HOUSE OF REPRESENTATIVES

Friday, February 03, 2006

The House met at 1.30 p.m.

PRAYERS

[MR. SPEAKER *in the Chair*]

HON. DR. KEITH ROWLEY'S MOTHER (DEATH OF)

Mr. Speaker: Hon. Members, under Announcements by the Speaker, I wish to bring to your attention the fact that the mother of the hon. Dr. Keith Rowley, Member of Parliament for Diego Martin West, had passed away and her funeral was yesterday. On your behalf and on my own behalf I wish to extend to him and his family our sincerest condolences.

PAPERS LAID

1. Report of the Auditor General of the Republic of Trinidad and Tobago on the financial statements of the National Lotteries Control Board for the year ended December 31, 2000. [*The Minister of Trade and Industry and Minister in the Ministry of Finance* (*Hon. Kenneth Valley*)]

2. Annual report and the annual audited financial statements of the National Insurance Board for the year ended June 30, 2005. [*Hon. K. Valley*]

   Papers 1 and 2 to be referred to the Public Accounts Committee.

3. Response of the Minister of Education to recommendations/comments contained in the First Report of the Joint Select Committee of Parliament appointed to inquire into and report on Municipal Corporations and Service Commissions with the exception of the Judicial and Legal Service Commission. [*Hon. K. Valley*]

4. Annual audited financial statements of Urban Development Corporation of Trinidad and Tobago Limited for the year ending December 31, 2001. [*Hon. K. Valley*]

5. Annual audited financial statements of Urban Development Corporation of Trinidad and Tobago Limited for the year ending December 31, 2002. [*Hon. K. Valley*]

6. Annual audited financial statements of Urban Development Corporation of Trinidad and Tobago Limited for the year ending December 31, 2003. [*Hon. K. Valley*]

7. Annual audited financial statements of Urban Development Corporation of Trinidad and Tobago Limited for the year ending December 31, 2004. [*Hon. K. Valley*]

8. Annual audited financial statements of Vehicle Maintenance Corporation of Trinidad and Tobago for the year ending September 30, 2004. [*Hon. K. Valley*]

Papers 4 to 8 to be referred to the Public Accounts (Enterprises) Committee.

ORAL ANSWER TO QUESTION

Injured Police Officers (Compensation re Spouses/Children)

5. Dr. Fuad Khan (*Barataria/San Juan*) asked the hon. Minister of National Security:

(a) Could the Minister inform the House whether compensation is available to the spouses and/or children of Police Officers injured in the line of duty and if so can he give details of such compensation?

(b) Could the Minister indicate whether it is the intention of the Government to increase this compensation?

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, in response to question No. 5, part (a), the Protective Services (Compensation) Act, No. 22 of 1996 makes provision for the payment of compensation in respect of officers in the protective services who suffer injury or die in circumstances arising out of, and in the course of employment with the State.

According to section 4(1) of the said Act, a police officer injured in the line of duty is the person first entitled to make an application for compensation under the Act. If the officer is so incapacitated by reason of the injury, that he is unable to make a claim himself, he can appoint under a power of attorney, some person of his choice, including his spouse or children, to make such application on his behalf.

A wife or child of a police officer can so claim, but such wife or child has no inherent or independent right to compensation by injury suffered by the officer in the line of duty. An order for compensation to any police officer injured in the line of duty is calculated by reference to the percentage indicated for such injury

of three years gross salary as set out in the Second Schedule of the Workmen's Compensation Act, Chap. 88:05. This Schedule is reproduced as the Second Schedule of the Protective Services (Compensation) Act.

Mr. Speaker, with respect to part (b), hon. Members will recall the statement made by the hon. Prime Minister in his contribution on a round of talks with Members of the Opposition on the matter of crime delivered in the Red House Parliament, on Friday, November 18, 2005 to the effect that the Government of Trinidad and Tobago had recognized the need for the amendment of the Protective Services (Compensation) Act to provide adequate compensation for those officers of the protective services who are injured in the execution of their duty.

In this regard, I wish to advise hon. Members that the Ministry of National Security has been and will continue to pursue action in consultation with the heads of the protective services, the relevant bargaining associations, the chairman of the Protective Services Compensation Committee and other relevant stakeholders with respect to reviewing the existing compensation as stipulated in Act No. 22 of 1996.

Thank you.

Dr. Khan: Could the Member indicate if at all, what would be the death benefit to the spouses and children in the event of the death of a police officer in the line of duty?

Hon. F. Hinds: Mr. Speaker, I do not have that particular piece of information before me as I speak, but will be very willing, and, of course, able to communicate that with the Member, as soon as practicable after.

Dr. Khan: Mr. Speaker, a further supplemental. The Member indicated that the legislation for the Protective Services (Compensation) Act of 1996 was in section 4(1)? Could the Member indicate what regime was in office at that time?

Mr. Speaker: That is not a proper supplemental.

Dr. Khan: Mr. Speaker, the reason I have asked that question, and it is a bona fide question—

Mr. Speaker: No, no. I have ruled that is not a proper supplemental.

Dr. Khan: The Member went on to say—

Mr. Speaker: Hon. Member, I am on my feet and I have ruled that that is not a proper supplemental. Proceed.

Mrs. Persad-Bissessar: Would the hon. Member please tell this House since the undertaking was made and given here by the hon. Prime Minister, what steps if any, have been taken to amend the Act?

Hon. F. Hinds: As I previously indicated, Mr. Speaker, continuing discussions and consultations with all relevant stakeholders are under way and will continue until the matter is resolved.

Mrs. Persad-Bissessar: Has any discussion taken place with any group since that statement was made?

Hon. F. Hinds: All I can do, Mr. Speaker, is repeat that which I have already stated very clearly, and I do not think there is need for so doing. The answer remains the same.

Mrs. Persad-Bissessar: The answer is no, he has done absolutely nothing.

WRITTEN ANSWER TO QUESTION

The following question was asked by Dr. Fuad Khan (*Barataria/San Juan*)*:*

Assistance in Surgical Waiting List (Institutions/Doctors)

3. Could the hon. Minister of Health indicate:

(a) The institutions and doctors that have assisted in the Surgical Waiting List Initiative, for the period January 2005 to date;

(b) specifically the number of procedures done by the individual doctor and institution to date; and

(c) the total payment made to each institution, company and/or individual?

Vide end of sitting for written reply.

MR. LAWRENCE ACHONG (APOLOGY)

Mr. Lawrence Achong (*Point Fortin*): Mr. Speaker, at the last sitting of the House, I used language and made comments that were wholly inappropriate and not associated with the dignity and decorum expected of a Member.

I therefore wish to unreservedly apologize to all Members of the House and in particular, to the hon. Ganga Singh and the hon. Manohar Ramsaran for offending them in the manner in which I did. My bark is a lot worse than my bite, Mr. Speaker. [*Desk thumping*]

FINANCE BILL

Senate Amendments

The Minister of Trade and Industry and Minister in the Ministry of Finance (Hon. Kenneth Valley): Mr. Speaker, I beg to move the following Motion standing in the name of the Minister of Finance:

Be it resolved that the Senate Amendments to the Finance Bill, 2006, listed in Appendix II of the Order Paper be now considered.

Question proposed.

Question put and agreed to.

Clause 6.

Senate amendment read as follows:

In paragraph (c)—

(i) delete the words "in section 15, by inserting after subsection (1A), the following subsections:" and substitute the words "in section 15, by deleting subsection (1A) and substituting the following subsections:

(1A) Allowances on the capitalized expenditure referred to in subsection (1) are deductible only after the commencement of commercial production or from the year following the year in which the expenditure was actually incurred, whichever is the earlier."

(ii) delete the mark of parenthesis occurring immediately before the word "(1B)".

Mr. Valley: Mr. Speaker, I beg to move that the House of Representatives doth agree with the Senate in the said amendment.

Question proposed.

Question put and agreed to.

OCCUPATIONAL SAFETY AND HEALTH (AMDT.) BILL

Senate Amendments

The Minister of Labour, Small and Micro Enterprise Development (Sen. The Hon. Danny Montano): Mr. Speaker, I beg to move the following Motion standing in my name:

Be it resolved that the Senate amendments to the Occupational Safety and Health (Amdt.) Bill, 2006, listed as Appendix I on the Supplemental Order Paper be now considered.

Question proposed.

Question put and agreed to.

Clause 3.

Senate amendment read as follows:

In paragraph (d), insert the words:

"by deleting the word 'over' and substituting the word 'of' and" between the words 'young person' and the word 'by' appearing in line one.

Mr. Montano: Mr. Speaker, I beg to move that the House of Representatives doth agree with the Senate in the said amendment.

Question proposed.

Question put and agreed to.

Clause 4.

Senate amendment read as follows:

In paragraph (a), new paragraph (g), delete the words:

"any other duties" appearing after the word "with" in line one and insert the words "Sections 7, 12, 37, 46, 75 and 76, Parts III and IX and such other duties that may be".

Mr. Montano: Mr. Speaker, I beg to move that the House of Representatives doth agree with the Senate in the said amendment.

Question proposed.

Mr. Partap: Mr. Speaker, I just want to say that with that amendment, the Minister clearly was only tinkering with the Bill by removing that section and now it is replaced again. There was no need for him to remove it and he was told that when he presented the amendments. So he was only tinkering with the Bill just to hold back the implementation of the Occupational Safety and Health Act.

Question put and agreed to.

Clause 7.

Senate amendment read as follows:

In paragraph (a), new paragraph (e), insert the word "a" between the words "in" and "responsible" appearing in line two.

Mr. Montano: Mr. Speaker, I beg to move that the House of Representatives doth agree with the Senate in the said amendment.

Question proposed.

Question put and agreed to.

Clause 16.

Senate amendment read as follows:

Delete.

Mr. Montano: Mr. Speaker, I beg to move that the House of Representatives doth agree with the Senate in the said amendment.

Question proposed.

Question put and agreed to.

Clauses 17 to 35.

Senate amendment read as follows:

Renumber as clauses 16 to 34.

Mr. Montano: Mr. Speaker, I beg to move that the House of Representatives doth agree with the Senate in the said amendment.

Question proposed.

Question put and agreed to.

Renumbered 24.

Senate amendment read as follows:

Insert "(1)" after "Section 57" in line one and delete the word "obtained" appearing at the end of line two and substitute the word "obtain".

Mr. Montano: Mr. Speaker, I beg to move that the House of Representatives doth agree with the Senate in the said amendment.

Question proposed.

Question put and agreed to.

INTERNATIONAL CRIMINAL COURT BILL

Order for second reading read.

