

HOUSE OF REPRESENTATIVES*Friday, July 18, 2008*

The House met at 1.30 p.m.

PRAYERS[MR. SPEAKER *in the Chair*]**PARLIAMENTARY HOUSE PAPERS
(DISTRIBUTION OF)**

Mr. Speaker: Hon. Members, on Wednesday, July 17, 2008, the *Newsday* published an article under the byline of Mr. Sean Douglas entitled:

“Govt House papers a State secret?”

Since this article touches on the duties of the Office of Speaker, I think it is important to draw this article to your attention and to address you on this matter.

Hon. Members, the distribution of parliamentary papers to Members of Parliament and members of the media is the responsibility of the staff of the Parliament who fall under the general supervision of the Speaker. These officers ensure that all Papers laid on the Table of the House are made available to all Members of Parliament and members of the media. This often happens during sittings on the date on which the Papers are laid, provided that copies are available.

In the case of the Auditor General's reports, governed by section 116(5) of the Constitution, such reports are required to be laid at the next sitting of the House, after receipt; after receipt. This means that original reports of the Auditor General submitted to the Speaker of the House are almost always laid before requisite copies for circulation are received. Immediately upon completion of a report, the Auditor General submits the sealed copy to the Speaker, and after it is laid this report is lodged with the Parliament library for the perusal of library users. Thereafter, the department arranges for copies of the report to be sent to the Clerk of the House.

Once these copies are received, they are circulated to Government and non-government members as well as the media. It is essential to note that the laying of such reports by a minister of Government is strictly routine in order to satisfy 116(5) of the Constitution, which requires that the President of the Senate and the Speaker cause the report of the Auditor General to be laid. Other constitutionally mandated reports submitted to Parliament through His Excellency, the President, follow a similar procedure.

The article was quite erroneous therefore to seek to ascribe this responsibility to the Government or to convey the impression that there is Government interference at this level of parliamentary operations. The reporter, who is a seasoned parliamentary reporter, well knows that the Auditor General is an independent officer and that copies of her reports traditionally follow the laying of her original report. He should also be expertly familiar with the many efforts being made by the Parliament to keep the media informed and well served.

PAPERS LAID

1. The report of the Auditor General of the Republic of Trinidad and Tobago on the financial statements of the Agricultural Society of Trinidad and Tobago for the year ended December 31, 1998. [*The Minister of Finance (Hon. Karen Nunez-Tesheira)*]
2. The report of the Auditor General of the Republic of Trinidad and Tobago on the financial statements of the Penal/Debe Regional Corporation for the year ended September 30, 2003. [*Hon. K. Nunez-Tesheira*]
3. The report of the Central Bank of Trinidad and Tobago on insurance and pensions for the year ended December 31, 2006. [*Hon. K. Nunez-Tesheira*]
4. The report of the Auditor General of Trinidad and Tobago on the consolidated financial statements of the Trinidad and Tobago Unit Trust Corporation (TTUTC) for the year ended December 31, 2007. [*Hon. K. Nunez-Tesheira*]

Papers 1 to 4 to be referred to the Public Accounts Committee.

5. The audited financial statements of the Sports Company of Trinidad and Tobago Limited for the year ended September 30, 2005. [*Hon. K. Nunez-Tesheira*]
6. The audited financial statements of the Sports Company of Trinidad and Tobago Limited for the year ended September 30, 2006. [*Hon. K. Nunez-Tesheira*]
7. The audited financial statements of the Trinidad and Tobago Film Company Limited for the year ended September 30, 2006. [*Hon. K. Nunez-Tesheira*]
8. The audited financial statements of the Export-Import Bank of Trinidad and Tobago Limited for the year ended December 31, 2006. [*Hon. K. Nunez-Tesheira*]

Papers 5 to 8 to be referred to the Public Accounts (Enterprises) Committee.

ORAL ANSWERS TO QUESTIONS

The Minister of Works and Transport (Hon. Colm Imbert): Mr. Speaker, the Government can answer 60 per cent of the questions on the Order Paper today. [*Laughter*] Nos. 153, 154, 170 for oral answer, Nos. 56 and 84 for written answers, and I would ask for a two-week deferral of the others.

The following questions stood on the Order Paper in the name of Dr. Hamza Rafeeq (Caroni Central)

**Housing Construction in Edinburgh 500
(Details of)**

148. Could the hon. Minister of Planning, Housing and the Environment state:

With respect to the high-rise housing complexes being constructed in the Edinburgh 500 area in Chaguanas:

- (a) whether the necessary approvals were obtained from the Chaguanas Borough Corporation;
- (b) if the answer to (a) is in the affirmative, what were the dates of such approvals;
- (c) what is the cost of construction of the housing units; and
- (d) at what price will these units be sold or rented?

**Caroni (1975) Limited
(Readiness of Agricultural Plots)**

152. Could the hon. Minister of Agriculture, Land and Marine Resources state how many of the 2-acre agricultural plots reserved for the ex-employees of Caroni (1975) Limited are ready for distribution with the necessary infrastructural work, for example, access roads, drainage, irrigation, as at May 12, 2008?

Questions, by leave, deferred.

**Scarborough General Hospital
(Contract for Completion of)**

153. Dr. Hamza Rafeeq (Caroni Central) asked the hon. Minister of Health to state:

- (a) whether a contract has been awarded for the completion of construction of the new Scarborough Hospital;

- (b) if the answer to (a) is in the affirmative, which company has been awarded the contract and at what price; and
- (c) what is the expected date of completion of construction of the hospital?

The Minister of Health (Sen. The Hon. Jerry Narace): Mr. Speaker, in response to part (a), a contract has been awarded for the completion of the construction of the new Scarborough Hospital.

With respect to part (b), the contract was awarded to China Railroad Construction Corporation under a modified design/build contract for the completion of the construction of the Scarborough Hospital project, in the sum of TT \$241.3 million, VAT inclusive.

With respect to part (c), the expected date of completion of construction of the new Scarborough Hospital is August 2010.

Dr. Rafeeq: Has work started on the hospital already? When is it expected to start?

Sen. The Hon. J. Narace: It is expected that some work would start at the end of July, in preparation, and by September it is anticipated that the project would be in full flight.

Dr. Gopeesingh: Is this a new site or is it the existing Scarborough Hospital which is being constructed? Is there a renovation to it as well, because you had mentioned a refurbishment?

Sen. The Hon. J. Narace: That is why I said a modified design/build contract, which means that it is the same site.

Dr. Rafeeq: The TT \$241 million that you mentioned, does that include equipment or only construction?

Sen. The Hon. J. Narace: That is only construction.

Scarborough General Hospital (Arbitration Proceedings)

154. Dr. Hamza Rafeeq asked the hon. Minister of Health to state:

- (a) whether arbitration proceedings between the Government and NH International with respect to the construction of the Scarborough Hospital have been completed; and

- (b) if the answer to (a) is in the affirmative, what quantum of money was awarded to NH International by way of settlement of claims, and has the money been paid?

The Minister of Health (Sen. The Hon. Jerry Narace): Mr. Speaker, the National Insurance Property Development Company Limited (Nipdec), which is managing the project, has provided the following information through correspondence.

The arbitration proceedings between Nipdec, the agent for the Government of Trinidad and Tobago, and NH International (Caribbean) Limited, with respect to the construction of the Scarborough Hospital, have not yet been completed because the arbitrator has not yet submitted his final award. In the circumstances, part (b) of this question is not applicable.

Dr. Rafeeq: Do we have an expected date of completion of the arbitration proceedings?

Sen. The Hon. J. Narace: Not at this present time.

M1 Ring Road (Flow of Traffic)

Mr. Subhas Panday (Princes Town North) asked the hon. Minister of Works and Transport:

- 170.** (a) Is aware the Minister aware that the M1 Ring Road from Manahambre Road, St. Madeline, to Craignish Village, Naparima-Mayaro Road, has a heavy traffic flow?
- (b) Is the Minister also aware that the said road is deteriorating very rapidly?
- (c) Could the Minister state if and when the said road will be rehabilitated?

The Minister of Works and Transport (Hon. Colm Imbert): Mr. Speaker, the Minister of Works and Transport is aware that M1 Ring Road from Manahambre Road, St. Madeleine to Craignish Village, Naparima/Mayaro Road has a heavy traffic flow.

This road was built initially as an alternative access route to reduce traffic congestion in the central business district of Princes Town. It is also now used as an alternative access route to Rio Claro, Mayaro and environs.

The Minister is also aware that the condition of the said road is deteriorating. Ironically, the condition of the roadway is primarily due to its success as an alternative access route, since it has attracted large volumes of commercial and private vehicles way beyond its original design capacity.

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As a consequence of the very heavy traffic loads on this road, it is programmed for rehabilitation and upgrade within the next six months. In the interim, this roadway is scheduled for increased routine road maintenance.

WRITTEN ANSWERS TO QUESTIONS

The following question was asked by Mr. Winston Peters (Mayaro):

**Carnival 2008
(Disbursements for)**

- 56.** With respect to Carnival 2008, could the hon. Minister of Community Development, Culture and Gender Affairs state:
- (a) the total allocation for Carnival 2008 by her Ministry; and
 - (b) the total disbursement of grants to all cultural and social organizations, (especially Calypso Tents) for Carnival related activities?

Vide end of sitting for written answer.

The following question was asked by Mr. Chandresh Sharma (Fyzabad):

**Land Settlement Agency
(Houses destroyed by)**

- 84.** With regard to government housing projects, could the hon. Minister of Planning, Housing and the Environment provide the following, for the period 2006 to 2007:
- (a) a list of citizens whose homes were destroyed by the Land Settlement Agency;
 - (b) the dollar value of the same;
 - (c) the number of persons affected by same; and
 - (d) the dollar value of compensation awarded to those persons who were affected?

Vide end of sitting for written answer.

1.45 p.m.

MATTER OF PRIVILEGE OF THE HOUSE

Mr. Ramesh Lawrence Maharaj SC (Tabaquite): Mr. Speaker, pursuant to Standing Order No. 27(2), I seek your leave to raise a Matter of Privilege of the House which concerns the conduct and/or action and/or inaction of the Government in its

continuing neglect and/or refusal since January 2008 to July 11, 2008 and up to today to give answers in the House to a substantial number of questions.

These questions qualify to be answered by the Government, and instead of answering these questions, persistently ask for them to be deferred for the Government to answer them at later dates. In respect of the many unanswered questions there have been several deferrals. Some of the questions had been due for answer as early as January, February and March 2008.

I rely on the contents of the relevant parts of the *Hansard* for the period January 2008 to July 11, 2008 in support of the facts mentioned above. These facts are matters of public knowledge and you are entitled to take parliamentary notice of them.

The aforesaid conduct, action, and/or inaction of the Government obstructed and impeded the House and the Members of the Opposition in the performance and discharge of their duties and functions and threatened to continue to produce that result. The Opposition has been severely prejudiced and adversely affected in its duty to scrutinize the Government and to make the Government account to the House. The Government's action by leaving questions unanswered for inordinate periods of time amounted to, and continues to amount to, an affront to the House and has brought it and continues to bring it into disrepute.

Mr. Speaker, the *Hansard* reports for that period would clearly show that the Chair continuously called upon the Government and its Ministers to answer the questions. One such occasion was on April 23, 2008, when the Speaker expressed the view that he thought the Government on that date would have answered the seventh question which was on the Order Paper; that did not happen. Mr. Speaker, you also said and I quote:

“Questions which remain on the Order Paper for an undue time is really an affront to the House, so I am appealing to you to do all within your power to have these questions answered.”

Mr. Speaker, the *Hansard* record will also reveal that the Opposition continuously, over that period, protested these deferrals. As early as July 30 2008, there were 18 questions on the Order Paper and the Government sought deferrals of 14.

Mr. Speaker, on that occasion, I said inter alia, that the functions of the Opposition are most important for the scrutiny of the Government. The Opposition during this period expected the Government to have heeded the rulings of the Speaker to stop the affront to the House by seeking these several deferrals to answer questions on the Order Paper.

The Government apparently by its conduct believes that the deferrals of such questions can be automatically given because it commands the support of the majority of the Members of the House. Last Friday, July 11, 2008, the Government again sought deferrals of almost all of the questions on the Order Paper; the aforesaid conduct is likely to continue unless this matter is reviewed by the committee of privileges.

The Standing Orders impose a mandatory duty on the Government to answer questions which are listed on the Order Paper. Questions are important tools for the Opposition to use to scrutinize the Government. The House is an important institution under the Constitution of our country for the Government to be scrutinized and made accountable to the people. The Standing Orders were made pursuant to the Trinidad and Tobago (Constitution) Order in Council, 1961 and in section 55(1) of the Constitution it recognizes that Standing Orders have the force of law to regulate the procedure of the House of Representatives.

Mr. Speaker, the Prime Minister as head of the Government and the Cabinet is responsible to this House for the aforesaid conduct of the Government and its Ministers. My research shows that nowhere in the Commonwealth has a government conducted itself in such a manner. Both the Chair and the Government recently accepted the principle that a contempt of Parliament is committed by any act or omission which obstructs and/or impedes the House in the performance of its functions and/or which impedes or obstructs any Member of the House in the discharge of his duties, or which tends either directly or indirectly to produce such results. They accepted these principles applied to our Parliament and referred to Erskine May's *Parliamentary Practice*, the 23rd edition at page 128.

Mr. Speaker, Standing Order No. 43(5) prohibits Members of the House of Representatives to show disregard to the ruling of the Speaker, disregard to the authority of the Chair. The aforesaid conduct of the Government amounts to a continuing breach of the Standing Order. It is submitted that the conduct and inaction of the Prime Minister as mentioned above and the reasons stated qualify this matter to be raised in the House as a matter of privilege and also constitute a prima facie case to be referred to the Committee of Privileges.

Mr. Speaker, one of the functions of the Committee of Privileges is, by its ruling, to prevent conduct which brings the House into disrepute.

Thank you very much, Mr. Speaker.

Mr. Speaker: Hon. Members, the hon. Member for Tabaquite has raised as a question of privilege a matter which you will all agree is quite a novel proposition. To put it as simply as I can, parliamentary privilege is a group of rights or rules that are designed to enable the Legislature to function properly.

Now hon. Members, the rationale of contempt of powers is the acknowledged right of both Houses to secure the free working of Parliament as a democratic institution by the exercise of undisputed control over their own internal proceedings. This power is a right that Parliament jealously safeguards, thus this House alone possesses the power to declare an act to be contempt of the House; not even the Speaker can do that. Therefore, the link between contempt of Parliament and parliamentary privilege is that one of the privileges of the House is the power to deal with matters of contempt.

Previous occupants of this Chair have explained the main contempts of Parliament to include: misconduct in the presence of the House, disobedience to rules or orders of the House, misconduct by Members of officer, constructive contempt, for example, reflecting negatively on the House, obstructing or molesting Members, officers or witnesses when discharging their duties.

Hon Members, it is not my task to hold an enquiry into this matter. All I am required to do is consider whether this rather novel submission of the hon. Member for Tabaquite point to a reasonable possibility that contempt has occurred.

I have carefully considered this matter which had been submitted to me earlier today against the background of the principles relating to contempt. In so doing, I have examined appropriate authorities including our own Constitution and I am of the view that a prima facie case of contempt has been made out. I do not express a concluded view on these matters, that is for your Committee of Privileges to do after a careful consideration and investigation of this issue.

In the circumstances, I refer the matter to the Committee of Privileges of this House for investigation and report. [*Desk thumping*]

STATEMENT BY MINISTER

Transformation of the Agricultural Sector

The Minister of Agriculture, Land and Marine Resources (Sen. The Hon. Arnold Piggott): Mr. Speaker, I am authorized by the Cabinet to make a statement on matters related to the Government's plan to transform the agricultural sector with specific reference to the establishment of supporting Governance arrangements for state corporations attached to the agricultural sector. This arrangement must be seen as part of the restructuring that will be required for the launch and implementation of the transformation plan which will be unfolded in the very near future.

Mr. Speaker, developments in food supplies and prices presently engaging countries worldwide touch and concern each citizen. The confluence of factors

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giving rise to what may be described as the perfect storm includes high oil prices, increasing use of arable land and agricultural products for the generation of biofuels, climate change and increasing demand from developing countries.

It is in light of these factors, Mr. Speaker, that the Government of the Republic of Trinidad and Tobago must act with urgency to ensure our food security. Our approach is grounded in the view that by the year 2020, agriculture must be competitive and must possess the capacity to sustain competitiveness by becoming resilient, adaptive, technological in focus and market driven. It must provide for sustainable livelihoods in the rural sector and meet the food and nutrition security needs of the nation.

Trinidad and Tobago's economy has over the last decade been on a steady growth path attributable mainly to the performance of the energy-based sector which contributes some 37 per cent to GDP. The agricultural sector meanwhile has been steadily declining and now contributes 0.6 per cent of GDP. The sector employs 5 per cent of the working population. These statistics however, belie the actual weight of the sector in respect of its importance in the rural communities and strategic significance in relation to food security.

Given that the energy sector resources are non-renewable, it is this Government's policy to diversify the non-energy economic base and agriculture has been identified as one of the sectors targeted to make a significant contribution to the diversified economic base.

Mr. Speaker, while the comprehensive transformation plan is being prepared, Government has been implementing a number of short-term components of this plan aimed at providing immediate relief to consumers on the one hand, and more effective support to our farmers on the other.

Mr. Speaker, allow me to remind the nation and this honourable House of some of the short-term actions that the Ministry of Agriculture, Land and Marine Resources had been pursuing. I will begin with the most recent ones: launch of the seed distribution home gardening starter kits; a nationwide initiative that was started in May 2008; launch of the national agricultural entrepreneurship competition with winners to be announced in September or October 2008. This is a programme to determine the entrepreneurs who excel in agricultural production for the year; and as well, the re-launching of the grow box initiative, wherever limited land is available to homeowners; the planned launch of a nationwide home gardening competition; the planned launch of a school gardening competition.

2.00p.m.

These projects are meant to demonstrate the Government's philosophy that everyone in Trinidad and Tobago has, and can play a meaningful role in the strategy for increasing national food security. In May 2007, the Ministry launched the national Agri-Business Development Programme in conjunction with the Trinidad and Tobago Agri-Business Association, and with the support of the Food and Agricultural Organization, this programme is intended to form the nucleus of the transformation programme and to reflect the strategic move from the narrow focus of agriculture to the wider scope of agribusiness.

The benefits of this programme, which would be centered around contract production, processing and marketing, include an increase in local food crop and livestock production, an expansion of employment opportunities, especially in the rural areas; the generation of higher export earnings and increasing the income of farmers. The Programme will place emphasis on commodities that have the potential to develop into major industries and the establishment of commodity/industry associations, which will undertake the preparation and implementation of development plans for the commodities in the sector.

As part of the National Agribusiness Development Programme, the Government has worked with the Food and Agricultural Organization to create the concept of 13 large agricultural estates, each comprising at least 100 acres. These estates will facilitate mass agricultural production in Trinidad and Tobago and will be joint public/private sector ventures. In addition, the Government will operate an additional farm in collaboration with the Government of Cuba. PCS Nitrogen will also operate a demonstration farm—a model farm—in support of the overall agricultural thrust.

These farms will be a catalyst in driving food production and will expand the food baskets of the country. Commodities that will be produced include: sweet potato, cassava, dasheen, tomato, ochro, cucumber, melongene, pumpkin, cabbage, lettuce, green pigeon peas, hot and seasoning pepper, paw paw, dwarf pommecythere, coconut, herbs, carrots, string beans, rabbit and tilapia. Of these, 10 commodities will be targeted primarily for the processing into value-added agri-products.

Recently following a tender process, the Government agreed to allocate four of 13 agricultural estates of 100-acre plus to four entrepreneurs for the establishment of commercially operated farms. Very shortly, requests for proposals (RFPs) will be invited for the remaining nine sites for which no acceptable proposal was received in the last rounds.

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At this juncture, I wish to disabuse the minds and de-bunk what I can only call a myth, that large commercial farms will be disadvantageous to small farms or family farms. Further, I wish to deny the statements being peddled by those who should know better, that preferential benefits will be provided to large commercial farms in Trinidad and Tobago. I wish to assure the national population that the Government of the Republic of Trinidad and Tobago has no such policy.

Large commercial farms, while providing for increases in agricultural production when established, will focus on products which lend themselves to import substitution for food security, products that require economies of scale and mechanized production. We are about building an agricultural base which will provide staples for food security, feedstock for agro-processing, agri-business and manufacturing.

The thrust towards accelerated local food production in the quantities required will be led by a Government initiative to establish a number of large farms involving both state lands as well as private lands, accounting for a total of 3,000 acres, including the supporting infrastructure. This initiative does not include the 7,000-plus 2-acre plots provided to the former employees of Caroni (1975) Limited.

Permit me to once more identify some of the new acreages which will be put into commercial farming operations for increased food production. They include:

No.	Site	Area/Acreage	Recommended Farm Type/s
1	Edinburgh	354	Vegetable Crops
2	Orange Grove	100	Vegetable Crops
3	Caroni	100	Root Crops & Rice
4	Picton Estate	1201	Livestock/Tree Crops/Root Crops
5	La Gloria	364	Mixed Farming/Livestock
6	Mon Jaloux	417	Integrated farming with Crops, Livestock & Aquaculture
7	Jerningham	108	Vegetable Crops
8	Tucker Valley (Government Funded)	200	Root Crops/Vegetable Crops
9	PCS Nitrogen (Private Sector Funded)	75	Vegetable Crops

10	Farmers Associations	300	Vegetable Crops
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This is some 3219 acres with infrastructural cost in excess of \$100 million.

Support will be provided for traditional small and medium sized private farms through the range of Governments incentive programmes, soft loan facilities and extension and training services. A synchronized allocation is to be made of the commodities to be produced within the large farm sub-sector, as well as between the large farm sub-sector as a whole, and the private farmers to avoid surpluses.

Generally, however, the large farms will tend to concentrate on production of root crops, legumes, grains, specialty vegetables and export crops, whereas the private small farms will tend to produce traditional crops, leafy vegetables, fruit and some export commodities.

In the area of access roads, the provision of access roads will significantly improve productivity in the agricultural sector. This project aims to upgrade and expand the road network to farmlands throughout the country to facilitate increased food production, farm incomes and facilitate marketing of farm output. The quality of the farmers' life, therefore, is expected to be positively impacted.

With respect to fishing centres and related facilities: This project will address the development of infrastructure facilities which are geared specifically to the needs of the fishing industry. In particular, it includes the expansion/upgrade of the fishing facilities at Gran Chemin, Moruga, which will provide fishermen in Moruga and surrounding communities with adequate fishing facilities and is the first phase of the development of the fishing industry in Moruga.

Another component of the project is a study of the offshore fishing industry in Moruga and the environs, which will inform the overall development plans for the industry in Moruga. In addition, adequate facilities will also be provided at fish landing sites in many fishing communities in accordance with international standards, including the construction of a jetty at King's Wharf in San Fernando. Improvements to several facilities are also proposed for north coast districts.

In terms of the rehabilitation of the cocoa industry, this project will be implemented in five phases and will involve the development of commercial varieties of cocoa, using agronomic pest and disease research, germplasm conservation and improvements in primary processing. As part of this project, 15 desirable cocoa varieties will be rehabilitated. Outreach programmes, including the provision of planting materials and technical information for best practices, will be continued.

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Out of some 1,700 cocoa estates, approximately 800 estates are currently not active producers. In collaboration with the Cocoa and Coffee Board, the ADB has structured a special loan package, the “Cocoa Revitalizer loan” aimed at bringing these estate owners back into high levels of production, where the Trinidad and Tobago cocoa product has earned the reputation to be classified as “fine, flavoured, aromatic cocoa” which currently attracts approximately US \$5,000 per metric ton.

Small individual farmers and family farms have been the backbone of the agricultural production in Trinidad and Tobago for many years, providing a whole range of food crops spanning the full spectrum of the six food groups. These small farmers have given yeoman service in dealing with the many challenges and risks involved in providing food for our tables. Small farmers are at the core of the food production chain. I have saluted these small farmers on several occasions at different locations throughout this country. Today, again, I want to pay homage to the small farmers of this nation and it is a signal honour for me to salute them for their contribution in supplying food for the nation over the years.

I wish to assure our small farmers that when they begin to feel the full impact of the range and quality of support services that this Government will be delivering, they will be left with no doubt that we consider them not only as premier business people and entrepreneurs, but as being essential to national development.

In terms of the former Caroni workers, some 7,248 of the ex-workers have been allocated two-acre plots. When these plots are fully developed and distributed, some 15,000 additional acres of land will be released by the State for agricultural production. I repeat: Some 15,000 additional acres of land will be released by the State for agricultural production.

Substantial sums of money have been allocated for infrastructure development on agricultural estates. There are some 17 sites of some 30 sections being developed. To date, upwards of \$500 million has been spent to develop these sites. Some 4,879 two-acre plots have been provided with infrastructure already, that is, roads and drains, to date.

The Estate Management and Business Development Company is developing these lands and in collaboration with the Office of the Chief State Solicitor, the lease preparation and lease execution exercise are being stepped up. Meanwhile, I am advised that some 6,608 licences to occupy lands have been issued to former Caroni workers.

At present, there is a whole range of incentives being offered by the Government for land preparation, rebates on motor vehicles, tractors, machinery and equipment, soft loans through the Agricultural Development Bank (ADB),

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among several others. Notwithstanding this menu of incentives, the Government of the Republic of Trinidad and Tobago is reviewing these incentive packages with a view to making them even more attractive. The work of the committee on incentives under the chairmanship of our Chief Technical Officer is well advanced.

One further initiative is making agricultural credit more easily available to our farmers. This is being facilitated through the Agricultural Development Bank which, in the last budget, was provided the sum of \$75 million in allocation for on-lending. This has been further strengthened by the Cabinet decision of April 2008 to grant substantial relief to beneficiaries for state agricultural leases.

In relation to my previous point on the Government's support of existing and new small farmers, a farmer on a holding of one hectare or less will now pay \$200 as compared to the previous rate in some cases in excess of \$1,000. In order to reduce the cost of operating small farms and family farms, the annual cost of land leases has, therefore, been substantially reduced to make land cost much more affordable to the small farmers of this country. Landholdings of 10 hectares or less will attract specially reduced annual rents.

The Ministry of Agriculture, Land and Marine resources has been communicating with the national community the changed and improved terms and conditions under which state agricultural leases will be granted going forward. They include the following annual rents:

<u>Acreage</u>	<u>Cost (\$)</u>
Under 1 hectare	200
1 hectare up to 2 hectares	400
Greater than 2 and up to 5 hectares	700
Greater than 5 and up to 10 hectares	1,000

2.15 p.m.

Annual rents for house spots on agricultural parcels of 5,000 square feet or less, will be rent-free and value added tax on agricultural rents will be zero-rated. The cost of the survey of state agricultural lands will be borne by the State until further notice. All terms and conditions of those stated earlier will be effective from May 01, 2008 going forward.

Permit me to debunk another myth which is being peddled that some farmers not yet in receipt of standard agricultural leases cannot access incentives through the Ministry of Agriculture, Land and Marine Resources. Farmers who have

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licences permitting them to enter upon state land, to cultivate the land, can indeed, access incentives from the State through the Ministry of Agriculture, Land and Marine Resources.

Loans from the Agricultural Development Bank are also available once they are registered as farmers with the Ministry of Agriculture, Land and Marine Resources, as are lease holders or those with title deeds to private land. To clarify further, in order for someone to access incentives and soft loans from the Agricultural Development Bank, only three conditions need exist. They are:

- (1) Outright ownership of private land by deed or lease;
- (2) of ownership by way of lease of state agricultural land; or
- (3) licence from the State permitting a person or persons to enter upon state land for cultivation; and
- (4) registration of the farmer with the Ministry of Agriculture, Land and Marine Resources as a farmer; and
- (5) engagement in agricultural production of an established level of land cultivation.

I wish to turn now to the issue of labour for agriculture. In April 2008, the idea of utilizing the Community-based Environmental Protection Enhancement Programme (CEPEP) Model for supplementing the labour force in agriculture was floated. This is not to say that CEPEP will be dismantled. However, the re-directing of some labour from certain areas, based upon new imperatives to engaging in work related to food production is certainly a most desirable form of engagement.

In the case of commercial farms, to the extent that international investors with new technology and new investments can be attracted, consideration may be given for farm hands from the investor country being allowed into the country to operate the farms for a predetermined period. These two initiatives for the labour supply to farms are currently in the analysis and discussion stage.

Another initiative that seeks to provide the pool of agricultural workers is the Youth Apprenticeship Programme in Agriculture (YAPA). This Project seeks to attract young people into agriculture. The objective is to increase the number of young people from the age of 18 to 25 years in farming, by providing them with the required technical knowledge and skills, as well as exposure to farm work with farmers. Participants in this programme will be assisted in becoming agricultural entrepreneurs at a later stage.

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Praedial larceny continues to be one of the most serious problems faced by the agricultural sector and is a real threat to our food security. The Government is determined to bring this under control and ensure that it ceases to be an obstacle, as currently exists, to investment in the agricultural sector.

It is to be recalled that the Government at the National Consultation on Food Prices last year, indicated that a new arrangement will be put in place outside of the police service to treat with the question of praedial larceny in hot spot areas, by the early part of 2008. However, in seeking to put a process in place for its implementation, a review has been undertaken by the ministry to include a comprehensive and expansionary approach to the problem. It is expected that recommendations for the mechanisms of implementation would be finalized shortly.

