

HOUSE OF REPRESENTATIVES*Wednesday, November 09, 2011*

The House met at 1.30 p.m.

PRAYERS[MR. SPEAKER *in the Chair*]**PAPERS LAID**

1. Audited financial statements for the Regulated Industries Commission for the year ended December 31, 2007. [*The Minister of Finance (Hon. Winston Dookeran)*]
To be referred to the Public Accounts Committee
2. Audited financial statements of the Trinidad and Tobago Solid Waste Management Company Limited for the financial year ended September 30, 2007. [*Hon. W. Dookeran*]
3. Audited financial statements of the Trinidad and Tobago Solid Waste Management Company Limited for the financial year ended September 30, 2008. [*Hon. W. Dookeran*]
4. Audited financial statements of the Trinidad and Tobago Solid Waste Management Company Limited for the financial year ended September 30, 2009. [*Hon. W. Dookeran*]
5. Audited financial statements of Education Facilities Company Limited for the financial year ended September 30, 2010. [*Hon. W. Dookeran*]
6. Annual audited financial statements of Trinidad and Tobago Free Zones Company Limited for the financial year ended December 31, 2010. [*Hon. W. Dookeran*]
7. Audited financial statements of the Vehicle Management Corporation of Trinidad and Tobago Limited for the year ended September 30, 2009. [*Hon. W. Dookeran*]
8. Audited financial statements of the Vehicle Management Corporation of Trinidad and Tobago Limited for the year ended September 30, 2010. [*Hon. W. Dookeran*]
9. Annual audited financial statements of National Enterprises Limited for the financial year ended March 31, 2011. [*Hon. W. Dookeran*]

Papers Laid

Wednesday, November 09, 2011

10. Annual audited financial statement of Estate Management and Business Development Company Limited for the financial year ended September 30, 2009. [*Hon. W. Dookeran*]

Papers 2 to 10 to be referred to the Public Accounts (Enterprises) Committee.

11. Annual administrative report of the National Insurance Appeals Tribunal for the financial year October 01, 2009 to September 30, 2010. [*Hon. W. Dookeran*]
12. Purchase of Certain Rights Regulations, 2011. [*Hon. W. Dookeran*]
13. Administrative report of the Boiler Examiner Board for the period September 2009 to September 2010. [*The Minister of Labour and Small and Micro Enterprise Development (Hon. Errol McLeod)*]
14. Administrative report of the Minimum Wages Board for the period January 2009 to December 2010. [*Hon. E. McLeod*]
15. Administrative report of the Advisory Friendly Societies Council for the period October 2008 to September 2010. [*Hon. Errol McLeod*]
16. Administrative report of the Board of Governors of the Cipriani College of Labour and Co-operative Studies (CCLCS) for the period October, 2008 to September, 2010. [*Hon. E. McLeod*]
17. Annual administrative report for the National Entrepreneurship Development Company Limited (NEDCO) for the period October 2008 to September 2010. [*Hon. E. McLeod*]
18. Annual report of the Ministry of Public Administration for the fiscal year 2010. [*The Minister of Public Administration (The. Hon. Seepersad-Bachan)*]
19. Annual administrative report of the Ministry of Local Government for the period October 01, 2004 to September 30, 2005. [*The Minister of Local Government (Hon. Chandresh Sharma)*]
20. Administrative report of the Port of Spain Corporation for the period October 2005 to September 2006. [*Hon. C. Sharma*]
21. Administrative report of the Mayaro/Rio Claro Regional Corporation for the period 2007 to 2008. [*Hon. C. Sharma*]

Papers Laid

Wednesday, November 09, 2011

22. Motor Vehicles and Road Traffic (Enforcement and Administration) Order, 2011. [*The Minister of Housing and the Environment Transport (Hon. Dr. Roodal Moonilal)*]
23. Motor Vehicles and Road Traffic (Amdt.) Regulations, 2011. [*The Minister of Transport (Hon. Dr. R. Moonilal)*]
24. Annual report of the Police Service Commission for the period January 1, 2010 to December 31, 2010. [*Hon. Dr. R. Moonilal*]
25. Police Service (Amendment) Regulations, 2011 [*Hon. Dr. R. Moonilal*]
26. Proceeds of Crime (Prescribed Sum) Order, 2011. [*Hon. Dr. Moonilal*]
27. National Forest Policy of the Government of the Republic of Trinidad and Tobago 2001. [*Hon. Dr. R. Moonilal*]
28. Ministerial response to the Second Report of the Joint Select Committee of Parliament on Ministries (Group 1), and on the Statutory Authorities and State Enterprises on the Administration of the Green Fund. [*Hon. Dr. R. Moonilal*]
29. Thirty-third annual report of the Ombudsman for the period January, 2010 to December, 2010. [*The Deputy Speaker (Mr. Jairam Seemungal)*]

JOINT SELECT COMMITTEE REPORTS

The Minister of State in the Ministry of People and Social Development (Hon. Dr. Lincoln Douglas): Mr. Speaker, I beg to present the following reports:

PSAEL

Ministries (Group 2)

1. The first report of the Joint Select Committee established to enquire into and report to Parliament on Ministries (Group 2), and on the Statutory Authorities and State Enterprises falling under their purview on Palo Seco Agricultural Enterprises Limited (PSAEL).

IGOVTT

Ministries (Group 2)

2. Second report of the Joint Select Committee established to enquire into and report to Parliament on Ministries (Group 2), and on the Statutory Authorities and State Enterprises falling under their purview on National Information Communication Technology Company Limited branded as IGOVTT.

ORAL ANSWERS TO QUESTIONS

3. **Dr. Keith. Rowley** (*Diego Martin West*) asked the hon. Attorney General:

With respect to the hiring of private legal services for the period June 1, 2010 to August 31, 2011 could the Attorney General:

- a) state the total expenditure paid and/or owed to Attorneys outside of the public service?
- b) identify each assignment, stating the name of the project/assignment, the attorney or legal team hired and the amount paid or outstanding to each entity?
- c) also identify the nature of the specific output obtained from each attorney/legal team as it relates to the payments or liabilities mentioned in (b) above?

The Attorney General (Sen. The Hon. Anand Ramlogan): Thank you very much, Mr. Speaker. This is an answer that I provided in the other place during my contribution to the budget debate, but I shall do so now formally. The question asked relates to the total expenditure paid and on owed to attorneys outside of the public service, to identify the assignments undertaken and of course the specific output obtained.

Mr. Speaker, question No.3 has several subsections, so I shall break them down. With respect to the hiring of private legal services for the period June 01, 2010 to August 31, 2010, the total sum paid by the Ministry of the Attorney General is \$45, 502,626.

Dr. K. Rowley: I think he means 2011, is that an error?

Mr. Speaker: Yes, I would imagine. You said 2010, but I would imagine it is 2011 August.

Dr. Gopeesingh: August 2011.

Sen. The Hon. A. Ramlogan: It is the period June 01, 2010 to August 30, 2011. Yes, that is correct. Mr. Speaker, of that figure that was paid during that time, however—the \$45.5 million—\$30,724,145 was, in fact, inherited debt from the former administration.

Mr. Sharma: What a shame! Shameless!

Sen. Hon. A. Ramlogan: From the former administration.

Sen. The Hon. A. Ramlogan: That figure represents legal fees accumulated for work done under the previous administration that they did not pay.

Mr. Sharma: You better repeat that.

Sen. The Hon. A. Ramlogan: So out of \$45.5 million, \$30,724 million was to pay off the inherited debt. And what is curious about that is that when the general election date was announced there was a mad rush to incur new legal expenditure, whilst you had people from the past two, three years, work done and no payment made.

Mr. Sharma: Are you all not ashamed?

Sen. The Hon. A. Ramlogan: So the inherited debt in some cases has been embarrassing to the State of Trinidad and Tobago. In fact the Privy Council agents—who have been standing Privy Council agents in London, the firm Charles and Co, Russel they have written only last month and some of the matters they have not been paid for date back to 5 years.

Mr. Sharma: That is PNM style.

Sen. Hon. A. Ramlogan: And that was the style of governance in terms of payment. So when they ask how much money we have paid: yes, we have paid \$45.5 million but \$30.7 million of that was to clean up what they left behind.

Hon. Sharma: Which is 67 per cent.

Sen. The Hon. A. Ramlogan: And of that figure—and of that money that has been spent, we had, of course, to pay for investigations they conducted into their own membership; like the Landate matter, the Justice Sealy Commission of Enquiry, the hiring of a firm by the name of Sanitas. And that firm was hired to conduct investigations into allegations against the present Leader of the Opposition. The firm of Sanitas was hired to pursue allegations about an offshore bank account and moneys relating thereto, forensic accountants and so on. So all of the moneys that we have paid, we paid it because we have to pay to help them to investigate their own. That is the reality.

Mr. Sharma: What a shame!

Sen. The Hon. A. Ramlogan: And I want to disclose that firm of Sanitas, I found it rather strange that the payments made did not just stop at the Ministry of the Attorney General, but I discovered recently that at UdeCott that same firm of Sanitas was employed and paid in US dollars to the tune of almost \$3 million. And that had to be for the continuation of the investigation into the Leader of the Opposition.

Mrs. Persad-Bissessar: What US?

Sen. The Hon. A. Ramlogan: Yes—no, it might be \$3 million TT, but they were paid in US. I will get the exact figures. So they were investigating, it seems, the Leader of the Opposition from various angles and utilizing various resources.

Now, Mr. Speaker, my legal bill as it were under the People's Partnership administration out of that \$45 million amounts to \$14.7 million, that is the legal bill, \$14,778, 48. That is what we incurred.

In terms of moneys owed, which is the second part of the question, the Ministry of the Attorney General owes \$ 11,805,383 for the period.

To identified each assignment, that is a matter which it is very voluminous, so I do not wish to report the details of it. Time would not permit me to orally go into all of the details, but with your permission, I would like to circulate the appendices with these details for all Members in the honourable Chamber to identify the output.

Mr. Speaker, the work that was done would have been of a routine nature advice, opinion, instructing, legal work, review and vetting of documents, litigation, and in some cases, of course, the assiduous, but rather diplomatic pursuit of investigations into Ministers in the PNM Cabinet; some of whom made an early and premature departure from that Cabinet.

1.45 p.m.

I am assured that the expertise that has been provided will redound to the benefit of the State and the people of this country by providing proper legal representation under the People's Partnership. I thank you. [*Desk thumping*]

Mr. Speaker: Before you speak hon. Leader, the hon. Attorney General has asked, given the voluminous nature of parts (b) and (c), that he would have that matter circulated. Hon. Members, do we agree on that?

Assent indicated.

Mr. Speaker: Okay, Hon. Member.

Dr. Rowley: Thank you very much, Mr. Speaker, and I look forward to receiving my voluminous copy.

Vide end of sitting for written part of answer.

Legal Matters Involving the State
(Details of)

4. Dr. Keith Rowley (*Diego Martin West*) asked the hon. Attorney General:

With respect to the period June 1, 2010 to August 31, 2011 could the Attorney General identify each legal matter involving the State for which an out of court settlement has been approved and/or effected, identifying the attorney/legal team involved for the complainant and the total sum approved and/or paid to lawyers and to the complainants?

The Attorney General (Sen. The Hon. Anand Ramlogan): Thank you very much, Mr. Speaker.

In relation to this question because of the volume of details involved, I again seek your indulgence to circulate two appendices which were prepared by the Solicitor General's department which provide an answer. But permit me to say that insofar as there may be matters listed pertaining to my former law firm, upon my appointment, I recused myself and disqualified myself from dealing with any such matter. All matters pending involving my former law firm, they go directly to the Solicitor General and she deals with them in her wisdom. So, to the extent that you will see in the appendices matters relating to that firm, it has nothing to do with the involvement of the Attorney General. And I say that because we would like to get the records straight having regard to what has been transpiring outside of this House in recent times in terms of inaccurate information. Thank you very much.

Dr. Rowley: Mr. Speaker, while I appreciate the Member's attempt to be helpful to the House, I am put at a disadvantage in that the Member having not answered the question as requested, as a written question, I cannot place the appropriate supplemental. So when the Member volunteers to convert my oral answer into a written answer, I would like to submit that if the Member has it voluminous, maybe he might want to give me an oral summary, I can settle for that.

Sen. The Hon. A. Ramlogan: Mr. Speaker, unfortunately, that would be—
[*Interruption and crosstalk*]

Mr. Speaker: What I would like to suggest is that normally a question ought to be answered within a 3—5 minute period. What I would suggest is that if you can begin responding, and in about five minutes, I will stop you, and you will

make the request that because of, as you have said, the voluminous nature of your response, then the House will agree that the matter be circulated in writing, but could you begin, at least your answer.

Sen. The Hon. A. Ramlogan: Mr. Speaker, I did not anticipate the objection having regard to the voluminous nature of the document. I am not seeing the relevant person from the Ministry with it because they are probably trying to get it copied.

Mr. Speaker: I am without a copy myself so I do not know the nature of the voluminous package that you have mentioned. I would like very much if we can have a copy so that I would be guided accordingly, but if you have a copy in your possession—you do not?

Sen. The Hon. A. Ramlogan: It is on route but I can deal with it.

Mr. Speaker: It is en route, all right. Well, let us defer that particular question, hon. Leader, it is on its way. So let us go on to question 5 in the meantime.

Question, by leave, deferred.

Dr. Rowley: Thank you, Mr. Speaker. I have never seen a Member of this House pretend to answer a question, but I proceed. [*Crosstalk*]

Mr. Speaker: Please, please, hon. Member for D'Abadie/O'Meara, allow the Member to speak.

Dr. Rowley: I am sure the Minister would like to hear the question.

**Office of the Attorney General
(Investigations Conducted)**

5. Dr. Keith Rowley (*Diego Martin West*) asked the hon. Attorney General:

Could the hon. Minister indicate:

- (a) the name, profession and nationality of each of the persons appointed by him or the Office of the Attorney General to conduct investigations into T&TEC, the Sport Company of Trinidad and Tobago, Petrotrin, NIDCO, HDC, eTeck, UTT and the Scarborough General Hospital;
- (b) the date(s) and the terms of reference of each engagement and the amount of money paid to each of these persons to date;
- (c) whether these investigations are complete and if not, the precise stage of each investigation as at August 1, 2011;

- (d) when each investigation is likely to be completed; and
- (e) in the case of non-nationals so appointed, how many times each of these persons visited Trinidad and Tobago in the course of their investigations, the dates of these visits, the cost of each visit and the duration of their stay?

The Attorney General (Sen. The Hon. Anand Ramlogan): Thank you very much, Mr. Speaker.

The People's Partnership Government was compelled to appoint a number of forensic probes into state enterprises and agencies. These probes were a part of our ongoing efforts to bring to justice those persons and organizations who pulled off an Italian job on the public coffers and people of Trinidad and Tobago. Mr. Speaker, revelations coming out of the numerous investigations are but just a tip of the pyramid of greed saddled on an unwitting population by the party whose members occupy the opposite Bench.

With respect to part (a) of the question, permit me to provide the details of the persons appointed by the Office of the Attorney General to conduct these probes.

Persons/Organizations	Profession	Nationality
Mr. Allan Newman QC	Barrister	British
Mr. Vincent Nelson QC	Barrister	Jamaican
Mr. Gerald Ramdeen	Attorney-at-law	Trinidadian
Alix Partners Limited	Forensic Accounting	British
AFA Law Firm	-	British
Lindquist Forensic Accounting Investigations	Forensic accountants	Canadian
Ernst & Young Services Limited	Chartered accountants and auditors	Trinidadian

With respect to part (b) of this question, there are three parts: the dates of the terms of reference, the terms of reference itself, and of course, the total sums that have been paid to undertake the audit.

Mr. Speaker, because of the details involved, once more I would like to seek your permission to circulate the terms of reference for T&TEC, the Sport Company of Trinidad and Tobago, Petrotrin, eTeck, UTT and Scarborough General Hospital. There are no terms of reference for HDC because there is in fact—

Mr. Speaker: May I suggest that you proceed and I am timing you. Continue with your presentation because, as I said, you have an average of five minutes max to respond to question, and if it is going too long, I am going to put to the House that given the voluminous nature—and you will make that available to us—that I will put to the House that the matter be circulated. Okay? But could you begin and continue at the same—?

Sen. The Hon. A. Ramlogan: Certainly, Mr. Speaker. The total sums paid: the following sums were paid to persons or organizations with respect to these investigations.

Persons/Organizations	Total sum paid
Mr. Alan Newman QC	\$1,486,087
Mr. Vincent Nelson	\$2,669,190
Mr. Gerald Ramdeen	\$1,000,017.90
Alix Partners Accounting Firm, Forensic auditors	\$17,411,871
AFA Law	\$2,130,386
Lindquist Forensic Accounting Investigations	\$1,323,203
Ernst & Young Services Limited	\$8,602,937
Grand total	\$34,640,764

Mr. Speaker, this figure covers eight probes that have been undertaken, and these probes cover T&TEC, the Sport Company of Trinidad and Tobago, Petrotrin, NIDCO, eTeck, UTT and the Scarborough General Hospital. These probes involve different components and it is not just one single probe. For example, in relation to Petrotrin, there is more than one probe based on different projects that were undertaken. We have already seen the result of the WGTL probe which has led to a court case. We would have already seen what has happened with the UDeCott one that has led to a court case. With respect to eTeck, for example, we have already seen the results of that probe insofar as it relates to the failed investment in the Bamboo Technologies.

We also have apart from that, the probes that are going on into the construction of the Scarborough hospital and that matter; of course, there are many facets of that probe into the construction of the Scarborough hospital.

In relation to the probe into T&TEC, this comes on the heels of an audit that was done under the previous administration, and the terms of that audit revealed in the street lighting programme and in many other projects that had been undertaken, there were grounds that suggested misconduct or malfeasances in public office. So, again, the probe into T&TEC is one that has to be approached from different angles and different perspectives.

Mr. Speaker, permit me to remind this honourable House that the average cost of these probes is in the vicinity of \$5 million. Permit me to compare that as well with what has happened in the past. The Piarco Airport corruption probe, the estimated cost for that is \$72 million. *Sunday Newsday* of May 08, 2011, estimated that the legal and consultancy fees spent in investigation of the Piarco construction scandal, in total, was approximately \$72 million; of course, that figure includes the Commission of Enquiry.

The Clico matter: under the former administration, the Clico matter which did not, in fact, result in any case of any kind, but \$105 million was spent on the Clico probe through the Central Bank. The breakdown for that is \$56 million to Mr. Bob Lindquist; \$31.5 million for legal fees and \$17 million for specialist fraud experts. So that is \$105 million spent on the Clico probe; \$72 million on the Piarco Airport.

The UFF Commission—fake alarm bell about the cost of corruption probes sanctioned by PNM into PNM corruption. The case against Calder Hart for fraud and negligence came after a prolonged and costly commission of enquiry that did not yield any results under the former administration in terms of a case being filed. The cost of that commission of enquiry was over \$50 million that compares to \$5 million that we have, in fact, expended.

Hon. Member: Great is the PNM! Waste every cent!

Sen. The Hon. A. Ramlogan: The Biche Commission of Enquiry: we are proud to say that we have in fact opened the Biche High School, “Nobody eh drop down dead from noxious fumes; nobody eh drop down dead as yet”. But they kept that Biche High School closed.

Mr. Speaker: Hon. Member, we have questions and we want answers. We are getting into a speech exercise. What I would like to suggest is that answers to parts (c), (d) and (e), if you have them with you, I will advise, with the leave of the House, that these parts to your question, if they are voluminous, be circulated. Let me hear the Leader.

Dr. Rowley: Thank you very much, Mr. Speaker, for your cooperation in this matter. But I would like to raise the fact that item (b) which comes before (c), (d) and (e), the Minister has not attempted to answer item (b) which is the terms of reference for the persons and firms engaged. I am hoping that if he is granted time that that key part of the question be answered, because he is giving me all kinds of volunteered information, and I am asking about the terms of reference, and he is very carefully not answering that.

Mr. Speaker: What I am suggesting to this honourable House is that it is two o'clock; the AG has been on his legs for the last 10 minutes answering this question. There are several other questions to be answered and we have timing under, I think, it is Standing Order 17 that deals with 2.15.

So I am asking the Attorney General, if you can answer part (b), and I would suggest if you could answer part (b) then because of the time constraint, with the leave of the House, if you can deal with (c) quickly, (d) quickly and (e), we will allow it. But if you are going beyond five past two, I will have to stop you and ask you to circulate the answers to those parts to the hon. Member and to the House by extension, because I would like all Members' questions to be answered before 2.15.

2.00 p.m.

Sen. The Hon. A. Ramlogan: Mr. Speaker, I shall proceed to answer question No. 5 (c) and (d) immediately. Question No. 5(c)—[*Interruption*]

Mr. Speaker: I ask if you could probably just deal with (b).

Sen. The Hon. A. Ramlogan: With respect to 5(b), I have indicated that is a matter that I will circulate by way of—[*Interruption*]

Hon. Members: No.

Sen. The Hon. A. Ramlogan:—and I have sought your leave to do that. I would refer to answer 5(c) and (d) now.

Mr. Speaker: So, you will come back to that after?

Sen. The Hon. A. Ramlogan: Indeed, Sir. With respect to question No. 5 (c) and (d). Mr. Speaker, these investigations are extremely complex and I wish to report that as at August 01, 2011, the following is the status:

- T&TEC: financial started and overall work should be completed on or before March 2012.
- Sport has been completed as far as we are able to.

- Petrotrin: the investigation into the gas to liquid plant project has been completed. That represents, of course, only part of the allegations of corruption into Petrotrin.
 - Nidco/MV *Su* matter: that investigation has been completed.
 - HDC: no investigation is being conducted at this time.
- eTeck: the investigation in respect of Bamboo Networks is completed and the remaining work should be completed on or before March 2012.
- UTT: the investigation is completed.
 - Scarborough Hospital: likely to be completed on or before March 2012.

These investigations are extremely complex. To date, the parties involved have examined more than two million documents. These are documents that have been retrieved from files, computers, and, indeed, in some cases, from ex-employees who had been fired from some of these institutions, who stood up in the defence of the institution to try and protect the plundering and rape that was taking place.

Some of the documents, and to add to the complexity of these probes; having regard to the timeline involves imaging retrieval from computers and laptops to lift images off them. In some cases, we have had to engage the assistance of foreign governments to trace wire transfers and to trace funds that take a very meandering transatlantic path that have left our shores and made their way elsewhere.

The investigation is one that requires, not just forensic expertise, but it requires legal expertise, accounting expertise and it also indeed, in some cases, requires experts in the particular discipline. In the case of construction, for example, in the case of the Scarborough General Hospital, if we are trying to determine whether materials left the site and went to a private development, we have to engage quantity surveyors to assess what materials should have been there, compared to what materials were there, to ascertain what materials left there. It is a very complex matter and that is why you would find that there are varying timelines for these investigations. Suffice it to say, that in the case of Petrotrin, in the case of UDeCott and in the case of eTeck—in the case of eTeck, the claim has been filed against the former board. In the case of Petrotrin, the pre-action letter has been issued against members of the former board. [*Interruption*]

Mr. Speaker: Hon. Members, I would like to suggest the following: it is five past two, and we have several other questions to be answered. I would like to suggest that you circulate, in writing to the Leader of the Opposition and Member for Diego Martin West, question No. 4, because that has not been answered. So, you have to circulate question No. 4, that has not been answered. As it relates to question No. 5, you have to circulate question No. 5(b), (c), (d) and (e) to the Leader of the Opposition and Member for Diego Martin West. I want to say, when Members are responding to questions I do not want Members to assume that questions are voluminous. Leave that for the Chair. I would like to see the question and I would make a determination, because questions are to be answered, so kindly be guided.

I think also question No. 3(b) and (c) are still to be circulated. Let me repeat, question No. 3, you have answered part (a), but in terms of (b) and (c), they are yet to be answered. Please circulate in writing.

In in terms of question No. 4, you have not answered that. Please circulate in writing today. Also, question No. (5), you are yet to complete 5(b), (c), (d) and (e). Could you kindly circulate those for us before the day is over?

Sen. The Hon. A. Ramlogan: Certainly.

Vide end of sitting for written parts of the answers.

Mr. Speaker: I will now proceed to the Member for Port of Spain South.

**Picton Dance Theatre
(Completion of)**

7. Miss Marlene McDonald (*Port of Spain South*) asked the hon. Minister of Community Development:

Could the hon. Minister state the completion date for the Picton Dance Theatre located on Picton Road, Laventille?

The Minister of Community Development (Hon. Nizam Baksh): Thank you, Mr. Speaker. With regard to question No. 7, the Picton Dance Theatre Facility was not part of the original list of construction of community centres and facilities, but subsequently approval was granted by Cabinet on August 13, 2009, for the inclusion of this project in the Ministry's Community Centres/Facilities Programme. The former Ministry of Community Development, Culture and Gender Affairs invited tenders for the construction of the Picton Dance Theatre facility.

Preliminary works on this project commenced on February 16, 2010. Currently, the Picton Dance Theatre is 10 per cent complete and because of insufficient allocation of funds to the Ministry's capital programme for fiscal 2011, this project was terminated. It is not practicable at this time to give a completion date for the Picton Dance Theatre, but as soon as funds become available this project will recommence.

Mr. Speaker: Any supplemental?

Miss McDonald: No, Sir.

**Basilon Street Community Complex
(Details of)**

8. Miss Marlene McDonald (*Port of Spain South*) asked the hon. Minister of Community Development:

Could the hon. Minister state when is the commencement date for the construction of the Basilon Street Community Complex?

The Minister of Community Development (Hon. Nizam Baksh): Thank you, Mr. Speaker. It is interesting that the questions are coming from the former Minister of Community Development who had the authority to complete. *[Interruption]*

Mr. Speaker: Answer the question.

Hon. N. Baksh: The proposed Basilon Street Community Recreational Complex was envisaged to house a community centre for which designs were already procured on a parcel of land measuring 1.850 acres situated in the heart of East Dry River, lower Belmont region of south Port of Spain. The Ministry of Community Development intends to demolish the existing facility and rebuild a community complex. The proposed facilities to be placed in this complex are: a community centre with two floors; an amphitheatre; swimming pool; and children's play park. In addition, an upgrade of the existing basketball and football court, park benches and landscaping were also proposed.

In 2009, a contract was awarded to proceed with preliminary works for this project. However, in fiscal 2011, this project had to be terminated due to insufficient allocation of funds to the Ministry's capital programme. It is proposed that this project be recommenced in 2012/2013.

Mr. Speaker: Do you have any supplemental question Member?

Miss. McDonald: No.

**Construction of Community Centres
(Details of)**

9. Miss Marlene McDonald (*Port of Spain South*) asked the hon. Minister of Community Development:

Could the hon. Minister give a detailed listing of all the community centres under construction from May 2010 onwards?

The Minister of Community Development (Hon. Nizam Baksh): Thank you, Mr. Speaker. With effect from May 2010, to present, 54 community centres were under construction. These centres are listed as follows—I would give the name of the project, the contractor the date of the award and the contract sum. Construction of Gulf View Community Centre, Twin Island Projects Limited, 21/12/2008—[*Interruption*]

Mr. Speaker: Hon. Minister, is it going to be very long?

Hon. N. Baksh: Yes, I have a couple of pages.

Mr. Speaker: With the leave of the hon. Member, there are three more questions to be answered and we have only five minutes more. Do you want him to go through?

Miss McDonald: Mr. Speaker, I would like to ask one question before, as a supplemental question.

Mr. Speaker: He had not answered it fully—do you want to anticipate him? Go ahead, ask the question and he will determine if he could answer.

Miss McDonald: Certainly. Minister of Community Development, could you state whether any construction of community centres in the East Port of Spain area—if any one of them would be completed or continued?

Mr. Speaker: Minister, would you be able to respond?

Hon. N. Baksh: I could give a general guideline here. Because of the constraint on funding, when I came into office there were 83 community centres under construction. What we did, we took those that were nearing completion and tried to finish those with the funds allocated. I could not say offhand, unless I go through the notes, those that are within the area she is requesting, but I could provide the—it is there in the written answer.

Mr. Speaker: Thank you. Could you kindly circulate that answer to the hon. Member and other Members of the House?

**Prime Minister's Trip to Brazil in April 2011
(Details of)**

22. Mrs. Paula Gopee-Scoon (*Point Fortin*) asked the hon. Minister of Foreign Affairs and Communications:

Could the hon. Minister state the dates, times and places of all official duties conducted by the honourable Prime Minister on her recent trip to Brazil in April 2011?

The Minister of Foreign Affairs and Communications (Hon. Dr. Surujrattan Rambachan): Thank you, Mr. Speaker. Mr. Speaker, you would recall and Members of the House would recall, that prior to going on any visit overseas, I come to this House and state categorically the objectives of the visit and what is proposed and following that, I also come back and give a report to this House as to what was achieved. The response, therefore, which I have for the hon. Member for Point Fortin is that the following constitutes the official duties in Brazil in April 2011.

- On Monday April 25, 2011, the Prime Minister and her delegation arrived in Brasilia at 10.30 p.m.
- On Tuesday, April 26, 2011, at 10.30 a.m. there was the unveiling of a plaque at the Embassy Lands for the construction of the Embassy Chancery; lands that were donated by the Brazilian Government for 38 years and nothing had been done until that particular day when, in fact, the sod was turned for the construction.
- At 12.30 p.m. on that day, the Prime Minister, together with the delegation, visited the chancery of the Embassy of Trinidad and Tobago and met with the Ambassador, Dr. Hamza Rafeeq and also then met with Embassy staff in a joint meeting.
- At 1.30 p.m. the Prime Minister had lunch with the Embassy staff and the official delegation.
- At 3.00 p.m. that same day, the Prime Minister and the delegation met with Brazil's premier agricultural research organization, EMBRAPA.

In saying this, let me say that Brazil has established an embassy in every one of the Caricom countries in the Caribbean, and Brazil has also donated to the Caricom, a model farm which is to be placed in one Caricom country and we visited EMBRAPA in order to deepen our relations—[*Interruption*]

2.15 p.m.

EXPIRATION OF QUESTION TIME

Mr. Speaker: Minister, in accordance with Standing Order 19(6), it is now 2.15 p.m.; question time comes to an end. Under Standing Order 19(7) after 2.15 p.m., all questions on the Order Paper are to be circulated in writing to the respective Members. We shall now proceed.

Hon. Members, may I further issue a guidance. Those questions which have not been answered today because of the time, if the Members who are still to ask questions are desirous of having those questions put on the next Order Paper, you can so indicate and the clerk would do the honourable thing.

Miss McDonald: Mr. Speaker, I would certainly appreciate that these questions, the unanswered questions, be placed, that is question No. 9, question No. 22, question No. 23 and question No. 24.

Mr. Speaker: The questions which would fall, would be questions Nos. 22, 23 and 24; we have already ruled on all previous matters. Those are the questions which will come on the next Order Paper, Member for Point Fortin. Okay, let us continue.

The following questions stood on the Order Paper in the name of Mrs. Paula Gopee-Scoon (Point Fortin)

Prime Minister's Trip to Brazil August 2011

(Details of)

- 22.** Could the hon. Minister of Foreign Affairs and Communications state the dates, times and places of all official duties conducted by the hon. Prime Minister on her recent trip to Brazil in April 2011?

Travels to Ghana 2011

(Details of)

- 23.** Could the hon. Minister of Energy and Energy Industries state:
- a) The purpose of the hon. Minister's travel undertaken in April 2011 to Ghana;
 - b) The current status of Ghana's Gas Infrastructure Development Project and the involvement of the National Gas Company of Trinidad and Tobago?

**Joint Venture with Trinmar
(Details of)**

- 24.** Could the hon. Minister of Energy and Energy Industries state:
- i) Whether the Government sought to find a joint venture partner for Trinmar;
 - ii) If the answer is in the affirmative, could the Minister state what efforts have been made during the past year to find a joint venture partner?

Questions, by leave, deferred.

STATEMENTS BY MINISTERS

Job Creation Programme

The Prime Minister (Hon. Kamla Persad-Bissessar): Thank you, Mr. Speaker. On Monday of this week after consultations with the National Security Council we took a decision to remove the curfew, but to retain the state of emergency. At that time I indicated that one of the measures which we will be using in assisting in the fight against crime would be the creation of 20,000 jobs for the most vulnerable and those in communities most in need., and that is what I wish to address now, with your leave, hon. Speaker, just for a few minutes.

We are intent, Mr. Speaker, on engaging our youth and the most vulnerable members of our communities in a massive job creation programme entitled “Reclaiming our Youth, Embracing our Future”. Consistent with our Government’s manifesto promise of “Prosperity for All”, we believe that employment is the highest form of empowerment. For a young citizen in a low-income and underprivileged environment, a job means the world, it brings meaning to life, a sense of purpose, dignity and the opportunity to participate in all this country offers. And so we intend to increase our existing capacity in several social intervention programmes to 20,000 jobs at an estimated cost of a further \$300 million, and we want to do so by immediately ramping up employment in several existing programmes.

Our youth from the previously determined hot spot areas and low-income communities will benefit from this income transfer by engaging to undertake community-based work, linked to training initiatives which confer basic literacy and numeric skills, along with instructions in the basic trades. To this end, the Community-Based Environmental Protection and Enhancement Programme (CEPEP) will ramp up its capacity to engage members of the community and neighbourhoods, which are most affected by crime and deviant behaviour amongst our youth.

Job Creation Programme
[HON. K. PERSAD-BISSESSAR]

Wednesday, November 09, 2011

Mr. Speaker, I want to state categorically that we will not be meeting or engaging the services of so-called community leaders, we left that behind as of May 24, 2010 with the last administration. On the contrary, we will engage communities using existing home village councils, residents, tenants' associations, action committees, NGOs and CBOs in those particular communities. Civic-minded activists who have demonstrated leadership and advocacy will work alongside state agencies to engage our youth in developmental programmes, which would transfer not only income, but equally or more important will also transfer values of hard work, pride in community and love of country.

This employment creation strategy, Mr. Speaker, will include, but is not limited to, the following: the now popular Colour Me Orange Programme of the Trinidad and Tobago Housing Development Corporation which aims to bring economic opportunities to youths and single women in the 54 housing estates across Trinidad, in a massive clean and beautify programme for the Christmas season.

This innovative programme will now include a component which will utilize local community activists to do home improvements to their own communities in a private/public partnership with the HDC. Our new project—I am sure the Member for Port of Spain South will be very happy to hear about—which we have dubbed: “58 Duncan Street” will serve as a pilot and hopefully the model for the rest of Trinidad and Tobago as a case of citizens taking responsibility for their public space, as I say, in a public/private partnership. This programme we will launch as early as next Tuesday, the November 15, and we will increase employment in the HDC estates from 450 to 2,000 new jobs. [*Desk thumping*]

Mr. Speaker, I say with regret that due to the neglect by the former administration, our youth in the HDC communities are amongst the most vulnerable and may be tempted or lured into criminal activities—some of them are. Saving our HDC communities this Government believes means saving our nation. We will also increase job creation in the HDC repair and rehab programme which aims to bring distressed estates into occupation as soon as possible. This programme would engage greater numbers of artisans and tradesmen in the small and micro business sector with supply and demand links to the construction industry.

Mr. Speaker, the job creation capacities in other programmes such as the National Reforestation Programme and the Unemployment Relief Programme

will be increased in the short term to meet the demands for employment in vulnerable communities when environmental imperatives are synchronized with employment needs.

Our creative and innovative programmes such as the CEPEP Marine and the URP Social will aid the job creation strategies so as to bring relief to those youths and single women in need of employment, while providing the most productive use of state funding for vulnerable citizens and groups.

So, Mr. Speaker, today, I announce this new job creation project which the People's Partnership Government is hoping will assist us, as I say, in improving the quality of life of many of our citizens and also in helping us in the fight against crime. And that fight against crime, yes, we use the weapon of the state of emergency which is still continuing as we phase out into post SoE. The curfew has been removed. We intend to come back to this Parliament, as we are doing today with the DNA Bill, with several legislative measures in the fight against crime. So the DNA Bill is before us today, the Bill for the PI, preliminary inquiries, to remove those and we have to speed up what happens in court. The electronic monitoring, Mr. Speaker, of persons out on bail and former criminals that will be coming to the Parliament very shortly. So a series of anti-crime legislative Bills, legislative matters to come to Parliament.

In the National Security Council meeting on Monday as well we approved for the Judiciary, based on their request., for tendering through the CTB for setting up videoconferencing facilities in several of our Magistrates' Courts, and in that way we hope to do the remanding in the prisons themselves through the videoconference, so that we do not have to transport prisoners across the country to just go to courthouses all over to have their cases adjourned and thereafter adjourned. Again that will help us in clearing the backlog in the Magistrates' Courts.

The removal of the PIs, with electronic videoconference would assist in the backlog—many will remember me standing in this Parliament speaking, complaining and really bemoaning the fact that we had over 172,000 cases in our Magistrates' Court, so on a daily basis how much work could ever get done; we always say justice delayed, is justice denied. The fight against crime is not just—we have seen and we have said it all time it is holistic: legislative and administrative, in addition to social economic measures that would be part of it and, of course, law enforcement which is what we saw a lot of during this period of the state of emergency.

Job Creation Programme
[HON. K. PERSAD-BISSESSAR]

Wednesday, November 09, 2011

So, Mr. Speaker, I am very happy to announce that we will establish “Reclaiming our youth, Embracing our Future” by the creation within this programme of 20,000 new jobs in Trinidad and Tobago.

I thank you, Mr. Speaker.

Outcomes of CHOGM (2011)

The Minister of Foreign Affairs and Communications (Hon. Dr. Surujrattan Rambachan): Thank you, Mr. Speaker. I have been requested by the hon. Prime Minister to provide this House with a report on the recently concluded Commonwealth Heads of Government Meeting (CHOGM) and other related meetings and events which took place in Perth, Australia from October 24 to 30, 2011.

Mr. Speaker, as we are all aware, the hon. Prime Minister of Trinidad and Tobago was the Chair-in-office of the Commonwealth for 15 months prior to CHOGM 2011, and, as such, was obligated to attend the CHOGM 2011 in Perth to official hand over the baton of Chair to Prime Minister Julia Gillard of Australia.

I am pleased to advise that one of the most enriching aspects of this year’s CHOGM has been the opportunity it afforded the Prime Minister to establish a close working relationship with the incoming chairperson in office and her fellow first female Prime Minister.

Mr. Speaker, our nations, that is Trinidad and Tobago and Australia, have long enjoyed friendly relations which were boosted in 2007 when the Australian High Commission opened its doors in Port of Spain. However, I am happy to signal that through our shared engagements at CHOGM 2011 the platform has been raised and we can mark a significant fillip in the bilateral relations and cooperation between Trinidad and Tobago and Australia.

Areas which are earmarked for further cooperation have been outlined in a joint Trinidad and Tobago/Australia statement which was released to the media upon the arrival of the hon. Prime Minister to Trinidad and Tobago from the CHOGM on Sunday. However, for the benefit of my honourable colleagues who probably would not have been able to access the joint statement, I will briefly outline some of the areas targeted for the deepening of relations between Trinidad and Tobago and Australia.

Firstly, in recognition of the strength of Trinidad and Tobago’s economy and its success in becoming a major regional financial centre, the Government will seek to strengthen the existing bilateral commercial relationship which is already

evident with the presence of the Australian giant BHP Billiton. This relationship will be further fortified by the implementation of the Australia/Caricom Memorandum of Understanding.