The Minister of Labour, Small and Micro Enterprise Development (Sen. The Hon. Danny Montano): Mr. Speaker, I beg to move,

That a Bill to provide for the prevention and punishment of genocide, crimes against humanity and war crimes, to give effect to the Rome Statute of the International Criminal Court done at Rome on the Seventeenth Day of July, One Thousand Nine Hundred and Ninety-Eight; and for purposes connected therewith or incidental thereto, be now read a second time.

Mr. Speaker, this honourable House is concerned today with enacting legislation to give effect to Trinidad and Tobago's obligations under the Rome Statute of the International Criminal Court (ICC).

It would be recalled that at the third special session of the United Nations General Assembly on Disarmament held in 1988 at the United Nations Headquarters in New York, Mr. Arthur N.R. Robinson, now former President of the Republic of Trinidad and Tobago, proposed that the United Nations should commence discussions on the criminal responsibility of individuals who act in breach of the relevant norms of international law.

In 1989, the Government of the Republic of Trinidad and Tobago was successful in placing on the agenda the 44th Session of the United Nations General Assembly, the issue of the transnational character of international crime which affected the ability of States to combat this scourge within their domestic jurisdiction. We called for the establishment of a permanent international court.

Diplomatic and political initiatives for the establishment of the ICC through various fora were carried out by the Government of Trinidad and Tobago. These initiatives included overtures within the CARICOM, submissions to the Organization of American States (OAS), the international law commission and diplomatic missions among other entities. Trinidad and Tobago also participated actively in the work of the proprietary commission for the establishment of the ICC as well as the 1988 UN sponsored conference in Rome, Italy where the statute of the ICC was adopted on July 17, 1998.

Mr. Speaker, Trinidad and Tobago signed and ratified the statute on March 23, 1999 and April 06, 1999 respectively. These acts placed Trinidad and Tobago among the first States to do so and demonstrated further its leading role in the establishment of the ICC. In keeping with the provisions of Article 126(1), the statute entered into force on July 01, 2002. It also entered into force for Trinidad and Tobago on that same date.

Mr. Speaker, the adoption of the Rome Statute of the ICC has been hailed as the most important development in international law since the adoption of the

Universal Declaration of Human Rights in 1948. The ICC has jurisdiction over matters involved in individual criminal responsibility and the judges selected to adjudicate in its chambers must be highly respected in their field of endeavour.

Article 36(3) of the statute provides as follows:

"(a) The judges shall be chosen from among persons of high moral character, impartiality and integrity who possess the qualifications required in their respective States for appointment to the highest judicial offices.

(b) Every candidate for election to the Court shall:

(i) have established competence in criminal law and procedure, and the necessary relevant experience, whether as judge, prosecutor, advocate or in a similar capacity, in criminal proceedings; or

(ii) have established competence in relevant areas of international law… and the law of human rights and extensive experience in a professional legal capacity which is of relevance to the judicial work of the Court;"

Trinidad and Tobago's seminal role in the establishment of the ICC was consolidated further when Mr. Karl Hudson-Phillips was elected to the First Bench of the Judges of the ICC at the First Resumed Session of the Assembly of States Parties to the ICC which was held at the United Nations Headquarters in New York in February, 2003.

Mr. Speaker, the statute enjoins States parties to enact within their respective domestic jurisdictions, legislation to give effect to its provisions. This is the object and purpose of the Bill with which we are concerned today.

The purpose of the Bill we are considering today is twofold:

(1) to enable Trinidad and Tobago's courts to try offences committed under the Statute within the framework of the Trinidad and Tobago legal system; and

(2) to make the legal provisions for the ICC to prosecute cases in Trinidad and Tobago where the Trinidad and Tobago authorities are unwilling or unable to do so.

The ICC, therefore, is designed to complement existing national judicial systems.

Mr. Speaker, this Bill is a fairly voluminous piece of legislation. The Bill is divided into 11 parts, 182 clauses. Part 1 provides for the application of the statute

in Trinidad and Tobago. Part II deals with the International Crimes and Offences Against the Administration of Justice. In this regard, it lays out the procedure for the trial in Trinidad and Tobago of the most grievous crimes provided for under the Statute.

Clauses 9 through 11 list these crimes as genocide, war crimes and crimes against humanity. For proceedings involving any of the offences under clauses 9, 10 or 11, Part II of the Bill applies the general principles of criminal law as stated in Articles 20 to 33 of the Statute.

Members are reminded that wherever these offences are committed, States are expected to prosecute them. The jurisdiction of the court is, therefore, universal. Persons in Trinidad and Tobago or elsewhere who commit these international crimes could be tried in Trinidad and Tobago. It will no longer be necessary for anyone to commit these crimes with impunity.

Mr. Speaker, Members will note that clause 13 provides that before proceedings for crimes under clauses 9, 10 or 11 are commenced, the Attorney General's consent must be obtained. The rationale for this approach lies in the international character of these treaty-based offences. I should emphasize here that a decision to prosecute or not engages the international responsibility of Trinidad and Tobago under the Rome Statute.

Such a decision may have serious repercussions within Trinidad and Tobago as well as the wider international community. It should not therefore be a decision left only to officials. The view is that the responsibility for initiating this action or declining to act in a particular case is best left to the Attorney General, who, as a Member of the Cabinet, shares effective responsibility for concluding and ratifying treaties, and constitutionally has responsibility for legal affairs and proceedings involving the State.

The Bill also sets out provisions to try offenders who seek to commit offences against the administration of justice. Clause 14 outlines the jurisdiction with respect to Offences Against the Administration of Justice for offences set out in clauses 15 to 21. The object and purpose of the preceding clauses is to prosecute those international criminals, officials of the ICC, or any other persons who attempt to infringe the provisions of Part II of the Bill thereby impugning the integrity of the ICC.

Part III of the Bill outlines the general provisions relating to request for assistance from the ICC. The intention of the Bill in this part is to provide for the rendering by Trinidad and Tobago to the ICC of the type of assistance contemplated in Part 9 of the Statute.

The types of assistance to be rendered to the ICC and the procedures to be followed in providing such assistance are prescribed in clauses 24 to 31 of the Bill.

Part IV of the Bill, clauses 32 to 80, provides for the circumstances under which the ICC could request the arrest and surrender from Trinidad and Tobago of a person. This Part also deals with issues concerning the provisional arrest, procedures following arrests, eligibility for surrender, surrender and temporary surrender, restrictions on surrender, appeals against determination for surrender, discharge of persons based on an order of the Attorney General and others. These provisions are in keeping with Trinidad and Tobago's obligations under Articles 89, 90, 91 and 92 of the Statute.

2.00 p.m.

In this regard, clause 32(1) identifies the persons for whom the International Criminal Court could make a request for arrest and surrender.

Clause 32(2) provides for provisional arrest as contemplated by Article 92 of the Statute. Clause 32(3) outlines the restrictions on surrender and execution of a request for surrender.

Clause 33 provides for the Attorney General to notify a judge of the High Court of the request for surrender and request that an arrest warrant be issued.

In the event that the person identified is the person in respect of whom the request for surrender is made, clause 34 empowers a High Court judge to issue an arrest warrant for that person. A High Court judge may also issue a provisional arrest warrant under clause 36, in keeping with Trinidad and Tobago's obligations under Article 92 of the Statute.

There is apparent, some similarity with the regime for the extradition of fugitive offenders under the Extradition Act. Since the ICC is an international organization and not a State, it is not possible to extradite offenders. Instead, they are surrendered.

Importantly, the Bill also sets out in clause 43, the circumstances under which a person becomes eligible for surrender to the ICC. This clause, inter alia, seeks to protect an individual's rights against arbitrary arrest. Notwithstanding the provisions contained in clause 43, clause 45 details the circumstances under which the High Court may accept the voluntary surrender of a person.

Clause 55 outlines the limited conditions whereby the Attorney General may refuse to surrender a person to the ICC.

The question has been asked in respect of clause 13 and Part III, that is provisions relating to requests for assistance and Part IV, which is arrest and surrender of a person to the ICC, and the role of the Attorney General in these matters as opposed to the Director of Public Prosecutions (DPP). These are treaty-based offences. It is the Executive that under the Trinidad and Tobago Constitution has responsibility for treaties.

The question of whether to prosecute in these circumstances contemplated by this Bill is a matter of national interest. In addition to whether a prima facie case could be made out, the Director of Public Prosecutions would consider the public interest as to prosecution. However, in these matters the question as to whether to prosecute is a matter of national interest. The DPP considers matters of public interest. His purview does not extend to issues of international interest that may have international ramifications. That responsibility properly rests with the representative of the Executive.

As to the question of requests for assistance and surrender, I would refer hon. Members to clause 176 which says that the Mutual Assistance in Criminal Matters Act shall apply to this Act as if the ICC were a foreign country, and clause 177 which says that the Extradition Act, 1985 applies to the surrender by the ICC to Trinidad and Tobago of a person.

Since the Mutual Assistance in Criminal Matters Act which was passed in 1997, one would recognize that it is the Attorney General who liaises with his colleagues in foreign jurisdictions and who is privy to information which is not generally available throughout the justice system. So that when a request comes pursuant to the 1997 Act, it is the Attorney General and the office of the central authority which is located in the AG's office which processes the request. This is so because the Attorney General is the functionary in international law. This issue was settled by the other side when the Mutual Assistance in Criminal Matters Act was passed in 1997.

With respect to surrender to the ICC, the Bill refers to "surrender" as opposed to "extradition" because the ICC is not a country, but the principles are the same. Extradition matters fall under the Attorney General. The DPP has no role to play. The proceedings are procedural and not evidential. When you are dealing with extradition you are dealing with international treaties and that is a matter for the Executive.

Clauses 157 to 162 deal with national security issues that further remove the DPP from these matters. The effect of clauses 94 to 99 dealing with the transfer of

prisoners also preclude the DPP from acting as this falls outside his constitutional duties.

The power under Part IV, "Arrest and Surrender", and the Attorney General's role, the issuance of a warrant, or its cancellation, and the provisional arrest warrant, are creatures of existing extradition law; it already exists on the books. In this Bill, all that is sought is to duplicate the powers he already has in relation to an extradition process.

One of the main pillars on which the ICC is built is the principle of complementarity. This means that the ICC would only exercise its jurisdiction if the State party is unable or unwilling to do so. The Preamble and Article 1 of the Statute state clearly that the "Statute shall be complementary to national criminal jurisdictions." Furthermore, Article 20 provides that no person shall be tried twice by the court for the same offence, and that no person who has been tried by any other court for conduct proscribed under Articles 6, 7 or 8, shall be tried by the court with respect to the same conduct unless those proceedings were to protect the person from criminal responsibility, or that the proceedings were not conducted independently or impartially in accordance with the norms of due process recognized by international law.