Let me now return to the main issue of the new governance arrangements for state corporations attached to the agricultural sector. Notwithstanding the best-arranged plans, events occurring in the global food market today, require an emergency response to ensure the food security of our nation. Therefore, in the context of these developments, the Government has viewed the establishment of a viable domestic food sector and stability in domestic food prices as of strategic and critical national importance. To this end, Cabinet agreed to the establishment of a defined and focused governance arrangement at major agricultural institutions, with the common goal of revitalizing the agricultural sector.

With the modernization and revitalization of the agricultural sector being accorded high priority in the Vision 2020 Operational Plan 2000—2010, public policy guidance and oversight for that sector were assigned initially in 2006, to a ministerial task force on food prices. Subsequently, with the incoming new administration in November 2007, the task for providing guidance and oversight at this critical stage for the establishment of food security was assigned to a newly created ministerial Committee for Food Prices and Inflation. That committee is in the process of advancing the work through policy provisions for making available, certain inputs for agricultural production.

Given the critical stage in the Government's thrust to modernize the agricultural sector, the responsible governmental institutions must be guided through this new environment with a common goal of bringing the agricultural sector to international industry standards in terms of levels and cost of production, as well as of efficiency as quickly as possible. This transformation process must be driven in summary, by considerable focused management effort and by relentless and coordinated initiatives across the board.

Statement by Minister
[SEN. THE HON. A. PIGGOTT]

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It is a well-established fact, that in the past and in similar circumstances, successive governments have found it useful to place clear and defined leadership to achieve the national objectives. It is in this context that new governance arrangements are being put in place in respect of key state companies, whose mandate it is to provide for and service the agricultural sector.

Consequently, Mr. Noel Garcia has been assigned the leadership role within the relevant state companies for revitalizing and modernizing agricultural production and marketing. In order to discharge that mandate, Mr. Garcia has left the Housing Development Corporation and has accepted the following new responsibilities:

- Chairman of the Estate Management and Business Development Company (EMBD) with a mandate for undertaking the development of state lands for agricultural purposes identified by the Government of Trinidad and Tobago;
- Chairman of the Agricultural Development Bank; Chairman and Chief Executive Officer of the National Agricultural Marketing and Development Company with a mandate for undertaking the construction of retail and wholesale markets; and
- Director of the Chaguaramas Development Authority, given his remit previously as chairman of that authority, related to the 200-acre Tucker Valley project.

Additionally, in an effort to assess in a timely manner, agricultural applications for state lands and to establish leases in the shortest possible time frame, all state lands for agricultural purposes will be transferred to the EMBD through a number of head leases. The EMBD will thereafter establish sub-leases with eligible applicants for all usage of state land for agricultural purposes.

It is to be noted that under the State Lands Act, the Commissioner of State Lands has the responsibility for issuing agricultural leases, but the issuance process was usually protracted, given the fact that the preparation and execution of such leases usually involved approximately 11 state agencies.

These new initiatives are specifically aimed at removing the critical constraints to the supply side of land, capital and produce marketing and by no means to supplant the ongoing initiatives of the Ministry of Agriculture, Land and Marine Resources. Indeed, the synergies created by marrying the ongoing plans of the Ministry of Agriculture, Land and Marine Resources and the new governance arrangements for these three related state institutions in the agricultural mix, will be the much needed catalyst for which the sector has been yearning.

Statement by Minister

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All our plans will be constantly reviewed and adjustments made to ensure that the national objectives are achieved.

Mr. Speaker, in closing, I wish to reiterate the point that: increasing agricultural production for food and nutrition security in Trinidad and Tobago is everybody's business. Every citizen must become engaged and ought to play a part in growing and producing some food item. Every homeowner with some extra land space around the house should establish some form of home garden. Homeowners with restricted land space must consider some form of grow box operation.

I wish therefore, to encourage the entire population to support our programme to Grow What You Eat and Eat What You Grow. Sow your seeds and reap, and be an active participant in the national effort to transform the agricultural sector to one that will ensure food sovereignty and security, while being internationally competitive.

Thank you. [*Desk thumping*]

Mr. Speaker: Hon. Members, whilst the Standing Orders do not provide for a length of time given for statements by the Ministers, I think that the accepted practice in the United Kingdom is 10 minutes. We have established around 15 minutes. It is the Government's day, so the Minister has made his statement. If Ministers can come to the point in around 15 minutes or thereabout—I indicate to Ministers that on Private Members Day, Statements by Ministers will be a rare occasion in the sense that only in cases of issues of national importance, will a statement be allowed.

BAIL (AMDT.) BILL

Order for second reading read.

The Attorney General (Sen. The Hon. Bridgid Annisette-George): Mr. Speaker, I beg to move,

That a Bill to amend the Bail Act, Chap 4:60; be now read a second time.

I propose to address the need for this type of legislation, firstly, and then I will turn to the provisions of the Bill. The prevalence of kidnapping and other serious offences in this country has subjected the citizens to a state of fear. If this state of affairs is left unchecked, there could be encouraged the development of a category of crimes for financial gains. This would have serious effects not only on the safety and psyche of our citizens, but would also adversely affect our financial systems.

The Government recognizes that the implementation of certain administrative and legislative measures is urgently required to further reform the criminal justice system, to treat with discipline, crime and justice and to improve the ability of the State to treat with undesirable levels of criminal activity in Trinidad and Tobago. This Bill is one such legislative measure.

You may recall that during the last few years this Government has introduced numerous amendments to certain pieces of substantive and procedural criminal legislation. These measures were found necessary to further the fight against criminal activity. The various procedural and substantive measures sought to, firstly, reduce delays in the criminal justice system. Secondly, it is to plug loopholes in the enforcement of areas of substantive law and thirdly to convict the guilty.

2.30 p.m.

If I should be permitted, I should like to highlight some of those changes. I would refer to the Summary Courts Act, Chap. 4:20, which was amended to provide for the admissibility of written statements by witnesses of matters that are not in dispute and also to admit formal admissions as proof of a fact that is not in dispute in a summary trial. There was also an amendment to the Criminal Procedure Act, Chap. 12:02, which was amended to provide that where a fact is not in dispute between the parties in a High Court trial, then that fact can be formally admitted into evidence. There was also an amendment to the Indictable Offences (Preliminary Enquiry) Act, Chap. 12:01. This amendment sought to revise the system of paper committal, so as to provide a workable system for the committal of accused persons on the basis of written statements submitted by the prosecution by the enquiring magistrate.

There was also an amendment to the Corporal Punishment (Offenders over Eighteen) Act, Chap. 13:04, which provides that a sentence of flogging can be carried out after the sentence is affirmed, hence removing the six-month time limit and also allowed for corporal punishment in cases of incest.

The Evidence Act, Chap. 7:02, was amended to provide for the use of sample evidence instead of bulk evidence and to allow administrative and non scientific staff at the Trinidad and Tobago Forensic Science Centre to receive any matter or thing for examination or analysis and to allow the State to admit, into evidence, hearsay evidence into documentary form in criminal proceedings, including in a preliminary enquiry.

The Larceny Act, Chap. 11:12, was amended to extend the limitation period of certain offences under that Act and to change the offence to receiving from an indictable to a summary offence.

The Bail Act, 1994 was amended to provide a right of appeal to the Court of Appeal, to the police or a convicted person, or an accused when bail is granted or not granted, as the case may be.

The Forgery Act, Chap. 11:13, was amended to make it a summary offence for a person to make, purchase or use a forged driver's permit, learner's permit or a national identification card.

The last four of these amendments were affected by the Administration of Justice (Miscellaneous Provisions) Act, 2005, which is Act No. 19 of 2005. The central focus of those amendments was to expedite trials in the Magistrates' Court and in the High Court and to implement radical change to key areas of the justice system, as it had become glaringly clear that the pace of the turn of the wheels of criminal justice was being used by criminals to frustrate the administration of justice.

The Government is fully aware of its duty to ensure the safety and welfare of our citizens and to ensure that the rule of law is applied to all equally, even to those who seek to undermine and destabilize the criminal justice system.

The system of criminal justice must also ensure, to the extent that can be provided, that witnesses can give evidence without fear and our laws must also allow the criminal justice system to function fairly and expeditiously so as to convict the guilty and acquit the innocent. The criminal justice system has the multifaceted function of ensuring that offenders are arrested, that the guilty are punished, that the innocent are set free, that potential perpetrators are deterred and that those offenders who can be rehabilitated are so rehabilitated.

The Bill before us this afternoon seeks to further those goals. Our legal system strikes a balance between, on the one hand, the principle that no one shall be deprived of his liberty unless and until his guilt is proved and on the other hand, the wider societal interest that persons accused of criminal offences should not easily avoid trial. Furthermore, our legal system ascribes to the principle that no one should be released; who cannot be released on bail with comparative safety.

The rationale underpinning the traditional right to freedom before conviction permits the unhampered preparation of a defence and serves to prevent the infliction of punishment prior to conviction and, of course, unless the right to bail before trial is preserved, the presumption of innocence would lose its meaning. But constitutional rights, including the right to bail, are not absolute rights. The rights of each person must be balanced with the rights and interest of the wider society.

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Our Constitution guarantees the right of an accused to be granted bail. That right is also well established in international law, especially in the domains of Human Rights Conventions and Charters.

Section 5(2)(f)(iii) of our Constitution states, among other things, that Parliament may not:

“deprive a person charged with a criminal offence of the right—

(ii) to reasonable bail without just cause.”

However, as I have made the point before, constitutional rights are not absolute rights. The very provision, that is section 5(2)(f)(iii) of the Constitution which creates the right, states that the right may be denied with just cause. That is to say that the court may deny a person charged for an offence of the right to bail if the court considers that in all the circumstances of the case, it is reasonable to believe to do so. This may be reasonable, for example, in a case where an offender may be a repeat offender or if it is likely that the offender may flee the jurisdiction, prior to conviction.

In fact, section 6 of the Bail Act, Chap. 4:60, enumerates a number of circumstances in which bail may be denied, such as failure to surrender to custody, committing an offence while on bail, where it is necessary for the personal protection of the defendant and a whole host of other circumstances set out in section 6.

Also, the Constitution itself makes provision, under section 13, for our entrenched rights, which include the right to bail, to be infringed or abridged if the amending legislation is enacted with a specified majority vote. Hence, the very Constitution which gives such a fundamental right also acknowledges the need to allow for its restriction, provided the constitutional procedures are followed.

Prior to the enactment of the Bail Act, Chap. 4:60, the law relating to bail in criminal proceedings was to be found partly in the common law and partly in various statutes. There was no single piece of legislation dealing comprehensively with the subject. There was a dearth of statutory guidelines governing the exercise of judicial discretion for granting bail in criminal proceedings.

While it is clear that the decision to grant or not to grant bail must ultimately be discretionary, the Bail Act was enacted so that the identification of relevant criteria in legislative form would provide assistance to judicial officers in making informed and rational decisions.

The Bail Act, Chap. 4:60, which sought to infringe or abridge the entrenched right to bail, was enacted with the requisite special majority. Murder, treason, piracy or hijackings are the only offences for which there is not the right to bail. These are the offences for which death is the penalty fixed by law and such a penalty justifies the need to deny the accused the entitlement to apply for bail for those offences.

The Government accepts that the consequences of a remand in custody are substantial, as it means the loss of liberty for the accused with possible resultant negative consequences for the accused and his family. Nevertheless, the denial of an accused liberty before conviction has to be balanced against the benefit to be derived for the society from the removal of these persons from the general public. It also has a deterrent effect on those who may consider committing these offences. Today the serious and violent offences have reached such proportions that it necessitates the denial of bail in the limited circumstances set out in this Bill.

Furthermore, the increasing levels of other violent offences cannot be ignored. The Government is fully cognizant of its duty to take whatever steps as are necessary, even drastic steps, of course, within the confines of the Constitution, to deal seriously with the issues at hand.

Thus, as I mentioned earlier, numerous pieces of criminal legislation have been amended to further the fight against crime. Also, with the support of the hon. Members on the other side, this Government was able to enact the police service reform legislative package; a key instrument in the fight against crime.

I also wish to indicate that the Government would soon introduce numerous amendments to various pieces of criminal legislation as we seek to continue the fight against crime; and these would include amendments to the Evidence Act, the Criminal Procedure Act, the Indictable Offences (Preliminary Enquiry) Act and the Offences Against the Person Act.

In piloting this Bill, it would be remiss of me if I did not make mention of the fact that this is the sixth time that this amended legislation is being considered by this Parliament. It was first considered in 2005; that was Act No.32 of 2005. It was then considered in 2006; that resulted in Act No. 30 of 2006, and three times during 2007, which resulted in Acts No. 10, No. 15 and No. 25 of 2007. On the last occasion, in 2007, that is Act 25 of 2007, the legislation was only to remain in force for one year.

Before I return to address the clauses of the Bill, I wish to indicate that this Bill would seek to amend the Bail Act, Chap. 4:60 directly, rather than the Bail

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(Amdt.) Act, 2005, which is Act No. 32 of 2005, as was done on previous occasions by the Bail (Amdt.) Act, 2006, Act No. 30 of 2006.

Hon. Members of this House may recall that the Bail (Amdt.) Act, 2006 merely extended the life of the Bail (Amdt.) Act, 2005 from one year to 15 months and the Bail (Amdt.) Act, 2007; Act No. 10 of 2007 and the Bail (Amdt.) (No. 2) Act 2007, which is Act No. 15 of 2007 provided for extensions of three months.

2.45 p.m.

I also note that the Bail (Amdt.) (No. 3) Act of 2007, that is Act No. 25 of 2007, also sought to amend the Bail Act directly, but was only to remain in force for one year, and that Act came into force on September 20, 2007.

Mr. Speaker, I now turn to deal specifically with the provisions as proposed in the Bill before this honourable Chamber. The Bail (Amdt.) Bill, 2008 is identical, except in two major aspects to the Bail (Amdt.) (No. 3) Act, 2007, which was assented to by his Excellency the President on September 20, 2007.

Section 7 of the 2007 amendment Act provides that the amending Act shall remain in force for a period of one year after the date of its commencement. Hence, the amendment Act would cease to have effect on September 19, 2008. However, unlike the amendment Act, there is no duration clause in this Bill. This Bill does not contain a sunset clause and it is my expressed hope that hon. Members on the other side are prepared to consider enacting this once and for all as part of the parent Act. The intent is that once the Bill is enacted it would become a permanent part of the Act which is Chap. 4:60. The other major difference is seen in clause 6, and I shall deal with it accordingly when I am speaking about the Bill clause by clause.

In summary, this Bill seeks to amend the Bail Act, which I refer to here as the Act, to make the offences of kidnapping for ransom or knowingly negotiating to obtain a ransom under the Kidnapping Act, Chap. 11:26, non-bailable offences for a period of 60 days, but thereafter bail may be granted at the discretion of the High Court where no evidence has been taken.

The Bill will also make certain violent offences including possession of a firearm or ammunition without a licence, certificate or permit under the Firearms Act, Chap. 16:01, or trafficking in a dangerous drug or being in possession of a dangerous drug for the purposes of trafficking under the Dangerous Drugs Act, Chap. 11:25, or kidnapping at common law or assault occasioning actual bodily harm; these would be made non-bailable offences under the Bill.

In certain cases, a person must be convicted on two prior occasions for any of those offences or a combination of those offences arising from a single incident during the last 15 years. Of course, the Bill is inconsistent with sections 4 and 5 of the Constitution and is, therefore, required to be passed by a special majority of three-fifths of the Members of each House.

Clauses 1, 2 and 3 of the Bill are self explanatory.

Clause 1 provides for the short title.

Clause 2 provides that the Act shall have effect though inconsistent with sections 4 and 5 of the Constitution.

Clause 3 seeks to provide for the interpretation provisions.

Clause 4 of the Bill proposes to amend section 5 of the Bail Act by inserting two new subsections after subsection (3). These are subsections (4) and (5). These two new subsections would provide that the court would not grant bail where a person is charged with a violent offence listed in Part II of the First Schedule and has been convicted on two prior occasions for any of those listed violent offences.

A person who has been convicted twice for a listed violent offence on separate occasions or a combination of any such offences arising from a single incident would not be granted bail. However, these prior convictions must have occurred during the last 15 years. In other words, two prior convictions for a listed violent offence during the last 15 years would give the court the power to deny bail to a person charged for a violent offence. This is not a new provision. This has been part of our law since 1994.

What the Government proposes is to increase the number of violent offences in the parent Act. We feel that in the present climate of crime such changes are reasonably justifiable.

I therefore wish to draw the attention of hon. Members to the continued inclusion of certain offences under Part III of the First Schedule. These are:

- (1) assault occasioning actual bodily harm;
- (2) possession of a firearm or ammunition without licence, certificate or permit;
- (3) trafficking in a dangerous drug or being in possession of a dangerous drug for the purpose of trafficking;
- (4) kidnapping;

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- (5) kidnapping for ransom; and
- (6) knowingly negotiating to obtain a ransom.

The effect of continuing to include these offences under Part III is to ensure that persons who seek to repeatedly commit any of these offences would be denied bail. The criminal justice system must take a firm stance in dealing with repeat offenders and this Bill seeks to send a strong message to potential offenders.

Clause 5 of the Bill seeks to amend the Act by inserting after section 5, a new section which would be section 5A to make the offences of kidnapping for ransom or knowingly negotiating to obtain a ransom under the Kidnapping Act non-bailable offences. These two offences are found under sections 3 and 5 of the Kidnapping Act. However, where the preliminary enquiry in relation to the charge has not commenced within 60 days of the date of the charge being read to the person accused, the person charged is entitled to apply to a judge in chambers for bail.

Essentially, the proposed section 5A(2) states that the person has been charged, brought before the court and the charge is read to him whether any evidence has been taken. Once the charge has been read to the accused, the matter would have been started.

In a preliminary enquiry, a person is not required to plead to the charge. Furthermore, after the charge is read to the accused, the matter is adjourned without any evidence being taken. For the purpose of the Bill, once no evidence has been taken within 60 days of the charge being read to the accused, then he is entitled to apply to the High Court for bail.

Mr. Speaker, therefore, hon. Members can see that the legislation is not intended completely to take away the right to bail. What it seeks to do is to restrict the right to a specified period in specified circumstances. The question which some of us may ask is whether such a restriction is reasonably justifiable in a democratic society such as ours. I intend to address this issue when I address the constitutional issue, as I indicated earlier.

Clause 6 of the Bill seeks to amend the First Schedule to the Act. The existing Part II would be repealed and a new Part II would be substituted. The offences listed in this new Part II are not the same offences which were set out in the amending Acts of 2007.

The difference between the amending Acts and the Bill is that some of the offences listed in Part II of the First Schedule, as provided in section 6 of the 2007 amending Acts as seen in clause 6 of the Bill have been modified and they shall take into account certain proposals made in the other place when this legislation was last debated.

The following four changes are to be noted in the Bill. It was proposed that the offence of unlawful wounding be added to the list of violent offences under Part III of the First Schedule. This was not an offence in the amending Acts of 2007. Paragraph (b) of clause 6(b) of the Bill has been accordingly amended to include this offence.

Secondly, paragraph (c) of clause 6(b) of the Bill does not contain the offence of armed robbery which was in the amending Acts of 2007, because this offence is already covered by the offence of robbery with aggravation which is being retained.

I would also ask hon. Members, through you, Mr. Speaker, to note that paragraph (c) of clause 6(b) of the Bill now includes the offence of robbery with violence which is provided under section 24(1)(b) of the Larceny Act, Chap. 11:12.

The offence of robbery with violence was not included in the amending Acts of 2007. The offence of assault occasioning grievous bodily harm which was in the amending Acts of 2007 has now been changed to assault occasioning actual bodily harm as seen in paragraph (d) of clause 6(b) of the Bill. This change is to reflect the proper offence under section 30 of the Offences Against the Person Act, Chap. 11:08.

The offence of possessing and using firearms or ammunition with intent to injure which was in the amending Acts of 2007 has been changed to possession and use of a firearm or ammunition with intent to endanger life as seen in paragraph (e) of clause 6(b) of the Bill. This change is to reflect the proper offence under section 12(1) of the Firearms Act, Chap. 16:01. Also, by clause 6, a new Part III would be inserted in the First Schedule to provide a list of violent offences.

Dr. Moonilal: Mr. Speaker, on a point of order, Standing Order 33(6).
[*Interruption*]

Mr. Speaker: Proceed, please.

Sen. The Hon. B. Annisette-George: The Bill seeks to introduce new offences, violent offences, essentially to address firearms, drug trafficking and kidnapping offences. This is one of the main changes that this Bill seeks to effect to our Bail legislation. I am sure that all of us here will agree that the repeat offenders of such offences must be dealt with severely.

I would also like at this stage to address the issue of the constitutionality of the Bill. The Bill before this honourable House would be inconsistent with sections 4 and 5 of the Constitution, as I said before. The supremacy of the Constitution is well acknowledged, and any law which is inconsistent with it is void to the extent of its inconsistency. This is clearly stated in section 3 of our Constitution.

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3.00 p.m.

Under section 4 of the Constitution a person has the protected fundamental right to his life and liberty and the right not to be deprived thereof except by due process of law. Then under section 5(2)(f)(iii): Parliament, except by special majority legislation cannot deprive a person of the right to reasonable bail without just cause.

This Bill seeks to deprive a person charged with specified criminal offences of his constitutional right to bail in certain circumstances. Section 13(2) of the Constitution provides that an Act, which is inconsistent with sections 4 and 5, must be passed with a special majority. Section 13(1) of the Constitution provides as follows:

"An Act to which this section applies may expressly declare that it shall have effect even though inconsistent with sections 4 and 5 and, if any such Act does so declare, it shall have effect accordingly unless the Act is shown not to be reasonably justifiable in a society that has a proper respect for the rights and freedoms of the individual."

Section 13(2) further provides:

"An Act to which this section applies is one the Bill for which has been passed by both Houses of Parliament and at the final vote thereon in each House has been supported by the votes of not less than three-fifths of all the members of that House."

The Bill therefore being inconsistent with sections 4 and 5 of the Constitution will need to be passed by a special majority vote of three-fifths of the House of Representatives and of the Senate. Accordingly, clause 2 of the Bill declares that it is inconsistent with sections 4 and 5 of the Constitution and that it requires a special majority vote of three-fifths of Members of both Houses.

Clause 5 of the Bill seeks to deny bail to persons charged with an offence under sections 3 and 5 of the Kidnapping Act, 2003, pending the final determination of the charge laid against such an accused. To achieve this, clause 6 will amend the First Schedule of the Bail Act to provide that those offences will be non-bailable offences for a period of 60 days. In other words, a person charged with the offence of kidnapping for ransom, which is section 3 under the Kidnapping Act, or knowingly negotiated to obtain a ransom under section 5 of the Kidnapping Act, would not be granted bail for the specified period.

Clauses 4 and 5 infringed section 5(2)(f)(iii) of the Constitution which gives to a person charged with a criminal offence the right not to be deprived of

reasonable bail without just cause. Additionally, the right of the individual to liberty and the right not to be deprived thereof except by due process of law are enshrined in section 4 of the Constitution. Hence, it cannot be underscored enough that this Bill must be passed with a special majority.

In the case of *Beharry v. Jack and the Attorney General of Trinidad and Tobago*, which is High Court Action No. 3129 of 1987, Justice Hamel-Smith made the following observations and I quote:

"The Constitution provides that a person is entitled to the right not to be deprived of reasonable bail without just cause. The Constitution did not attempt to interfere with the discretion vested in the Magistrate to grant or not grant bail. It left that discretion intact...it meant that once the Magistrate decided to grant bail, unless he had good and substantial cause to fix an extraordinary amount for bail, the bail was not to be in such amount as to be tantamount to 'no bail' in effect."

That is at page 18 of that judgment. It is the duty of the Government to adopt and put in place necessary measures to ensure the safety of our law-abiding citizens. Therefore, the Government must be prepared to respond to the needs, hopes and expectations of our people as the occasion may arise.

The growing crime problem of which the offence of kidnapping is a major element, is one such instance and therefore requires stringent measures to address it. The Government is of the view that legislation of this kind is not only necessary but is, under section 13 of our Constitution, also reasonably justifiable in a society such as ours that has proper respect for the rights and freedoms of the individual. An Act may be passed with a special majority under section 13, but it may still be challenged as being unconstitutional because the Act is shown to be not reasonably justifiable in a society that has a proper respect for the rights and freedoms of the individual. And that was also established in the case of *Morgan and the Attorney General of Trinidad and Tobago*.

The question, which our courts have had to grapple with is the meaning of the constitutional words or such similar words: "reasonably justifiable in a society that has a proper respect for the rights and freedoms of the individual." The corresponding words used in section 36(1) of the 1996 Constitution of South Africa are and I quote:

"...reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom."

In the authority to which I just referred, *Morgan and the Attorney General of Trinidad and Tobago*, the Privy Council had to determine whether the Rent Restriction (Dwelling Houses) Act of 1981 was a reasonably justifiable derogation of the right to property. The Rent Restriction (Dwelling Houses) Act sets a cap on rental increases in relation to residential tenancies. In dismissing the appeal of the landlord, the board of the Privy Council held that the statutory rent restriction had long been a feature of many societies, which protected individual rights and freedoms. Although such legislation was a blunt instrument and not universally approved, Lord Templeton in delivering the judgment of the board said at page 470 of the report that, and I quote as follows:

"Rent restrictions are justified by the need to prevent a landlord exploiting a shortage of housing accommodation.

Many societies, which pay proper regard to the rights and freedoms of the individual, conclude that it is reasonably justifiable to control housing rents without, at the same time, making any attempt to control other incomes or to control other prices. Landlords have no fundamental right to increases of rent which reflect inflation."

Finally, it was held that with the rent restriction legislation which varied from country to country, some laws were inflexible and others provided machinery for rent increases. Hence it was impossible to draw a distinction between a rent restriction law which would be reasonably justified because it was flexible and our 1981 Rent Restriction (Dwelling Houses) Act, which allowed increases only within narrow limits.

Morgan's case is also the authority for the rule that in this jurisdiction the burden of proving that an Act is not reasonably justifiable is on the party challenging the constitutionality of that Act.

In the case of *de Freitas and the Permanent Secretary of the Ministry of Agriculture, Fisheries, Lands and Housing and Others*, which was reported in 1998, 53 West Indian Reports, page 130—and this is also a Privy Council decision—the appellant was a public officer who was suspended from office because he participated in political activities.

Section 10(2)(a) of the Antigua and Barbuda Civil Service Act, 1994 provides that a public officer cannot publish or express an opinion on matters of national or international political controversy. Section 6 of that Civil Service Act also states that the tenure of a public officer is subject to both the Act and the Constitution.

Section 12(1) of the Constitution provides a right of the freedom of expression. Section 13(1) provides for the right of freedom of assembly and association. But section 12(4) of the Constitution allows for the imposition of restrictions on public officers that are reasonably required for the proper performance of their functions except that the restrictions would be unconstitutional if they are and I quote: "...shown not to be reasonably justifiable in a democratic society."

The board stated at page 144 that the burden of proof was on the appellant to show that the restraint was not reasonably justifiable in a democratic society and the board held that he had succeeded in this case. This was in keeping with the decision in Morgan's case.

At page 143, Lord Clyde relied on the learning of Gubbay, the hon. Chief Justice in the case of *Nyambirai and the National Social Security Authority*, which is reported at 1996, 1LRC, page 64. There the learned Chief Justice at page 74 of the report said:

"That the quality of reasonableness in the expression reasonably justifiable in a democratic society depended on the question whether the provision which is under challenge arbitrarily or excessively invades the enjoyment of the guaranteed right according to the standards of a society that has a proper respect for the rights and freedoms of the individual."

Lord Clyde further noted and I quote:

"whether: (i) the legislative objective is sufficiently important to justify limiting a fundamental right; (ii) the measures designed to meet the legislative objective are rationally connected to it; and (iii) the means used to impair the right or freedom are no more than is necessary to accomplish the objective."

These are the tests that we used to see whether the limitation is arbitrary or excessive. The board of the Privy Council accepted and adopted this threefold analysis of the relevant criteria. They concluded in the case that section 10(2)(a) of the Act was invalid.

In the case of *Park-Ross and Another v. the Director of the Office of Serious Economic Offences*, which is reported in 1995, serious allegations of fraud and irregularities in the ward of an offshore drilling rig were made against the applicants, and the respondent decided to hold an enquiry under the investigation of the Serious Economic Offences Act, 1991.

Pursuant to his powers under section 6 of the 1991 Act, the respondent authorized raids on the second applicant's premises and the homes of some of its

employees and seized documents. The first applicant was summoned for questioning at the enquiry, but challenged the constitutionality of certain sections of the 1991 Act before the Supreme Court. The respondent opposed the application on the basis that the 1991 Act was not in conflict with the 1993 Constitution. But even if it appeared to be so, in light of the increase in white-collar crime, the rights, which included the right to silence and the right to privacy could be limited as being reasonable, being justifiable and necessary under section 33(1) of that Constitution. The Supreme Court of the Cape of Good Hope held, among other things, that section 6 of the 1991 Act, which gave the director certain powers, was a violation of the right to privacy embodied in section 13 of the Constitution.

3.15 p.m.

The Supreme Court of the Cape of Good Hope held, among other things, that section 6 of the 1991 Act which gave the directors certain powers was a violation of the right to privacy embodied in section 13 of the Constitution. The court, following the test set out in the Nyambirai case, also held that the criteria for section 6 to qualify as a reasonable limit that could be justified under section 33(1) of the Constitution were that it was rationally connected to a sufficiently important objective, that it impaired a right no more than was necessary to accomplish the objective and that it did not have a disproportionately severe effect on those affected by it. It was accepted in order to preserve law and order, to investigate and combat crime and to protect society and the rights of its members that searches might have to occur even if the right to privacy was thereby affected by it. The court also held that in light of the increase of white-collar crime and fraud and the need for swift and proper investigations, the objective of the Act was sufficiently important to justify limiting constitutional rights.