Secondly, given the similarity of interest of both governments in the international arena, both countries pledge to work together to advance areas of mutual interest including:

- women's participation in leadership in both the Caribbean and Pacific regions;
- the United Nations Arms Trade Treaty;
- the United Nations outcomes on non-communicable diseases; and
- the further strengthening of the Commonwealth and follow-up action on issues such as food security, natural resource management, remittances and climate change; all of these in a manner which will ensure that these outcomes meet the needs particularly of small vulnerable states in the Commonwealth.

One of the key matters for consideration by CHOGM was the report of the Eminent Persons Group which was commissioned at the 2009 CHOGM held in Port of Spain. In this regard, Trinidad and Tobago is very supportive of an enhanced role for the Commonwealth Ministerial Action Group normally called CMAG, which addresses serious and persistent violations of Commonwealth values. You may recall that Trinidad and Tobago became a member of CMAG in November 2009 and in my capacity as Minister of Foreign Affairs, I assumed the Vice-chairmanship of CMAG in September 2010.

Given the extensive involvement of Trinidad and Tobago in CMAG over the past year, it was decided at CHOGM 2011, that Trinidad and Tobago should continue to be a member of CMAG for a second term. [*Desk thumping*]

2.30 p.m.

As the custodian of Commonwealth values, and given this country's long tradition of peaceful election, demonstrated through peaceful transitions in democratically elected governments, membership on this ministerial action group will provide my country with the opportunity to demonstrate, and to lend to other Commonwealth countries its experience and wisdom in dealing with conflicts.

Also coming out of the report of the Eminent Persons Group was the recommendation for the drawing up of a Commonwealth Charter. Trinidad and

Outcomes of CHOGM (2011)
[HON. DR. S. RAMBACHAN]

Wednesday, November 09, 2011

Tobago is supportive of this measure as it represents a major step towards solidifying the core values of the Commonwealth. This process will culminate in 2012 after a period of consultation.

Mr. Speaker, in my previous statement to Parliament, I inadvertently omitted that the hon. Minister, Dr. Glenn Ramadharsingh, was on the official delegation. His presence at CHOGM was extremely important in that several issues of the Commonwealth involve poverty alleviation; empowering people and the reconstruction of communities which represents the goals of the people's forum and civil society. Civil society, as you know, plays a most important role in determining the work of the Commonwealth and, in addition, plays a key role in the formulation and adoption of the Commonwealth Charter.

Mr. Speaker, the hon. Prime Minister of Trinidad and Tobago has been championing the cause of the empowerment of women. Her role as Chair-in-office of the Commonwealth has provided her with the opportunity to steadfastly pursue the goal of empowering women within the Commonwealth and beyond the Commonwealth in the larger global context. CHOGM, therefore, constituted the zenith of her efforts over the past 15 months to truly catalyze the empowerment of women.

Some of the initiatives that have been spearheaded by the hon. Prime Minister in her thrust towards the attainment of gender equality have been the hosting of the Caribbean Regional Women's Colloquium which took place here in Port of Spain in June, and the co-hosting on the margins of the United Nations General Assembly 66, the side event on women's political participation in New York in September. Mr. Speaker, it was an historic milestone for women throughout the Commonwealth and the rest of the world that the first female chair-in-office handed over to the second female chair. The hon. Prime Minister also participated in an important side event hosted by Prime Minister Gillard, geared towards furthering women's empowerment in the Commonwealth and signalling a continuation of the good work done by the Prime Minister of Trinidad and Tobago.

In another side event, hosted by the Royal Commonwealth Society we, again, discussed the significant issue affecting young women and adolescent girls in particular. The organization, Plan UK, discussed the important issue of the marriageable age of young girls and the forced marriages of women. As the event's theme boldly suggests "Silence is not an Option", even in our local context, silence is no longer an option on this matter.

Mr. Speaker, the biennial Commonwealth Heads of Government offers an important forum for heads to network and creates opportunities to strengthen existing intra-Commonwealth ties, and to forge new linkages with our fellow Commonwealth countries. Trinidad and Tobago sought to use this networking opportunity, not only to deepen trade and investment relations with fellow members, but also to explore the possibility of establishing direct flights to South Africa and India and, generally, to the African continent. I am sure you will all agree that this is an exciting prospect and will result in numerous gains for our country.

CHOGM 2011 presented an array of opportunities for encouraging growth, investment and trade in Trinidad and Tobago. Our agenda included participation in the Commonwealth Business Forum, which had the largest registration ever of delegates, 1,500. This proved to be instrumental in highlighting the value of intra-Commonwealth trade and the need to strengthen Commonwealth partnerships with both the private and public sectors. In this regard, I wish to highlight to this House, that one of the outstanding aspects of the Commonwealth Business Forum, was the considerable respect and the prominence accorded to our hon. Prime Minister of Trinidad and Tobago at the Commonwealth Business Forum which she addressed. The global recognition, Mr. Speaker, of our Prime Minister in the short space of 15 months is another development which Trinidad and Tobago must fully utilize in the interest of this nation and the Caribbean as a whole.

The hon. Kamla Persad-Bissessar aptly portrayed Trinidad and Tobago's role in promoting the work of the Commonwealth Business Council and promoting trade with the Commonwealth in her address at the opening ceremony of the business forum. The Prime Minister endorsed Trinidad and Tobago as a facilitator of investment for partnerships between Latin America and the Caribbean, as well as branded Trinidad and Tobago as an experienced business partner with a long history in the oil and gas industry with significant exports of liquefied natural gas to the United States of America.

She further presented Trinidad and Tobago as a gateway to the Americas, and in outlining the conducive environment for trade and investment opportunities, again, declared that Trinidad and Tobago is open for business and ready to support the expansion of intra-Commonwealth trade. Our fellow Commonwealth member states were also made aware of the significance of the first ever Caribbean investment forum which was hosted in Trinidad and Tobago in June.

Outcomes of CHOGM (2011)
[HON. DR. S. RAMBACHAN]

Wednesday, November 09, 2011

Mr. Speaker, with over 100 years of experience in energy, Trinidad and Tobago has, indeed, earned its reputation as a world leader in the energy sector. By partnering with fellow Commonwealth nations, we have the opportunity to share our expertise and to take the success of our oil and gas industry to new heights.

The presence of the hon. Minister of Energy and Energy Affairs, Sen. The Hon. Kevin Ramnarine, was a tremendous boost to our efforts in shining the energy spotlight on Trinidad and Tobago. The global recognition of Trinidad and Tobago as a crucial player on the international energy plane was further solidified by his presence. He rallied and led the high-level business team, the technical team, inclusive of our High Commissioners in Uganda, Nigeria and South Africa, in spreading the energy mantra of Trinidad and Tobago to all who were prepared to listen. Indeed, there were many listeners. The widespread recognition of Trinidad and Tobago as a significant player in the global energy field was most noteworthy.

Most evident throughout the meeting at the business forum was the considerable effort on the part of African countries to benefit from the wealth of experience and expertise that Trinidad and Tobago possesses in the energy and non-energy sectors. The renewed development thrust within Africa, the increased attention which Africa has already begun to attract and the many benefits to be derived from Trinidad and Tobago becoming more involved on the African continent augurs well for the development of trade in the energy sector and energy-related services.

Through both the Minister of Trade and Industry, hon. Stephen Cadiz and the Minister of Energy and Energy Affairs, Sen. The Hon. Kevin Ramnarine, we were able to network with several African leaders, including the President of Nigeria, His Excellency Goodluck Jonathan. We effectively marketed “Brand Trinidad and Tobago” and our country’s capability to supply technology and training as well as discussed potential joint venture arrangements. It is in pursuit of this, that our hon. Prime Minister proposed that an energy meeting of Commonwealth Ministers of Energy take place in Trinidad and Tobago in the early part of the new year. The main objectives of this meeting will be explore strategies and best practices for sustainable energy development, the role of institutions, the role of corporate social responsibility and the role of human capital development.

The Government of Trinidad and Tobago and the hon. Prime Minister is confident that this proposed event will not only strengthen our ties with the

Commonwealth, but will also serve as a platform to attract investors and further develop our nation's leadership role in the global oil and gas industries.

It is noteworthy that Trinidad and Tobago has already pioneered cooperation agreements with members of the African Commonwealth countries, therefore, Commonwealth countries of the Indian Ocean and Pacific Rim represent great potential for trade and investment and the sharing of technical expertise in the energy sector. African nations, for example, Tanzania, Kenya, Uganda, Rwanda, Nigeria and Cameroon, to name a few, represent tremendous prospects for economic growth and development which can be harnessed for the benefit of our country. To this end, the Government will be exploring the suggestions of the hon. Minister of Energy and Energy Affairs that there is need to establish a permanent energy office on the African continent. This has considerable validity and foresight for Trinidad and Tobago's future role in the international energy sector.

Mr. Speaker, I would like to share with this House some of the details that Trinidad and Tobago achieved on the margins of the Commonwealth Heads of Government Meeting with the following countries.

Uganda: a team of officials from the National Gas Company and the National Energy Corporation met with private and public officials from the energy sector of Uganda to discuss proposals for technical cooperation in oil and gas. As a result, there is every likelihood that technical cooperation with Uganda will be enhanced, with very good prospects for investments in the energy and non-energy sectors. Discussions were held with the Chairman of the Uganda Petroleum Institute and an influential industrialist in the energy sector. It is anticipated that when the NGC/NEC delegation visits East Africa later this month, they will most likely hold further discussions with both private and public sector officials in the energy sector.

Tanzania: the team met with private and public sector representatives of the Tanzanian energy sector under the umbrella of the Tanzania Investment Centre. Cooperation in the field of energy was, again, discussed. Prominent among the group was officials from the Tanzanian Petroleum Development Company Limited. It was agreed that the team would visit Tanzania in November with a view to advancing the discussions and hopefully identify business opportunities.

Rwanda: the team held discussions with the Executive Chairman of the Independent Petroleum Producers, the Managing Director of the Multi-Sector Investment Group and the Rwandan Development Board with a view to exploring

Outcomes of CHOGM (2011)
[HON. DR. S. RAMBACHAN]

Wednesday, November 09, 2011

the opportunities for investment and collaboration in both the energy and non-energy sectors. Again, it is hoped that these initial discussions will be vigorously pursued when the NGC/NEC delegation visits the region in November 2011.

Nigeria: the Minister of Energy and Industry Industries met with an investor from the private sector with respect to a gas project currently in progress in Abia State, Nigeria. This project has the potential to facilitate the successful entry of the National Gas Company and the National Energy Corporation into the very large oil and gas sector in Nigeria. This will be further explored during the visit of the NGC/NEC team to Nigeria in November.

Cameroon: Cameroon is actively pursuing the development of the oil and gas sectors and we met with the head of the Cameroon Investment Commission. I am positive that the National Gas Company will be well equipped to provide assistance to enter the Cameroon market.

Botswana. Botswana is currently exploring for oil and gas and during a meeting with representatives from this country, they expressed the following interest:

- (i) sourcing engineers with both structural and gas/oil orientation;
- (ii) sourcing asphalt for its massive road infrastructure programme; and
- (iii) finalization of the Technical, Scientific and Economic Cooperation Agreement which was signed between Trinidad and Tobago and Botswana but which has not yet been implemented.

Namibia: Namibia is also exploring its gas/oil potential and is willing tap into the experience of the Trinidad and Tobago energy sector.

South Africa:

- (i) the South African Synthetic Oil Liquid Company (SASOL) expressed an interest in developing links with Petrotrin and the National Gas Corporation;
- (ii) the Government of South Africa has expressed an interest in sourcing asphalt from Trinidad and Tobago; and
- (iii) they expressed a renewed interest in having an air services agreement with Trinidad and Tobago.

Mr. Speaker, we also met with Mauritius. In discussion with Mauritius, the following issues were raised:

- (i) the establishment of an energy hub in Mauritius to supply LNG and other downstream products to the Southern Cone of Africa;
- (ii) a Scientific, Technical and Economic Cooperation Agreement with Trinidad and Tobago and facilitation of a student exchange programme in agriculture; and
- (iii) the development of a tourism project with Trinidad and Tobago. The Mauritius Ministry of Tourism and the Mauritius Tour Operators Association will link directly with our High Commission in Pretoria on this issue.

Mozambique: the Mozambique delegation met directly with the Trinidad and Tobago energy team, and as a result of that a delegation from Mozambique is scheduled to visit Trinidad and Tobago later this month to explore opportunities for cooperation and investment in their country.

Mr. Speaker, our efforts have already begun to bear fruit. During a courtesy call with the High Commissioner of Ghana last week to Trinidad and Tobago, the High Commissioner again reiterated and identified tangible areas for the strengthening of the bilateral relationships between Trinidad and Tobago and Ghana including: air transport; joint venture partnerships in Ghana's energy sector; training of Ghanaians with regard to the petroleum, petrochemical and energy related industries; and possible cooperation in agriculture.

2.45 p.m.

Mr. Speaker, I wish to point out that the hon. Prime Minister, Kamla Persad-Bissessar and her delegation met with Mr. Bob Dudley, the Chief Executive Officer of BP and other senior BP executives in London. The meeting followed on from a meeting with BP Chairman, Carl-Henric Svanberg in Perth, as a result arrangements were made for bpTT to pay TT \$1 billion to the Government of the Republic of Trinidad and Tobago. [*Desk thumping*] This sum represents the commencement of payments arising out of the negotiations with the Board of Inland Revenue; that company has made an initial payment of US \$159,723,071 which covers the period 2001 to 2006.

Mr. Speaker, as you can see our attendance at conferences like CHOGM are precious opportunities—

Mr. Speaker: Member for Point Fortin, I appeal to you, allow the hon. Minister of Foreign Affairs and Communications to speak in silence. Continue, hon. Minister of Foreign Affairs and Communications.

Hon. Dr. S. Rambachan: Thank you, Mr. Speaker. There is a difference between promises and getting the job done, and this Government is about getting the job done, so a billion dollars has been collected. [*Desk thumping*]

Mr. Speaker, as you can see our attendance at conferences like CHOGM are precious opportunities for the aggressive marketing of Trinidad and Tobago and the best utilization of our talented human resources. What is even more significant is that the team is led at the top in its marketing thrust by the hon. Prime Minister who proverbially puts on boots and rolls up the sleeves to engage potential international investors.

In the words of the hon. Prime Minister, she is the CEO of the Government. For anyone making the journey to the literal otherside of the world it is a great physical sacrifice, but it is the type of sacrifice that we must of necessity make to further the position and entrench the position of Trinidad and Tobago in new global space. It is where—Members opposite will know—the finest minds meet to discuss the future of one-third of the world’s population, more importantly, because this population is growing and has now exceeded 7 billion people worldwide. So that when the hon. Prime Minister of Trinidad and Tobago and her delegation visited “DownUnder”, it was not only to seek the benefit of Trinbagonians, but to contribute in a tangible way to the ideas and plans which will make better the lives of our Commonwealth brothers and sisters. I thank you, Mr. Speaker. [*Desk thumping*]

(ADMINISTRATION OF JUSTICE)

(DEOXYRIBONUCLEIC ACID) BILL, 2011

Bill to repeal and replace the Deoxyribonucleic Acid (DNA) Act, Chap. 5:34 [*The Minister of Justice*]; read the first time.

Motion made: That the next stage be taken at a later stage of the proceedings. [*Hon. H. Volney*]

CUSTOMS (AMDT.) BILL

Bill to amend the Customs Act, Chap. 78:01 to enhance border control by providing for advance passenger and cargo information to be submitted electronically to the Comptroller of Customs and Excise and for related matters [*The Minister of Finance*]; read the first time.

EQUAL OPPORTUNITY (AMDT.) (NO. 2) BILL

Bill to amend the Equal Opportunity Act, Chap. 22:03 [*The Attorney General*]; read the first time.

STATE SUITS LIMITATION (NO. 2) BILL

Bill to repeal and replace the Crown Suits Limitation Ordinance, [*The Attorney General*]; read the first time.

(ADMINISTRATION OF JUSTICE)**(DEOXYRIBONUCLEIC ACID) BILL, 2011**

The Minister of Justice (Hon. Herbert Volney): Thank you, Mr. Speaker. Mr. Speaker, I beg to move,

That a Bill to repeal and replace the Deoxyribonucleic Acid Act, Chap. 5:34 be now read a second time.

Mr. Speaker, this Bill is just one of the Government's major initiatives to transform and modernize the criminal justice system of Trinidad and Tobago. For the past 18 months the legal team of the Ministry of Justice—and I also want to recognize in this the legal team of the Law Reform Commission, the Office of the Chief Parliamentary Counsel, and all the lawyers in the legal ministries of this Government—in a bid to improve the workings of the criminal justice system have put their hands to the wheel in coming up with this Bill, from the point of an individual's detention to the determination of the matter. I wish to thank all those persons who were involved in producing this measure for the House today.

Before I continue I also wish to recognize some of the constituents of St. Joseph who are here, no doubt to support their Member of Parliament. [*Crosstalk*]

Mr. Speaker: Hon. Member, you would be aware that we do not recognize anyone except Members of Parliament, so do not recognize anyone.

Hon. H. Volney: Thank you, Mr. Speaker. This Government is cognizant of the promise it made to our beloved nation to return Trinidad and Tobago to a place where the safety and security of life and property is paramount. The burgeoning criminal activity in our country, however, calls for an equally strong and decisive response by the Government. We must use all within our power, improved legislation, updated technology and processes, manpower training as well as innovative programmes to arrest and address the issue.

Mr. Speaker, legislation alone cannot solve the crime problem or cure the ills which plague the criminal justice system, but we are steadfast in our resolve to

DNA Bill, 2011
[HON. H. VOLNEY]

Wednesday, November 09, 2011

implement legislative measures which will strengthen and enhance the administration of criminal justice. It is with this objective in mind that a number of Bills which seek to address deficiencies in the law will soon be laid in Parliament: the Administration of Justice (Indictable Proceedings) Bill, 2011, the Administration of Justice (Electronic Monitoring) Bill, 2011 and of course the Bill we are considering today, the Administration of Justice (Deoxyribonucleic Acid) Bill, 2011. The cumulative effect of the measures proposed in these Bills will be to make criminal prosecutions less difficult, protect witnesses, ensure offenders are remanded in custody, punish the guilty and enable the innocent to be set free.

Advances in medical and forensic science have led to the introduction of new types of scientific evidence; DNA evidence is one such advancement. This type of evidence has long been established as a powerful tool for the purpose of identifying persons involved in criminal activities. In fact, the medical journal, the *Lancet* of July 17, 1993 described the DNA based testing as, I quote:

“...probably the most significant development in forensic science since fingerprinting itself, creating the possibility of uniquely identifying an individual from a single cell left at the scene of a crime.”

Mr. Speaker, the main benefits of DNA evidence is the fact that it is able to stand up to rigorous cross-examination. It is not subject to the vagaries and unpredictability of human testimony and it provides important corroborative evidence which can show conclusively whether an accused person is guilty or innocent.

At this stage it is incumbent on me to briefly explain what is DNA. Simply put, DNA is an acid found in the nucleus of cells in living organisms which is analyzed by scientists to obtain a DNA profile. Outside the criminal arena, DNA profiling—which is also commonly called DNA testing, DNA typing or genetic fingerprinting—can be used in various ways, for example, to match organ donors with recipients; to detect bacteria and other organisms that can pollute air, water, soil and food; to determine pedigree for seed or livestock breeds; and to identify endangered and protected animal species. One of the best known uses of DNA profiling is in establishing paternity.

Mr. Speaker, I wish to make it clear that the focus of this Bill is with the use of forensic DNA profiling within the criminal justice system. DNA profiling has emerged as an indispensable and powerful investigative tool since each person's

DNA is unique, except in the case of identical twins. In human beings DNA can be extracted from tissue and bodily fluids such as blood, saliva, semen or urine and also from hair, bones, or the fingernails.

3.00 p.m.

When a DNA sample is taken from a person or collected from a crime scene it can provide an undisputable link to a suspect, detainee, accused or convicted person or eliminate the person from suspicion—I repeat that, Mr. Speaker, or eliminate the person from suspicion. In short, one of the main advantages of DNA profiling is that it provides positive identification whereas more traditional methods such as blood testing can only be used to eliminate possibilities.

In countries such as the United Kingdom, Australia, Canada and the United States, DNA evidence has been instrumental in implicating or eliminating suspects, in securing convictions and most importantly, Mr. Speaker, in exonerating the innocent. By way of example, in the United Kingdom during the period April to June this year alone, their National DNA Database accounted for 37 matches to murder, 128 to rapes, and a total of 7,747 matches to other crime scenes.

In Canada to date the DNA databank has assisted in the solving of 1,455 murders, 2,595 sexual assaults, 480 attempted murders, 2,345 armed robberies and 8,838 break-ins and entering with intent, to recount only a few of their successes.

As such there is little doubt, Mr. Speaker, that the use of forensic DNA evidence will be an indispensable tool available to the State in the fight against crime and the detection of persons involved in criminal activity.

Mr. Speaker, before I move on to present an overview of the Bill, I wish to focus on the use of DNA profiling and DNA evidence as a tool for exonerating persons who may be wrongly accused or convicted of a criminal offence.

In the year 2008 Quincy Jeremy became the first person in this jurisdiction to be cleared by DNA evidence after spending more than four years in prison for allegedly raping two women who positively identified him as the perpetrator.

Mr. Jeremy always maintained his innocence, and alleged that as far back as the year 2003 when he first appeared in the Magistrates' Court his request for a DNA test was denied. He was eventually exonerated at his trial after a DNA test conducted at the Trinidad and Tobago Forensic Science Centre excluded him.

Mr. Speaker, the then Director of Public Prosecutions, Mr. Geoffrey Henderson—now a Judge of the Supreme Court—is attributed as saying in a *Trinidad Guardian* article of March 13, 2008, that it was possible that many

DNA Bill, 2011
[HON. H. VOLNEY]

Wednesday, November 09, 2011

innocent people have been wrongly committed of crimes in the past. He acknowledged that the lack of statutory support made it difficult for scientific technology to be used in criminal prosecutions since the State was unable, legally, to embark on such analysis in the past. Today, Mr. Speaker, this Government, our People's Partnership Government seeks to implement legislative measures which will put an end to these grave injustices of the past.

Mr. Speaker, there are countless cases which illustrate the inestimable benefit of DNA evidence as an exculpatory tool. Hon. Members would no doubt recall a recent case coming out of Texas in October of this year, where former grocery clerk Michael Morton who spent nearly 25 years in prison for his wife's murder was exonerated after DNA evidence linked her killing to another man.

Mr. Speaker, with your leave I will give a brief overview of the provisions of the Bill. I propose to elaborate on the improvements proposed by the bill later in my presentation when I examine each clause in-depth.

The Administration of Justice (Deoxyribonucleic Acid) Bill, 2011, seeks to repeal and replace the Deoxyribonucleic Acid Act, Chap. 5 No. 34 the Act, which was enacted in the year 2007. With this Bill the Government intends to finally, finally, break the cycle of non-implementation and underutilization of DNA technology and ensure its efficacy against crime and criminality. The strategic deficiencies that existed in the previous legislation were addressed from a practice standpoint towards ensuring this new bill, our Bill, and foremost, kicks in immediately upon its passage and that the criminal justice system yields nothing but the maximum benefit from this technology.

Mr. Speaker, the Act in its present form is unworkable in many respects as evidenced by the non-implementation of crucial sections. For example, neither the DNA Board nor a custodian for the DNA databank has ever been appointed. Additionally, there are huge omissions and limitations within the Act which are the cause of grave problems within the criminal justice system and have resulted in some accused persons and convicts refusing to cooperate. The most noted example is the matter of the Magisterial Appeal No. 3811 of 2006 where the man charged with the murder of Steven Hackshaw refused to give a sample to police even after confessing to two persons that he had in fact committed the murder.

Police applied to the High Court under section 19 thereof, in order to compel the accused to submit to DNA testing, and the court found that it was unable to grant an order to compel the man who was charged for the murder. I will explore this and other examples further in my clause by clause analysis of the Bill later on.

The bill before us, hon. Members, therefore seeks to stem the mounting crisis in the implementation of DNA legislation, to remedy the deficiencies and to enact legislation that would in fact prove functional. As we surveyed the existing legislation, the Government found it necessary to return to the drawing board, to completely overhaul the 2007 law. To this end, we drafted the 2011 Bill which seeks to repeal and to replace the existing legislation. This Act will bring Trinidad and Tobago closer towards our goal of revealing the unrealized potential of DNA by making DNA testing an established part of criminal justice procedure, and a routinely admissible element in court in fulfilment of DNA's promise.

Our process of review of the existing legislation, Mr. Speaker, was exhaustive. We conducted a thorough examination of the *Hansard* relevant to the Act, and a comparative analysis of the provisions of the Act with those Acts of more developed nations. We consulted with key stakeholders including the Commissioner of Police, the Commissioner of Prisons and the Director and staff of the Trinidad and Tobago Forensic Science Centre.

The Bill was therefore formulated on the culmination of intense research and review conducted by the legal team of the Ministry of Justice, and of course those at the Law Review Commission, to augment the impact of DNA legislation, strengthen the functionality of DNA forensic analysis and address among other things:

1. The increase in crimes of a serious nature such as murder, kidnapping, sexual offences and drug trafficking.
2. The inability of the courts to order intimate samples to be taken from an individual charged with or convicted of an offence under the Act.
3. The increase in recidivism rates and the growing number of repeat offenders.
4. The lingering inability to implement crucial provisions of the Act. This Bill therefore, represents an adaptation of the best practices and represents a magnum opus that the country can feel good about.

It is a technological measure that will bring our domestic legislative framework, finally, into the 21st Century, and further reinstate safety and security for the people of Trinidad and Tobago. This measure therefore, Mr. Speaker, is seminal to the advancement of the criminal justice agenda of Trinidad and Tobago, particularly in view of the current wave of increased criminality.

DNA Bill, 2011
[HON. H. VOLNEY]

Wednesday, November 09, 2011

Further, we envisage that with the passing of this Bill, the knowledge and fear of the increased utility of DNA legislation and consequently DNA evidence will serve as a deterrent to criminals and so reduce the crime rate.

Mr. Speaker, when the crime is done we will catch every one of them once they leave any sort of their presence on the scene of the crime, that will be a deterrent to others who have God on the wrong side of their of minds.

The principal objective of the Bill is to make available to the police the results of DNA profiling which will be yet another tool available to the State in the detection and prosecution of criminal offences. A key feature of the Bill is the simplification of the process for obtaining non-intimate and intimate DNA samples. Having regard to the fact that the DNA extracted from a person's blood would be the same as the DNA extracted from that person's hair or saliva, we were of the view that the cumbersome definition of intimate sample and non-intimate sample in the Act—the 2007 Act—was unnecessary.

For example, an imitate sample included a sample of venous blood, a urine sample, a sample of semen and a dental impression. According to the experts from our Trinidad and Tobago Forensic Science Centre, who shared their invaluable expertise and advice in the preparation of this Bill, the quality of the DNA extracted from a less intrusive method of obtaining samples would, in most instances, be the same. There was no need, therefore, for the cumbersome definitions and procedures set out by the Act for the taking of intimate and non-intimate samples.

Mr. Speaker, at this juncture I wish to place on record the Government's heartfelt appreciation to those experts from the Trinidad and Tobago Forensic Science Centre who spent many hours lending their technical and scientific advice in the preparation of this Bill, we are in their debt.

Mr. Speaker, the Act to severely limited with respect to the persons from whom samples may be obtained. For example, an intimate sample can only be obtained from a suspect and where that suspect does not consent to the taking of the sample an application has to be made to the court. The Bill totally revamps these provisions and non-intimate DNA samples may now be taken without consent from suspects, detainees, accused persons and convicted persons.

3.15 p.m.

As previously mentioned, we were advised by the experts that there was realistically little need, save and except in the case of victims of sexual offences,

to subject persons to the taking of intimate samples. In light of this the Bill primarily provides for the taking of non-intimate samples without consent by police officers. The categories of persons from whom these non-intimate samples can be obtained have also expanded. For example, non-intimate samples will now be taken from members of the protective services; holders of firearm licences; deported citizens; citizens of other countries who are detained in this jurisdiction and persons from whom a sample is required in the interest of national security.

Mr. Speaker, up to recently the Immigration Detention Centre was one of the areas under the purview of the Minister of Justice. One of the problems that we had at the Immigration Detention Centre was that there were many persons there who literally could not be repatriated because they hid/destroyed all documentations as related to their identification or identity. Having landed in Trinidad and seeing it, especially these days, as the land of milk and honey, they did not want to return to Africa, they did not want to go back, they wanted to stay here. Some of these people, no doubt, are persons who are criminals in flight. There is no way of knowing who they are and they remain for years at the detention centre without any identification. Whatever they say they are or whoever they say they are has been checked and in most instances found to be incorrect and the State cannot repatriate someone unless their identification documents have been obtained for them. As a result, these people remain at the Immigration Detention Centre for years at taxpayers' expense. This measure will address that issue when it is without consent; intimate and non-intimate samples can now result or go towards the identification of who these people are so that in the normal course they can be repatriated to their respective countries.

Recognizing the transnational nature of criminal activity the Bill would empower the Government of Trinidad and Tobago to enter into arrangements with foreign governments to share DNA data.

It is well established that the mere collection and processing of DNA samples is not sufficient and the establishment of a comprehensive database is necessary to optimize the use of DNA data. The Bill, therefore, provides for the establishment of the national forensic DNA data bank and for the appointment of a custodian who would be responsible for receiving and storing all DNA profiles. A DNA register would also be established and maintained at each police station, and by each qualified person who take samples. As a corollary, the Bill describes the circumstances in which samples may be retained or destroyed and delineates the parameters for disclosure of DNA data stored in the forensic DNA databank. Under the Bill, the Trinidad and Tobago Forensic Science Centre is designated the official forensic DNA laboratory for this country and this jurisdiction.

DNA Bill, 2011
[HON. H. VOLNEY]

Wednesday, November 09, 2011

Mr. Speaker, I now turn to the constitutionality of the Bill. A standard feature of any written constitution in every democratic nation is that fundamental rights and freedoms are recognized and declared in one form or another. When one thinks of a right as being fundamental it is defined in terms of something which is of intrinsic and inestimable value, a right over which we as human beings have a moral claim which should not be suppressed or denied. Fundamental rights, therefore, define the limits on how the State may or may not treat its citizens. We all acknowledge the supremacy of the Constitution and any law which is inconsistent with it is void to the extent of the inconsistency. This is clearly stated in section 2 of our Constitution. Therefore, Parliament cannot by simple majority legislate in a manner which is inconsistent with the Constitution.

Notwithstanding, the recognition and declaration of our fundamental rights and freedoms in sections 4 and 5 of the Constitution, provision is made for Parliament to abrogate these rights. Any piece of legislation which is inconsistent with sections 4 and 5 is required, pursuant to section 13(2) of the Constitution, to be passed by a special majority vote of not less than three-fifths of the Members of each House. Section 13(1) of the Constitution provides that, and I quote:

“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.”

The Government is confident that this Bill is in fact reasonably justifiable in accordance with section 13(1). The Bill seeks to modernize the criminal justice system and implement critical legislation which will be an invaluable crime-fighting tool aimed at securing convictions and exonerating the innocent. It is duty of the Government to put in place whatever measures may be necessary to ensure the safety and well-being of our citizens. This Bill is a manifestation of that resolve. It may be argued that the mandatory taking of a DNA sample affects an individual’s intrinsic human right to bodily integrity; infringes personal privacy and is contrary to the privilege against self-incrimination.

Hon. Members would know that our Constitution does not afford express protection of the right to privacy. However, section 4(c) does recognize the right of the individual to respect for his private and family life. The right to privacy is an issue which is generally cited in relation to the taking, use and retention of DNA samples. The unique nature of the genetic material found in an individual’s DNA can reveal familial relationships; identify physical characteristics and traits;

identify genetic disorders; the individual's susceptibility to diseases and even their ethnic origin. A DNA sample, therefore, contains a wide range of personal and family information, thus the retention of DNA samples even for a specified timeframe as provided in this Bill impacts on personal privacy.

On the other hand, a DNA profile which is obtained through the forensic DNA analysis of a DNA sample is a set of identifying characteristics in the form of a code which may only be read with the aid of technology. It is these DNA profiles which will be stored in the forensic DNA databank indefinitely. It is submitted, therefore, Mr. Speaker and hon. Members present, that the indefinite storage and use of a DNA profile as opposed to a DNA sample mitigates privacy concerns. It is acknowledged, however, that the storage of both DNA samples and DNA profiles can impact the right to informational privacy which is the right of each individual to retain some measure of control or oversight of material and data which relate to them.

With respect to the privilege against self-incrimination, section 5(2)(d) provides that Parliament may not authorize a court tribunal, commission, board or other authority to compel a person to give evidence unless he is afforded protection against self-incrimination and, where necessary, to ensure such protection, the right to legal representation. For the most part, provision is made in this Bill for the collection of non-intimate and intimate samples without the consent of the person from whom the sample is being taken. This is the case even in relation to the taking of an intimate sample from the alleged victim of a sexual offence.

Mr. Speaker, privacy considerations aside, many among us may wish to vociferously object to these provisions on the basis that they infringe the privilege against self-incrimination, that is, the long-established principle that a person should not be compelled to answer any questions or give any evidence that would likely incriminate him in a subsequent criminal case. Whilst the Government recognizes that the tenets of the Constitution must be treated with the utmost respect, individual rights must be balanced against the overriding public interest. An established principle of constitutional jurisprudence is that no right is absolute and there are instances in which rights claims should yield to competing social considerations. This is law!

In other words, the rights of each individual must be balanced against the right of the State to protect all individuals collectively. And I want to repeat that, Mr. Speaker: the rights of each individual must be balanced against the right of the State to protect all individuals collectively. Because the fundamental human rights

DNA Bill, 2011
[HON. H. VOLNEY]

Wednesday, November 09, 2011

of the citizenry are involved, the State cannot and should not act capriciously in these matters but must show just cause, that is, some compelling moral justification for intervening or imposing limitations on the manner in which an individual exercises his fundamental rights. It is submitted that in determining the rules to govern any society priority must be given, inter alia, to the maintenance of public order, the security of the State, the well-being of the citizenry and the prevention, detection and prosecution of all criminal offences.

The local case of *Morgan v The Attorney General*, reported at 1987-36 West Indian Report, a decision of the Privy Council, aptly illustrates this balancing process. In this case, legislation enacted to restrict increases in rent was challenged. The legislation in question, which is the Rent Restriction (Dwelling Houses) Act, 1981, was passed with a special majority. The appellant landlord sought to challenge the legislation on the basis that it interfered with his constitutionally entrenched right to enjoyment of property and the right not to be deprived of it, except by due process of law, pursuant, of course, to section 4(a) of the Constitution. In determining the constitutionality of the legislation the Privy Council balanced the prejudice that might result to thousands of tenants if the legislation was struck down against the benefit of a rental increase to the landlord. The Privy Council dismissed the appeal.

3.30 p.m.

The principles outlined in the *Morgan* case remain relevant even today, and support our decision to implement this measure as proposed in the Bill now before this honourable House. The criminal element has virtually decimated the functioning of the criminal justice system and has put our beloved nation under siege. As a people, we say today that we have had enough. I repeat we have had enough! [*Desk thumping*] We recognize that we are no longer fighting for our individual interest, but for our collective well-being and for the future of our children.

As such, Mr. Speaker, the Government is duty bound to respond to the needs, hopes and expectations of our people. And so, it is with the collective interest of our citizens in mind, I appeal to the hon. Members on the other side to support this piece of far-reaching legislation. It is time to make meaningful and decisive action. It is time to take meaningful and decisive action, not to oppose, because you are the Opposition, but I repeat it is time to take meaningful and decisive action and in the circumstances the rights of many must outweigh individual rights.

Mr. Speaker, I now turn to the provisions of the Bill. The Bill is divided into six parts and comprises of 38 clauses. It would be 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 of Parliament. I elaborated on the need for the Bill to be passed by a special majority earlier in my presentation.

Mr. Speaker, again I ask, and I would want to think that the Opposition—the parliamentary Opposition—would want, if they care about the people of this country, to support this measure. [*Desk thumping*] If they do not, they will very soon become irrelevant to the people of this country.

Hon. Members: More irrelevant.

Hon. H. Volney: More irrelevant.

Part I of the Bill comprises clauses 1 to 4 and deals with preliminary matters.

Clause 1 would provide the short title of the Bill.

Clause 2 provides for the constitutionality of the Bill.

Clause 3 would provide for the application of the Bill, namely, that this Act will apply to the investigation and prosecution of offences committed before, on or after the coming into force of this Bill.

Clause 4 would provide the interpretation provisions.

Part II of the Bill comprises clauses 5 to 6 and deals with the establishment of the Forensic DNA Laboratories.

Mr. Speaker, the Act currently provides that the Trinidad and Tobago Forensic Science Centre is deemed to be an approved Forensic DNA Laboratory for a period of three years after the then coming into force of the 2007 Act and thereafter, the Minister being empowered to extend for a period not exceeding one year the length of time that the Forensic Science Centre would be deemed to be an approved DNA laboratory. The Government is of the view that these provisions are unnecessarily cumbersome and we have therefore, sought to simplify the process.

Clause 5 would therefore provide that the Trinidad and Tobago Forensic Science Centre shall be the official forensic DNA laboratory for Trinidad and Tobago.

Clause 6 would provide that the Trinidad and Tobago Forensic Science Centre may, for the purpose of obtaining forensic DNA services, enter into an

DNA Bill, 2011
[HON. H. VOLNEY]

Wednesday, November 09, 2011

arrangement with an accredited laboratory. This is a safeguard which will ensure that there is no lapse in the delivery of forensic DNA services in this jurisdiction in the event that the Forensic Science Centre is unable for whatever reason to conduct forensic DNA analysis of samples which have been submitted in the course of a criminal investigation.

Part III of the Bill comprises clauses 7 to 11, and deals with the establishment and functioning of the National Forensic Databank of Trinidad and Tobago.

Clause 7 would make provisions for the establishment of the National Forensic DNA Databank of Trinidad and Tobago. This databank would comprise a comprehensive collection of DNA profiles attributed to individuals or crime scenes which may be stored indefinitely.

Mr. Speaker, it is important to note that the storage of a profile in the databank does not indicate the innocence or guilt of the individual to whom it relates. Rather, this information provides the opportunity to detect offenders and eliminate the innocent from enquiries quickly. I repeat this for those who are hard of understanding; rather, this information provides the opportunity to detect offenders and eliminate the innocent from enquiries quickly. The databank may act as a deterrent to offending and re-offending, can provide the means of solving cold cases and will undoubtedly raise public confidence that persons who have committed offences can now be found—can now be found no matter how long ago they may have committed these crimes of murder, of rape, and dealt with by the criminal justice system. [*Desk thumping*]

Clause 8 would make provision for the appointment of a Custodian and Deputy Custodian of the Forensic DNA Databank. The primary responsibility of the Custodian would be to, receive and store all DNA profiles from the Forensic Science Centre; and to carry out searches against the Forensic DNA Databank.

Mr. Speaker, one of the reasons the Act which came into force in 2007 remains unworkable—and it is that Act that was passed by the parliamentary Opposition of today—it is the fact that no one has ever been appointed to this critical post of Custodian of Forensic DNA Databank. Let me say today, that this state of affairs will not be allowed to continue under this Government's watch [*Desk thumping*] and on coming into force of this Act, both the Custodian and Deputy Custodian will be appointed at the earliest opportunity.