In keeping with this principle, clause 67 of the Bill allows an individual to appeal on a point of law to the Court of Appeal of Trinidad and Tobago on the eligibility of his surrender to the ICC.

Part V of the Bill seeks to give effect to Trinidad and Tobago's obligations to cooperate with the ICC other than in areas already stated. The areas of cooperation are listed in clauses 81 to 123 and include, among other things, the identification and location of persons or things, taking evidence, producing documents, questioning persons, facilitating appearance of witnesses, temporary transfer of persons and search and seizure. It is also apparent that this cooperation is consistent with the international regime for mutual legal assistance in criminal matters.

Part VI of the Bill, comprising clauses 124 to 135, provides for the enforcement of penalties in Trinidad and Tobago imposed by the ICC. The enforcement of the penalties would be pursuant to an order of the ICC under Article 75 of the Statute. These penalties include fines, forfeiture orders and the transfer of money or property to the ICC.

Part VII of the Bill, clauses 136 to 156, outlines the circumstances and procedures governing persons intransit to the ICC or those persons serving

sentences imposed by the ICC. Clause 139(1), for example, provides that the Attorney General may inform the ICC whether Trinidad and Tobago is willing to have persons sentenced by the ICC serve their sentences in Trinidad and Tobago. The Bill, in fidelity to the Statute, recognized the existence of extradition agreements between States. In this regard, clause 148 contemplates the extradition of a prisoner under the Extradition (Commonwealth and Foreign Territories) Act, 1985.

Article 75 of the Statute recognizes the sovereignty of a State insofar as the circumstances under which the disclosure of certain information or documents would be prejudicial to its national security interests. Such circumstances are reflected in Part VIII, that is, clauses 157 to 165 of the Bill.

Part IX, clauses 166 to 172 of the Bill, provides for investigations or sittings of the ICC in Trinidad and Tobago. This contemplates situations where the prosecutor may conduct investigations in Trinidad and Tobago and the ICC itself may decide to sit here to perform its functions under the Statute and its rules of procedure and evidence.

The Statute recognizes the need for cooperation between the States' parties and the ICC. Part X of the Bill, clauses 173 to 177, outlines the types of assistance Trinidad and Tobago may request from the ICC. Clause 173, for example, provides for such request to be made by the Attorney General of Trinidad and Tobago. Part 11 of the Bill, clauses 178 to 182, deal with miscellaneous provisions and consequential amendments which would be effected as a consequence of the passage of the Bill.

It should be noted that the crime of genocide is listed as one of the crimes within the jurisdiction of the Statute as provided for in Article 5. This is outlined in clause 9 of the Bill. The passage of the Bill would therefore make nugatory the provisions of the Genocide Act. This was stated in clause 182(1) of the Bill.

Clause 8(4) raises the question as to retroactivity. Clause 8(4)(a) makes the applicable date to be January 31, 1997 in relation to an offence against clause 9, which deals with genocide. That is the effective date of the Genocide Act which is being repealed by clause 182 and, therefore, this provision simply makes the application of this Bill contiguous with the Genocide Act.

Clause 8(4)(b) refers to clause 10, crimes against humanity and is to provide for the same effect of the United Nations Security Council Resolution which gave the International Tribunal on Yugoslavia jurisdiction.

Approval by this honourable House of this Bill would mark the ultimate step towards ensuring that Trinidad and Tobago joins those States which have enacted

legislation to give effect to the provisions of the 1998 Rome Statute of the International Criminal Court. In so doing, we would ensure that on the way to universal application of the Rome Statute, this country is one more jurisdiction in which the perpetrators of the most heinous international crimes, that is, genocide, war crimes and crimes against humanity, will find no sanctuary, will enjoy no immunity but will have to accept individual responsibility for their actions.

Mr. Speaker, I beg to move.

Question proposed.

Dr. Roodal Moonilal (*Oropouche*): Mr. Speaker, the House is concerned today with enacting legislation to give effect to Trinidad and Tobago's obligations under the Rome Statute of the International Criminal Court. Regrettably, the Minister spent little time giving any idea as to the philosophical and historical basis of this measure, regarded by many as a historic development in attempts to regulate the conduct of public officials, high government officials, and so on, in international relations, particularly as it relates to criminal conduct.

The measure before us today is a culmination of work for over half of a century, work that began around 1951 in the aftermath of the Second World War, when the international community resolved, through the United Nations, to embark upon the establishment of an international court, as opposed to a tribunal that can hear and determine matters regarding criminal conduct by high public officials. It is also known that in situations of war and conflict, heads of governments and heads of State, under the guise of the supremacy and the protection of the State, embark upon criminal conduct resulting in mass death, murder, extermination, sexual violence and a host of other very serious criminal acts, all in the name of the State.

For decades the international community has been trying to fashion and establish one court to address this conduct on the part of the states. Unlike, for example, the International Court of Justice which deals with state-to-state matters, the International Criminal Court deals with individuals committing criminal offences in the respective countries that are parties, called state parties, to the ICC. Since 1951 to the late 1980s, this matter has been discussed and shelved at various international fora. One major deterrent to the culmination of this initiative was, indeed, the cold war and the conflict-ridden separation of the world between the East and the West, and the communist and capitalist nations and so on, and a lack of cooperation arising from that.

The other matter is that given the widespread diffusion of technology, mass media and literature, you find that by the 1980s the world was becoming more and more familiar with atrocities, crimes, criminal conduct of leaders and of States in the name of the supremacy of State, in the name of religious and ethnic dominance, and so on. By 1989, it was the Government of Trinidad and Tobago that raised this matter of the International Criminal Court at the United Nations General Assembly and returned the matter to the front burner in the international agenda.

It is very instructive that when Trinidad and Tobago raised this matter, along with about 15 other States in 1989, the matter was raised in a particular context. The matter of the International Criminal Court was raised by the Government of Trinidad and Tobago in the context of persons who engage in international crime, such as illegal drug trafficking across national frontiers, and so on. The matter was actually raised in 1989 to deal with drug and narcotics trafficking and the impact of this criminal conduct on small Third World nations.

Between 1989 to 1994, incidentally, narcotics trafficking and drug-related offences were removed from the agenda. By 1994, the International Law Commission in a draft proposal had actually proposed that drug trafficking be an international crime under the jurisdiction of the ICC. However, to get the nations of the world, and particularly the leading industrial powers interested in an international criminal court, the crimes and the offences which were at that time dominating the international attention, dealt with genocide, what is called crimes of aggression, extermination, murder, and so on. The developments in Cambodia, Rwanda and Yugoslavia added that type of emotional impetus to the international community to resolve itself to establish and take steps to put in place an International Criminal Court. I would come back to this matter of illegal drug-trafficking later, since this was the basis upon which the Trinidad and Tobago Government articulated for an International Criminal Court.

Regrettably with this Government, it has a tendency to adopt, whether it is treaties, commercial and trading agreements, lock, stock and barrel; bring those agreements to the Parliament and expect support from the Opposition and, indeed, from the national community, without much analysis, research and without the benefit of expert assistance to understand, at times, complex matters. The Rome Statute was adopted, of course, by 1998 and this was meant for the different countries which are signatories to the agreement to go back to their national Parliaments and pass the implementing legislation. But when a treaty like this is concluded, it is left to the countries that are signatories to study, to look at the

ramifications, to understand the perspectives of the intention, not only of the treaty, but of your own domestic legal arrangements and social and legal framework. Implementing this measure in New Zealand would be different from implementing this matter in Trinidad and Tobago, where Trinidad and Tobago has a written Constitution that is the supreme law of the land which spells out roles, responsibilities and functions of public officials.

I wanted to begin by recommending that the Government of Trinidad and Tobago, and the Parliament, look at what obtains in other countries in the Commonwealth and, particularly, New Zealand, where, when matters such as these involving treaties and agreements between countries and so on, go to the Parliament in New Zealand, they actually embark upon, what is called, a treaty examination process which is assisted by a national interest analysis report—this is all at the Parliament—where matters such as these are referred to a particular select committee under the Standing Orders to examine the treaty, to look at the national interest; how the national interest is being served or not, also, to collate expert opinion and views on the various provisions so that the Parliament can benefit by such expertise that may not be resident in the House.

This is a good model to recommend because, as the Minister agrees, this matter before us and this treaty, is an extremely detailed and comprehensive document with over 121 provisions, and in the short time we can just reflect on a few provisions in the Bill, certainly not the Bill in its entirety, and there may be grey areas that require expert opinion; that may require a submission from another group of expert scholars, on the one hand, and legal practitioners on the other. We need to be careful that we do not pass legislation without understanding the implications and the ramifications for Trinidad and Tobago and also its relationship to the Constitution which is supreme. I wanted to indicate that New Zealand really presents a good example of how this matter and matters such as these could be handled in the House of Representatives.

The New Zealand legislature, indeed, treated with this matter, made certain amendments, understood in detail and in a comprehensive way the implications of various articles of the Statute in the context of the legal framework that obtains in New Zealand, and so they were able to come up with a law that would fit comfortably within their own social and legal framework. The same certainly cannot be said for Trinidad and Tobago where, apart from the written Constitution, we have a particular English legal heritage, the authority rooted in the Constitution, including office holders, and the treaty before us to be adopted may infringe on the Constitution.

Another introductory point somewhat, is that in this matter it is felt by the international community that crimes under international law, by their very nature, often require the direct or indirect participation of a number of individuals, at least some of whom are in positions of governmental authority. That is an important principle, that to meet and treat with international crimes, as we are looking at today, require the direct or indirect participation of government officials as a basis for, whether it is surrendering an accused or prosecution. If the government authorities themselves are without integrity, and the highest of transparency and accountability, then it makes such legislation a complete waste of time, because it depends upon integrity in your governmental authorities, particularly dealing with the ICC, the Attorney General, Cabinet, and so on.

At the higher level, before coming to particular clauses, this also has implications for several complex issues dealing with concepts in criminal law and whether certain concepts can be transferred across national boundaries. It has implications for the extension of classical international criminal law beyond extra-territorial jurisdictions; beyond obligations to prosecute and extradite accused and, of course, it has certain arguments to be raised concerning the definition of a crime, because this is, indeed, a historic and momentous move to try individuals in almost a global court for offences that are across international boundaries, defined more or less in the same way.

Whether in a multilingual world you can actually define crimes in one way and allow that to hold, is something else. In another sphere of activity, in employment law, for example, the International Labour Organization, for 10 years, has been trying to define contract labour and it cannot, because the definitions may relate to a particular linguistic and cultural environment but they make no sense in another environment. The issue of the concepts and definitions of the criminal offences is a more complex issue.