Mr. Speaker, the Government feels certain, on the authorities discussed, that this legislation would pass the test of being legislation which is reasonable, justifiable and necessary under section 13 of the Constitution. We have a choice. The choice is to adopt a position that fundamental rights and freedoms are absolute and therefore the exercise of might supersedes that which is right, or adopt the other position that the rights of each person must be balanced with the rights and interest of the country as a whole. This Government has chosen the latter view with which I am assured no law-abiding citizen shall differ.

The Government must adopt measures to promote the rule of law, equity and justice to all citizens and therefore encourage public confidence in and adherence to the rule of law. The Bail (Amdt.) Bill, 2008, is one such measure. I wish to

remind hon. Members, Mr. Speaker, through you, that this Bill is not the only measure that this Government is seeking to put in place to address the crime problem. Other measures, such as the Breathalyser and the DNA legislation have been enacted to assist the police in the fight against crime; and recently the Evidence (Amdt.) Act, 2007, which seeks to allow the State to admit into evidence hearsay evidence in documentary form in criminal proceedings, including in a preliminary enquiry, has been enacted.

Public confidence in the system of criminal justice is being eroded daily. But the reality is, however, that the system has been in need of reform for sometime. Those who abuse fundamental rights and freedoms, abuse technicalities and shun substance having sifted the balance between the rights of the individual and the rights of the society at large and therefore new legislative and administrative measures are needed to recalibrate the balance of rights. Also legislative measures are necessary in order to strengthen the confidence of the public in the justice system in general, and particularly at this time. The Bill before this honourable House seeks to strengthen our criminal justice system, and I therefore call on all Members to support this Bill in the interest of our beloved country.

While the Bail (Amdt.) (No. 3) Act, 2007 would cease to have effect on September 19, 2008, it is important that similar legislation should be enacted to take effect immediately after September 19, 2008. If this Bill is not enacted into law before September 20, 2008, many hard core criminal figures in this country would be free to once more continue their criminal activities—

Mrs. Persad-Bissessar: Would the hon. Minister please give way? Thank you very much. How many persons are in jail without bail under the provisions of the existing law?

Sen. The Hon. B. Annisette-George: Mr. Speaker, to the hon. Member for Siparia, through you, those numbers would be provided in another presentation by one of the speakers.

Hon. Member: Shame! [*Inaudible*] [*Laughter*]

Mr. Speaker: Order!

Sen. The Hon. B. Annisette-George: More particularly, this Bill is a very important measure in the fight against kidnapping and other serious and violent offences and therefore I again call on Members to support. The hon. Members in this House may recollect a couple of weeks ago and this would have been reported in our daily newspapers, and this deals with the kidnapping of a very

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beautiful young woman—this would have taken place early in the month of July and I am here referring to the *Guardian* of Tuesday, July 01, 2008. It is at page A3 under the caption “No bail for ‘best friend’”. When the matter came up and one of the accused, a young woman by the name of Shanice Ramcharan stood before the magistrate and an application was made for bail, and this is with respect to a case of kidnapping [*Interruption*] and I quote from the newspaper, they refer here to the magistrate which is Her Worship:

“Baboolal-Gafoor...began entertaining...the application...for bail...but after the hearing”—and I am quoting from the article—“about five minutes of submissions between the parties, the Magistrate changed her decision.

What? Why are people asking for bail. A court shouldn't grant bail for a person in kidnapping for ransom'.”

This was as a result of the Bail (Amdt.) Bill and the Bail (Amdt.) Act of 2007.

Therefore, having regard to the circumstances in the society, having regard to the fact that this being a democratic society this Bill should reasonably be justifiable in all the circumstances, I call on all Members to support.

Thank you, Mr. Speaker.

Question proposed.

Mr. Ramesh Lawrence Maharaj SC (Tabaquite): Mr. Speaker, the Opposition has not denied that fundamental rights are not absolute. The Opposition does not deny that there may come a time in the life of a Parliament in which a government would have to take steps in order to pass laws to deal with particular situations in which, normally, you would find that those measures are being unconstitutional.

I do not think the Government has to worry about convincing us about that or convincing the population about that. But this is a measure which was passed at a time on a few occasions, as mentioned by the hon. Attorney General, in which it was said that the Government needed these measures in order to fight crime and to stop crime. These measures in this bail legislation were after the Government in 2001 took steps as it considered necessary to fight crime. Those steps failed and in 2005 the Government decided that it would tell the country that it needed a package of legislation, which pieces of legislation were needed in order for the Government to fight crime.

The predecessor of the hon. Attorney General stood in this Parliament and said the time for talk had gone, the time for action had come and that it needed this legislation together with the police Bills in order to fight crime. Crime has

gone up. Bail does not come into play unless you detect the criminal, [*Desk thumping*] unless you get the accused. You cannot grant bail for someone who is not charged for an offence, who is not detected and I do not know whether this Bill is necessary at this time. I have to be convinced.

In the Preamble to the Bill the last paragraph says:

“And whereas it is necessary and expedient that the provisions of this Act shall have effect even though inconsistent with sections 4 and 5 of the Constitution:”

So what the hon. Attorney General did—I think the principles of law are well known. We went around the world; very great research. I know you have a very good department very good officers—

Hon. Annisette-George: [*Inaudible*]

Mr. R.L. Maharaj SC: [*Laughs*]—but the fact of the matter is that we need the facts. The hon. Member for Siparia got up and asked you a question and I would have thought that the Government in presenting the Bill would have been able to give us those facts. [*Desk thumping*] In other words, we need to know the facts upon which you are saying it is necessary and expedient.

The fact that you have kidnappings in a country, murders and rapes would not give the entitlement of a government to just come and amend the Constitution, take away fundamental rights. As a matter of fact, I am sure the Attorney General is aware that over the last nine months, in America and in England, laws which dealt with terrorism and which had provided for persons to be detained without being charged, jurists in courts have expressed strong opinions about the legislation not being shown to be justified. What has to happen is when the Government is coming with a measure like this from the principles which had been decided only recently by the Judicial Committee of the House of Lords, the Government has to show that they are really the exigencies of the crisis, show the Parliament that these facts exist so that parliamentarians would be able to exercise their vote properly, especially when you are coming with a draconian piece of legislation and the principle is regarded as a principle of strict necessity.

As a matter of fact I have taken these words—and I will quote the references just now to you—from a recently decided case, the case is *A and others*, the House of Lords in England, Lord Bingham and all these Lords, Sir Hope and whatever their names are, and they said that the restriction and the imposition to make the change must be directed to an actual clear and a present or imminent

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danger and not to be imposed merely on a speculation or an apprehension of potential danger. So what the Government needed to show is—

[*Hon. P. Taylor stands*]

Mr. R.L. Maharaj SC: I am sorry.

Mr. Taylor: Mr. Speaker, I want to thank the hon. Member for giving way and to assure him certainly that many of the requests for statistics, which he so passionately has suggested that the Government could provide, will be provided in the fullness of the course of the debate.

Mr. R.L. Maharaj SC: I am very indebted to my friend, the hon. Member for Princes Town South, but I would have thought that as a Government in a piece of legislation like this, it would present those facts in the opening, because here is where you are asking Members to respond. We have our hands outstretched to help the Government, but you are tying our hands behind our backs and in front of our heads. How could we express a view on the merits of the legislation if you have not given us the facts?

As a matter of fact, yesterday, having not got any facts from the Government in advance, having not been consulted on the measures, the Opposition office wrote to the Permanent Secretary in the Ministry of National Security, carbon copied the letter to the Minister of National Security, the Acting Commissioner of Police and asked for urgent request for information. “I have been requested by the Opposition Chief Whip”—it was signed by the officer at the Opposition office—“to seek urgent data relating to this Bill”, and the data included—“...the number of persons with the relevant particulars who fell under the provisions of this Act and who were therefore denied bail since the Act commenced in 2005. Please provide the information disaggregated for the period 2005, 2006, 2007 and 2008 to date.”

We have gotten no response. No written response and no response from the Government even in the opening of the debate.

3.30 p.m.

I think it is unfortunate because this Bill has severe consequences for entrenched protected rights, and although we support measures to be taken against kidnapers, murderers and criminals— As a matter of fact, Mr. Speaker, in my constituency, there is a young businessman who remains kidnapped. I have visited that home and the homes of several victims of kidnapping and victims of crime and I think the time has come for very strong measures to be taken against criminals, but I do not think that it is to be purely rhetoric.

This Government has been saying since 2002 to now, strong actions, strong actions, strong actions and crimes have gone up. Today, we have 288 murders and 10 kidnappings. They cannot tell us that the presence of this bail legislation would reduce those numbers, because the legislation has been in existence since 2005 and it has not decreased any crime; it has increased the crime.

As a matter of fact, I have the figures for the crimes of kidnapping and ransom for 2002—2007 in Trinidad and Tobago from the police service:

- in 2002—31, but only 15 were detected;
- in 2003—50, but only 12 were detected;
- in 2004—28, but only eight were detected;
- in 2005—58, but only 15 were detected;
- in 2006—17, but only eight were detected;
- in 2007—14, but only two were detected.

So the question which arises, I do not know if the persons who were detected, are persons who had previous convictions. I do not have that information. I thought that I would have got it from the Government either yesterday or today. The fact of the matter is that the detection rate is very significant for you to consider bail, and therefore, if we are going to pass a law to take away people's rights, but that it is not necessary, then this Parliament is just wasting time and the Government will be using this measure as a public relations measure [*Desk thumping*] to convince people that something is being done to fight crime, but there is a worse scenario to this.

If this Bill is passed in its present form—maybe nobody ever raised the point—and you do not have a criminal justice system which could determine cases of persons in custody within a short space of time, you would be giving the criminals or the persons charged for criminal offences, a defence to apply to have the prosecution declared null and void as an abuse of process on the ground of unfairness, delay and an unfair trial. Therefore, are you really protecting the public interest, or are you not consciously, but unconsciously, favouring the persons who are committing the crimes? [*Desk thumping*]

I will go through this because I want my contribution today—I am trying not to be political in my contribution. I am trying to be purely law, because I want to put on record so that the Government can seriously consider this measure and as a matter of fact, at an appropriate time, I will present an amendment. I think in the

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quest for any government to fight crime, it has to understand that it should not be giving indirectly, or unconsciously, a weapon for the criminal to be used against the government and to adversely affect the public interest.

I have the statistics also for other crimes under the new measures. I will deal with them on a total basis because I think it will take too long. From 2002—2007, there were 1,810 murders, but only 503 were detected. I do not know what you can get with the measures in this Bill. I do not know if it might make any dent in the fight against crime because the Bills were there. The murder rate has gone up; the detection rate has gone down; and the conviction rate has gone down—[*Interruption*]

Mrs. Persad-Bissessar: There is no bail for murders.

Mr. R. L. Maharaj SC:—and there is no bail for murders. I am indebted to the Member of Parliament for Siparia.

Mr. Ramnath: [*Inaudible*]

Mr. R. L. Maharaj SC: Yes, I support that, Member of Parliament for Couva South. From 2002—2007, woundings and shootings were 4,185; detected 1,693. Imagine that, all the “gallery”—I am not blaming you all, I am blaming your predecessors and you have inherited something. The only person was Diego Martin North/East—all the public relations, all the plans and whatever you call it, that is the state of the figures for woundings and shootings. From 2002—2007, rapes, incest and sexual offences were 4,271; number detected 2,999. Look at the number of rapists outside there that are not being detected. The number of murderers and the number of wounders and shooters. From 2002—2007, serious indecency was 495; I think this might be the best, 353 detected.

Mrs. Persad-Bissessar: What is that? [*Inaudible*]

Mr. R. L. Maharaj SC: Serious indecency.

Mr. Ramnath: [*Inaudible*]

Mr. R. L. Maharaj SC: Speak for yourself, Member for Couva South. Sorry, Mr. Speaker. Kidnapping—the figures I quoted, the police made a note to it that these figures are also included in the general kidnapping figure for the years. From 2002—2007—so this is kidnapping, not necessarily kidnapping for ransom—1,300, detected 645, but the conviction rate is less than 2 or 3 per cent.

Mrs. Persad-Bissessar: More than 1,000.

Mr. R. L. Maharaj SC: Burglaries and break-ins, hear the figure, 29,409; detected, 4,257.

Mr. Speaker, anybody listening to this today will wonder whether we have a Minister of National Security. But I want to interject, with your leave, he is regarded by the Prime Minister as the best Minister of National Security this country has ever had. Robberies—28,502; detected, 4,694. And we have all this bail law in place from 2005, and you have therefore, about 23,000 robbers, or alleged robbers—I have to be very careful—outside there. There are robbers because the offences have been committed. Fraud offences—2,052, detected 1,902. Larceny, including larceny of motor vehicles—23,614; detected 2,407, so that is over 20,000. Larceny in a dwelling house—2,503 for the five years; detected 397. Narcotic offences—3,230, detected 3,228, because in most of the narcotic offences, you find them in possession of the narcotics. Other serious crimes 5,302; detected 3,616. The total serious crimes for that period is 106,683 and the total detected, 26,694.

Hon. Member: Shame! Shame!

Mrs. Persad-Bissessar: Seventy-five per cent.

Mr. R. L. Maharaj SC: Mr. Speaker, it is a serious state of affairs. I want to explain this Constitution a bit. As I understand it, the Constitution is based upon the fact that fundamental rights would be enjoyed by the people of Trinidad and Tobago. This Constitution, however, makes it clear that there should be a separation of judicial power from executive or legislative power. In other words, there is what is called doctrine of the separation of powers, so that the Executive or the Legislature ought not to arrogate unto itself, or usurp the functions of the judicial arm of the State.

So this Bill does not only involve the question of a fundamental right to bail, it involves a question of, if the Bill is passed, it will mean permanently, people would not have the right to access a court except in a special circumstance.

Mr. Speaker: There is some music outside and I have sent to enquire what it is all about. If you wish to continue you may do so. Do you wish to continue? I have sent to find out what is going on.

Mr. R. L. Maharaj SC: Mr. Speaker, it also involves the rights of persons to access to justice to approach a court, and that is an important right because it will mean that permanently, the Executive and the Parliament would have basically taken away the right of access to a court. Now, the right to access to a court of justice is an inherent right, and it would seem to me—probably we will deal with that at the committee stage—that the Parliament has to be very careful if it is taking away the right to access to the High Court, and if it is preventing, it is in effect, interfering with judicial power.

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As I said, I am mentioning this so the Government can consider it. Serious constitutional questions can arise, and instead of us trying to close the loopholes or make it more difficult for criminals, we may be giving additional weapons to them. Because if you deny people to go to a court, and if it is probably temporarily and you have a certain emergency situation, it may be said to be reasonably justifiable, but it may be very difficult to justify in courts of law, and us as parliamentarians, as to whether it is reasonably justifiable.

Mr. Speaker, the Parliament is given the power in section 54 to pass a law if it becomes necessary to alter the Constitution. Section 13 of the Constitution, as the Attorney General said, gives the Parliament the power to pass a law which is inconsistent with Chapter 1 of the Constitution, but that law must be passed by votes of not less than three-fifths of all Members of the House. That law, even if it is passed by the three-fifths majority, can be declared by the court to be unconstitutional, as not being reasonably justifiable in our society that has a proper respect for the rights and freedoms of the individual.

3.45 p.m.

The function of the Parliament is law making; we are lawmakers. We have to exercise our judgment and determine whether, on the matters which are put forward to us, we could make a judgment call on the facts, that they are reasonably justifiable at this time.

When you look at section 54, altering of the Constitution is defined. An alteration is defined in section 54(6) of the Constitution; it says that altering would include, apart from repealing, et cetera:

"...the making of provision for any particular case or class of case inconsistent therewith..."

But if you are altering sections 4-14, you need a greater majority than three-fifths; you need a two-thirds majority. What you are doing here, it would seem to me, is that you are making the provision for a particular case, or class of case, inconsistent with section 4. It is, therefore, something that the Government could consider, as to whether it is a Bill which is merely inconsistent with section 54(6), or a Bill in which the effect of section 54(6) is that you are altering, having regard to the definition of altering.

If we do this wrong, let us say it is a necessary piece of legislation, those kidnappers who are charged, if they have no defence, we would be giving them a defence; those persons who have committed serious crimes, if they do not have a

defence, we would be giving them a defence. We have to get this right in a way in which, after it is passed or if it is not passed, whatever happens, if it has to come back to be amended, we must be sure that it would really be a weapon by the State against the criminals and not a weapon by the criminals against the State.

Mr. S. Panday: The Attorney General speaks!

Mr. R. L. Maharaj SC: Mr. Speaker, I mentioned earlier what was required. On the face of the Bill, it means that the Government has to show it is necessary and/or expedient. In section 13 of the Constitution it says "reasonably justifiable". I just want to refer to one case that has been recently decided. Members would recall that in the United Kingdom (UK) there was a situation where terrorism was regarded as a great evil at the time, a few years ago. It was felt that the British Government could have enacted legislation to give certain powers to the Executive and that persons could be detained for a long period of time without getting access to a court. It reached the House of Lords. They did not put the names of the persons for many reasons; they put "A (FC) and others", including the Home Department:

"A (FC) and others...v Secretary of State for the Home Department..."

There were 10 Law Lords who sat; the same persons who sit in the Privy Council, headed by Lord Bingham.

They had some comments about matters where you have fundamental rights; they were dealing with the Convention on Human Rights there. They quoted a case from the European Human Rights at page 13, paragraph 54. They said:

"The principle of strict necessity shall be applied in an objective manner. Each measure shall be directed to an actual, clear, present, or imminent danger and may not be imposed merely because of an apprehension of potential danger."

So it is not sufficient to say that there is terrorism, there is a danger, or that there is kidnapping, there is a danger; we have to show that there is strict necessity for the legislation. We have to show that it must be directed to "an actual, clear, present, and imminent danger". We cannot only show that there is an apprehension of potential danger.

At page 12, quoting from the principles of international law, the Lordships said, in the middle of the page:

"A state party may take measures derogating from its obligations under the International Covenant on Civil and Political Rights...only when faced with a situation of exceptional and actual or imminent danger which threatens the life of the nation."

At page 14, quoting from an opinion of the Council of Europe Commissioner for Human Rights, their Lordships said:

"Whilst acknowledging the obligation of governments to protect their citizens against the threat of terrorism, the Commissioner is of the opinion that general appeals to an increased risk of terrorist activities post September 11th 2001 cannot, on their own, be sufficient to justify derogating from the Convention. Several European states long faced with recurring terrorist activity have not considered it necessary to derogate from Convention rights. Nor have any found it necessary to do so under the present circumstances. Detailed information pointing to a real and imminent danger to public safety in the United Kingdom will, therefore, have to be shown."

So I invite the Government to show us this, to bring the statistics to show us.

At page 26, after the court stressed the importance of the convention system which guaranteed fundamental rights, it quoted a case from the United States of America, the Supreme Court's earlier decision, and these were the words—that the courts:

"stands as a caution that in times of distress the shield of military necessity and national security must not be used to protect governmental actions from close scrutiny and accountability."

Then one of the judges, Lord Justice Simon Brown, in a case was quoted as saying:

"...the court's role under the 1998 Act...!—which is the Human Rights Act—'is as the guardian of human rights. It cannot abdicate this responsibility.'"

I am saying two things: It is of paramount importance; it is a precondition for us determining whether we could go along with this legislation, for the Government to show us that, in the words of these principles, it is necessary, it is expedient, it is reasonably justifiable, it is to direct and to prevent a clear, present or imminent danger. They cannot merely show that there is an apprehension of potential danger.

Mr. Speaker, this brings me to the point where it would seem to me that we could possibly find a solution to this matter quite easily. One of the main reasons for objecting to the law remaining as it is that I think one has to be very objective and candid without offending anyone, I think the public perception has been that at times in the Magistrates' Court bail is too readily given, and that you may have persons that the public would believe, and even lawyers would believe, ought not to have been granted bail. The situation grew over a period of time that in respect of some of the rulings of High Court judges, bail should not have been granted. Therefore, there has been a growing lack of public confidence in giving to a sole magistrate or judge the right to grant bail in these categories of bail.

Mr. Speaker, I have an amendment. I have lost some of my skill in drafting; I was never a good draftsman, but I have tried my best. I will put it for circulation. [*Document handed to Clerk*] It is an amendment in which I have basically stated that in these cases mentioned under the Act, even if we assume and we take that these are cases to deal with, bail should only be granted by the High Court to comprise not less than three judges.

If that is considered, what you would do is prevent a situation where there could be delay, that even if one judge wanted to grant bail, you have the safeguard of two other judges. It would mean there would be due process of law. I think that whatever the situation was, nobody would be able to complain that it was unfair, unconstitutional or that they were denied due process of law.

Mr. Speaker, the Constitution of Trinidad and Tobago, the fundamental rights, was taken—[*Interruption*]

Hon. Annisette-George: Just on a point of clarification. Are you proposing that bail be granted after the 60 days by the High Court with three judges, or are you saying to remove the 60-day provision and then a person would only be entitled to bail by going to the High Court comprising of, at least, three judges?

Mr. R. L. Maharaj SC: I think the AG has understood what I said; that is to say, you remove the 60 days. I will read the amendment, in respect of the amendment to clause 4, subsection(4):

"Bail shall only be granted by the High Court to comprise not less than three (3) judges"—to that category of persons.

Then we delete new section 5(A)(2), and in 5(A)(1) we say the same thing:

"Bail shall only be granted by the High Court to comprise not less than three (3) judges"

However the draftspersons want to frame it. In other words, you forget those 60 days. If a person falls in the category and he wants bail, the magistrate cannot grant him bail; only the High Court with three judges; not less than three judges.

The reason I put three—and you may want to put two—is because I think two might be a problem. If you put three, it means to say that even if you have one judge who feels to grant bail, you have the safeguard of having two others.

The fundamental rights of this Constitution were taken from the Canadian Bill of Rights. The interpretation of the Bill of Rights in the criminal justice system could pose a serious problem to most governments. In the administration of

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criminal justice, the cases which had been decided by the Supreme Court of Canada and, to some extent, which have been adopted in some of the Commonwealth countries' Courts of Appeal and, to a lesser extent, in the Privy Council, could pose serious difficulties to legislation, in which you would not have the court intervening where the right to liberty is involved.

Where you are denying a person bail, and he cannot access the courts—Mr. Speaker, let us take this provision. I could understand the attempt to water down the effect of it, but in clause 5, which provides the 60 days, it says:

"Notwithstanding subsection (1), where a person is charged with an offence mentioned in subsection (1) and brought before the Court but no evidence has been taken within sixty days of the reading of the charge, that person is entitled to make an application to a Judge in Chambers for bail."

But let us be practical, the evidence would start, but the person could still take six or eight years to have his case completed. Let us say you have a kidnapper who falls within this, it would be in his interest, if he knows that he is guilty, to have the case started, wait for five years and then file for judicial review.

In my capacity as a lawyer, I know a lot about that. [*Desk thumping*] [*Laughter*]

4.00 p.m.

As a matter of fact, when I became the Attorney General of Trinidad and Tobago, I decided to take all the experiences I knew as a lawyer in the criminal field, and I asked if I were the lawyer in some of these major cases what are the legal points I would take against, and that is how I went with a set of measures to reform the laws. I then became the lawyer for Trinidad and Tobago and not the lawyer for the man charged with the criminal offence. So I am doing the same here, in that I think I have a duty to this Parliament.

So if you have clause 5(2) and you have a guilty kidnapper, he can use the law to wait and have his prosecution declared an abuse of process, but if we go the route I have suggested, even if it has to be amended in whatever form the Government thinks, you have the intervention of the court, therefore, there can be no question or there can be a question without any merit of his rights being infringed.

Mr. Speaker, when we look at sections 4 and 5, you will see that the Constitution gives very strong rights to an accused person charged with a criminal offence. For example, in section 4:

“(a) the right of the individual to...liberty,...and the right not to be deprived thereof except by due process of law;”

So Mr. Speaker, if you go to a court in Trinidad and Tobago, judges would have to look at what is decided abroad and in Trinidad and Tobago, and it will be very difficult to support a contention that people's liberty is taken away with no access to the High Court and the question would arise: Is it reasonably justifiable on a permanent basis for this law to exist?

At section 5(e), the right not to “deprive a person of the right to a fair hearing in accordance with the principles of fundamental justice for the determination of his rights and obligations;” and you have a situation in law where you will be able to deny this person access to court, it falls on the face of it prima facie and naked violation of this right, and the question would arise if it is reasonably justifiable.

This is not like the Rent Restriction Act, in this Act the court decided that there is no right of a landlord to increase his rent and, therefore, if it is in the public's interest to keep rent down and to have a board with the exercise of judicial power to fix that rent, that cannot be reasonably justifiable. If, on the other hand, there was no Rent Restriction Board and the Executive or Legislature had the power to fix that rent, it would not be reasonably justifiable. Look at the right.

“(f) deprive a person charged with a criminal offence of the right—

(i) to be presumed innocent until proved guilty according to law...”

This would be a presumption of guilt, not one of innocence.

“(ii) to a fair and public hearing by an independent and impartial tribunal;...”

Even a bail hearing is an independent and impartial tribunal, so reasonable bail without just cause is really if the judge has matters that he can take into consideration and he finds just cause. It is for the judge and the magistrate to find just cause. Then there is the right not to—

“(h) deprive a person of the right to such procedural provisions as are necessary for...giving effect...”—to the fundamental rights.

Mr. Speaker, it would seem to me that we may not be acting to fight crime and this Bill may not be a tool to fight crime if we go the route that the Government is going. I think we ought to remember that these measures are temporary and we are asking to make them permanent now, and that could make a difference to the whole scenario.

Mr. Speaker, I do not want to take up much time with this matter because I propose to deal with this on a pure legal and constitutional issue. I just want to put on the record that the function of the Opposition in a situation like this—and I

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quote from the *Parliamentarian* 2007 issue No. 4 at page 307: Role, rights and responsibilities of the opposition. It says:

“Parliament is fundamentally about debate and the transacting of the people’s business in public. Thus a genuine political opposition is a necessary attribute of democracy if citizens are to resolve differences peacefully...

A responsible opposition performs a critical role to the effective working of Parliament and to the well being of the nation. The opposition plays a special role as a leading participant in and out of Parliament in the national debate in a democracy. It ensures that the views of the minority are given full exposure, especially when the matter at hand is of great national importance. By doing so, the opposition becomes the voice of the voiceless, builds the confidence of the people and reassures them that their concerns and interests are ably expressed and protected. The opposition also checks on the activities of the government. This is done through questions in Parliament and the committee system. Watchdog committees...”—et cetera.

Mr. Speaker, I am saying this because it is in this context that we have a responsibility to the people and to the Parliament. We do not propose to merely oppose for opposing sake; we have decided to make our position clear. We are willing to look at the measures and merits, but we feel very confident that if the Government really wants this to be a measure where the criminals will really feel the brunt of this law, it should seriously consider having the intervention of the Supreme Court in this matter in dealing with the question of liberty.

Thank you very much.

The Minister of State in the Ministry of National Security (Hon. Donna Cox): Thank you, Mr. Speaker. As I rise to make my contribution I wish to thank the people of Laventille East/Morvant for the confidence they have expressed in me to be their representative in this Parliament following the November 2007 election. [*Desk thumping*]

Mr. Speaker, I am happy to be a part of this debate, of this very necessary and critical piece of legislation which is a key weapon in the defence and protection of the people of our beloved country Trinidad and Tobago.

Mr. Speaker, the Government has come to the Parliament with these measures to effectively deal with criminals bent on kidnapping for ransom, committing robberies and sexual offences, as well as destroying the peace and safety of our citizens.

Over the past few years, the incidence of such serious crimes as kidnappings for ransom, especially of members of the business sector has ripped this country apart. Even as we debate this Bail (Amdt.) Bill today, we must all be mindful that one of our citizens remains in the hands of kidnappers. Mr. Speaker, he is one too many and that is why we are here today, to ensure that legislation remains in place to effectively deal with those held and charged with that dreadful crime.

Mr. Speaker, Government recognized very early the need to implement certain administrative and legislative measures including the transformation of the police service. This shows that we are serious about protecting the lives and properties of citizens and visitors alike. Nobody in this country should ever have to live in fear of intimidation, fear of kidnapping, of being robbed, or of being brutalized in their homes and business places.

Before I continue, let me spend some time on the Trinidad and Tobago Prison Service and its operations. The prison service is seen within the context of Government's comprehensive public policy on crime. Government has moved from the retributive justice policy to the more humane restorative justice philosophy in dealing with prisoners. It is anticipated that this new restorative model will impact positively on reducing recidivism and re-offending thereby creating a climate of stability and prediction as it relates to crime control and reduction.

As we all know, within a retributive justice framework sanctions are imposed for inflicting pain on the offender. The goal of restoration can only be achieved through programmes and practices that extend beyond a singular focus on the offender and are designed to meet the needs of a variety of criminal justice clientele which includes victim and community.

Correctional restorative programmes when methodically executed in a penal environment will not only mentally prepare the offender for productive reintegration; they will also create a climate of satisfaction and closure between the victim and the offender. Through these restorative programmes, certain anticipated outcomes are expected. For the victims, the objective for repayment of material losses as well as a sense of acknowledgement of the harm caused and some degree of repair and reconciliation will be realized.

