the initiatives that we are taking. We have seen a reduction in death; we have seen a reduction in new cases because we are aggressively dealing with this question of HIV/AIDS. It is also important to understand what this Government is doing through its antiretroviral treatment programme.

Antiretroviral treatment prolongs life, making HIV/AIDS a chronic disease and not a death sentence. Because of our programme, providing antiretroviral

treatment and prolonging life, one may now start to consider that HIV/AIDS is a chronic illness just like any other chronic illness. So, we are removing that stigma that the Member for Caroni Central talked so much about. So that antiretroviral treatment is really providing an improved quality of life for our citizens living with HIV\AIDS, and that started with this Government in 2002. [*Desk thumping*] We are making antiretroviral medication available at no cost to the recipient. Not many countries in the world can make that statement; the maximum might be about 20 countries. Most of the developed countries—you must ask their citizens who are suffering with HIV/AIDS, if, in fact, they could get antiretroviral therapy without having to pay for it. Trinidad and Tobago is one of the leading countries that is providing antiretroviral treatment at no cost to its citizens. [*Desk thumping*]

The words of the Director General of the World Health Organization underscores how proactive and progressive this programme is, and I quote:

> "Lack of access to antiretroviral treatment is a global health emergency. To deliver antiretroviral treatment to the millions who need it, we must first change the way we think and change the way we Act. "

This is to say, service we sometime take for granted in Trinidad and Tobago, which as I said, is not so easily accessible elsewhere. We take for granted what is provided for us as citizens of Trinidad and Tobago: free antiretroviral treatment; free medication through the CDAP programme. I want to tell you this afternoon, that that is one of the most successful programmes that has ever been introduced in the health sector since time immemorial in Trinidad and Tobago. [*Desk thumping*]

Could you believe that someone suffering from high blood pressure, diabetes, asthma, arthritis, glaucoma and depression, all these chronic illnesses, could now get a CDAP prescription and go to any of our 130 public pharmacies throughout Trinidad and Tobago—and the 230 private pharmacies that are participating in that programme—and get his/her medication at no cost? Not even in the First World! We talk about 2020, in that area, we are already in 2020. [*Desk thumping*] The health sector in Trinidad and Tobago is moving apace, so that on or before 2020, we will deliver quality health care to all our citizens of Trinidad and Tobago. [*Desk thumping*]

A related initiative that is also an unqualified success is our prevention of mother-to-child transmission programme, in which positive mothers are offered free testing and antiretroviral treatment to prevent transmission to their unborn

child. I was told that, what was happening was that women with HIV/AIDS were getting pregnant so that they can get treatment—treatment would be provided for the unborn child and the mother. Let me remove that myth because women can receive treatment without having to become pregnant. That is what we are doing. We are providing the antiretroviral treatment to all women, pregnant or not pregnant. Very interestingly also, when we pull out the figures for Tobago from the national statistics—for the sake of comparison—we found a similar success rate for their clinical achievements. For example, over the last year there were 140 persons in care, with 112 of them on antiretroviral treatment—that is a very high percentage. They are also now benefiting from the same diflucan partnership that we were able to arrange last year. Their prevention of mother-to-child transmission programme has so far, recorded 100 per cent success.

In Tobago persons who join the care and treatment programme over the previous year, in what appeared then, to be an unemployable stage—that is, persons who are infected with that illness cannot be mobile, were very weak and therefore they were not employable—we have been able, through these antiretroviral and diflucan programmes, to get 76 per cent of those people back to work within six months. After treatment and care, the HIV/AIDS patients were able to have the strength and the will to report back to work. Over that same one-year period there was a 76 per cent decrease in the mortality rate and a 73 per cent decrease in morbidity, with a 60 per cent decrease in hospital admissions. We are seeing decreases in every area: in hospital admissions; in persons in treatment who have been very successful within six months. We are seeing that the mortality rate is down. There is success in our programme in Trinidad and more so in Tobago. I really would like to compliment the Tobago Regional Health Authority and the programme that is going on in Tobago. Clearly, then, the success of our care and treatment programme is truly national.

In order to maintain this success rate, however, we must now devote more attention to prevention strategies and my Ministry, therefore, sees this Bill that is before us—to amend the Offences Against the Person Act—as such a benefit. That will assist us in further reducing the incidence of new HIV cases, in addition to providing a measure of protection to innocent citizens against the intentional or reckless exposure to HIV by an infected person, especially in respect of our young women. They are the most vulnerable group for the contraction of HIV/AIDS.

That is why the Ministry of Health is so proud of the growing success; both of Rapport and the abstinence programme, which is a joint initiative between the

Ministry of Health and the Ministry of Education and which is driven by the youths themselves. It is unbelievable that so many young people across the nation's schools are taking ownership of their own destiny, by espousing the virtues of healthy lifestyle choices. It is the young people who are now espousing those virtues and planning activities to change the attitudes and behaviours of their peers. Let me just quote from a press release from the Ministry of Education and the Ministry of Health in support of youth abstinence:

> "The abstinence programme is promoted through clubs and does not replace traditional channels with the school system for teaching children and young people about sexuality and the management of health in the context of the challenges of sexually transmitted infections. "

The efforts of the hon. Minister of Education to introduce a revised health and family life education curriculum into schools, to be supported by a morals and values education programme. Again, the Member for Caroni Central talked about education, well we are there; we are at the schools. He is now making the suggestion that we should be going to the schools, but we are already there. We are far, far ahead of the thinking of any Member on that side. Mr. Speaker, morals and values education programme, HIV/AIDS curriculum module and a number of initiatives to combat HIV/AIDS have not been compromised in any way by the abstinence only programme.

The abstinence programme is barely two years old. However, the programme has forced the national community to put abstinence where it properly belongs, in the lives of children and young people. Our pride is that many young people who tell us that with the introduction of abstinence clubs, they are no more ashamed to declare before their peers that their personal priorities do not include sex. With what is happening—not only in Trinidad and Tobago, but worldwide—young girls and boys below the age of 12 are already sexually active.

Not too long ago, a 12-year-old delivered a child in eastern Trinidad, before that a 10-year-old. Recently, we had a 15-year-old murdered with a 24 year-old boyfriend. We have to bring back morality in our system. [*Desk thumping*] We cannot allow this to continue unabated. When we stress to our young people that they must control their emotions; that they must control their behaviour, what are we doing? We are developing young citizens to be disciplined.

We are developing our young citizens so that they can take control of their lives, and not only give in to any emotion. If we allow our young boys and girls, our children, to say well, you know, it is your hormones and therefore, you cannot control that and that is the kind of problem we face, so you accept it. We must tell

them that is not so. You must be able to control your actions and you must be able to control your emotions. So, by doing that, we are developing citizens so that they can in fact, resist immoral behaviour as they continue to grow up, reducing all of the problems that exist in Trinidad and Tobago today.

3. 30 p.m.

Mr. Speaker, when adults got angry, they used to maybe, cuff each other down; today, they are pulling guns and knives. Our young people are no longer valuing their own lives. What we have to do is, instil in them the question of proper behaviour, the question of self-discipline and proper principles. If we do that, we are developing the next generation that will replace this young generation today that seems to have lost its way.