Another issue that the Minister did not and, more likely than not, will not address, is the political issues. They are not just issues of law but of politics. This treaty before us and the establishment of the International Criminal Court is also placed within the context of the United Nations system and particularly the work of the UN Security Council which is, for all intents and purposes, a political organization. The UN Security Council is a political institution with enormous power over sanction and through resolution-making, and so on; as we have seen over war, and this political institution in a way dovetails into the work of a global judicial body. So there is a debate there as to the extent to which the Security Council can impact upon an international judicial body. For example, the Security

Council under the treaty can postpone, albeit one year at a time, the hearing of a matter before the ICC, and the Security Council is made up of politicians. So you may have politically motivated decision-making influencing the work of a judicial body set up for international justice and this is a serious issue that the Government would like to raise and discuss.

The work of the United Nations Security Council in relation to the ICC is a grey area; it is an area where there is a lot of debate as to the role of that Security Council vis-à-vis the International Criminal Court. Another area of conflict relates to the initial involvement and quick withdrawal of support from the United States.

2.30 p.m.

Mr. Speaker, as you would know, former President Bill Clinton signed on to this matter of the Rome Statute and, in May 2002, President George W. Bush unsigned the statute—it will be left to President Bush to unsign something—and went further to pass the American Service Members Protection Act, which outlawed the International Criminal Court (ICC) and which gave the United States the legal authority to punish countries that sign on to the ICC. So the United States can withhold military aid to a country, if that country is a signatory to the ICC.

The American Service Members Protection Act also granted the authority for the United States administration to enter into what is called Article 98 agreements. That works like this. Although the United States is not a member of the ICC, a US citizen can still be brought before it. That citizen could be held in a country that is a signatory to the ICC. Further, according to the treaty provisions, if the US citizen commits a crime in a state that is a signatory and then goes to a state that is not, that US citizen can still be held. More than that, according to the treaty, once a state submits to the jurisdiction of the International Criminal Court, it can surrender the American citizen.

The Americans, to deal with that, entered into Article 98 agreements, which, simply put, creates a bilateral agreement with a country, so that American citizens would not be subjected to the ICC. The Americans actually intend to sign 127 bilateral agreements with all the countries that have signed on to the ICC. So, for every country that signs on to the ICC, the Americans do a bilateral agreement and then remove US citizens, under any circumstances, from being under the jurisdiction of the ICC. This has been the American response.

It is that way because they are conscious of their own conduct in war. The developments in Abu Gave and Guantanamo Bay would testify to what appears to

be criminal conduct and war crimes on the part of US officials and to exempt US citizens, military and otherwise, from prosecution, they enter into Article 98 agreements.

While many people believe that the ICC can continue and make the necessary impact upon the conduct of state and state officials, there are some who believe that without the support of the United States and, particularly with their playing the role some would describe as bully in the schoolyard, this court may end up being a toothless bulldog—a court that really is of no authority, useless, or, as the Americans describe it, an international kangaroo court. So, the US non-involvement in this and their other initiatives undermine the extent to which the ICC could bring about global justice.

Apart from that, they are being funded along the same basis as the United Nations—it is the same body in terms of the origin—and the United States funds about 20 per cent of the UN budget. The serious implication, therefore, is that United States funding would also be necessary to operate the ICC. That is another major issue on whether or not this court could work.

On another matter, the ICC deals, not just with the International Criminal Court based in Hague, but also with domestic courts, in that, according to the Bill, the jurisdiction of the ICC would be complementary to national courts, which means that it would only act when countries are unwilling or unable to investigate or prosecute.

It is quite interesting that when we talk about the ICC, mentally we place ourselves in Hague, but really the domestic courts are now being charged with a responsibility to hear crimes under the ICC—genocide, war crimes, crimes of aggression and so forth. We all know of the state of the Judiciary in terms of personnel, equipment and infrastructure. This is a country where a few days ago the same US authority, the embassy in Port of Spain, had to be donating equipment to the Court in Trinidad and Tobago. So we get handouts from the US to assist in having speedy and efficient justice. That is the nature of the management of the justice sector in Trinidad and Tobago under the PNM. Here we have these so-called new crimes that are now codified under international law that our domestic courts must meet and treat with.

One problem the Minister alluded to but did not convince us on his position was the matter of the Attorney General. According to the treaty, the Attorney General is the responsible office holder who must give consent for prosecution to take place. In several territories the Attorney General is not a politician as he is in Trinidad and Tobago. There are other countries, including Commonwealth countries.

Mr. Speaker, the Attorney General in this country wears a balisier tie. [*Interruption*] This treaty places decision-making and consent to prosecution in the hands of a political appointee, the Attorney General. More than that, under the Constitution of Trinidad and Tobago, the DPP is entrusted with the responsibility to investigate and to decide on matters of prosecution. So a citizen of Trinidad and Tobago is subjected, under the Constitution, to the DPP to investigate and cause to be prosecuted. Under the treaty, the Attorney General plays that role and, we are hearing from the Government that the Attorney General is responsible for, not only national, but for international crime. Presumably this is a matter where a Trinidad and Tobago citizen could be hauled before the court on a crime under the ICC, but the Attorney General decides whether or not a prosecution takes place.

This is a country where, only recently, in a nightmarish cabal among the Prime Minister, the Attorney General and the DPP, they caused a scandal in the Judiciary revolving around the image and the integrity of the Chief Justice. We read this matter in the newspaper. The matter, as I understand it, is for mediation now and has been for a long time. During that conflict, letters—very complex and sophisticated legal arguments were being concluded within hours. Within hours, one party was writing another. This matter has been for mediation for six months or more and nothing could be heard in the public domain on it. It is a matter involving the Prime Minister, the Attorney General and the very DPP. This is the integrity of office holders in Trinidad and Tobago, the DPP included. Now we are told that the Attorney General would have to give his consent, with a balisier tie, to whether or not a prosecution takes place. The public will judge the Government in due course.

I can talk about another matter which is not before the Court—in fact it has been thrown out of the court—where the DPP—and it is related to the Chief Justice's matter—in collusion with the Attorney General, hounded, harassed and persecuted Prof. Vijay Naraynsingh and his family.

Mr. Speaker: That is a dangerous statement. You are accusing the Attorney General of colluding with the DPP. Please do not go there!

Dr. R. Moonilal: Mr. Speaker, we have established as fact that there was contact between the Attorney General and the DPP. The improper contact led to the arrest and the prosecution of Prof. Naraynsingh, so they colluded, conspired and undermined the justice system of Trinidad and Tobago. The Government is guilty of that.

Let me move on. On that matter, I want to come to another issue that is not yet in the court. We are depending on the Attorney General, a political appointee, to exercise this power to give consent or not to prosecution, which may involve government officials. In fact, the very nature of the ICC is to bring Government officials to justice because it was felt that domestic law could protect Government officials against crimes. They may commit crime and declare that they are protected by immunity; they are protected by domestic legislation from prosecution. The very birth of the ICC relates to that.

This Government has been tried and tested. This Government now faces another important test—and I go back to the issue I raised at the beginning. When the Government of Trinidad and Tobago placed the ICC on the agenda at the United Nations in 1989, the concern was narcotics. Today, we have all read in the newspaper of another scandal and chilling revelation that seems to suggest that agents and/or officials of the Government of Trinidad and Tobago conspired to import narcotics with the purpose of putting it into the water tank of a Member of Parliament. Mr. Speaker, I know you do not like to call names, so I will not go there, but my point is that it is in the public domain. It was in the newspaper and elsewhere that there was an allegation, a very serious accusation, that government officials did that.

This matter is one that can find itself before the ICC, if government authorities fail or are unwilling to investigate. That is the nature of the ICC. Where the Government fails or is unwilling to investigate, a concerned group—for that matter anybody—can write a letter and bring the matter to the International Criminal Court.

When, at first, the police commissioner responded to this matter, he responded with a level of cynicism and distrust as if he had made his judgment already as to the truth of the accusations being made by Vernon Paul. When he was pressed further, he changed his mind and said they would investigate. Then he said they would not investigate; then recently, they would investigate. It is clear that political pressure can be brought to bear upon the Commissioner of Police and senior police officers so that they would pursue justice, but seek to cover up government officials in that conspiracy and undermine justice.

2.45 p.m.

Mr. Speaker, it is understood that the person in question—this relates to Government officials—was working at the Unemployment Relief Programme (URP) office in San Fernando. Today, we read in the newspaper that he was in possession of $2 million for the expressed purpose of conducting activities in

collusion with Government officials, to set up the UNC and undermine the electoral chances of the UNC in the 2002 general elections—the State's money, taxpayers' money.

There is the apparent unwillingness of state officials to investigate this matter involving Vernon Paul. Mr. Speaker, there are also matters involving the La Brea Industrial Development Company, the Barbados fishermen and other matters. The State has refused and remains unwilling to conduct proper investigations. This is their track record. We are calling for a proper independent enquiry into the allegations of Vernon Paul in which the State should be assisted by foreign experts from the FBI and Scotland Yard.

I was ashamed that in the recent kidnapping and murder of Baliram Maharaj when persons were arrested—it was a foreign authority, the FBI that came here to assist the local police with its investigation that led to the arrest of persons. It was the FBI, not the local police that we expect to investigate Vernon Paul. When the matter was first brought to the public domain, the leader expressed cynicism as if to suggest immediately that this is not so and his job is to cover up the PNM Government. That is the reality. So with the International Criminal Court (ICC) or no ICC this is what we are dealing with. This is the political and social context within which we are trying to adopt a Treaty.

Mr. Speaker, there are other matters that we on this side are concerned about, not only the matter of the Attorney General and whether or not the Attorney General is appropriate, given that the Attorney General is a political appointee in our system. If we had the benefit of a select committee with a group of experts in attendance and so forth, we would have been able to clarify other matters. For example, a citizen of Trinidad and Tobago, under our Constitution is subjected to the jurisdiction of the courts and the structure of justice as outlined in the Constitution; whether it is the High Court, the Court of Appeal or the Privy Council. Now, a citizen of Trinidad and Tobago would be subjected to the jurisdiction of an international court outside of the Privy Council, Court of Appeal and High Court and so forth. This may violate and infringe the Constitution where a citizen of the Republic of Trinidad and Tobago is now subjected to the jurisdiction of another court, outside of the Constitution. This is an area that the Minister and the Government may consider.

Another issue concerns Part VII of the Bill and it is also related to clauses 9(3)(a), 10(3)(a) and 11(4)(a) which states:

> "if the offence involves the wilful killing of a person, the same as the penalty for murder;"

Mr. Speaker, under the laws of Trinidad and Tobago the penalty for murder is execution by hanging. Under the ICC it is life sentence. So this appears to be another point where the Treaty conflicts with domestic law and this may require a second look. We submit that a select committee may be best placed to undertake this matter. It cannot be that the domestic law of Trinidad and Tobago subjects you to one punishment and the ICC to another for the same crime.