For the community, there will be the establishment of an increased capacity to accept and integrate offenders; increased involvement and an understanding of the justice system by community members; a sense of the offender having made some degree of amends, and a reduced level of fear. With respect to the offender, there will be an increased awareness of the impact of crime on other people; increased

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capacity of offenders to contribute productively to the community; higher educational status and improved occupational, social and decision-making skills; improved self-image and improved public image of the offender; increased sense of belonging to the community and the improved generosity of the community towards the offender.

Mr. Speaker, Government, through the Ministry of National Security has also put in place a strategic plan of action to respond to the needs of the Trinidad and Tobago Prison Service. This plan provides not only for the development of the human resource base, but for the improvement of the infrastructure and provision of resources required by the prison service.

The progress which the prison service has made includes the establishment of a transformation unit to facilitate all the elements of the prison reform and transformation initiative; the establishment of an intelligence unit; the introduction of modern security technology; the upgrade of the existing facilities and construction of new ones as a main prison complex at Golden Grove, and a training college also at Golden Grove. The construction of a vocational workshop is also on the way, this facility will be used to deliver programmes which will equip inmates with the appropriate skills and knowledge that will guard against repeat offending.

Other programmes ongoing this year include consultancy and commencement of construction of the correctional complex in Central Trinidad; finalization of land acquisition; development of user brief and selection of contractor for commencement of construction of a prison complex in Tobago; complete construction of a vocational workshop at Golden Grove; construction of a visit facility at Golden Grove Prison to accommodate children's visits with incarcerated parents; implementation of a parole system; construction of a nursery at the Women's Prison, Golden Grove, to accommodate newborn infants with their incarcerated mothers.

With regard to overcrowding, there are those who may argue that the measures obtained in the Bill will impact on the overcrowding situation within the prison. In an effort to deal with this, the prison service is beginning to put in place measures to counteract this issue.

The Maximum Security Prison which is now only at half capacity will be able to accommodate more offenders. The prison service is addressing the issue of staffing at the Maximum Security Prison as it continues to address the general staffing of the entire prison service.

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At present, there are over 100 officers being trained and they are expected to complete training within two months' time. Also, 262 prospective recruits are expected to begin training before the end of the year. On a more long-term basis, the remand yard facility will be expanded to accommodate 500 more beds.

With that stated, the Constitution of Trinidad and Tobago allows every person the right to liberty and the right not to be deprived of this except by due process of the law. The Constitution also affords that a person charged with a criminal offence must not be deprived of reasonable bail without just cause. So we all recognize that bail is an important, critical aspect in the administration of justice since it allows a person held in legal custody to be released with conditions, of course, while awaiting trial. But over the years the Government and, in fact, the entire national community realized that certain criminal activities were becoming more and more prevalent and we realized that legislative action had to be taken to effectively treat with offences that have a serious impact on the lives of all our citizens.

It is for this reason the Government initiated the passage of this legislation in an effort to curb the freedom of those who have been placed in custody for serious offences. We must admit that even though the crime of kidnapping for ransom has been considerably reduced, every now and then it rears its ugly head. It has not gone completely. So this means that we must continue to be vigilant and aggressive with our legislative agenda. We must not let up. I wish to indicate today that since kidnapping and other serious crimes were made non-bailable offences, in certain instances there has been an improvement in the measure of security and safety to the welfare of the people of Trinidad and Tobago. This Government is committed to curbing crime by using a series of measures, whether preventative or punitive, through changes to the legislation.

Institutional Strengthening and Training: Government conducted a critical review of the Trinidad and Tobago Police Service and an in-depth transformation programme was initiated. To date, substantial work has been done in the following areas:

- The staff of the Police Complaints Division has been strengthened and expanded;
- A merit-based performance appraisal system has been implemented;
- The homicide unit has been expanded to address the unacceptable high levels of homicide;

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- An incident coordinating centre has been established to increase the effectiveness of law enforcement's efforts in dealing with kidnappings;
- Twenty-one middle-management officers completed a six-month strategic crime control course and are today employing the modern problem-oriented policing techniques in the execution of their duties;
- Higher screening requirements have been established for the new batch of police recruits;
- A modern training curriculum has been introduced for new police recruits;
- One thousand police officers were beneficiaries of high-Impact supervisory and police executive training;
- Seventy-five trainers were beneficiaries of train-the-trainer courses. This is needed to ensure that trainers at the Police Training College have modern methodologies in training new recruits as well as current officers.

The foregoing measures are intended to strengthen the accountability, effectiveness, professionalism and responsibility of every officer in the Trinidad and Tobago Police Service. To further increase the effectiveness of the police service, the Government, in collaboration with the US embassy and the Federal Bureau of Investigation, has introduced specialized in-country training in crisis negotiations, in kidnapping, crime scene investigation and law enforcement safety and survival training for first responders to crime.

In addition to the above-mentioned transformation measures, the Ministry of National Security has also introduced an attachment of former UK police officers to work jointly with law enforcement agencies in Trinidad and Tobago. This has further enhanced the operational mode of our officers. The Ministry of National Security has also given special focus to the Forensic Science Centre. The Ministry of National Security, with the assistance of the British High Commission, entered into an agreement with the UK-based forensic science services for the training of staff and the institutional strengthening of the Forensic Science Centre.

Our intent was to increase the staff at the Forensic Science Centre and to strengthen the staff's capabilities and competencies to ensure that they can support law enforcement agencies in a timely and professional manner. The main areas of focus were: firearms examiners; DNA testing; a temporary DNA mobile facility is in place; document examiners and complete computerization of the centre's operations.

With regard to the operational aspect, the Ministry has also supported the formation of a homicide-prevention working group which brings together all aspects of law enforcement: forensic, prisons and intelligence. The collaboration and coordination fostered within this working group and the detailed intelligence developed by this group, feed directly into the operations of the homicide unit and several other units of the police service. The aim is to ensure that the evidence in key cases is well presented and dealt with in a timely manner.

The Organized Crime and Firearms Unit has been engaged in a sustained effort to eradicate known drug blocks. The Inter-Agency Task Force has been mounting increasing numbers of cordon and search in gang-infested areas. There has also been an increase in joint army and police patrols. The Special Anti-Crime Unit of Trinidad and Tobago has also procured several assets which are being utilized to increase surveillance.

Legislation: Despite all of the foregoing operational matters, the country's legislative framework has been modernized to deal with the insidious nature of 21st Century crime and criminals. The fact is that criminals explore weaknesses in law enforcement and the legal environment. Therefore, as we strengthen the operational capabilities, the Government, with the help of the Opposition, has ensured that our country's legislative weaknesses were strengthened. The Government's talks with the Opposition have been productive with the enactment to the amendments to the Bail Act.

Preventative Measures: The Ministry of National Security now provides many opportunities for our young people to gainfully occupy their time by learning essential skills through the programmes aimed directly at their development. Noteworthy programmes are: the Civilian Conservation Corps; the Military-led Academic Training (MILAT); the Military Youth Programme of Apprenticeship and Reorientation Training (MYPART), and, of course, the Trinidad and Tobago Cadet Force. We have received very favourable feedback from those citizens who have participated in, and benefited immensely from these programmes and are now poised to contribute productively to the landscape of Trinidad and Tobago. In this respect, the Government understands the critical impact of these youth-oriented initiatives and will continue to give them high priority as we work towards boasting the number of positive opportunities available to our young people.

Our figures show that there has been a serious drop in the number of kidnappings for ransom, from 2005 when the legislation was first introduced, to 2008. For 2008 to date, the police have recorded 11 reports of kidnapping for ransom with three detections thus far. One was reported in the Port of Spain

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division; two in the southern division; two in the western division; one in the northern division and five in the central division. I must point out that Tobago remains untouched by this kidnapping scourge. For that we must all be thankful. The statistics show that between 2005 and 2007 there has been a continuous decline in the number of kidnappings for ransom. In 2005, there were 58 reported cases of kidnapping for ransom; 16 cases in 2006 and 14 in 2007.

With reference to the question from the Member of Siparia, I wish to inform this honourable House that since the legislation was amended to make kidnapping for ransom a non-bailable offence, seven persons have been denied bail. It should be noted that when certain persons are in prison, some categories of crime, like kidnapping, drop drastically. It is evident that this legislation must stay in place if our citizens and visitors are to enjoy some degree of safety and security in this country. All Members of both sides of the House must continue to support the passage of this legislation—

Mrs. Persad-Bissessar: Hon. Minister, would you kindly give way? Thank you very much. I congratulate you on your maiden presentation. You said there were seven persons in jail without bail as a result of this legislation. You may recall that the legislation also talks about bringing them to trial within a 60-day period. Would the 60 days have passed and would they have, therefore, been eligible to get bail after the 60 days?

Hon. D. Cox: I am not sure but we will get that information for you.

It is evident that this legislation must stay in place if our citizens and visitors are to enjoy some degree of safety and security in this country. All Members on both sides of the House must continue to support the passage of this legislation for the greater safety and security of all our citizens. As you know, the Ministry of National Security plays a pivotal role in ensuring that all the law enforcement agencies are fully equipped to batter crime and we will continue to play our part in this regard.

I wish to thank our dedicated law enforcement officers who put their lives at risk every day to protect and serve our country and for playing their part in this fight against crime. Public confidence must be restored and public safety must be taken into account, as we seek the support of the other side to pass this critical piece of legislation. We must send a strong message through the legislation that we are serious about dealing with crime. Whilst our laws allow for the respect of fundamental rights and freedoms, those who seek to abuse those rights must be made to feel the full brunt of the law.

The Government is, indeed, taking decisive action against crime. Hon. Members on the other side, we need your support to do more to continue to protect the citizens of this country. This Bill is, indeed, necessary.

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

Mr. Speaker: Hon. Members, I gather from the hon. Member for Laventille East/Morvant, this is the first time you are contributing in a debate. That being so, let me congratulate you on your maiden contribution. [*Desk thumping*]

Hon. Members, we just have three minutes before tea. With your indulgence I think we can go for tea. So the sitting of the House is suspended for tea and will resume at 5.00 p.m.

4.27 p.m.: *Sitting suspended.*

5.00 p.m.: *Sitting resumed.*

Mr. Subhas Panday (Princes Town North): Mr. Speaker, I cannot see this Government rejecting the amendment proposed by the hon. Member for Tabaquite. The hon. Member for Tabaquite has made a sterling contribution. As a matter of fact, the hon. Member for Tabaquite brought all his legal learning free to this Parliament and today, we saw in him the deserving Senior Counsel. We have come to Parliament on many occasions and argued about constitutionality in terms of figures and numbers. You are saying that if you do not have the requisite number, it is unconstitutional.

Today, the hon. Member for Tabaquite went so deep into the law that he brought out to us, that although you may have the required numerical number to pass the law, it could still be unconstitutional, because it does not lead to good governance. That is a new and another approach to the Bail (Amdt.) Bill. Although we have come on so many occasions, we see it now in a different light. The hon. Member for Tabaquite said that we are bringing this draconian legislation to deal with the issue of serious criminals. If we run it the way we are running the argument and allow the Bill to be passed in the same way or form in which it has been presented, then, we would be giving the criminals an opening.

How could anybody in this Parliament and country say that they are not going to deal with that? If you are saying that you want to deal with criminals and on this side we are showing you that you are letting go the criminals, and if you persist with this legislation, that means that you are not interested in dealing with crime. I urge the Government to adopt that amendment proposed by the hon. Member for Tabaquite. I am sure that the purpose, aim and objective of this Bill

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will be achieved. If that is not done we are wasting time and you want to come here for *mauvaise langue*. You are trying to fool the people by telling them that we are passing this draconian legislation to deal with crime. When we analyze the law and are showing you that you will allow the persons to escape, you do not take those amendments on board, it is clear that this Government is not serious in dealing with crime.

I was surprised when I saw the Bill of 2008, in which the sunset clause was removed. It appears as though the removal of that sunset clause puts a different light on the legislation. We spoke on a previous occasion and said that this legislation was draconian. We were trying to take away the powers of persons of having access to the court. When that section 7 is removed and becomes permanent legislation, it would make the legislation more brave.

There are three limbs of government. The three limbs of government are the Legislative, Executive and the Judiciary. This legislation is taking away the power of the Judiciary in the administration of justice. We are undermining the separation of powers in this legislation, in that the Parliament and by extension the executive is now usurping the function of the Judiciary. This PNM Government is trying to be judge, jury and executioner. When one looks at the Bill one would see that a court shall not grant bail to a person who is charged with an offence listed in Part III of the First Schedule. You are taking away that person's fundamental right to access the court. That is an important right for any citizen. We are taking away that right. We are saying that it is jail without bail or jail without a trial. This legislation is jail without a trial.

It says that the two prior convictions referred to in subsection (1), you will take only the convictions recorded in the last 15 years. You are telling people that if you are charged on the third occasion with an offence in Part III of the Schedule, you would not get bail. There is nothing in this legislation which states that if you do not get bail, steps would be taken to ensure that you get a speedy trial. The Member for Tabaquite has indicated to you, the constitutional importance of fair trial and speedy trial.

What is the situation in clause 4(a)? You are arrested. The Member for Laventille East/Morvant spoke about when certain people are in custody the kidnapping drops. When on two occasions an offence arising out of a separate transaction, you cannot get bail. It does not say when your trial will start. Clause 5 speaks about when the trial will start, but this section does not speak about a time when the trial will start. That is a fundamental breach of your constitutional right.

Now they say murder, heresy and treason are non-bailable offences. When one comes to court and the court says that you are in custody but you have committed an offence which is bailable, I grant you bail but you cannot raise the

bail, do not blame me for that. If you have a murder or piracy trial, since the law imposes upon you that you cannot get bail, they put all the matters on the back burner and try to do the murder trial as expeditiously as possible.

Look how wide the net has been opened in Part III. It is manslaughter, shooting, robbery, assault, possession; 21 categories of offences have been included. Before we had murder, treason and piracy, the court could have adjusted its list so that it could do the murder trials at the expense of other trials. When you open this list so wide, you ask the question: Nearly everybody in jail? These 21 offences will now be competing with murder, treason and piracy. What will be the situation with the judicial system? One can see clearly that if we allow this to go through like this, it would grind the administration of justice to a halt and what we are trying to achieve, we would defeat that purpose.

The point made by the Member for Tabaquite is so vital and important to this legislation to ensure that the administration of justice spins. When you bring 20 more offences which are committed more frequently than murder, the number of persons that will fall under the non-bailable situation would increase by over 20 fold. What will be the situation with the administration of justice? It will grind to a halt. It is necessary to look at it from this point of view.

If this Government does not accept that amendment proposed by the Member for Tabaquite, we would tell the population that they are mamaguying them and are not interested in dealing with the criminal system and the criminals. They do not want to increase the number of judges but they are creating a greater number of offences and making them non-bailable. How will you deal with it? This Government is trifling and mamaguying this population. This Government is not really serious. At one time in 2005, the Supreme Court of Judicature (Amdt.) Bill was presented to this House. The Supreme Court of Judicature Act should have been amended in order to increase the number of judges from nine Appeal Court judges to 11 and puisne judges, that is First Court instant judges from 23 to 29. If we had put the system in place and brought this legislation, people could have had their trials and you could have dealt with them. This Government is a vindictive government; this Government is a wicked government; this Government is a spiteful government, especially the Prime Minister.

Mr. Speaker, do you remember when that Bill came to Parliament, it moved from No. 6 or 7 on the Order Paper and went to No. 1. When the Bill reached No. 1 on the Order Paper this Government removed it. We asked the Prime Minister—you all were not here at that time—and the Member for Diego Martin North/East: Why did you see it fit not to amend the Supreme Court of Judicature Act to

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increase the number of judges? “Cyah answer? Playing deaf. Yuh have stick in yuh ears.” To show how they do not care about crime, this Government threw it off the Order Paper. Do you know why? To spite a judge! You talking about kidnapping and dealing with crime? You had an opportunity to increase the number of judges and you did not do it because Sat Sharma was the Chief Justice and for reasons best known to the Prime Minister, he never wanted Sat Sharma.

5.15 p.m.

He never wanted Satnarine Sharma as the Chief Justice. [*Interruption*] Hold on. Reason? Satnarine Sharma was the judge next in line to become Chief Justice. They pushed him down and they brought de la Bastide from the outside because, they said, Satnarine Sharma would have had 11 years or 12 years as Chief Justice. They brought de la Bastide in 1995, so that he would take seven years out of Sharma’s term. They cut the length of Sharma’s term as Chief Justice. Having done that, in order for Sharma—that is what we are asking the Prime Minister to say—to get the appointment, there had to be a national outcry. They were forced to appoint Justice Sharma. From the day they appointed Justice Sharma, he was hounded by this Government for reasons best known to this Government.

Instead of trying to deal with crime, increasing the resources for the Judiciary and increasing the number of judges, we moved the Act to amend the Supreme Court of Judicature Act, just to make sure that Chief Justice Sharma was not the Chairman of the Judicial and Legal Service Commission when those appointments had to be made. What you talking about kidnapping and non-bailable offences? When you look at the two situations, one would see that you had an opportunity to increase the number of judges and you refused to do it. Now you are bringing legislation to increase the workload of the Judiciary and you are not increasing the number of judges.

When you watch what is going on, you would see this PNM Government is merely “gambarging”. This is a Government that does not implement any law. They are lazy, incompetent and inefficient. Imagine, on Friday, March 16, 2007 when they were introducing this same Bail (Amdt.) Bill, the Member for Diego Martin North/East in debating, they never had intentions of implementing this kidnapping law. If you hear the foolish and spurious arguments they brought to this Parliament. I quote from the Member for Diego Martin North/East:

“Let me go to the figures again. In 2005, there were 52 kidnappings for ransom; in 2006, after the passage of the Bail Bill, it was 17; from 52 to 17, a 67 per cent reduction. [*Desk thumping*]”

They thumped the desk for that.

“That is in the public domain; that is in the courts; that is a matter of public record that kidnappings for ransom had been reduced in 2006 by 67 per cent. That did not happen by accident.”—not by implementation of the law and not by working—“That did not happen by accident. There were a number of reasons why, but the primary reason”—‘yuh ever hear foolishness like dat?’—“was that the kidnappers were out of circulation as a result of the passage of the Bail (Amdt.) Bill.”

That is why they are passing legislation. They are trying to frighten people and hoping when they frighten people, the crime will reduce. In truth and in fact you have not said in this Parliament or to this country, that the reason kidnapping had been reduced is because we implemented the law. “You ever hear jokey”—I do not want to use unparliamentary language—“foolishness like dat?”

Here, they are attacking us. The Prime Minister said that we are the worst Opposition. I want to ask the Prime Minister why. Hear what he said—This is the laziest and most incompetent Government we ever had. [*Interruption*] That is true? Member for Tobago East, you are asking me if that is true. He goes on.

“Members on the Front Bench opposite”—he is speaking about us—“can live in their own fantasy land if they wish.

Let me give you the statistics for 2007. So far, up to March 16, 2007, there have been two kidnappings for ransom; from 52 in 2005 down to 17 in 2006...”—He goes and asks the nation about us—“I wonder if ‘stick break in their ears’.”

That is the low level of debate that comes from that side.

I did not see the Member for Laventille East/Morvant. I want to congratulate her on her maiden speech.

Mrs. Nunez-Tesheira: What quality of debate?

Mr. S. Panday: From that Member? It is the first time she has spoken in Parliament. I think it would be inappropriate for me to comment on her. I would not do it. I would not behave like the Minister of Local Government, when she tried to harass one of our young Members of the Senate. We have more class than that.

“They cannot hear. Do they not understand or are they just wicked?”

The Prime Minister calls us the worst and that Member for Diego Martin North/East said they are just wicked.

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“Even a child in primary school can see that the Bail (Amdt.) Bill has worked”—because we have passed it—“There are no two ways about it.”

That is the reason for them passing this Bill. They have no intention whatsoever of implementing the Bill. That is why, maybe, the Member for Laventille East/Morvant had indicated only seven persons. We have been passing this Bill since 2005.

The hon. Attorney General gave that chronology of this legislation. The chronology of legislation started since 2005. We came here seven or eight times in this Parliament. The Chronology of 2005 is the Bail (Amdt.) Bill, 2005; the Bail (Amdt.) (No. 2) Bill of 2005; in 2006, the Bail (Amdt.) Bill, 2006 and in March 2007, the Bail (Amdt.) Bill. As a matter of fact, in 2007 the Bail Bill came to this Parliament on three occasions. In 2007, we had the Bail (Amdt.) (No. 3) Bill. What they did there was to extend the life of the Bail Bill for a period of one year.

We ask the question: Where are we really going? We must ask them also, at this point in time: Why do we have sunset clauses? We have sunset clauses, not only because the legislation is draconian, but because we want to make sure that we monitor the Government; to see that since this Government is headed by a dictator or somebody with dictatorial tendencies, we have to put checks and balances. As a result of that, we always had three months, six months and 90 days. That is why we had sunset clauses. Do you think when this Government gets this Bill without a sunset clause, it would be like a wild horse with nobody to look at them. They would then treat people as they well like.

If you do not accept the amendment from the Member for Tabaquite, then there will be a great necessity to ensure that the sunset clause is placed in this Bill. We came to the Parliament on such a number of occasions with this Bail Bill that the sunset clause created any impediment on the Government from performing under the Bail Bill? Tell us why you want to do away with the sunset clause. You cannot just come and tell us, hon. Attorney General, that you want this sunset clause to be omitted and not give us the reason. We want a rationale for it. We are giving you the rationale we have for the sunset clause.

If they do not accept the amendments raised by the Member for Tabaquite; amendments that are necessary to put the sunset clause, we are not going to support this Bill. You must not forget that this Government has dictatorial tendencies. You must not forget that this Government attempted to arrest politicians. This Government has attempted to arrest their own politicians. This Government has tried to arrest a Chief Justice.

There was once an Attorney General by the name of John Jeremie who caused the Integrity Commission to send documents to the DPP to have a sitting Member of this House arrested. When the Director of Public Prosecutions was dragging his feet, they got annoyed with the Director of Public Prosecutions. Mr. Speaker, as fate would have it, that Member was saved from being prosecuted for political purposes. One of their own, for political purposes, was prosecuted because they made an announcement that if you have a charge pending, you cannot fight the polls. They used legislation to try to destroy people politically. As fate would have it, that person went to the court; the same court they are trying to deprive people from going to, under this Act. That Member of Parliament had to resort to the court to save his skin. That is why we are saying that clause called the sunset clause was necessary to keep the Government in check from exercising that extra dictatorial tendency.

When one reads this legislation about what the Prime Minister said at that PNM rum and roti fete in Chaguaramas on Sunday—he said that the Director of Public Prosecutions must be independent. We are talking about draconian legislation. We are talking about draconian legislation when you are depriving people of their rights.

I want so say, like the Member for Tabaquite, we are not on the side of criminals. We want to see them go. We want to make sure that when you do it, you do it according to law and with due process of the law. Look at what is happening. They are bringing draconian legislation. At the same time, hear what the Prime Minister said on Sunday:

“The Director of Public Prosecutions must be independent on criminal matters.”

I agree with that. Everyone agrees with that. As a matter of fact the Constitution says that the Director of Public Prosecutions should be fully independent. But hear what this Prime Minister says; hear dictatorship:

“Regarding to official secret, terrorism, state-to-state relation, the DPP must have prior approval of the Attorney General. The system also allows for consultation between the Attorney General and the Director of Public Prosecutions.”

That is serious. They are saying “official secret”. What does that mean? It means if a certain Member finds out something and he speaks, they could pass into law a situation where the political directorate could have compelled the DPP “tuh lock yuh up”.

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Mr. Speaker, when they say “official secret”, I feel they want to lock up one of their own again. When they want to talk about “official secret”, the Member for Tobago East might go next, because “official secret” is for people to assess it. Mr. Speaker, assuming that is just the beginning of what will happen, when a dictator starts to erode the rights of people—he starts in small bits—then this would be the beginning of the end.

The Attorney General, the new member of the Executive, has no right to interfere with the Director of Public Prosecutions. [*Desk thumping*] His right is a constitutional right. He preserves the freedom of the people in certain circumstances where he decides he has the sole discretion whether to bring charges against people or to enter *nolle prosequi* against people. Politicians must never interfere with the function of the DPP. [*Desk thumping*] This Government has indicated its intention to undermine the criminal justice system. That is why Sir Ellis Clarke disowned this thing. My information is that people from the roundtable are asking who is the author of it. Nobody from the round table knows anything about it, and nobody wants to be associated with this PNM and this kind of draconian legislation.

Mr. Speaker, not only that! They are bringing the Bail (Amdt.) Bill in this Parliament to take away people’s fundamental right. One of the tenets of democracy is the separation of powers. It is said that the Judiciary must be jealously independent. Members of the Judiciary must not be independent individually—[*Cellphone rings*]

Mr. Speaker: The person who has that cellphone, please take it off. This is the second time for the day that I am hearing it. I cannot identify who it is coming from. Hon. Member, I heard you for the last couple of minutes, but you need to return to the Bail (Amdt.) Bill. [*Desk thumping*]

Mr. S. Panday: What I am saying is that this Bail (Amdt.) Bill is draconian and only a shortsighted person would view this Bill in such a myopic way. One must view the Bill in relation to the things that are taking place in the society and see how it impacts upon the people who you are trying to take away bail from and whose freedom you are trying to take away.

Although they are trying to make this Parliament judge, jury and executioner, we are saying it must not be so. Judges must perform their functions, and this Bail (Amdt.) Bill must be adjudicated by the Judiciary. Therefore, we are asking for an independent Judiciary. Mr. Speaker, I apologize to you if you feel that I was not

within the four walls of the Bill, but it was just to show you a holistic view of the operation of this draconian piece of legislation. [*Desk thumping*]

The Prime Minister said:

“The judiciary remains independent in judicial functions, but it is proposed that administrative functions associated with the judiciary are a matter for the executive, and will be carried out under normal public service arrangements through a Ministry of Justice.”

So, in one breath they are cursing the public service of being unable to perform its functions, and in this situation they are saying that they are going to deal with the Judiciary through a public service system. The question is: Are you putting pressure on judges when they have to interpret this legislation? We are saying, when you are passing draconian legislation, there is a necessity to ensure total independence of the Judiciary individually and the Judiciary as a group. That is the point I was making.

Mr. Speaker, clause 6 of the Bill says:

“The First Schedule to the Act is amended—

(a) by repealing Part II and substituting the following Part:”

So, in Act No. 18 of 1994, there were a number of offences which were under Part II, and they have taken them out from under Part II and put them under Part III. There are only a few offences under Part II and it says:

“(a) possession of imitation firearm in pursuance of any criminal offence;

(b) larceny of a motor vehicle;

(c) perverting or defeating the course of public justice;

(d) arson; and

(e) receiving stolen goods.”

Now, since you want me to return to the Bill, let me help you. Although in the Bill there is a paucity of information, if you read it like it is, it hangs on its own. You must read this Bill in conjunction with section 5 of Act No. 18 of 1994 and section 5 says:

“(1) Subject to subsection (2), a Court may grant bail to any person charged with any offence other than the offence listed in Part I of the First Schedule.

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- (2) A Court shall not grant bail to a person who is charged with an offence listed in Part II of the First Schedule and has been convicted on three occasions arising out of separate transactions—
- (a) of any offence; or
 - (b) of any combination of offences

listed in that Part, unless on application to a Judge he can show sufficient cause why his remand in custody is not justified.”

Mr. Speaker, that is why I was speaking about the independence of the Judiciary. This Government is sending a message to the society and to the Judiciary that it does not trust them and they are going to deal with them. If you are saying that the First Schedule of the Act is amended by repealing Part II and substituting that part, it means that Part II of the specified offences under this legislation—although this Bill speaks about no bail and so on—under Part II, a judge has the right to grant you bail if you can show sufficient cause why your remand in custody is not justified. So, you are saying no bail for all these offences, but if you read it in conjunction with the other Act, you are going to see that, in fact, they have the right to grant bail for offences in Part II.

What are you telling the Judiciary? You are saying to the Judiciary that they are not competent and you cannot trust them with serious offences and the society cannot trust them. So, you are leaving one or two small offences like receiving stolen goods, arson, perverting the course of public justice, larceny of motor vehicles and possession of imitation firearms in pursuance of any criminal offence for them to grant bail, but the serious offences they cannot grant bail for them.

So, this Bill is sending mixed signals. What they are really saying to the Judiciary is that they cannot trust them and they are not giving them that inherent right to deal with the freedom of the people. This PNM Government is taking away that power from the Judiciary. They are saying that the court has no power to grant Bail in very serious offences, but the Parliament is doing it. When you tie them together you could see the nexus between one and the other.

As you know, for them to tell us that they are asking us to support this legislation, we want to let them know that sometime ago, the Opposition and the Government met. That was on Friday, November 18, 2005. The Prime Minister came to this House and he praised the Opposition for coming to the rescue of this country in 2005 when they piloted the Bail (Amdt.) Bill. The Prime Minister went

on to say in a statement in the Parliament on the round talks with Members of the Opposition on the matter of crime, and I quote:

“It is well recognized that cooperative effort is the cornerstone of all great movements and achievements, as evidenced by the cooperative effort which resulted in that deciding historic goal being scored. I therefore believe it to be incumbent upon me to indicate to this honourable House and to the public at large, that our discussions over the past week were conducted in a similar spirit of cooperation...”

That is the Opposition who was cooperating with them.

“the victory being increased effectiveness and efficiency in our national battle.”—against the scourge of crime.

So, when they try to give the country the impression that the Opposition is not interested in crime, the Prime Minister, himself, has thanked us.

“One lesson of the past week is that progress feeds on cooperation and conversely, friction starves progress.”