Mr. Speaker, let me tell you that the Rotary Club of Central Port of Spain, District 7030 recently reported to the hon. Minister of Education that 70 per cent of the respondents who attended their Model United Nations Assembly for students in April, 2005 and dealt with the topic HIV/AIDS, stated that if there is an abstinence club in their school they will join it. That is just another vehicle towards dealing with HIV/AIDS and sexually transmitted infections. It is just one of the many vehicles.

Mr. Speaker, my Ministry will continue to give full support to these programmes as key prevention strategies. We will continue our fight against HIV/AIDS. The Ministry of Health recognizes the need to form new partnerships to combine all the forces in the society and mobilize all available resources, because no family or group in society is immune from HIV/AIDS. So that, none of us, regardless of our ethnic background, our economic status, regardless of anything, we are not immune from HIV/AIDS. So the question of discrimination when the Member made reference to a "Chinee", I did not quite understand, I did not quite get that, nevertheless there is no discrimination with respect to the dispensing of antiretroviral therapy and medication, nor any other area. Mr. Speaker, the Ministry of Health is determined that we are going to deal seriously with all issues that affect our citizens.

I would like to take this opportunity to invite the national community to join us in the battle to overcome this dreaded disease. I am confident that we can win the battle. In every area, the Ministry of Health is making inroads. In every single area! There are certain obstacles that are still there, that we have to overcome, and I am sure that the Member for Caroni Central is aware of some of those, since the RHAs were formed and we are going to be dealing with that. Before the end of

this year we would bring about a resolution to that problem, because unless we deal with that problem, we would always be handicapped; we would always be handcuffed in the delivery of health care.

Mr. Speaker, the vision that we have for health in Trinidad and Tobago, is one that will provide each and every citizen of Trinidad and Tobago an opportunity to access health care at any institution or at institutions within a geographical area. What that will do, it would allow the indigent, the poor, the middle class and the very rich to be able to access the same quality of health care. Already, in the public health service we are delivering in certain areas, more than in the private sector. When it comes to MRIs, we are producing to our citizens, those in the public health sector more than any other private company that has an MRI machine. We have been able to provide more CT scans than ever before.

Let me just give you some figures. When it comes to CT scans, in 1997 to 2001, for the entire year, during that period the average was 1,500 CT scans, in five months in 2005, we have been able, not to do 1,500 CT scans which is the average between 1997 to 2001, in five months we have done 2,158 CT scans. [*Desk thumping*] We have increased, almost doubled the number, in half of the year. Could you imagine? [*Desk thumping*] [*Interruption*] You understand, and that is what we are doing, we are delivering! That is why whenever the Ministry of Health puts out an ad there is a tick and it says "delivered."

And as I have this in my hand—increased surgeries and new urology theatre at San Fernando General Hospital, let me give you some statistics: In November, 2003 there were 30 cases done in urology; in November, 2004 we moved from 30 to 97, three times; in December, 2003, 30 cases; in December, 2004, 78 cases; and I am comparing these figures during our term in office, because we are never satisfied with what we are doing. We always want to do more, that is what we want to do. So, come 2006 we are going to do more than we did in 2005. [*Desk thumping*] That is what we are doing.

Mr. Speaker, every month from November, 2003 to March, 2004—and if you were to compare the period—we did 128 cases in these five months; in November, 2004 to 2005 we moved from 128 to 439, over 300 per cent increase. That is performance, you understand! And we did not have to throw money behind that for it to happen, proper planning, pieces of instruments that were required and we have a dedicated urology theatre at the San Fernando General Hospital.

Mr. Speaker, I am going to invite you next week and certain Members of this honourable House to the San Fernando General Hospital—

Hon. Member: Oh, lord!

Hon. J. Rahael:—to see the new wards. Mr. Speaker, you would believe—I am telling you—not the Caribbean—[*Interruption*]

Hon. Member: We reach 2020 already.

Hon. J. Rahael: "Man, listen to me, man we in 2025 here man," you understand. [*Desk thumping*] Mr. Speaker, I saw that for the very first time, it is completed now and patients are going to be moving in next weekend. This coming week, you will certainly, as a southerner have an invitation to see what is happening in your hometown and as the hon. Prime Minister walks in, I hope he would be there to officially open the new wards at the San Fernando General Hospital [*Desk thumping*] to see the work that we are doing in the health sector, and so that all of us can be proud of what is happening.

Mr. Singh: Yeah, yeah, yeah.

Hon. J. Rahael: Mr. Speaker, surgeries, we have been able to do surgeries like they have never been done before. When I first took this Ministry, the Opposition said that there were 10,000 persons on the waiting list; what have you done about that; when we left, this, that and the other, they were crying. Today: cataract, no waiting list—current; [*Desk thumping*] hernia surgeries, current; [*Desk thumping*] fibroids, current; [*Desk thumping*] we are moving to orthopaedic, soon to be current. [*Desk thumping*] Mr. Speaker, almost in every single category—

Hon. Member: We current.

Hon. J. Rahael:—we current. [*Desk thumping*] Not even T&TEC could be as current as we are. [*Laughter*] [*Interruption*] Mr. Speaker, in October to March, we have been able to do 15,332 surgeries. I think it would have taken the UNC maybe the entire term to do that. We did that in six months! [*Desk thumping*] In all our private institutions, because I think that they have a concern whether we are using—our institutions, not any set of private hospitals. Do you want to get the figures, because I want it in *Hansard*, let it be recorded. [*Interruption*]

Port of Spain General Hospital, in six months we did 2,678; in San Fernando General Hospital, 3,828; at Eric Williams Medical Sciences Complex, 1,987; at Mount Hope Women's Hospital, 1,349; Scarborough, 672; Point Fortin, 176; Sangre Grande, 756; the surgical waiting list, both done at the Port of Spain

General Hospital and the San Fernando General Hospital, 3,549; Caribbean heart—that is open-heart surgery—done at the Eric Williams Medical Sciences Complex, 60 surgeries; and through our international arrangement with Operation Rainbow and Mission International, 277, done at the Eric Williams Medical Sciences Complex. Making a grand total of 15,332 surgeries! [*Desk thumping*]

Mr. Speaker, I want them to respond! Let them respond to these types of things! [*Interruption*] MRIs, in January we did 149; in February we did 160; you see what is happening? The Ministry is insisting that we must increase—we must do better, we are not satisfied—in March, 178; in April 230 and in May, 290. No other MRI machine in the private sector was able to achieve 290 MRIs. Never! [*Desk thumping*] We did it at the Eric Williams Medical Sciences Complex. Do you understand what is happening here? Listen, you think the public are not recognizing it?

Hon. Member: They are recognizing it.

Hon. J. Rahael: They are recognizing it; they are not worried about those on that side. [*Interruption*] Let me make some quotes for you, Mr. Speaker. Now, also I want to make it clear, as I said earlier, there are challenges still ahead, there are obstacles that we must overcome, and that is why we are continuing the drive to address all areas of health care, from preventative and primary health care—man what we are doing, we are providing exercise equipment in our health centres, because fitness is the name of game. Fitness! Even if you are a bit overweight, if you are fit, then you stand a better chance to have a quality of life and not to become ill.

Mr. Speaker, I want to appeal to the general population of Trinidad and Tobago to become more physical. Do not just jump in your cars every time you want to go somewhere, take time out to exercise; whether it is just walking, jogging or going to your favourite gym.

Hon. Member: Smoking.