There are other issues involving the admissibility of evidence and, again, the role of the Attorney General. There is also a matter that the Minister touched on concerning bail, where according to the Treaty, there are certain offences in which bail is not a right. This may be another point where the Constitution of the Republic of Trinidad and Tobago is infringed and also constitutional rights. Are there new offences that are now non-bailable, if the right to bail is denied under the Treaty that would now become law? These are serious matters affecting our domestic laws and our Constitution. I am of the view that not enough attention is being given to this matter. If this is so, then it requires the requisite majority to pass this measure into law that tampers with the constitutional rights under the Constitution.

In terms of some other matters with the ICC, it would not be until 2009 that other offences in the international community could be amended to place other offences under the jurisdiction of the ICC. In the international community, while we accept that the last century has been the bloodiest century in human existence, and the international community should move swiftly to outlaw criminal conduct in the name of the nation's state and by high public officials, these crimes, as brave as they are, are being committed in a handful of countries that they must act on, but there are other crimes such as crimes against the environment; crimes of aggression; and discrimination racism.

The basis for all conflict is inequality. It may well be that the ICC should look at these "rogue states" which fail to implement legislation that protects the rights of citizens; to promote equality; to end discrimination, the basis of conflict; and so many wars and killings. It may well be that we may consider in the future articulating that discrimination and racism must also be considered crimes against humanity. When you meet and treat large groups of persons—and sometimes small groups as well, but in most cases the larger groups—on the basis of a determination to undermine their rights by racist policies and to discriminate against them, that is a crime against humanity. [*Desk thumping*] In fact, in Trinidad and Tobago, citizens are now protesting and asserting their rights to live in conditions of decency and this suggests that is a crime as well.

This is a country where there is gas, oil and petroleum and citizens are protesting for water and better roads.

Mrs. Job-Davis: Ask Ganga why.

Dr. R. Moonilal: Mr. Speaker, next to the Pitch Lake, people were protesting and burning tyres and so forth and asking for better roads. That is the State.

Mr. Bereaux: Would the hon. Member give way?

Dr. R. Moonilal: No, I am not giving way. They want me to lose my train of thought. The people are protesting for better roads and water. To live in a state of dignity you need drinking water. They beat them as they intended to do during the strike at the Atlantic LNG project. These are serious crimes against people. Today, in Trinidad and Tobago, you do not have water and roads. These are basic utilities. This incompetent Government cannot supply these things. This is a country where you can drown in a flood, but you cannot get water to drink.

Mrs. Job-Davis: Ask Ganga.

Dr. R. Moonilal: Nobody is taking responsibility for this. They have closed down Caroni (1975) Limited, and 10,000 persons—incidentally, sugar went up and they are importing sugar—are on the breadline without hope or jobs. Today, if we ask the Government to tell us how many persons out of the 10,000 sugar workers have been employed, they would not know. My information is that less than 100 former Caroni (1975) Limited employees have been able to secure jobs. This is how the Government treats people.

Dr. Khan: Political persecution.

Dr. R. Moonilal: In several areas in this country, farmers have been on lands for over decades providing food with their badges. The Government moved in and destroyed their crops. Mr. Speaker, that must be a crime of aggression against people. Incidentally, when Israel resisted the signing of this statute, they were also concerned with the impact of the ICC on their settlement policy. China was concerned with its policy on population control, and to enforce sterilization could be deemed to be a crime of extermination. The Chinese were pursuing that in certain provinces. The political arguments were that in certain areas they were targeting particular groups of persons to control the population.

In Trinidad and Tobago, the PNM Government targeted Caroni (1975) Limited workers; they targeted their lands. Today, we have the highest rate of poverty in Trinidad and Tobago. In the former sugar areas there is flooding because they

forgot that Caroni (1975) Limited did not only produce sugar, but provided social utility services. Where the national government and regional corporations could not provide services, Caroni (1975) Limited stepped in. So whether it had to do with a health centre, drainage or road paving and so forth, Caroni (1975) Limited stepped in. This Government did not have the interest of a section of the population of Trinidad and Tobago at heart. In Trinidad and Tobago, these are crimes of aggression. In an earlier incarnation, many years ago, they were accused of trying to wipe out parts of this country.

Mr. Speaker, as I now return to the Bill, we are convinced—

Mr. Speaker: Before you reach into the Bill, your speaking time has expired.

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

Question put and agreed to.

Dr. R. Moonilal: I want to come back to the point that this measure requires the attention of a select committee; it requires expert submissions on several areas dealing with the Constitution, with domestic law; and the role of public officials in Trinidad and Tobago. This measure also deals with bribes paid to judges, and an interesting problem arises in clause 16(1) which says:

> "Every person is liable on conviction on indictment to imprisonment for seven years who, in Trinidad and Tobago or elsewhere, corruptly gives or offers, or agrees to give, a bribe…"

Mr. Speaker, is this only applicable to Trinidad and Tobago citizens? What if the action takes place outside of Trinidad and Tobago? What if a corrupt judge from another country comes to Trinidad and Tobago and that country is not a signatory to the ICC? What would be the situation of that person? Can he come here as part of paradise to escape jurisdiction or would he also be liable to be brought before the ICC in Trinidad and Tobago? That matter needs to be clarified.

The other matters involved providing training, awareness and sensitization like communication firms working in the Government now. You only have to look at the Ministry of Health for full page coloured advertisements, magazines and centre spreads and so forth. Mr. Speaker, this requires training, sensitivity and awareness by members of the legal profession; the non-governmental organizations. Incidentally, the ICC is also a creation of the enormous work of the international NGO movement, not just states. In fact, many states resisted the creation of the international NGO community.

If matters are to be raised under this Treaty and persons are to be held, surrendered and prosecuted, I submit that it would be the NGO movement that would play a pivotal role. Therefore, it is that movement and civil society that must be educated as to the provisions and the articles of this Treaty, so that we would have a society where persons are empowered. They would know the crimes that we are concerned with whether it is genocide—well that is well established—or war crimes. A war crime under this Treaty is not just a crime committed during war; it is before war as well. A lot of the criminal activities take place before a declaration of war.

Another matter that would have to engage the attention of the Government and agencies that are required to communicate on this matter involves this tricky offence called "crime of aggression". Unless I am mistaken, the Minister could correct me, there is no definition for a crime of aggression. One needs to speculate on that as to where this offence is taking us. What are the borders of this offence? That is one of the reasons the United States of America has withheld support for this measure. They are in fear that American military officers could be tried for a crime of aggression under this Treaty. In fact, they could be tried in any country of the world that is a signatory to the ICC. The former General, Tommy Frank, is before a court in Belgium for a crime of aggression against civilian targets in the Middle East.

Mr. Speaker, the matter before us certainly deserves our support and with all that we have said, both here and in the other place, by no stretch of the imagination are we suggesting that we are not in support of the International Criminal Court Bill and we are not in support of this historic development in human history.

I want to end by saying that the clauses with respect to the Treaty and so forth are much too complex for us to discuss in a preliminary manner when we consider the deeper issues involved and how they affect the domestic law and our constitutional rights.

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

Mr. Winston Dookeran (*St. Augustine*): Mr. Speaker, I am pleased to make a short contribution on this long outstanding piece of legislation. I am very pleased, as my colleague indicated, that this matter has come to the House for approval.

The International Criminal Court Bill, 2005 is of greater significance to us today in Trinidad and Tobago. You could imagine when this matter was first put on the agenda of the Government of Trinidad and Tobago in the mid '80s by the

then prime minister, Mr. Robinson, and subsequently placed on the agenda of the United Nations. At that time, the critical issues that were before the global community were the broad issues of crime against humanity and the issues pertaining to human rights.

The philosophical underpinnings of this legislation were meant to protect citizens against any abuse of human rights by forces that were completely outside the control of the local jurisdiction, and to deal with the issue of crime against humanity.

In the context of the Caribbean, we were then faced with other issues like the incidence of the growth of drug trafficking in the region of which the Member for Oropouche spoke. What was also important was the issue of the viability of small states. At that time, there was a lot of discussion, not only about the economic viability of small states, but rather about the very security of the state in the political and military context. We have had our own experience in the Caribbean with the events of Grenada in which the very viability of that state became undermined and threatened by internal conflicts within the then government. That became a big issue in the Caribbean context.

Mr. Speaker, there have been occasions when the state itself became a great contributor to the issues leading to crime against humanity and crimes against human rights. In fact, the Human Rights Watch Report of April 2000 identified the situation in Europe. I quote from the report which says:

The Serbian and Yugoslav governments have consistently used repressive measures on fair trials, harassment and violence against opposition politicians, street demonstrators and domestic critics.

Therefore, the Bill before us is of great significance to our local environment and the Caribbean political situation.

We know of the problems in Guyana within the last decade in which the state was accused, very deliberately, of using state resources in order to impress the society. We know the history of this was eventually passionately dealt with and it remains perhaps an issue to be dealt with. I do not think that this legislation is to be looked at only in the context of international agreements, and that we are here today to sign up to another international agreement.

When the hon. Minister made his presentation, he did go through that line of argument that it was part of that obligation in which we are involved. There are real issues that are relevant to our society in order to protect ourselves from crime against humanity and human rights. The genesis of the Bill is derived from that.

As I said, the philosophical underpinnings are related to the issue of criminality and the issue of human rights.

There is a provision in the Bill to which both the Minister and the Member for Oropouche referred that we had a little concern with. If this Bill is, in fact, a Bill in the international arena to deal with criminality even by the state against its citizens, then clause 13 of the Bill which seeks to require the consent of the Attorney General to be obtained before a prosecution of an offence against clauses 9, 10 or 11 can be brought, seems in some way to compromise the intention of the Bill.

Now, when I looked at clauses 9, 10 and 11, I saw a list of the kinds of offences for which the approval of the Attorney General is required before any enactment or enforcement of the provisions of this Bill and those crimes are listed in clause 10(2) of the Bill which says:

> "For the purpose of this section, a'crime against humanity' means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack:
>
> (a) murder;
>
> (b) extermination;
>
> (c) enslavement;
>
> (d) deportation or forcible transfer of population;
>
> (e) imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;
>
> (f) torture;
>
> (g) rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity;
>
> (h) persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the ICC;
>
> (i) enforced disappearance of persons;
>
> (j) the crime of apartheid; or

(k) other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health."