That was the Prime Minister talking. Hear what he said, the same PNM who voted to throw out the Leader of the Opposition:

“I would therefore like to thank the Leader of the Opposition...for making the progressive step of agreeing to this new round of meetings aimed at addressing the scourge of crime that has been occupying national attention for several years, but, more so within recent times. It is therefore fortuitous that we have had an opportunity to meet on this matter of urgent national importance.”

He went on to reiterate:

“The underlying tenet of our discussions is that democracy is paramount in our system of governance, therefore, solutions to the issues must reflect adherence to basic democratic principles.”

Mr. Speaker, he was talking about democracy and democratic principles at that time. He went on to say:

“In order to ensure that civil liberties are not infringed, we agreed to make the legislation sunset legislation, that is, after a specified period of time the legislation dies. However, during the life of the legislation it would be continuously assessed and if at the end of its life it is assessed to have been effective, it would be re-enacted.”

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If at the end of its life it is assessed to have been effective, it would be reenacted. Mr. Speaker, we ask the question—

Mr. Speaker: Before you ask the question. Hon. Members, the speaking time of the hon. Member for Princes Town South has expired.

Motion made, That the hon. Member's speaking time be extended by 30 minutes. [*Mr. R. L. Maharaj SC*]

Mr. Speaker: I keep putting you in the wrong constituency.

Question put and agreed to.

Mr. Speaker: I keep putting you in the wrong constituency.

Mr. S. Panday: Mr. Speaker, I apologize for being so academic and dry. The question we ask is what has changed from 2005 to now to cause you to remove the sunset clause? The answer is, there is nothing! Because only seven persons are in custody and you are not working; you are not implementing the law and you merely trying to give the impression that by passing laws you will deal with the issue of crime.

My friend, the Member for Laventille East/Morvant, spoke about prison reform. She also spoke about the improvement in the police service. The United National Congress has made a fundamental contribution to the improvement of the police service when we gave them that modern system. The PNM has been so incompetent and inefficient that they undermined it.

When one looks at the index, one will see that out of 130 in terms of police reliability, we are No. 122. We are at the bottom of the list. The World Economic Forum says:

"With regard to safety and security we rank 107 out of 130. In reliability of the police service we rank 122 out of 130."

We are eighth to last in the world. I feel Afghanistan, Iraq, maybe Sri Lanka and one of those few countries are below us. We are at the bottom of the table. You ask the question: Why are we at the bottom of the table? It says:

"Business course of crime and violence we rank 124 out of 130 countries."

We are sixth to last. We joined this Government; we had discussions with this Government and we agreed with them to change the structure of the police service so that the police service, would be more efficient. After two years hear what is

our rating. What is our rating, Mr. Speaker? When my friend, the Member for Laventille East/Morvant spoke about the police service we asked the question: Why has the situation reached this stage? Could you pass draconian legislation like this when you have a world rating like this? When you are third to last in police reliability, that means you cannot rely on the police.

All of us who have been in criminal practice know that police plant things on people; not all policemen, a few. If the police want to get rid of you, they hit you one under the Kidnapping Act and you gone for good. Do you think you should pass draconian legislation like this when you have a police service that is run like this? The answer is indeed: No, we cannot do that!

If you had the police service working properly you probably could have said, "Let us come with the Act". During that round table discussion the Opposition and the Government had decided that the method and criteria for the appointment and removal of a commissioner of police and deputy commissioner of police are of paramount importance. So that an Act like this will come under its purview. The process must ensure transparency. The system of appointment and removal must result in the best persons being appointed, while providing a mechanism to allow non-performing commissioners to be dealt with.

The reason we agreed with them on this kind of Bill is because we had also agreed on the appointment of a commissioner. When the process had been gone through and they did not like the result they got, they brought the veto in the Parliament.

Mr. Speaker: We had this debate I think last week or two weeks ago. You need to really come back to the Bail (Amdt.) Bill.

Mr. S. Panday: Mr. Speaker, I am showing you that if you had a good commissioner we would say okay with the Bill. That is the point we are making.

Mr. Speaker: With due respect, I think you are bordering on irrelevance, so get back to the Bill. [*Crosstalk*]

Mr. S. Panday: Mr. Speaker, I understand that is what the Member for Laventille East/Morvant said about the police, you know. She spoke a lot on the prison service. [*Crosstalk*] We are saying that this Government is not interested in dealing with the crime because when they had a chance to improve the police service they did not do it. [*Desk thumping*]

How do you want to pass kidnapping legislation when you do not have a police service which could deal with this kind of legislation? You must have competent officers. This is serious legislation. You need to have competent police

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officers. If we pass this Bill as is, with the condition of the police service as it stands now, under this Government, innocent persons would be jailed for long periods without a trial. That is the point I am making.

We are talking about law. We are talking about law enforcement, and the persons who are supposed to enforce the law are the police officers. This Government has set a system in place where that will not happen. For example, Mr. Speaker, you may say I am bordering on irrelevance, but we need competent officers. In the last selection of officers the paper was leaked. [*Interruption*] Yes. Here is the paper that was leaked. [*Member raised paper*] It was leaked for the oral exams; for the promotion of corporals to sergeants, who are supposed to have knowledge to deal with this legislation. [*Interruption*] "Lock meh up if yuh want!" This was leaked before the interview. This was leaked before the process had taken place. What had happened is that this—just like how the CAPE was leaked—was leaked. [*Crosstalk*]

Mr. Speaker: Order!

Mr. S. Panday: And what you found happening was that—[*Interruption*] Yes!—you had people who were not competent but had the paper before the oral exam, went to the oral exam and passed the exam. Those are the people now you are asking to give effect to this kidnapping law. This is serious law.

The bandit is not here, you have the bandits in the Kidnapping Act. What about this, where you had policemen who had the paper before? And when they went there, competent police officers failed the exam and the people who were not qualified and were given these papers passed the exams. So, you know what happens in the court on this Kidnapping Bill? They had corporals and they made them acting sergeants so they could prosecute. When this bogus exam came and people who were unqualified or not qualified passed the exam, they became the sergeants, and the people who were acting sergeant were reverted to corporal.

Mr. Speaker, go to the courts now. I ask any one of you to go to the courts now—you asked me how I got this paper—and you will see the corporal teaching the sergeant how to prosecute. The corporal is teaching the sergeant how to prosecute because of this Government. This corrupted Government! This incompetent Government! And the joke, we are passing serious legislation here; we are passing legislation that will affect the lives and liberty of people and look at what is happening in the police service. They cannot go hand in hand.

You know what happened? They looked at a case file and they had all the answers. So, when another policeman, who is working hard, comes and gives

different answers and they did not like it, he got the wrong tick and competent police officers failed the exam. How could you boost public trust and confidence in your district and they had all the answers?

They had five persons with two questions each. You had three minutes for a question and 30 minutes, out, you are gone. There were people in the police service who were on suspension and a month before suspension their name got on the list and they got promoted. And policemen who worked very hard are suffering. But the joke is, all “yuh” want to pass draconian legislation. This is the kind of country “yuh” all are running?

Here is what they did, Mr. Speaker. They told the sergeant take off the three stripes. So, the corporal is in the court. But the law says that only a person of the rank of sergeant could prosecute. You know what they did? Before the promotion exam took place, there were vacancies for acting, so all these prosecutors were acting. When all the vacancies were filled there were no acting positions, so the prosecutors went back to corporal. When they realized what happened, you know what they did? They made acting appointment of corporal to make that—

Mr. Imbert: Mr. Speaker, point of order, 36(1).

Mr. S. Panday: I would speak about "arrestes" and "breakfastes". [*Laughter*]

Mr. Speaker: No, no, wait. I have to rule on the point of order, please.

Mr. S. Panday: Mr. Speaker, what is happening is—

Mr. Speaker: No, no, no. The Member has raised a point of order. He has raised 36(1), which talks about being relevant. So, I am allowing you to continue but I am urging you to come back closer to the Bill. I am not saying that you are not on the Bill you know. All I am saying is come back a little closer to the Bill. [*Laughter*]

Mr. S. Panday: Mr. Speaker, I want to really thank you for your generosity, because I remember one day you told that Member for Diego Martin North/East, "Oh, gawd, at least mention the name of the Bill to make it relevant." [*Laughter*]

I want to indicate after all the joke and fun, it is a serious piece of legislation. It is serious. And in order to implement this legislation you need to have a proper police system and we do not have a proper police system in the country. The system is corrupted. How could you have a corrupted system implementing such an important piece of law? That is why we are afraid to support this in this way. That is why we are asking, as the Member for Tabaquite said, let the people have some opening so that they could go to the courts and if they have any problems they could tell the court what is happening.

Hon. Member:—pass lie detector tests.

Mr. S. Panday: I will come back to that point. So, what they have done; in order to make the corporal have the capacity to prosecute, they again made him acting sergeant. Although there is no vacancy for sergeants in the police service at this point in time, because of the recent promotion, they still made them acting sergeants to prosecute.

6.00 p.m.

Hon. Member: Irrelevant.

Mr. S. Panday: Mr. Speaker, the question is—irrelevant? This goes to the crux of the matter. Police have to implement this law. [*Interruption*] I know what happen to you all. “All yuh feeling shame” that it happened like this. It is only under this Government that the CXC leak; “not only CXC leak, everything leaking; all yuh like a tank with all the water leaking”.

Hon. Member: Pipe is leaking.

Mr. S. Panday: Everything is leaking.

Mr. Speaker, that is why it is frightening! If you do not have a good policing system be careful of the kind of laws you are making.

Hon. Member: They would lock you all up.

Mr. S. Panday: Be careful of the type of laws you are making. As I said before this is a kind of Government that will influence certain police officers to lock up their own Members.

Hon. Member: That is true! [*Desk thumping*]

Mr. Ramnath: [*Inaudible*] will win the election against the Prime Minister's slate. Look it here. [*Shows newspaper*]

Dr. Gopeesingh: “Jerry give them a jerry.” [*Laughter*]

Mr. S. Panday: Mr. Speaker, I am certain that, as I told you before, this Act cannot be looked at in isolation, but the Act must be looked against the backdrop of the package of legislation which we passed. [*Interruption*] The Police Reform legislation; the Kidnapping legislation; the DNA legislation, all these were passed in one package of legislation. That is why when you speak—[*Crosstalk*]

Mr. Speaker: Order, please!

Mr. S. Panday:—about the Kidnapping Bill, you cannot speak about the Kidnapping Bill in isolation, but you must speak about the Kidnapping Bill in conjunction with the package of crime legislation which we the Opposition—[*Desk thumping*]

Hon. Member: Nine pieces of legislation.

Mr. S. Panday: Nine pieces of legislation, Mr. Speaker. The reform of the Police Service was a major part of that reform of the package of legislation.

Hon. Member: Three police Bills.

Mr. S. Panday: Do you know that this Government, because of their incompetence, their laziness and inefficiency, they blamed everybody. The more things change is the more they remain the same. *[Interruption]* We thought when the old battalion went, because everything that happened, UNC is the fault, UNC's fault! You know these chickens come here and before they can even crow *[Laughter]* they are casting aspersions, UNC is the cause, blame the UNC. *[Interruption]* "If you know how all yuh sound, eh"? *[Crosstalk]*

That is why they have reached a stage that they blame the UNC when things do not work; they blame the public when things do not work, and they are so shameless that when there is nobody else to blame—what they blamed the last time with Stephen Williams?

Dr. Moonilal: The process was flawed.

Mr. S. Panday: Process was flawed. A process which they, this Cabinet—all of you—drafted legislation 165 and you came *[Interruption]* that Member for Port of Spain North/St. Ann's West, you are like a mannequin, you are hollow inside. *[Crosstalk]* Do not heckle me—*[Crosstalk]*

Mr. Speaker: No! The same Standing Order 36(4) that was quoted just now talks about:

"It shall be out of order to use offensive or insulting language..."

Mr. Ramnath: That is not offensive language.

Mr. Speaker: No, it is offensive. As much as you may dislike the Member, take that outside, not inside the House. So please. *[Crosstalk]*

Mr. S. Panday: I apologize.

Mr. Speaker: You need to withdraw the statement and then apologize. *[Crosstalk]* So, you have to withdraw the statement, please.

Mr. S. Panday: Mr. Speaker, I want to tell you, I want to humbly apologize to the hon. Member and say that he looks so beautiful, nice and very charming. *[Interruption]* I really want to apologize to him.

Mr. Ramnath: Instead of mannequin, use Manning.

Mr. S. Panday: Mr. Speaker, as I say, we are willing to support the legislation provided that we have in this legislation the protection of the rights of the people. *[Interruption]* If they pass this Bill and this Bill ends up in the court and prisoners are set free because of the incompetence of this Government, we want to say “it is dem to blame, not we”.

Thank you, Mr. Speaker.

The Minister of Works and Transport (Hon. Colm Imbert): Mr. Speaker—*[Desk thumping]*

Mr. Ramnath: Cow has now entered the debate.

Mr. Speaker: No, no, please! Again, Member for Couva North, you cannot say that. You can say that outside, not—

Mr. Ramnath: *[Inaudible]*

Mr. S. Panday: Yes, but I am hearing it.

Mr. Ramnath: I will tell you in your ears alone.

Mr. Speaker: *[Laughs]* I know, say it outside not inside. Please continue.

Dr. Moonilal: Not that it is not relevant.

Hon. C. Imbert: Mr. Speaker, I rise to make an extremely brief intervention, just to deal with the points, very briefly, made by the Member for Tabaquite, and to some extent by the Member for Princes Town North. The Member for Tabaquite made two and a half points. The half point was that there is no justification for this legislation because we have not presented any data to support it. That is the half point.

The first point the Member for Tabaquite made is that there is no time limit for the completion of the trial of an accused person who has been denied bail under this legislation.

And the second point made by the Member for Tabaquite was that bail or the right to liberty is a fundamental right. The Member then went on to say that as a consequence of these two and a half points the Bill may be struck down by the courts because it may be deemed to be improper in a society that has respect for the rights and freedoms of persons. Now, the fact of the matter is, at this point in time the Government is satisfied that the due process provisions in the legislation, namely, the right of a person to be brought before the court with prosecution

commencing within 60 days of reading of the charge, and if that does not happen the person is entitled to make an application to a judge in chambers for bail—we are of the view that that satisfies the test in the Constitution, that you are not to be denied your fundamental rights and freedoms except without due process. That is our view at this point in time. So, we do not agree with the point made by the hon. Member for Tabaquite that this legislation is in fact altering the Constitution and requires a two-thirds majority. We are of the view that our three-fifths majority—which we do have, all 26 PNM Members are here today—is adequate to pass this Bill; we are of the view that it simply infringes sections 4 and 5 of the Constitution, and the due process provision deals with the point made by the Member for Tabaquite.

The point made by the Member for Princes Town North, that there should be a sunset clause, the fact of the matter is, we only put a sunset clause in the legislation on the last occasion because we did not have a three-fifths majority.

Hon. Member: That is the reason.

Hon. C. Imbert: We were of the view then as we are of the view now that there was no requirement for a sunset clause. We required the support of the then minority Opposition, the Congress of the People who gave us the support, but the condition that they put in was that the Bill should expire, in other words, it should be sunset legislation. We had no choice. We accepted the conditions imposed by the minority Opposition at the time and that is why the sunset clause was put in. Now we have a requisite three-fifths majority and therefore we do not believe that the sunset clause is necessary, because we do not believe that this Bill alters the Constitution, and we believe that our three-fifths majority is adequate. Before I take my seat—

Mr. Ramnath: Dangerous people.

Hon. C. Imbert: The point is that we intend to vote on this Bill today and we intend to pass this Bill. On a previous occasion when this matter was before this House—

Mr. Ramnath: Listen to the arrogance, “nah”.

Hon. C. Imbert:—we made the point that at that time there were 32 persons—and this is to deal with the matter [*Interruption*] of statistics. We were of the view then and we told this House that there were 32 persons incarcerated, awaiting trial who the authorities believed—not us—were involved in organized kidnapping for ransom and because those 32 persons were incarcerated at the time there had been a serious reduction in kidnapping. In fact, the number had gone down by some 70 per cent while those 32 persons were incarcerated. So, it was

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proof then and it is proof now that this Bill is justified, and that if we do not pass this Bill we run the risk of repeat offenders coming back out on bail and committing these serious offences. So, we do not accept the amendment of the Member for Tabaquite at this point in time. However, we feel that the Member for Tabaquite has made some very important points.

Mr. Ramnath: Do not mamaguy him.

Hon. C. Imbert: No, it is a fact. [*Interruption*] Very important points and this Bill will be going to the Senate in the first week in September—

Mrs. Persad-Bissessar: I do not trust you.

Hon. C. Imbert:—because there is insufficient time for the Senate to deal with this matter before the vacation period. The Senate intends to conclude its business on July 30, for the vacation period. The current Bill expires on September 18—it is just necessary to put this information into the record—so that there will be at least one month for the Government to seek expert advice on the points made by the Member for Tabaquite to see whether they have any merit. As we stand here today we do not believe they have any merit.

However, out of an abundance of caution during the period from today to the first week in September we will be seeking expert advice on the points made by the Member for Tabaquite to see whether they have any merit. If, by some remote possibility there is a bit of merit, those matters will be addressed by the Attorney General, if need be in the Senate. For those reasons we on this side see no reason to accept the amendments proposed by the Member for Tabaquite today because we have ample time; we have an entire month to study them, to see whether they are in fact meritorious, and therefore we are going to vote, the Government will be using its three-fifths majority to pass this Bill today.

I thank you, Mr. Speaker.

Mrs. Kamla Persad-Bissessar (*Siparia*): Thank you, Mr. Speaker. I have been forced to intervene in this debate, [*Interruption*] because when I listened to the hon. Member for Diego Martin North/East I became really concerned with respect to the abuse of power that we see being practised by this Government. [*Desk thumping*] When the hon. Member could stand here at this time this evening and tell us that the reason we are not going to put this subclause now is because we do not need you, we do not need your votes, we have a three-fifths majority, well heaven help us if you ever get a two-thirds majority. And that is what you wanted but you did not get; God was good and the country made sure

that did not happen. [*Desk thumping*] Because if you had that two-thirds majority, Mr. Speaker, you would not be in that Chair, with due respect to you, Sir, or this Opposition would not be in this Parliament; because it is very clear, from the words coming out from former PNM Members, the Member who sat as the Leader of Government Business, Kenneth Valley, about the dictatorial tendencies of that Government. So we see it here today manifested in once again the really arrogant attitude of the Member for Diego Martin North/East.

I listened last week Friday and I know we would not go back, but if you will allow me in passing, the Member for Caroni East dealt with it, but the arrogance of the Member and the abuse that he perpetrates on people in his language, his personal attacks that he comes with. [*Interruption*] So, he said to us on this side, on the one hand, we will consider the proposals put forward by the Member for Tabaquite, but on the other hand we are going to pass the Bill anyhow. It is duplicitous; it is hypocritical; it is sheer hypocrisy.

Mr. Maharaj: He did Dr. Rowley the same thing.

Mrs. K. Persad-Bissessar: Yes, he did the same thing to Dr. Rowley. So if it is that you want to seek advice, why are you rushing to pass the Bill? And then he gives us the answer. Well, listen, we have a three-fifths majority today and we are going to pass it. [*Interruption*] He does not know if he will get that tomorrow. [*Laughter*] He does not know if he will have it next week, because at the rate they are proceeding—again, as I am saying, I understand from the newspapers that there are Members on the other side who ran against the chosen candidates of the Prime Minister in their internal election and so on, so their heads may be on the block. We may see others joining the Back Bench on this side because they disagreed with the Prime Minister.

Dr. Moonilal: Welcome, welcome.

Mrs. K. Persad-Bissessar: It may well be, I do not know. So he is going with the three-fifths. [*Crosstalk*]

Mr. Speaker: Order!

6.15 p.m.

Mr. Speaker, with due respect, if you are breaching fundamental rights, you must only do so as the Member for Tabaquite quite rightly pointed out, and gave you the recent House of Lords decision that where there is clear and present danger, it must be sheer necessity. This Government has not convinced us; has not in any way demonstrated that this is essential; that there is clear and present

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danger; and that this is the answer to that clear and present danger. That is why I asked the hon. Attorney General for the number of persons on bail without jail.

The Member for Laventille East/Morvant said there were seven of them. I ask: "Are these seven persons who have gone over the 60 days, or were they recent persons who have been charged and arrested?" Because when the hon. Attorney General spoke last year in this House, we also sought the information, and at that time that the Attorney General said there were eight. So if there were seven, one has gone somewhere. I do not know where that one has gone because I do not know of any convictions with respect to those persons who had been charged, but this is vital information that I want to put on the record.

When the hon. Member for Couva North, as Leader of the Opposition in this Parliament, in a debate—I think it was during a budget debate—accepted the invitation of the hon. Member for San Fernando East, the Prime Minister of the country, for a team of Members from the Government side to meet with a team of Members from the Opposition side, with respect to—people would call it "crime talks", I prefer to think of them as "anti-crime talks" because we were looking at what could be done in order to deal with crime, and that has been dealt with here. But I think it is very important that we go back and focus as to what was agreed to then, and what has transpired.

I was a Member of that team headed by the Member for Couva North. We went to the Prime Minister with his team, comprising his then Attorney General; I believe the Member who was then the Member for Arouca North, then honourable, still hon. Camille Robinson-Regis; the Minister of National Security and others from the other side, and the only thing that the Government had on the table that they wanted the votes for, was this Bail Bill. That was the only thing. They wanted to set-up no bail for these offences of kidnapping for ransom and they said, "Okay, we need your support for the package of Police Bills, but we want your support for the Bail Bill." There was nothing else. We want you to support this Bail Bill.

We thrashed out the agreements based on that, but we put into the mix, several other matters, and the hon. Prime Minister came to this Parliament and told the Parliament what were the terms of the agreement. I think the Member for Princes Town has identified some of those. The terms of the agreement were very simply this: we will give the special majority vote for the Police Reform package; we will give the special majority vote for the Bail (Amdt.) legislation; and we will also deal with other pieces of legislation, as the Member for Princes Town has pointed out. But it is important to remember what those are and to see what has happened.

So, the Prime Minister said, "We will come here and deal with Equal Opportunity." That was the condition. Do you know up to today that has not been met? Up to today in spite of the judgment, a judgment from the highest court for this country, that promise from the Privy Council decision—[*Interruption*]

Mr. Maharaj SC: There is another decision to come on Monday.

Mrs. K. Persad-Bissessar:—and there is a second decision to come on Monday, I understand from the Member for Tabaquite—we still do not have the Equal Opportunity Commission. The support in this House was predicated upon, that the next set of talks would have included amended and strengthened the Equal Opportunity legislation.

The Member for Diego Martin North/East has spoken about the support that he got from the back bench then, the Congress of the People (COP) and that was also one of their conditions to include equal opportunities. We did not support it because we said that we felt that the equal opportunity legislation was so vital and you had breached the agreement with respect to that, so we would withhold our support for the Bail legislation. Fine, so Equal Opportunity was one of it.

We had other things dealing with, the Breathalyzer. I heard one of the Members speak about Breathalyzer and DNA, is that in force? Has that been implemented? I do not know. I do not think it has been and I would be glad—yes, I do not believe it has—if the Member could tell us where it is at. Because the DNA legislation was 2000 legislation and this Government was of the view that they need to amend, and amend, and amend, and it took many six years to do so. Got it done; came back here and had it passed; and it is still not implemented. What is happening with Breathalyzer and DNA? Tell us, because those were part of the Bills with respect to the package that we had agreed upon.

Further, in those meetings, we had also agreed that the Government will look at compensation for the protective services because that Act was so deficient. It was so flawed that members of the protective services—police, fire and army—were not getting the kind of compensation that they needed in this high-risk society in which we are living and in which they are protecting and serving—the police officers. That was part of the agreement in 2005, and we have not seen anything to deal with the protective services compensation legislation to help these police officers, to make sure that when something happens to them in the line of duty, their families, children, spouse and so on would be taken care of. Nothing has happened with that.

Further, it was agreed that the Criminal Injuries Compensation Act would be amended to raise the ceiling of the amounts for compensation for victims of

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crime. That law was passed as well in 2000, and up to today, as we stand here and as we sit here July 2008, more than eight years later, not a single victim of crime has been compensated by this Government. Not a single victim; not a single one. So the feeling was—[*Interruption*]

Mr. Ramnath: Shame!

Mrs. K. Persad-Bissessar:—you would raise the ceiling—because the ceiling was \$25,000 maximum—to \$250,000.

Mr. Speaker, a Bill did in fact come to the Senate increasing that ceiling maximum for victims of crime, and it was increased to \$50,000. Again, that was in breach. The agreement, as contained in the *Hansard*, as read out by the hon. Member for San Fernando East in this Parliament, was for a \$250,000 ceiling; nonetheless that Bill went to the Senate. Debate on it began and there were 11 sittings after that debate, but the debate was never completed. The Bill was never passed in the Senate and has never been brought to this House.

So here we are concentrating on one aspect—no, I am not going to wind up, Member for Diego Martin North/East. I will speak, because I have a right as the Speaker would say. I have 75 minutes and we have others who wish to speak—victims of crime compensation legislation. Where is it? When the hon. Member for Tabaquite read out the number of persons who would have been—because if you had a total of 106,683 serious crimes, then you would have 106,683 victims of crime, and not a single one has been compensated.

In fact, several years ago, we had cause to file matters in court to even get the tribunal appointed. The victims of crime compensation board was not even set up. It was only when the court mandated that the Government set up the board, the board was set up, but when you try to find this board to send your applications and so on, you cannot find them. It is the case of the “missing victims of crime” compensation board. You cannot find them. They too might have become a victim of crime, I do not know. It is in the Ministry of the Attorney General. I think they are still sitting there, somewhere. I do not know because that is the last place we were able to locate them or locate at least the chairman of that board, sitting in the Office of the Attorney General. It falls under the portfolio of social development, but the physical desk was in the Ministry of the Attorney General.

We had sent some applications there. I do not know what has happened with those, as I know not a person has been paid, and secondly, the legislation has not been amended. So the priorities being given to come to this House to borrow ad infinitum, the development loans and the treasury bonds, and to borrow millions,

and millions, and billions of dollars, but no priority is being given to the victims of crime in this country. I would like the Government to tell us something about that because that was part of the package when this Bail Bill was involved.

In that same package, we talked about the setting up of a gun and kidnapping court. What has happened to that? We come repeatedly to the Parliament to change the Bail Bill, but all the other measures that were agreed upon to deal with crime, they are not here before us. So I am saying, on those issues we need to hear you and we need to see where you are coming from. I want to say that I am totally not convinced by what the Member of Parliament for Diego Martin North/East said. I do not know if any of us are convinced that you have reason to proceed to pass this Bill today, simply because you have your 26 Members here and you have your three-fifths majority, so that you can railroad the Parliament into something even though in your heart, I think you know it is wrong. *[Interruption]*

Dr. Moonilal: He has no heart.

Mrs. K. Persad-Bissessar: That is why you are protesting. You know it is wrong, but that is the nature of the creature that you will go as a puppet and cast the vote even though you know it is wrong. That is what you are going to do. *[Interruption]*

Mr. Ramnath: You want to put Rowley on the spot.

Mrs. K. Persad-Bissessar: So you want to put that there. When I asked the question—and now I come back to the numbers, as the Member for Tabaquite had indicated, the Bill says this it is going to be doing these things because, “Whereas it is necessary and expedient for the provisions of this Act shall have effect even though inconsistent with sections 4 and 5...” The hon. Member spoke to this House and said, “Look, I do not have the facts.” What are the facts? You are asking us—you are tying my hands behind my back and in front my face. We do not have the facts, and therefore, how are you asking us to be convinced to support.

Mr. Speaker: From the side, the hon. Member said that, “I could not understand how you could do this, and do that at the same time.”

Mrs. K. Persad-Bissessar: That is why he smiled. At first he said, “You are tying my hands behind my back”, than he said, “In front my face...” I think what he meant, some of us were being tied with our hands behind our backs, and some of us were being tied with our hands in front. I think that is what he meant, but the most operative word would be “hands tied”. We did not have the facts—thank you for advising us—so we requested these. And now the only fact that has come forward is that there were seven persons.

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When I look at the same statistics with a new eye, quoted by the hon. Member for Tabaquite, again, it does not convince us that it is necessary and expedient. Can I just step back one second? In the crime talks, the reason that this Bail Bill was given a sunset clause was that we felt that in those periods of time when we had to come back to the Parliament, you would be able to come and give a review of the operations of the Act; how successful it was; what had been done; whether it has been working; whether it has been operating, and therefore, you would then go forward with another sunset clause or go forward with the Act. We never had that kind of review.

We have never had that an Act has not been enforced so many persons have been in jail without bail under this law. The 60 days have expired and so many people have never been brought to trial. Nothing! Why is there this reluctance to give that data first of all; and to disaggregate the data? It must be because it would not help their case; it would not help the justification for this Bill, and therefore, as the Member for Tabaquite said and I repeat, "This is just a PR gimmick." It is a PR gimmick to give the population out there—look, they feel we are fighting crime; we are doing something.

So we come back, seven persons. Let us look at the statistics provided by police and quoted by the Member for Tabaquite: kidnapping for ransom in 2003, 31 reported. Mr. Speaker, when these cases were reported, we must remember a whole lot of other extortion rackets are going on where people do not report kidnappings, or where they have to pay the money up front. What is it called? *[Interruption]*

Hon. Member: Coward tax.