Hon. Member: “Ah tink ah will give Jeffrey dat wok—Custodian of the DNA Bank.”

Hon. H. Volney: Clause 9 would set out the circumstances under which the Custodian or Deputy Custodian may resign his office or have his appointment terminated. These circumstances include where the Custodian or Deputy Custodian is found guilty of misconduct, fails to carry out any of the duties of functions conferred on him by this Act or is incapable of performing his duties under this Act.

Clause 10 sets out the functions and duties of the Custodian which includes maintaining the Forensic DNA Databank and ensuring that DNA data is stored securely and remains confidential.

By clause 11, the Custodian is mandated to submit an annual report of his operations to the Minister within three months after the end of each calendar year. In the same vein, the Minister shall cause the said report to be laid in Parliament.

Part IV of the Bill comprises clauses 12—23 and makes provision the taking non-intimate and intimate samples.

Clause 12 would provide that the person may volunteer to give a sample. Mr. Speaker, the value of obtaining samples from volunteers cannot be overlooked. DNA data can only be effectively relied on law enforcement authorities if elimination samples are obtained. For example, where an individual has been murdered, each police officer who attends the crime scene, the district medical officer, the undertakers or any other person who may have compromised the integrity of the crime scene should volunteer to give an elimination sample. Similarly, where a woman has been the victim of a rape, her husband or committed partner may wish to volunteer a DNA sample in order to distinguish his DNA from any biological material which may have been retrieved from the rape victim.

Clause 13 sets out the circumstances under which a non-intimate sample shall be taken from a person without his consent.

Mr. Speaker, before I elaborate on Government's policy with respect to the taking of non-intimate samples without consent which has been encapsulated in clause 13 of the Bill, permit me to give a brief overview of the persons from whom DNA samples can currently be taken, other than volunteers and members of the protective services under this Act.

At present non-intimate samples may only be taken from a person without his consent where:

- (a) he has been charged with an offence;

DNA Bill, 2011
[HON. H. VOLNEY]

Wednesday, November 09, 2011

- (b) a stain derived from a crime scene exists and there are reasonable grounds for suspecting the person's involvement in the crime;
- (c) the person has already had a non-intimate sample taken and that sample has proved to be unsuitable or insufficient; and
- (d) the person has been convicted of an offence and is serving a term of imprisonment.

Mr. Speaker, I am at pains to understand who drafted this last Act. I am at pains and that is why we have had to take the step of repealing that entire Act of 2007. It is totally unworkable. It did not provide the law enforcement with the "teeth" required to get into DNA testing as well as the use of DNA in prosecutions.

With respect to intimate samples, the Act is limited to the taking of an intimate sample from a suspect with his consent or without his consent by order of the court. Additionally, non-intimate or intimate samples may be taken from a person who is in prison or another institution to which the Prisons Act applies or from a person who is detained at a psychiatric hospital in accordance with the Mental Health Act.

Mr. Speaker, the severe limitations imposed by this current legislative formulation were highlighted in Magisterial Appeal No. 3811 of 2006, *Sean Dhilpaul, Corporal of Police No. 13828 v Richard Mc Bain alias "Bean"*. In this matter, the complainant sought an order under section 19(1) of the Act to obtain an intimate sample from the accused. Mr. Mc Bain was charged with the murder of Stephen Hackshaw. The main question to be determined by the court is whether Mr. Mc Bain was a suspect within the meaning of section 19 of the Act. Having already been charged for murder and the preliminary enquiry already having begun, the court ruled that section 19(1) of the Act only applied to a suspect and did not apply to an accused person who had already been charged and brought before the court. The court further concluded, that since section 19 made no mention of persons charged or convicted of an offence as provided for in section 5 of the Act, the court could make no ruling or order in respect of an accused, but was limited by the section making orders in respect of a suspect. The learned judge, Madam Justice Alice Yorke-Soo Hon, was of the position that, if section 19 were intended to apply to an accused or to a convicted person, then it should have been drafted in terms similar to section 5 considering the legislation as a whole, and in the way that it is drafted at present, it is my respectful view that a court may only order that an intimate sample be taken from a suspect and not from an accused already charged with a crime or someone already convicted of an offence.

Clearly, Mr. Speaker, the practical effect of the court's ruling was to severely restrict the ability of the police to obtain intimate samples from accused or convicted persons resulting in a major hindrance to the investigative capacity of the police and an inadequate use of DNA technology. This Bill, Mr. Speaker, addresses these deficiencies.

Clause 13 therefore, is intended to strengthen the legislation and to assist the police with their investigations by broadening the categories of person from whom non-intimate samples can be taken. The Bill provides that a police officer shall take a non-intimate sample from a person without his consent where:

- (a) the person is a suspect, detainee or an accused;
- (b) a stain derived from a crime scene exists and there are reasonable grounds or suspecting the persons involvement in the crime;
- (c) the person has already had a non-intimate sample taken and that sample has proved to be unsuitable or insufficient;
- (d) that the person is not the victim of an offence attends a crime scene and is required by an investigating officer to give a non-intimate sample.

3.45 p.m.

Further, a qualified person shall take a non-intimate sample from a person without consent where the person—

- (a) is admitted to hospital and is suspected accused or convicted of an offence;
- (b) is detained in a prison or other institution to which the Prison Act applies;
- (c) is an incapable person who is admitted to a psychiatric hospital in accordance with the Mental Health Act and is suspected, accused or convicted of an offence; or
- (d) falls under the supervision of a juvenile residential facility.

Mr. Speaker, I mentioned earlier in my presentation that this Government has sought to simplify the means by which DNA samples are obtained and to strengthen the legislation, so that DNA evidence may be fully utilized as a modern and effective crime fighting tool. Clause 13 achieves these goals. The consent of the person from whom a sample is to be taken is no longer an issue, and the taking

DNA Bill, 2011
[HON. H. VOLNEY]

Wednesday, November 09, 2011

of DNA samples is no longer restricted to suspects or persons charged with an offence. Moreover, police officers will now be empowered to take a wider range of non-intimate samples, including a specimen of blood.

Similarly, the categories of persons from whom a qualified person shall take a non-intimate sample has been extended to include persons who are hospitalized and are suspected, accused or convicted of an offence; and persons who fall under the supervision of a juvenile residential facility.

Clause 14 sets out the circumstances under which a repeat sample may be taken from a person who has had a non-intimate sample taken and that sample—

- (a) has proved to be unsuitable or insufficient for forensic DNA analysis.
- (b) is lost or destroyed; or
- (c) cannot be used for any other reason.

Provision is made for the police to cause a notice to be served on the person from whom the non-intimate sample is to be taken or, in the case of a child or incapable person, on his representative. Further, the police may arrest without a warrant any person who fails to comply with the notice, save and except those persons who are hospitalized, detained in a prison, admitted to a psychiatric hospital or under the supervision of a juvenile residential facility.

Clause 15 would provide that a non-intimate sample shall be taken from a person specified in the Third Schedule to this Act. I have already alluded to the need for having “elimination samples” lodged on the databases which would form the DNA databank.

Because of the sensitive nature of their employment and as a security measure, it was felt that the following persons should, as a matter of course, provide a non-intimate sample:

- (a) a person who is employed or applies for employment in the protective services (that is, members of the police service, prison service, and fire service);
- (b) an applicant for, or the holder of a licence, certificate or permit under the Firearms Act, and
- (c) a person who is employed or assigned duties at the Forensic Science Centre.

Mr. Speaker, legislation should never be static, but should always evolve and adapt to the needs of society. It may be necessary, in the public interest, for other

persons to give mandatory DNA samples. Provision is therefore made for the Minister, by order, to amend the Third Schedule.

Clause 16 of the Bill introduces another new concept. That is, where the Minister of National Security is of the opinion that a sample is required from a person in the interest of national security, he may request that the Commissioner of Police make arrangements for a non-intimate sample to be taken from the person. We are all aware that we live in a global village where threats to destabilize civil society have become a frightening reality. Ever cognizant of this fact, it was felt that stringent measures needed to be put in place to establish and build a comprehensive database in the interest of national security.

Clause 17 makes provision for the taking of non-intimate samples from citizens who have been deported both before and after the coming into force of this new Act and also from non-citizens who have been detained under the Immigration Act. This is another radical change from the current law which will serve to strengthen our databases and investigative capacity, as this information may prove to be of invaluable assistance in the event that the deported or detained person was convicted of a criminal offence abroad, or is wanted for any outstanding criminal matters in this jurisdiction.

I now to turn to clause 18. In recent years, our nation experienced an unprecedented surge in the kidnapping of persons for ransom, many of whom remain unaccounted for to this very day. The families of these missing persons understandably have had their lives turned upside down, always searching for their loved ones, needing closure. Occasionally, we see and we read reports in the media that unidentified human remains have been found. or that the remnants of clothing and other items which may belong to a missing person are discovered. There is obvious benefit in the use of DNA technology to assist in identifying missing persons, or even the bodies of deceased persons which are in such an advanced state of decomposition that the identity of the individual may only be determined by forensic DNA analysis. This clause seeks to address these issues and would make provisions for forensic DNA analysis to be carried out on an item belonging to or used by a missing person, on any biological material found on the body of a deceased person, or on any item attributable to a crime scene. We are helping to bring closure to all those who have lost loved ones. If for that alone, I expect the support of the parliamentary Opposition. [*Desk thumping*]

One of the most important uses of forensic DNA analysis is in identifying crime and catastrophe victims.

DNA Bill, 2011
[HON. H. VOLNEY]

Wednesday, November 09, 2011

A prime example of the immeasurable value of DNA evidence was its use in identifying the victims of the September 11, 2001, attack on the World Trade Center which presented a unique forensic challenge, as the number and identity of the victims were unknown and primarily represented by bone and tissue fragments.

Clause 19 deals with persons who have been the victims of sexual offences. This clause is for those women who have been raped—this clause 19.

Mr. Speaker: Hon. Member, you have ten more minutes. Five past four your 75 minutes will be up.

Hon. H. Volney: My—

Mr. Speaker:—Seventy-five minutes will be up. Five past four.

Hon. H. Volney:—Seventy-five? Yes. Clause 19 deals with persons who have been the victims of sexual offences. Where a report of the commission of a sexual offence is made, the police officer taking the report shall, without delay make arrangements for the alleged victim to be examined by a qualified person. The consent of the alleged victim is not required for the taking of the sample and the qualified person may take both intimate and non-intimate samples from the alleged victim. The rationale behind this provision is not to subject the victims of sexual offences to undue trauma.

We acknowledge and respect the rights of individuals to privacy of the person. However, we proceed on the basis that if an individual, having set the wheels of justice in motion, has nothing to hide then they have nothing to fear. Too often, cases involving the alleged commission of sexual offences fail for lack of evidence because the alleged victim refuses to testify through embarrassment or fear. Additionally, the physical evidence may just not be available to the prosecution, because of a delay in reporting the alleged sexual offence to the police or the refusal of the alleged victim to submit to the taking of a sample.

Mr. Speaker, this provision may appear to be draconian but this Government is about getting serious and making the criminal justice system work efficiently, so that the guilty are punished and the innocent vindicated. I repeat: nothing to hide, nothing to fear. Our focus, therefore, is on ensuring that justice is served both for the victim and for the alleged perpetrators of these heinous crimes. It is also a fact that individuals are often falsely accused of committing sexual offences. The mandatory collection of DNA samples from not only the alleged

victim but also accused persons will certainly reduce the likelihood of cases collapsing before the courts for want of evidence and ensure that the innocent are exonerated.

Mr. Speaker, I have explained in the preceding clauses 12 to 19, the circumstances under which, and the persons from whom, non-intimate and intimate samples can be obtained. The purpose of clause 20 would be to set out the conditions which a qualified person who takes an intimate sample must adhere to. As its name suggests, an intimate sample would be a specimen of biological or other material taken from the most intimate and private parts of a person's body; namely, from any part of the genitals or bodily orifice other than the mouth. It stands to reason that only a qualified person, as defined in the Bill, should be allowed to take an intimate sample in accordance with specific guidelines which would maintain the integrity of the process.

It is critically important that the integrity of a sample taken from a person pursuant to the provisions of this Bill is maintained. This is the purpose of clause 21, which provides that a police officer or qualified person who takes the sample shall, as soon as practicable, submit the sample to the Forensic Science Centre for DNA analysis.

Clause 22 provides that the sample shall not be taken from a child or incapable person unless the representative of the child or incapable person is present when the sample is being taken. The representative being defined as—

- (a) parent or legal guardian;
- (b) a person over the age of 18 who has custody, charge or care of the child or incapable person;
- (c) attorney at law;
- (d) a qualified social worker; or
- (e) representative of the Children's Authority.

Clause 23 would provide that the person authorized to take a sample, may use reasonable force to take and protect the sample.

Part V of the Bill, which comprises clauses 24 to 25, seeks to establish post collection procedures.

Clause 24 sets out the duties of an analyst for the purpose of the Evidence Act. Clause 25 is an important provision which deals with the length of time samples

DNA Bill, 2011
[HON. H. VOLNEY]

Wednesday, November 09, 2011

may be retained by the Forensic Science Centre. Provision is made for the retention of samples for a minimum period of 10 years unless the court orders that the samples not be destroyed.

4.00 p.m.

Mr. Speaker, despite privacy concerns, this is the benefit of retaining DNA samples. The Bill therefore seeks to extend the scope of the existing legislation by providing that within three months of the end of each calendar year, the Forensic Science Centre shall provide the Commissioner of Police with a list of samples it proposes to destroy. If the Commissioner does not object to the destruction of a sample on the list, the sample may be destroyed.

Part VI of the Bill comprises clauses 26 to 38 and provides for miscellaneous matters which relate to the taking of DNA samples, the storage of DNA profiles and the sharing of DNA data.

Clause 28 would provide immunity from civil or criminal proceedings for persons involved in the taking of non-intimate and intimate samples except where there was a negligent act or omission on the part of the person in the taking of the samples.

Clause 29 sets out the circumstances under which the Custodian or a person authorized by him may disclose DNA data. Where DNA data is disclosed outside the specified categories of persons, the person making the unauthorized disclosure commits an offence and is liable on summary conviction to a fine of \$100,000 and to imprisonment for seven years.

Clause 30 would set out the offences which can be committed by a person under the proposed legislation.

Clause 31 would provide that a person who refuses to give a sample or otherwise obstructs or resists a police officer or a qualified person in the exercise of his function under this Act commits an offence and is liable on summary conviction to a fine of \$10,000 and to imprisonment for two years.

Clause 33 would provide for the admissibility of documentary evidence in criminal proceedings, and clause 34 would empower the Minister to make regulations for the purpose of giving effect to the Act.

Clause 36 is a validation clause which will provide for the acts of validation of things done under the Act.

Clause 37 would provide for the repeal of the Act and clause 38, very important, would be a savings provision which would extend to any action taken

or any samples or DNA profiles obtained under the repealed Act prior to the coming into force of this new Act.

Mr. Speaker, the Government is firm in its resolve that the introduction of this Bill is timely and necessary as we continue our efforts to stamp out the unbridled criminal activity which now plagues our nation. Members of this honourable House, the spiralling levels of crime and criminality that face us demand that we bring all our systems and processes and the legislation that govern them into the 21st Century. What we face now is the proverbial bend in the road, the signal moment in our history when our nation, our fellow citizens, are depending on us, their representatives in this honourable House on both sides, to take the bold and decisive steps that would send a strong message to the criminal element in this country.

I accordingly appeal to the hon. Members on the other side to put partisanship aside and put country first. Let our children and grandchildren remember this moment as one of the many in our history when the vote was mightier than the sword. [*Desk thumping*] These proposed amendments, hon. Members, together with the other legislative measures the Government will soon introduce in order to strengthen and enhance the criminal justice system will not be a panacea for all the ills we currently battle.

We recognise that one piece of legislation cannot be used like the proverbial magic bullet to correct all the problems of an ailing society, but we are making incremental steps. We seek justice in the courts and an end to miscarriage of justice. This Government is committed to reducing and preventing crime and tackling the fear of crime. We are also committed to supporting our police officers who are the foot soldiers in this battle against crime.

Mr. Speaker: Hon. Member, just take a minute and wrap up. It is past the time.

Hon. H. Volney: Yes. Mr. Speaker, every day real crimes affect real people. The impact of crime on victims, their families and on the fabric of society should never be underestimated. Without a doubt, DNA profiling will foster a level of public protection, enhance public confidence in the criminal justice system, serve to bring the guilty to justice, and, most importantly, it will ensure that the innocent go free. This will undoubtedly be of inestimable value to the lives of our citizens and the future of our beloved nation. Mr. Speaker, I beg to move. [*Desk thumping*]

Question proposed.

Mr. Colm Imbert (*Diego Martin North/East*): Thank you, Mr. Speaker. Let me state at the outset, just to make sure that there is no ambiguity, that I am authorized to inform the Government that the Opposition will not be supporting this piece of legislation. [*Desk thumping*] And I will explain why.

The Bill fails on several grounds. The first and most significant ground which has relevance to what has happened during the recent state of emergency where hundreds of suspects were released for lack of evidence, the Bill parallels this in that it provides no safeguards whatsoever to ensure the accuracy of samples, to ensure the non-contamination of samples. There is no requirement for training and certification of police officers and other persons who will be taking the samples. No requirement for training and certification of technicians and analysts who will be analyzing the samples. [*Interruption and laughter*]

Mr. Speaker, I notice the Government Members are laughing; that is how they normally react when they are faced with arguments for which they have no answer. [*Desk thumping*] One of the fundamental reasons why this Bill will fail, and it is something that the Minister—[*Interruption*] Mr. Speaker, I am hearing a cacaphony of noise, could you—

Mr. Speaker: Hon. Members, I will ask all Members to allow the Member for Diego Martin North/East to speak in silence in accordance with Standing Order 40(b) and (c) respectively. Continue, hon. Member.

Mr. C. Imbert: Thank you, Mr. Speaker. One of the major flaws in the Bill which the Minister studiously avoided, and as a former Minister of Justice—and I mean that in the judicial sense—he would know that this Bill will be challenged because of clause 3. I noticed the Minister stayed far, far away from clause 3 of the Bill, and since he did not deal with it, I will deal with it. This is clause 3 and it says:

“This Act applies to the investigation and prosecution of offences committed before, on or after the coming into operation of this Act.”

He ran away from that clause because he knows how dangerous it is. Mr. Speaker, this is retroactive criminal legislation which is prohibited in virtually every country in the world, and for very good reason; for very good reason.

The other reason this Bill will fail is that it allows for samples of DNA to be kept indefinitely including the samples of innocent people which samples will be taken without their consent.

Now, a great deal has happened since the Parliament debated the DNA—I would not bother to try to pronounce the long title—Deoxyribonucleic—that is

DNA Bill, 2011

Wednesday, November 09, 2011

the first and last time I will pronounce that—but a great deal has happened since the debate on the DNA Bill of 2007. I have with me the report of the Joint Select Committee appointed to consider and report on the DNA Bill 2006—[*Crosstalk*] Of course, yes and we were valuably assisted by Dr. Tim Gopeesingh and Dr. Adesh Nanan. You see, Mr. Speaker, I heard the Minister—[*Interruption*] This is way back in 2007; this is prior to the 2007 election.

Mr. Speaker, in February 2007 when the Joint Select Committee was appointed to consider the DNA Bill, 2006, the PNM did not have the requisite special majority. Because the DNA Bill at that time infringed rights which the Minister has referred to in sections 4 and 5 of the Constitution, we could not pass the Bill without the support of the then Opposition.

As a consequence, we went into committee from February to July 2007, and subsequently, prior to the 2007 General Election when we did achieve a parliamentary majority, we passed the Bill, and the consequence of those deliberations was that a number of changes had to be made to the legislation at the insistence of the then UNC, especially the Member for Caroni East, and therefore, I am surprised that the Member for St. Joseph would ask who drafted this Bill. It was drafted by the Member for Caroni East because we could not pass the Bill without the votes of the UNC and they demanded considerable amendments and changes to the Bill that was brought to the Parliament in 2006.

So the irony or joke of this whole thing is that the existing law—the 2007 law—was a product of a committee where the votes of the Opposition were mandatory. We could not have passed this Bill unless we agreed to every single demand and every single change, amendment, condition, safeguard, for example, the introduction of a DNA board; and all sorts of provisions with respect to the Custodian.

I heard the Minister refer to the fact that a Custodian has not been appointed, and full of sound and fury, he told us that “under this Government we will appoint a Custodian, this will never happen again”. But, Mr. Speaker, it is almost at the end of 2011; they have been in power for almost two years. It is politically hypocritical for the Minister to come and shout and scream about the non-appointment of a Custodian for DNA when they had the opportunity to appoint a Custodian since June 2010. [*Desk thumping*] Eighteen months ago. If it was so important, Mr. Speaker, why did they not appoint a Custodian; this is just political rhetoric. And I found that the Minister’s speech was comprised purely of political rhetoric.

DNA Bill, 2011
[MR. IMBERT]

Wednesday, November 09, 2011

Well, let us go back to this ex post facto legislation, because it is ex post facto. In many jurisdictions, ex post facto criminal laws are seen as a violation of the rule of law as it applies in a free and democratic society, and I would like to think that Trinidad and Tobago is a free and democratic society. I would wager a guess that if you use your majority and railroad through this Bill without any changes to clause 3 that it will be challenged, and it is quite likely that it will be found to be in violation of section 13 of our Constitution.

I go on, Mr. Speaker. Most common law jurisdictions do not permit retroactive criminal legislation under the theory that it is unfair to punish a person for an act which was legal at the time it was committed.

4.15 p.m.

I would now go through the list of countries that prohibit retroactive legislation. *[Interruption]*

Mr. Speaker: Please, allow the Member to speak.

Mr. C. Imbert: If the Minister is so confident, why did he not give us an explanation as to why he thought that clause 3 was relevant in our society? Why is it that you want to make this law that is now coming to this Parliament in November 2011, applicable to prosecutions that have occurred prior to the debate today? Why are you doing that? Why are you making this legislation retroactive? I would like to know. The Minister has not dealt with it. He has not answered it. *[Interruption]* Yes, sure let me go through a list of countries in alphabetical order.

In Brazil, according to the fifth Article of the Brazilian Constitution, laws cannot have ex post facto effects that affect acquired rights, accomplished judicial acts. In Canada, ex post facto criminal laws are constitutionally prohibited by section 11 of the Charter of Rights and Freedoms. In Finland, ex post facto jurisprudence is banned by the Constitution of Finland. In France, any ex post facto criminal law may be applied only if the retroactive application benefits the accused person. In Germany, Article 103 of German basic law requires that an act may be punished if it is already being punishable by the law at the time it was committed.

In India, it is in the Constitution. Section 20 of the Indian Constitution states that no person shall be convicted of any offence except for violation of law enforced at the time of the commission of the act charged as an offence. In Indonesia, Article 281 of the Indonesian Constitution prohibits trying citizens, prosecuting them under retroactive laws in any circumstances. But this oppressive Government wants to prosecute people retroactively.

In Ireland—[*Interruption*] Mr. Speaker, the usual noise in the back there. Could you quiet them down?

Mr. Speaker: You have my full protection. Could you allow the Member to speak in silence?

Dr. Moonilal: Thank you Member for Diego Martin North/East. I just want to follow you carefully so I understand the argument. Are you saying that a new method of using evidence for prosecution should not be introduced where the offence was committed before the passage of the law? Because, as I understand it, it is not a new offence, it is really the use of evidence and a new method. Is that the same for you as a new offence?

Mr. C. Imbert: I am not sure I would give way to you again. You could have asked that question in three lines. Now, let me go on. I would deal with you in due course. [*Interruption*] The Member for Lopinot/Bon Air, he cannot—

Mr. Speaker: Member for Lopinot/Bon Air, please. You cannot be shouting in the Parliament in the first instance. A Member is on his legs speaking. I ask Members to observe Standing Order 40(b) and (c). When a Member is speaking, allow the Member to speak in silence. If you want to converse—undertones. If you come overtones I would ask you to leave the Chamber. Okay? Continue, hon. Member.

Mr. C. Imbert: I know the intention is to stop me in my dissertation. In Ireland, the imposition of retroactive criminal sanctions is prohibited by Article 15 of the Constitution of Ireland. In Italy, Article 25(2) of the Italian Constitution establishes that nobody can be punished but according to a law coming to force before the deed was committed. In Japan, Article 39 of the Constitution prohibits the retroactive application of laws. In New Zealand, section 7 of the Interpretation Act stipulates that enactments do not have retrospective effect. In Norway, Article 97 of the Norwegian Constitution prohibits any law to be given retroactive effect. In Pakistan, Article 12 of the Constitution of Pakistan prohibits any law to be given retrospective effect.

In the Philippines it is prohibited. In Russia it is prohibited. In Spain it is prohibited. In South Africa it is prohibited. In Sweden it is against the law. In Turkey it is against the law. In the United States, the Federal Government is prohibited from passing ex post facto laws by clause 3 of Article 1, section 9 of the United States Constitution. It is also an offence to pass retroactive legislation. It offends the Universal Declaration of Human Rights. It defriends the African Charter on Human Rights, American Declaration of Rights, Duties of Man, European Convention on Human Rights and so on and so on.

DNA Bill, 2011
[MR. IMBERT]

Wednesday, November 09, 2011

Let me just deal with the question that the Leader of Government Business asked me. Mr. Speaker, ex post facto law—it is all right, I know he had some legal training, so I am sure if he goes and checks his notes he will find this—can have a variety of features. It may criminalize actions that were legal when committed. I recognize from the question the Member asked me, he thought that is what I was talking about. That is not all I was talking about. It may aggravate a crime by bringing it into a more severe category than it was at the time it was committed, in other words increase the sentence for the same crime. It may change or increase the punishment prescribed for the crime; same thing, such as adding new penalties or extending terms—this is the one where this is offensive—or it may alter the rules of evidence in order to make conviction for a crime more likely than it would have been at the time of the action for which a defendant is prosecuted.

I am sure, Member for Oropouche East—go and check your textbooks and you will find that retroactive ex post facto law has many definitions and what clause 3 is seeking to do is to offend the principle with respect to gathering of evidence. It is moving the goalpost. It is changing the rules, with respect to the gathering of evidence and it is making accused persons subject to sanctions that did not exist when they committed the alleged crime.

I have noticed that the Minister has run away from this. I would point out to him, while we follow English law, England is a member of the European Union. I am sure that the learned Member is aware of the many decisions within the European court with respect to the validity of retroactive criminal law. I am sure he will be aware that Article 7 of the European Convention on Human Rights prohibits retrospective punishment for crimes. I am sure he will be aware that after an appeal was made to the European court, with respect to retroactive criminal law, and the European court ruled that it is prohibited within the European Union, that the British Government was forced to start reviewing their legislation with respect to retroactive criminal law, and they have taken a decision that it cannot happen. I am sure that the Member for St. Joseph is aware of this.

So, I would like him, when he is winding up, to explain to us why have you put in this piece of draconian legislation, the idea of making it retroactive and punishing people for offences that they were not guilty of, prior to the coming into effect of this law. Explain why. *[Interruption]* Do not do that. You can talk to me later. No, no, sorry. I am very sorry, no. Nope! *[Interruption]* As I said, a lot has happened. *[Interruption]* Would you stop it! A lot has happened since the coming into force of the 2007 law. That is what I am telling you. The whole paradigm has changed.

Those of us who watch CNN and watch international news—[*Interruption*]

Dr. Moonilal: Did not see 2007.

Mr. C. Imbert: That is all right. We are now in 2001. Those of us follow international news may have been following the case of Amanda Knox in Italy. In October 2011, just last month, Amanda Knox and her ex-boyfriend Raffaele Sollecito were cleared of killing UK student Meredith Kercher following a successful appeal in Perugia, Italy. Let me explain why. Amanda Knox walked free due to unreliable DNA analysis. She walked free after forensic scientists said the DNA evidence on which the prosecution's case depended could be contaminated. The whole reason—this young lady who had been convicted to serve 26 years in an Italian jail for allegedly killing a United Kingdom student, the entire case collapsed because it was established that the police contaminated, or there was a good chance that the police had contaminated the DNA evidence. I did not hear the Minister utter one word about the safeguards that the Government is going to put in place, now that they are going to be taking DNA without consent.

The other thing that the Minister did not deal with is the fact that DNA sampling can be used to determine a number of things, not just whether somebody is the perpetrator of a crime or whether somebody was at a crime scene. I am reading from an article in the *Daily Telegraph* of May 22, 2002. This was quite some time ago.

At present, anybody could take something such as a coffee cup from a public figure, analyze the genetic trail and establish that persons chances of developing a disease such as Alzheimers. The dangers with DNA profiling is that DNA profiling can be used to determine the health of a person, and it has been used by companies. It has been used illegally by companies—an American railway company, for example, which took blood samples from employees complaining of strain injuries. The workers were tested without their knowledge for a genetic vulnerability to carpel tunnel syndrome and that was used to retrench and dismiss workers who took the company to court and won a case.

But the most interesting article I came across is an article in the *Daily Mail* of August 19, 2009:

“DNA evidence can be fabricated and planted at crime scenes, scientists warn

Scientists have shown it is possible”—this is 2009—“to fake DNA evidence potentially undermining the creditability of the key forensic technique.

DNA Bill, 2011
[MR. IMBERT]

Wednesday, November 09, 2011

Using equipment found in labs”—simple labs—“up and down the country, they obliterated all traces of DNA from a blood sample and added somebody else's genetic material in its place.

The swap was so successful it fooled scientists who carry out DNA fingerprinting for U.S. courts.”

There is a group of scientists in Israel—and all of this has happened within the last two years after the original Deoxyribonucleic Acid (DNA) Bill was passed.

I have another article CBS News.

Scientists in Israel—again, this is August 2009—“have successfully fabricated blood and saliva samples containing DNA, potentially undercutting what has been considered key evidence”—in the— “conviction or exoneration in crime cases, the *New York Times* reported.

The scientists also demonstrated that if they had access to a DNA profile in a database...”

And I did not hear the Minister say one word about the training and certification of the persons who will be handling the DNA database.

“they could construct a sample of DNA to match that profile without obtaining any tissue from that person. ‘Any biology undergraduate could perform this,’ said Dr. Dan Frumkin, lead author of the paper, which is published online in the journal *Genetics*.”

If Members opposite are familiar with these learned journals, they will be aware that it is virtually impossible to publish an article in the journal *Genetics* unless it is subject to peer review and unless it has established certain minimum criteria in terms of scientific merit.

“The paper asserts that while DNA analysis has become the”—[*Interruption*]

Mr. Speaker: Hon. Member for Diego Martin North/East, this is a good time for us to take a pause for tea. We shall resume at 5.00 p.m. This sitting is now suspended until 5.00 p.m.

4.30 p.m.: *Sitting suspended.*

5.00 p.m.: *Sitting resumed.*

Mr. C. Imbert: Thank you, Mr. Speaker.

Mr. Speaker before we took the break, I took the opportunity to deal with two issues, not in great detail, and I shall now return to one of the issues which was

troubling the Member for Oropouche East, and that is the whole question of the retroactivity of clause 3 of the Bill.

Mr. Speaker, the DNA Bill of 2007 had a similar provision and it may well be that because the DNA Bill of 2007 had a similar provision, the drafters felt that it was appropriate to repeat that provision in this Bill which seeks to repeal the 2007 law. However, one of the difficulties with that theory is that in the 2007 legislation, there were no provisions for the taking of DNA without consent. There was no offence created when a person refused to give DNA. There was no power given to the authorities to use force to take DNA from someone who had refused consent, and that is the difference. What this clause 3 does, it seeks to criminalize actions which may not have been unlawful at the time they were allegedly committed, and it also seeks to change the rules for gathering of evidence, which may not have been valid at the time that the previous crime was committed. The 2007 law did no such thing. So, whereas on a superficial reading of section 3 of the 2007 law, and clause 3 of the 2011 law one might think that they are the same, they certainly do not have the same effect, and therein lies the problem with the retroactive nature of the criminal law.

I would urge the Minister to look at that very carefully, not to dismiss that point because I believe on that clause alone this—yes, I see you shaking your head, and you know, Mr. Speaker, I am sure the Minister of Justice was among Members of the Cabinet urging on the police when they gathered up all those young men from John John and Duncan Street who were subsequently released, because the police failed to gather evidence which was admissible with respect to the crimes of being a gang member and participating in gang-related activities. I am sure he was in the Cabinet urging on the police when they—as I said corralled all those young men and from his disposition, he may also be urging and exhorting the authorities to take DNA without consent and to make this law retroactive. But as he will find out with the gang Bill, he will also find out with the DNA Bill. I am not going to give the Government any more advice in this, I am not going to be party to the Government's incompetence; I have flagged it, and if they decide to ignore it, that is their problem, they are creating a legal conundrum for themselves. [*Desk thumping*] [*Interruption*]

“Yeah, yeah ah know that, yeah sure, sure, sure!”

Now, Mr. Speaker, let me go back to the fabrication of DNA evidence which occurred in 2009; and this is the Israeli researcher. The company:

“...used two techniques to fabricate the “—DNA—” evidence.

DNA Bill, 2011
[MR. IMBERT]

Wednesday, November 09, 2011

In the first, they extracted minute samples of genetic material from strands of hair and multiplied them many times over.

They then inserted this DNA into the blood cells that had been purged of all the genetic clues to their real owner.

The blood then contained the genetic fingerprint of the first person, the journal of Forensic Science International: Genetics reports”.

Then quite possibly this fabricated DNA could be planted at the scene of a crime.

So what they did, they took one sample and they purged it of all genetic identifiers so that it would give no clue as to the owner of that DNA, and then they inserted DNA from another person into that sample and created fabricated DNA, Mr. Speaker. Researchers believe the technology would eventually be used by criminals. They have warned that DNA evidence is key to the conviction or exoneration of suspects of various types of crime, from rape to murder, but there is the disturbing possibility that DNA evidence can be fabricated and this has been overlooked by many authorities throughout the world and by many judicial systems.

So this is something which has happened in the world since the 2007 Act was passed, the fabrication of DNA. I go back to the point I made about the Amanda Knox case. Mr. Speaker, what happened?

“...police investigators failed to follow international protocols for the collecting and handling of evidence, and the conducting of tests on small genetic samples, known as low copy number or (LCN) DNA analysis. For example, police officers were not wearing protective masks or hair caps at the crime scene. In addition the police used plastic bags rather than paper to wrap the evidence, heightening the risk of contamination.

...the independent experts concluded they could not rule out the possibility that the knife and bra belonging to the young lady had been contaminated by other sources, such as evidence at the crime lab where forensic testing was taking place.”

I will come to what they are doing at the Forensic Science Centre which goes against all known protocols in the international world where forensic testing was taking place.

The investigators concluded, therefore, that there was very great possibility that the DNA of Amanda Knox had been tampered with and contaminated, and as a consequence she was released; this case enjoyed worldwide attention.

The point about it is that Italy is a developed country we are not talking about a developing country where the resources, the infrastructure, the equipment, the knowledge base, the techniques, the training mechanisms are available, we are talking about a highly developed country, Italy, it has the third largest economy in the eurozone, Mr. Speaker. And if police officers in Italy, in such a high profile case could make such basic fundamental errors with respect to the contamination of DNA, then it is quite possible, it is logical to—*[Interruption]* I hear the Members opposite, but they will find out to their detriment. It is quite possible that unless we take adequate precautions in Trinidad and Tobago, that we will find every single DNA case being thrown out based on the developments in science over the last two years.

Mr. Speaker, I have in my possession a report, and I heard the Minister refer to innocent persons who had been exonerated based on DNA evidence, but what he studiously avoided is persons who have been wrongfully convicted based on contaminated, or just bad DNA material. The reading is replete with examples of erroneous matches and contaminated samples leading to persons being arrested and even convicted based on DNA evidence. That is the flipside.

The Minister said that the invasion of the rights to privacy, the invasion of the right not to be self-incriminated and all of the other rights that are being infringed by this legislation, are necessary to punish the guilty and to exonerate the innocent. But obviously, in my opinion, the Minister was not briefed or if he was briefed he did not make it evident on the most recent developments in terms of cross-contamination of DNA samples and erroneous matches; and what has happened to persons when they have been wrongfully convicted of a crime when there was a problem with the DNA.

Let me give you some examples, Mr. Speaker and I am reading from an article from William C. Thompson, the Department of Criminology, Law and Society, University of California, August 12, 2008, produced by the Council for Responsible Genetics and its National Conference Forensic DNA Databases and Race Issues Abuses and Actions, held in June 2008 at the New York University.

“Accidental cross-contamination of DNA samples has caused a number of false ‘cold hits’, for example, the Washington State Patrol laboratory accidentally contaminated samples from a rape case with DNA from the reference sample of a juvenile felon. The juvenile was identified through a database search but could not have been involved in the rape because he was only a child when the rape occurred.”

DNA Bill, 2011
[MR. IMBERT]

Wednesday, November 09, 2011

But the lab identified him as the perpetrator, because his DNA was on the database, and was cross-contaminated with DNA from the crime scene.

Mr. Speaker, there is a very, very interesting case about two persons who were accused, again of rape, and one of the persons—this is the case:

“...in 2002, while investigating the 1969 murder of University of Michigan law student Jane Mixer, the Michigan State Police Crime Laboratory in Lansing found DNA of two men on her clothing. The profiles were searched through a database and matched two Michigan men, Gary Leiterman and John Ruelas. Police immediately suspected that Leiterman and Ruelas had been involved in the murder, but there was a problem—Ruelas was only four years old when Mixer was killed and had been living with his parents in another city...police could find no link between—the two. That did not deter Washtenaw County Assistant Prosecutor...who charged Leiterman with the murder. Hiller created a scenario placing a young four year old Ruelas at the [murder] scene as a chronic nose-bleeder whose blood dropped on Mixer.”

5.15 p.m.

This explanation was found to be completely far-fetched. There was no evidence that Leiterman had ever come in contact with the young Ruelas or his family, and they lived in different parts of the state.

“Examination of laboratory records revealed that known samples of DNA from both Leiterman and Ruelas were being processed in the Michigan State Lab on the same day as the samples from the Mixer murder...”

And there was contamination. Now, this paper which is cited by many people as being quite seminal in work, gives many examples of the problems of contamination.

Let me give you another one. One of the best known false cold hits occurred in a high profile Australian case involving the murder of a toddler named Jaidyn Leskie. The toddler disappeared in 1997 under bizarre circumstances while in the care of the boyfriend of the toddler’s mother. The toddler’s body was found in a reservoir six months later and the boyfriend was charged with murder, but the case was clouded by the discovery of DNA from an unknown woman in what appeared to be bloodstains on the toddler’s clothing. In late 1998 the boyfriend was acquitted.

In 2003 the unknown DNA was matched via a database cold hit, so now they are going after this person. They exonerated the boyfriend, paralleling some of the

examples the Minister has given us—they are now going after the guilty person to punish the guilty person using DNA technology—to a young mentally challenged woman who had lived hundreds of miles away, and by all accounts had never left her own village. Police could find no way to link the young woman to the toddler's murder and the case became the subject of an investigation, and the review established that DNA from the young woman had been processed from the same laboratory at the same time as the toddler's clothing. Now, Mr. Speaker, this brings me to another offensive clause in the Bill, and another reason why this law will be in serious danger of being struck down.