Now, when we looked at these provisions, there is no reason why in the context of the need to protect the civilian population against crimes against humanity and human rights that these crimes could well be perpetrated by the state. Therefore, it seems to me, to some extent, to compromise the intention of the Bill to have this matter dealt with via the consent of the Attorney General. I raise this matter if only for the public information at this stage. This could well be a limitation of the very intention of the legislation before us.

In Trinidad and Tobago, that very issue has clearly emerged on our national agenda—the very issue as to the integrity of the State. We have had many circumstances in which now the very institutions of the State are under some kind of risk to the integrity of the State. We have been talking about the issue of criminality in the political process and, in my view, this is a very serious issue in today's democracy in Trinidad and Tobago.

It is necessary to develop a very rigorous programme to remove such influence in the political process and the electoral process if we are to maintain a very democratic political culture. As a society, it is absolutely essential that we attack this problem fundamentally, not only in the context of the governance of the country, but also in the context of the practice of politics. To that extent, if we are to adhere to the intentions of this Bill that is before us, we need to take appropriate steps to do so. At all times, we must clearly agree that the political process must be free from the influence of criminal elements. That is a principle that we must never surrender.

Mr. Speaker, when we began our discussions with the Government on the crime talks, we communicated these basic principles that must form part of the legislative agenda. They are:

1. there should be adequate protection against the abuse of power;
2. there should be complete protection of our civil liberties; and
3. that the political process must be free from criminal influence.

What is of particular concern to us and what we are hearing everywhere is that the Government's very allocation of its resources perhaps, unintentional, is fuelling the state of crime and criminality in our land. The rising tide of daily cold-blooded murders is undermining the foundations of a civilized society. How can we hold on to our civility when every morning we hear how many persons

have been shot, execution style, the day and the night before? It is really no solace to say that these murders are just gang–related. After all, what is fuelling this gang warfare? Is it possible today in our society to ignore the many claims that have been made by many informed persons that state–funded programmes lie at the root of criminality in this nation? This has raised another issue and that is the broader issue of the integrity of the State.

Recent events that have taken place in the military establishment of this country have also raised the issue of the integrity of the State when these very institutions that are supposed to maintain the integrity of the State are now at risk of not performing that duty. It becomes a critical issue. We must find ways and means by which we can protect the integrity of the State. In that context, it is absolutely essential that we develop the resilience in order to protect the integrity of the State and to ensure that these conditions are not allowed to be fostered and create the possibility of crime against humanity or crime against human rights. It is in that context I believe we are to look at this legislation before us to see whether or not it can satisfy the demands of the challenges of our own society.

The hon. Member for Oropouche raised some issues as to what are the ways by which we can take action to protect that integrity. Fundamental, of course, in that whole approach, is the very independence of our Judiciary. There is argument as to whether or not the financial independence and operations of the Judiciary is itself a compromise on that independence. In my view, these are issues that we need to deal with urgently if we are to restore this integrity of the State. Fortunately, I believe we do remain with a Judiciary that has independent minded people, but whether the resources are sufficient to compromise that independence, and the manner by which it is being funded, could compromise that independence and that is a matter of some concern.

I have already spoken about the disbursement of the state resources to fund criminality. The society should never become complacent on that matter. We in the Opposition have been for a long time arguing as to the removal of that by virtue of state supported programmes.

Mr. Speaker, there is also the need to have the principle of the right of the public to know. The best safeguard against the emergence of these types of activities that would undermine the security of the State is to have public vigilance and to ensure that the public has the right to know. When events of this nature are brought to our attention by specific acts, wherever they take place, I believe the principle that the public has a right to know must be a cardinal principle that we must never surrender in this country. It is in that context that I

expressed grave concern of the tendency within recent times to try to deny the public the right to know on critical issues of public interest that preserves the integrity of our democracy and our State. [*Desk thumping*]

The Freedom of Information Act which was supposed to provide the legal avenues by which the public can have access to information has been consistently eroded, in term of its coverage, over the last few years. We know the consequences of that. Ever so often there is an order which says that certain institutions are no longer expected to comply with that Act and no fundamental philosophical basis for so doing has ever been promoted, whether it is the Central Bank or some of the state agencies which have been identified. There has always been a response, not to a philosophical underpinning of the right to know, but to a certain charge to be levelled against the institution, and then the Government's response is to change the Freedom of Information Act to prevent the public from knowing.

Now, I think that is a very serious indictment against a Government that has agreed to the Freedom of Information Act. If there is going to be a change in the scope and coverage of that Act, it should be based on the philosophical underpinnings of that Act, not in response to a specific allegation that has been made against a specific institution and, therefore, the Government's response to that is to stop the information from going to the public. [*Desk thumping*] That to me is a fundamental issue that we have to face up to in this country because bit by bit we are going to see an erosion; an erosion of these particular rights of democracy, not in the name of any fundamental change in philosophy, but in the name of political expediency. [*Desk thumping*] That is wrong. It cannot be right for any society to be able to accept that as part of our lives.

Public vigilance, as reflected in the Freedom of Information Act, is something that we must encourage on this issue. In the context of the agenda before us, at this point in time, it is important that we accept the principle of the public right to know.

One of the issues pertaining to protecting the country against that entire issue of crime against humanity and crime against human rights violation, is the whole issue of corruption in general and, more specifically, to the issues with which this society is now grappling. There is no doubt that we need to deal with this issue in a comprehensive and total manner. In that respect, I want to support the call that has been made by Transparency International very recently.

Mr. Speaker, Transparency International raised the issue as to why this Government has not seen it fit to be a signatory to the United Nations Convention Against Corruption, especially in light of the various allegations of corruption,

criminal involvement and the mismanagement of state funds. I would like to say in this Parliament that I support that call by Transparency International.

The United Nations Convention provides the framework for the development of a comprehensive set of measures to clamp down and eradicate corruption. The convention has addressed every area of the conduct of public and private affairs in which a government is alleged to be in some way or the other involved in wrongdoing.

On this occasion, as we debate this ICC Bill, it is an important step for us to also adhere to the requirements and to sign that United Nations Convention. I am sure that this is a matter that ought to be placed high on the agenda but, for some time now, this has not been dealt with by the Government. On the one hand, the Government is saying that it is fighting this matter but, on the other hand, according to Transparency International, the Government is not taking concrete steps to deal with this matter.

Mr. Singh: Walk the talk.

Mr. W. Dookeran: The ICC Charter, in its convention against corruption cited the seriousness of problems and threats posed by corruption to the stability and security of societies, undermining the institutions and values of democracy, ethical values and justice and jeopardizing sustainable development and the rule of law.

In its preamble it says that the links between corruption and other forms of crimes, in particular organized crime and economic crime would be addressed. This is another issue which ought to engage our attention. When we looked at the convention itself we saw the comprehensive nature of it. So, not only in my view should we adhere to the call of Transparency International to be a signatory, but this matter has been outstanding for some time without any response from the Government. It is also necessary to put in place local mechanisms to protect us against the broad issue of corruption which affects the integrity of the State—we are talking here of corruption in a wider context when we hear of members of the military force being charged with acts of murder, et cetera. This is in a wide context of how we manage these institutions.

If we are to deal with this matter, there is a rule by which it can be dealt with in terms of specific measures in the local economy. In that particular convention there are many measures for the prevention of anti-corruption policies and practices for the public sector and the private sector; codes of conduct for public officials; the public procurement and management of public finances; public

reporting on the issue; measures relating to the Judiciary and prosecution services; the participation of society in dealing with this issue; measures to prevent money laundering; abuse of functions of the state; illicit enrichment; bribery in the private sector; and embezzlement of property in the public sector, et cetera. I am raising this because I believe we should heed the call of Transparency International to be a signatory to that convention and to follow it up by ensuring that it is enforceable in Trinidad and Tobago. At the heart of this is the issue of criminality in the political process.

As I mentioned earlier, we had enunciated a principle by which we can conduct our discussions on the crime legislation. Since then there has been this very trying issue that has engaged the attention of the people—that is the matter pertaining to the allegations that a number of Members of the PNM Government have been engaged in activities, not only to defame the character but, to some extent, create acts of illegality by placing cocaine, arms and ammunition in a tank. This is part of that entire process of act against the civilian population but, more specifically, the act against officials who are indirectly related to the State or citizens of this country and particular citizens of this country who might be in fact providing political opposition.

We cannot be hypocritical in signing all these conventions that are international in nature and not apply the practice when that convention is in fact being infringed in our own country. [*Desk thumping*] If we are to adhere to the rules and the philosophical underpinnings of that convention, then we need to act. We need to act if only to provide to this nation the right to know. This is a fundamental right in all democracies. No government, no official or no minister has the right to take away from the people, the right to information on issues of security of the State. [*Desk thumping*] That is a principle that we should ensure that we adhere to.

Mr. Speaker, against that background, as you are aware, we have made a number of suggestions. For some time now, the Leader of the Opposition has been raising this issue and calling for a proper enquiry, but nothing has been done. This is a matter that has been going on for many years and it has come to the head, because of a certain newspaper report that has provided allegations of activities that have taken place by high ranking members of the PNM party, in order to defame Opposition persons. In so doing, they are compromising the very integrity of the State, or so the charge is.

What I am saying here today is whether or not the Government believes that these charges have any foundation; whether or not they believe that this is a political matter that should be dealt with in a narrow political interest, then they

would be wrong. This is a fundamental issue of the preservation of the democratic life of Trinidad and Tobago. [*Desk thumping*] It is in that context the Government ought to respond to the situation at hand.

I said in my earlier comments that we had faced problems of the integrity of the state in the events of Grenada and what has led to it. We should study it so that we would know what that could lead to here. When information on very fundamental issues like that, is being denied to the population after a while the population would totally disrespect the very political and governance process.

Mr. Valley: Would the hon. Member give way? Is the Member suggesting that the Government should compromise the police investigation on what is obviously a very serious issue and appoint a commission? Is it correct that the police investigation should take its course, as suggested by the hon. Attorney General?

Mr. W. Dookeran: Mr. Speaker, it is not a matter of the police substituting for the commission of enquiry. In all cases before, I was advised that is a prerequisite and it becomes part of the evidence in the commission of enquiry. [*Desk thumping*]

Mr. Singh: Look at the airport.

Mr. W. Dookeran: The commission of enquiry has the benefit of a proper police investigation before it, but that is not the only issue that is at stake in the commission of enquiry.

Mr. Valley: Well, then we are on the right track. I am sorry. I think the Member is giving way.

Mr. W. Dookeran: I am giving way for a question.

Mrs. Persad-Bissessar: Not to make a statement.

Mr. Valley: Mr. Speaker, it appears from the newspaper report that in fact there is a police investigation that is taking place.

Mrs. Persad-Bissessar: Voter padding and police investigation—

Mr. Singh: Four years they are investigating that matter.