Hon. J. Rahael: What! Do not talk about smoking. I know some Members in this honourable House sometimes go in the balcony outside and smoke. Let me tell you, smoking is against the law! Our policy is, no smoking in any government building, government vehicle or government offices. [*Desk thumping*] So, if there are any Members, regardless of sex on that side, who are smoking, please take note that that is not in keeping with the Government's policy, and we will be bringing legislation in due course, to deal with tobacco smoking.

Mr. Speaker, let me give you some—you know, the other side likes to quote the newspapers. Every time they come to make a speech, they have a set of quotations from the newspapers, as if they have nothing else to say. But I will just take two or three minutes on that, to quote from the newspapers: *Trinidad Guardian*, February 08, 2005, letter to the Editor:

> "Real heroes at Grande hospital.
>
> Thanks again to you kind people who worked selflessly and unsung to help those who need your assistance. God bless you all.
>
> E. Fortune, Arima. "

Mr. Singh: Yeah, yeah, yeah, very good. [*Desk thumping*]

Hon. J. Rahael: "Great staff at Chaguanas Health facility"—I want to tell you, Mr. Speaker, I was there earlier this week—you see—my desk time is after 4.30 in the afternoon, or when I come here sometimes. When the Members are speaking I try of do some work here on my desk. [*Laughter*] So that during the daytime I visit a lot of institutions, I talk—

Mr. Speaker: Hon. Members, the speaking time of the hon. Minister of Health has expired.

Motion made, That the hon. Member's speaking time be extended by 30 minutes. [*Hon. K. Valley*]

Question put and agreed to.

Hon. J. Rahael: Mr. Speaker, Brian Jones, writing from Chaguanas, letter to the *Express*, Wednesday, February 16, 2005. [*Interruption*] I am quoting the name for you; he is from Chaguanas. The Member for Chaguanas, you are from that area, you could go and find him, Brian Jones is his name, he is from Chaguanas: "Great staff at Chaguanas Health Facility". I was making the point that earlier this week I went to that existing health centre at Chaguanas. We all know that it is in a condition, that I had to express my appreciation to all of the workers at that Chaguanas Health Centre. Plans have been approved. We are going out for tender to build a brand new district health facility in Chaguanas. That is, hopefully, going to start before the end of this year. I must admit when it comes to infrastructure and construction; the process and problems that we are experiencing, are really cause for concern. Because many times it is a matter that is in front of the courts, or there are some problems with the design, and we want to make sure that

whatever we do from now, starting at the very foundation, at the very beginning, that we have it right.

Mr. Speaker, they spoke so much about the Tobago Hospital. It was in 2000 that the architecture and engineering contract was awarded. It was not under this administration, and a lot of the problems that we are experiencing now, are because of the work that was done by the particular company. But, that will come in time, because everything is going to be exposed. However, let me go on to say—let me quote from the *Express*:

"Great staff at Chaguanas Health Facility.

These days, when our health facilities are so often under attack, the workers at the Chaguanas Heath Facility (doctors, nurses, X-ray technicians, everybody) should take a bow.

Thanks for a job well done."

Letter to the editor.

Mr. Speaker, another one. Charlene Thomas, Thursday, April 22, 2004; "Trinidad and Tobago free of most vaccine preventable disease", and it goes on and on. [*Interruption*] You come here and you quote from the newspapers, but you do not read these things. But, enough of that, because, we do not have to quote from the newspapers to know what we are doing; we know from the results of what we are doing.

Mr. Speaker, again, this Bill is to assist us with persons who are infected with this illness that they must disclose to someone that they intend to have intimate relationship with, so that whatever precautions need to be taken, can be taken. So, that we can continue to reduce the incidents of persons with HIV/AIDS and we can continue to decrease the number of persons who die from this illness. As I said, because of our treatment and care programme, it is now, not a death sentence. It can be considered a chronic illness, because we are moving towards treatment for all of those victims.

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

Mr. Ganga Singh (*Caroni East***)**: Mr. Speaker, I rise to speak on this Bill entitled, "An Act to amend the Offences Against the Person Act, Chap. 11:08, (HIV) Bill, 2004" and I want to congratulate the Member for Port of Spain North/St. Ann's West for a very spirited performance. By his very acknowledgement,

if I were to quote him correctly, "that there has been a reduction of new cases by 50 per cent; a reduction in deaths by 50 per cent; a reduction in Tobago by 76 per cent", and so on. If you are so successful in reducing the incidents, reducing the activity emanating; why is there this attempt now—[*Crosstalk*] Why are you seeking to make HIV a crime? Why are you seeking to bring about criminal sanctions, in what you called, at the end of your speech, what is now a chronic disease? What is a chronic disease?

Mr. Speaker, it is clear to me—[*Interruption*]

Mr. Speaker: Order!

Mr. G. Singh:—that this Government, consistent with its approach in other areas, is once more perpetuating a culture of blame. You are seeking to find scapegoats within the national community, within the population of Trinidad and Tobago. You are looking for scapegoats in order to perpetuate your culture of blame, and in this instance, your scapegoats are those who are infected with the HIV virus.

You have no clear public policy position on this matter. The hon. Member for Laventille East/Morvant in making his presentation before this honourable House this evening, did not articulate a clear public policy position as to why there is need to make HIV a crime. Why is there the need for the criminalization of HIV? No public policy position! [*Interruption*]

Mr. S. Panday: You all stop the Nigerian doctor.

Mr. G. Singh: Mr. Speaker, it is easier for us as a society to apportion blame and to become judgemental, rather than accept the shared responsibility, individually and collectively, and in this instance, this is what is happening, apportionment of blame. This administration is seeking to pass this into law, to make HIV a crime. Having the virus which is now a chronic disease—according to the Minister of Health, make it criminal, criminalize this chronic disease, so to speak—this Government has no history of implementation, in fact, they have a history of non-implementation. [*Desk thumping*] For example, the OSHA—

Hon. Member: You were not listening or what? You were not listening?

Mr. G. Singh:—Occupational Safety and Health legislation in which persons are dying throughout this country; in which the Opposition has a Private Members' Motion, in which the hon. Member for Nariva spoke so eloquently on the last occasion, and as we approach Labour Day, non-implementation of OSHA.

Tissue transplant legislation, non-implementation! Equal Opportunity, non-implementation! [*Interruption*] You could come back—

Hon. Member: Big money because of your—[*Inaudible*]

Mr. G. Singh: This non-implementation and this culture of blame and seeking to find scapegoats, runs deep in the DNA of the PNM, because you see, another scapegoat that they sought to bring into a legislative arena was only, this week, the Corporal Punishment (Amdt.) Bill, 2005. The hon. Member for San Fernando East said; "licks for them" in St. Augustine and that was crystallized into public policy.

Hon. Members: Yes.

Mr. G. Singh: Not having any regard to the fact that in our neighbouring Caribbean territory, Barbados which might be regarded—

Hon. Member: Licks for the UNC.

Mr. G. Singh:—as the most civilized of Caribbean countries. In that country, in the case of, I think, Store Hobbs, in the 1992 case of Hobbs, corporal punishment was regarded as inhumane and degrading punishment, but in 2005, Trinidad and Tobago with the impetus of the hon. Member for San Fernando East, "licks for them" and their position of corporal punishment, back into the society. Notwithstanding the fact that violence will breed greater violence in this society. [*Interruption*] That is what is happening, today! I know my friend from Couva South is always talking about the colonials. In today's newspaper, page 5 of the *Guardian*—

Mr. Ramnath: Them is white people.