Whereas in the last committee, I was grateful for the intervention of the Member for Caroni East on this occasion—the Member for Caroni East had made heavy weather, but it turned out it was quite valid, that the Forensic Science Laboratory should be accredited. Quite right, the Forensic Science Laboratory should be accredited, and because we were required to get their votes in order to have the special majority to pass the Bill—we did not have 26 votes at that point in time, or 24 votes or how many votes were required for a three-fifths majority at the time—we accepted the recommendations of the Member for Caroni East with respect to the accreditation of the Trinidad and Tobago Forensic Science Centre, and it made sense too. It made sense that the Forensic Science Centre—It made sense too. It made sense that the Forensic Science Centre should be subject to accreditation by some international accrediting body. If you look in the verbatim notes, you will see there was a lot of discussion on this issue.

What has this Government done? I do recall the Member for Caroni East making a lot of noise about the time frame that the Forensic Science Centre should be given in order to get itself accredited, because they were dealing with matters that could affect people's lives; they were dealing with the analysis of DNA samples; the storage of DNA samples; the testing of DNA samples and the development of DNA profiles from DNA samples.

Quite rightly, at the time, the Member for Caroni East insisted that the Forensic Science Centre be accredited, and that there should be a period within which they get the international accreditation which he felt, and we agreed, was definitely required. What has this Government done in this Bill? It has declared by edict, by imperial fiat, that henceforth the Trinidad and Tobago Forensic Science Centre shall be the official forensic DNA laboratory for Trinidad and Tobago. No more accreditation.

Mr. Volney: We are a sovereign nation.

Mr. C. Imbert: Yes, you go ahead. No more accreditation; no requirement for third parties to examine the processes and procedures, quality control and quality assurance at the Forensic Science Centre. There is no longer any requirement for these basic scientific approaches to the analysis of samples and the creation of profiles. I heard the Minister shout out that we are a sovereign nation, so because we are a sovereign nation, all of a sudden, we, who do not possess the ability to certify a DNA lab, we have declared that it meets quality standards by imperial edict. I can assure you, Mr. Speaker, that this clause will most certainly be challenged, because on what basis is the Trinidad and Tobago Forensic Science Centre now being declared unilaterally to be the official lab?

Where is the application of the Metrology Act? Does the Minister know that it is only the Bureau of Standards under the Metrology Act that can certify laboratories in this country? Where is the cross-referencing between the Metrology Act and this Act in terms of certifying the competence of this laboratory? That is an all rhetorical question. There is nothing. The Minister in his mad haste and in his mad rush to be able to take DNA from people without their consent and to be able to analyze, test and develop profiles without the necessary safeguards and controls has just declared that the Forensic Science Centre is a laboratory that meets international standards. What makes it worse, in clause 6 you now have the Minister, who has no expertise whatsoever with respect to accreditation and scientific matters, will also approve agreements for laboratories by notification. There are no criteria here. There are no criteria that these laboratories that are going to be working together with this Forensic Science Centre, which has now been declared to be fit and proper by imperial fiat, these laboratories that will be approved by the Minister, there is no requirement now that these other laboratories—whether they are local or foreign—will meet any standards whatsoever for the storage, testing and analysis of DNA samples. So the Bill fails on that ground as well. It fails because it does not have any safeguards with respect to quality controls and quality assurance and—

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

Motion made: That the hon. Member's speaking time be extended by 30 minutes. [*Miss M. McDonald*]

Question put and agreed to.

Mr. C. Imbert: Thank you, Mr. Speaker. Now, you know, this Government has a habit of rushing through things. When we were in the other place, the other

building, I remember distinctly how they railroaded through the Data Protection Act—there was a seminar recently—and we pointed out the numerous flaws in that Data Protection Act. [*Crosstalk*] We pointed it out during the debate, and you ignored us.

Hon. Member: You walked out!

Mr. C. Imbert: We refused to participate in a vote on a defective piece of legislation. It was replete with errors, inconsistencies and contradictions, and now you cannot enact, you cannot proclaim and put into effect that Act, because that Act is simply worthless, and that is because you did not listen. We are telling you again, there are numerous clauses in this legislation which have not been properly thought through.

The other thing that the Government does not seem to understand is that there is a growing perception among the national population that the Government is unable to govern the country [*Laughter*] using basic approaches to governance, hence your reason for declaring a state of emergency to deal with crime. The state of emergency has now failed, and you have fired your biggest gun and it has failed—[*Interruption*]—locked up people without evidence—just rushed down the road and corralled a set of people just to make your state of emergency appear good, and now you have to put your tail between your legs and deal with a set of lawsuits dealing with false imprisonment and wrongful arrests.

That is the legacy of the state of emergency; hundreds of situations where persons are now entitled to sue the State for false imprisonment all because of your mad rush to implement a gang law without a gang unit; without training the police in the gathering of evidence and without explaining the systems required to create the evidentiary database required to achieve convictions under the Anti-Gang Act. And am I am saying the same thing with this DNA Act. You continue with your nonsense! There is no civilized country in the world that would just accept that a laboratory that would have the power of this laboratory can be accredited by imperial fiat by a declaration of the Minister, because we are “a sovereign country”.

But for the benefit of hon. Members opposite, let me read into the record another article from the United Kingdom, and it is interesting. The UK went almost in this direction with draconian DNA legislation, and England, in particular, is now forced to crawl back and adopt more progressive forms of DNA legislation.

The whole question of keeping DNA indefinitely: why do you want to keep people’s DNA indefinitely, especially if they are innocent? Why? There is a case

DNA Bill, 2011
[MR. IMBERT]

Wednesday, November 09, 2011

in England where a school teacher was accused of a sexual offence, and was acquitted and she asked for her DNA to be destroyed, and the authorities refused, and this matter went to the European Court and the European Court ruled that the DNA must be destroyed. [*Crosstalk*] You could say what you want. The European court ruled that the lady's DNA must be destroyed because she was innocent. Mr. Speaker, the Minister has not explained why he wants to keep the DNA of thousands of innocent citizens indefinitely. He has not explained it.

Let me just read this article now, dated November 24, 2009, because this is a hot topic in England; the whole question of DNA sampling, taking samples without consent, the whole question of contamination of samples and the procedures that the police must use in terms of gathering DNA samples and also testing.

The headline is "The DNA Snatchers: Police arresting innocents just to grab genetic details for Big Brother database." Here is the story.

"Police are arresting innocent people in order to get their hands on as many DNA samples as possible, senior Government advisers". This is in England: "revealed last night.

The Human Genetics Commission said the Big Brother tactic was creating a 'spiral of suspicion' among the public.

The panel which contains some of Britain's leading scientists and academics - said officers should no longer routinely take samples at the point of arresting a suspect."

That is where we differ. We do not agree that you should be allowed to take a sample from a suspect without his or her consent. The whole world is moving towards taking samples from people who have been charged and people who have been convicted, and not people who are mere suspects, but you want to take Trinidad and Tobago backwards into an era where the rest of the world is moving on recognizing that it is wrong to take DNA samples from innocent people and keep them indefinitely.

Let me go on.

"By law, officers are only allowed to make an arrest if they have 'reasonable suspicion' that a person has committed a crime—lengthy review of the merits of the database...evidence had emerged of police arresting people purely so they could take their DNA.

Its chairman, Professor Jonathon Montgomery, said: ‘People are arrested in order to retain DNA information that might not have been arrested in other circumstances.’

The claim, which was backed by evidence from a senior police officer, delivers a significant blow to the Government’s defence of the database which contains more than 5.6 million samples.”

5.30 p.m.

“Campaigners have long feared officers were carrying out mass sweeps of the population to load their samples on the database, and make future crime fighting easier.

The result is one million entirely innocent people have their genetic details logged by the State.”

And this is the worrying part about it, and in a plural society we have to be very, very careful. I want to make it clear, I am reading from an article in England where the majority of persons are not of African origin.

“The Commission said one of the consequences of current DNA laws was that young black men are ‘very highly over-represented’ with more than threequarters of those aged 18—35 on the database.”

So what had they found in England? More than 75 per cent of young black men in England between the ages of 18 to 35 found themselves on the database, most of them innocent.

“Professor Montgomery warned this is creating a ‘spiral of suspicion’ among sections of society.

A retired senior police officer, a superintendent, told the commission: It is now the norm to arrest offenders for everything if there is a power to do so.

‘It is apparently understood by serving police officers that one of the reasons, if not the reason, for the change in practice is so that the DNA of the offender can be obtained.’”

In England there has been a finding that the police, having been given the power—this is a developed country—to take DNA samples without consent were abusing their powers and just grabbing people, not charging them for offences, but taking their DNA and keeping it on the database.

DNA Bill, 2011
[MR. IMBERT]

Wednesday, November 09, 2011

“Proposals within the Crime and Security Bill—published last week—will, for the first time put a time limit, in most cases six years, on how long profiles are stored when the alleged offender is either not charged or later cleared.”

But what is in our law? It is entirely discretionary. First, they can keep it for 10 years, and they can keep it for as long as they want because it is discretionary. The period in our law in this new Bill is that you can keep it for a minimum of 10 years. There is no maximum period defined in this law, and that is not what is being done in other civilized countries. The article goes on to talk about the cost of TT4.3 million to run the database system.

The DNA database system in England—and the spokesman for the Liberal Democrats, Chris Huhne, said:

“The Government’s cavalier attitude to DNA retention has put us in the ridiculous situation where people are being arrested just to have their DNA harvested.

‘Ministers make no distinction between innocence and guilt and as a result everyone is treated like a suspect’.”

Does that sound familiar? I heard the Minister, full of sound and fury, say that we have to punish the guilty and exonerate the innocent. If you are going to exonerate the innocent, why are you keeping their DNA? But you want to pass a law where you will keep the DNA for a minimum of 10 years, and if you want to you can keep it indefinitely.

I can assure you that that clause where the Government can keep the DNA of persons indefinitely will be challenged as well. I can assure you, Mr. Speaker.

Dr. Moonilal: You throw away your mugshot?

Mr. C. Imbert: Yes, go ahead. You are slowly or quickly sinking it. It depends on what model you look at. The Government is either slowly or quickly sinking into the abyss.

“Government’s plan to charge innocent people a £200 fee to have their names removed from the national DNA database”—was attacked vociferously and calls were made—“for England and Wales to follow the Scottish model by not retaining the DNA of innocents, save in exceptional circumstances.”

So that is what is happening in England where the Minister, as far as I can see, has journeyed to England and borrowed outdated legislation. The British authorities have recognized that their DNA laws were abusive, open to abuse, were

infringing people's fundamental rights; they are subject to decisions of the European Court of Justice and they are quickly moving away from these draconian provisions that are in here.

Here is another famous case: "Germany's Phantom Serial Killer: A DNA Blunder." This is an article published in *Time World Magazine*, March 2009.

"The murderer dubbed the Phantom of Heilbronn had been baffling German investigators for two years. The criminal was a rarity, a female serial killer, and a very busy one: police had linked DNA evidence from 40 crimes—including the infamous homicide of a policewoman in the southern German town of Heilbronn—to the same woman.

Police had found her DNA on items ranging from a cookie to a heroin syringe to a stolen car. They had put a \$400,000 reward on her head. Profilers from around Europe were called in to help hunt her down. The police even considered diviners and fortune-tellers in hopes of discovering her identity. The papers declared the case 'the most mysterious serial crime of the past century.'

The police thought they'd been looking everywhere. But it turns out they should have been looking down—at the cotton swabs they were using to collect DNA samples. On March 26, German police revealed that the cotton swabs they use may have all been contaminated by the same worker at a factory in Austria—and that the Phantom of Heilbronn never existed."

This is another point, now that you want to take people's DNA without their consent. DNA samples can be contaminated by the very gloves that the police officers are using, by the cotton swabs that they use to take samples, whether intimate or non-intimate, and there is nothing in the legislation to deal with—I have to repeat this—the training and certification of the persons who are going to be taking DNA samples and developing DNA profiles.

Now let me go—how many more minutes do I have, Mr. Speaker?

Mr. Speaker: You have until 5.53 p.m.

Mr. C. Imbert: Thank you so much. I go back to the article written by William C. Thompson, August 2008, and I read from the first page:

"Promoters of forensic DNA testing have, from the beginning, claimed that DNA tests are virtually infallible. In advertising materials, publications and courtroom testimony..."

DNA Bill, 2011
[MR. IMBERT]

Wednesday, November 09, 2011

And now we hear from the Minister of Justice:

“the claim has been made that DNA tests produce either the right result or no result. This rhetoric of infallibility took hold early in appellate court opinions, which often parroted promotional hyperbole. It was supported when the National Research Council, in the second of two reports on forensic DNA testing, declared ‘the reliability and validity of properly collected...DNA should not be in doubt. It was further reinforced in the public imagination by news accounts of post-conviction DNA exonerations.’”

Much like we heard today the Minister telling us about post-conviction DNA exonerations:

“Wrongfully convicted people were shown being released from prison, while guilty people were brought to justice,...”

Sounds familiar? Sounds just like to the words of the hon. Minister. We want to punish the guilty and exonerate the innocent by this marvelous new technology.

“With both prosecutors and advocates from the wrongfully convicted using it successfully in court, who could doubt that DNA evidence was in fact what its promoters claimed: the gold standard, a truth machine?”

The rhetoric of infallibility proved helpful in establishing the admissibility of forensic DNA tests and persuading judges and jurors of its epistemic authority...Innocent people have nothing to fear from databases, promoters claim.”

Sounds familiar? I heard that in this Chamber today.

“Because the tests are infallible, the risk of a false incrimination must necessarily be nil. One indication of...the rhetoric of infallibility is that, until quite recently,”—and this is why I tell the Minister, update yourself on recent discoveries and advances with respect to DNA technology—“concerns about false incriminations played almost no role in debates about database expansion.

In this article, I will argue that this assumption is wrong. Although generally quite reliable...DNA tests are not now and have never been infallible. Errors in DNA test occur regularly. DNA evidence has caused false incriminations”—and that is the flipside—“and false convictions, and will continue to do so...the risk of false incrimination is high enough to deserve serious consideration in debates about expansion of DNA databases.”

Which is what we are doing today, the Government has come to us and has asked us to expand, almost exponentially, the DNA database of Trinidad and Tobago.

“The risk of false incrimination is borne primarily by individuals whose profiles are included in government databases (and perhaps by their relatives). Because there are racial, ethnic and class disparities in the composition of databases, the risk of false incrimination will fall disproportionately on members of the included groups.”

And I averted to the fact that in Britain 75 per cent of young black males are on the DNA database, and I will read now:

“Because there are racial, ethnic and class disparities in the composition of databases, the risk of false incrimination will fall disproportionately on members of the included groups.”

And in this article the author went through all of the various scenarios where DNA can be contaminated, mismatched, erroneously matched, mixed up in the lab, mixed with other DNA from the crime scenes, and so on.

Mr. Speaker, we have seen, over the last 18 months, a new government coming into power and in everything that they do there is a public relations element. The Minister justified this legislation. Look at what he justified: the declaration that the forensic science lab is a good lab just because he says so, not because any scientific body says so—he says so; the justification that the Minister could authorize other labs as being competent not because of any criteria, but because he says so.

All of this very strange approach to law-making is justified because we have a crime problem in Trinidad and Tobago. So because we have a crime problem in Trinidad and Tobago you must throw all known scientific protocols out the window and you must decide that a lab is a good lab just because you say so. There is no third party analysis; there is no term of reference; there is no criteria; nothing, just the Minister says so. So because we have a crime problem the Minister can say this is a good lab and that is a bad lab. Because we have a crime problem, the Minister can now introduce retroactive criminal legislation which will have a profound effect on people already in the system—because we have a crime problem. Because we have a crime problem the Minister can keep the DNA information of innocent people indefinitely even after they have been exonerated of a crime—because we have a crime problem. Do you see the oxymoronic nature of the Government’s proposition, Mr. Speaker? Because we have a crime problem you should keep the data of an innocent person after he or she has been

DNA Bill, 2011
[MR. IMBERT]

Wednesday, November 09, 2011

exonerated from the crime. That is their logic. And if the Minister says that you know what I am saying is engineering logic, well, I wonder what kind of logic that is, that because of crime you want to keep the DNA of an innocent person. What kind of logic is that? Is that St. Joseph logic? I mean I would love the Minister to explain that for me.

Mr. Volney: You do not understand it.

Mr. C. Imbert: Yes, yes. You know, Mr. Speaker, whenever the Government is challenged, they resort to rhetoric, “You do not understand; it is above you; it is too much for you.” That is what they always say, Mr. Speaker, because they cannot deal with the issues every time. You know, it reminds me of the budget debate, when we challenged the Minister of Finance with respect to the figures, we challenged him with respect to the fact that he made no comparative review of the economy in 2010 and 2011.

5.45 p.m.

We challenged him with respect to his estimates of value added tax. He said:

“—it is too much for you, it is above you,” but he did not deal with the issues, Mr. Speaker. And I do not know what the Minister of Justice is going to do. I do not know if he is going to tell us why he has decided that he, Emperor, will declare that the Forensic Science Centre to be a good lab, and nobody must question that. I do not know if he is going to explain to us why he wants to keep people’s DNA indefinitely when the rest of the world is moving away from that. I do not know if he is going to explain to us why there are no provisions in the Bill. Just like the Breathalyzer Act, Mr. Speaker, one of the reasons the breathalyzer legislation took a little time to be implemented was that it was recognized that in the United States people had been challenging the accuracy and the validity of breath samples.

As a consequence, recognizing the advances in the law that persons were successfully challenging the competence of the persons who were taking the samples of breath for the purpose of determining the level of alcohol in a person’s blood, we did not implement the law until police officers had been trained by an internationally accredited training organization and certified as being competent to take samples of breath for the purposes of determining whether a person is driving under the influence. We took that precaution, and as a consequence, every day you read in the newspapers about successful convictions for driving with alcohol in your blood over the prescribed limit. Those convictions would not have been successful if the persons could have challenged the competence of the police

officers who are taking the breath samples. Mr. Speaker, that is just a simple, narrow area of our criminal law. Similarly, we are talking about DNA now. DNA could be used to convict somebody for murder, somebody for rape, put them behind bars for 30 years, and you are going to tell me that while this country felt it was important to certify police officers to take breath samples because we understood then how important it was, now it is no longer important to certify police officers to take DNA samples; DNA samples that could send you to the gallows. And this is another reason why this Bill is not going anywhere.

So, Mr. Speaker, I know that the Members opposite have—

Mr. Speaker: Hon. Member, you have five more minutes.

Mr. C. Imbert: Sure; I am wrapping up, Mr. Speaker. I know the Members opposite are very adverse to admitting error. I cannot believe that the Minister took 18 months to come up with this. There are so many clauses in this Bill that are cause for concern, Mr. Speaker, so many clauses require another look: 3, 5, 6, 7(2), 8(2), 10, 13, 15, 16, 17, 18, 19 to 21, 23, 25, 33. Those are all the clauses in this Bill that I have determined, just from a cursory examination—

Hon. Member: “You right.”

Mr. C. Imbert: No, I have established from a cursory examination that those clauses are either offensive or they are vague and ambiguous and require another review, Mr. Speaker. And let us look at them. As I said clause 3 allows prosecution of persons retroactively under the new law, and whereas the old law you had to have consent, in the new law you do not have to have consent, and if someone objects to the taking of a sample you can use force and take it from them. And that is a very serious and sinister introduction into this legislation.

Clause 5 is the offensive clause where without an accreditation by any known body the Forensic Science Centre is now an official lab. Clause 6(b), the Minister can approve other labs by notification; just by posting a notice, he would say “X” lab and “Y” lab are now competent to analyze DNA samples.

Clause 7(2), DNA profiles stored in the forensic DNA databank may be kept indefinitely. In addition, the custodian who has an important role to play shall be appointed by the Minister on such terms as he thinks fit.

Clause 13, a police officer shall take a non-intimate sample from a person without his consent where the person is a suspect. You have not committed any crime, you are not charged for any crime, there are not even reasonable grounds for suspecting that you are involved in an offence because that is the next clause 13(1)(b), but they can take your DNA because you are a suspect.

DNA Bill, 2011
[MR. IMBERT]

Wednesday, November 09, 2011

You can also in clause 15, another offensive clause: “A non-intimate sample shall be taken from a person specified in the Third Schedule without his consent”; and then an omnibus catch-all, the Minister may subject to negative resolution amend the Third Schedule. So it made the Third Schedule redundant, you could add anything you want to the Third Schedule, Mr. Speaker, and it will be just laid in the Parliament and become law.

Clause 16: where the Minister with responsibility for national security is of the opinion a sample is required from a person in the interest of national security he just writes the police and that is it, they arrest you without warrant and they take your DNA by force, Mr. Speaker. You have all these other clauses with respect to people detained under the immigration laws and so on.

Then you have this one, 19(2): “A qualified person may take such samples as he thinks fit from an alleged victim of a sexual offence without consent of the alleged victim”.

And in many cases where persons are accused of sexual offences the victim was really engaging in consensual sex, and that is one of main reasons why persons do not go ahead with sexual offences; not the only reason, but it is one of the reasons why persons do not proceed with sexual offence prosecutions.

Clause 23: a person authorized under this Act to take a sample may use reasonable force to take and protect this sample. And then in clause 25, you shall keep the sample for a minimum period of 10 years from the date.

There are so many offensive clauses in this Bill. I am sure the Members opposite know that it will be improper to use their special majority to railroad the Bill through this Parliament today. I am urging them to reflect on what they are doing, and to take this Bill back, examine the comments we have made—and the Member for Port Spain South has much to say as well. examine the comments that we have made, go back to the drawing board and re-draft this legislation, take out the offensive clauses and you will receive the support of the Opposition.
[Desk thumping]

I thank you, Mr. Speaker.

The Minister of Works and Infrastructure (Hon. Jack Warner): Thank you, Mr. Speaker. By now this House has gotten used to the histrionics of the last speaker. We sit here, I mean, session after session, and whenever the last speaker speaks, we are regaled by his histrionics: shouts he and he throws his paper and he “gallivants” and so on, hoping of course he would be impressive. I want to make

the point that nobody on this side is impressed, nobody who has seen you or has heard you is impressed and you have not done yourself justice.

Mr. Speaker, the last speaker begins by saying that the Bill fails on several grounds, and he lists three grounds among the reasons he gave why the Bill fails. He said the bill provides no safeguards to ensure the accuracy of samples, the non-contamination of samples, no requirement for the training of officers, technicians and so on. In fact he was even angry that we on this side were laughing, and we do laugh at times at nonsense.

Hon. Member: Of course!

Hon. J. Warner: We cannot help that, right. And he says that one of the critical areas in the Bill, Mr. Speaker, is clause 3, and he shows where, clause 3, he says, is a clause that talks about retroactive legislation. We are accused of having certain retroactive legislation, Mr. Speaker, and he calls all the countries in the world where this kind of legislation is outlawed. The only place he did not call was Maraval. Every country in the world this kind of thing is outlawed.

In 2007 when the PNM was in power and they passed the Act in 2007, the Act, the Bill was piloted by the Member for Diego Martin North/East.

Hon. Member: Who!

Hon. J. Warner: The Bill of 2007 passed by the PNM was piloted by Member for Diego Martin North/East, the last speaker.

Dr. Moonilal: True or false?

Miss McDonald: On a point of clarification.

Hon. J. Warner: You really want to do me that now?

Miss McDonald: Yes, just to clear something up. Mr. Speaker, in 2007 that Bill was laid in January by the then Minister of State in the Ministry of National Security, the Hon. Fitzgerald Hinds, the Member for Diego Martin North/East was the Chairman of the Joint Select Committee. The Bill went to a joint select committee of Parliament, he never piloted that Bill.

Mrs. Gopee-Scoon: That is right!

Hon. J. Warner: Were you here in 2007?

Miss McDonald: No, Sir.

Hon. J. Warner: You were not here? Well let me tell you. He was Chairman of the Joint Select Committee, and the Joint Select Committee report of which he was Chairman, came here.

Hon. Member: Exactly!

Dr. Moonilal: And he led it.

Hon. J. Warner: And he led the report.

Dr. Moonilal: And he presented it.

Hon. J. Warner: So you were not here.

Miss McDonald: You said he piloted the Bill. [*Interruption*]

Hon. Member: Oh God!

Hon. J. Warner: You know next time I will not give way all right. You go ahead! I was in full flight when you stopped me, and just for that, anyhow.

As I was saying, Mr. Speaker, section 3, 2007 when the PNM passed the Bill—

Dr. Moonilal: “And Imbert bring the report.”

Hon. J. Warner: —and the report was brought here, Mr. Speaker, from the joint select committee, by the hon. Colm Imbert, the Member for Diego Martin North/East—

Hon. Member: He had the same height then.

Hon. J. Warner: He was the same height then, I agree. Thank you.

Mr. Speaker: Please do not attribute these things to [*Inaudible*]

Hon. J. Warner: Mr. Speaker, the clause 3 which he brought read as follows: “This Act applies to the investigation and prosecution of offences committed before, on or after the in to operation of this Act.”

Hon. Member: How shameless can you be!

Hon. J. Warner: Mr. Speaker, not a single comma, line or full-stop has been changed. But it is okay in 2007 when they piloted the Bill but because he saw CNN on the smallish TV and he comes here to of course, talk about political history.

Mr. Speaker, worse yet, when the vote was taken—I will tell you the vote that was taken. The vote was taken, listen, 24 persons said aye. The House voted as follows—“Yuh” gone, “Yuh” gone, “Yuh” running?” The House voted as follows, Mr. Speaker.

DNA Bill, 2011

Wednesday, November 09, 2011

Hon. Member: Stand up and walk.

Hon. J. Warner: Hon. Ken Valley, aye

Patrick Manning, aye

Hon. Dr. Keith Rowley, aye

Hon. Member: What!

Hon. J. Warner: Colm Imbert, aye

Jarrette Narine, aye

Roger Boynes, aye

John Raheal, aye

Anthony Roberts, aye

Hedwigde Bereaux, same thing.

Eulalie James—the late Eulaie James, God rest her soul—same thing.

Eddie Hart, aye

Dr. Moonilal: That is the only thing he say.

Hon. J. Warner: Hon. Steven—what Callender was he? From Tobago, S. Callender, aye.

Diane Seukeran, aye

Eudine Job-Davis, aye

Fitzgerald Hinds, aye

Franklyn Khan, aye

Dr. Hamza Rafeeq, aye

Dr. Moonilal: Progressive.

Hon. J. Warner: Kamla Persad-Bissessar, aye.

Dr. Moonilal: Progressive.

Hon. J. Warner: Harry Partap, aye

Adesh Nanan, Subhas Panday, Nizam Baksh, Dr. Roodal Moonilal—

Dr. Moonilal: That is me.

DNA Bill, 2011

Wednesday, November 09, 2011

Hon. J. Warner:—aye, and Manohar Ramsaran.

Dr. Moonilal: Support.

Hon. J. Warner: They all said aye, to the very same clause. The difference is that we have come here today to correct the Act, the Bill so to speak, you have stayed there in your cocoon hoping that we remain of course as we are, that is the difference. And to come here therefore, and to posture and behave as if this clause is so draconian, it is the same clause that you brought. It was not draconian in 2007, but having watched CNN and BBC news you come here now: “it is draconian”. That does not make sense guys! It does not make sense!

6.00 p.m.

Worst yet, Mr. Speaker, [*Crosstalk*] he is very critical that the samples are being kept indefinitely, he says. What do they do with fingerprints? What do they do with fingerprints? Do they destroy them? What do they do with mug shots? They destroy them? [*Interruption*] Do they not have a registry where they keep them? Why are you coming here today to waste the Parliament’s time and to fool the people?

Dr. Moonilal: What do they do with party cards?

Hon. J. Warner: What do they do with those things? I want to ask you the same thing about the balisier ties, what do you do with them?

Dr. Moonilal: Only one man—[*Inaudible*]

Hon. J. Warner: Do you destroy them? At the end of the day these things are kept and, therefore, to come here and talk about these things are being taken indefinitely, I say, yes, it is consistent with what is being done with fingerprints and mugshots. [*Desk thumping*]

Then he goes to the *Daily Telegraph* of 2002. He comes here with an article that is nine years old—almost my age. [*Laughter*] An article nine years old and he talked about that article being relevant. [*Interruption*] That is relevant today, but the 2007, clause 3, he said, is not relevant. Something has to be wrong! The point he made about DNA can be fabricated, nothing is new about that. Nothing is new about that, Mr. Speaker. In fact, any evidence can be fabricated. It depends, however, on the character of the people who are dealing with the evidence. It depends on the integrity of the persons who deal with the evidence. Any evidence can be fabricated! So to come here and make a big issue about it, that is a non-point. It is a non-point! The fact is—and I have a note here, one big “steups”.

[*Laughter*—is the last speaker saying that because of this we must do away with the DNA? Is that what he is trying to say, Mr. Speaker?

He makes the point—in fact I should add, is he saying no DNA and what we must have now is “Dick Tracy, Sam Catchem and Sherlock Holmes with a lil looking glass and so on?” Is that what he is saying? [*Interruption*] He is talking about training and certification of officers. Friends, let us be serious, you do not put that in law. That is left for the administration. If you are to put about how you would train and you would certify officers, the Bill itself would be about 5,000 pages. In fact, in 2004 the PNM Government passed the Metrology Act and to this day that Act they passed has not been proclaimed. Do you know why? Because of issues surrounding the employment conditions in the Act, the Act was not proclaimed to date because they did not, as they say, have the issues about the conditions for employment.

Today, the Minister of Trade and Industry, hon. Stephen Cadiz, is moving to have the Act proclaimed after seven years. So you do not put those things into a Bill, those things are left to the administration and the Member for La Brea, as a past teacher, why did you not help them? [*Laughter*] Why did you not help them with your experience? Help them, because they believe—I was reading somewhere where it was said that I am not an ordinary mongrel or “pot hound”, “I doh bark at every passing car.” They believe they must bark at every passing car. [*Interruption*] They believe that everything we say here they must object to. You do not have to be a mongrel or a “pot hound” and bark at every passing car—thanks to the Member for San Fernando East’s advice, you do not have to be—so tell them about it!

Mr. Speaker, he quotes and he says “I am not going to be party to the Government’s incompetence”. I say how laughable because as far as I am concerned, on that side it is incompetence personified. [*Desk thumping*] We in this country have been the beneficiaries, for want of a better word, of their incompetence in the worst possible way. In the worst possible way from Cucharan Trace in the south right on to Tragarete Road; we have seen their incompetence.

Hon. Member: From Mamoral.

Hon. J. Warner: Yes, from Mamoral, Tulsa Trace, Gopee Trace and so on; we have seen it. [*Crosstalk*]

Dr. Moonilal: “Dem doh know nothing bout that!”

Hon. J. Warner: They do not know anything about those places and to talk about incompetence.

Mrs. Gopee-Scoon: “Talk about the Bill nah”!

Hon. J. Warner: If I were you—leave me alone. The house you lose—if I were you, leave me alone. [*Laughter*]

Mrs. Gopee-Scoon: “Yuh understand.”

Dr. Moonilal: What house is that?

Hon. J. Warner: Mr. Speaker, we are also told—yes, she had a house on a hill. [*Laughter*]. Mr. Speaker, we were also told about the fabrication of DNA evidence in 2009 and the last speaker talked about the Israelis and what they did with samples. Of course, they must know about the Israelis, from eavesdropping equipment to, you name what, they know about it.

But he comes here and talks about the Israelis and he said what they did with samples and how they took one sample of DNA and were able to split it and make two, three, four and five. Mr. Speaker, honestly, does that make the DNA flawed? Does it make the process flawed because the Israelis did it? I repeat, it is left to the character of the investigators at the end of the day. [*Interruption*] There are mistakes that can be made, but that does not make the system bad. Sometimes you have mothers making babies on the same ward and a mother goes home with the wrong baby, is child making bad? [*Interruption*] Does that make it bad? To me it is nonsense to talk about because the Israelis show that an error can be made that the system is bad. It does not make sense! [*Interruption*] It does not make sense! I repeat that if we do not have DNA then what do we do? What is he suggesting?

He talks about issues of standards, quality control, quality assurance; I want to say that as far as we on this side are concerned, what was told to us just now is a prescription for doing little or in fact doing nothing. If they on that side want to be called “do little, do nothing”, we on this side do not want that acronym. Therefore, I am suggesting that as far as we are concerned—and I would leave the balance for my colleague here to reply to, because at the end of the day when I listen to the last speaker, I get the impression that he is an eternal chronic pessimist and we want no part of that. [*Laughter*] We want no part of that! Therefore, Mr. Speaker, let me go quickly to the Bill as it is here and leave the rest for my learned friend to reply to.

Mr. Speaker, it must be an indictment against all past governments that up to this present day we do not have any functional system for efficiently using DNA evidence in the fight against crime—in the fight against crime which has been mooted by that side and this side. To this day we have no efficient system of

using the DNA evidence in the fight against crime. This is the legacy of a regime that believed that the first way to world status was by building tall buildings, so you get to world status by building tall buildings. We on this side believe that you can get to world status by doing some other things which are correct, like correcting the DNA Bill. [*Desk thumping*]

Mr. Speaker, in the 21st Century this country wants to claim First World status. It wants to say that we are not backward and yet for all, we do not have a DNA registry. Furthermore, we do not have a system, an effective system for taking DNA samples from crime suspects. We do not have it! We do not have an efficient system for analyzing DNA left behind by criminals at the crime scenes, whether it is homicide or rape, whatever it is, we do not have a system where we can analyze the evidence these criminals leave at the crime scene. Sometimes, because of our limited facilities we have to send evidence to the USA and to England to get tested, and you know the time and cost that is involved. We seem to be very happy with that.

We are hearing today from the Member for Diego Martin North/East that we should do nothing; all the clauses are bad, even what they brought in are bad. Do nothing! I am saying therefore, it is because of this we have a major setback in the fight against crime. Our detectives on whom we rely to solve crimes are having a tough time, a very difficult time—

Dr. Moonilal: Ten per cent detection rate.

Hon. J. Warner: That is correct! Our detection rate is still 10 per cent. Are you happy with that? The world is moving by and our detection rate is still 10 per cent and we have now one of the areas that we can get help to improve that—the DNA—and today we had to sit and listen to the last speaker.

It is said that whenever a criminal strikes he or she takes something and leaves something at the scene. They take something but they also leave something. It is said so, Mr. Speaker. So, the criminal comes, he takes your valuables, he robs you of your life, sometimes; he robs you of your sense of security; he robs you of your dignity; he robs you sometimes of even your sanity, but in doing so, in robbing you, he also leaves something. He leaves behind some kind of evidence, and the evidence sometimes is so microscopic that it cannot be seen with the naked eye, some evidence is unique, and therefore, I am saying that this is why the DNA is so important. Therefore, our police have not been able to produce the goods as you would want them to produce because they lack testing facilities, which, of course, handicap the police. As such, therefore, the criminals get a chance to escape, in

DNA Bill, 2011
[HON. J. WARNER]

Wednesday, November 09, 2011

fact, sometimes, they thumb their nose at you, they do not even put on masks anymore; they do not come in the night anymore, they come any hour of the day.

The criminals today, Mr. Speaker, are no respecter of persons, places or time, and therefore, as such, it makes it difficult for our police to fight crime, this reign of terror, so to speak, without the help of DNA. The victims are deprived of justice. As such therefore, we on this side are trying to correct that wrong.

Murder, in several cases—and this is important—the lack of DNA evidence has prolonged the agony of the relatives of victims when bodies cannot be easily identified and the pain and the suffering that is prolonged. I will give you a few. In 2005—Rudolph Sammy and Peter Samaroo, their two bodies were found stuffed in water barrels in San Fernando in November 2005, the bodies were decomposed beyond recognition; everyone, even the police, knew it was Sammy and Samaroo but they did not have conclusive identification, and therefore, the bodies could not have been released to the families for the final rites. The *Express*, December 21, 2008 says the men's legal estates are in limbo. The killers who many know, are still free. Both men were fathers and there was never a funeral. And today we are listening to that! Today, we all sit here listening to that to tell us [*Interruption*] you are not supporting the DNA. You think the people of this country could ever forgive you guys whether you apologize or not?

Dr. Moonilal: Never!

Hon. J. Warner: Whether you apologize or not they cannot forgive you.

Hon. Member: Apologize for what?

Hon. J. Warner: The fact is, the time has come when we as a Government have to band together, and based on our collective efforts, fight the scourge of crime. [*Desk thumping*]

6.15 p.m.

Mr. Speaker, 2005—Arnold Changa. Changa left his family's home at Jaipaulsingh Road, Barrackpore in February 2005. You remember.

Mr. Cadiz: Akiel Chambers.

Hon. J. Warner: I am coming to that. Mr. Speaker, and Changa vanished. A month later a burnt body was dug out from a grave in a cane field near to his home. The parents gave blood samples, but three years later, three years later, after they gave blood samples in the *Express* again, December 21, 2008, the families are still waiting for results from those test. Three years later. I am

DNA Bill, 2011

Wednesday, November 09, 2011

advised, Mr. Speaker, that the body was never positively identified. Changa's mother, on her knees with tears in her eyes, begged. Mr. Speaker, I quote her:

“They could do what they want with the body now. Just give me a death certificate so I could have a pooja or something. Just give me something”, she cried.

Did Diego Martin North/East hear her cry? Did he read her cry? No, he went to Israel, and to Indonesia and to Poland and to England—go to Barrackpore! Go to Barrackpore! [*Desk thumping*] All she was asking was for the body, for a pooja—after three years, no body. She has no body. No closure to this day and that is what he is asking for. No closure to the lady. Again, the *Express* 2008, the same issue, they say:

“The village knows who killed Changa. They, the killers are free.”

Mr. Speaker, 2008, again Antonio Stevens' bloated body was found in a drain in a teak field in Tabaquite, near the Navet Reservoir, September, 2008. The face of Antonio Stevens was decayed in ways that you cannot even imagine. The relatives and the villagers in Tabaquite were certain that the body was Steven's. The clothes and the sneakers near the body were his, Mr. Speaker. He was the only known person missing in the whole of Tabaquite. I say again, the clothes and the sneakers next to the body were his. But the police required certainty of identity. It took 21/2 months for DNA testing to be done abroad confirming the identity of the corpse.

Mr. Speaker, three months after the body was found, relatives of Antonio Stevens were at last able to give him a funeral and to bury him. What is my friend talking about from Diego Martin North/East? Is he aware of—does he know where Tabaquite is? He knows where Biche and Cuche is? He knows where Poole and Dades Trace are? You know where they are? He does not understand the pain of these people. You understand—[*Interruption*] “Leave meh alone Miss, for your sake”. So therefore, I am saying to you—it is all right, do not worry—Mr. Speaker, that is what you have to understand. It is very serious. You can trivialize it if you want to. This is a serious matter. You could stay in Diego Martin and represent Point Fortin, that is all right. That is okay.

Mr. Speaker, in March, 2011, Anita Ramsaran [*Interruption*]

[*Mr. Speaker motion with hand for quiet*]

Thank you, Mr. Speaker. March 2011, Anita Ramsaran, 25 years old, on a trip to Chaguanas—from San Fernando to Chaguanas—she disappeared; March,

DNA Bill, 2011
[HON. J. WARNER]

Wednesday, November 09, 2011

2011. Her body was found burnt beyond recognition on a pile of old tyres in a cane field in Chaguanas. It took investigators five months before Ramsaran's body could be identified by DNA techniques. Five months. One of the causes, Mr. Speaker, for the delay—this long delay, was because of a breakdown in the machine used for testing at the Forensic Science Centre in St. James.