Mrs. K. Persad-Bissessar: Coward tax. You pay the money up front, so these statistics are not real, so we know this is a problem. Listen again: in 2002, 31 reported; 15 detected—50 per cent. In 2003, 50 reports; 12 detected—12 into that is 25 per cent. In 2004, 28 reported, only eight detected; so 20 not detected. In 2005, 58 reported; 15 detected. In 2006, 17 reported; eight detected. In 2007, 14 reported; two detected.

When we take those numbers together, we are talking about 198 reported cases of kidnapping and out of these, only 65 have been detected. But if there were 65 detected, how come there are only seven people in jail without bail under this law? I do not understand it; the statistics do not make sense. From the police figures, out of the 198 reported cases, 65 have been detected. So if 65 have been detected, I would expect to get the statistics to tell me, out of those 65 detected,

how many have been convicted. If they have not yet been convicted, are they inside jail without bail awaiting trial? No. Because if it is only seven of them, it means that you have detected 65, but you did not arrest the “fellas”, or the “fellas” escaped, or they went, or the 60 days came and went, or they died? Is that what you are saying, they died? Sixty-five minus seven, all “dem” people dead?

6.30 p.m.

Mr. Speaker, I did not know that persons in the prison service were dying at the rate of 65 minus seven, 58. Fifty-eight persons died? Please be honest and give us the statistics.

We have nothing in this House to give us the strength or the confidence to say that this Act is working, has worked and is necessary. You have done nothing to show that it is necessary. You have done nothing to show that it is expedient; yet, not only do you come to convince us to pass it, but you come to say, “We want to put this in perpetuity.” This is no longer with a sunset; this is like forever; permanent. [*Crosstalk*] You have totally taken away a jurisdiction that was vested in the court. I want to come back to what the hon. Member for Tabaquite said. [*Interruption*]

Again, the total disrespect of the Member for Diego Martin North/East about two and a half points. Let me tell you something: Those two and a half points he made, were better than the 15 points you made any day. [*Desk thumping*]

Mr. Manning: Says who?

Dr. Moonilal: Says the brilliant Opposition!

Mrs. K. Persad-Bissessar: They were very valid points.

There is the case with respect to the Caribbean Court of Justice (CCJ) Act, which the Opposition in Jamaica took to the Privy Council. The Privy Council said that where you were attempting to take away a jurisdiction from the court—it is vested in the court by the Constitution—you could not do it; it was unconstitutional. You would need the requisite majority, because you were altering the whole structure of the Constitution.

That was the point the Member was making. He quoted his cases, but certainly the CCJ case that went to the Privy Council, that was what he was saying. He used the case of Hinds, coming out of Jamaica, and earlier cases where they had set up these Magistrates’ Courts. They had tried to set up the gun court as a special court, and the Privy Council ruled: “Look, you cannot take a jurisdiction that is vested in judges of the Supreme Court and give it to those who

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did not have the kind of protection.” The principle is this: Where you are attempting to amend, by implication, the constitutional structures, with respect to the separation of powers and the Judiciary, you cannot do it with this three-fifths majority.

So the Member feels that he has his three-fifths and he is going; that was what the Member for Tabaquite said. He said that you were now giving those criminals out there, the very ones you want to keep behind bars, a reason, a way out, a loophole, to come out and be back out there on the streets. That was why the Opposition offered a compromise, a balance, because, at the end of the day, you have fundamental rights under the Constitution, but no rights are absolute.

The Constitution recognizes that there must be a balancing of rights, so there are the individual fundamental rights and there are also the rights of other individuals. What the Constitution does—and it has been proposed in constitutional jurisprudence—is that you have a balancing of the interests of the society, of the other individuals, as against the liberty of a particular individual, which is what is happening here; the alleged kidnapper, the alleged person charged with these offences, and so on. There is a balancing. You could obtain that balancing without totally depriving a person of their rights, by using the formula proposed by the Opposition, through the Member for Tabaquite.

We are saying that the normal law is that a man is entitled to bail, but because of these circumstances, at this time, we are of the view that we would not depend on a single magistrate to make that decision; we would not depend on a single judgment in the High Court to make that decision; let us place it in the hands of three judges of the Supreme Court, and let them make the decision as to when a person is charged with something, they would weigh all the facts, they would weigh all the issues, and then make a decision. What is wrong with that?

I could tell you what is very wrong with 60 days, no bail, you cannot even apply, you cannot do anything. You have extended the list of offences again. When this began, it was about kidnapping for ransom. Every time we came back to this Parliament, the Bill came adding new and more and more offences. It is the creeping dictatorship that Kenneth Valley spoke about, because each time you are taking away the rights of added groups of more and more people, each time you bring this Bill back.

The scourge was about kidnapping for ransom, and that was the first amendment made. The law already had that for treason and murder. Bail was not allowed; that has been in our law from time whenever. You came with kidnapping for ransom as a third tranche and you said: “Look, let us not do this.” You come now and you are extending the offences to other things.

When you listen to the human rights report put out by the United States, just two lines out of that; when you read what is happening, you really have to be very concerned that a man could be in there for five, 10 or 15 years, he has no right to apply for bail, but he may be totally innocent; he may be completely innocent.

We have this document from the U.S. Department of State:

“Trinidad and Tobago.

Country Reports on Human Rights Practices—2007

Released by the Bureau of Democracy, Human Rights, and Labor

March 11, 2008”

That was just a month or two ago. This was what they said about Trinidad and Tobago, which we know, but this is what they were saying from their research:

“Lengthy pretrial detention resulting from heavy court backlogs and an inefficient judicial system continued to be a problem. Out of a prison population...inmates awaited trial at year’s end. Many persons under indictment waited months, if not years, for their trial dates in the High Court. An added inefficiency resulted from the legal requirement that anyone charged and detained must appear in person for a hearing before magistrate’s court every 10 days, if only to have the case postponed for a further 10 days, pending conclusion of the investigation...

On September 10, authorities released Ulric Merrimick from prison six months after his original sentence ended;”

“De fella in jail”; the sentence ended and they did not know. He was in there for six months, since September last year.

“due to delays in the court system and administrative oversight, he remained in custody while awaiting a hearing on his appeal.”

The U.S. Department of State human rights report on practices here in Trinidad and Tobago. I have raised this issue on numerous occasions in this Parliament; that there are over 472,000 cases pending in the Magistrates’ Courts; 472,00 cases before 40 magistrates. There is no way, when you take a man and say, “You are not getting any bail”, he has no hope in sight of getting out of there for years, because you have 472,000 cases pending in the Magistrates’ Court; and by now it is more. [*Crosstalk*]

How could we feel comfortable saying, “You will never get bail”? Sixty days we will bring you to trial; you do not bring them, you could go and apply to the

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High Court. What you could do in 60 days is take evidence for five minutes, so you would have satisfied a partial requirement of the Act, and keep that man in there, or keep one of you in there, if it should happen to be you, or one of your relatives. I do not want to speak about anybody's family, but there are persons who are before the courts who we know, who may be relatives of politicians sitting here. They may be your relatives who are outside. [*Crosstalk*]

Dr. Moonilal: Children!

Mrs. K. Persad-Bissessar: And so it is totally dangerous to have a provision like this where there is absolutely no redress. That was where the Member for Tabaquite, once again, on behalf of the Opposition, gave a formula that would strike a balance, with respect to our fear of the criminals, but, at the same time, the balance to give the fundamental rights of the individual to uphold and honour those.

Again, I ask the Government to seriously reconsider its position. We ask you to seriously do that, to give some kind of further consideration to the proposals of the Opposition, with respect to the formula. We are saying, "Look, you will not have to go through the normal channel of going before the magistrate or the one judge before the High Court; you have three Supreme Court judges." If you cannot trust these persons, who will you trust? If we cannot trust three judges of our Supreme Court to use their discretion to decide whether a person charged with one of these offences should or should not get bail, then who can we trust? Who can we have confidence in?

It is all well and good today to rubber stamp this and vote for it, when tomorrow morning it could be you or one of your family members who might be wrongfully charged or wrongfully arrested, because the charge does not mean that you are guilty, caught under this Bill, and inside in a cold cell; inside a jail for upwards of five to 10 years before any bail comes. Hon. Members, please reconsider.

I, again, endorse the hope that the caucus discussed this. The Opposition caucus totally endorsed the formula put forward by the hon. Member for Tabaquite.

I want to close with the words of the hon. Member for Couva North, when we last had the debate on this matter. Opposition Leader, Mr. B. Panday, replied on our behalf. He said:

"...the UNC denied support to the Bill when it was first presented by Government last year, since it contained loopholes through which power could be abused, 'given the propensity of this government to abuse power.'

'But this isn't the time or place to discuss this...we leave it for another day,'...the latest PNM/UNC crime talks had removed the Bill's potential for abuse of power.

But though the Bill would receive the required Opposition support for passage, he said, it might still be struck down by the courts as being unconstitutional.

Panday warned that legislation alone wouldn't solve crime and that Government shouldn't hype the bill to the public as a Christmas gift which would stop kidnapping immediately.

The Bill would be meaningless without attention to the management and administration of justice, he said adding that improvements are needed in courts for more judges, recording equipment, infrastructure and for night court systems."

A remand court. We have talked about that so many times before; carrying these persons every 10 days up and down the country—you see these "Justice on Time" vans; spending a set of money—to run prisoners all over the country to adjourn their cases; when we could have done that right at the prison there, with the remand courts proposed.

Mr. Panday went on further.

"Panday expressed concern about one aspect of the Bill.

Acting Leader of Government Business Mr. Colm Imbert and others on the PNM front bench immediately assured him, 'We'll fix it; we'll fix it.'"

The words from the Member for Diego Martin North/East.

"Panday replied approvingly, 'How I wish all legislation would come in the month of December.'"

To the Parliament, with the Opposition support.

"...Panday said the Government no longer had anyone to blame for crime and accuse of obstructing the bill"—meaning the Opposition—

"Those charged with categories of kidnapping can be held for 60 days...

The three strikes clause: no bail for 60 days for repeat offenders...

Sunset clause:"

Mr. Panday also said on that occasion: "Even though we gave our support on that first occasion and the Bill had been passed with the requisite three-fifths at that time, it could still be struck down in the courts under section 13, if it is not reasonably justifiable." The Member for Tabaquite has dealt at length with that. I know that the hon. Attorney General dealt with many, many cases on that whole term of art in law, "reasonable and justifiable" in our society. We have found a balance; we have found a way.

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While we are doing all of this, we have come to deal with only amending bail for this, when we have a lot of problems out there with bailors. We have absolutely no regulation of professional bailors in this country. That is a problem that has gone from way back. Former Chief Justice, Sir Isaac Hyatali, since October 23, 1973, in his opening speech, talked about that:

“...bail bonds are and have been permitted for far too long to be a shady source of wealth to professional bailors. Moreover they constitute a privileged class of citizens in the country since they pay no taxes on the fees which they mercilessly extract from their hapless victims. This, it is said, is at least 10% of the quantum of the bond.”

This is what persons take in order to use professional bailors.

He continued:

“Unfortunately and most regrettably, some of our Justices of the Peace allowed themselves to be used by these harpies to wreck the integrity of the system which was devised to ensure that bona fide bail bonds were executed by honest citizens.”

That was in 1973.

Again in 1987, the then Chief Justice, who would have been Mr. Clinton Bernard, repeated these words. As recently as December 02, 2007, Senior Counsel, Hendrickson Seunath also expressed his dismay and concern when it came to dealing with these professional persons dealing with bail bonds.

There was a story carried in the *Trinidad Guardian* 2007, headlined:

“Poor people victims of bail system”

Senior Counsel Hendrickson Seunath said:

“There is no provision for professional bailors and that is something we need to look at in light of the various problems we have been having like people tendering false documents.”

I would like to recommend or suggest to Government that they consider bringing legislation to this Parliament similar to those you would find in the United States, which deal with the establishment of a professional bail bonds board, with the role of licensing, supervising, disciplining and educating all bail bond agents and surety recovery agents.

We have had this problem for a long time. It is not something that only came about recently. I know, Mr. Speaker, without bringing you into the debate, that you may be familiar with some of the issues of these professional bailors, when it comes to dealing with bail bonds.

6.45 p.m.

Since the Member for Diego Martin North/East is saying that he will consider our amendments and the fact that he is going to decide right now. Mr. Speaker, before that vote is taken on these issues, I say that we remain very concerned that this measure in this Bill can be the subject, the weapon, the tool and the mechanism for abuse of power in the hands of police officers who may charge persons.

“A fella vex with somebody man, some man vex with somebody else, or a wife is angry about something, makes report, ‘arrestses’ somebody.” It may be scandalous but it happens, it is the reality of the world.

Hon. Member: “Arrestses”?

Mrs. K. Persad-Bissessar: “Arrestses” yes, ask Mr. Joseph, I have learnt from him and, therefore, this person is arrested and ends up charged with one of these offences. “Fella” I am telling you, ladies, friends, colleagues, it could be any person in this country.

Somebody does not like you, somebody is spiteful and could use this to ensure that you do not get bail and you remain in jail. Again, I commend to you the Opposition’s formula to take the balancing and let it go before three Justices of the Supreme Court.

With these words Sir, I thank you.

The Attorney General (Sen. The Hon. Bridgid Annisette-George) Thank you, Mr. Speaker. In winding up this debate I would like to touch on a number of issues raised by hon. Members on the opposite side.

The hon. Member for Siparia spoke about abuse of power, another Member indicated that this Bail Bill was another abuse of dictatorial powers by this Government. I want to ask, through you, whether or not a Government’s function is to exercise power for the benefit, improvement and protection of the welfare and safety of its citizens, and if a government exercises its power for that purpose, whether we can in all honesty term that an abuse of power. [*Desk thumping*] Maybe that is why on the November 05, 2007 the citizens of this country voted to have us here and you there. [*Desk thumping*]

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[SEN. THE HON. B. ANNISSETTE-GEORGE]

We believe that there is a real danger to the wholeness of this society posed by perpetrators of violent and serious crimes, and we see it every day so it is not a question of something that is speculative. It is real and the citizens of Trinidad and Tobago tell us every day. Listen to the talk shows, read the newspapers, serious crimes are prevalent and real in Trinidad and Tobago.

There are approximately 20 persons at this time in prison who have been charged with serious offences under the amendments to the Bail Act, Chap. 4:60 which have resulted from the amendments in the year 2007. These accused are no minions, they are serious offenders and maybe that is why there is a discrepancy between the figures that the hon. Member for Siparia and the hon. Member for Tabaquite quoted in terms of the numbers detected and the numbers in prison under the Bail (Amdt.) Act and it is to show that this legislation does not affect the ordinary accused, but a particular category of accused. Therefore, the fears that the hon. Members on that side have tried to paint about how draconian this legislation is, is in effect, unfounded because it does not affect the ordinary criminal or the lives of the majority of citizens in Trinidad and Tobago.

Further, I want to particularly address some of the issues raised by the hon. Member for Siparia who sought to paint a picture that this Government has been dilatory in many of its legislation and implementing a lot of legislation. She particularly referred to the Equal Opportunity Act and I would like to recall for the hon. Member for Siparia the history of the Equal Opportunity Act. Those on this side had serious issues about the constitutionality of the Act, that matter was tried and tested and only finally determined, and the hon. Member for Tabaquite will know quite well—I think it was October 15, 2007—the Privy Council ruled that the Government should implement the Equal Opportunity Act immediately.

We would recall that in October 2007, Trinidad and Tobago was in election mode and shortly after this Government was installed, the Government came into office. The election was on November 05, the Prime Minister was sworn in on November 07, and the other Members were sworn in on November 08 and all Members virtually took office the following week. And it would have been late in November 2007; the Attorney General took a note to the Cabinet indicating the status, the position and the ruling of the Privy Council in the case of *Suram v the Attorney General* which dealt with the Equal Opportunity Act. The Cabinet came in on November 08, 2007 and in December 2007, it took a decision to implement the Equal Opportunity Act and since then, steps have been actively taken to bring about the birth of the Equal Opportunity Commission and the tribunal.

I am sure it has not escaped Members on the other side, I guess they were invited by His Excellency and if I recall from the newspapers, they opted not to attend. It is in April of this year that the Commission was appointed, the Chairman of the Commission is Prof. Le Guerre and I am sure everyone here knows who the other members of the commission are. I am also sure that it has not escaped the attention of the Members on the opposite side because they tell me that the *Newsday* is the best newspaper and I have seen it in the *Newsday* where a recent report that the Chairman of the Equal Opportunity Commission has been quoted as saying they had received 10 complaints and have not as yet had permanent accommodation. There has been published also a notification under the name of their Administrative Officer V, so steps are being made to bring the Commission into full operation.

This Government also allocated and found funds to put the Equal Opportunity Commission in money. Some \$10 million was allocated and identified for fiscal year 2007/2008. So the Commission is doing all that is possible to come into being. An interim structure has been approved and of course, we know that Trinidad and Tobago has reached full employment and, therefore, finding adequate human resources in Trinidad and Tobago in 2008 takes time.

Be that as it may, steps are being taken and pursued with vigour to bring the Commission into full operation. The tribunal, as hon. Members on the other side and all Members of this House know, has to be appointed by His Excellency and in a press release in April 2008, the newspapers quoted His Excellency as indicating that the post of Chairman of the Tribunal will be advertised by the Judicial and Legal Service Commission to appoint a Chairman to the Tribunal. So I want to debunk any idea that this Government has been dilatory in bringing into being the Equal Opportunity Commission and the Equal Opportunity Tribunal.

The hon. Member for Siparia also spoke about the Criminal Injuries Compensation Board and I want to report, certainly just for the purposes of accuracy that it has been established and appointed and from the very contribution of the Member for Siparia, she has acknowledged this, because she has indicated the tracing of the location of the board. It is currently situated in Beacon Building which is upstairs the Ministry of Social Development and the Criminal Injuries Board has made determination on several applications, and I have been advised that shortly people are going to be advised of the awards made with respect to the compensation. [*Interruption*] Mr. Speaker, awards have been made, what I have said is that applicants will soon be notified.

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With respect to the DNA legislation, it has been assented to; there was no proclamation clause so there was no need for the President to proclaim it. The DNA legislation was assented to since September 28, 2007 and, therefore, it is law. There have been reported cases in the newspapers about the use of DNA in matters before the courts in Trinidad and Tobago. I would hasten to admit that there have been certain administrative challenges in terms of implementing certain provisions of the DNA Act, but this Government has not sat down idly. An implementation committee has been set up and has been working assiduously to bring full implementation of the DNA legislation. So any claim that we do not keep promises, that we are dilatory, that we seek to avoid implementing legislation which will assist in the fight against crime, I will submit is quite an erroneous assertion.

I would deal with some other matters particularly with the issues raised in the contribution by the hon. Member for Tabaquite and in dealing with the rights of a person charged with a criminal offence. The hon. Member referred this Chamber to the case of A and others and the Secretary of State, which is a decision of the House of Lords of the United Kingdom and it related to the Terrorism Act and he indicated that in interpreting constitutional provisions, and where they affected constitutional rights, it was really a question of the principle of necessity. The Member for Tabaquite from his illustrious career would know that the decisions of the House of Lords in Trinidad and Tobago are merely persuasive and although the membership of the House of Lords on that occasion would have comprised members who sit on the Privy Council, I am certain that the hon. Member appreciates that the House of Lords is a totally different body from the Privy Council.

7.00 p.m.

By section 109 of our Constitution, the Privy Council is the final court of appeal of Trinidad and Tobago and when it sits, it sits as the final court of appeal of Trinidad and Tobago as if it were located in Trinidad and Tobago and applying the laws of Trinidad and Tobago. We are bound by the decisions of the Privy Council and not by the decisions of the House of Lords. So that the case of Morgan and the case of De Freitas, which I referred to when I originally made my contribution, are the cases that are binding on Trinidad and Tobago. In those cases the Privy Council set out what will be the criteria in determining whether or not the provisions are reasonably justifiable in a democratic society, and those are whether the legislative objective is sufficiently important to justify limiting a fundamental right; whether the measures designed to meet the legislative objective are rationally connected to it and whether the means used to impair the right or freedom are no more than is necessary to accomplish the objective.

So it is my submission that this authority of *A and Others and the Secretary of State* is not binding and is of very little persuasive authority in Trinidad and Tobago. It was really founded on the United Kingdom's obligations to the European Union's conventions which we are not party to. We are not bound by those, so that I would be very careful in using *A and Others and the Secretary of State* as any sort of authority for the interpretation of the Constitution of Trinidad and Tobago.

Further, the hon. Member for Tabaquite really proposed a very creative solution which, in the contribution of the hon. Member for Diego Martin North/East, he indicated that it is a proposal that we are quite prepared to consider having received the necessary advice. I have serious concerns with that proposal—as creative as it may be—as it is. In our law, the accused person is allowed a three-tier process in obtaining bail: the Magistrates' Court; the High Court and then the Court of Appeal, and that is enshrined in the Bail Act at sections 9, 10 and 11. The way I understand the proposal of the hon. Member for Tabaquite, I really see that as taking away a right, in that it would remove the right of the accused to approach the Magistrates' Court in any event for bail. That, to me, would be interfering with a constitutional right.

Further, when I consider the proposal, the hon. Member for Tabaquite has proposed three judges to hear bail. That is attractive, but then on the substantive matter there would only be one judge. So it appears that the application for bail weighs more heavily than the substantive matter. In any event, the accused would have a right to appeal to the Court of Appeal, which would constitute one judge reviewing the decision of three judges. So, as I said, it is a proposal that we would consider. It is creative and we will consider it upon advice.

With respect to the issue of the constitutionality of the proposed amendment in terms of the majority which would be required, the hon. Member for Tabaquite again, in this contribution, referred to section 54(5) of the Constitution and sought to suggest that the proposed amendment would require a two-thirds majority as it infringes section 4 of the Constitution. I wish to submit that what this Bill seeks to do is to restrict the right and not take it away and, therefore, it will fall under section 13 of the Constitution and not section 54.

Section 54, in my submission, will be applicable if there were a Constitutional (Amdt.) Bill. We do not have a Constitutional (Amdt.) Bill before us. We are not taking away section 4 or any of the provisions under section 4. I think when one looks at section 5 of the Constitution, it makes provision for the abrogation, abridgment or infringement of any rights and it further sets out that if one is going to do that, then it is subject to section 13 and we have, in the preamble, set out

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that these provisions are inconsistent and therefore require the necessary majority set out under section 13, which is a three-fifths majority.

Further, in one of the contributions, and again I think it was from the hon. Member for Tabaquite, I seem to get the impression when he again referred to *A and Others and the Secretary of State* that if there is a recognition in international law of a particular ruling or a particular practice, then that makes it reasonably justifiable. What I wish to say is that in terms of “reasonably justifiable”, if I take that argument to its logical extension, there is, in international law, precedent for what we are trying to do here. I refer to the position in the State of California in the United States of America, where there is a three-strike law; that a person gets no bail after three convictions of certain offences. That is under section 66(7)(b) of the California Penal Code and sections 1170(12) of the California penal code.

The United States Supreme Court has ruled that the California three-strike law is constitutional. In fact, the Supreme Court in the United States of America has said that the law was not unreasonable or disproportionate, in that the Court has said that certain repeat offenders may be locked up for long periods for relatively minor crimes, ruling that a sentence of up to life is reasonable for a criminal person stealing three golf clubs.

So there is precedent in the international arena for what we are trying to do here. Again, we say it is in the interest and for the protection of law-abiding citizens in Trinidad and Tobago. There is talk about this being evidence of a dictatorship. I want to say, because we are taking steps to protect law-abiding citizens against hardened prey, against criminals, that cannot be a dictatorship; that must be Government 101. We would learn what a dictatorship is, and nothing here suggests or would qualify to warrant any sort of description of dictatorship. The Members on the other side, I surely believe, do not believe that; they do not accept that.

I would also like to say, in closing, that I have heard the hon. Member for Siparia talk about bail reform. We on this side recognize and accept that bail reform is important; it is crucial. We have had a two-day symposium with Justices of the Peace, looking at recommendations, and it is in keeping with consultations with stakeholders. The aspect of bail bond houses has come up and it is being considered by consultants to see whether it can fit into this society; the ethos; the practices; the culture and customs of Trinidad and Tobago.

In closing, I would again ask the Members on the opposite side to support this measure. I would also wish to say that in hearing the contribution of the Member for Siparia and, particularly, the point that she made with respect to the 60-day

time limit and that it is quite possible that on the 59th day the matter is started and adjourned from time to time, every ten days and a year passes, two years pass. Having heard that contribution, I would like to say, through you to the hon. Member for Siparia, that active consideration would be given to maybe putting in a further amendment which would say that if within some time frame—so the matter has started under the 60-day limit but has not been completed, let us say, in three or six months, then the person can make an application for bail. So something like that would be considered between now and when we go to the Senate and may be included in the Bill in the Senate and then come back here. I think it is a point really worthy for consideration. The Bill is drafted on the assumption that the court system will be up and running, but I think the points that have been made as regards the “efficiency”—I want to put it that way—of the judicial system is worthy of merit. So that consideration would be given to that.

Therefore, Mr. Speaker, I want to again urge Members on the opposite side to support this Bill in the interest of the people of Trinidad and Tobago and when this Bill is presented in the Senate, I give the undertaking that the statistics that the hon. Members on the other side have called for would be presented.

I therefore 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.

Clause 1 ordered to stand part of the Bill.

Clause 2.

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

Mr. Maharaj SC: Mr. Chairman, I just want to record that our position is that the Bill is not inconsistent with sections 4 and 5; that it alters the Constitution.

Mr. Imbert: Mr. Chairman, we would just like to record that at this time we do not believe that to be the case.

Question put and agreed to.

Clause 2 ordered to stand part of the Bill.

Clause 3 ordered to stand part of the Bill.

7.15 p.m.

Clause 4.

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

Mr. Maharaj SC: Mr. Chairman, I beg to move that clause 4(4) be amended by deleting the words, “A Court shall not grant bail” and inserting the words, “Bail shall only be granted by the High Court to comprise not less than three judges”.

I want to put on the record that the Government does not seem to understand what was stated. The purpose of this amendment is to ensure that the jurisdiction of the Supreme Court is not abolished. This measure abolishes the jurisdiction of the Supreme Court with this class of cases.

In other words, the Supreme Court’s jurisdiction in granting bail in this class of cases is taken away. Since the Attorney General mentioned the Privy Council, there were two cases in the Privy Council which said that if you do that you are altering the Constitution. In the case of *Hinds and the Queen*, Lord Diplock expressly stated that and your lawyer in London before the Privy Council used that the other day. The other cases if the Independent Jamaica Human Rights; the CCJ’s case.

I am saying this because I am of the firm view that the Government will have to come back here to ask us for support not only for this but also to validate what has happened in the past. I know that the Government has made up its mind and is going ahead. I am asking again, before they go to the Senate they should consider this matter seriously.

Mrs. Persad-Bissessar: I join in endorsing what the Member for Tabaquite has said. I am convinced by those two Privy Council decisions which I mentioned in my contribution, in addition to the issues of access to the court. We are talking about altering the jurisdiction of the Supreme Court. In order to do that section 54 tells you that you need a two-thirds majority. The Attorney General dealt with the issues raised by the Member for Tabaquite. I did not hear any response in your winding up with respect to that submission, that you are interfering with or altering the Judiciary’s functions. I ask again if you will respond to allow us to consider whether or not we should vote for this.

Mrs. Annette-George: We got some statistics at this last moment and it shows that there are 67 persons in prison at this time. There are 58 who have not been convicted and nine who have been convicted of kidnapping and offences under the Kidnapping Act.

I said that in the other place we will give some greater detail. This shows that it is necessary, expedient and real and not some speculative fear.

Further, with respect to the point just made by the hon. Member for Siparia, we are of the view that the function of the Judiciary in terms of the exercise of its discretion to grant bail is still enshrined even with the amendments. Section 5 of the Bail Act talks about the general principles.

Mrs. Persad-Bissessar: Clause 4 said that the court shall not grant bail. The right is totally taken away. In clause 5 you have a kind of delay. Clause 4 says that a court shall not grant bail. In this regard you have abolished it without the requisite majority.

Mrs. Annisette-George: We do not accept the view of the other side. We have given the undertaking that between now and when we go to the Senate, we will get advice. If that is the case we would amend accordingly. I have heard what the hon. Member for Tabaquite said and if that is the case we would have to come back here.

Mr. S. Panday: Madam Attorney General, section 5 is that of Act 18 of 1994 which relates to Part II of this amended Bill. When you spoke of that right to bail, it is not to Parts I and III but Part II.

Mrs. Persad-Bissessar: You would be creating a lot of jobs and legal fees for some of your friends in the legal fraternity.

Mrs. Annisette-George: Apparently, hon. Member for Siparia, you do not accept the undertaking that it will be looked at. The fees for the friends in the legal profession will not take place.

Mrs. Persad-Bissessar: That is fair enough. We look forward to that. We have had certain things said here in this House that will be done in the other place and it has not happened. The hon. Attorney General is reiterating that consideration will be given and opinions will be sought. We ask for a copy of such opinion and not leave it that when you go in the Senate you will do “X” or “Y” in good faith. We share your concern in this regard.

Mr. Manning: I want to underscore what has been said by my two colleagues, the hon. Attorney General and the Member for Diego Martin North/East. We have heard what has been said on the other side. We will check between now and the time it will go to the other place to see what the facts are. We are of a particular persuasion at this time. We have a point of view to which we subscribe. If it turns out that our view is wrong, we would make the

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appropriate adjustments. If it turns out that our view is correct, then, we confirm it in the other place. Nobody's rights are being threatened by the course of action which we are now contemplating. It is entirely in order.

Mr. Imbert: To correct the record, the draftsman has drawn to my attention that in the parent Act section 5(2) reads as follows:

“A Court shall not grant bail to a person who is charged with an offence listed in Part II of the First Schedule...”