Mr. G. Singh: "British MPs join battle against hanging in T&T."

Hon. Member: What! What page?

Mr. G. Singh: On page—[*Crosstalk*] You had a Motion. I will read the—

> "The British Parliament has now become embroiled in the debate over Government's decision to hang all convicted murders on death row, with an Early Day Motion being laid yesterday in the United Kingdom House of Commons".

Mr. Speaker, in the British Parliament—

Hon. Member: They can debate it there, but not here.

Mr. G. Singh:—they can debate these matters. The unfortunate reality is that the Standing Orders, archaic as they are, preclude a debate of this nature as was demonstrated this evening. So, there is need for systemic change, and that is why we in the Opposition consistently said there is need for constitutional change in Trinidad and Tobago. [*Desk thumping*]

Dr. Moonilal: This is a banana republic.

Mr. Ramnath: We have a Standing Order that was under the colonial secretary man and it is still anti-colonial.

Mr. G. Singh: Mr. Speaker, the newspaper report goes on to say:

> "A driving force behind the motion is Lord Thomas of Gresford, who is the Liberal Democrat shadow attorney general in the House of Lords." [*Interruption*]

Mr. Speaker: Order!

Mr. G. Singh: And he said:

> "International condemnation of the actions of the Trinidad Government is building in all countries which respect the rule of law and have in the past admired the Republic of Trinidad and Tobago, its system of justice and its democratic constitution…
>
> He told the *Guardian* the move in the UK did not disrespect the fact that T&T was an independent republic.
>
> 'We understand and respect the independent republic of Trinidad and Tobago, but we also know that Trinidad and Tobago has a constitution and what the Government is trying to do is unconstitutional,' Lord Thomas said.
>
> 'No one is above the law. '"

And he goes on to say that this action, this attempt to deal with crime by hanging en masse "will place a stain on the State" of Trinidad and Tobago. [*Interruption*] That is what Lord Thomas indicated. The point I am making—[*Crosstalk*]

Mrs. Robinson-Regis: That is why you hang nine people.

Mr. G. Singh:—is that culture of apportioning blame in this society, creating scapegoats as you seek to hang people, as you seek to provide licks for them, creating a cycle of violence, creating a cycle of crime, we have found that now, crystallized, in the criminalization of the HIV.

Mr. Speaker, this Government is hell-bent on criminalizing everything. [*Crosstalk*] This Government wants to criminalize behaviour that should not be the subject of any legal sanction at all. Therefore, when I asked the question: what was the public policy information that guided the recommendation to criminalize HIV? What was the public policy consideration? In my research, I found this document, An Overview of HIV infection and AIDS in Trinidad and Tobago: Exploring the Need For Legislation and Proposals for Reform, "A Law Commission Working Paper" May 29, 1998.

Hon. Member: Twenty-ninth of what?

Mr. G. Singh: May 29, 1998. This law reform paper carries with it the articulation of a public policy position and it will be interesting for purposes of education to find out what was the Law Reform Commission's position because the Law Reform Commission's position is diametrically opposed to that taken by the Government.

Hon. Member: True.

Mr. G. Singh: They did the research. They did the necessary analysis, but none was forthcoming from the presenter of the Bill, the hon. Member for Laventille East/Morvant as to why this articulated position has changed.

Mr. Speaker, in this Law Commission Paper there are cogent and compelling reasons why HIV—the chronic disease, according to the Member for Port of Spain North/St. Ann's West—should not be criminalized. I would read liberally, because it has not been brought to the attention of the House, it is one of those things that perhaps, the hon. Member in his eagerness to present, did not look at.

Mr. Speaker, at page 14 the contents are very interesting. This was a thorough analysis of the learning:

Chap. 1. Introduction: The HIV/AIDS Pandemic;

Chap. 2. HIV/AIDS and the Children and Juveniles of Trinidad and Tobago: A Definite Threat;

Chap. 3. The Impact of HIV/AIDS Epidemic on Trinidad and Tobago and the National Response; and

Chap. 4. Can Legislation Prevent the Spread of HIV/AIDS? The debate continues.

Hon. Member: Hardly.

4. 00 p.m.

So they dealt frontally with this issue. Clearly, there was an omission on the part of the Government to confront this matter.

Mr. Speaker, I will go to the conclusion and recommendations at Chapter 5: On the Eve of the 21st Century: Conclusion and Recommendations Aimed at Averting a National Crisis. It is from the Law Commission's Working Paper, an independent body that is not looking for scapegoats, not seeking to apportion blame, but seeking to establish individual and collective responsibility in the society.

> "(i) No coercive legislative measures be introduced to deal with the transmission of HIV, in particular criminalizing the spread of HIV/AIDS.
>
> (ii) Consideration be given to enabling victims of rape/sexual offences, where a real possibility of HIV transmission exists, to have their assailants undergo compulsory testing for HIV.
>
> (iii) Enacting new legislation or amending existing legislation in respect of public health matters such as quarantine and compulsory testing need not be treated as matters of priority, rather, implementing measures such as those at (vii) to (xi) below should be actively pursued. "

Mr. Speaker, there are 13 recommendations.

> "(iv) The proposed Equal Opportunities Bill be re-visited and consideration be given to (a) including sexual orientation as a prohibited ground of discrimination and (b) extending the meaning of 'disability' so that it would include HIV.
>
> (v) Favourable consideration should be given to the document HIV/AIDS in the Workplace: A National Policy and its transition to legislation be expedited.
>
> (vi) A comprehensive HIV/AIDS Education Programme should be introduced formally to the curriculum of the nation's secondary schools in particular. [*Desk thumping*]
>
> (vii) Promoting the proper and consistent use of condoms as one of the ways in which the transmission of HIV can be significantly reduced; and

making them widely available at a reasonable cost so that they are affordable to as many people as possible. The type of condom, storage facilities and the expiry dates should also be monitored and regulated.

(viii) Widespread availability of HIV/STD testing. The number of nationwide centres where testing can be carried out should be increased, possibly by utilizing existing district health centres."

Did the hon. Minister of Health say anything about the utilization of the existing health centres for HIV/STD testing?

Mr. S. Panday: He did not touch it.

Mr. Rahael: [*Inaudible*]…St. George Health Centre.

Mr. G. Singh: No, no, how many? Widespread does not mean two or three. [*Crosstalk*]

Mr. Speaker: Order! Order!

Mr. G. Singh:

"(ix) Widespread availability of proper pre- and post-HIV/STD test counselling conducted by professionals.

(x) Recommendations (vii) to (ix) above should be made known by way of an intensive public education/information and awareness campaign utilizing all the facets of the media and public fora. The public awareness campaign should be maintained vigorously throughout the year and should not be emphasized only at festive times such as during the Carnival season."

I remember the hon. Member for Port of Spain North/St. Ann's West popped up for carnival, and he is laying a lot of emphasis on the abstinence programme. Do you know why?

Mr. Ramnath: It has been forced upon him.

Mr. G. Singh: Well, I would not go into that, but he is placing a great deal of emphasis on the abstinence programme because a close relative of his is in charge of it. You are in charge of the programme but she is spearheading the programme and I can understand that.