Mr. Speaker, week after week, this young lady's relatives were begging for closure; begging for closure. They did not have it.

But, Mr. Speaker, no case is more heart-rending, no case is more pitiful, no case—for me in doing the research, I found more dreadful than the case involving Deomatie Persad in May 2003. This young mother went into the forest at Rio Claro in May 2003, to work at an oil exploration project. She never returned from the forest. I have it here, but I do not have time to go through it right now. Never returned from the forest. Persad's body—her remains were found six months later in the forest. It was a pile of burnt bones. Her skull bore evidence of a fatal blow to the head. Remnants of her clothes—the clothes she wore, the last day she was seen were found near to the bones—Deomatie Persad. The bones, Mr. Speaker—when the body was found—the bones were then bagged and sent to the Forensic Sciences Centre. Persad's relatives gave blood samples in the hope that a positive legal identification would take place. The DNA testing could not be done here; we were not equipped for it—had to be done in Jamaica. The testing had to be done in Jamaica. At the time the Forensic Science Centre said that they did not have the technical capabilities to test DNA. Whatever happened, Mr. Speaker, to make a long story short, there was no identification, it was not established and the remains were never released. Jamaica could not establish the identification and the remains of this young lady were never released.

Mr. Speaker, three years later, on July 9, 2006, the *Express* reported that the bones disappeared from the Forensic Sciences Centre, three years later, the case was never solved. Persad was never confirmed as dead. She has a six-year-old daughter who has never gotten closure on this matter; never gotten to say goodbye to her mother. When Mother's Day comes, she runs to her mother's picture and asks, "Mummy, when you coming home?". And I must come here this afternoon to listen to that, and go to Poland, Indonesia, Brazil, England, and so on? Stay here! Stay here! [*Desk thumping*] Live the reality here! And coming here, of course, to harass me and laugh "gib, gib, gib, gib". That is what we come here to do? At the end of the day, let us be serious, "man", let us be serious. This is serious business.

Mr. Speaker, in all these cases, if we had a properly functioning framework for the use of DNA evidence, this would not have happened. If we had a framework for DNA evidence to be used, Mr. Speaker, these things would not have happened. The families of these victims would have gotten the closure that they needed. The police investigations could have progressed further, and the killers could have been found and prosecuted.

But what about Akiel Chambers? Mr. Speaker, this is one of the most unfortunate and tragic cases that we could ever think about: an 11-year-old Akiel Chambers who was found dead in a swimming pool in May 1998. DNA evidence found in his underwear was never followed. The underwear and sample disappeared. If Akiel was murdered, as the evidence suggests, his killer has been on the loose for over 13 years. And I am saying therefore, if we had the framework for DNA evidence to be successfully used this would not have happened.

We have had unsolved crimes galore in this country. From January 1, 2003 to January 1, 2011, there were 3,403 murders; 2,599 remain unsolved, and you laughing “kee, kee, kee, kee”. Rapes and sexual offences, we had 6,239 in the same period, 2,400 remain unsolved. And, Mr. Speaker, I am suggesting—here from the research that I have done it says that if we had DNA evidence here in this country that the possibility exists that over 2,900 cases, the police would have had a better chance of solving if they had a more efficient DNA system to work with.

So therefore, Mr. Speaker, let us get it right. All I am saying here therefore, is an indictment against successive political regimes. At this point in time it makes no difference “who right or who wrong”. What is of course different is who must bell the cat. Who must do it, “and we doing it”. [*Desk thumping*] We are doing it, because there is no point in crying over spilt milk. If they never had done it when they were in government, and they did not do it when they were there, why should we worry about that? In any case we are doing it. We realize that we need a system that can function properly to solve these cases and bring the criminals to justice and that is why we are here today. And that is why the Member for St. Joseph, the Minister of Justice, is here today and that is why he brought this Bill, Mr. Speaker.

Successive governments, in the past, may not even have gotten it right, but today this Government needs to get it right. [*Desk thumping*] We are doing so now. We as a Government have a duty, as a Parliament in fact, to get proper functional DNA laws enacted now, and that is what we shall do. We are familiar with the history of putting the DNA on our law books, we have a file with the

DNA Bill, 2011
[HON. J. WARNER]

Wednesday, November 09, 2011

history, to come here this afternoon and give us a lot of history about DNA, we know the history. We know, Mr. Speaker—and go to Israel, and Indonesia and Poland and England—we know the history.

Mr. Speaker, in 1999 the then UNC government brought a Bill, a DNA Bill. That Bill became an Act in 2000. In July 2000, it was assented to, but the Bill was never implemented. The PNM Government came in on a ground of “spiritual and moral values”. What about those values “all yuh come in with”, those spiritual and moral values. They came in on the ground of spiritual and moral values and they of course said the Act must not be implemented because it was faulty, it was flawed. They said the Act was not workable.

Seven years later, Mr. Speaker, they brought the Bill. It then went to a joint select committee and the Parliament got a revised Bill in August 2007. And that revised Bill was on the collaboration of the PNM, the UNC and the COP in both Chambers of the Parliament, plus of course the wisdom of the Independent Senators.

Mr. Speaker, the revised Bill with the blessing of all, then became the Act of 2007, which I read just now. And now, we find that an important feature of that Act does not work properly. The police cannot get a DNA sample from an uncooperative suspect. If a suspect is uncooperative the police cannot get the sample from him.

In July 2008, I am reading from the *Newsday*, an article written by Andre Bhagoo, Sunday February 13, 2011, his article is a bit long so I will read just the relevant part, he said:

“In July 2008, Justice Alice Yorke Soo-Hon, (now a Justice of Appeal) found that the 2007 DNA legislation, which she described as unclear, contained key gaps. At issue was the fact that Section 19 of the Act only empowers the court to compel a ‘suspect’ to give samples and no one else. Though the legislation was supposed to result in the setting-up of a comprehensive DNA database, persons who would have been thought most likely to end up in that database, convicts and charged persons, were not covered.”

She said, Mr. Speaker, and I quote:

“Regrettably our own DNA Act is not very clear on who is a suspect.”

She is saying, Mr. Speaker, the Act was not clear on who is a suspect. She said:

“There is no definition on suspect or accused.”

That is Justice Alice Yorke –Soo Hon. She said:

“Another very important distinction is that Section 19 makes no mention of persons charged or convicted of an offence.”

She said therefore:

“Considering the Bill as a whole and the way that it is drafted at present, it is my view that a court may only order that an intimate sample be taken from a suspect and not from an accused already charged with a crime...”

Mr. Speaker, this was the judge saying so in 2008. And yet for all, the Member for Diego Martin North/East comes here and accuses us of doing nothing in 18 months, when between 2008—2010 they did nothing. They did nothing! Here is the judge complaining, she said she cannot try the case; she is blocked because of the flawed Act, and they were in power. What did they do? What did you do?

Hon. Member: Shame! Nothing!

Hon. J. Warner: And you come today as Pontius Pilate, very sanctimonious to come here and tell us we are here for two years and I have not touched the Act—Israel, Indonesia, Poland and Gibraltar, and all kinds of foolishness.

6.30 p.m.

Mr. Speaker, therefore what we have done as a progressive Government, the People’s Partnership, as people who are bent on making this country better, as people who are bent on improving the lives of our people, a Government bent on fighting crime under the leadership of our Prime Minister Kamla Persad-Bissessar, [*Desk thumping*] the only Prime Minister who showed guts—I nearly said something else—[*Laughter*—who showed guts, among other things, in calling a state of emergency, which has saved lives. [*Desk thumping*] Mothers do not weep as much as before.

In the last ten years this month has the lowest murder rate in 20 years and to come here and talk about state of emergency very casually, very dismissively, is fooling people.

Mr. Volney: Trying to.

Hon. J. Warner: Eighteen months after the judge being in power, here is the Prime Minister and her Government bringing a new Bill in the fight against crime. “And what you expect,” Before we sit together as a Government on both sides and put our hands together for the common good—

Dr. Moonilal: Like we did before when we were there.

Hon. J. Warner:—to save this country, because when we were there we did that. [*Desk thumping*] When we were there we joined you all on this Bill.

Dr. Moonilal: I voted.

Hon. J. Warner: When we were there, hear who voted for you: Hamza Rafeeq, Kamla Persad-Bissessar, Harry Partap, Adesh Nanan, Subhas Panday, Nizam Baksh, Dr. Roodal Moonilal, Manohar Ramsaran—“what you think, they are PNM?”

Dr. Moonilal: We supported you.

Hon. J. Warner: They supported the Bill and that is all we are asking for today. Support the Bill in the fight against crime. So, Mr. Speaker.

Miss Cox: [*Inaudible*]

Hon. J. Warner: I never said any Bill. If you could read you could never say any Bill. Therefore, all I am saying, today we have a new DNA Bill and I have to commend the Attorney General—your good friend the Attorney General who you like to talk to and so on. I would like to commend the Attorney General and all the others who moved swiftly to prepare this Bill. I have to commend the Minister of Justice as well. [*Desk thumping*] Mr. Speaker, when they realized that the Act was defective—so I want to say to you, Minister of Justice, thanks to you and thanks to the Attorney General, and thanks to the Prime Minister for not waiting for seven years to draft this Bill and being it before this House—seven years.

The world has known about DNA profiling for the last 140 years. So when the last speaker came here to “gallery” and to show off his knowledge and so on, all you have to do is google and get it. He said the Bill is racial. I do not know how he could say a Bill is racial. God help me, I do not know, but he said so and he knows best.

Dr. Moonilal: He is a “googler” his grandfather used to kick—

Hon. J. Warner: You could google when you have nothing to do. Mr. Speaker, the DNA in its pure state was isolated in 1935. The genetic code was cracked in 1966. The first successful experiments were performed in California USA in 1972. In 1978, scientists discovered the method for DNA testing when they found that there were differences in the DNA of different people—1978. The process was refined in 1984 and developed in a technique for DNA fingerprinting. DNA fingerprinting entered the courtroom in 1985. I did not go to Indonesia for

this or Ireland or Poland; just did it by google. What is the big thing? There have been major developments in DNA studies to map the evolution of human species. They mapped all the genes in the body, they mapped genetic engineering, growing organs from DNA, and they cracked the genetic human code. All these things they have done. There is an evolution taking place. So if in other parts of the world they are growing sheep in test tubes, for example, how is it that a country lagging so far behind as we are, we do not have the basic framework for DNA to be used in criminal investigations? Why is it? The rest of the world has been using DNA in the courtrooms, for 26 years—Professor tell them so, it began in 1985—26 years this has been in use by the rest of the world, we here still not using it and therefore we are saying the time to do so is now.

Since 1992, the US Army has been collecting blood and tissue samples for its database. Almost 20 years ago. They are doing that also to help to identify soldiers who are killed in battle. Why are we afraid of DNA? What is the big thing that you are afraid of the DNA? If not the DNA, then what? Then what?

Mr. Speaker, it is said that Emperor Nero sat in his costume on stage in AD 14, while the Roman Empire burned. While we engage in political and academic talk shops, our country is burning; while we engage in some frivolous dissertation, our country is burning. I am saying it is time for this to stop. It is time to put partisan interest aside for the sake of our country. I heard the Minister of Justice, he said put aside the partisan politics. Let us be bipartisan he is saying and come together for the country for the common good. Before they even heard this side, “they say” we are not going to support them. They did not even hear a word yet, they did not even hear the argument they come here fixed; “We are not going to support them.” Well, do not support and when you go back go, tell your constituents you did not support. Tell them that you did not support.

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

Motion made: That the hon. Member speaking time be extended by 30 minutes. [*Hon. A. Roberts*]

Question put and agreed to.

Hon. J. Warner: Thank you, Mr. Speaker, thank you colleagues. I am sure I would not take more than 10 minutes but I will try to wrap up by then. Thank you very much.

Life is not a TV show, life is not CNN, but we can see DNA forensics being common and being practised even on TV today. The public expects that we as a

DNA Bill, 2011
[HON. J. WARNER]

Wednesday, November 09, 2011

Government, that this is the minimum standard that should be applied to crimes in this country. They expect us to do this; it is the minimum they ask of us, they expect of us and we should not fail them. What do we need? What is the common understanding of the DNA system? What do we need? What we need in a DNA system are mechanism for obtaining samples from suspects in a way that is acceptable in legal prosecution. We need a mechanism for testing the DNA and a system for keeping a database of DNA samples for use in cases. That is all we need. That is all we need. I am saying, let us work carefully to ensure that in our deliberations we achieve these three objectives. Is that asking too much for a country, for our people, for our generation, for the legacy we can leave? Is that asking too much?

Let us all get the system going so that we can hunt down the criminals and lock them up, those who are found guilty. It is worth reiterating that this Government is showing its determination, its fight, its guts, its grit against crime. As a Government we are doing everything we can. We are listening to the crime fighting experts and we are giving them the support and the tools they ask for. When they asked us to implement a state of emergency, we gave it to them. When they asked for curfew, we gave it to them—unlike that side—and we have seen the results.

I want to say again; last month, October 2011, had the lowest homicide rate in 20 years. One more time! [*Desk thumping*] Whether the guns that were seized belonged to Sir Walter Raleigh or Francis Drake last month had the lowest homicide rate in this country in 20 years and if that does not justify what Mrs. Perad-Bissessar and her Government did, then tell me what does—and thanks to our protective services.

There were also a reductions in categories of crimes ranging from 43 per cent in some categories like homicide, to as much as 75 per cent in others like rapes and car thefts—75 per cent reduction. And when I hear guys parroting, “End the state of emergency because it is against labour and the PNM”, I say Father, forgive them because they do know what they are saying; forgive them Father for they do know what they are saying, like mongrel “pot hound” running after a car.

Mr. Speaker, in this same period, we have seized more marijuana; 107 thousand kilogrammes, 107

Hon. Member: Like you smoke already.

Hon. J. Warner: “ent smoke any”? I never use it.

Mr. Roberts: How he could ask you that?

Hon. J. Warner: No, that is okay, 107 thousand kilogrammes seized during the state of emergency period to date. In 2010, in the whole of that year, the police seized 39 thousand kilogrammes. We seized almost 300 per cent—107 thousand and you say you want us to end the state of emergency because we against the PNM and against labour. We seized 166 kilogrammes of cocaine this year, last year they seized 82 kilogrammes—whole of last year and we are saying therefore that if this does not show success, tell us what does.

Mr. Speaker, some 12,000 bullets were seized this year; 12,000 bullets that were out there are now under lock and key—12,000 bullets. And for the whole of last year they seized 5,000 bullets, this can go on and on and on. Any objective thinker, any parliamentarian who loves his country cannot come and say “end the state of emergency” or cannot be critical of the Prime Minister and her Government for the curfew. It is madness.

Mr. Speaker, what I am saying therefore, when you give the protective services the resources, performance goes up and that is a fact. So the curfew has been lifted and the emergency remains because the fight against crime continues. As a responsible Government we have to take the bull by the horns, we have to make tough decisions, we have to do what is right, not necessarily what is popular, and if what is right is popular, so be it. But we as a Government, will always do what is right. Mr. Speaker, we are not going to be soft on crime and we would not be idle.

6.45 p.m.

This Bill requires a special majority, which we have, but that is not an issue. It would be so much better if all of us come together for the common good. I have sought advice from citizens who I believe know better than I do about this Bill, and the feedback that I have gotten is that this Bill is a good Bill; a good draft for law, and that this Bill has all the elements to function.

I therefore look forward to Members going through this Bill at the committee stage so that we can ensure the full wisdom of the Parliament is brought to bear on this subject, and at the end, we can finalize this law, get it passed, and put into operation for the good and the benefit of our citizens of this country. Mr. Speaker, I thank you. [*Desk thumping*]

Mr. Speaker: Before I call on the next speaker, I just want to get the House consent and indulgence to revert to “Announcements by the Speaker.” Do I have your consent?

Assent indicated.

LEAVE OF ABSENCE

Mr. Speaker: I have received communication to the effect that the hon. Dr. Amery Browne MP, Member for Diego Martin Central and the hon. Dr. Rupert Griffith, Member of Parliament for Toco/Sangre Grande and Minister of Tourism, have sought leave of absence from today’s sitting of the House. The leave sought by these Members is hereby granted.

ADMINISTRATION OF JUSTICE (DEOXYRIBONUCLEIC ACID) BILL

Miss Marlene McDonald (*Port of Spain South*): Thank you, Mr. Speaker, for this opportunity to join in this debate this evening. Mr. Speaker, like my colleague from Diego Martin North/East, I will just call the name of this Bill once and then revert to DNA—the shortened version. So I am happy to participate in this Deoxyribonucleic Acid Bill, 2011, and certainly, the objectives are all listed, so I would just be very brief.

The Government is seeking to expand a framework within which intimate and non-intimate samples can be taken for the purpose of forensic DNA analysis; the taking of samples without consent from a suspect, detainee, accused or convicted person. The Bill also is seeking to have samples taken from victims of sexual offences, children or incapable persons, deportees; from non-citizens who have been detained under the Immigration Act.

Administratively, the Bill seeks to establish a National Forensic DNA Databank; it seeks to appoint a Custodian as well as a Deputy Custodian; it establishes a DNA register; it facilitates Trinidad and Tobago to enter arrangements with foreign governments to share DNA data. There is a provision for regulating the destruction and retention of samples; there is a provision relating to confidentiality of DNA data stored in the Forensic DNA Databank.

Mr. Speaker, I sat here and I listened to both the hon. Minister of Justice and Member for St. Joseph who I have a great deal of respect for, as well as Member for Chaguanas West. [*Interruption*] Of course, I do. Well, that is implicit, Sir. Mr. Speaker, I would be the first to state on this side that we will support any worthwhile measure that will assist in the fight against crime. We will do it. [*Desk*

thumping] We can support the strengthening of the Interdiction Support Services at the Forensic Science Centre, and certainly, we have acted quite responsibly over the last year. We have supported the Government in certain pieces of legislation. We have supported the Government on the Inception of Communication Bill; we have supported the Government on the Bail (Amdt.) Bill; the infamous Anti-Gang Bill, we have supported the Government.

But, today, we have before us this DNA Bill, and I got a sense when I listened to the Member for Chaguanas West, it is almost as if we are being bullied to support this piece of legislation.

Hon. Member: No one can bully you!

Miss M. McDonald: No, no, they cannot so that is why I sat and I listened, because as my friend from Diego Martin North/East would say, I am an independent thinker; always would say that. But, the thing about it, as I indicated, where it is in the best interest of this country, we will support.

Mr. Speaker, this is the third version of DNA legislation coming to this Parliament, and I think the Member for Chaguanas West did it quite well. It has a long track of history from 1999, it went to a Joint Select Committee and then the Bill, it was not proclaimed but it was assented to in 2000—just giving you a little history—and then by January 2007, a second version of the Bill came to this Parliament, and certainly by August 2007, that Bill repealed the 2000 Act. And here we are, and I want to state before I say that, that all Members, indeed the Member for Chaguanas West was correct, all Members on both sides voted in favour of the particular Bill.

Because there was certain conditions in there at the Joint Select Committee they insisted that things like a DNA board be set up, they insisted that consent be given. And I recall in reading and doing the research that consent in the 2007 Bill, you need to get consent for taking non-intimate samples and consent for intimate samples; and the Opposition Members insisted on the issue of consent, and I will prove it in a short while. I see the Member for Caroni East shaking his head, but I will prove that to you, Sir; we will go back in time and we will read.

Mr. Speaker, let me state from the outset that this Bill is fundamentally flawed. There are numerous areas for potential abuse of citizens by the State. The Government may very well suggest this afternoon that this Bill should go to a Joint Select Committee. But, Mr. Speaker, we need to get proper advice. I know that Minister, you would have gotten, of course, you said you worked with a team of persons but there are still areas of confusion in that Bill. I will go through it and show you, because what I am doing in my contribution, I will be asking you

DNA Bill, 2011
[MISS McDONALD]

Wednesday, November 09, 2011

questions. At the end of my contribution and when you are summoning up, you can choose to answer. But for now, when we look at it, our advice on this side is to take it back and fix it. [*Desk thumping*] Take it back and fix it.

We have seen in this Parliament that Anti-Gang Bill, and I will tell you why I used the word “bullied” here this afternoon. We worked collaboratively—you know I was on the committee with you, Minister and we worked together—and crafted that Anti-Gang Bill that came to this Parliament only to find out thereafter certain mechanisms were not put in place. We were totally unaware and we were taken by surprise with the state of emergency on August 21, and the Bill was proclaimed on August 15, and that nobody seemed to have understood that evidence garnered before August 15 could not have been used. But you know what is happening in the public domain, Mr. Speaker? The PNM—the Opposition—is being blamed. We are being blamed; even the Member for Oropouche East, Leader of Government Business, said it is the PNM to be blamed for that. I listened to it and I was amazed, and I am sure you would have heard various comments but we all put our joint efforts together to come up with that version of the Anti-Gang Bill; we did that.

Mr. Speaker, I am suggesting, take it back and fix it because we do not want to see the spectacle of that Anti-Gang Bill again in this country. [*Desk thumping*] We do not want to see it. Mr. Speaker, the Data Protection Bill would be another source of embarrassment for this Government. And I recall my colleague from Diego Martin North/East sat here in Parliament—we were on the other side—and he said it was fundamentally flawed; take it back; there are so many amendments, but the Government used its majority and went ahead and passed it.

So therefore, I am a little bit cautious today; you know, once bitten, twice shy. As I said, we honestly and earnestly would like to support something that is in the interest of this country; we would like to do that. Mr. Speaker, we have all been elected to do the people's business, and we have to accept that responsibility, but we have to stop the blame game. So what is happening? You throw it off: it is the Opposition, “is the Opposition.”

I will show you another thing, Mr. Speaker. At this just concluded budget debate, I listened to the Member for Tunapuna and Minister of Finance; he attended a conference at the Chamber of Commerce and after—I looked at it on television—they probably asked certain questions and he said—I was amazed because he is another person I have respect for—they blaming me for the economic decline in the fiscal 2011. He said I have put a framework in place. I am not quoting you exactly but this is what I gathered you said.

Mrs. Gopee-Scoon: Yes, he said that.

Miss M. McDonald: Blame the private sector and the Opposition. Now, as I say, you want to blame the private sector because they did not have the confidence to buy into expansion in the economy and whatnot over 2011; well, fine, blame them. But we, the Opposition, we supported that budget last year, and not only that, we are not holding, as I would say, the bourgeoise which is the purse, and we supported you, Minister and then you turned around and said to us that we are to be blamed for the decline in the economy by 1.4—*[Interruption]* I got it wrong? Well, maybe, this is the whole thing; every time something happens, we get it wrong but we went to school too. We do not understand but we went to school, and I think I have a fair amount of understanding, Sir.

Mr. Speaker, when a Bill is laid in this honourable House, that Bill must represent the best efforts of a Government; it must represent the best efforts. You have brought it to us and we are coming here and we are going to debate it. Now, if there are so many flaws that we believe that making amendments will not work, it has nothing to do with ego; it has everything to do with what the Member for Chaguanas West had to say. Let us get it right, let us come together, let us withdraw it; take it back and fix it; nothing is wrong with that.

It is better something like that had happened with the Data Protection Bill. It is better something like that had happened, rather than to go the long course and then we come back around. “We cyah get the Bill, or the Bill struck down.” No, Mr. Speaker.

7.00 p.m.

We have to get the people’s business right and we will work together. As I have said, the Leader of the Opposition said to us on several occasions, we will support legislation in the best interest of the citizens of this country. I do not want the national community—because we are speaking to the national community and they must understand our position. They cannot just understand that the other side is trying to abuse us, because that is not so. We support when it is necessary to do so.

Not only that, this Bill needs a three-fifths majority. The Government has that three-fifths majority, but I am putting you on notice, that on this occasion you will be on your own. We are seeing areas here where we believe that you could—one week—take it back, look at it and come back. We will support any legislation in interest of the people of Trinidad and Tobago.

DNA Bill, 2011
[MISS McDONALD]

Wednesday, November 09, 2011

Mr. Speaker, aside from that, in the past—let me look at the analysis of the Bill, the preamble—the eyewitness testimony has been the basis for the justice system in fighting crime. That was supplemented with scientific methods such as blood analysis, hair follicle analysis and fingerprinting to determine the identity of a criminal. For years, a fingerprint left at the scene of the crime was the most reliable means of confirming a person’s presence at a crime scene, but this method was fraught with problems, because you could not always get a clear set of fingerprints from a crime scene, and even if you did, a person could alter his or her fingerprint by plastic surgery or other surgical methods. For this reason, the rise in crime, not only in Trinidad and Tobago, we see it warranted a mechanism to deal with greater detection of crime. It is within this context we see the emergence of DNA as a crime- fighting tool. But, the Member for Chaguanas West was right, it has been around since 1869, but we have seen it now from the 1980s. It is now being used for the purposes of forensic identification.

Exactly what is DNA? The Member for St. Joseph was correct; it is a complex chemical that carries our genetic information. I am speaking so because I want the national community and my constituents to understand why we feel the way we feel when you talk about genetic information and a simple thing and how people—if I cough here, those little platelets, I think that is what they are called, will contain my DNA inside of it, my genetic make-up. [*Interruption*]

Dr. Gopeesingh: Droplets.

Miss M. McDonald: Droplets? Thank you. See, it is good to have a doctor in the House. That will contain my DNA; my whole genetic make-up. The gene embodies the unit of inheritance in each human being, and the DNA is contained in the chromosomes which are found in the nucleus of most cells, and it shows that no two persons will have same the DNA, except identical twins. The doctor could correct me, because I recently did the research in DNA. DNA is the blueprint that contains the information of a person’s genetic make-up. It cannot be altered by any known techniques as a fingerprint can. It is a natural for crime solving. It holds an individual’s unique genetic code and it is carried in most body cells.

Because of the emergence and the development of DNA research, it might be no longer necessary to have an eyewitness at a crime scene because you can—and I agree with him—establish somebody’s presence or absence through the testing and through the evidence. Not only can the DNA fingerprint be used for confirm a person’s guilt; it could also be used to confirm or to prove the innocence of a person. But there are concerns about how to use this DNA and the whole use of

this DNA identification. That is really a raging debate across the globe; not about how to do it in principle, but rather how to do it in practice and how well managed and regulated the practice is, that is where the concern is.

There is high potential for abuse of citizens of Trinidad and Tobago as this Government seeks to achieve their stated objectives and by extension the underlying goal of creating a national DNA databank. If we are not careful—I would read from *Hansard* in a short while—and if we are not vigilant, the whole country would have to submit to DNA testing without our consent, totally ignoring human rights issues and privacy issues.

I would tell you why I am scared and I am cautious, that is the word I use. Over the past 18 months, we as citizens in this country have witnessed the horror of the removal and the suspension of our basic rights in violation of the Constitution of Trinidad and Tobago and three issues come to mind. *[Interruption]* You could talk when you are winding up. The amendment to the Central Bank Act, I brought it out when we were debating it. Do you know what that Bill has done? It has removed the rights of every shareholder, every policyholder and every depositor, all those groups of people who deposited in a commercial bank, in a credit union, in an insurance company, they have removed our rights to sue these institutions, despite the fact that there might be abuse by the various boards. What was this Government trying to do? They were trying to cure a situation at Clico and British American and because of that what did they do? They have removed all our rights. They went beyond Clico and British American and removed our rights. It is the first time in the history of Trinidad and Tobago that these various boards, the banks, the insurance companies and the credit unions, they have unbridled power to do what they want. They could abuse and misuse your funds, and we as ordinary citizens banking in these institutions do not have any rights. So, long after the Clico issue would have gone, long after British American, we are stuck with that legislation. That is my reason. I am saying, to me, in my simple mind, this is an area of abuse and I am scared and I am very cautious.

We have also witnessed the suspension of our rights, with respect to the freedom of movement, freedom of association and our freedom of assembly with this so-called state of emergency. I never agreed with it in the first place, but to date, we do not know what was this crisis being averted. From time to time we would have said to this Government remove the state of emergency, especially when it was said that the problem or whatever crisis is no longer there, we have dealt with it. Strange enough, as soon as the business community—I was listening

DNA Bill, 2011
[MISS McDONALD]

Wednesday, November 09, 2011

one day to i95.5 and I heard Ms. Catherine Kumar say: “We the business community”—she was talking on behalf of the Chamber of Commerce—“will not support the state of emergency after December 07.” She also went on to say: “Remove, lift the curfew.” She went on to talk about all the small businesses who are members of the Chamber of Commerce, how they were suffering and whatnot. I listened to her and as soon as the hon. Prime Minister came back to this country, they lifted the curfew, and I am sure, sooner than later, that SoE would also be lifted.

I would tell you something further; do you how it comes across to the small man there, the business community, because Christmas is coming? Businesses are losing. All those restaurants are losing money when the night comes. All those stores, they need to sell their curtains, their this and their that and their whatever. As soon as the business community, it hurt their pockets you jump to their rescue. This is how it is coming over to the ordinary man, but no problem, you could sit there, stick your head in the sand and you will see. *[Interruption]* You do not?

Mr. Speaker—I would tell you what, Member for St. Joseph, when you spoke I remained quiet and I listened, so if you could return the respect I would be grateful.

Mr. Speaker, when a Prime Minister could use her veto power and oust a successful candidate who competed in an interview process by an established—and supervised by an independent Public Service Commission, and that person garnered over 600 points from that interview process and the second place person got 449 points and the Prime Minister used—*[Interruption]*

Mr. Volney: Mr. Speaker Standing Order 36(1), relevance to the debate.

Mr. Speaker: What I would suggest is if the hon. Member could link that particular issue that you are raising to the matter before us, it would be useful; otherwise I would have to sustain that point. I would give you a chance to link those points.

Miss M. McDonald: Mr. Speaker, thank you very much, but I want to state if it is one person you never have to use Standing Order 36(1) against it is the Member for Port of Spain South. I know the issues and I could link because my next sentence is: can I trust this Government? Can the citizens of this country trust this Government? Furthermore, can I trust you to take my DNA without my consent? That is where I was going. I was saying that there is abuse. I do not trust you. That is where I was going. *[Interruption]*

Mr. Speaker: Hon. Member, I know where you are coming from, but do not personalize debates here. The Minister is moving a measure. I do not want you to accuse him of anything. We do not get personal. Deal with the issues, please.

Miss M. McDonald: Thank you, Mr. Speaker. The Member for St. Joseph knows that I have a good relationship with the hon. Minister and he knows when I am speaking there is a passion that comes out, so do not worry.

It is within this context that I am crafting—you see, he did not wait—my debate. It is around the context of abuse and that is what I am talking about. I used some examples merely to demonstrate what I see as abuse in this country. You may or may not agree with me, but this is how I see it.

7.15 p.m.

Mr. Speaker, the first point I want make when I am looking at the clauses here in the Bill, Mr. Minister, clause 6 deals with cooperation with accredited laboratories. Now, in the 2007 Act, there is a section here which deals with—they have listed, this is in Second Schedule, it has the international accrediting bodies, and they have listed four, and there is a Part B which lists 15 foreign accredited laboratories. Now, in this 2011 Bill, there is no—all you have done was transported the international accrediting bodies, but did not state the foreign accredited laboratories.

Now, in clause 26 of this Bill, to the Minister, through the Speaker, you are putting here arrangements with foreign governments to share DNA data. I am saying all that to say that I believe if you are sharing data and, for example, if you need to get some data from let us say the United States, one would expect that it must come from an accredited laboratory. Whoever is the Minister in charge of the forensic services here in this country must be careful in accepting and sharing data from any laboratory which he is not aware of. We must be certain that these laboratories—when we are sharing this information—must be accredited and well recognized, and in line with the four; either or all of them must be accredited by these four bodies here. It would have been cleaner, Mr. Minister, if you had listed the foreign accredited laboratories as was done in the 2007 Act. It would just make it much cleaner. *[Interruption]*

Dr. Gopeesingh: There are too many.

Miss M. McDonald: Well, it does not matter. Well, you are saying it is too many? There are 15 of them. *[Interruption]* Sure.

Dr. Gopeesingh: Thank you very much for giving way, Member for Port of Spain South. You see these international accrediting bodies, these four listed here are the ones which accredit laboratories, so these are the main accrediting bodies. So once we have an association with these accrediting bodies, it means that those laboratories which are accredited under them are accredited as well. So it is an indirect way of accreditation of all the laboratories, because these are the four major ones which accredit those laboratories here.

Miss M. McDonald: Thank you Member for Caroni East. Mr. Speaker, I take his point, but I think that when we legislate, we legislate for the future too, and it would be much cleaner, even if you figure there are too many of them—15—we can select some of them, and place them here, but to leave it wide open I think this is open, in my opinion, to abuse, and especially where you will be leaving the Minister, whoever is that Minister in charge, by notification to approve the use of a laboratory. I would prefer to see that the laboratories which we intend to use be listed in the legislation, as part of the schedule.

I want to ask the Minister another question. Is the Trinidad and Tobago Forensic Science Centre a fully accredited forensic DNA laboratory as we speak? Is this laboratory fully operational? Because all that we might be doing here is very academic. Those are the two questions; I will repeat them. Is the Trinidad and Tobago Forensic Science Centre a fully accredited forensic DNA laboratory? And two, is this laboratory fully operational as we speak?

Mr. Speaker, I go to clause 7(2) which states:

“DNA profiles stored in the Forensic DNA Databank may be kept indefinitely.”

This clause which provides that these profiles be kept indefinitely, is open to abuse and can be in breach or contravention of a person’s rights laid down in section 4. I will agree with the Minister that society has an interest in reducing crime; most people would like to see persons detained, possibly convicted and, if not, rehabilitated. However, we need to balance the rights of an individual and the interest of society, and this is what I am not getting—that humane touch in this Bill as I read. This, again, is one of the debates across—whenever you read, when you look at the literature, the balance of the rights of the individual and the interest of the society on the other hand.

Mr. Speaker, the biggest threat to people’s right to privacy is posed by the indefinite retention of DNA samples, because these could provide unlimited amounts of genetic information about known individuals. I will tell something, let us assume a non-intimate sample was taken, a police officer takes a non-intimate

sample from someone, and takes it to—out of the sample after doing your forensic analysis, you develop the profile, and you have the samples there, if that gets into the wrong hands—and let us say I am not convicted, I was arrested, I was detained, I was subsequently released, if that gets in the wrong hand and you did not destroy those samples, we have a problem there.

I have thought about it, I have looked, I have read this Bill over and over, because in my contribution, you just do not want to seem as if you are pulling down, but you have to look at it realistically and ask the question, what can you do to avoid something like this happening? And if someone is found to be innocent there is no cogent reason why that person's sample should be retained and their right to their privacy denied. Why do you want to retain it? What is the underlying philosophy for keeping all these samples? What is it, where someone has not even being charged?

I could understand those persons who were charged, persons who were convicted and I could understand retaining those, but there is another set of persons—I know the Government's aim is to broaden that database, but why have all these persons—what you call a surveillance list, and that the next point which threatens our civil liberties, the potential to use this as an instrument of surveillance. Therefore, you create what you call a list of suspects, even though persons were not charged and subsequently convicted of a crime. Why do you want to keep these samples? In my mind it has the potential for undermining the principle of innocent until proven guilty. That is one of the basic tenets of our criminal law system. Member for St. Augustine you would know that, that is one of the basic principles upon which our criminal justice system is based. A person is innocent until proven guilty.

Mr. Speaker, it raises the concern that records could be used in the future to restrict—you do not know what is happening there, that you keep all that samples and people's records could be used against them in the future, for example, making it difficult for some persons to obtain employment, and that to me is frightening. So I see it as an infringement of the individual's right to privacy, and loss of civil liberties.

Mr. Speaker, let us see what happens internationally, and I will not be going to Poland, Russia and whatnot, I would not be going there, I am just going to see what is happening in the United Kingdom and Scotland, and see whether the Minister could look at what is happening in Scotland, and see whether it is something which he would like to look at as a model. I do not know what model,

DNA Bill, 2011
[MISS McDONALD]

Wednesday, November 09, 2011

what framework you used, which model legislation you utilized, I am not sure. I will try to look at it, but in your winding up, I was—[*Interruption*] oh, so you have done it on your own, okay, fine, honest enough.

Mr. Speaker, there is a school of thought it is the GeneWatch UK, January 2011 edition, its DNA database and human rights, Woods said that:

“...computerised DNA profiles and personal data “—when—” stored indefinitely on a database...could be used in ways that threaten people’s individual privacy and rights and that of their families.”

You know what is frightening, Mr. Speaker, that through your DNA profile, after you have taken that sample, and all the forensics done on it, and you develop a profile from that sample do you know someone can track you as an individual and also track your family, your relatives and whatnot, just utilizing that profile?

Mr. Speaker, I shudder to think, because I am telling you there are persons sitting right here in this Parliament who believe that we as parliamentarians should subject ourselves to DNA testing all—and I do not know, maybe they would have to arrest me, because I know that when you need to do a non-intimate sample, you need to do so without consent and if you refuse you could—the police could arrest you without a warrant, but there are persons sitting right here and I will just quote it. This is coming from the hon. Member for Tunapuna on Friday, February 09, 2007; he said—this is when we introduced the police officers to do the non-intimate samples, this what the Member for Tunapuna said:

“If we are serious, we must start with those who...”—because he objected to the use of police officers taking non-intimate samples with consent. “If we are serious, we must start with those who have primary responsibility in this matter and to merely relegate it for new recruits is not good enough”—that is the police. “And I even say, in the interest of the...100...hundred years of Parliament in this country, all Members of this Parliament should subject themselves to a DNA test as well. [*Desk thumping*]”

So people agreed with the Member. I am saying that when I think about it and read some of these things here, it is the same players from 2000—2007, the same thread which is running through, to subject all of us to this DNA testing. Mr. Speaker, I tell you, I am scared when I consider—because I do know much about—I want to tell you I do not know much about DNA. Last week when I got my Bill, I went and I availed myself of the literature, whole night, whole day I am reading, and when I understand now that by just taking a simple sample, you are

DNA Bill, 2011

Wednesday, November 09, 2011

taking my hair, taking some blood and then you develop a profile from that sample, if it falls in the wrong hands I have serious problems. That is why I am saying this thing cannot be done—[*Interruption*]

Mr. Speaker, the Member for Lopinot/Bon Air West, please! And I warned him today.

The major human rights concern relates to the widening of the group of individuals and these are not from the crime scene. We have no problem—this Bench, we have no problem in garnering, Mr. Minister, evidence from those criminals you know none whatsoever, keep it for a lifetime if you can.

The problem is those persons who were subsequently released, those innocent persons, that is the concern I have, at least, this Bench. That is the problem we have.

7.30 p.m.

Mr. Speaker, Liz Campbell, in her article called “A Rights-based Analysis of DNA Retention, found in *Criminal Law Review*, 2010”—explores the implications for human rights of retaining a person’s DNA when there has been no conviction in the courts. She said the right to privacy, the presumption of innocence and the interest in not being stigmatised by society, all in turn, would determine if they pose a challenge to the retention of an innocent person’s genetic material. [*Interruption*]

You do not even understand what I am saying. [*Laughter*] You do not even understand. [*Crosstalk*]

Mr. Speaker: The Member for Fyzabad, please!