That has been on our statute books since 1994 for 14 years and it was passed with a three-fifths majority. To correct the record we are doing nothing different from what has existed on the law books for 14 years. It has not been challenged or overturned.

Mrs. Persad-Bissessar: The hon. Prime Minister has given the undertaking to take certain action. Then, the hon. Member for Diego Martin North/East jumps in and changes the whole face as put forward by the Prime Minister. I will listen to the undertaking given by the Member for San Fernando East and look forward to whatever opinion he may get. We will be guided by that. That is fair enough.

Question put and agreed to.

Clause 4 ordered to stand part of the Bill.

Clause 5.

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

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

In clause 5(a)(1) delete the words, “a Court shall not grant bail” and insert the words, “Bail shall only be granted by the High Court to comprise not less than three judges.”

Delete clause 5(a)(2).

I will not elaborate further. I have explained it in my contribution on the floor of the House.

Mr. Speaker: I will imagine that the same explanation will suffice.

Question put and agreed to.

Clause 5 ordered to stand part of the Bill.

Clause 6 ordered to stand part of the Bill.

Preamble.

Question proposed, That the Preamble be approved.

Mr. Maharaj SC: The Attorney General has said that there are no sufficient facts to satisfy the principle that these measures are necessary and expedient. The Government has shown that it is not prepared to accept the principles given by the Judicial Committee of the House of Lords in the Reaky case. In my respectful view, the Government cannot not contend that this Bill is necessary and expedient, for it to be inconsistent or altering the Constitution.

Mrs. Anisette-George: On this side we accept the view that the test is reasonably justifiable in a democratic society. Having regard to the decision of the Privy Council, that is determined by whether there has been an arbitrary or excessive invasion of the guaranteed right according to the standards of a society that has a proper respect for the rights and freedoms of the individual. I reiterate the three pronged test which was set out in the authority of De Freitas and say that that is the binding principle and not necessarily excuse.

Question put and agreed to.

Preamble approved.

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

House resumed.

Bill reported, without amendment.

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

The House voted: Ayes 26

AYES

Imbert, Hon. C.

Manning, Hon. P.

Nunez-Tesheira, Hon. K

Gopee-Scoon, Hon. P.

Kangaloo, Hon. C.

Abdul-Hamid, Hon. M.

Dumas, Hon. R.

Ross, Hon. J.

Taylor, Hon. P.

Swaratsingh, Hon. K.

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Parsanlal, Hon. N.

Beckles, Miss P.

Mc Donald, Hon. M

Hunt, Hon. G.

Le Gendre, Hon. E.

Browne, Hon. Dr. A.

Callendar, Hon. S.

Cox, Hon. D.

Jeffrey, Hon. F.

Hospedales, Hon. A.

Joseph, Hon. R.

Hypolite, N.

Regrello, J.

Rowley, Dr. K.

Roberts, A.

Ojah-Maharaj, Mrs. I.

The following Members abstained: R. L. Maharaj SC, Mrs. K. Persad-Bissessar, Dr. R. Moonilal, Dr. T. Gopeesingh, V. Bharath, S. Panday, C. Sharma, W. Peters, Dr. H. Rafeeq, H. Partap, N. Baksh,

Question agreed to.

Bill accordingly read the third time and passed.

PROCEDURAL MOTION

The Minister of Works and Transport (Hon. Colm Imbert): Mr. Speaker, in accordance with the Standing Orders, I beg to move that the House continue to sit until we have dealt with the matters on the Motion on the Adjournment.

Question put and agreed to.

ADJOURNMENT

The Minister of Works and Transport (Hon. Colm Imbert): Mr. Speaker, I beg to move that the House do now adjourn to Wednesday, July 23, 2008, at

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1.30 p.m. on which day we will do the pension amendment Bills. We are very specific about this. They are the Teachers Pensions (Amdt.) Bill; the Assisted Secondary School Teachers Pensions (Amdt.) Bill and the Pensions (Amdt.) Bill. It is the Government's intention to move a Procedural Motion on that day, that these three Bills be taken together so that we would have one debate on them.

We had considered adjourning to Monday, but certain important matters of State will be taking place on Monday and that is why we have gone to Wednesday.

7.30 p.m.

Mr. Speaker: Hon. Members, before I put the question on the adjournment, there are three matters to be raised. The first matter to be addressed would be that of the Member for Siparia.

**Penal/Debe Drainage Programme
(Government's Non-provision of Funding)**

Mrs. Kamla Persad-Bissessar (*Siparia*): Mr. Speaker, I thank you for giving us leave to raise this matter on the adjournment: Government's non-provision of funding for the extension of the drainage programme to abate flooding in the Penal/Debe region. We had filed this last week and last Friday it was deferred. Since then, I am sure you may well be aware, it is public knowledge, of what happened in our region yesterday with respect to the flooding—flood tide in the region.

I am very happy that the Minister is here. We did meet on Wednesday, in the Local Government Consultations, and I indicated to the Minister that this was a matter on the adjournment and that consideration should be given to it. I would not be very long because, basically, we are here in this House on behalf of the residents in the Penal/Debe region and my own region.

Yesterday, in my constituency, several things happened, which made it even more urgent. At Bobb Trace, on Penal Rock Road, the wooden bridge has been washed away. Those residents are cut off completely. There was extensive flooding on Clarke Road, 1 mile mark to the 3 mile mark; Rochard Road; areas around Ramsabad Trace; and in Sumanie Trace there was a landslip into a person's home. The road is now threatened. If we do not prepare it, there is a possibility that they would not be able to pass. One home is certainly affected with the landslide on the hill of the Sumanie Trace. Other affected areas are: Bunsee Trace Scale Yard; Lachoos Road; Penal Rock Road; outside Sou Sou Land; Jhulai Trace Junction; Mohan Street, in front the cemetery; and around Goodman Trace Junction.

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There is flooding in:

- low areas from Monkey Town along the New Colonial Road, No. 2 Scale, along the Rochard Road all the way to the Penal Rock Road;
- low areas on the Penal Rock Road from the 1 mile mark to 6 1/2 mile mark;
- low areas from the No. 2 Scale Junction all the way on the Rochard Douglas Road; and
- low areas on the Clarke Road 1 mile mark at Oliverie Drive all the way to the three 3 mile mark on Wilson Road Junction.

These are the areas that have been most hit with the recent heavy rains that took place a couple of days ago when we were supposedly on a storm watch. Fortunately the storm never came, but we did get very heavy rain.

Our region is approximately 240 square kilometres, 60 per cent of which lies within the Oropouche Drainage Basin. As I have said before, there are 20,000 households and 85,000 people within the region, so there is a tremendous demand for drainage facilities, box drains, as well as the cleaning of the unpaved drains and watercourses.

I am advised that three agencies are responsible for the cleaning of watercourses within the region. Formerly there were four, but now there is the Penal/Debe Regional Corporation; the Ministry of Works and Transport, Drainage Division; and the Ministry of Agriculture, Land and Marine Resources, Drainage Division. Caroni (1975) Limited is no longer operational, which has put a greater burden on the Ministries of Works and Transport; Agriculture, Land and Marine Resources and Local Government, through the PDRC. There is a greater burden now that Caroni is no longer doing that work. They did a lot of cleaning work of drains in Caroni (1975) Limited lands.

In fact, in my own constituency, the Defence Force has set up something called Camp Serette, which is in the constituency, on a piece of former Caroni (1975) Limited land; all of which would have been cleared and drains would have been taken care of by Caroni (1975) Limited, but that is not happening anymore. There are two Ministries that are responsible for cleaning of the watercourses, other than roadside drains. Caroni (1975) Limited also had a major responsibility for cleaning of their fields, drains, outfalls, as well as areas around the Oropouche Swamp in the La Fortune district, where they had planted hundreds of acres of cane. Caroni (1975) Limited also cleaned the outfall channels within the Oropouche Lagoon, in the area bordering the Mosquito Creek. These are all overgrown.

I am advised that each year, the releases for the cleaning of drains and watercourses—not only the Penal/Debe Regional Corporation (PDRC), but also the Ministries of Works and Transport and Agriculture, Land and Marine Resources—are not sufficient to permit a comprehensive cleaning programme. On several occasions, at the monthly regional coordinating meetings, at which these Ministries are represented, they have pointed out the scarcity of funds to maintain these works. As a consequence, there is never a coordinated and comprehensive watercourse maintenance programme in which the three bodies act in concert and the annual funds have now become a feature of the Penal/Debe region.

For example, when the PDRC cleans its drains and watercourses, these outfall into the watercourses of both the Ministries of Works and Transport and Agriculture, Land and Marine Resources. The Ministry of Local Government does some. When they clean those, they have to go into the Ministry of Agriculture, Land and Marine Resources drains. The Ministry of Works and Transport has not cleaned theirs. It is not a concerted effort. Again, the result is these massive floods that come about.

In 2006, farmers and homeowners suffered a loss of \$20 million from two massive floods. This data was supplied to the PDRC unofficially by members of both the Ministries of Community Development, Culture and Gender Affairs and Agriculture, Land and Marine Resources. In 2006, following these floods, I recall we met with the hon. Prime Minister in the Penal/Debe region where the hon. Prime Minister had undertaken to give some assistance.

In 2006, the PDRC prepared and submitted to the Ministry of Local Government a comprehensive estimate in the sum of \$68 million for a complete overhaul of the drainage system within the region, with a shorter version in the sum of \$2.2 million for immediate work. Regrettably, both the long term request and the short term request have received no response to date.

In 2007, again following the floods, a detailed flood relief programme titled *Desilting of Water Courses*, in the sum of \$1.6 million, was submitted but we have not had responses to that.

In March 2008, a request was made for short term funding. We know that there is a scarcity of funds and it cannot go for \$68 million, which would be for the entire drainage of the area, but they are requesting \$1.3 million as of March this year. The PDRC officials are saying if this money is released, there is still enough time to undertake a clean up of watercourses campaign to reduce the potential for flooding.

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Hon. Minister, we ask that you use your good office—I believe the letter was sent to the Ministry on March 11, 2008. I do have a copy. It sets out the areas and the projects that they would be able to cover on this additional \$1.3 million. We ask, through you Sir, that the Ministry of Local Government, through the hon. Minister, may make available some additional funding, given what has happened yesterday. That is the first thing.

Secondly, through you, whether the Ministry of Social Development would be minded to come into the area and let us see. I know this has been done when the Prime Minister visited a couple of years ago. The social services people came in to give immediate assistance where people's homes were flooded, their beds, groceries and mattresses and so on. I would ask, through you, if the hon. Minister of Social Development would be minded to consider the plight of these people who have been flooded out. We could probably speak. We need to do it as of this weekend, where we can get some personnel into the area to assist.

I want to thank you very much for your time.

The Minister of Local Government (Sen. The Hon. Hazel Manning):
Thank you very much, Mr. Speaker. I rise to respond to a Motion on the Adjournment that speaks to Government's non-provision of funding for the extension of the drainage programme to abate flooding in the Penal/Debe region.

I am not responsible for Caroni (1975) Limited lands or the Ministry of Works and Transport, and I am therefore going to concentrate on the non-provision of funding for the extension of drainage programmes to abate flooding in the Penal/Debe region, as carried out by the Ministry of Local Government.

The Ministry of Local Government, according to the Municipal Corporations Act, No. 21 of 1990, is responsible for the construction and the maintenance of all drains and watercourses except the main watercourses and the highway watercourses. I am not going to speak of those and the funding provided.

The funding that is going to be provided here is going to be limited, as I have said before. We get funding from, in this particular instance, the Public Sector Investment Programme, the Recurrent Expenditure and the Infrastructure Renewal Improvement Development Programme (IRID).

For fiscal 2008, the Penal/Debe Regional Corporation was allocated over \$5,527,347; for PSIP, \$400,000; for recurrent expenditure, \$3,527,347; and for IRID, \$.16 million. The Penal/Debe Regional Corporation received over \$5.5 million to be utilized for the construction of drainage infrastructure.

On November 19, 2007, this corporation made a request to the Ministry of Finance for release of the entire allocation of the PSIP of \$400,000. They said that they had eight projects to do. The eight projects which cost approximately \$50,000 each were: Picton Settlement, Laltoo Trace Extension, Samai Trace, Hillpeace, La Plaisance Road, Old Seebalack Trace, Naipalia Trace and Ramroop Trace. On November 30, 11 days after they made the request, the Ministry of Finance released the requested sum of \$400,000 and, therefore, the corporation was able to use that for the drainage and irrigation programme.

By the end of March 2008, that is during the dry season, this corporation completed all eight projects at a cost of \$352,750. I want to congratulate this corporation. They did that within time and within budget, actually having a balance of over \$47,250.

After diligently researching our files, to date we have noted that the Ministry of Local Government has seen no request from Penal/Debe for transfer or virement to enhance this allocation, nor has the Ministry seen any request for supplementary funding for drainage works under the PSIP for the midterm.

Under IRID, to date, that corporation has been awarded contracts in the sum of \$1,289,512.50. These contracts were awarded for the construction of 18 box drains. I want to identify the box drains: the Palmiste Development; Lalbeharry Trace; Boodoo Trace; Gopee Trace from Ramsook's residence; Nancoo Trace; Concord Road; Humming Bird Drive; Post Office Trace; Naipalia Branch Trace; Goodman Trace; Naipalia Trace; Ramsuhag Trace; Seebalack Branch Trace; Ramsingh Trace; Mulchan Trace; Bunsee Trace and Mendez Trace. The Penal/Debe Regional Corporation is at present preparing estimates also for utilizing the balance that they had of \$310,487.50.

I now come to recurrent expenditure, because they also get money under recurrent. The Penal/Debe Regional Corporation did request supplementary funding for the midterm in the amount of \$13,947,174. Included in this, there was a request for \$1.3 million for drainage works under contracted services for the maintenance of state traces. The justification given by the Penal/Debe Regional Corporation for this request was that the original recurrent allocation of approximately \$3.5 million was insufficient and that the additional sum of \$1.3 million was needed to award contracts for the construction of 16 box drains.

7.45 p.m.

Again, I want to call out the box drains. They are Katwaroo Branch Trace, Goodman Trace, Congo Village Road, Gopee Trace, Mulchan Trace, Gandhi Village Road, Maude Street, Pearl Street, Batchia Trace, Picton Settlement,

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Jamonie Trace, Ramrattan Maharaj Trace, Concord Road, Dumfries Road, Picton Settlement, Satnarine Trace and Seebalack Trace.

Mr. Speaker, the Ministry of Local Government has historically always responded to requests for additional funding to address priorities in that region. Municipal corporations would send in their listing and we would do that. To illustrate that, in fiscal year 2005, at a meeting with municipal corporations with the then Minister of Local Government, Minister Dumas, determined that drainage was a priority, and the amount of money that could be usefully expended was \$5 million. The Ministry of Local Government made representations to the Ministry of Finance and secured a supplementary allocation of \$70 million at the midterm—that is \$5 million per municipality for drainage and irrigation works. It should be noted that this additional funding of \$70 million was, again, repeated in fiscal year 2006. I am sure that this is more money provided at any time by those on the other side.

Mr. Speaker, in fiscal year 2005, the Penal/Debe Regional Corporation received an original allocation of \$750,000 plus \$5 million at the midterm. This shows that throughout the years this Government has been providing funding and support for development in that area. In view of the excessive flooding of the municipality during that year, the Ministry of Local Government made further representations on behalf of the Penal/Debe Regional Corporation to the Ministry of Planning and Development, and a further supplementary allocation was made only to the Penal/Debe Regional Corporation, resulting in a total allocation to that municipality of over \$10 million. To be exact, approximately \$10,380,000 was given to the Penal/Debe Regional Corporation in the year 2005.

Mr. Speaker, of this revised allocation, the Penal/Debe Regional Corporation requested and was released the sum of \$7,505,000. It should be noted here that the entire allocation for that year was not requested. The corporation did not possess the capacity to effectively utilize the additional funding.

In fiscal year 2006, the Penal/Debe Regional Corporation total allocation for drainage works was \$5.1 million. Mr. Speaker, \$5 million came from a centrally administered drainage programme and \$100,000 from the corporation's drainage and irrigation programme, the IDF funding. Thus, over the two-year period 2005/2006, the Penal/Debe Regional Corporation received \$15,480,000 under the PSIP, which should have resulted in some alleviation of the problem of flooding.

Mr. Speaker, when I first met with the municipal leaders in the ministry when I got there in November, among other things, my commitment and this

Government's to them was that the Ministry of Local Government would continue to provide support for municipal corporations; that the Ministry of Local Government would ensure that standards are put in place for the key operating areas to support efficient and effective service delivery. We were going to ensure the focus remained on the environment, the poor and the underprivileged.

At the second meeting, when we asked the municipal leaders, mayors and chairmen to tell us what were their challenges, they provided us with a list, and that list was prioritized for immediate action. That list had on it waste management, vagrancy, disaster management, water trucking, tracking expenditure of PSIP and IRID; daily-paid establishment issues and regional plans. Mr. Speaker, the seven items that have been shortlisted have been dealt with and are being dealt with. In a list of seven, all of them have had attention, and there was no mention of flooding and the need for flood alleviation. We understand that flooding is an issue, and the Ministry in its establishment of the disaster units made sure that it put in place permanent structures in each municipality to ensure that support would be provided in such events.

Mr. Speaker, we also looked at bridges. There are approximately 964 bridges in the country, and we have put in place a bridges programme to make sure that we can take care of bridges.

Mr. Speaker, in chatting with the Chairman of the Penal/Debe Regional Corporation this week—we had an extensive discussion on the fact that the area was flood prone—I took the time to commit to the fact that we need to alleviate the challenges that exist. It appears that the mere provision of funding is not sufficient.

We have also been using the special purpose companies and the special purpose companies in that area have spent over \$2.2 million to alleviate flooding in that area to date.

I want to encourage all regional corporations, including the Penal/Debe Regional Corporation to keep talking to us. We are saying that we are going to utilize the services of the Regional Planning Unit, which is a new unit that has been established in the ministry, to look at the problems that exist. In this particular area there is the problem of flooding. I have been told that they are in a basin and the technical assistance needed for the development of that area would soon be available. I would like to commit on this Government's behalf to be able to provide more financial resources and more assistance to target the problems in that particular area in a very holistic manner. [*Desk thumping*]

**Home Mortgage Bank
(Transfer of Shares)**

Mr. Vasant Bharath (*St. Augustine*): Mr. Speaker, thank you. I rise this afternoon to address another issue that further erodes the credibility of this already failing Government. [*Interruption*] The matter deals with the transfer of 43.8 per cent of shares in the Home Mortgage Bank, which accounts for just over seven million shares, to a company called Stone Street Capital owned by then PNM treasurer, Mr. Andre Monteil, a position which has now been inherited by the Minister in the Ministry of Finance.

Mr. Speaker, you would recall that at the time of the transfer, in addition to being the chairman of the Home Mortgage Bank, Mr. Monteil was also chairman of the Housing Development Corporation as well as the Education Facilities Management Company Limited.

On Wednesday, May 09, 2007, the Prime Minister is on record in this honourable House as saying:

“...it had indeed come to the attention of the Minister of Finance and the Prime Minister and an investigation was already on the way. The Minister of Finance and Prime Minister is now in receipt of a preliminary report on the matter, and a number of related issues which have been raised by the report are now the subject of continuing investigations.

I wish to reassure this House and the national community that this Government will adhere to the highest standards of integrity in the conduct of our affairs and that no one, however high or low, is above the law of the land.”

Mr. Speaker, the reports to which the Prime Minister was referring at the time were those submitted by the Central Bank of Trinidad and Tobago and the Securities and Exchange Commission. For the Central Bank of Trinidad and Tobago, the issue was whether the transfer of shares was consistent with the provisions of the Home Mortgage Bank Act as amended in 2005 and 2007, and for the Securities and Exchange Commission, the issue was whether the transaction breached any provisions of the Securities Industries Act, 1995.

Although the report from the Central Bank of Trinidad and Tobago stated that the transfer of shares was not illegal, it had this to say:

“The 43% ownership of HMB shares place Stone Street Capital as the controlling shareholder with the co-owner of this entity being the Chairman of the Board. This could impact on public perception and confidence in an

institution which has quasi-statal objectives and was established by Parliament for public interest purposes and to implement government policy.

...the new share structure...is inconsistent with the original philosophy which saw the HMB as an institution with a public purpose (like the UTC). The new share structure is also inconsistent with the intention of the 2005 Amendment, which envisaged the listing of the shares on the Stock Exchange to produce a broad representative ownership structure.”

The Central Bank of Trinidad and Tobago went on to make two recommendations. The first was that the legislation be changed to eliminate the Home Mortgage Bank’s special status and to incorporate it under the Companies Act as a financial entity and, secondly, to use moral suasion to convince Mr. and Mrs. Monteil of Stone Street Capital to divest its shares so as to preserve the purpose behind the 2005 amendment which is effectively to arrive at a broad based shareholding.

I am certain this evening that the Minister in her response will tell us that no laws have been broken with the transfer of these shares. I am also certain that the Minister will attempt to again tell this population that amendments are being brought to ensure that shares cannot be transferred in future between existing shareholders.

I want to remind this honourable House of the words of the Prime Minister in his winding up of the 2007/2008 budget and I quote:

“I now wish to advise hon. Members that yesterday the two reports were referred to the Commissioner of Police, the Integrity Commission and the Director of Public Prosecutions for action as they consider appropriate.”

Mr. Speaker, some nine days later, on September 08, 2007, the *Trinidad Express* newspaper carried an article in which it quoted the Commissioner of Police, Trevor Paul, as stating that the Anti-Corruption Investigation Bureau is probing the \$110 million purchase of shares in the Home Mortgage Bank by Stone Street Capital which is co-owned by the bank's chairman, Andre Monteil.

Mr. Speaker, on February 20, 2008 again, in the *Trinidad Express*, the officer in charge of the investigation said that they are working toward concluding our six-month investigation into allegations of financial wrongdoing against the chairman, Louis Andre Monteil without any undue delay. Mr. Speaker, I ask this evening, where are these reports? Certainly, we have not heard any further from the Commissioner of Police, the Integrity Commission or the Director of Public Prosecutions on these matters.

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Mr. Speaker, I just want to continue the Prime Minister's statement on August 29, 2007 where he states:

“When I made my statement in this honourable House what perhaps, I did not do was to convey the extent of the Government's displeasure over this transaction, whether or not it was legal...I wish to make it pellucidly clear to this honourable House and to members of the national community that whether or not it is legal, it is contrary to Government's policy and the Government frowns on the way the whole transaction was conducted.

What has now emerged with one individual or one company substantially owning the shares of the Home Mortgage Bank is contrary to the Government's policy. Just as legislative action on the part of the Government facilitated that transaction, so we intend to resort to legislative action to correct it, and in correcting it, we are going to ensure also that the shares are now retransferred at the same price the shares were transferred in the first place.”

8.00 p.m.

The transfer of these shares represents yet another incident where a high-ranking Member of the ruling party has again used public office for private advantage. The corruption and the nepotism continues unabated and is now so endemic and entrenched in the system that it no longer carries any shock value to this population.

Mr. Speaker, this evening I would like the Minister who will be responding, to tell this country when the legislation would be brought to this House, as promised by the Prime Minister on August 29, 2007; to retransfer the shares of Stone Street Capital to the Home Mortgage Bank. And whether the Prime Minister will be making a public apology to the people of Trinidad and Tobago for renegeing on yet another promise.

I thank you very much.

The Minister of Finance (Hon. Karen Nunez-Tesheira): Thank you, Mr. Speaker. On the matter raised on the Motion on the Adjournment and I want to use the wording of the Motion because I think it would be very helpful, "The Government's delay in bringing promised legislation to the House with regard to the circumstances that facilitated the transfer of shares to the Home Mortgage Bank to Stone Street Capital".

The reason I read it out is particularly because of the word "facilitated". I said, let me be very clear of what is intended by that Motion that the whole transfer to the Home Mortgage Bank was somehow facilitated by this Government. I looked at the meaning of "facilitate" in the dictionary. Its says, to make easy, to make

possible, help, aid and assist. If one thought merely that the word "facilitate" was passive and it had no implication of some level of culpability on the part of this Government, one may want to look for clarity of the purpose and intent of that Motion to the language used in the other place by the hon. Sen. Wade Mark, speaking on this issue with regard to the circumstances regarding the transfer to Stone Street Capital. I want to refer to some of the statements made at that time on Tuesday, May 20 by Sen. Wade Mark. This is what he had to say:

"Mr. Vice-President, there was a scam involved in this whole exercise and the PNM was totally responsible and they were in league with Monteil in order to rob this country and the people of their resources. Open theft. Restrictions on the transfer of shares. The HMB Act was amended in a very surreptitious way in 2005."

And another page if one was not clear as to the intent of the Senator, he had this to say:

"...we in this Parliament were hoodwinked by the then Government in supporting—well we oppose the legislation, but they brought the legislation, conscious of the fact that it was all part of a conspiracy in order to allow André Monteil, an individual to own 46 per cent of the shares of HMB."

And this evening we heard those views echoed by the hon. Member for St. Augustine, implying on this side of this honourable House, certainly on the part of this Government, that there was a not a facilitation, but there was some level of culpability, some theft, some collusion, some conspiracy to—"open theft" were the words that were used. Nothing can be further from the truth. Why can I say that? Let us look at the very stated objectives of the Home Mortgage Bank, because that legislation was passed as part of Government's policy.

In the context of Government's policy, the objective of that bank—was many, but major objectives—was to provide a secondary mortgage market to allow persons who aspire to own their own homes, the opportunity to own their own homes by transferring the mortgages to this secondary mortgage bank—Home Mortgage Bank—to provide the banks, the first lenders, the commercial banks, the necessary liquidity to extend further loans to the market.

In addition to doing that it brought down the commission payment from 3 per cent of, I believe, the value of the assets to a \$1,000 fee. That was an intent and an objective of this Government. An intent which the other side wants to besmirch by making accusations of open theft, collusion and all these kinds of allegations which speak to some level of conspiracy and wrongdoing on the part of this Government.

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In fact, the Home Mortgage Bank spoke about the public purpose. The mandate has brought significant benefits to the population since the Home Mortgage Bank has acted to provide liquidity to the mortgage market. We understand that that objective was then further given effect to by an amendment to the Act. This is what I suppose this whole Motion is about, the amendment that was made to that Act. An amendment that was made in 2005. The amendment that was clear and it was in keeping with Government's policy. That amendment was to remove the share structure ownership of the bank that existed initially in 1987 and the legislation took effect, but more importantly, it opened up its share ownership with the intention that that share ownership could be extended to members of the public.

So, Mr. Speaker, that was done by two major amendments to the legislation. That was first, section 3 which removed the classification of shareholders. Because you see, originally the classification of shareholders was restricted to specific categories of shareholders. That was the banks, insurance companies, the Central Bank and it was limited. Therefore, the intent of this legislation was firstly to remove that restrictive category of shareholders. More importantly, section 18 of the amending Act, removed at section 27 of the Act, (by amending section 27 of the Act,) restrictions on share ownership or share transfers.

The intent behind that provision—a combination of provisions in the 2005 amendment, but in particular, that amendment—was in order to allow shares of the Home Mortgage Bank to be offered to members of the public. That was the intention behind the removal of the restriction, because as the Act initially enacted the share ownership was restricted and the transfer of shares among the various categories of shareholders was restricted. So, it was not open to members of the public to own shares. Therefore, the intention of that amendment to the legislation was to give effect to a policy to open up ownership to members of the public.

We know that unfortunately—I say that very clearly—that after that amendment was passed on March 28, 2007, Colonial Life transferred its shares to Stone Street Capital, a company owned by the then chairman of the Home Mortgage Bank and to his wife for a consideration of \$110 million. That is the fact and we understand that is the fact. The hon. Prime Minister and then Minister of Finance addressed this honourable House on August 17, 2007, because he considered it a matter of serious and sufficient import.

He wanted to assure members of the national community that this Government did not subscribe to what had happened. This Government did not consider what had occurred to be part of the Government's policy. In fact, the

words of the Prime Minister and perhaps it was quoted by the hon. Member for St. Augustine in part. He said:

"However, I wish to emphasize that it is the view of the Government that sound and fair principles of corporate governance must prevail in all institutions which are established by statute for public policy purposes.

Mr. Speaker, the Government is of the view that the emerging new share structure in the Home Mortgage Bank is inconsistent with our public policy objective of the widest public possible participation in the ownership of the Home Mortgage Bank, which was the foundation for the 2005 amendment, which provided for the unrestricted transfer of shares."

The Prime Minister then as Minister of Finance, Prime Minister and political leader of People's National Movement made the statement to make it very clear that this Government took no part and in no way endorsed what had occurred. In fact, he attempted and we attempted on this side to remedy this situation, first, by looking at the legal options available to us.

In seeking to undo the transaction and the commitment of this Government to undo the transaction, a number of legal options was explored, of which of course, we know one, the legislation as it was crafted did not prevent any restrictions of transfer from shareholder to shareholder, which Colonial Life Insurance Company already was. So, there was no illegality in the transfer of shares.

Secondly, the question of the Security Industries Act. Whether the Securities Industry Act acted as a regulator and whether the transfer had infringed provisions of the Securities Industry Act. As was stated, not only in the address by the hon. Prime Minister, but the advice that was given, those shares were private equity shares and did not come under the jurisdiction of the Securities Industry Act.

When the legal options were explored it was clear, in spite of the lack of good governance that that transaction clearly displayed and which this Government and this Prime Minister clearly condemned, the legality of the transaction was unquestionable.