I want the hon. Member to read the report of Duke University which conducted a 20-year study of persons who had participated in the abstinence programme. They indicated in that study that those who participated in the abstinence programme are more likely to engage in risky sexual behaviour. [*Interruption*] And I do not want to go into the carnal details of what was indicated in the report, but I will tell it to you privately so you can convey it to your close relative.

> "(xi) The public awareness campaign should encourage people to undergo voluntary testing and to avail themselves of counselling while also stressing the confidential nature of these services.
>
> (xii) Financial and administrative support from the government should continue for bodies such as the National AIDS Programme, RAPPORT and the Queen's Park Counselling Centre and Clinic, and if possible, increased; larger subventions for organizations such as the F. P. A. and NGOs can also be considered. "

The hon. Member for Port of Spain North/St. Ann's West indicated that they should continue to support and so forth.

The final recommendation is:

> "(xiii) The concerted adoption of a multisectoral approach to combat the spread of HIV/AIDS which will include the active involvement of all relevant government ministries, NGOs, religious organizations, self-help initiatives of HIV-positive persons, other vulnerable groups and the private sector. "

This policy measure of this Government is uninformed—

Hon. Member: It is yours.

Mr. G. Singh: Mr. Speaker, the Law Commission Working Paper is not a "yours and them Commission". It is an independent think tank that operates in the environment of law reform so therefore you do not have "yours and them". I am amazed at you, hon. Member for La Brea, a man of your experience and stature ought not to make that kind of remark of "yours and them". You seek to tarnish the independent recommendation of the Law Commission by seeking to taint it in politically partisan fashion. I am really surprised that a man of your experience should enter into that arena.

Mr. Speaker, it is clear to us that the Government's policy position in this matter is fundamentally flawed, and in dealing with what is really the crux of the matter this evening: Can legislation prevent the spread of HIV/AIDS? This is what the Law Commission had to say:

> "4. 1 HIV/AIDS has forced all countries to examine their laws in order to evaluate them for their appropriateness in the light of this pandemic. Unlike other countries, to date, Trinidad and Tobago has neither enacted new legislation nor amended existing legislation to deal specifically with HIV/AIDS…"

Mr. Rahael: It is reducing the incidence.

Mr. G. Singh: I am reading, you will argue after.

> "Following, is an insight into the ways in which some other jurisdictions have dealt with HIV/AIDS by way of legislation, which may provide some guidance for future policy decisions in this country. The analysis is undertaken under three headings: criminal law, public health law and anti-discrimination law. "

Mr. Speaker, under the rubric HIV/AIDS and the Criminal Law, this is what the Law Commission, an independent body, bereft of any kind of politically partisan consideration, and seeking to bear upon the thinking of the policy makers a measure of enlightenment had this to say:

> "4. 2 Since the onset of the HIV/AIDS epidemic there has been a school of thought that favours making persons who knowingly transmit HIV and neglect to inform their sexual partners of their HIV-positive status, face criminal prosecution; some legislatures have heeded this call and have passed legislation to this effect. Others however, are of the opinion that this type of behaviour on the part of HIV-positive persons is dealt with adequately under existing criminal laws and therefore there is no need for the enactment of criminal legislation to deal specifically with these cases. Still others, believe that a public health approach is the better way of containing and controlling the disease. "

We seek to aspire for First World status and the hon. Member talked about his accomplishment, that he was a beyond First World status.

"4. 3 …the National Advisory Committee on AIDS, the Royal Society of Canada and the Canadian Bar Association (Ontario), as well as community groups have all studied the issue and recommended against the use of criminal law in such situations; the reasons for their opposition are as follows:

- existing public health laws may be better suited to deal with persons who, knowing that they are HIV-positive, continue to engage in unsafe sexual or drug-using behaviour;

- creating a criminal offence may send out the wrong message i. e. that the law can protect people from contracting HIV infection, whereas everyone needs to protect themselves;"

Mr. Bereaux: Hon. Member, are you aware that quite recently, a citizen of Trinidad and Tobago had gone to Canada knowing that he was infected with HIV/AIDS and had sexual intercourse with several persons and was arrested and kept in prison in Canada? The Canadian authorities had contacted persons in Trinidad with whom he may have had sexual intercourse and sought to continue to get other charges laid against him. Are you aware of that? The person is from the constituency of La Brea.

Mr. G. Singh: Mr. Speaker, I can understand the concern of the Member for La Brea and the concern for his constituents. I do not know of that particular case but the Canadians have said, and the Law Commission Working Paper is saying that the public health legislation is sufficient and you do not need to engage in the criminal law. [*Interruption*]

I hear the Member for Tobago East muttering, but I know of the case of the Scandinavian, Simona Frika. [*Interruption*] Frika, I said my friend. You seem to have a premeditated approach, but I said Simona Frika, the Scandinavian lady who was picked up in Tobago by the immigration authorities and deported. I was told the story by the taxi driver whom the immigration officer commanded to take—it is Tobago, that is why Rowley got exposed. [*Desk thumping*]

Mr. Speaker, the taxi driver who was commanded by the immigration officer who went to take control of—and when you hear the story of Simona Frika, you realize that law will not prevent that. I am certain that the hon. Members for Tobago West and Tobago East know the story.

Simona Frika was having consensual sex with Tobagonians and not two or three, it went into double digits. [*Crosstalk*] And when you hear the story from my good friend the taxi driver whose name is "Watty" he would tell you about the families who were affected as a result of Simona Frika. So 10 years after, what we have before us is Simona Frika's legislation.

The Canadian Authority's Law Reform Commission is saying that:

> "- creating a criminal offence may send out the wrong message, i. e. that the law can protect people from contracting HIV infection, whereas everyone needs to protect themselves;"

What this legislation is seeking to do is get into sexual activity in the bedroom. That is what it is seeking to do. So this Government, by seeking to criminalize and make HIV a crime is seeking to get into the bedrooms of the nationals of Trinidad and Tobago.

Mr. Speaker, when you understand that it is the individual's responsibility and, therefore, we should not seek to make people who have the HIV virus a criminal or place a legal duty upon them, do you know what they would do to Magic Johnson? He is HIV positive and he is a well-known *cause cèlèbre* in the basketball arena but you would be placing a legal duty and a stigma upon Magic Johnson and also open him up to the possibility of being set up and— [*Interruption*] [*Crosstalk*]

Mr. Speaker: Order please! Order! Hon. Members, I would ask you to give the hon. Member for Caroni East some silence to make his contribution. There is too much crosstalk.

Mr. Valley: Mr. Speaker, is the Member suggesting that Magic Johnson should go hither, thither and beyond doing his thing without telling people? [*Crosstalk*]

Mr. G. Singh: Mr. Speaker, that is exactly the point. How are you going to establish whether or not Mr. Magic Johnson is going hither, thither and beyond and not telling the people? How are you going to establish that? [*Crosstalk*]

Mr. Manning: Mr. Speaker, the Member for Caroni East is carrying on. Please cool down. All the legislation is saying is that you must have full disclosure. That is all. [*Crosstalk*]

Mr. G. Singh: Mr. Speaker, for the benefit of the Member for San Fernando East I would read what the Canadian HIV/AIDS Legal Network and Canadian AIDS Society, Montreal, 1996 had to say.