Miss M. McDonald: Mr. Speaker, we could look at Scotland. I am speaking to you, Mr. Speaker, and through you I would be talking to Mr. Minister. In Scotland:

The Information Commissioner for Scotland believes that the indefinite retention of DNA profiles of individuals arrested but not convicted of any offence, and where there are no longer any policing concerns about them, is an ongoing intrusion into the private lives...—of these individuals. So, under the present Scottish law, an individual’s profile is removed from the Scottish database as well as the national DNA database following acquittal. That is advancement, Mr. Speaker.

DNA Bill, 2011
[MISS McDONALD]

Wednesday, November 09, 2011

Mr. Speaker, I would tell you about the United Kingdom. In the United Kingdom, about 8 per cent of the UK's population, five million people, is on the national DNA database. In England, their law allows for the permanent retention of DNA samples and records from anyone arrested for virtually any offence. But do you know what? Just recently, Mr. Minister, in February 2011, the UK Government announced that hundreds of thousands of DNA profile on the national database will be deleted.

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

Motion made: That the hon. Member's speaking time be extended by 30 minutes. [*Hon. C. Sharma*]

Question put and agreed to.

Miss M. McDonald: Thank you, Mr. Speaker, and thank you Member for Fyzabad and, of course, to colleagues on both sides of the House. [*Crosstalk*] Mr. Speaker, in the United Kingdom, in the proposed Coalition's Protection of Freedom Bill, this is what they are proposing, Mr. Minister: "Any adult convicted of a crime will have their DNA profile stored indefinitely in the national database"—and we could agree to that. They went on to say if an adult is arrested for a serious offence but not convicted, the profile can be kept for three years with possible extension of two years, but with a court order. It goes on to say that persons arrested for less serious offences will see their profile deleted if they are not subsequently charged. So there is a nice system. The UK is now setting up this under this proposed legislation, so it will bring the United Kingdom's law in line with what obtains in Scotland.

Mr. Speaker, I will tell you something further. Accordingly to recent figures, there are almost 1.1 million profiles on the database of people with any link to any convictions in the United Kingdom that will have their profiles deleted from the national database.

Moving on, I looked at clause 8—and you need to guide me here, Mr. Minister—it deals with the appointment of Custodian and the Deputy Custodian. In subclause (2) it says:

"The Minister shall appoint the Custodian from among suitably qualified persons..."

I had some confusion there in my mind, because in your interpretation clause, it says "qualified persons" means a medical practitioner or anyone registered under

DNA Bill, 2011

Wednesday, November 09, 2011

the Midwives Act. I want to believe what you want to say here is, you need to spell out the qualifications of the Custodian and the Deputy Custodian, because there are no qualifications for these two listed posts. So, I think that you have created confusion in my mind and you need to clear that up, Sir.

We look at clause 13, obtaining non-intimate and intimate samples, and I see this as yet another potential area of abuse. The Government is expanding the framework within which non-intimate samples can be taken for the purpose of forensic DNA analysis and without the consent of the person.

Now, in the 2007 Act at section 5 it says that a non-intimate sample may be taken from a person without his consent, and they listed four areas. The one that concerns me is he has been charged with an offence. So in 2007 you needed to be charged with an offence, so that they could carry out that non-intimate sample—that is not a problem—but in 2011, they are saying that a police officer shall take a non-intimate sample without consent where—but you have expanded the section. You moved from suspect to detainee or accused, and it is not only there, but it is done in clause 13(2); where the person is admitted to hospital; and where the person is an incapable person. I looked at your interpretation clause, and I am seeing where you have defined a detainee or an accused, but you have not defined suspect. I am going to tell you why I want to see suspect interpreted for me.

Bearing in mind this legislation is inconsistent with sections 4 and 5, and the provisions will still be valid despite the fact that they contravene section 13 of the Constitution, if this suspect is not defined and that thread is running through in clause 13, any police officer—so you have opened up the police officers to abuse, and you are well aware that we have errant police officers. So, if it is not defined, any police officer may take non-intimate samples of persons without their consent, and then try to justify the person as a suspect. Consider the issue of framing, Mr. Minister. So that needs clearance. I am asking questions. I am going along and I am pointing out why I am saying it is fundamentally flawed and I am demonstrating that.

Mr. Speaker, the issue of consent has long been a concern in the DNA legislation dating way back to 1999. Speaking in the Senate on Wednesday, December 08, the then Minister of National Security, Brig. Joseph Theodore said:

“...I recall at the last debate, there were many concerns expressed about the issue of privacy, the rights of the individual and the general matter that prevailed...”

DNA Bill, 2011
[MISS McDONALD]

Wednesday, November 09, 2011

He went on:

“We found it important, therefore, to establish that any...legislation must strive to establish a balance between the rights of the individual and the right of the State to use DNA...as a tool...”—as a crime fighting tool.

But he also said that:

“Careful provisions are made in Bill”—that is the 2000 Bill—“for receiving the consent of persons from whom the samples may be obtained.”

And, obviously, everybody agreed to it.

We come now to the 2007 Bill, when Minister Hinds introduced a new clause, because in 2000 an authorized person could have taken the non-intimate samples. In 2007 the police officer was introduced—a trained police officer was introduced, that concept—to take the non-intimate samples but with consent. Also too, you would see in the 2007 Act that the intimate samples, you also could obtain them but with consent.

I just want to draw your attention to what was said in January 2007, when we introduced this whole concept with the police officer. This was the then Opposition Leader and Member for Siparia. This is what she had to say. She said:

“Thank you, Mr. Speaker. The hon. Member”—and she means the Minister of State, that was Mr. Fitzgerald Hinds—“tells us that one of the changes made from the UNC 2000 Act and now is in this Bill that is different,”—It is different in this Bill—“is that they have changed the person who is to take the samples. There was an authorized person and now they are changing it. You know who they” are going to “put now? A police officer. A police officer can take the non-intimate samples. I am saying the people of this country do not trust the police officers. They do not trust them. You need to keep...checks and...balances...”

This is the Member for Siparia talking. “Look it here in *Hansard*.” This is Friday, January 26, 2007. [*Crosstalk*] You see, what I tell you, he does not understand. Ignore him; he does not understand.

Mr. Speaker, as if that was not sufficient, on February 09, 2007, in his contribution to the debate on the DNA Bill 2007, the then Member for St. Augustine, Mr. Dookeran, clearly demonstrated his lack of confidence in the police in this country to carry out non-intimate DNA testing. This is what he said at page 180. [*Crosstalk*] Mr. Speaker, could the Member allow me to speak, please?

Mr. Speaker: Yes. Member for Fyzabad. Please continue.

Miss M. McDonald: He said:

“...Mr. Speaker, in this Bill there is now provision for police officers to extract samples that formerly would have been subscribed to medical practitioners. This raises real questions about citizens’ confidence in this provision, especially in light of what is going on in the country today and what we have been hearing with respect to the police service.”

So he had no confidence that the police officers could have done what they were supposed to do, that is, taking the non-intimate samples.

Further, I want to state that in 2007 in section 14(4), on the insistence of the Opposition Members at the Joint Select Committee, they insisted that a clause be put there requiring consent of a person to submit to intimate samples being done. Mr. Speaker, that is found at section 14(4) of the 2007 Act. Further, Mr. Speaker, when you look at the 2011 Bill, clause 20 of this Bill speaks to the intimate samples, but absolutely nothing on consent. It is silent. The taking of intimate samples is silent.

Mr. Speaker, here is the same UNC from 2007 stating that the police had too much power; they were incompetent and we were empowering the police to take non-intimate samples from persons without consent and without a notification. Hear what they are doing now. They are now giving the same police wider powers, because we said you need to get consent before taking the samples. Now, in 2011 you are giving the same police officers wide-ranging powers to take non-intimate samples without consent.

7.45 p.m.

So something is wrong, that is why I am saying I do not trust you—that is why I say that. Ask me why I am saying it: I do not trust what is happening here because you say one thing today and something else tomorrow. Mr. Speaker, I want to look at and the Minister needs to just explain this to me—and at the end:

“...a police officer shall take a non-intimate sample from a person...”

This is section 13(1)(d)

“from a person without his consent where—

(d) the person is not a victim of an offence, attends a crime scene...”

When I read that, I said: “Hey wait a minute! Suppose I am just passing by a crime scene—ordinary person—and I am not even aware, so the police could just

DNA Bill, 2011
[MISS McDONALD]

Wednesday, November 09, 2011

nab me and say: ‘Come and do a non-intimate sample’.” Indeed that is total abuse and indeed this Bill, as I said, is very intrusive; it violates you. So I need to know exactly what is in this section.

Mr. Speaker, there is a new clause created which is section 16(1), and here you are targeting persons whom in the eyes of the Minister with responsibility for national security, you are saying these persons, based on national security grounds, you need to do non-intimate samples. Hon. Minister, when I looked at section 16—I can show you my writings after—I said: repeat of anti-gang, George Street, Nelson Street, whatnot. Here you are, who is this person of interest and is it based on national security grounds? Who is this person? Give us the criteria on: who this person is? How do I know I, too—Marlene McDonald—am not a person of interest? How do I know this? This is giving again unbridled power to the Minister, and of course, he would be acting through the Commissioner of Police to arrest. And I will tell you what—you may arrest without warrant any person who you believe is of interest. And I am sure that the rest of the Bench here—the Government Bench—I am sure they do not know what is happening here and the implications of this. I am sure three-quarters of them probably did not even read this Bill, and so they are happy that I am going through it like this.

Mr. Speaker, I looked at clause 25, and clause 25 deals with retention of samples. I want to look specifically at 25(3) and 25(4) where you are saying:

“...the Trinidad and Tobago Forensic Science Centre shall, within three months after the end of each calendar year, provide the Commissioner of Police with a list of any samples which it proposes to destroy.”

And the fourth part, subsection (4) says:

“Where the Commissioner of Police does not object to the destruction of a sample on a list referred to it in subsection (3) within three months of” reviewing then they may destroy it.

I want to state that—and I am sure you will agree with me, hon. Minister—the main purpose of this legislation that you have brought here this evening is to assist with the prosecution of criminal offences; that is what you are doing. It is to assist with the prosecution of criminal offences and, as such, the Director of Public Prosecutions has a role to play in this. The Director of Public Prosecutions should be one of those persons—if not the person—to be included under subsection (3) and subsection (4), because he is the one charged with the responsibility of prosecuting, and—besides the police he would also direct you as

to the charges, so he has a main role to play in the criminal justice system in this country. You cannot leave him out like that because this is evidence that you are destroying—samples—you do not know when you would want to reopen the case and in this country—

Mr. Speaker: Hon. Member, a Procedural Motion at this time.

PROCEDURAL MOTION

The Minister of Housing and the Environment (Hon. Dr. Roodal. Moonilal): Mr. Speaker, in accordance with Standing Order 10(11), I beg to move that the House continue to sit until the completion of the debate on the Bill under consideration, along with the Motion listed at No. 1 under “Government Business” on the Order Paper and the matter on the Motion for the Adjournment of the House. I thank you.

Question put and agreed to.

ADMINISTRATION OF JUSTICE

Miss M. McDonald: Thank you, Mr. Speaker. Mr. Speaker, could you tell me how my time is going, please?

Mr. Speaker: Yes. You have until 8.03 p.m.

Miss M. McDonald: Thank you, Mr. Speaker. Mr. Speaker, we are looking at clause 28, the one on “Immunity”, and again this is where I see that we are limiting the rights of citizens to sue. This is what we are doing here. We are limiting the rights because police officers—it is saying that:

“No proceeding, civil or criminal, shall be brought against a person in respect of taking of a non-intimate or intimate...”

And remember you need to read that in conjunction with clause 23, and clause 23 says:

“A person authorized under this Act to take a sample, or a person assisting such a person, may use reasonable force to take and protect the sample.”

So you need to read this in conjunction—and we are saying that we cannot—this Bill is saying if something goes awry, you cannot bring any suit against the particular police officer or the qualified person. Mr. Speaker, we already have issues with errant police officers using excessive force, and we see it coming out under the SoE. This clause will be dangerous to the administration of justice and the protection of citizens’ rights as citizens will be limited in terms of instituting

DNA Bill, 2011
[MISS McDONALD]

Wednesday, November 09, 2011

proceedings. And all they are saying in section 2 is those are the only sorts of proceedings we could bring. So you are limiting the rights of citizens. I think we need to look at that.

Additionally, what I have noticed, some general concerns, there is no procedure set out for the access of DNA information via the data bank. We are not seeing any there. There should be a specific—just by way of recommendation, there should be a specific section detailing how requests for information should be made taking into account the Freedom of Information Act and the Data Protection Act. The section should list the request procedure, the time frame for the response and instances under which information can be refused and the procedure for appeal of such decisions.

The second thing that I have noted, which is in line with what my colleague from Diego Martin North/East said, police officers should be trained in the collection and preservation of DNA samples. This is because improper collection can result in valuable evidence being missed or rendered unsuitable for testing. And special training should be required for persons authorized to take samples to avoid—these are the things you want to avoid: cross contamination when obtaining DNA samples, erroneous lab reports, self-contamination, error during testing, error in the DNA test interpretation and error in testing procedure.

Mr. Speaker, there is a third point that I would like to see or they can consider, whether I like it or not is immaterial, it is whether the Minister and his team and the Government will consider. I saw this in the Canadian DNA Identification Regulations; regulations should be made as to use a sample kit, and they are saying in the Canadian DNA Identification Regulations, section 2—so you can look at that. The Canadian DNA Identification Regulations, section 2, states that a databank sample kit is required to be used in order for the DNA information to be included. So therefore, the sample kit will tell you exactly how to go about the procedure with respect to how you collect and how you carry out the tests and whatnot.

Mr. Speaker, just before I close I have a small concern and that concern is that in all countries with DNA legislation they have some form of data protection legislation, and I do not know what is the state of our data protection legislation—

Mr. Imbert: Unconstitutional.

Miss M. McDonald: It is unconstitutional? I do not know, the hon. Minister will tell me, and I am wondering—I do not know if the Minister at the end when he is wrapping up will say something on this. Mr. Speaker, as I said at the top of

my contribution these are some of the areas that I have found to be flawed, some of the areas that I have found to have, you know, areas of potential abuse and it is the same thing as I saw in the anti-gang, the same thing we saw in the data protection, and so we have to be ever so vigilant. No one can ever sit and legislate a hundred—you know, a foolproof hundred percent, but we could try to get it as close and as right as possible. And we do that, hon. Minister—through you, Mr. Speaker—we are prepared to support but we cannot support in the format it is in today. We are saying take it back, fix it and return and you will have our support. Mr. Speaker, with those few words, I thank you.

Mr. Speaker: Hon. Members, before I call on the Member of St. Augustine and Minister of Legal Affairs, may I inform you that I have been advised that dinner has arrived and we shall not be suspending the sitting to facilitate dinner, so I advise Members when you wish to stream out to have your dinner you may do so.

The Minister of Legal Affairs (Hon. Prakash Ramadhar): Mr. Speaker, once again let me thank you for this opportunity to address this House. My father Siew Ramadhar, is something of a philosopher, and I grew up learning many things from him, one of which as a young child I heard him say: “It is better for 10 guilty to go free than one innocent to be convicted”. I have struggled all of my life till today to truly appreciate the gravity of that statement. It is really an awful thing for an innocent person to be convicted of a crime for which he is absolutely innocent. It is also a terrible thing for 10 guilty persons to go free.

Before I go into the substance of my contribution, I think it would be somewhat remiss and irresponsible not to deal with some of the comments made by my most learned friend from Port of Spain South, when she commented that: “Couldn’t we all work together? Couldn’t we do this for the nation? Couldn’t we really cooperate?” And I am reminded just last week I had a conversation with my dear friend and colleague from Lopinot/Bon Air West: “Could we not ask for a suspension of politics when we deal with the people’s business?” And for a moment I was almost lulled into a belief that my friend from Port of Spain South was speaking COP language and she truly believed what she was saying.

Then she went further to say, that the Central Bank amendment takes away the rights of all of our citizens to access the courts. Maybe I am wrong but, as I recall, that amendment was already an existing law that had been taken out of common law—when I say common law, non-constitutional majority law—but it only

DNA Bill, 2011
[HON. P. RAMADHAR]

Wednesday, November 09, 2011

applies when there is a financial institution that is in difficulty and has been taken over by the Central Bank for the very reason that it is to protect the asset base for the larger good.

8.00 p.m.

My friend went on to speak about the state of emergency and suggested that the removal of the curfew hours had to do with the business community. Let me say this for the record, that I personally and the COP, a Member of this partnership, were never happy with a state of emergency or a curfew, but it became a necessity based on the recommendations of national security and on their advice. There have been continuous meetings, and I had been privileged and I do not want to disclose because I am a member of the National Security Council, based on the advice and nothing else from those who are responsible for national security.

The state of emergency continues and the curfew had been allowed or been required by them to continue until it was recommended to do otherwise; for no other reason. But what damage is done when it is suggested that this Government is interested only in what business has to say and the small man is being neglected.

These are words covered in that very uplifting language of working together for the people. How damaging it is! It rips at the social fabric of this nation when we do these things, with great talent certainly because of course the political intent is to remove us from Government as soon as it is possible, we understand that. But let us also remember that there is sometimes a gift that you get, a reward that you have earned that you will not be able to bare, when things are planted to create hate in a society, to create division in a society, to create instability in a society. And we have to be very, very careful when we speak.

My friend went on to speak about the exercise of the prime ministerial powers of veto. That is a constitutional right. Of course it may be subject to review by the courts but do not suggest that what the Prime Minister would have done was unlawful or inappropriate or even irregular. That is a constitutional entitlement of a prime minister exercised by this Prime Minister. Who wishes to challenge it feel free to do that because this is a democracy that we will always defend the right to do it that way.

Mr. Speaker, let me now turn to the Bill before us, the DNA Act. Criminal law, criminal justice could never be perfect. We try to do the best we can with very human failings, with a very sometimes inadequate system, but we appreciate that

DNA Bill, 2011

Wednesday, November 09, 2011

perfection is only for God, and the only perfect knowledge that we have in life is that of death. But what do we do? Because we cannot be perfect do we then say we do nothing? Of course not!

When persons were first prosecuted for crimes before, all it took was an allegation, you did not even have a right to be heard, you did not even have a right to cross-examine those who made allegations against you, but as time proceeded we realized that there must be some level of fairness. No one could just make an allegation against you and you are convicted, and pay a penalty without you having the right to heard on these matters or to ask questions of those who made the allegations. And the law developed, and it developed, and it developed to the point where and my friend from Port of Spain South—I must congratulate your knowledge, your ability to research and to understand very quickly some simple matters and sometimes complicated ones.

The issue of evidence before was based on hearsay—when I say hearsay, somebody says, somebody said they saw. Then it moved to a point of a combination of those things to a confession; “I did it”, but I am in court now and I say, “I did not do it”.

Then it moved on to scientific evidence as my friend pointed out, blood tests and so, and then you combined in some cases all that evidence, sometimes with circumstantial evidence, and a jury is left—I am speaking of the higher level crimes—to determine your guilt, beyond a reasonable doubt, there being a presumption of innocence. Of course there is a presumption of innocence because it is now known and trite that those who allege must prove, and they must do so to the point that you feel sure in your heart, if you are a juror, that this person is guilty of the offence, and therefore, you would bring back a verdict of guilty in the matter.

What have we seen in Trinidad in the last several years? What we have seen is the “I see witnesses” those who say that saw what happened, have been murdered, a lot of them; they have been intimidated to not even come forward as witnesses or after having come forward and given their evidence at the preliminary enquiry when they arrive at the assizes, they seem to have forgotten—amnesia. And these are the realities that have caused the criminal justice system to almost collapse, where many feel that they commit murder, rape or whatever, and there will be no sufficiency of evidence to bring to their justice. And I want deal with the word “justice”.

What we have in recent past is really an artificial emblem of justice. The courts, our society has acknowledged and recognized, have failed to deliver

DNA Bill, 2011
[HON. P. RAMADHAR]

Wednesday, November 09, 2011

justice. You may get a trial, you may get an acquittal, you may get a conviction but there is very little confidence in the wider community that you would go to the courts for justice. Justice is about restoring a level of truth and honour and bringing back the society to where truth matters and not legal technicalities so you walk free on them. I have been a criminal lawyer for many years, and many of my clients have walked free on legal technicalities. It brings me no personal joy but that was my duty as a lawyer.

But we really do need at a higher level, for a society to develop, to base its institutions on the return to truth. If you are guilty of an offence you should pay the price for it, and if you are not guilty you should not even be bothered to be accused of it, and that is where we want to go.

It troubled me to no end when I heard the very intelligent sounding Member for Diego Martin North/East, but then he made a cardinal error when he referred our section 3 here, and if you will permit me, Sir, to read it. It says very simply this:

“This Act applies to the investigation and prosecution of offences committed before, on or after the coming into operation of this Act.”

How could anyone suggest for a moment that this is retroactive legislation bringing in some new offence? And of course he quoted some law, clearly misguided on it, unfortunately. Let me put this in clear, clear perspective.

A murder had occurred in Carlsen Field about 15 years ago. The deceased was chopped and he died a horrific, bloody death. For seven years that murder when completely without any resolution, but at the scene a fingerprint was found. The police kept it in their files, and guess what? Seven years after in Freeport, after the murder, there was a house break-in, and on the pane of a louvre was this fingerprint impression. Wow! Guess what happened? Because they kept the fingerprint impression from the murder seven years before, it matched. They were able to solve the house break-in case, therefore they were able to find the person whose print was on that louvre pane, and also at the scene of the murder.

Investigations were conducted and eventually I think it was five or six persons were charged and convicted for that murder. A cold case come hot because of a registry of a fingerprint.

When we spoke about the development of the law, and the kind of evidence that cases were built upon, the introduction of fingerprint evidence was critical because it marked, for the first time, a scientific means of identifying a person that

was not subject to the human frailty of recognition, fleeting glances, poor lighting conditions or the trauma that a person looks like—they go to identify in an identification parade, point out someone who is completely innocent but because of the certainty in their error, a person is convicted, sometimes for murder. Fingerprint moved it closer to a more secure form of justice. Because how can you explain your fingerprint being on a weapon that was used to kill, and you also have the identifying evidence, jurors became more confident in their ability to convict.

I remember doing a case many years ago in San Fernando—I took it over from a colleague—where a person had been charged for robbery, and the one bit of evidence they had against him, apart from identification, was his print on the inside of a glass showcase. He could not explain how that got there, and therefore, it was an easier case than if it was left only for visual identification.

We move forward now, I remember some years ago a young police officer having left a cinema in Port of Spain, walking down St. Vincent Street, it was. He was brutally stabbed to death. Do you know what evidence was used to capture those who were responsible? Camera footage. We move forward. We keep improving. The camera footage is used not just in that case but around the world it is now recognized. So we always look for better things, better and better as they say. We proceed.

Back to my point on my friend's interpretation of section 3. If it were left to him and his interpretation, it would mean that many persons who are guilty of murder, rape or other heinous offences, would walk freely because if it is shown that their DNA put them as the rapist or as the murderer, but because it is, in his mind, retroactive they must be allowed the right to go free. That interpretation is almost obscene from its deviation from common sense. It must be that there was an offence of murder, rape, robbery that existed before, all this does is to provide and assist in the resolution of the case by the new form of evidence that is available. It is as simple as that. Nobody could interpret that otherwise honestly, with all due respect. But I make no allegations against my friend.

Sir, we have heard all sorts of criticisms about this Bill. As I repeat, nothing is perfect, we will learn as we proceed. However, when we start talking about the accreditation, at clause 6, it says that:

“The Government may, for the purpose of obtaining forensic DNA services, enter into an agreement with a lab that is—NP (a) accredited by an international accrediting body listed in the First Schedule; and
(b) approved by the Minister by Notification”.

DNA Bill, 2011
[HON. P. RAMADHAR]

Wednesday, November 09, 2011

All this means is that you may use labs anywhere in the world that are accredited by the internationally recognized accrediting bodies. Like any university that is worth its salt, there accrediting bodies that would recognize them, and others that which would not be recognized because they have not come up standard. So that the Minister may use any of those labs that are accredited by internationally recognized accrediting institutions.

Therefore, the number of labs that would be available would depend on how many are accredited by those bodies, so that they could be unlimited in terms of access.

We have heard criticism of clause 5, that:

“the Trinidad and Tobago Forensic Science Centre shall be the official forensic DNA lab for Trinidad and Tobago.”

Guess what? The Forensic Science Centre is already recognized as the institution that is recognized by the courts of Trinidad and Tobago; for instance, to determine whether things that are submitted are really cocaine; for ballistic examinations.

In fact the courts have recognized them and have relied upon the Forensic Science Centre for almost all of its scientific evidence in any matter, and I could say this for as long as I have been in the practice and long before that. So to suggest that the Forensic Science Centre may not be an appropriate place would be almost puerile to believe that they would not get their certification and accreditation because what is there must be read in the context of the entire Act. If you take one thing out of context certainly you will be out of context; but the issue is far bigger than just one line or two lines in one section without understanding the totality of the Bill.

My friend went on—and forgive me if I am going to go a little quickly on this—about there is no mechanism, talking about training, about certification of those who are to take samples and so, forgetting altogether that in her last few minutes she spoke about the regulations in the law in England, and that is what regulations are there for. An Act does not stand alone.

The Minister is permitted under clause 34(1)—and with your permission, Sir, it is so short I shall read it in less than five seconds. It says:

“The Minister may make Regulations for the purpose of giving effect to this Act.

(2) Regulations made under subsection (1) are subject to negative resolution of Parliament.”

One cannot put in an Act every single thing. Regulations are really the lubrication or the fuel, if I might put it like that, in an engine that makes it work. One without the other does not work. Because it is not in the Act itself or the Bill itself does not mean that there is no recognition of the need for those things. And this clause 34 gives the authority to the Minister to do those things. That is a matter of course. In almost every bit of legislation that we bring before this House there are necessary regulations.

8.15 p.m.

My friend spoke about keeping the samples indefinitely. Why is it such a big issue that a sample is taken but that you continue to keep it? My friend said it is because of the abuse that could come from your holding it. Well, guess what; recognizing that danger there are penalties put into our law at clause 30(1)(h) where it says:

“A person who wilfully and without authorization—

(h) gains or gives access to a non-intimate or an intimate sample;

commits an offence and is liable on summary conviction to a fine of one hundred thousand dollars and to imprisonment for seven years.”

Also at clause 29:

“The Custodian or a person authorized by him may disclose DNA data to—”

And it gives a long list, but at subclause (2)

“A person who discloses DNA data otherwise than in accordance with subsection (1), commits an offence and is liable on summary conviction to a fine of one hundred thousand dollars and to imprisonment for seven years.”

So, it is not as if you willy-nilly could interfere with the material that is there. We understand! We understand how significant and how very sensitive it is to have DNA swirling around out there that has been lawfully taken, lawfully kept and then unlawfully distributed. The law does not permit for that and it caters for that. I hear suggestions too, that you cannot trust the police. Wow, I came from a defence background, I never trusted the police, I will always be skeptical of them. And guess what! When you remember why it is that my colleagues clearly have stated that in this honourable House, on the *Hansard* record that was reflected, it would have been from their experience, those who were in Opposition, the Member for Tunapuna, the now present hon. Prime Minister, the experience they had around that period when they would have spoken, gave them reason to not trust the police.

DNA Bill, 2011
[HON. P. RAMADHAR]

Wednesday, November 09, 2011

How many may have forgotten that when a Motion of No Confidence was brought right outside the Red House at Woodford Square, the police under an acting Commissioner of Police, basically oversaw, what I consider with all humility, an illegal congregation to disrupt the work of the Parliament, and there were many other reasons when you saw police being used to hound the Chief Justice and other acts which clearly had, in the mind of a fair-minded person, political direction.

But we move forward to a position as the law moves to deal with those deviant officers; and in every profession, in every walk of life in this country, there are the good, the bad and the ugly, but we do not base our institutions on the lowest denominator. We appreciate the dangers of it and put mechanisms to protect it from those, but we look towards that standard that we must achieve, that you have to have a position where the police are trusted, whether they wish to voluntarily or whether we have to make them trusted by the laws that we will pass, the laws that we will enforce, by the strengthening of the institutions of the Police Complaints Authority as one fine example.

Who could have chosen a better person to commandeer that noble institution than our own Gillian Lucky, a committed patriot? And things are changing, sometimes, maybe too fast for some of my friends to appreciate that we are improving this nation slowly but surely, sometimes faster, and we intend to do the things necessary to bring us all up to standard, whether they are police, whether they are politicians; as we strengthen our institutions because without institutions you do not have a society. What you would have are people who exercise their own independent, and sometimes not so independent, capricious views on things and exercises like that.

My friends may have forgotten that the use of DNA does not mean one thing and one thing only, that is, if a person's DNA has been found or claim to have been found on the scene by the police; there is a trial process. Many of us had the fortune of looking at the OJ Simpson trial and saw for the first time live and direct the cross-examination that ensued, blistering cross-examination, I forget the name of the lawyer, a Jewish name—seeing that we were visiting Israel earlier today—I think it was Scheck; who cross-examined furiously and then went on, I believe, to launch the innocence project in the United States, because DNA became a tool not just to convict the guilty but to free the innocent.

Tonight itself, in Texas, a man by the name of Hank Skinner was to be put to death tonight, this very November 09, for a murder he was convicted of, for killing a woman and two of her children in 1993. Do you know what he has been

DNA Bill, 2011

Wednesday, November 09, 2011

doing? He has been using every possibility open to him to allow for DNA testing of samples and the courts, for whatever reason, in Texas have refused him until yesterday, a superior court granted a stay. So he will not die tonight. A DNA test will be conducted and may very well prove his innocence like it did for these young gentlemen. May I, with your leave, read this, it is from Associated Press written by David Mercer. It says:

“One of five men sent to prison for the rape and murder of a middle school classmate two decades ago”—two decades ago, eh—“walked out of an Illinois prison Friday, exonerated by new DNA evidence that also has cleared at least two of the others, including his half-brother.

James Harden, now 36, stood outside the walls of Menard Correctional Center in Chester and said the taste of freedom was ‘like breathing new life in my body.’

His half-brother Jonathan Barr, will have to wait while paperwork related to a decades-old juvenile conviction is worked out, his attorney said.

‘Another one or two days or whatever after doing 18, 20 years, it’s like a drop in the bucket,’ Craig Cooley of the New York based Innocence Project said.”

He goes on, this is the young gentleman Harden, he said he hopes to personally proclaim his innocence when it was shown by DNA that he had nothing to do with the murder, but that case led to the conviction of these gentlemen on basis of confessions from some co-accused and persons who turned state witness and gave evidence against them.

Here we have the science of DNA; after 20 years they are being released and he wants to do this to the mother of the decease, he wants to go and tell her:

“I don’t want that lady thinking that we had anything to do with her daughter’s death.”

He wants to go and clear his name having been cleared by the courts by DNA.

This is the wondrous nature of science that it could tell you not only who did, but who did not. So this, for the first time, is a tool for the innocent, and for too long we have heard about the rights of an accused—yes, of course, there being a presumption of innocence—but have we ever heard about the rights of the innocent, because you know what happens, Sir, in all due respect?—*[Interruption]* Barry Scheck, thank you. That was the name of the lawyer in the OJ Simpson case. I too, when I saw him in action—

Mr. Sharma: Did you google it?

Hon. P. Ramadhar: No. [*Laughter*—it was very inspiring.

But, we were making the point that this new tool, this new wondrous thing called DNA testing will allow for the police to focus their attention very quickly on persons who are guilty and forego the usual suspects. What happens in an area, if there is a rape or there is a murder, they “rounds” up several persons who are, in their mind, the usual suspects and spend endless hours, sometimes endless days, sometimes in futile effort, to ascertain whether those persons are guilty or not, when the actual guilty person could be making a speedy escape. With DNA within a very short space of time they could eliminate some suspects and go directly to who would have been the person responsible for the crime. That is an incredible tool that would free up the police to do other work, but not to minimize for a moment the ability to capture the guilty.

Nothing in life is perfect. I keep repeating this for the very reason, that we could bring something that is almost perfect, but the part that is not, where we say it is almost but not quite, you could criticize that and then say, “but that ain’t good enough”. We must do better, and with DNA, of course, there is the opportunity for deviant police officers or wicked-minded people to manipulate evidence, like in anything else. I remember the common thing when I came into practice as a young lawyer. When you get a deposition the first thing you look at is who is the complainant and who the police officers are, and I would tell you without even looking at the depositions the kind of evidence they have in it. If this person Mr. X is the complainant and Mr. Y is his witness, I could tell you it is a confession, I am going to tell you exactly what they are going to say. And that was the game that many officers played. It would not work. They would find a person who they believe they may have something on him in the past, could not solve the case, bring him in, give him a confession, give him a promise you sign up this and you go home. Many persons went to the gallows, well, I should not say that; were convicted of murder in this country based on confession evidence only. We have to move away from that.

Fingerprint evidence, a common joke but not only a joke, it was true; police would say that they went into a home where a person was murdered, dusted for prints and found a glass with a fingerprint on it; the accused would always tell you, “Well, chief, I do not know anything about this. I was in the police station, they gave me a glass of water, look, that is the glass.”—fingerprint on it. We appreciate manipulations like that. Security officers would tell you, you could

never secure any property perfectly, all you could do is delay; if a person has the right resources and the amount of time they would get in. So nothing is perfect. We move forward on that. [*Interruption*]

The point I want to make more than anything else is this—I also learnt from my father that the truth will set you free. Every time I reflect on that I understand it a bit differently. The truth will set you free. Free of what? Free from what? If you have committed an offence—for instance murder—and you speak the truth to the authorities, the law provides for the sentence of death. Does it mean that you would be free in the physical world? The answer is no, because you would pay the price. But at a spiritual level, once you have spoken the truth and you truly confess not just those bogus confessions we may hear and apologies that mean nothing other than for the convenience of politics; when you truly confess, you open yourself and accept responsibility, you are liberated at one level. Another interpretation of the truth shall set you free is that if you are truthful to yourself and you are truthful to your values and your beliefs you would become immune from temptation and doing the wrong thing. There are many other interpretations, but it is important for us, as I am about to take my seat to reflect on the need for the return to truth, that our justice system, not being perfect, we work towards improving it so that guilty persons will know—

[MR. DEPUTY SPEAKER *in the Chair*]

—that the likelihood of their being detected first of all and convicted is an almost certainty, because the institutions of the police, the court, the jury service will bring forth a just and truthful verdict based on evidence that is untampered with.

8.30 p.m.

That is the purity we want and we have to continue striving towards it. The truth shall set us free, not just in the criminal courts, but as a nation, as we have taken oaths as leaders in this country to speak and do things, we must never allow it, when we have that opportunity, for that great right when we speak, to allow cheap, to allow very selfish motives to pollute our words. That is why a society as rich as this in terms of all the natural resources, we have never been able to see the greatness that we could and must achieve. A friend of mine told me years ago, that this country appears that we have low men in high office. And we are called honourable, you do not really want to have that name given to you without you having earned it. So whatever we do, always must be with a pure intent and that truth in your intent will set you free as a leader, as a politician and set a nation free in its karmic consequence of our actions.

DNA Bill, 2011
[HON. P. RAMADHAR]

Wednesday, November 09, 2011

Mr. Deputy Speaker, it will reach a point, this DNA Bill has got to be passed, it has got to go forward because the other forms of evidence that I have spoken about in terms of eye witnesses, that is a dying breed literally, and we have to move to the scientific level which this now brings. I look forward to the next level, the evolutionary thinkers of science, that will bring it even closer so that all of the mischief that this may be subject to could be minimized to a point of being almost negligible, so that when a court pronounces upon the guilt or innocence of a person, no longer do I have to worry, as my father had, that 10 guilty should go free rather than one innocent man be convicted.

I thank you very much.

The Minister of Education (Hon. Dr. Tim Gopeesingh): Mr. Deputy Speaker, and colleagues, there are a few issues which needed a little more response—and I will touch on these for a short period of time—to illustrate that there are key differences between this Bill of 2011 from the Act of 2007—which the People’s Partnership Government needed to bring in—because the Bill of 2007, was not satisfying the needs for fighting crime in the context of the forensic aspect with the DNA Bill as existed in 2007. There are 14 areas of difference and therefore, to say that we could have made amendments to the 2007 Act, with 14 major amendments, this is the reason why the hon. Minister of Justice, the Attorney General and the People’s Partnership Government decided that we have to bring a new Bill in 2011, with some of the areas from the 2007 Act.

The first area of difference is the distinction between a limitation of categories of persons from whom non-intimate and intimate samples may be taken. In the 2011 Bill, we have enlarged those categories of persons from whom DNA samples may be taken and the removal of most distinctions regarding the taking of non-intimate and intimate samples. So it was convoluted. So this is why we have to—this is one differentiation between the 2007 Act and 2011 Bill. When Members on the other side are speaking—we want to take samples without consent. I want to draw your attention to your Act of 2007 which said that non-intimate samples may be taken without consent from a person where—and you have five areas:

- (a) he is charged with an offence;
- (b) a stain derived from a crime scene;
- (c) a non-intimate sample has already been taken and that sample has proved to be unsuitable or insufficient;
- (d) the person has been convicted of an offence and is serving a term of imprisonment or he is an officer of the protective services.

What has happened in this 2011 Bill, the circumstances in which non-intimate samples shall be taken without consent includes as well, detainees or an accused. We have also put in where a non-intimate sample has already been taken and that sample has proved to be unsuitable or insufficient; we have also so inserted where the sample is lost or destroyed or cannot be used. So these are additional areas where we have made some changes to the non-intimate samples. So those are two key differences that exist between this 2011 Bill and 2007 Act.

The third: the 2007 Act has unnecessary cumbersome definitions of non-intimate sample and intimate sample. In the 2011 Bill, both definitions were simplified based on the fact that the same quality of DNA can be extracted from both non-intimate and intimate samples. There is no need therefore, to compel an individual to take an intimate sample where a non-intimate sample would suffice.

Another point of differentiation, and this goes with the question of accreditation which you have been speaking about in the Opposition. In the 2007 Act, there is a limitation on the number of years the Trinidad and Tobago Forensic Science Centre is deemed to be an approved forensic DNA laboratory. So we are admitting that the forensic lab is an accredited lab for DNA testing. But your accreditation was only deemed to be an approved laboratory for only three years after the commencement of the 2007 Act. Thereafter, the Minister could extend by order the period within which the Forensic Science Centre is deemed to be approved for a period not exceeding one year, and that period expired on September 28, 2011.

So in terms of accreditation we understand the lab has been accredited. At first it was accredited for three years and then the Minister extended accreditation to another year, but that had expired by September 28, of this year. What in fact the hon. Minister of Justice has done in this 2011 Bill, he has removed the limitation and indicated that the Trinidad and Tobago Forensic Science Centre shall be the official Forensic DNA Laboratory for Trinidad and Tobago once this Bill is passed. And when we are looking at accreditation as well, Mr. Deputy Speaker, the Member for Port of Spain South, raised the issue about we should at least put in about 15 different laboratories so that if we work with them we know that they will be accredited.

The first is, the First Schedule has international accrediting bodies: one from the United States, that is the American Society of Crime Laboratory, the Directors Laboratory of Accreditation Board, then you have an international accrediting body, Forensic Quality Services-International (FQS-I), the Standards council of Canada (SCC) and the United Kingdom Accreditation Service.