I want to say the hon. Member for St. Augustine spoke about the report on the Director of Public Prosecutions (DPP) and the Integrity Commission. I do not know if the hon. Member for St. Augustine is implying that somehow this Government must intervene in the work of the DPP, which under the Constitution is an independent office and there cannot be any kind of intervention or any kind of interference with the work of the office or the DPP. So, I do not know if the

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hon. Member for St. Augustine was implying or suggesting that we interfere with the office of the DPP or the office of the Integrity Commission. They are doing their work and they would present their findings in due course. [*Desk thumping*]

Mr. Speaker, I want to lay to rest the question of any kind of criminal wrongdoing. That is something that must be pursued by the proper authorities, as independently as the Constitution requires. When we look at the legality of the situation, the remedies available, when the hon. Prime Minister spoke on this issue, what was uppermost in his mind, is uppermost in the mind of everyone, was that that transaction should not be allowed to stand.

Let us look at the legal options available. Since the transaction in and of itself, based on all the legal opinions that were obtained was not illegal, what could we do. The question of legislation; if one were to pursue the option of legislation in terms of overturning that particular transaction, one would have to make that legislation retroactive or retrospective in effect. We heard this afternoon a lot of conversations about constitutions, constitutional rights, constitutional majority and the right to property.

Even if one were to get the cooperation of other side in passing the legislation, the amendment to the Home Mortgage Bank to allow it to be retrospective in effect, there is no question that you are running the real risk of that amendment or that change to the legislation being challenged by a constitutional motion under section 4 of the Constitution, the right to property.

What are we about? Are we about getting the right vehicle and the right means to an end? What is the end that we seek? The end that we seek, to which this Government is committed and to which this Prime Minister is committed and which this side and our Government is committed, is the reversal of that transaction without profit to Stone Street Capital.

8.15 p.m.

That has remained this Government's commitment and this Government intends to pursue that commitment, but, Mr. Speaker, it is clear that to do so by way of amending the legislation for that particular purpose there are several hurdles ahead of us, not least of which is a challenge by way of a constitutional Motion.

So, in closing and in my contribution on this Motion brought by the other side I want to end by saying that this Government's commitment to seeing the reversal of that transaction without profit is being pursued, and diligently pursued, and we gave our undertaking that that is going to be pursued vigorously, but to do so by

legal amendment to the Home Mortgage Bank will not bring—most respectfully, I submit that that will not give us the solution that we seek because of the several hurdles involved in that. So in closing I wish again to reemphasize our commitment to seeing the transaction reversed without profit to Stone Street Capital. [*Interruption*]

I thank you, Mr. Speaker.

Flooding in Caparo and Surrounding Areas

Dr. Hamza Rafeeq (*Caroni Central*): Thank you, Mr. Speaker. This is about the third or fourth time that I have had to raise the issue of flooding in Caparo, Palmiste, Mamoral, Todds Road and Longdenville area.

Many years ago a decision was taken to construct dams at Mamoral which would trap the water during the rainy season and release it slowly thereafter. As a temporary solution while the UNC was in office we did the dredging of the Caparo River and the dredging of the Honda River and these together provided some measure of relief to the residents of Caparo and surrounding areas. Every year the residents of Caparo suffer severe hardships from flooding. About three or four years ago the Minister of Works and Transport then, the hon. Franklin Khan, together with his technocrats, held a massive consultation in the area and promised the residents that work would begin very shortly and gave timelines as to the commencement of the construction of the Mamoral Dam and even the completion dates. Very little has happened so far and the flooding continues unabated.

Every year the residents there lose thousands of dollars in household appliances, in livestock, crops and so on. Most of them in that area are farmers, most of them are poor people and they can hardly afford these losses. There is one particular resident in that area who lost her job because she could not leave her home to go to work for two days and because of that being employed with a private company she lost her job. There are children there who go to school, sometimes they miss their examinations, they, of course, miss classes and so on. If you are outside of Caparo you remain outside when it is flooding, if you are inside you remain inside because there is no communication to go in or out when there is flooding in that area.

Household appliances: They lose a number of household appliances: fridges, stoves, beds and so on; they lose a number of livestock: chicken, duck, goat, sheep and so on; they lose a number of crops, tomatoes, melongene, peppers and so on, and of course the risk of illness from the flooding is also very real.

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In terms of the loss of crops, and as I said most of these people are farmers, I do not have to tell you how little they get by way of compensation if they get compensation at all. I was very surprised recently when there was flooding in that area and when I visited they told me that the officers at the Ministry of Agriculture, Land and Marine Resources told them that the only way they will get any kind of relief or any kind of compensation was that the officers had to visit the area and actually see the losses. So they had to keep their dead ducks and dead chickens for about four or five days in order for the officers to visit. Of course, they could not do that and because of that when the officers visited they said, well, we have seen no losses and so they got no compensation. As I said, most of these people are farmers and they suffer on a regular basis because of the flooding.

Recently I heard the Prime Minister say that he was giving \$50 million or \$60 million to Grenada or St. Vincent to build an airport.

Hon. Member: Seventy eight million dollars.

Dr. H. Rafeeq: Seventy eight million dollars to build an airport. I have no problem with that but the thing is charity begins at home. You have people here at home who are suffering on a regular basis because you are not providing a service for them and that is constructing the Mamoral Dam and giving them the necessary compensation. Over the last three or four years, every year some allocation has been put in the budget for the construction of the Mamoral Dam and very little has been done so far.

I want something positive from the Minister of Works and Transport today. I want him to give us something positive to give to the residents of that area to tell them that this is going to happen so and so date, so they can look forward—and not only give us commitments but stick to the commitments. The Minister of Works and Transport has a history of making lavish promises and not keeping these promises. *[Laughter]* We would like him to make promises that he can keep and the residents can look forward to. I would like two commitments this evening. First of all I would like a commitment from the Government that some kind of compensation would be given to the residents there who have had losses in terms of household appliances, crops, livestock and so on. That is the first thing and, secondly, we would like to have some kind of timetable for the construction of the Mamoral Dam so the flooding can be alleviated and the residents will not have to suffer on a regular basis.

Mr. Speaker, I hope that we get some positive word from the Minister of Works and Transport on these two matters.

Thank you very much.

The Minister of Works and Transport (Hon. Colm Imbert): Thank you, Mr. Speaker. I can positively say that the Member for Caroni Central either does not live in Caroni Central, does not visit Caroni Central or is not in contact with anybody in Caroni Central. *[Interruption]* I can positively say that. That is the positive assurance you can get from me.

This matter is ludicrous and I will explain why. *[Laughter]* When we go into the records and I will list the areas. *[Interruption]* Mr. Speaker, I did not interrupt them when the Member was speaking. Could you quiet them down for me please? *[Interruption]* Just get them to quiet down, please.

Mr. Speaker: Order, please!

Hon. Member: Go ahead, go ahead.

Hon. C. Imbert: The areas within the geographic location of Caparo, Palmiste, Todds Road and Mamoral are as follows: Mamoral Road, Frank Bridge; Mamoral Road, Fisher, Dean Bridge; Balliram Bridge; the Cemetery; Caparo Road, Brasso Breeding Unit; Caparo Main Road, Knights Bridge; Caparo Main Road, Durham Mills; Caparo Main Road, Pay Yard Outfall; Carr Trace, Caparo; Santa Phillipa, Caparo; Fletcher's Road, Todds Road; King Avenue, Palmiste; Chin Johnson, Palmiste; School Street Outfall, Palmiste; Ravine Sable Junction, Longdenville; Jairam Trace, Ravine Sable and Longdenville.

Those are the villages and settlements—now you are properly educated—within the Caparo, Palmiste, Todds Road, Mamoral area; *[Interruption]* the areas that are the subject of your presentation.

Prior to the work done by the Ministry of Works and Transport in 2006, there were approximately 125 flooding events per year, and I have the actual figures which show a distribution of flooding events throughout all of these areas prior to 2006. In 2006 because of work done by the Ministry of Works and Transport significant dredging of the main watercourses and infrastructure work, the flooding events were reduced from 125 to 65. So, in all these villages from 125 flooding events during the year 2004/2005 and so on, it was reduced to 65 flooding events because of the work done by this PNM administration in this particular area.

In 2007, because of the additional work done by this PNM administration the flooding events were reduced from 65 to 14, and now in 2008, so far for the year, so far up to the date of this memo sent to me by the Drainage Division of the Ministry of Works and Transport—which, yes, I do believe them, because I have checked myself—July 16, there have been six flooding events. *[Interruption]* I shall now read out the flooding events.

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Flooding events in Mamoral Road, Frank Bridge, in 2008, zero; Fisher, Dean Bridge Mamoral, flooding, zero; Balliram Bridge Mamoral Road, flooding, zero; Cemetery area Mamoral, flooding, zero; Caparo Main Road, Brasso Breeding Unit, flooding, zero; Caparo Main Road, Knights Bridge, flooding in 2008, zero; Caparo Main Road, Durham Mills, flooding in 2008, none; Caparo Main Road, Pay Yard Outfall area, flooding in 2008, none; Carr Trace, Caparo, flooding in 2008, none; Santa Phillipa, Caparo area, where we built a bridge, flooding in 2008, none; [Interruption] Fletcher's Road, Todds Road area, flooding event, one. [Interruption]

You could bring me here, there and thither—1.5 miles Todds Road, flooding events in 2008, two; King Road, Palmiste, flooding events, two. No property damage in Fletchers Road, Todds Road, none; minor property damage in King Avenue, Palmiste and in Longdenville one home suffered furniture damage. Chin Johnson, zero; [Interruption] School Street Outfall, zero; Ravine Sable Junction, zero; Jaihram Trace, Ravine Sable, zero.

Mr. Speaker, to sum it up there was no flooding of any significance anywhere within the defined area. No flooding of any significance anywhere within the defined area, and this is why I asked whether the Member for Caroni Central lives in the area, visits the area or is associated with people in the area, because he has got to be hallucinating. Hallucinating! He knows that the Ministry of Works and Transport spent millions of dollars widening, straightening, dredging and deepening the Caparo River.

Hon. Member: Shame on you! Shame on you!

Hon. C. Imbert: He knows that! He knows that we built a bridge in the Santa Phillipa area. If he was reading the papers—he does not have to visit; he does not have to live there; he does not have to know—just this week I noticed commentary from residents in the Caparo area who said that because of the bridge built by the Ministry of Works and Transport and the work done on the watercourses by the Ministry of Works and Transport, by this PNM administration, that person, despite the rains that fell, despite the presence of a tropical wave, despite the fact that in the last seven days the rainfall in Trinidad has been one-half of the average for the entire month of July, so in one week one-half of the rainfall that normally falls in the whole month of July fell in the last seven days. Despite that fact, if he was reading the papers he would see the residents thanking the Government for building the bridge to allow them to access their homes. [Desk thumping] And no school children could not go to school, no workers were unable to go back home. There was no flood, no ducks swam away. [Desk thumping] [Interruption] Apart from the few isolated incidents; the minimal

flooding in Fletcher's Road, the two homes which suffered furniture and appliance damage in King Avenue, Palmiste, and the one home that suffered furniture damage in Longdenville; that is it. That is it. I think you need to go before the privileges committee.

8.30 p.m.

Mr. Speaker, I would ask the Members in this House, to do your home—
[*Interruption*]

Hon. Member: [*Inaudible*]

Hon. C. Imbert: But the people know. The people in Santa Phillipa know. I opened the bridge with the councillor for the area, Councillor Boondoo. He was not there. He does not know what is going on. This Motion is ludicrous; this Motion is ill-conceived; and it speaks about the failure of the Government to address the problem of flooding in Caparo, Palmiste, Todds Road and Mamoral. The Government has spent millions of dollars addressing flooding, resulting in a 95 per cent reduction in the incidence of flooding in that area.

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

Mr. Speaker: All I can say is when it rains, it pours. I understand we have a fourth Motion? [*Laughter*] The hon. Member for Caroni East.

Hon. C. Imbert: It floods.

Findings of Enquiry into Overtime Payment (Minister's Failure to make Public)

Dr. Tim Gopeesingh (*Caroni East*): Mr. Speaker, I do not have to do it this evening, but I saw the hon. Minister of Health—[*Interruption*]

Mr. Imbert: Just hold on. Mr. Speaker, we were not scheduled to have these many Motions today, but out of the human kindness and generosity of the Government, [*Desk thumping*] we have decided to subject ourselves to these Motions, even though the time has passed.

Dr. T. Gopeesingh: Thank you, Mr. Speaker. It is not an easy task for me this evening, to raise this Motion in the House. The Motion on this adjournment is the failure of the hon. Minister of Health to make public, the findings of the enquiry into the \$5 million overtime payment, to paediatricians at the Port of Spain General Hospital. You can understand why this has some anxiety in it, but what has to be done, has to be done.

When this was brought to the attention of the present Minister of Health, Sen. The Hon. Jerry Narace, as was reported on the *Sunday Guardian*, May 11, 2008, I think most people would have seen this, “Cops probing \$5 million scam at the hospital”. This was written by Leah Sorias:

“A \$5 million overtime scam, allegedly involving three senior doctors at Port of Spain General Hospital...”

These three doctors were being paid overtime under the paediatric department which did not exist at the Port of Spain General Hospital. The paediatric services were transferred to the Paediatric Hospital since 1998, and that hospital was later named the Wendy Fitzwilliam Paediatric Hospital. There was no paediatric department at the Port of Spain General Hospital since 1998; therefore, there was no need to roster any doctors for the Port of Spain General Hospital at the paediatric department.

The doctors who are Ministry of Health workers, not RHA doctors, were under the control by the Permanent Secretary in the Ministry of Health, and were asked to move to the Eric Williams Medical Sciences Complex and they refused. They said, “They were public servants and the Eric Williams Medical Sciences Complex was not a hospital associated with the public service.” Since it was a Regional Authority hospital, and they, therefore, decided to remain at the Port of Spain General Hospital.

We understand that letters were written to them by the Permanent Secretary. I have a pile of information here, hon. Minister, in case you do not have them. These copies were sent to me. Perhaps when we hear you, I can probably give you the information.

These doctors refused to move to Eric Williams Medical Sciences Complex, but they remained at the Port of Spain General Hospital where there was no paediatric department and no patient to see. So what were they remaining there for? They continued to receive their salary—that was from 1998, I think up to this year when they resigned—for working in a department that did not exist.

In addition to that, they also claimed for overtime, via on-call rosters—and these are the rosters that were approved at the hospital [*Rosters displayed*—that did not exist because there was no department.

Mrs. Persad-Bissessar: How many doctors?

Dr. T. Gopeesingh: Three doctors. On-call allowances were paid for being on-call after 4.00 p.m.—when you are on-call, you are on-call from 4.00 p.m.—from Monday to Friday and being on-call on Saturdays, Sundays and public

holidays, but there were no patients as I mentioned, and no paediatric department. So they were being paid for on-call. As my distinguished Member for Diego Martin Central will know, when doctors are on-call what it entails, they must be seeing patients, but there were no patients to be seen.

On-call rosters are prepared by heads of departments and signed by the Medical Chief of Staff, but the Medical Chief of Staff at Port of Spain up to 2004, refused to sign the rosters. He said, and it is quoted in this article here:

“I left in 2004 and up to that time there was a request for me to sign the overtime, but these people had not done overtime, so I refused to sign it.”

That is what he said during a telephone interview with the *Sunday Guardian*.

Mr. Speaker, the question arises, who signed those documents before and after 2004? The matter of overtime payments surfaced during the Gafoor Commission of Enquiry into the health sector, where the then Medical Chief of Staff confirmed that there was no paediatric department unit there—that is at the Port of Spain General Hospital—but the said doctors were still part of the hospital staff on payroll since 1998.

Mr. Speaker, the hon. Minister of Health, at that time I believe when he was asked, said that an enquiry would have been completed in three days. You can tell me if that was not in fact so. Not surprising, you can tell the House, the PNM Government which we know is a secret Government, hiding every corruption scam like the \$2 billion housing and the \$45 million scholarships from community development, and the fees for attorneys and so on, we are wondering if this is yet another example of cover-up with a corruption scandal.

Through you, Mr. Speaker, the hon. Minister must tell this nation why he kept this report of that enquiry a cover-up? Why has the nation not been privy to the information on that enquiry? Why it is that the UNC Opposition as the alternate government, on behalf of the people, unable to get any information from you on this practice and this corruption in the health sector?

In 2006, the Medical Professionals Association of Trinidad and Tobago (MPATT) called on the Permanent Secretary in the Ministry of Health, to investigate the matter verbally and in writing. We have correspondence on all the letters that were sent to the Permanent Secretary in 2006 by MPATT. On July 18, 2007, when MPATT did not hear anything from the Permanent Secretary—Mr. Prime Minister, I am sure that is why you want to view permanent secretaries in a different manner. *[Interruption]*

Dr. Moonilal: Abolish them.

Dr. T. Gopeesingh:—they sent out letters to the Commissioner of Police;— and the letters are here—the Fraud Squad; the President, Maxwell Richards; the Public Service Commission, Mr. Thomas; the Auditor General and the DPP calling for an investigation. This was on July 18, 2007, almost a year ago, so we want to know the reason why the information on this enquiry was not made public.

The President of MPATT has asked repeated questions into the financial mismanagement into the health sector, but today, nothing has been done or given to the nation. So where is the report that was promised in May by the hon. Minister of Health? He said it would have been given in three days. Is it hidden? Where is it hidden? Are we preventing someone from being prosecuted, because that is misconduct in public office. We need to know; the country needs to know the answer to that, and we want to ensure that this is not another PNM cover-up.

In addition, Mr. Speaker, we have now written to the DPP, the Auditor General and the Commissioner of Police ourselves, with these signed documents enclosed on this matter. So we await the Minister's response to this issue.

Thank you. [*Desk thumping*]

Mr. Speaker: The hon. Minister of Health, may I tell you that you have 15 minutes to reply.

The Minister of Health (Sen. The Hon. Jerry Narace): Thank you, Mr. Speaker. I wish to inform this honourable House that the enquiry into the alleged overtime payments of TT \$5 million to three medical paediatric practitioners at the Port of Spain General Hospital, highlighted by the *Sunday Guardian* article dated May 11, 2008, was made public via a media release on May 26, 2008.

Most importantly, when the 100-day plan initiative was updated two days later on May 28, 2008, the Ministry of Health made copies of the report of the enquiry available to all media personal, MPATT and the TTMA. Mr. Speaker, let me say from the onset that we reject this Motion outright.

Immediately upon reading the article in the *Sunday Guardian* dated May 11, 2008, which highlighted the alleged overtime payments of TT \$5 million to three medical paediatric practitioners attached to the Port of Spain General Hospital, a committee was established on May 12, 2008 to investigate this matter. The members of the committee were as follows:

- Permanent Secretary, Ministry of Health—Chairman;
- Chairman of the North West Regional Health Authority—Co-Chairman;

- Chief Medical Officer of the Ministry of Health; and
- Legal Advisor of the Ministry of Health.

The committee submitted its report on May 15, 2008. The article in the *Sunday Guardian* raised the issue of an overtime payment of TT \$5 million to three medical practitioners attached to the Port of Spain General Hospital, more particularly, it surrounded the transfer of the paediatric services from the Port of Spain General Hospital to the Wendy Fitzwilliam Paediatric Hospital, Eric Williams Medical Sciences Complex on or about August 1997.

Mr. Speaker, consequent to the transfer of the said service, medical staff attached to the paediatric service Port of Spain General Hospital were directed by the Ministry of Health to report for duties at its new location, the Eric Williams Medical Sciences Complex.

These medical paediatric practitioners indicated *inter alia*, that the Eric Williams Medical Sciences Complex was not an institution under the rubric of the public service, and as such, refused to take up duties at the Paediatric Hospital, Eric Williams Medical Sciences Complex. Mr. Speaker, that is why we have been trying to transfer all of the public service medical practitioners to the RHAs. As such, they continue to perform duties at the Port of Spain General Hospital up to the time they exited the public service.

Consequently, the findings of the committee in a Ministry of Health report revealed that in keeping with the collective agreement between the Chief Personnel Officer and the Public Services Association on November 01, 1997, the three medical paediatric practitioners were legally entitled to their respective salaries, an on-call allowance and 20 hours guaranteed overtime payments.

In addition, the committee noted that this particular allegation was raised during a sitting of the Commission of Enquiry into the operations and delivery of public health care services in Trinidad and Tobago. Subsequently, the allegation was forwarded to the Public Services Commission by the Medical Professionals Association of Trinidad and Tobago (MPATT).

Mr. Speaker, the findings of the committee are as follows:

- The report of the Commission of Enquiry into the health sector was laid in Parliament on June 01, 2007.
- The three medical paediatric practitioners in the public service, in addition to their salaries, are entitled to an on-call allowance and are guaranteed 20 hours overtime per month, in accordance with their terms and conditions.

Findings of Enquiry into Overtime Payment
[SEN. THE HON. J NARACE]

Friday, July 18, 2008

- The report of the Commission of Enquiry into the health sector is receiving the attention of the relevant authorities, and in the matter relating to the overtime payment of the \$5 million, which was reported in the Commission of Enquiry into the health sector.
- The Ministry of Health subsequently held discussions with the Ministry of the Attorney General.
- The Ministry of Health has been informed that the matter is currently receiving the attention of the relevant authorities.

Mr. Speaker, the Ministry of Health will continue to investigate all forms of allegations and reports of improprieties, and will make all of the findings public, as well as take the necessary legal action where possible. The Ministry also recognizes that proper performance management and auditing systems must be implemented, if one has to minimize the risk of fraud and other forms of improprieties.

8.45 p.m.

Towards this end, the Ministry of Health has been pursuing a strategy to build its internal auditing capability and create an entire internal audit division by mid-2008. Cabinet has already given us the approval so to do.

Mr. Speaker, the Ministry of Health recognizes that a longer term strategy must be implemented to provide a platform upon which the Ministry and the health sector would be better prepared to effectively implement transformational changes such as the National Health Service and the National Health Management Information System, and to effectively manage a modernized health sector by the year 2020. As a result, the Ministry of Health has engaged a change management consultant to focus specifically on further developing the institutional capacity and the performance management framework. This would enable the Ministry to accelerate the implementation of its various programmes.

Furthermore, the Ministry is currently designing an entire internal control financial system and a fraud awareness and risk assessment programme in order to mitigate the risks associated with fraud and management of resources.

Mr. Speaker, I wish to remind this honourable House that during the period 1995—2001, [*Crosstalk*] a lack of initiative and foresight forced the Ministry of Health and the Regional Health Authorities to operate with substandard control and operative systems. [*Interruption*] You were not the Minister then, so I do not blame you. During the period 2002 to the present time, most of the initiatives as outlined under the health sector reform programme are currently being developed and implemented. [*Desk thumping*]

Mr. Speaker, this present Government is about change and creating a modernized health sector, despite all the efforts by those who would like to ridicule us. [*Desk thumping*] I want to remind this honourable House that we understand in the PNM that a modernized, efficient health sector is really about serving all the people, and that the people who are the most vulnerable in the society would require a proper functioning health system. We in the PNM understand that. This would ensure the delivery of health care in the most timely and efficient manner in our public health systems.

Towards this end, I wish to inform this honourable House that the quick wind changes recommended by the change management consultant are currently being implemented by a local counterpart team in the Ministry of Health, while the major long-term internal control systems would be implemented by the incoming fiscal year 2008/2009.

I would like to reiterate that an effective execution of internal financial controls would provide the Ministry with the reasonable assurance that financial integrity risks which might lead to fraudulent or inaccurate financial reporting would be prevented by subjecting to early detection.

When we debated the regulations for the Regional Health Authorities, which I know the other side objected to, it was something aimed at really ensuring that there is a regulatory framework so that these things cannot happen again; but we will talk more about that. In addition, the Ministry's Finance and Accounting Unit has developed the capability to assess, document and control financial reporting risks on a continual basis. This would help the Ministry's leadership team and auditors to respond at a faster rate to the demands of our health sector.

An example of this initiative currently exists in the protection of the Ministry's investment in pharmaceutical inventory. There are two stores officers, Auditors I and II, who audit the pharmaceuticals inventory procured by the National Insurance Property Development Company Limited (Nipdec). This internal control is critical, both in terms of materiality and monetary value, as well as operational service delivery to the public, under the Government's C40 programme.

Mr. Speaker, I use this opportunity to reassure the national community that allegations of impropriety will continue to be investigated by conducting proper financial and human resource audits. The Ministry continues to recognize and appreciate the invaluable service being provided to the national community by medical professionals, sometimes under very trying circumstances, but wishes to state that it would not hesitate to institute established disciplinary procedures against its employees found to be engaged in any form of impropriety.

Mr. Speaker: At this point, it is probably worth reminding Members that, as of today, I do not think we could entertain any more motions on the adjournment until after the recess.

Question put and agreed to.

House adjourned accordingly.

Adjourned at 8.52 p.m.

WRITTEN ANSWERS TO QUESTIONS

The following question was asked by Mr. Winston Peters (Mayaro):

Carnival 2008 (Disbursements for)

- 56.** With respect to Carnival 2008, could the hon. Minister of Community Development, Culture and Gender Affairs state:
- (a) the total allocation for Carnival 2008 by her Ministry; and
 - (b) the total disbursement of grants to all cultural and social organizations, (especially Calypso Tents) for Carnival related activities?

The Minister of Community Development, Culture and Gender Affairs (Hon. Marlene Mc Donald): Trinidad and Tobago's Carnival has moved well beyond the simple expression of the cultural heritage and social traditions of our people. Our artistes and artisans have, over the years, carved a niche for themselves regionally and internationally, exporting the products as a viable commercial business. Furthermore, the spontaneity, creativity and excitement of the Street Parade and some off-shoot events have been introduced to the rest of the world. In particular, Trinidad and Tobago can now boast that our national festival has spawned over eighty (80) masquerades within the Caribbean and the wider Diaspora.

Within the Caribbean region, the organizers of national events continually seek the advice and expertise of the National Carnival Commission (NCC) in the organization and management of their own festivals. In particular, Trinidad and Tobago continues to provide services and training to judges and the mas fraternity in the regional territories.

Locally, visitor arrivals to the country for carnival and carnival activities in 2008 are now at the level of thirty-nine thousand, one hundred and fifteen

(39,115), with 59% originating from North America, 19% from the Caribbean, 16% from Europe and 2% from South America.

Carnival as an industry, has also engaged the attention of University researchers, entrepreneurs and practising artistes as they seek to develop systems and procedures to manage the industry and to quantify the impact of the national festival on the social and economic well being of the country.

The National Carnival Commission, an agency under the Ministry of Community Development, Culture and Gender Affairs, is the body established by Act No. 9 of 1991 with responsibility for Carnival. In planning for Carnival 2008, the NCC took on board the lessons learnt from the first experience of executing a “Carnival in Transition” of 2007, to “Mas on the Move” on the streets of Port of Spain. The Commission achieved varying levels of success in accomplishing several of the goals identified for Carnival 2008 including:

- Refurbishment of some 140 vendors booths and design of Food Courts to better facilitate patronage by the public and provide for live entertainment/activity during the day;
- Provision of accommodation for paid patrons/foreign visitors/media personnel;
- Strengthening of the security services provided for events with a view to providing greater protection to patrons and members of the public;
- Improvement of facilities at Skinner’s Park to better accommodate patrons of Panorama Finals in 2008 and future cultural productions;
- Improvement of the physical space provided for patrons “on the Greens”;
- Improvement of facilities provided at outer venues such as Down Town, Victoria and Adam Smith Squares.

The total allocation made by the Parliament for fiscal 2007/2008 to the National Carnival Commission is eighty-seven million, two hundred and ninety-seven thousand, four hundred and sixty-six dollars (\$87,297,466).

The total disbursement of grants to all cultural and social organizations for 2008 carnival related activities was nine million, six hundred and eleven thousand, five hundred and eighty one dollars (\$9,611,581). Of this sum, a total of one million, six hundred and forty-three thousand, three hundred dollars (\$1,643,300) was disbursed to calypso tents including Chutney and Vintage calypso tents.

The following question was asked by Mr. Chandresh Shama (Fyzabad):

**Land Settlement Agency
(Houses destroyed by)**

- 84.** With regard to government housing projects, could the hon. Minister of Planning, Housing and the Environment provide the following, for the period 2006 to 2007:
- (a) a list of citizens whose homes were destroyed by the Land Settlement Agency;
 - (b) the dollar value of the same;
 - (c) the number of persons affected by same; and
 - (d) the dollar value of compensation awarded to those persons who were affected?

The Minister of Planning, Housing and the Environment (Sen. the Hon. Dr. Emily Gaynor Dick-Forde): The purpose of the Land Settlement Agency (LSA) in accordance with Act 25 of 1998 is to:-

- bring some measure of protection to squatters in occupation of State Land prior to January 1st, 1998 through regularisation which involves the provision of security of tenure and the upgrade of infrastructure.
 - prevent and contain further squatting on State Lands.
- (a) In its containment exercise the LSA is not required to compensate for illegal structures removed and consequently does not keep the detailed records that can provide the information requested in parts (a), (b) and (c) of this question.
 - (d) The Land Settlement Agency (LSA) and the Housing Development Corporation (HDC) worked jointly to relocate 85 families from State Lands which were required for a public purpose. This exercise involved compensation for the value of their structures only, or relocation to other communities or to identified HDC sites. The dollar value of compensation due for the structures removed was six million nine hundred and sixty thousand three hundred and sixty-three dollars and eighty cents (\$6,960,363.80). It is to be noted that some of these families affected chose to utilize the option of relocation to identified HDC sites and the value of the compensation was applied to the cost of the housing unit.