> "Those who amend the criminal law to prohibit, for example sexual intercourse without disclosure of one's HIV status are in one sense trying to identify the 'sheep-killing wolf' rather than asking where the flock is wandering. "

Mr. Speaker, how will criminalization of HIV provide the deterrence, when I say that we embark on a useless exercise that will stigmatize people in accordance with what the hon. Member for Caroni Central said?

We have laws that outlawed abortion in our statute books. There is a great debate in our society about the right to life; the right of the woman to do what she wants with her body; all religious and moral issues. Abortion is illegal in Trinidad and Tobago yet research has shown that between 3,000—4,000 cases end up at the six major public hospitals in this country following—

Mr. Rahael: Should we make it legal because of that?

Mr. G. Singh: I noticed you did not mention that statistic; you called out many statistics but not that one. Between 3,000—4,000 abortions on an annual basis end up at the six major hospitals in this country following complications arising out of unsafe abortions which cost the Government some $12 million annually. [*Crosstalk*]

Mr. Speaker, the point I am making is that this does not take into consideration those who go into the private institutions. Botched operations! [*Interruption*] So here you have a law outlawing abortions, and there are 3,000—4,000 complications on an annual basis, but there is no enforcement.

The State is turning a blind eye to this, but now you are seeking to make HIV a criminal offence to stigmatize people and place a legal duty upon them. [*Crosstalk*] Why do the public health laws not deal with that?

On the point made by my colleague, the Member for Caroni Central, when you seek to stigmatize people, they will not participate in your public education programme which will bring about the prevention you desire. Why should one participate in an HIV test which will establish that he/she is aware that he/she is HIV positive?

[*Hon. Member rises*]

I will give way subsequent to tea. I am in full flight here now. [*Laughter*] Mr. Speaker, this Government should not participate in legislation that allows the police to engage in the most intimate details of people's sexual life and their sexual history or preferences based only on a list that someone may be HIV positive. What is this kind of paranoia, this kind of scapegoating that is taking place?

It would seem that the Minister came here with legislation to tell the country he is doing something about HIV/AIDS. In reality, as the hon. Member for Port of Spain North/St. Ann's West indicated, based on his reported cases of the antiretroviral treatment it has become a chronic disease so it is treatable.

Mr. Speaker, tuberculosis is contagious, it is carried in the air and the Law Commission Working Paper is very clear as to the manner in which the HIV virus can be transmitted, but I would deal with that subsequently. So you are creating a criminal offence but you are also criminalizing individuals, you are therefore encouraging silence and, therefore, persons will fear criminal action, they will exclude themselves from the health care system, or not approach it. So by this Government's legislation, it is creating a hostile environment to those who have HIV/AIDS.

Let us face it. In the 18—39-year-old age group, there is a significant level of the working class but, of course, it is no respecter of class, but there is a significant portion at that level. So this Government is creating HIV carriers of the virus as potential criminals and there are a series of considerations with which the hon. Member did not deal with respect to the criminal law.

Generally, the burden of proof is on the prosecution so you are shifting the burden of proof once you are established with HIV. You are effectively making it a strict liability offence so, therefore, how are you going to establish that these activities take place without a third party witness when the activities will take place within the confines of bedrooms or other places? Where is the third party?

It seems to me that this Government is institutionalizing *ménage à trois* because what it is seeking to do is bring in a third party so that a third party will be a witness in order to establish that "A" had sex with "B", and therefore "C" was part of the activity and could go as a witness, otherwise it will be one's word against the other. What are the intervening circumstances that would take place? The emphasis should be on the public health arena.

Mr. Speaker, we have a responsibility in this Parliament. We are clear that the criminal law should be a measure of last resort, but we have not reached that stage

and the Member for Port of Spain North/St. Ann's West indicated that it is declining. Why are you now intervening with the law? It is a last resort, we have not reached that stage in the society, and it is not a sufficient response to bring law to criminalize HIV.

Mr. Speaker, we have a responsibility against the proliferation of a new virus in the society; that is highly useless laws (HUL) so this HIV legislation is really a highly useless piece of legislation, it will not have the public policy impact which we all desire. Public health measures are more appropriate.

In the post tea break I will go on to deal with the issue of how this law will not bring about deterrence, how it will not seek to deter activity in this arena and juxtapose that against the issues. What we are seeking to do is apportion blame, create scapegoats, and make HIV a crime in this country. Unacceptable! [*Desk thumping*]

Mr. Speaker: Hon. Members, the sitting of the House is suspended for tea and will be resumed at 5.00 p.m.

4.30 p.m. : *Sitting suspended.*

5.00 p.m. : *Sitting resumed.*

Mr. Speaker: Hon. Members, the speaking time of the hon. Member for Caroni East has expired.

Motion made, That the hon. Member's speaking time be extended by 30 minutes. [*Hon. K. Valley*]

Question put and agreed to.

Mr. G. Singh: Mr. Speaker, I thank the Leader of Government Business and all other hon. Members of this House for seeking to extend my time.

Just prior to the tea break I was making the point that notwithstanding the high incidence of crime in the country we are making a chronic disease of HIV effectively into a criminal offence. What we are seeking to do is that we must then enter into the realm of the policy position to find out whether criminalization of this disease of HIV makes sense.

Mr. Hinds: Thank you very much for giving way. I am listening carefully to the Member's contribution but, clearly, he is proceeding on the wrong path. We are not attempting, in this Bill, to criminalize HIV; we are attempting to criminalize the spread of HIV by persons who do it willingly and intentionally.

That is quite different, and to continue to mislead us and to speak that language is just wasting time.

Mrs. Job-Davis: He cannot help it.

Mr. Speaker: Order!

Mr. G. Singh: Mr. Speaker, the effect of this legislation would be to stigmatize all persons who have the chronic disease of HIV. That is what the cumulative effect would be.

But let us look at the learning; let us look at what the other countries have done. The hon. Member for La Brea is always talking about the Canadian and the state of the Canadian system. I would quote, with your leave, from a paper entitled: "Criminal Law & HIV/AIDS", Paper No. 4. It is one of a series of eight papers—Info. Sheets on the Canadian System. It is entitled: "Criminalization: Does it Make Sense."

Mrs. Job-Davis: The date. That is old information.

Mr. G. Singh: No, no. It is not old information; it is a series of papers.

I would deal with the concept: "Arguments for Criminalization".

Mrs. Job-Davis: What is the date?

Mr. G. Singh: Philosophical arguments have no date; they are timeless. [*Desk thumping*] [*Crosstalk*]. Mr. Speaker, I quote:

> "Proponents of criminalization argue that HIV-positive people who place others at risk of infection should be criminally prosecuted, because it is necessary to punish and deter such conduct. "

And this finds expression in the legislation which the hon. Member for Laventille East/Morvant has brought before this honourable House. This paper asks the question:

> "How valid is this position?"

It goes into "Punishment" and "Deterrence"; two concepts:

> "Punishment: The punishment of criminal sentences is usually reserved for harm that is intentional or reckless."