Mr. W. Dookeran: Mr. Speaker, even on that issue, we are not sure. We heard one day that an investigation is being done by the police. The next day we heard that they have decided not to proceed with the probe and then the following we heard that they have decided to restart the probe. So, as citizens of this country, we do not know what is really happening in this issue of the police probe. [*Desk thumping*] This is more reason that we should have a commission of

enquiry in a manner that has an independent voice and that can adjudicate on the issues before us, including the findings of the police probe, if it were to take place in a timely manner and the country would have delivery within a short space of time and not have these things prolonged for years and years and nullify the character of people for many years in this civilized society. [*Desk thumping*] This is our responsibility in protecting the integrity of the State. It is when you prolong these things and people are not given a fair chance for justice in this country that you get the incipient cries for some kind of oppressive measures to be taken; both by the State and by the people themselves to rise against that.

Mr. Speaker, this is not an easy and procedural matter, as the Member for Diego Martin Central is concerting. This is a matter of dealing with the procedures of the fundamental principle of the right to know, and for the Government to take appropriate action in a timely manner in order to be able to satisfy that democratic right in Trinidad and Tobago. [*Desk thumping*]

I want to put on record a letter I wrote to the Prime Minister on this matter. I felt that it was hitting at the very heart of our democracy and of the right of citizens to know so that we can deal with the issue of the discharge of our function properly. If you would bear with me, I think for the purposes of the public record, I would like to put this letter into the record of this Parliament.

> "The allegation contained in a newspaper report last week which alleged that PNM officials were part of a plot to plant illegal drugs, arms and ammunition on two Members of Parliament is deeply troubling to the nation. Such allegations, if left unanswered only serve to deepen the mistrust the public has of politicians from all sides and undermine the credibility of our political process.
>
> It is up to us, Mr. Prime Minister, to show the nation that when the public interest is at stake we have not only the ability, but also the political will to put partisan differences aside and act in the interest of our nation.
>
> Ever since the events of 1990, I have always been very disturbed that leaders in our society do not defend as vigorously as we should, the basic principles of our democratic way of life.
>
> You would recall that at the first meeting between the Opposition and the Government on the issue of crime, we agreed on a number of principles that must inform our legislation which included: protection against the abuse of power; protection of civil liberties; and the political process must be free from criminal influence.

> Clearly, criminality has no place in our political process. The public interest now demands that we act to deter any erosion of confidence in the rules by which we govern ourselves.
>
> Although I note that a police probe is under way, this will not be able to clear the air on the broader issues of the implications of the allegation raised. Moreover, by the police commissioner's own admission, even though more than a month has gone since he was formally made aware of these recent allegations, some of those alleged to be involved are yet to be interviewed.
>
> In any event, the scope of such a probe would necessarily be limited and run the risk of not inspiring the full confidence of a society.
>
> The report of the allegation has already reached the international community. If left unanswered, confidence in our investment climate would be further affected. At home, confidence in the system is being undermined with each allegation and counter allegation and in the absence of a full and accurate exposure of the facts. These allegations are even more worrying, given the fact that cocaine and ammunition were indeed found in the water tank of a then sitting Member of Parliament.
>
> Since some four years have elapsed, it appears as though the police service has been unable to make any significant headway in this matter.
>
> I recommend to you to have a comprehensive and official investigation and to set up an independent commission of enquiry into the matter under the Commission of Enquiry Act. I also suggest that to avoid the perception of bias in such an inquiry, suitably qualified commissioners should be sought from the Commonwealth or elsewhere and a timeline for reporting be agreed upon."

I went on to say:

> "I will be willing to work with the Government in whatever way that is required to get to the truth of this matter. However, it is my firm opinion that in this situation the ultimate power lies in the commission of enquiry and, therefore, in your hands.
>
> In addition, the commission should be asked to look into the manner in which the police handled the matter and the apparent ease with which contraband items were brought into the country. Regardless of the findings of such an enquiry, the public right to know and the national interest both supersede any other consideration that either of us may have.

I look forward to your action and your most pressing and urgent response."

3.45 p.m.

While I have not yet had any response, I know that the Prime Minister is busy, but I thought I should raise it here for the public interest. Is there any fear that we will open up a paradox box—

Mr. Singh: Pandora's Box.

Mr. W. Dookeran: Pandora's Box, sorry; if this inquiry is to take place? I ask those questions because I believe that there is some conflicting evidence that has already begun to appear—at least in the newspapers—I do not know whether it is true or not.

In the *Sunday Guardian* of January 22, 2006 Robert Alonzo carried an interview with Vernon Paul which detailed the following accusations against senior PNM officials: conspiracy to import drugs; conspiracy to import explosives; conspiracy to import arms; conspiracy to import ammunitions; the importation of cocaine; the importation of explosives; the importation of arms; the importation of ammunitions; conspiracy to frame two MPs; the planting of cocaine and explosives in the home of two MPs; conspiracy to commit arson; the destination of cocaine, as only five kilos of the 25 kilos imported were found in Sadiq Baksh's water tank—what has happened to the rest?—the destination of arms and explosives; the possible member who has planted the cocaine; the conspiracy to murder.

These are serious charges, Mr. Speaker, and an issue of public interest. [*Interruption*] Curiously, the article quoted Commissioner of Police, Trevor Paul, stating two Fridays ago that:

"…he did not know a Vernon Paul, but he never had any communication with him."

In the House on January 23, 2006 the Minister of National Security, Sen. The Hon. Martin Joseph, contradicted the Commissioner of Police and also said that Vernon Paul called on him on December 12, 2005—it was said in this Parliament—and he, Joseph, referred him to Commissioner of Police, Paul. Commissioner of Police, Paul sent two police officers on December 21, 2005 to interview Vernon Paul. The question is clear. How could Commissioner of Police, Paul, on January 13, 2006 say he had no communication with Vernon Paul and on January 23, 2006 admitted at the press conference at the Police Administration Building that he spoke to Vernon Paul on December 12, 2005.

Now, this is just of a contradictory nature, conflicting evidence and these are matters that would be cleared up in a properly constituted measure. We also note that the US Embassy has immediately made a release. Was that information solicited and by whom? [*Interruption*]

Mr. Speaker, is it evident that there is some kind of undermining of the public right to know in this matter? Is there a cover-up in the making? I do not know, but I think as a Member of this Parliament who has sworn to the oath of serving this nation and its integrity—we in this Parliament, and the country has a right to know all the facts pertaining to this serious set of allegations in our country.

Mr. Speaker, thousands of citizens have been making this same call.

Mr. Valley: They have, we have; not "we has".

Mr. W. Dookeran: We have received many pieces of correspondence by individuals who have been as concerned—and I am sure many Members have been doing so—suggesting to the President that if the Prime Minister is unable to act, that he should have a consultation with the Prime Minister on the matter.

Mr. Speaker, I say that and I raise these issues, if only to underline the need for us in our system to ensure that there is no criminality in the political process, and that the country's right to know is re-established and that our democratic principles to which we all adhere in this nation are upheld at all times. This must be so in all aspects of our politics; it must be so in the operations of our governments; it must be so in the practice of our political parties; it must be so in terms of the scrutiny that people apply in the selection of candidates and it must in fact become part of our democratic culture.

The best safeguard to ensuring these very principles that are outlined in this Bill before us is the very vigilance of the people and the population of this country. And in that sense, I hope that as we pass this legislation before us today and we give vent to the international obligations that it demands upon us, that we take it seriously and in situations where the very fundamental principles at stake are being infringed upon that we take the appropriate action.

I call upon the Government once again to take the steps to do so and I call upon our society to become most vigilant on the issue of criminality in the political process. I do so, because I fear that this society can move in a direction that none of us would like and we must stop any attempt to move in that direction at its earliest position; and where we start and where we have influence is in the managing of our own politics.

So I make these suggestions here today with the hope that we can in fact take steps to be vigilant and to protect our democracy and to remove the influence of criminal element in our political process.

Thank you. [*Desk thumping*]

The Minister of Labour, Small and Micro Enterprise Development (Sen. The Hon. Danny Montano): Thank you, Mr. Speaker. Let me deal with the last speaker first. I know the Member for St. Augustine from another time and another place. I knew him to be a man of some integrity, of some education and some culture, and I was very taken aback this afternoon hearing him talk so avidly about the reports concerning Vernon Paul; who as we know—

Mr. Dookeran: Is the Minister by my indication saying that my integrity is at stake by asking for the protection of the integrity of this society?

Sen. The Hon. D. Montano: That is a matter you will have to answer for yourself. Mr. Speaker, what is very apparent is that the hon. Member has passionately referred to alleged statements by this fellow, Vernon Paul, who has completely been discredited by everyone—

Mr. Singh: By whom!

Sen. The Hon. D. Montano:—from the DEA, to the police: his story changes every 10 minutes.

Mr. Singh: Let us have a commission of enquiry and let the enquiry decide that. [*Crosstalk*]

Sen. The Hon. D. Montano: I would only suggest to the hon. Member— [*Crosstalk*]

Mr. Speaker: Order!

Mr. Singh: Speak to the messenger and forget the message?

Sen. The Hon. D. Montano: You know you had your turn. I would only suggest to the Member that he be careful lest he taints himself, his good name and reputation with the reputation of this individual, Vernon Paul.

There is evidence that would suggest, Mr. Speaker—and just a bit of personal advice to the hon. Member—

Mr. Singh: That is plantocracy. [*Crosstalk*]

Mr. Dookeran: Mr. Speaker, may I just clarify? Mr. Minister, I think that you are deliberately misleading this House from what I have said. I have said that allegations have been made and counter allegations have been made, and the

fundamental principle at stake is the public right to know. [*Desk thumping*] That is what I have said [*Interruption*] and I want it to be clear so that you do not mislead the Parliament on that issue.

Mrs. Persad-Bissessar: Talk on the Bill.

Sen. The Hon. D. Montano: Mr. Speaker, I would not be so bold as to mislead this honourable House—

Mr. Singh: Again!

Mr. Speaker: Order!

Sen. The Hon. D. Montano:—on purpose or by accident; there are others in this Chamber who are far better at that than I am. The fact remains that this kind of allegation; and leaning heavily on allegations from a person like this—

Mr. Singh: The mortar bomb is not an allegation. [*Interruption*]

Sen. The Hon. D. Montano:—does nothing other than taint the speaker's own character. [*Interruption*] And I say that with some degree of sorrow, it is a pity to see him come to this.