DNA Bill, 2011
[HON. DR. T. GOPEESINGH]

Wednesday, November 09, 2011

So the Forensic Laboratory of Trinidad and Tobago by virtue of this Bill, allows the international accreditation through accrediting bodies in the United Kingdom, in Canada, internationally with the Forensic Quality Services-International and the American Society of Crime Laboratory. So these international accrediting bodies do the accreditation across the world to laboratories that are doing DNA. And once they accredit them, by virtue of that we would have accredited those laboratories because we are joined with those international accrediting bodies. So there is no question of lack of accreditation by virtue of this new Bill that the Minister of Justice has piloted.

The next point is, the 2007 Act made provision for the establishment of a DNA Board which was never implemented. We cannot continue with a DNA Board, because that DNA Board first of all was never appointed and so we had to remove the provision of that DNA Board because we cannot get the type of professionals to fill the positions as was stated in the 2007 Act. You needed a geneticist and you needed top line expertise from the laboratories and no matter how much you all searched, I believe you were not able to fill the positions for a DNA Board because of the expertise that was needed to be in those top positions and you were unable to get them. So there is no need to talk about a continuation of a board, so this Bill has removed the necessity for a board.

You made some comments on the other side about the Custodian issue. Your 2007 Act made provisions for the appointment of a Custodian for the Forensic DNA Databank, but you never did it. You never appointed a Custodian from 2007—2010. So for three years no Custodians were appointed. You made the provision for the creation of a Forensic Databank which was also never created. So both a Custodian and a databank were never—a Custodian was never appointed and a databank was never created. But this 2011 Bill enlarges the provision to include, not only a Custodian but a Deputy Custodian and an Acting Deputy Custodian.

Another point of differentiation: your DNA Databank in the 2007 Act, comprised various databases and it was an unnecessarily complicated procedure. This, what we have done in 2011, simplified the procedure to have one main searchable database in the DNA Databank. What you had in 2007, was four or five database areas, we have now simplified it to one.

Also in 2007 you said that the Act has the DNA sample not to be taken from a child or incapable person without the consent or presence of their parent or guardian. We have made it even stronger and the provision is simplified—need for the parent's or guardian's consent has been removed. But we said here that a

DNA sample is not to be taken from a child or incapable person unless their representative is present. It is not always easy to get a parent or a guardian.

So a representative is defined in five different areas:

- “(a) a parent or legal guardian;
- (a) any person over the age of eighteen years who has the custody, charge, or care of the child or incapable person;
- (b) an Attorney-at-law;
- (c) a qualified social worker; or
- (d) a representative of the Children’s Authority.”

So these are seven areas so far that we have differentiated this Bill from your Act which needed to be done, so, it would have been difficult to put amendments to the 2007 Act, and this is why we have to bring out a new Bill.

8.45 p.m.

Eighth: complicated provisions dealing with the procedure for taking non-intimate and intimate samples. The 2007 Act has a lot of complicated procedures and provisions and these provisions in this Bill now have been removed, they are procedural in nature and best suited to regulations or internal protocol documents, and the regulations are going to be made by the Minister for either affirmative or negative resolution in Parliament. So that Parliament would be able to see what regulations are being brought by the Minister of Justice.

Ninth: You speak about the samples being kept and you said on the Opposition side, that you have difficulty with the samples being kept indefinitely. What you have in your 2007 Act: DNA samples to be retained for a period of ten years from the date on which the analysis was completed and thereafter destroyed, unless the court orders that the sample not be destroyed. What we have in the 2011, the provisions are enlarged to provide that the Trinidad and Tobago Forensic Science Centre shall, within three months after the end of each calendar year provide the Commissioner of Police with a list of the samples it intends to destroy. The Commissioner of Police will be in a position to determine whether the samples should be retained for investigative purposes or if the sample can be destroyed.

Further, the Bill provides that DNA data stored at the forensic databank may be kept indefinitely, but it has the ability at the end of each calendar year to provide the Commissioner of Police with a list of the samples it intends to destroy. So

DNA Bill, 2011
[HON. DR. T. GOPEESINGH]

Wednesday, November 09, 2011

there is the ability for the destruction of samples, whereas you had ten years we are reviewing them at the end of every year.

The tenth major difference—in the 2007 Act the DNA register is to be maintained by the police. In 2011 have enlarged this provision, the DNA register is to be maintained by the police at each police station, and also by a qualified person who takes DNA samples. So we have enlarged the provision for that.

You had no provision for sharing DNA data, the 2007 Act was myopic in that regard. The 2011 Bill empowers the Government of Trinidad and Tobago to enter into arrangements with foreign governments to share DNA data; recognizing the transnational nature of crime this is expected to be a valuable crime-fighting tool. So we can exchange information from countries abroad and we can provide information to them as well.

Another point of differentiation, the 2007 Act provides circumstances under which an offence is committed. In 2011, this Bill expands the position by creating a new offence that is, the refusal of a person from whom a sample is to be taken or the obstruction or the resistance by such person in relation to the exercise of the functions of the police or qualified persons under the Bill now constitutes an offence. A penalty of \$10,000 and imprisonment for two years is also provided.

So this allows us an opportunity to explain to the national community and to Members on the other side, why it has been necessary for us to bring on a new Bill of 2011 rather than just making amendments to the 2007 Act. I would like in a few minutes to just indicate the difficulties that were experienced nationally and why we felt that the 2007 DNA Act did not yield optimal benefits under the previous administration. In fact, in a letter dated February 21, 2011 from Dr. Dwayne Gibbs the Commissioner of Police to the Permanent Secretary of the Ministry of Justice entitled “Request for Information Re. Deoxyribonucleic Acid Bill Act 2007”, Dr. Gibbs identified the following challenges faced by law enforcement in implementing the DNA Act. So it is no secret that we had difficulties in implementing the DNA Act.

1. DNA samples are not routinely taken by law enforcement personnel from persons suspected of committing an offence—this is what he has said.
2. There are inadequate storage facilities at various stations throughout the country.
3. Lack of proper procedure for the storage, retention and analysis of samples collected as a result of the non-appointment of a custodian—and you had three years to appoint a custodian and you did not do it.

4. The lack of any form of database against which profiles can be compared. So for three and a half years you did not form a database although you had an opportunity.
5. The non-appointment of a DNA board while the Act had—you could not get the expertise that you required to have the appointment of a DNA board, because of the high qualifications that had been set for appointees to this board.
6. The non-accreditation of Trinidad and Tobago Forensic Science Centre in accordance with section 33 of the Act. In September this became a problem.
7. The inability of the Forensic Science Centre to process all types of DNA evidence, example: teeth, bones and cellular material and so on.

The Commissioner of Police who is in charge of this entire issue of getting DNA analysis and DNA profiling had complained significantly that we did not have the ability to optimize the benefits which were under the previous 2007 Act; and therefore, we have made it simpler in the 2011 Bill.

So it is quite strange that when the Member for Diego North/East got up and said that he had the permission from all his colleagues from that side to indicate that they were not supporting this Bill, it was enlightening to hear the Member for Port of Spain South come around to say that they were prepared to support the Bill. A number of the points that they raised in terms of the retroactivity and the testing and so on have been debunked. In fact, this is just one area that I think needed to be clarified, that is in relation to the testing that the Member for Diego Martin North/East spoke about.

He questioned whether we had the requirement and certification for testing but I want to just quote from *Hansard* on Friday January 26, when the person who piloted the Bill for them at that time when they were in Government, that is Minister of State Fitzgerald Hinds, said:

“We had to train police officers and we did Members, you would have read over time that dozens of police of officers—I think about 120 so far—have been trained as crime scene investigators....”

By September 15, we are happy to inform you...the capacity for such profiling and analysis will be fully operational. I put the emphasis on fully because, as it now stands, I am happy to inform this honourable House that our Forensic Science Centre has been undergoing intellectual, technological and professional upgrade. This is necessary and quite serious.”

DNA Bill, 2011
[HON. DR. T. GOPEESINGH]

Wednesday, November 09, 2011

So I am quoting to nullify the statement made by the Member for Diego Martin North/East, when he said that there is no adequate safeguard and requirement for certification of technicians and for training. And here it is his own member in 2007 said:

“The staff of the Trinidad and Tobago Forensic Science Centre has undergone in-depth training in analysis of DNA using DNA PCR—STR analysis.”

PCR, as my colleague from Barataria/San Juan would know is a type of reaction mechanism that is used for the DNA typing—polychromosomal reaction typing.

So in terms of the retroactivity, my colleague, Member for St. Augustine and hon. Minister of Legal Affairs, showed that your Act in 2007 had the same thing that we have under clause 3 in 2011; it has not changed. In fact, it is the same thing, and we have not changed it. So when the question of retroactivity was brought up by the Member for Diego Martin North/East it was of no consequence, because we have not changed anything significant as far as that is concerned, that was put in section 3 of the Act that you had in 2007 that is different in 2011. And it states, “This Act applies to the investigation and prosecution of offences committed before on or after the coming into operation of this Act”. This is in your 2007 Act.

So, Mr. Deputy Speaker, I think we have answered all the questions on the retroactivity; the samples that they said we are keeping too long, the profiling kept indefinitely and a number of other areas. And therefore, we seek the support of the Members on the Opposition as the Minister of State at that time in 2007 said “this Bill is being presented in the context of very clear evidence that we, as parliamentarians, as state officials, as citizens, must stand up and do so together, to defeat this criminal onslaught...” And he went on to say:

“...this was not a partisan issue, this was a matter that was being sought to improve the circumstances of the criminal justice system and the other systems in our country.”—and it is a—“balance between the interest and the security of the State and the society as a whole vis-à-vis the interests and rights of the individual”.

So there it was, he was asking for the support of the Opposition in 2007. He got the support and here it is we are seeking the support of the Opposition and we look forward to your support to have this Bill passed at this time and we look forward to the early implementation of the 2011 Bill, which will become an Act. I thank you very much Mr. Deputy Speaker.

Mr. Deputy Speaker: Is there anyone else, hon. Members who would like to contribute to this debate from either side of the House? Going once, twice.

The Minister of Justice (Hon. Herbert Volney): Mr. Deputy Speaker, the task that I have at this time to wind up the debate is a very easy one given the nature of the contributions made from those opposite. I would like to begin, however, with addressing the issue raised by the hon. Member for Diego Martin North/ East on the retroactivity of the legislation in its effect.

It is quite clear to me as one who has been in the practice of the law, that the hon. Member is completely bereft of any understanding of the difference between criminal evidence and criminal law. This is not an instance of the criminal law being introduced in order to make someone liable to the loss of liberty for an act that they had done some years ago, other than in the law as now obtains that would result in such a conviction. This Act is to provide the tools to be able to interpret the evidence that was left when the offence was committed. It is a 21st Century device that is available and has been available for many years.

9.00 p.m.

There was an attempt to use that device several years ago in 2007 but, regrettably, the legislation at the time was flawed. Not only was the legislation flawed and impossible in its application, but the law and the procedures themselves have developed since 2007. And what is more is that what has emerged in Trinidad and Tobago is a new and renewed confidence in our protective services and this can be seen given the outstanding work that they have done in the state of emergency in our country.

So, at this point in time, the country need not fear this legislation. While we accept that it abrogates certain provisions of privacy and the right against self-incrimination, it is good for the country, for the majority of the people of the country that is paramount behind this legislation. The measure is quite clearly reasonably justifiable given what it seeks and serves to do.

Mr. Deputy Speaker, even the former DPP, Mr. Geoffrey Henderson, remarked, as I said in my earlier address to this House, on the ill-fatedness of a State which has to rely almost exclusively on either the account of eyewitnesses or on confessions. We are past that, Mr. Deputy Speaker. The evidence is out there and it is now for us to use the evidence by being able to interpret it, and the introduction of this Bill, the passage of this Bill will be a tool and a method to interpret the evidence at scenes of crimes committed in the past, and also to provide a reservoir—a databank—for which provision is made in the Bill so that future crimes may be more readily and easily detected.

DNA Bill, 2011
[HON. H. VOLNEY]

Wednesday, November 09, 2011

Mr. Deputy Speaker, at this point in time, the forensic laboratory—that is the DNA lab—is to a large extent operational; it has been for some time. The accreditation that we speak of in this Bill is an accreditation to provide a basis for evidence that is gathered here to be analyzed and used in our own domestic courtrooms, in our own criminal justice system. It is a starting point. This Bill is a balanced Bill. It provides, Mr. Deputy Speaker, protection for those persons who are innocent, and it certainly goes to the heart of proving the guilt of those persons who have to see the face of the criminal justice in our country.

Mr. Deputy Speaker, in July 2011, in the case of *Ruben Mitchell* in Pittsburgh in the Third Circuit Court of Appeals in the United States, the judges ruled that police may collect DNA samples from persons under arrest, finding the DNA sample is no more than a fingerprint for the 21st Century. The court emphasized the Government's compelling interest in identifying suspects and the unique attributes of DNA evidence to support its decision.

Mr. Deputy Speaker, when I sit here and I hear the arguments raised on the other side, it is quite clear that we on this side wonder who the Opposition Members truly represent. Do they represent the people who have lost loved ones and who would like to see closure? Do they represent the ones who have lost loved ones and who would like to see those who have deprived them of their family brought to justice? It seems not, Mr. Deputy Speaker.

From the outset, it was clear that the Opposition has come to oppose for the sake of opposition. This has been a trend for some time in this honourable House; almost every Bill has been opposed. I recall, Mr. Deputy Speaker, the Bill that would have led to judicial executions, that is the death penalty. I recall in this House every effort was made in order to get the support of the parliamentary Opposition—as they requested, we granted. We moved the goalpost almost to the other side of the field in order to accommodate them and, at the end of the day, Members opposite voted against the measure. That has been going on for some time now.

What it comes across clearly as, is that the parliamentary Opposition has not yet come to realize that they are in Opposition, they are not in Government. We, on this side, have the responsibility of dealing firmly with law and order. We bring measures that are considered to deal with that end. Here it is an Act that had not been able to work properly, that had been part of the law books, was found to be seriously flawed. For 18 months, after we tried to look at the amendments that had been proposed by the last Government through the Law Reform Commission,

we looked at those proposals and we had to reject them because they did not deal with the problems of getting and taking of DNA samples from convicted persons. Only suspects could be approached so that DNA samples could be taken.

Madame Justice Soo Hon spoke; she gave a judgment. Quite clearly the last Act—the 2007 Act—could not work; was not working. And that Act was so seriously flawed that the decision was taken that we would start from a policy position. We would develop the policy by inviting stakeholder interest and participation. We looked at all the models throughout the world and we chose what was suitable, and we adapted it to become an indigenous DNA Bill; our own product.

Now, because there are no measures there that suit the Opposition; there are certain measures that they would have done it their way; well, they had the opportunity to do it their way and they did not. As a result, we are in Government and it is our responsibility to pass the measure, to bring the measure to Parliament, and to deal with it in order to change the law once and for all, so that DNA as a tool of interdiction, of detecting crimes and raising the detection rate up, past 10 per cent—the low 10 per cent that it has been for several years—that the police now have the tools to deal with detection of crimes.

Mr. Deputy Speaker, 10 per cent might have been good enough for those opposite when they were in Government but it certainly is not good enough for our People's Partnership Government. So this is why we have felt that the introduction of this measure is but a small part in a compendium of Bills that the Government will be bringing to Parliament.

Mr. Deputy Speaker, there is no mystery in the taking of samples from persons. One must understand that there are persons who will take your life—those are what you may call the bad guys. Those are the guys, those are the persons, those are the citizens that we have to be fearful of; that is where the fear should lie. Those persons who have cocoa in the sun; those persons who have committed crimes are the ones who should be shuddering with this bit of legislation.

The Member for Port of Spain South should not be afraid of this legislation. In fact, as soon as it is enacted, I will be the first one to go and give blood; I have nothing to fear. Why should I fear as a citizen? What would happen? It provides an opportunity, so that if in the future, an accusation, an allegation is made against this Member of Parliament, I may very well be able to use my own DNA that is in the databank to show that the allegation is wrong. Why should the Member be

DNA Bill, 2011
[HON. H. VOLNEY]

Wednesday, November 09, 2011

fearful of it? From the word “go”, it has been a matter of the parliamentary Opposition trying to get the citizens of this country scared of this legislation. “You cannot trust the police. The police service now is under—”[*Crosstalk*] No, that is what is coming from over there, that side. They are saying you cannot trust the police; and that is why over the last year, we have appointed a Police Commissioner, we have appointed Deputy Police Commissioners.

There is a new air in the police service and you can see clearly and the country can see, given what has been happening in the state of emergency, how many arrests have been made; that the police have been doing their work. And that is why all the polls show that there is almost total support for the state of emergency and the effect it has had on the lives of our citizens. [*Desk thumping*] The only people who see other are the 9 per cent represented by the parliamentary Opposition—9 per cent, if it is as much as 9 per cent.

So, Mr. Deputy Speaker, I have not seen any compelling reason why this measure should not be passed by this honourable House. I have heard no argument on the other side that would indicate that Members on the other side have even taken the time to carefully study the provisions of this parliamentary measure. Could you imagine that there are 12 elected Members on the other side and they could not even produce more than two speakers on a Bill like this that is so important? What does that mean? We have not even heard from the Leader of the Opposition on a Bill of this importance. Why, Mr. Deputy Speaker? We all want to know why. He always asks, “Why”. Well, we on this side want to know why we have not heard, why this country has not heard from him.

Why this country has not heard from the Member for San Fernando East? Where is he? And every time an argument, a compelling argument is made in favour of the legislation, Members get up—they are paid to be in the House to represent their constituents and well paid at it, but they are not in the House when they should be, and they can make no proper contribution in the House.

Hon. Member: I beg to move.

9.15 p.m.

Hon. H. Volney: I must say, Mr. Deputy Speaker, that as a new Member of this Parliament I am extremely disappointed with the quality of representation of those on the other side. There is absolutely nothing for me to contribute further and so, Mr. Deputy Speaker—[*Interruption*]

Miss Cox: I beg to move.

DNA Bill, 2011

Wednesday, November 09, 2011

Dr. Rowley: I beg to move.

Mr. Deputy Speaker: Hon. Members, allow the Member for St. Joseph to finalize his contribution.

Dr. Rowley: But, he just said that he has nothing to say.

Hon. H. Volney: Mr. Deputy Speaker—*[Interruption]*

Miss Cox: I beg to move.

Hon. H. Volney:—when I want to say “I beg to move”, I will, and I do so now. I beg to move. *[Laughter and 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.

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

Clause 8.

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

Mr. Chairman: There is an amendment that has been circulated.

Mrs. Persad-Bissessar: Mr. Chairman, I beg to move that clause 8 be amended as circulated.

Delete the word “and” after paragraph (a) and substitute the word “or”.

Mr. Jeffrey: Are you on clause 8(2)? There is a question on clause 8(2), where the Minister shall appoint the Custodian from among suitably qualified persons. What do we mean by “suitably qualified persons”? I am saying this against the background of what has happened with Reshmi Ramnarine and Susan Francois; I think there is real need for us to clarify what we mean by “suitably qualified persons”. And more than that, the whole question—*[Interruption]* “hush yuh mouth nah man”—about “on such terms and conditions as he thinks fit.” I think that leaves room for manipulation by the politician. I believe that—*[Interruption]*

Mr. Deputy Speaker: We have a proposal for an amendment.

Mr. Jeffrey: The proposal I would like to make is that the President should appoint the Custodian on the advice of the Prime Minister and Leader of the Opposition, after consultation with the Prime Minister and Leader of the Opposition.

DNA Bill, 2011

Wednesday, November 09, 2011

Mr. Chairman: Can you repeat the proposal that you made, Member?

Mr. Jeffrey: “The President shall appoint the Custodian, after consultation with the Prime Minister and the Leader of the Opposition.” What I am saying is that we should specify what we mean by “suitably qualified”. We should spell it out.

Mrs. Persad-Bissessar: Yes, but where do you suggest the spelling? What should be the spelling?

Mr. Jeffrey: I believe that—what I am saying is that we need some clarification on what you mean by “suitably qualified persons”. That is the question I am asking.

Hon. Members: Phrase it, then.

Mr. Jeffrey: You would know what you are asking for. What do you mean by “suitably qualified”?

Mr. Roberts: What is your proposal?

Mr. Jeffrey: “Keep quiet nah.” You make the statement. All I am asking is: what do you mean by that?

Mr. Chairman: We will proceed.

Question put and agreed to.

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

Clauses 9 to 38 ordered to stand part of the Bill.

First Schedule ordered to stand part of the Bill.

Second Schedule.

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

Mrs. Persad-Bissessar: Mr. Chairman, I beg to move that Form 4 as contained in the Second Schedule be amended as circulated.

In Form 4, delete the words ““information”” and substitute the word “information”.

Question put and agreed to.

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

DNA Bill, 2011

Wednesday, November 09, 2011

9.30 p.m.

Third Schedule ordered to stand part of the Bill.

Preamble approved.

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

House resumed.

[MR. SPEAKER *in the Chair*]

Bill reported, with amendment.

Mr. Speaker: Hon. Members, this Bill requires a special majority. A division is therefore required.

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

The House divided: Ayes 28 Noes 9

AYES

Moonilal, Hon. Dr. R.

Persad-Bissessar, Hon. K.

Warner, Hon. J.

Dookeran, Hon. W.

McLeod, Hon. E.

Sharma, Hon. C.

Alleyne-Toppin, Hon. V.

Gopeesingh, Hon. Dr. T.

Peters, Hon. W.

Rambachan, Hon. Dr. S.

Seepersad-Bachan, Hon. C.

Seemungal, J.

Volney, Hon. H.

Roberts, Hon. A.

Cadiz, Hon. S.

DNA Bill, 2011

Wednesday, November 09, 2011

Baksh, Hon. N.

Ramadharsingh, Hon. Dr. G.

Ramadhar, Hon. P.

Khan, Hon. Dr. F.

De Coteau, Hon. C.

Indarsingh, Hon. R.

Baker, Hon. Dr. D.

Samuel, Hon. R.

Douglas, Hon. Dr. L.

Roopnarine, Miss S.

Ramdial, Miss R.

Partap, Hon. C.

Khan, Miss N.

NOES

McDonald, Miss M.

Rowley, Dr. K.

Cox, Miss D.

Hypolite, N.

McIntosh, Mrs. P.

Imbert, C.

Jeffrey, F.

Thomas, Miss J.

Gopee-Scoon, Mrs. P.

Question agreed to.

Bill accordingly read the third time and passed.

JSC (Appointment of)

Wednesday, November 09, 2011

JOINT SELECT COMMITTEE
Central Tenders Board Act
(Proposal to Repeal and Replace)
(Appointment of)

The Minister of Housing and the Environment (Hon. Dr. Roodal Moonilal): Mr. Speaker, thank you very much. Motion No. 1 on the Order Paper states:

Be it resolved that a Joint Select Committee be established to consider the Legislative Proposal to provide for public procurement and disposal of public property together with the Legislative Proposal to repeal and replace the Central Tenders Board Act which were laid in the House of Representatives on Friday, June 25, 2010 along with the work of the previous Committee appointed in the First Session of the Tenth Parliament:

And be it further resolved that this Joint Select Committee be mandated to:

- (a) consult with stakeholders, experts and other interested persons;
- (b) send for persons, papers, records and other documents;
- (c) recommend amendments to the proposals with a view to improving the drafts;
- (d) submit a report to Parliament within three (3) months from the date of appointment.

Mr. Speaker, this Motion, as Members are aware and the national community, on entering office on May 24, 2010, the Prime Minister, the hon. Member for Siparia, made a commitment and a promise to the nation that the in-coming Government of the People's Partnership would move with haste, and within three months of convening the Parliament we would indeed table legislation to deal with the very important issue of procurement; an issue which occupied attention of the national community particularly in light of our recent past involving several very disturbing issues which were raised in the public domain and which led to the Uff Commission of Enquiry and other public pronouncements.

Mr. Speaker, it is a matter of public record that the Prime Minister stood firm on this issue and indeed affected her commitment and her promise to the nation on the political platform and we did, in fact, lay the documents in the Parliament.

JSC (Appointment of)
[HON. DR. R. MOONILAL]

Wednesday, November 09, 2011

Subsequent to that a joint select committee was established and indeed that joint select committee, we understand from the Members and the spokesman from that committee, did pioneering work in good time. However, due to the nature of this issue and the need to consult a wide cross section of the stakeholders and to properly consider these very sophisticated issues, the committee could not finish its work during the first session. The Parliament acted to preserve the records, the papers and the work of this committee and today, Mr. Speaker, we move with the consensus of the House to continue the work of this committee, so that it will come to an end, and we will indeed bear the fruits of this committee, which is the passage of comprehensive legislation to deal once and for all with procurement, a fundamental issue in promoting the “Pillars of Good Governance” as outlined in our manifesto, and promoting the principles of transparency and public accountability which are critical to our development efforts.

Mr. Speaker, on this note, I beg to move that this committee be reinstated.

I thank you.

Question proposed.

Dr. Keith Rowley (*Diego Martin West*): Mr. Speaker, this matter is one which requires a certain amount of urgency, and I did hear the mover of the Motion indicate credits to the Prime Minister and how we have moved with alacrity in treating with this matter, and that the committee of which I am a member, or I was a member, had done pioneering work. But I will be less than honest if I accept that at face value and not report, or not raise, as we go back to continue that work, that this committee really suffered from a lack of direction from the political directorate.

The whole question of a policy for procurement is still missing from this exercise. While the Government did keep its promise to lay in the House procurement legislation, it would be useful to note that what was laid, was the work of a previous administration and the policy—in fact, it was not only the policy, there were the policies, there were two documents: one had a policy which said that we could reform the approach of the Central Tenders Board; and the other which said that procurement in the state sector in Trinidad and Tobago should be revamped in the context of a devolved responsibility, where the procurers would not be centralized under a central tenders board, but would have a procurement policy laid down in law to follow as they procure. These are two quite diametrically opposed positions and what was required and what still is required, and what I would like to hear, Mr. Speaker, is that the Government has a

position which this Government wants to advance to the committee, so that the committee, knowing what the Government's policy is, would be able to craft legislation in the context of that policy.

9.45 p.m.

The work that has been done so far—and some work was done out of the Ministry of Finance, which provided some guidelines, I am subject to correction. Maybe somebody on the Government side will tell me I am wrong, I do not know—but I am not satisfied that the Government has stamped its position on a new procurement policy for the country, and that position of the Government's policy is guiding the process that is at the joint select committee. *[Interruption]* Mr. Speaker, I hear the Prime Minister grumbling that the policy is certainly not what happened under our watch. That is the problem with this country. If we are focusing on doing something now, and you have the responsibility of doing it now, and it is being hampered by an absence of your policy on the matter, I do not care what you think of the last policy. That is why the committee has not finished its work.

If we are going to make any significant progress, these two diametrically opposed positions require a policy position from this Government. I cast no aspersions on my colleagues on the committee, but they struggle to treat with simple matters because those simple matters require the guidance of policy, and in the absence of that policy we have marked a lot of time. I hope if the committee is reconstituted, that the committee will be able to move meaningfully towards preparing legislation which will come back to this House, and be enacted with some dispatch, because as I said initially, modernized legislation to deal with public procurement in Trinidad and Tobago is a matter of great concern, and should be of great interest to the public, and we on this side would want to cooperate with that fully, but we want to be guided by clear Government policy at the joint select committee. I thank you, Mr. Speaker.

The Minister of Education (Hon. Dr. Tim Gopeesingh): I thank you very much, Mr. Speaker. I heard what the Member for Diego Martin West indicated. He said he was disturbed by the fact that we did not go in with a policy, and he was waiting on a policy. He made those statements on about two occasions during the 15 meetings that we had, particularly, more to the first part of the discussions, of the meetings, the first seven or eight.

Mr. Speaker, the People's Partnership Government went in with an open mind in that situation, and we wanted to ensure transparency, accountability and

JSC (Appointment of)
[HON. DR. T. GOPEESINGH]

Wednesday, November 09, 2011

probity, so we went into that committee for consultation amongst the Members, so that the Members could feed the information so that we could then come up with a defined policy that would suit the Opposition, the Government and the stakeholders.

We had numerous stakeholders who came in. The JCC represented about four or five different organizations; the Ministry of Finance made their presentation; and we had a presentation from the Solicitor General and we were open to the suggestions that were made by all the stakeholders and all those who participated.

We looked at the Jamaica model and we looked at a number of models from around the world, and were coming to an end where we were formulating a defined policy, and a defined way forward and best practices from around the world to also include electronic type of bidding on procurement as well. Towards the end, the Chief Parliamentary Counsel was beginning to formulate a Bill for us to consider and tweak, and we had reached that stage of almost completion. So, when the Member for Diego Martin West speaks about us not having a policy, it was a matter of an open approach with stakeholders and the Opposition side.

I do not think that he would have wanted us to have policy like they had—they want a smelter and they must have a smelter. We did not want that—and then have consultations after, sham consultations after. We came with an open mind and we had significant Members from the Opposition on the team, and we had a number of stakeholders, and we decided that we would go forward on that principle. So we have come to the end now where we have worked out the issues and we are going to produce a Bill pretty shortly with the assistance of Members.

I want to thank the Members opposite for their contributions, Members from the Independent Bench and from the People's Partnership Government side. So, Mr. Speaker, thank you very much.

Mr. Colm Imbert (*Diego Martin North/East*): Thank you, Mr. Speaker. As a Member of the former committee, I want to reinforce the point made by the Leader of the Opposition. This Government decides to develop policy when it suits them. It is obvious, since we had an example of that today with the Bill we just voted on, that this is their policy and they are doing it whether we like it or not.

The problem with the approach being adopted by the Government with respect to procurement is that once you adopt a populist approach—which is what they are trying to adopt—and try to achieve consensus from so many people, different people with so many different interest groups and competing interests,

the inevitable result is that you end up with nothing. So that we now come to the situation where 18 months after this Government came into office with a promise to enact procurement legislation, we have turned full circle and returned to the place where we were in June 2010. We have no legislation and there is no Government policy.

It is all very well for the Government to say that it wants the policy to evolve; they will listen to stakeholders and they will develop a policy. I dare say that that is not a very efficient approach. The Government must have some concept of the approach they want to adopt for procurement. The procurement policy document that was placed before us for discussion, proposed the establishment of an independent entity that would have control over the procurement process in this country, to the extent that the Government might have been alienated from the process, and the Government's development programme might have been stymied. That was pointed out to the Government very "early o'clock" last year.

We now find ourselves in 2011, a year later, where having recognized that this is an issue, the Government is still to pronounce on whether they are going to agree to an independent body having control of the procurement process thus, quite likely, jeopardizing the development programme or not, and that is really the matter that we need to settle. I sincerely hope that the Cabinet will make a decision as to whether they wish to alienate themselves from the procurement process and hand it over to somebody else, or whether they simply wish to have rules, guidelines and regulations which would ensure transparency and accountability.

So, I urge the Government, when we go back into committee—whoever is on that committee—please make up your mind and decide whether you simply want to have rules put into law or you wish to hand over the procurement process to an outsider. Thank you, Mr. Speaker.

The Prime Minister (Hon. Kamla Persad-Bissessar): Mr. Speaker, I listened with consternation to both hon. Members on the opposite side, and what they are suggesting is that we must come with a policy and say: "This is the policy and nothing else", then you will be defeating the entire purpose of a joint select committee [*Desk thumping*] and that has been their way.

The hon. Member will stand there and pontificate about we have no policy 18 months later on procurement. What did they do? They brought absolutely nothing! Within the 18 months, we do have the legislative proposals. We have

JSC (Appointment of)
[HON. K. PERSAD-BISSESSAR]

Wednesday, November 09, 2011

spent one year in the joint select committee. Mr. Speaker, they did not even get off the ground. They did not even get started when it came to procurement. Their whole approach to procurement was totally different.

When the hon. Member said, what is the policy? I said sotto voce here that the policy is certainly not that of the former administration, because they made no attempts whatsoever to deal with procurement and disposal of assets of the Government. None whatsoever! Therefore, it is hypocritical, in my respectful view, to come here and tell us that we have a populist approach. Well, that is why we are here and you are on that side. That is why. [*Crosstalk*] We have a populist approach and we listen and then we lead and that is what they failed to do. So, should we come with a policy, what is the purpose of a consultation exercise with stakeholders? What would have been the purpose? Then you blow hot and cold. You took five years to deal with the DNA legislation, we have brought it within 17 months—we brought a new Bill which was passed here in this House and it will go up to the Senate, and so you say, “Oh, that is your policy. That DNA is your policy, take it or leave it.”

So, on one hand when we bring fixed policy, and we say, “Look this is what we are going with”, you are not happy. On the other hand, when we use the process of the joint select committee, you complain about that. So, as far as I see it, you could never please those on the other side. They will never be pleased, no matter what approach is taken.

And so, Mr. Speaker, I have sat in this Parliament for many years as so many other Members have done, and I have seen many joint select committees sitting during one session of the Parliament and coming back in two sessions and sometimes coming back three and four times and still never getting it off the ground. So to say that it has taken this period of time—and, again, like others, I thank the committee Members for their work—it is not to say that it has been delayed inordinately. The point is, we are committed to this procurement legislation. We made that commitment, and we will abide by that commitment.

Should it be then that we sit in a Cabinet and we decide that this should be the way it should go and this is what the policy should be? Then why are you calling in the contractors? Why are you calling in other stakeholders to speak with them? Why? Why are you looking at other models from other parts of the world? So, I think the approach has been a good approach, we will get there.

I was advised that there were many times when persons did not even attend the meetings and that is why I asked for the report—I just got it in my hand—to

look at it again. In terms of persons attending, we had problems with a quorum. If you want, I will share it with you. I am sure you have a copy. You were a Member of the committee. One would see from the Minutes of those meetings those Members who from time to time did not come. That was one of the issues that was raised by your good self on the other side at one point in terms of a small Parliament and the number of times you would have to come to sit. So, there were times when Members on this side and Members on your side did not attend, and so the quorum was not always available. So it is something that we have to look for if we are committed. I was advised by Members of the committee that this happened.

Dr. Gopeesingh: The anti-gang legislation committee was going on at the same time.

Hon. K. Persad-Bissessar: So, there were two committees at the same time. So let us try and get it done in this round. I do not think the approach should be for me and our Cabinet to fix it and say, “This is what we want, we do not want to hear anything else.” I do not think that is the approach at all. So, therefore, in this session, let us try and get this right.

Dr. Rowley: Before you close.

Hon. K. Persad-Bissessar: Sure.

Dr. Rowley: Mr. Speaker, I thank the Prime Minister for giving way. When I intervened in the debate, I hope I did not convey the impression that I was talking about any hold-up in the process or placing blame on anybody. What I sought to do—and if I failed to do that I apologize—was to point out that notwithstanding what the process was—one process versus the other—we are at a point where a decision has to be made—that is the only point I wanted to make—because we have an either/or situation, and that is not going to come from individuals at a committee. It is going to come from the Government saying in this left-hand/right-hand situation the Government’s position is going to be this. That is where we are.

I was saying if that decision is made, we could move with alacrity to finishing the process. If it is not made, it is my humble view—I could be wrong—that there may be some protraction of the situation waiting for that decision. That is all I was trying to say, and I do not know why it had to turn out into what they did and what they did not do. The committee has done the work. We are at a point where I am expecting the Government to say, okay, we have heard all of this and we have seen all of this, our position is this and, therefore, we will go forward on that line. That is all I am saying.

10.00 p.m.

Hon. K. Persad-Bissessar: I do not know if this report was signed by all the Members of the committee.

Dr. Rowley: I did not sign anything.

Hon. K. Persad-Bissessar: You did not sign it. So you do not agree with the report presented to the Parliament? Through you, Mr. Speaker, if I may—because in this report I do not see this diametrically—opposed approach. The report gives no such information to us. I do not know if it is in there but reading it what I am being told is that the committee needs more time and is asking for it to continue its work and to take the past information gathered. So, should that be the problem, I am sure—I am advised by my Members who are on the committee—the Committee now having reported can share this information that they are almost at an end, and it only reached there to make these decisions because of that consultative process that took place before. So let me say, it is now 10.01 p.m. and I want to thank the hon. Member for Diego Martin West for his apology as just proffered to us. Mr. Speaker, I thank you very much.

Hon. Dr. R. Moonilal: Mr. Speaker, I could not put it better myself. I beg to move.

Mr. Speaker: Members, can I have your attention, your silence please?

Question put and agreed to.

Resolved:

That this Joint Select Committee be mandated to:

- (a) consult with stakeholders, experts and other interested persons;
- (b) send for papers, persons, records and other documents;
- (c) recommend amendments at the proposals with a view to improving the drafts;
- (d) submit a report to Parliament within three months from the date of appointment.

ADJOURNMENT

The Minister of Housing and the Environment (Hon. Dr. Roodal Moonilal): Mr. Speaker, I beg to move that this House do now adjourn to November 11, 2011 at 1.30 p.m. in the afternoon, and on that afternoon we will

Adjournment

Wednesday, November 09, 2011

have the Private Members' Day and the Opposition Chief Whip may like to indicate what matter we will be dealing with on that day. Mr. Speaker, I beg to move.

Miss McDonald: Mr. Speaker, I hereby give notice that on November 11, 2011 at 1.30 p.m. we will be debating Motion No. 1 under Private Business. Thank you.

Mr. Speaker: Before putting the Motion or moving the motion for the adjournment there is a matter to be raised on the adjournment, it is in the name of the Member for Port of Spain North/St. Ann's West. Fifteen minutes for your contribution and fifteen minutes for the Member for Caroni East, the Minister of Education.

**Tunapuna Hindu Primary School
(Issues Relating to)**

Mrs. Patricia McIntosh (Port of Spain North/St. Ann's West): Mr. Speaker, as an ordinary citizen but more so as an educator, it behoves me to draw the attention of this honourable House to a most undesirable and unwelcomed situation that has developed in some of our nation's schools, a situation that does not augur well for the advancement of education in our beloved country of Trinidad and Tobago.

Mr. Speaker, I should like to cite the case of the Tunapuna Hindu Primary School and present the issues involved against a backdrop of events. Mr. Speaker, on the June 17, 2011, Mrs. Sita Gajadharsingh-Nanga, Principal of Tunapuna Hindu Government Primary School, wrote a letter to the Teaching Service Commission—a letter that I have here, I should call it appendix A—in which she complained that over the past two years she had been subjected to numerous acts of intimidation and harassment perpetrated by the [Sanatan Dharma Maha Sabha](#) Board and or several of its members. As a consequence, she has requested a release from the SDMS Board and a transfer to the Government Teaching Service. Among the reasons cited by Mrs. Gajadharsingh-Nanga for her request for transfer are:

- 1) "The Secretary General threatened to lock me out of the school for taking in non-Indian children who were within the catchment area." And I am quoting from her letter—I have just enlarged the print:

"He told me in no uncertain terms that I must not admit black children into the school and admission lists for both primary and preschool are being scrutinized to ascertain whether I am following instructions."

Tunapuna Hindu Primary School
[MRS. McINTOSH]

Wednesday, November 09, 2011

- 2) The Secretary General was in an uproar because two out of eight OJTs sent to the school were non-Indian. He threatened that the schools' keys would be taken from me because I was changing the culture of the school and I was ordered to immediately get rid of the OJTs."