As in this instance:

> "But very few instances of HIV transmission are intentional, and only a few HIV-positive individuals recklessly disregard others' safety. Using criminal prosecutions as punishment would only be justified in a handful of cases, and is irrelevant to the vast majority of cases of HIV exposure. Most 'HIV transmission' laws go beyond criminalizing the intentional or reckless infection of others. One law proposed (but not passed) in Canada outlawed sex for any person who 'knows or reasonably should know' they are HIV-positive, even if they disclosed to their partner *and* took precautions, such as using condoms. This approach actually carries no incentive to practise safer sex: if sex is criminal even when safe, why bother with precautions?"

So clearly in the context of the criminal sanction, punishment is an inappropriate medium for criminalization. I continue:

> "Deterrence: Courts have stated that, rather than punishing after the fact, deterring harmful conduct is, and should be, the primary function of criminal sanctions. But those few HIV-positive people who deliberately infect others are unlikely to be deterred by the remote threat of imprisonment. "

The Simona Frikas of the world:

> "It is also doubtful whether criminalization will significantly deter people from the activities that account for most cases of HIV transmission: sex and drug use. "

I would read that again. The writer is saying:

> "It is also doubtful whether criminalization will significantly deter people from the activities that account for most cases of HIV transmission: sex and drug use. The history of prohibitions on alcohol, drugs, prostitution, and gay sex shows that the criminal law is ineffective in preventing such intimate and complex human behaviour. 'In most cases where the criminal law has been used against AIDS carriers there was no motive or advanced planning. Spontaneous behaviour driven by human anguish, despair, or passion is difficult to prevent.'"

Mr. Hinds: I sincerely thank the Member for giving way because I could easily have waited until I speak to share this with you, but let me share this with you as we discuss this matter. You will get injury time. I am sure the Speaker will facilitate you. Let me share this with you quickly.

Under Canadian law—I am quoting from the case where the Trinidadian was charged in Canada for doing the same thing we are talking about today—by using a condom or engaging in non-penetrative relations, a person may not have to disclose that they are HIV-positive to partners. However, in a September 1998 ruling by the Canadian Supreme Court, in *R and Courier*, the court imposes a legal duty on people living with HIV to declare their status before engaging in sexual behaviour that they may put another partner at risk. In fact, this Trinidadian was actually charged in Canada for the same thing under Canadian law.

Mr. G. Singh: I thank the hon. Member. But Canadian law—that is the point we are talking about in the Courier case—is not part of the criminal sanctions, but in their criminal code. It is under the public health law, not under the criminal law. [*Interruption*]

Mr. Hinds: It is part of the criminal sanctions.

Mr. G. Singh: I will deal with that case. There are 20-odd cases of HIV in Canada and I would read a few if I have the time.

So we had the arguments for criminalization, now we need to go into the "Arguments against Criminalization". It states:

> "Not only are criminal prosecutions unlikely to be effective in addressing most instances of HIV transmission; such a coercive social response may do more harm than good. History indicates that punitive and coercive policies are counterproductive to promoting public health. Criminal prosecutions are unlikely to deter risky sex or needle sharing, but will instead deter those most at risk from getting tested, which in turn will prevent access to medical treatments and support services after a diagnosis of HIV infection. Recognizing this, Parliament repealed the law making 'communicating venereal disease' a crime in 1985."

Mr. Speaker, we have a history of diseases of this nature in which there is paranoia and anguish because of a lack of a cure, and then they move in a certain direction. Venereal diseases carried criminal sanctions, but they were unenforceable for over 50 years. What we want is for the Government to take an enlightened approach. It has now reached chronic disease status; do not bring it into the realm of the criminal law. I continue to quote:

> "Invoking criminal sanctions surrounds HIV/AIDS and people living with the disease with further stigma, making it even more difficult to provide

> effective education about preventing HIV infection (especially for socially marginalized communities most at risk)."

That is the point we are making. When you make this disease subject to criminal sanction, then what you will be, in fact, doing is making the people who are at the margins of the society, who are socially deprived—this ought not to be criminal legislation; this is social policy. I continue to quote:

> "If risk activities by HIV-positive people become criminal offences, this will inhibit open discussion about reducing risks and changing behaviour, especially if counsellors or public health personnel are required to report those suspected of engaging in unsafe sex or sharing needles to police. Moreover, applying criminal law to risk activities invites intrusion into people's private lives, and will probably disproportionately affect those already identified in the public mind with the epidemic and subject to social disapproval…"

For example, in the Canadian setting:

> "sex workers, gay and bisexual men, injection drug users, immigrants, and prisoners.
>
> Finally, threatening criminal prosecution of the person who exposes someone else to HIV may create a false sense of security among HIV-negative people: 'To the extent public health policy states everyone should assume their partners are infected and should take measures accordingly, that policy is undermined by the false belief that criminal sanctions have helped them reduce the risk.' "

So you enter, with this piece of legislation, a comfort zone that does not really exist for you and you undermine the objectives of the public health policy. The article continues:

> "The Costs Outweigh the Benefits."

And I would read it for the benefit of Members:

> "The limited benefit to be gained from prosecutions must be weighed against the social and economic costs of applying state sanctions. Public policy aimed at criminalizing HIV transmission/exposure would appear to be 'getting tough' in the fight against AIDS. In reality, it will do little or nothing to stem the spread of HIV, and diverts resources and attention from the policies and initiatives that make a real difference, such as: education;

> access to testing, support services, and the means of protecting against infection (eg, safer sex materials, needle-exchange programs, etc); and initiatives addressing the roots of people's vulnerability to HIV infection (such as poverty, violence against women and children, homophobia, barriers to education, and substance use)."

The article goes on to say:

> "In almost all cases, public health measures offer a better alternative. A coordinated response between prosecutors and public health officials is needed that uses the least intrusive and restrictive measures first, and only proceeds to more coercive interventions if they are absolutely necessary to prevent HIV transmission. Criminal prosecution should be a last resort: it is not, and cannot be, a sufficient response to conduct to risky behaviour by people with HIV/AIDS, and should not be the first response."

Mr. Speaker, it is clear to us on this side that this first response of the Government—we heard what the hon. Member for Port of Spain North/St. Ann's West had to say, with the apparent success in the report; the decline in the reported cases; the decline in the morbidity, and so on, and we are very happy for that, but we feel that this criminal sanction and the arena of this criminal section, is counterproductive to what is happening.

What we need to do is to entrench that further. The Law Commission was very, very clear: Do not engage in coercive legislation; develop the education programme; make it part of the school curriculum; make a definitive policy statement with both the Ministry of Education the Ministry of Health to entrench and deepen that and further integrate that process, but do not embark on coercive legislation. But this Government has embarked on a course and we feel that this, really, would be a useless piece of legislation.

When you look at the provisions in it—and I made the point whilst the hon. Member for Laventille East/Morvant was making his opening contribution—in section 18B(1) it states:

"Where an individual body, corporate or an unincorporated institution—

(a) supplies for transference, transportation or transfusion; or

(b) transfers, transplants or transfuses to or into a person, as the case may be, tissue, organs, blood, semen or other body parts or fluids and the person becomes infected with HIV owing to the gross negligence

> of the individual, body corporate or unincorporated institution, the offence of negligent transmission of HIV is committed."

Then you have the sanctions of $500,000.