On the question of the UN convention on corruption, [*Interruption*] we have an Integrity Act, and my advice on it is that it is wider and has more strength to it than any other legislation anywhere else in the world. If it is that he is suggesting that needs to be revisited; I think that Members on this side would be very interested to note that there is interest on that side to revisit that piece of legislation. [*Interruption*]

With respect to the integrity of the State, this really is a debate on the International Criminal Court (ICC), but I would merely say to him that the integrity of the State can be no more than the sum of the integrity of the persons who comprise its membership. I would leave it at that point and I would simply advise the hon. Member to heed those words very carefully and just to look around himself and see that statement applies to any organization and that he should look closely at his neighbours.

Hon. Member: Repeat it, he did not hear it.

Sen. The Hon. D. Montano: He spoke also about clause 13 of the Bill, the consent of the Attorney General being required— Mr. Speaker, I was at pains—

Mr. Ramsaran: Who is he?

Mr. Imbert: Not to use "he", use "hon. Member."

Sen. The Hon. D. Montano:—when I presented the Bill to describe what the powers of the Attorney General were in the circumstances, and that the Director of Public Prosecutions (DPP) had no role to play in the matter. What clause 13 is in effect doing, is placing the Attorney General in a position to initiate action by effectively consenting to the prosecution of individuals. There is nothing wrong with it. [*Interruption*]

The point that he made was that the Attorney General is a politician and that he should not be the person to do this. The Bill and the Statute take into account that there may be—and I use these words—where the State may be unwilling or unable to prosecute; in that situation, the ICC can prosecute on its own. [*Interruption*] If it is unable to effectively extradite someone, that means, that the State is protecting someone, and that State—whoever the state is, whether it is this State or any other state—would certainly incur the wrath of other States at the international level and there are all kinds of implications to that. Therefore, there is no point in my getting into that; failure to understand what I am saying would simply be hysteria on the part of the hon. Member.

The Member for Oropouche spoke about drug trafficking and terrorism. Mr. Speaker, those were issues that were raised by members of Trinidad and Tobago who represented this State at the original discussions in Rome prior to the signing. But it was felt by many member states that they could not agree on a definition of "terrorism", that is why it was never included. There were also many other states which felt that the court would never have the resources to be able to deal with drug trafficking. That was an issue that had special interest for Trinidad and Tobago. But there were other states that felt that would not be feasible for the International Criminal Court at this time.

The Member for Oropouche continued by talking about—he was suggesting that international agreements of this kind should come to Parliament and should be the subject of a Special Committee of the Parliament to review all of the provisions of the Treaty as well as the legislation and so on. But the statement rings rather hollow. I would only have to remind hon. Members of what the party that he represents did when they were in Government; they signed the Shiprider Agreement in the dead of night, effectively signing away some of our sovereign rights and they never brought that to Parliament, and I know that most of the Members here have never even seen that.

Mr. Speaker, I have already dealt with the question of the Attorney General which was raised by the hon. Member for St. Augustine. On the question of the

penalty for murder, that was necessary in order to harmonize the Statute with our local legislation. The penalty for murder in Trinidad and Tobago is death and therefore that will be the penalty for murder in this case. The same provision exists in the Terrorism Act which was the subject of a treaty as well.

The Member for Oropouche interpreted the Bill to suggest that there was no right to bail, but he did not understand what the legislation was effectively saying; you do not have bail as of right but you certainly have the opportunity to apply for it. You are not denied access to bail, [*Interruption*] but it is not a question as of right that you get bail. You can apply for bail and therefore citizens' rights are not impacted as a result of that.

The question as to whether a corrupt judge can be prosecuted here, the short answer to that is, yes, the powers of the Statute in the Bill are sufficiently wide.

Mr. Speaker, there were many other things that were spoken about that had absolutely no relevance to the Bill at all and therefore I do not propose to go there.

With those few words, I beg to move. [*Desk thumping*]

Question put and agreed to.

Bill accordingly read a second time.

Bill committed to a committee of the whole House.

House in committee.

Question put and agreed to.

Clauses 1 to 7 ordered to stand part of the Bill.

Clauses 8 to 23.

Question proposed, That clauses 8 to 23 stand part of the Bill.

Mrs. Persad-Bissessar: Mr. Chairman, clause 13, the Member for St. Augustine, as well as the Member for Oropouche, did raise the issue where you are requesting the consent of the Attorney General to prosecutions under any of the offences under clauses 9, 10 or 11. The Attorney General in our jurisdiction—the point was well made—is a political appointee and therefore if the Attorney General is being asked, for example, to consent to a prosecution of the person who appointed him as Attorney General, he is in a very difficult place. I am not speaking of the man; now his office is going to be severely compromised because he is going to be having to consent to the Prime Minister, the person who gives

him his appointment, gives him his life as Attorney General. What position would that be? So, I am of the view that there should not be a requirement for the consent of the Attorney General to any prosecution.

When the matters were raised about the allegation of the abuse of power with the cocaine in the water tank and so on, the Member for Diego Martin Central said, "take it to the International Criminal Court".

Mr. Valley: Did I say so then?

Mrs. Persad-Bissessar: Yes, you said, "take it to the ICC", in such words while you were sitting. The point comes again; I would need the consent of the Attorney General so to do. And if Government is already unwilling—as it is—to follow the request of Members on this side for a commission of enquiry; do you think the Attorney General, a political appointee, is going to consent? I think it is a very dangerous position to put in the Bill the requirement for the Attorney General to give his consent to a prosecution; a political appointee should never do that. If you want to have some kind of oversight then put it in the person who is the criminal justice system—

Mr. Chairman: If I may interrupt. I think, your argument, it was more for the debate and not necessarily to give restraint from the—In committee, we—

Mrs. Persad-Bissessar: I am asking for you—

Mr. Chairman: Do you want an amendment?

Mrs. Persad-Bissessar: Yes. You asked me to approve clause 13 and I have said, no, I do not approve clause 13.

Mr. Chairman: Well, do you have an amendment?

Mr. Persad-Bissessar: And therefore we are asking for it to be deleted.

Mr. Chairman: Okay. Well, that is there.

Mrs. Persad-Bissessar: Yes, but I have to give a reason why. I cannot just say, delete it. I am giving a reason.

Mr. Chairman: Yes.

Mrs. Persad-Bissessar: I take your guidance, let us not belabour it. I am asking the other side to seriously consider—The Attorney General could be yours or ours. It does not matter which party is in power; it is a very dangerous clause. In fact, there was a similar provision in one of the Commonwealth jurisdictions for the consent of the Attorney General. In modern jurisprudence under constitutional

provisions in the Bill of Rights it is now considered a fetter on access to the courts to seek permission for prosecution and those clauses have been struck down. I am asking that the clause be deleted. It is unconstitutional and, on top of that, it is an interference in the judicial process and in the criminal justice system.

Sen. D. Montano: Mr. Chairman, if I may, the court does not prohibit or does not provide for the prohibition of the scenario that the hon. Member is talking about. The ICC can prosecute in its own right, in its own jurisdiction. This only relates to prosecution in Trinidad and Tobago's courts and therefore the ICC still has jurisdiction in the matter in its own court. [*Crosstalk*]

Mrs. Persad-Bissessar: It means in the domestic jurisdiction, you are saying that I cannot have access to the courts. I must get the permission of the Attorney General in the local courts—it is even worse. You are fettering access to the courts. It is unconstitutional. There is case law that has struck down any fetter on access to the courts; I am asking you to consider removing that clause.

Sen. D. Montano: Mr. Chairman, with respect, the argument is really nonsense because there has to be an agent of the State to do this, and I articulated very clearly that the Attorney General is the authorized representative of the State in international matters. The DPP has no such authority under the Constitution and therefore is not the officer that should be dealt with here, but we are dealing here with issues of policy instead of the wording of the Bill. We are not going to yield on this clause.

Mrs. Persad-Bissessar: With due respect, one, we are speaking of the local courts; and, secondly, the question of policy, it is also a question of law. [*Crosstalk*]

Question put.

Mrs. Persad-Bissessar: I ask for a Division.

The Committee divided: Ayes 15 Noes 11

AYES

Valley, K.

Manning, P.

Imbert, C.

Narine, J.

Beckles, P.

Rahael, J.
Roberts, A.
Bereaux, H.
James, Mrs. E.
Hart, E.
Callender, S.
Seukeran, Ms. D.
Job-Davis, Mrs. E.
Khan, F.
Achong, L.

NOES

Singh, G.
Panday, B.
Dookeran, W.
Persad-Bissessar, Mrs. K.
Ramsaran, M.
Rafeeq, Dr. H.
Sharma, C.
Partap, H.
Nanan, Dr. A.
Moonilal, Dr. R.
Lucky, Miss G.

Question agreed to.

Clauses 8 to 23 ordered to stand part of the Bill.

Clauses 24 to 156 ordered to stand part of the Bill.

4.15 p.m.

Clauses 157 to 182 ordered to stand part of the Bill.

Schedule ordered to stand part of the Bill.

Preamble approved.

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

House resumed.

Bill reported, without amendment, read the third time and passed.

ADJOURNMENT

The Minister of Trade and Industry and Minister in the Ministry of Finance (Hon. Kenneth Valley): Mr. Speaker, I beg to move that the House be now adjourned to Friday, February 10, 2006 at 1.30 p.m. I wish to inform Members that on that day we would be following the Order Paper.

Question put and agreed to.

House adjourned accordingly.

Adjourned at 4.19 p.m.

WRITTEN ANSWER TO QUESTION

The following question was asked by Dr. Fuad Khan (*Barataria/San Juan*)*:*

Assistance in Surgical Waiting List
(Institutions/Doctors)

3. Could the Minister of Health indicate:

(a) The institutions and doctors that have assisted in the Surgical Waiting List Initiative, for the period January 2005 to date;

(b) specifically the number of procedures done by the individual doctor and institution to date; and

(c) the total payment made to each institution, company and/or individual?

The following reply was circulated to Members of the House.

The Minister of Health (Hon. John Rahael): The information requested in the House of Representatives with respect to Question No. 3 (a-c) is as follows:

Surgical Waiting List January 2005 – November, 2005

Name of Institution	No. of Procedures	Total
Valsayn Medical Centre	143	$ 639,895.75
Westshore Medical Centre	353	$1,110,395.00

Name of Institution	No. of Procedures	Total
Medical Associates	53	$ 770,973.74
Surgitrin	160	$ 81,695.00
St Clair Medical Centre	37	$ 126,947.00
Southern Medical Centre	39	$ 210,162.23
Caribbean Eye Institute	378	$ 881,500.00
Professional Vision Centre	261	$ 505,400.00
Fibroid Caribbean Ltd	96	$ 1,419,250.00
Opthalmology Society of Trinidad & Tobago	1504	$ 4,360,989.37
Surgical Medical Clinic	8	$ 97,000.00
Dr. Bruno Mitchell	23	$ 322,000.00