I ask the question as to whether or not there has been consultation. I called one private sector institution within the time frame we got to find out whether or not it was aware. I had to fax a copy of my Bill to the institution for them to look at it. So I cannot, in all honesty, indicate whether or not there was widespread contribution. I only called one and they were not aware of that. The point I want to make is that it is a measure that is important, because once you are dealing with the areas like the Blood Bank, the hospitals, the North West Regional Health Authority, the South West Regional Health Authority, and other institutions that deal with the transfusion of body fluids—blood and so on—you have to ensure, especially at the level of the public sector, in the first instance, that you have reached that level in which you can be fairly certain that this would not take place.

Certainly in the private sector you need to have that infrastructure in place. When you bring legislation, one would presume that that consultation took place, and I know from my initial response, from that person at that institution, that did not take place. So, immediately, we would pass the law because it is by a simple majority, but then there would be a large gap in the implementation of the law and once more would go towards the credibility of the Government and, by extension, the credibility of the legislature in passing highly useless legislation.

In this context, I would ask whether the Minister of Health convened a meeting of the private health care providers in this country and alerted them as to the impact of this piece of legislation. He said nothing about that and I am hoping that my honourable friend, the Member for Laventille East/Morvant, would be guided by him in his winding up of the Bill.

Our position is that we must not allow fear, anguish and paranoia. There is an article in which it says that there is a certain cycle for matters of this nature, and the cycle for matters of this nature is that you respond in such a way that you really do not achieve the objective which you want to achieve. For example, we do not see the public good that is served by promoting hysteria against people with HIV. We believe, as the Canadian Bar Association indicated—and I quote from them:

> "We are not persuaded that the use of the criminal law is an appropriate way to deal with AIDS. There exist adequate protections against the irresponsible person by virtue of the Health Protection and Promotion Act;"

Social policy, not criminal law. It continues:

> "the criminal sanction appears superfluous. Moreover, one must ask whether the threat of a criminal sanction is likely to play any meaningful deterrent role in the mind of a person likely to wilfully infect another. In our opinion, there is no justification for enacting such a provision in the Criminal Code."

And the Courier case, that it not within the Canadian Criminal Code.

This is what South African Beatrice Nabulya of the NGO, African Getting Involved, noted:

> "…Promoting HIV testing is supposed to help people lead healthier lives by allowing them to find out their diagnosis sooner rather than later. It was never meant to involve punishment within the criminal justice system or discrimination within society at large. Isolating positive people as personally responsible and punishable for criminal acts has grave consequences. The ruling presents one part as the victim, relieving them of any individual responsibility."

Mr. Speaker, if you are HIV-negative, then you are placed as a victim, and when you are HIV-positive, you are the perpetrator. So HIV-negative is good and HIV-positive is evil. That is what the stigmatization would lead to; that is the natural process in a society such as ours. I continue to quote:

> "This encourages complacency, worsening the sexual health crisis…Positive people are burdened by the issue of disclosure because of this kind of ignorance. They need support to adopt and sustain safer sex but this shouldn't mean responsibility for safer sex rests solely with them. Efforts should concentrate on fighting HIV stigma which hinders disclosure and testing through education for all. Only then can we begin to see a reduction in infection rates."

The Member for Port of Spain North/St. Ann's West said there was already a 50 per cent reduction, so why are you imposing this criminal sanction?

Michelle Reid, the Chief Executive of a British NGO, the George House Trust, says:

> "Putting people in prison…"

As it envisages here, 10 years, five years, and so on—sanction:

> "for passing on a virus does absolutely nothing to stop new infections. It won't stop the spread of HIV. In fact, it may mean more new infections because fewer people will want to come forward for testing. Sex between consenting adults is legal. These cases only reached court because the disease involved is HIV."

So you have criminalized that. That is the point I am making the whole afternoon. You are creating a new group of criminals in the society. It states further:

> "Is there any other disease that would carry this level of sentence, or is this just further evidence of the public's abiding hatred and fear of anything to do with HIV and AIDS?"

Mr. Speaker, it falls into that category; paranoia, leading to that kind of anguish to create a new group of criminals, while other diseases—chronic, as the Member says—fall within this realm of criminal sanction. The article continues:

> "I'm convinced that we're witnessing the first few steps of a disastrous journey that will eventually see criminalization of HIV positive people. The real crime here is the continuing discrimination against people living with HIV."

This is what the British NGO is saying; the real crime is the continued discrimination and as a State, we are perpetuating that discrimination against the people with this chronic disease, HIV.

Richard Elliot, in a paper for UNAIDS, indicated that there are five policy considerations in applying criminal law to HIV. The first was the burden of proof. We are saying it shifts to the person with HIV and you create a problem, because most of these risk activities would take place in private. The second was, of course, the detrimental effect on public health initiatives, where you have HIV-specific criminal legislation and individual criminal prosecutions.

You know, when you have sex between consenting adults—and let us suppose there was disclosure—and then the relationship, as is common in the Caribbean, breaks up and the person makes an allegation that he or she had sexual activity

with this person who is HIV-positive, and notwithstanding the disclosure, the person says "A" did not disclose, what are you going to do? You are going to clog the court system. You are going to create this new breed of criminals and, once more, we are going into the realm of stigmatization and allowing loopholes for exposure.

Therefore, what you would have in this society is selective prosecution, and once there is selective prosecution the poor people will suffer. It is the socially marginalized. So that people who have HIV/AIDS would be regarded as guilty although the law provides for a presumption of innocence. We are going down a disastrous journey. I am trying to protect this society against, what I consider to be, bad legislation. The economically marginalized people would be regarded as the guilty people with HIV/AIDS; the urban poor, the rural poor, prostitutes, injection drug users, gay and bisexual men, immigrants and other minorities. So there would be selective discrimination in the application of this law.

Then, of course, the law would be applied in the context of gender inequality, which is women, generally. Whether it is from the denial of water, more women suffer. There are issues also of the invasion of privacy. Criminal prosecutions are public proceedings and I know there seems to be a kind of sadistic inclination on the part of the others to have people's business out in the public. It is, what I call, the "Mano Benjamin" mentality. Criminal proceedings are public proceedings and the HIV status of the accused would be widely reported.

I ask the hon. Prime Minister and the Government to rethink this measure. I think it is a measure in which there has to be a clearly articulated public policy position and criminalization would not deal with this problem we have, of HIV and AIDS in our society.

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

ADJOURNMENT

The Minister of Trade and Industry and Minister in the Ministry of Finance (Hon. Kenneth Valley): Mr. Speaker, I think this is an appropriate time to move the adjournment and to continue these matters on Wednesday, June 22, 2005 at 1. 30 p.m.

In moving the adjournment this afternoon, permit me to use the opportunity to extend Happy Father's Day to all fathers here and in the nation as a whole. [*Crosstalk*]

Mr. Speaker: Order! Order!

Hon. K. Valley: I extend also happy Labour Day celebrations to the movement, as well as all of us who would enjoy that holiday.

I beg to move.

Mr. Ganga Singh (*Caroni East*): Mr. Speaker, I, too, join with the Leader of Government Business in wishing all fathers, would─be fathers and potential fathers, a happy Father's Day. [*Interruption*] You can speak for yourself in that area. [*Laughter*]

Mr. S. Panday: You walked into that one!

Mr. G. Singh: And I, too, join with the Leader of Government Business in wishing the Trade Union Movement and all those who are engaged in labour, a wonderful Labour Day weekend and we look forward to having a safe return to the House on Wednesday.

Question put and agreed to.

House adjourned accordingly.

Adjourned at 5. 36 p. m.