Indeed, Mr. Speaker, a little more than one year ago on March 12, 2010 the Secretary General of the [Sanatan Dharma Maha Sabha](#), Mr. Satnarine Maharaj, had written a letter—and I have it here as appendix B—to Mrs. Gajadharsingh-Nanga as follows, and I quote:

"Please be reminded that Tunapuna Hindu School is the property of the [Sanatan Dharma Maha Sabha](#) Incorporated and its control falls under the SDMS Education Board of Management. We have the right to ensure that the culture and religion of the school reflects the culture and religion of the SDMS.

In recent weeks without the consent of my board you have admitted a secretary who is not a Hindu and does not respond to teachers and students in our tradition. In addition, you have permitted a number of OJTs who are not Hindus and do not conform to our dress code. We hereby advise that within two weeks you send these persons back to the offices from which you accepted them. We view this as a serious breach of the Concordat and will take positive action if our instructions remain unfulfilled.

Signed,

Satnarine Maharaj, Secretary General."

Mr. Speaker, I should like to advise this honourable House that the Concordat of 1960, which is the agreement between the Denominational Boards and the State, gives those boards the right indeed to ownership of property, and the right to the teaching of the religion of the particular denomination that owns the school by teachers professing to belong to that religion. Mr. Speaker, the Concordat does not give the Denominational Board or any of its members the authority to pronounce on the placement of clerical or ancillary staff and the corresponding execution of duties and responsibilities. The document speaks very deliberately to the delivery of the religious education curriculum by teachers, and I should like to refer to section 3 of the Concordat and I quote:

"In denominational schools...the religion of the particular denomination which owns the school will be taught exclusively and by teachers professing to belong to that Denomination."

Mr. Speaker, there is absolutely no mention of ancillary staff and the execution of their clerical duties. Mr. Speaker, it is with great consternation that I view the approach adopted by Mr. Satnarine Maharaj and the Board of the [Sanatan Dharma Maha Sabha](#). Mr. Speaker, in our beloved country of Trinidad and Tobago where we promote multiculturalism, where we promote unity and harmony in diversity, inclusion and tolerance, no child, as a matter of fact, no one should be refused admission to any institution or be excluded from any event, function or activity on the basis of colour, creed, race or ethnicity. Our national anthem speaks to this fact when we sing the words, “Every creed and race find an equal place”.

Mr. Speaker, I am calling for radical discussions and national debate on the role of religion in respect of the exclusion of students and or staff from certain denominational schools, where those persons do not profess the religion of the particular denomination. Mr. Speaker, I should like to know what is the ruling of the Equal Opportunity Commission on this matter. While the commission is busy pronouncing on Sen. Devant Maharaj’s allegations of racism in respect of grants awarded under PNM administration, it would be interesting to hear what they have to say on this issue where in certain schools children are denied the opportunity of education, and workers the opportunity of employment based on the grounds of religion. This is in total defiance of the Equal Opportunity Act.

Mr. Speaker, on September 05, 2011, the first day of the commencement of the school year, Mrs. Gajadharsingh-Nanga received a letter from Mr. Satnarine Maharaj instructing her to report to the office of the School Supervisor III. Since that time to date, Mrs. Gajadharsingh-Nanga has been debarred from entering the school where she is principal and has been seeking direction in respect of her status from the Ministry of Education as well as the Teaching Service Commission. Mr. Speaker, the Teaching Service Commission has been clear in its instruction to the Ministry of Education, that the latter’s responsibility is to ensure that teachers and or principals be allowed to perform their duties uninhibited and without fear or favor. However, despite several requests by the Teaching Service Commission that the Ministry of Education should seek to resolve this unlawful matter as soon as possible, the situation remains unchanged. As a matter of fact, the situation has deteriorated significantly.

Mr. Speaker, on October 24, 2011, two school supervisors accompanied Mrs. Gajadharsingh-Nanga to the Tunapuna Hindu Primary School where all three were denied entry to the school’s compound. They had to summon the police to instruct the security guard to allow them entry to the school. They had to summon

Tunapuna Hindu Primary School
[MRS. McINTOSH]

Wednesday, November 09, 2011

fire officers to break the locks of two doors to gained entry to the principal's office, and when they had finally gain entry, the supervisors were unable to locate the attendance register and the logbook—properties of the Ministry of Education—so that Mrs. Gajadharsingh-Nanga could sign as having reported for duty and the supervisors could make the relevant entries in the respective books.

Mr. Speaker, on September 25, the two supervisors and Mrs. Gajadharsingh-Nanga returned to the school but were again prevented from entering the compound. This most unacceptable and illegitimate situation persists to date. The supervisors and principals have been debarred by the board from entering the school and performing their duties on behalf of the State. Subsequently, to add insult to injury, Mr. Satnarine Maharaj accompanied by Mr. Devant Maharaj, Minister of Transport, visited the Tunapuna Police Station to press charges against the principal and the two school supervisors and the police and fire officers who had accompanied them to the school on the day of October 24. Mr. Speaker, if this is not the height of arrogance and contempt for the State on the part of a board then I do not know what is!

Mr. Speaker, the [Sanatan Dharma Maha Sabha](#) Board has arrogated unto itself an authority it does not possess. While the buildings that house the Tunapuna Hindu Primary School belong to the board, the school itself, that body that comprises the students, the teachers and administrators and the school's operations fall under the jurisdiction of the State.

10.15 p.m.

Like all denominational boards the Tunapuna Hindu Primary School is indeed, by law, a public school. Denominational schools, Mr. Speaker, are funded by public money, taxpayers' money. Teachers are paid by the State and resources are provided by the State.

Mr. Speaker, all schools, denominational or government, are run by the Ministry of Education acting on behalf of the Teaching Service Commission. And, Mr. Speaker, it is indeed the Teaching Service Commission, the agent of the State that possesses the sole authority to appoint, retain, promote, discipline, transfer or terminate teachers and administrators, not the board, not the board.

Mr. Speaker, the Concordat to which Mr. Maharaj is referring is abundantly clear on this issue, and I should like to refer to section 4, and I quote:

“The right of appointment, retention, promotion, transfer and dismissal of teachers in Primary Schools will rest with the Public Service Commission.”

—of which the Teaching Service Commission is part.

In addition, Mr. Speaker, under the Industrial Relations Act the board has no power, absolutely no power, to lock out either teacher or administrator and prevent him or her from performing his or her duties.

Despite the Permanent Secretary's instructions to the principal to report for duty at the school, the Board of the Sanatan Dharma Maha Sabha remains inflexible and resolute in its stance to lock out the principal. No matter what the Ministry says, the board is unwilling to change its position.

Mr. Speaker, I have to ask, where is the hon. Minister of Education in all of this? He has been deafeningly silent on this issue. Mr. Speaker, the public has a right to know what action the hon. Minister of Education intends to take in respect of this highly unlawful and untenable situation.

Mr. Speaker, this not the first time that a denominational board has attempted to engage in such illegal action. I should like to cite an instance in the past where the ASJA board locked out a principal who was subsequently transferred.

Currently, Mr. Speaker, the Trinidad and Tobago Unified Teachers Association (TTUTA) is dealing with three cases in which the ASJA board has debarred teachers from entering their schools, and/or signing the attendance register.

In the ASJA Primary School in San Fernando there is a case of a teacher who has been locked out for over three months. Mr. Speaker, TTUTA has publicly condemned this action on the part of the SDMS and ASJA boards, and I should like to quote from an advertisement appearing in the *Sunday Express* of October 30, a TTUTA ad, and I would like to read the last paragraph where TTUTA says:

“TTUTA rejects these unilateral, illegal, reprehensible actions of the SDMS board and the Asja board and calls on the Ministry of Education, Teaching Service Commission and the national community to ensure that such thuggery, injustice and arrogant contempt by the boards are eradicated in schools.”

Mr. Speaker, I should like to join TTUTA in calling for national dialogue on what it describes as arrogant contempt by some boards for the machinery of State, a stance that must be stopped before it is too late. However, Mr. Speaker, in the final analysis, it is the hon. Minister of Education who must be held accountable for this deteriorating and unlawful situation that could alter, in a very hideous manner, the face of education in Trinidad and Tobago. I thank you, Mr. Speaker.
[Desk thumping]

The Minister of Education (Hon. Dr. Tim Gopeesingh): Mr. Speaker, this matter involves a principal of a school belonging to the Sanatan Dharma, the board itself, the Teaching Service Commission and the Ministry of Education. Permit me to give a chronology of the events in this matter, one letter which, yes, the Minister read, so I will be brief in the summary of the chronology of events.

On June 17, 2011 Mrs. Ghadarsingh Nanga wrote a letter to the Teaching Service Commission requesting a transfer to a government primary school, and in which she made numerous allegations about the Sanatan Dharma Maha Sabha Board. That letter was only copied to a School Supervisor III, no one else at the Ministry.

On August 10, 2011 a letter from the Secretary General of the Maha Sabha was sent to the Teaching Service Commission supporting Mrs. Nanga's request for a transfer and making allegations against her. That was not sent to the Ministry of Education, it was sent to the Teaching Service Commission. Remember Mrs. Nanga's letter was also sent to the Teaching Service Commission bypassing the Ministry of Education.

August 22, a memorandum from the Teaching Service Commission, for the first time, came to the Ministry of Education seeking the Ministry's comments, recommendations with respect to Mrs. Nanga's request for transfer, the issues raised by both Mrs. Nanga and Mr. Maharaj and a report submitted by the School Supervisor III, St. George East Regional Education district. So on August 22 for the first time the Teaching Service Commission wrote the Ministry of Education asking for recommendations on this issue.

On August 30, 2011 the Permanent Secretary from the Ministry of Education sent a letter to the Teaching Service Commission stating comments on the issues raised by the Commission in this regard. The Minister of Education indicated the following:

1. The principal had not followed the established procedures in applying for a transfer. In this regard the Public Service Commission Regulations require that such an application from a teacher in an assisted school be made first through the board to the Permanent Secretary. This was not done, as such the issue of a transfer is not properly before the Commission.

This is a letter from the Ministry of Education, Permanent Secretary, to the Teaching Service Commission.

2. The issues raised by both the principal and the Secretary General of the Maha Sabha contained many allegations that have not been substantiated.

3. The decision regarding the principal's transfer to another school which had been advanced as a possible solution to the matter remains for the Commission to decide.

So far these issues are for the Commission to decide. The Teaching Service Commission wrote the Ministry, the Ministry wrote back the Teaching Service Commission on August 30.

On September 2, letter from the Maha Sabha General Secretary to Mrs. Nanga advising her to report for the duty at the St. George East Education District Office.

On September 26 memorandum from the DPA to the Ministry of Education requesting that the PS, that is the Permanent Secretary, take steps to ensure that the principal be allowed to carry out her duties at the school.

October 14, letter to the Maha Sabha Secretary General confirming that unless Mrs. Nanga is transferred or otherwise directed by the Teaching Service Commission, the Maha Sabha Board has no authority to debar her from reporting for duty at the Tunapuna Hindu School—that was written.

On October 20, correspondence from MTS confirming that Mrs. Nanga would be allowed entry to the school.

October 24, Mrs. Nanga accompanied by the School Supervisor III and School Supervisor II attached to the St. George East Education office went to the school.

October 24, letter from the Secretary General Sanatan Dharma Maha Sabha advising MTS that it had been relieved of its responsibility at the Tunapuna Hindu School. [*Interruption*]

On October 24, report by the School Supervisor III St. George East Education Office on the events at the Tunapuna Hindu School when the principal attempted to resume her duty.

On the same day, October 24, the second letter from the Teaching Service Commission asked the Ministry of Education to investigate the matter, and the letter reads as follows: from Director of Personnel Administration to the Permanent Secretary, Kathleen Thomas, date, October 20, 2011. This letter was received on October 24, 2011.

Re: Mrs. Nanga, Tunapuna Hindu School.

The enclosed copy of a letter with attachments dated October 10, 2011 from the Secretary General, Board of Management is forwarded for your

Tunapuna Hindu Primary School
[HON. DR. T. GOPEESINGH]

Wednesday, November 09, 2011

attention. Kindly investigate the claims contained therein and submit your comments, recommendations for the attention of the Teaching Service Commission as a matter of urgency.

This letter was received by the Ministry on October 24. So, on receipt of this letter the Permanent Secretary appointed School Supervisor II and School Supervisor I to investigate these allegations made by the board and certain allegations made by the principal. The reports are to be submitted by this Friday, November 11, 2011. When we get the report we will send the report to the Teaching Service Commission for the Teaching Service Commission to act on it. So the Ministry of Education has accepted its responsibility and behaved in a very responsible manner.

The first time that we got a letter from Teaching Service Commission was on August 22, we responded on August 30 to the Teaching Service Commission. They wrote us back for the second time on October 24 and we have appointed the two Members of the team to investigate the matter. When the matter is completed on Friday, November 11, the report of that will be sent to the Teaching Service Commission.

Member for Port of Spain North/St. Ann's West, you have raised some issues about equality of treatment, and the need for equality of treatment in all schools, and we uphold that noble precept and principle. There is no question whatsoever that this People's Partnership Government strongly advocates equality and social justice, there is no question. [*Desk thumping*] But I would like to ask you, you would remember—you perhaps were not in this Parliament, you were not. For years the People's National Movement government resisted an Equal Opportunity Commission, the formation of an Equal Opportunities Commission, for years, for years you never wanted it. [*Crosstalk*] It took a UNC Government and the Privy Council to help set up the Equal Opportunity Commission despite you kicking and ranting and raving about it, and today it is mass hypocrisy—

Hon. Member: Oh yes!

Hon. Dr. T. Gopeesingh:—that you could come and ask for it to be before an Equal Opportunity Commission. Devant Maharaj, if you state that Devant Maharaj used the Equal Opportunity Commission; he put his matters to the Equal Opportunity Commission. The Equal Opportunity Commission deliberated on it and they gave their verdict. I would kindly advise you, Member for Port of Spain North/St. Ann's West, you have a matter that is close to your heart, you should probably send the matter to the Equal Opportunity Commission for their deliberations on it. I thank you very much, Mr. Speaker.

Mr. Speaker: Member for Port of Spain North/St. Ann's West, I did say St. Ann's East, I apologise to you. I am saying I just did not identify your constituency properly.

Safety and Security Briefing

Members, before putting the question, may I inform all Members, all hon. Members are invited to a safety and security briefing by the Marshal of the Parliament in the J. Hamilton Maurice Room, the Mezzanine floor, Tower D, not tonight [*Laughter*] but on Friday at 11.00 a.m. During this briefing the following points will be discussed; we are in a new building so we have to alert all Members of Parliament: fire emergency exits; exiting the Chamber and other areas of the Parliament; the role of the Parliamentary Security Unit Officers; Muster Point and security; and Members' accountability.

We are asking all Members of this honourable House to be present on Friday, we have a sitting but come in at eleven o'clock, and we will take care of you afterwards. So we want you to come to this safety briefing on Friday at 11.00 a.m., Hamilton Maurice Room.

Question put and agreed to.

House adjourned accordingly.

Adjourned at 10.30 p.m.

WRITTEN ANSWER TO QUESTION

The following questions were asked by Dr. Keith Rowley:

**Attorney General's Legal Services
(Details of)**

3. **Dr. Keith. Rowley** (*Diego Martin West*) asked the hon. Attorney General:

With respect to the hiring of private legal services for the period June 1, 2010 to August 31, 2011 could the Attorney General:

- a) state the total expenditure paid and/or owed to Attorneys outside of the public service?
- b) identify each assignment, stating the name of the project/assignment, the attorney or legal team hired and the amount paid or outstanding to each entity?
- c) also identify the nature of the specific output obtained from each attorney/legal team as it relates to the payments or liabilities mentioned in (b) above?

Pursuant to his reply to question 3, earlier in the proceedings, the Attorney General (Sen. The Hon. Anand Ramlogan) caused to be circulated to Members of the House of Representatives the following:

MINISTRY OF THE ATTORNEY GENERAL

APPENDIX 1: Q 3

*Fees paid to attorneys by the Ministry
with effect from June 1, 2010 to August 31, 2011*

NAMES	AMOUNT PAID		PROJECT/ASSIGNMENT/MATTER
Alexander, Jeremie and Company	230		notarization of G-Pan Documents
	920		notarization of G-Pan Documents
		1,150	

NAMES	AMOUNT PAID		PROJECT/ASSIGNMENT/MATTER
Astigarraga Davis	1,336,165		Consolidated Summary inv#1 to inv#4 f.t.p. June 12009 to March 31 2010 re consolidation of Triton and Restitution Matters)
	294,531		re Triton and Restitution matters
	728,372		re prof services in legal matters TRITON and Restitution matters; CLICO Energy matter, CLICO Energy matter
		2,359,068	
Avory M Sinanan	690,000		re Steve Ferguson & Ish Galbaransingh v AG (judicial); Steve Ferguson & Ish Galbaransingh v AG and Sherman Mc Nicholls (constitutional appeal)
	28,750		re Christianne kelsick (an infant suing by her father and next of kin Rawle Kelsick) v Dr Ajit Kuruvilla NWRHA and the AG
	20,700		Vernon Ashby vs Registrar of the Industrial Court
	552,000		Fees Re: Claim No. CV 2011-01052 - Tanya Gayadeen and Curtis Gayadeen v the Attorney General of T&T
	20,700		re Tanya Gayadeen and Curtis Gayadeen v AG
	86,250		Fees Re: Claim No. CV 2010-004144 Steve Ferguson & Ishwar Galbaransingh v The Attorney General of T&T and His Worship Sherman Mc Nicholls Chief Magistrate - Application for Disclosure

NAMES	AMOUNT PAID		PROJECT/ASSIGNMENT/MATTER
	69,000		Impounding of Motor Vehicles by the Port of Spain City Corporation
	575,000		I Galbaransingh & S Ferguson; S Ferguson and I Galbaransingh v AG - substantive application for Judicial Review, pplication for permission to apply for Judicial Review - Hindu Credit Union v AG and Sir Anthony Coleman (appointed Commissioner)
	115,000		Fees Re: Application for Bail, Ishwar Galbaransingh and Steve Ferguson
1	230,000		re application for bail - I Galbaransingh & S Ferguson; S Ferguson and I Galbaransingh v AG and Sherman Mc Nicholls - application to extend time and for leave to appeal to the Privy Council; Christianne kelsick (an infant suing by her father and next of kin Rawle Kelsick) v DrAjit Kuruvilla NWRHA and the AG
	115,000		Re: Appeal against the Refusal of bail by MON Desir J - Ishwar Galbaransingh & Steve Ferguson
		2,502,400	
Alvin Fitzpatrick	276,000		re Herbert Charles vs AG
	250,000		re Abzal Mohammed v PSC and the Public Service Appeal Board 'Snr counsel's fee
		526,000	

NAMES	AMOUNT PAID		PROJECT/ASSIGNMENT/MATTER
Alan Newman	230,549		re Paponette; CLICO Judicial Review (Alexander Jeremie letter); CLICO Judicial Review (RLM letter)
	1,255,538		re Broadgate Place Tower; Broadgate Place Tower; Broadgate Place Tower; Calder Hart; Ingrid Isaac - contract of employment terms
		1,486,087	
tata K.O. Kujifi	9,230		Fees Re: Lease! Rental of Office Space in a building at L.P No. 101 Tunapuna Rd. Anna to accommodate the Unemployment Relief Programme (URP)- Ministry of Works
		9,230	
Arnold and Porter LLP	40,915		re services rendered in advising on the Citibank Yen Swap Transaction
	39,876		re services rendered in advising on the Citibank Yen Swap Transaction
		80,791	
Christopher Sallon	466,624		re: the State and Franklin Khan and Eric Williams
		466,624	

NAMES	AMOUNT PAID		PROJECT/ASSIGNMENT/MATTER
Charles Russell LLP	1,396,773		re Darryl Samnarinesingh v the State; Barbara Jean Hamel-Smith & Suzette Hamel-Smith v the AG; Judge's position in a judicial; Malcolm Johnnathy v the AG; Chandresh Sharma v AG; Criminal Procedure (amendment) Act 2009; Evidence (amendment) Bill 2009; opinion on Judge's actions; Malcolm Johnnathy v the AG; Gregory G Donnor; Marvin Boisselle v the State; Rasheed Karim; Sean Sean Soobransingh
	342,801		Professional services rendered Re: Maraj Naraysingh v the DPP and the AG
	1,547,645		Malcolm Johnnathy v AG; Felix Augustus Durity v AG; Anino Garcia and Curtis Marshall v State; Marion Daniel & Curtis Archibald v State; Gordon Cunningham v Stae; Francis Merrigque v DPP and AG; Winston Phillip Jr v State; Nicholas Cadet v State
Charles Russell	481,406		re Frank Ramai v AG; George Newton v Joanne Connor Mulgansingh v AG; Chandresh Sharma v Patrick Manning & 17 others
	1,263,222		re Johnson and Balwant v AG; L Phillip v AG (Yasin Abu Bakr), T Constantine (Kala Akil Bua); Franklin Khan - misconduct Financial Action Task Force (FATF) - newspaper article - Guardian; Earle Charles v State
	1,681,545		re Ronald John v State; Commercial Procurement & Finance - OPVs, FICS, Helicopters & Fast Ferries; Dave Burnett v State; Civil Fraud Desalcott Project; Franklin Khan - misconduct; Jack Wamer/FIFA

NAMES	AMOUNT PAID		PROJECT/ASSIGNMENT/MATTER
	711,712		re Akim Carter v State, Kevin Edmunds v State; Dike Williams v State; Offshore Patrol Vessel Procurement (OPV); Carl Jones v State
	2,048,199		re Ronald Tewarie v State; Finbar Gangar, Chandresh Sharma v Dr Lenny Saith - Mm of Public Admin; Sanatan Dharma Sabha v Patrick Manning; T&T Civil Rights Assoc & Rajh Basdeo; Alphie Subiah v AG
	2,091,245		re BAE v GORTT
	1,116,842		prof services rendered Helicopter Project; Offshore Patrol Vessel Procurement; Helicopter Project; Extradition - USA; Lennox Phillip v AG a/c Yasin Abu Bakr Trevor Constantine; Romauld James
	7,645,727		
		20,327,117	
Christlyn Moore	50,000		re Ruby Thompson-Bodie and Lenore Harris vs Cabinet and AG
		50,000	
David West	20,000		Advise with respect to work in the Central Authority Unit
	25,000		Advise with respect to work in the Central Authority Unit
	25,000		Advise with respect to work in the Central Authority Unit - August 2010
		70,000	

NAMES	AMOUNT PAID	PROJECT/ASSIGNMENT/MATTER
Dana Seetahal	37,500	Requisition fees re Stephen Robinson v State; State v Auren Grappie; Michael Griffith v State
	272,875	re auction of properties AG v Jamaat al Muslimeen
	140,000	retainer re Mano Sakai and Surendra Sakai v the Workshop Magistrate Busby Earlet; Joel Fraser v Mag. Sherman Mc Nichols
	37,500	retainer fees re Stephen robinson and Michael Griffith v State
	37,500	Snr counsel fee re Sheffie Roberts and Mervyn Nedd v State
	37,500	Requisition fees re Stephen Robinson v State; Auren Grappie v State; Marvin Nedd v State
	722,500	Refreshers in Joel Fraser v Sherman Mc Nichols and amended invoice re state v Shervon Peters and 9 others for murder (Vindra Naipaul Coolman trial)
	37,500	requisition fees - October 2010 re Sheffie Roberts v State; Jemerty Rolle v PC Stewart; ASP Goopersad v Andrew Stroude; Henry Felix v PC Bachoo
	282,000	re State V Rick Gomes
	37,500	re retainer fees in appeals for DPP
	250,000	Fees for the sale of Jamaat Property & Transfer of Property June 2010- December 2010
	37,500	requisition fees re Criminal appeals Vivian Clarke, Mc Gilvary & Martin v State; Dave Burnett v State

NAMES	AMOUNT PAID		PROJECT/ASSIGNMENT/MATTER
	37,500		Retainer for DPP for April 2011
	37,500		Retainer for DPP for May 2011
	37,500		re appeals for DPP - June 2011
	75,000		Requisition Re:Mapisterial Appeal s:Marlon Stanley v PC Osborne, Orlando Duncan v PC Nelson, Tyrell Talyor v PC Brigmohansingh, Fergus Thomas v PC Phillip, Kern Commissiong v PC George, Boswell v WPC Leon, Joel Medina v PC Ramsawak, John Figaro v PC Julien, Winston Prince v PC Jhagroosingh, Kamini Lochan v PC Reyes. Criminal Appeals: Kerron Lopez v The State, Shelly Ann Anjanoo v The StateGarvin Sookram & Keron Lopez v The State
	37,500		Requisition for monthly retainer Re: Mapisterial Appeals:Marcus. Garica v Bebee, PC Gadar v Anthony Octava, C&E Anthony Chandlaer v Glen Alpheus & Josephine Alpheus and WPC Huggins v Paula Sellier. Criminal Appeals: Garvin Sookram & Keron Lopez v The State
		2,154,875	
Derek Ali	15,000		Gopaul & Co v AG
	33,400		re CPO v PSA
		48,400	
Douglas Mendes	661,250		fee on brief RBTT Bank Ltd vs BIR etc

NAMES	AMOUNT PAID		PROJECT/ASSIGNMENT/MATTER
	557,750		brief re: Shivannand v Ramnanan v PS Mm of Education; Daren Joseph v AG; Fabian La Roche el al v AG; AG v Universal Projects Ltd; Keron Matthews and proposed freezing order injunction by the Gov't against CL Financial Ltd
	82,800		G v Universal Projects Ltd; AG v Keron Matthews
	143,750		Carmel-Smith v Statutory Authorities Service Commission
	143,750		Basdeo Panday v Ejenny Espinet & DPP
		1,589,300	I
Devesh Maharaj & Associates	116,602		Fees Re: CA No. 154-2005- Vishnu Ramdath v Krishna Jaikaran and The Mayor, Alderman and Councillors and City of San Fernando
		116,602	
Deborah Peake	86,250		Fees Re: CV 2011-2027- Rudy Thompson- Boddie and Lenore Hams v The Cabinet of T&T and The Attorney General Of T&T
		86,250	
E C Sirjoo & Co	12,107		registration and commissioners fee and admin charges re lease of premises at no. 81_83 Abercromby St

NAMES	AMOUNT PAID		PROJECT/ASSIGNMENT/MATTER
		12,107	
Elaine Green	100,000		CV 2010-000456; no. 14074 P.C. Moore and no. 14930 P.C. Sifontes v. Mrs Nalini Singh, the Coroner for the St George West POS the DPP intervening
	157,500		Snr Supt Maurice Piggott v Ameer Edoo, S. Ferguson, I. Galbaransingh, & others
		257,500	
Edward Jenkins QC	215,179		Professional services rendered Re: Piarco Airport (28m Fraud)
		215,179	
Evans Welch	120,000		Fees Re: Commissioner of Police v Supt. Junior Copeland for murder
	65,000		requisition fees re Sgt Martin Phagoo vs Alisha Chunu for corruption
		185,000	
Fyard Hosein	460,000		re Jason Bissessar vs AG; Mukesh Maharaj vs the AG; TSTT vs the Integrity Commission & the AG
		460,000	
Fitzwilliam, Stone, Furness-Smith & Morgan	11,500		Disciplinary hearing and charges agsinst DrAnnand Chattergoon nephrology centre advice

NAMES	AMOUNT PAID		PROJECT/ASSIGNMENT/MATTER
	42,550		
		54,050	
Frederick Gilkes	150,000		Advice to AG re effectiveness of measures taken to secure the financial support afforded by GORTT to CLICO, British American Insurance Co Ltd and CIB and possible legal action arising from the findings of the investigation of Robert Lindquist into inter-company transactions within the CL Financial Group of Cos
		150,000	
Gittens, Smart & Co.	6,304		Professional services rendered Re: Lease/Rental of in the building located at No. 55 Edwards St. POS to accommodate the Specialised Youth Programmes Call Centre of the T & T Defence Force
		6,304	
Gilbert Peterson	150,000		CV 2010-000456; no. 14074 P.C. Moore and no. 14930 P.C. Sifontes v. Mrs Nalini Singh, the coroner for the St George West POS the DPP intervening
	310,000		Requisition for refreshers-Airports No. 2; Snr Supt Maurice Piggott v S. Ferguson, I. Galbaransingh, Brian Kuei Tung & others
	150,000		Re: Fabian La Roche, Roger Green, Anthony Andrews v The Attorney General, Daron Joseph v The Attorney General,

NAMES	AMOUNT PAID		PROJECT/ASSIGNMENT/MATTER
		610,000	
Gerald Ramdeen	146,500		Hindu Credit Union vs AG and others
	218,590		Fees Re: Matter of Appeal No. PSC-: DA 2 of 2010 between Former Police Constable No. 12889 Clinton Auguste ^a 218,590 The Commissioner Of Police
		365,090	
Hinds & Co	11,000		legal representation for Raymond Charles, fire fighter
		11,000	
H R Ian Roach	30,000		re Kenneth Munroe-Brown v AG
		30,000	
Ian L Benjamin	139,150		Devant Maharaj v AG, Asha Ragbir v DrAfraz and AG; Commissioner of Police v Carl Bridglal
	64,400		re Lutchmeesingh v AG; fee on brief for persuing papers and advice in conference with John Mackay and Ms Reshma Ramcharan (Trintoplan engineers) with Ms Hosein and Ms Tang Pack CSS
	40,250		Ramlochan v AG

NAMES	AMOUNT PAID		PROJECT/ASSIGNMENT/MATTER
	138,000		NH International (Caribbean) Ltd v Commission of Enquiry into the award of all contracts to NH International and Arner Construction Ltd from 2002 to present
		381,800	
Israel B Khan	8,500		Refreshers fee for 2 days re Mervyn Edwards vs PC Sherwin LeIa and PC Kynan Nicholson; Sgt Edwards vs PC Aaron Mc Leod
	250,000		Abu Bakr v Commissioner of Police and AG
		258,500	
Jagdeo Singh	100,000		re Habeas Corpus application for Hassen Atwell to take instructions, perusing application and submission, appearing on application etc
	100,000		Appeal from order of Justice Jones dismissing application for Writ of Habeas Corpus by Hassen Atwell
	65,000		No. 1707 Fire Sub Station Officer Wsham Mohammed(Retired) Re: Taking instructions, appearances at San Fernando Magistrate Court, conferences, advice legal research,general care and conduct
	133,333		Hindu Credit Union vs AG and Sir Anthony Coleman (appointed Commissioner)
		398,333	

NAMES	AMOUNT PAID		PROJECT/ASSIGNMENT/MATTER
James T Lewis	1,699,909		S. Ferguson & I. Galbaransingh - USA v Northern Construction Ltd & Calmaguip Engineering Corporation
		1,699,909	
J D Sellier & Co	5,348		re advice in connection with request by Farrow Partnership for copy Arbitral Award
	6,774		re renewal of lease from Solomon All Holdings Ltd to Min of Public Admin and Information Property
		12,121	
Kelvin Ramkisson	65,000		brief as counsel for attendances at the hearing of the Bail Application (Holdip J)
	35,000		S. Ferguson & I. Galbaransingh vs AG and Magistrate Sherman Mc Nichols
	175,000		fee on brief as Jr counsel for attendance at the hearing of the Constitutional motion re S Ferguson and I Galbaransingh v AG and Sherman Mc Nicholls; providing legal representation for the first name respondent re Sadiq Baksh, Kuei Tung v Mag. Espinet and DPP
	66,667		re claim between Ramnarace Nandoo and Nalini Singh; fee on brief as Jr counsel to Russell Martineau, consideration of the law, notice of application to dismiss matter on the basis of abuse and provisions of Mag's Protection Act, affidavit in support of application, attendance at court, general care and conduct

NAMES	AMOUNT PAID		PROJECT/ASSIGNMENT/MATTER
	399,999		re S Ferguson and I Galbaransingh v AG (appl for leave to apply for Judicial Review - Charles J); S Ferguson and I Galbaransingh v AG (appeal on the Judicial Review from order of Charles J); S Ferguson and I Galbaransingh v AG (Constitutional Appeal)
	75,000		Fees Re: Application for Bail, Ishwar Galbaransingh and Steve Ferguson
	15,500		Professional services rendered Re: Response to Pre-Action Protocol issued against the Hon. Minister of Finance for alleged defamation, issued by the Hindu Credit Union Cooperative Society LTD and its Directors
	200,000		Fees Re: Broadgate Place Property Company LTD v The Minister Of Planning Economic and Social Restructuring and Gender Affairs and Appeal against the Refusal of bail by MON Desir J - Ishwar Galbaransingh & Steve Ferguson
	250,000		re I Galbaransingh & S Ferguson; S Ferguson and I Galbaransingh v AG - substantive application for Judicial Review; I Galbaransingh & S Ferguson; S Ferguson and I Galbaransingh v AG and Sherman Mc Nicholls - application to extend time and for leave to appeal to the Privy Council
	50,000		Fees Re: Claim No. CV 2010-004144 Steve Ferguson & Ishwar Galbaransingh v The Attorney General of T&T and His Worship Sherman Mc Nicholls Chief Magistrate - Application for Disclosure

NAMES	AMOUNT PAID		PROJECT/ASSIGNMENT/MATTER
	18,500		Fees Re: Proposed claim by Hollis Hinds, Senior Business Analyst, Monitoring and Networking Unit, Ministry of Trade and Industry
	45,000		re Pre action protocol issued by Alexander Jeremie & Co - alledged unlawful CLICO policy of Gov't; and Pre action protocol issued by RLM & Co - alledged unlawful CLICO policy of Govt
		1,395,6661	
Kerwyn Garcia	55,200		Jr counsel fees re AG v Universal Projects Ltd; AG v Keron Matthews
	40,250		re Universal Projects Ltd v the AG
		95,450	
Liana Ramsahai	17,500		re investigation of the death of 12yr old Vanessa Doon at S/Grande County Medical
		17,500	
Larry N Lalla	150,000		re Abzal Mohammed v PSC and the Public Service Appeal Board - Jr counsel's fee
	100,000		re Gary Moore & PC Sifontes and Nalini Singh coroner St George West

NAMES	AMOUNT PAID		PROJECT/ASSIGNMENT/MATTER
	220,000		Fees Re: Claim No. CV 2011- 01052- Tanya gayadeen and Curtis Gayadeen v the Attorney General of T&T
	247,000		Fees Re: Claim No. CV2010-00182 Yasin Abu Bakr v the Attorney General ire
	100,000		Baksh & Kuei Tung vs Mag Espinet and DPP for fee on brief for providing legal representation for the first named respondent at the Court of Appeal, appearance at the application for extension of time for filing submission drafting and sitting submission appearing at the hearing on the substantive matter at the Court of Appeal
		817,000	
Lemuel Murphy	90,000		Fees Re: CV. 2011-00592 the Hindu Credit Union Society Ltd v The Attorney General and others
	75,000		re Hindu Credit Union vs AG and Sir Anthony Coleman (appointed Commissioner)
		165,000	
Lesley Ann Lucky Persad	16,500		fees Re: Administrative Claims by Christopher Sieuchand
		16,500	

NAMES	AMOUNT PAID		PROJECT/ASSIGNMENT/MATTER
Martin Anthony George & Co	499,675		Trade Dispute no. 6 of 2006 between Caroni Ltd & Assoc of Tech. Admin. And Supervisory Staff
		499,675	
M G Daly & Partners	41,624		re legal services on lease of office in a bldg to be constructed at Broadgate Place Broadway /South Quay POS
	53,400		re legal services on lease of office in a bldg to be constructed at Broadgate Place Broadway /South Quay POS
	21,850		re mediation services - Broadgate Place Property Co Ltd and the Govt
	30,475		Mediation Services- Broadgate Place Property Company Limited & Tha Government Of T&T
	100,999		Perusal and considerations of the statement of Rudyard Davidson and consultation with Allan Newman QC and Fees on brief (Senior and Junior Counsel) for mediation before Christopher Hamel Smith SC
	97,750		Fees Re: Opinion of the Prime Minister Stay at a private residence
		346,099	
Michael Quamina	134,167		fee on brief RBTT Bank Ltd vs BIR

NAMES	AMOUNT PAID		PROJECT/ASSIGNMENT/MATTER
	115,000		S. Ferguson & I. Galbaransingh and AG and Magistrate Sherman Mc Nichols
	23,000		Fees Re: Appeal No. PSC:- DA 2 of 2010 between Former Police Constable No. 12889 Clinton Auguste Auguste and The Comissioner of Police
		272,167	
Mark Strachan QC	58,107		Professional services rendered Re: World GTL and World GTL of St. Lucia v The Republic of Trinidad and Tobago
		58,107	
Marsha K. King	150,000		Re: Inquest No.61 of 2009/Inquest toching the death of Damien Antoine and CV 2009-00734/Joy Balkaran v The DPP
		150,000	
Martin Daly	287,500		Horace Reid v Minister of Finance and AG
	287,500		re Horace Reid v Minister of Finance and AG
		575,000	

NAMES	AMOUNT PAID		PROJECT/ASSIGNMENT/MATTER
Mark Seepersad	190,000		re Horace Reid v Minister of Finance and AG
		190,000	
Neal Bisnath	172,500		re vetting of legal documents - WAS AU Bond Issue
		172,500	
Nisha K. Persad	15,300		fees Re: Administrative Claims by Christopher Sieuchand
		15,300	
N D Alfonso & Co	363,833		re Top hat Yachts vs Evelyn Petersen and AG, Property Protectors Ltd and Cindy Jagroop; Jr counsel fees plus disbursement
		363,833	
NFC Global, LLC	2,560		Professional services rendered in the Legal Matters: Triton and Restitution
		2,560	
Om Lalla	115,000		Fees Re: CV 2011- 00592 telephone conference with Solicitor General, general care and conduct of matter

NAMES	AMOUNT PAID		PROJECT/ASSIGNMENT/MATTER
		115,000	
Pollonais Blanc, de la Bastide & Jacelon	16,954		prof. charges for services rendered re lease/rental of office space at 76 Henry St POS
		16,954	
Prof Philippe Sands	62,748		re T&T extended continental shelf of the arbitral
		62,748	
Raquel Birbal	25,000		Re: Enquiry into the circumstances surrounding the death of 19 year old Sharaz Khan, at the San Fernando General Hospital
	25,000		re death of Nikeisha Caine and unborn baby
		50,000	
Russell Martineau	23,000		Payment for fees for conferences, settling application affidavit and on brief re Latchmin Rampersad v Housing and vestment Land Ownership Multipurpose Co operative Society Ltd
	51,750		opinion on the Special Anti Crime Unit
	132,250		re: Gopaul & Co and AG; Ramnarace Nandoo v Nalini Singh

NAMES	AMOUNT PAID		PROJECT/ASSIGNMENT/MATTER
	86,250		V 2009-01834 - Rakesh Ramsook v The Comissioner of Police for Brief, Conference with Junior and Instructing and Settling affidavit
	230,000		CV 2010-04524- Broadgate Place Property Company LTD v The Minister of Planning Economic and Social Restructuring and Gender Affairs
	172,500		re Gary Moore & PC Sifontes and Nalini Singh coroner St George West
	86,250		re opinion-ex parte AG- David West; Death Penalty Legislation
	448,500		re EON Hewitt and others v Minister of Works & Transport and Transport Commissioner and Opinion - in the matter of the Directors of Petrotrin 2004 to 2009 and in the matter of the WGTI Inc
		1,230,500	
Robin Otway	6,325		requisition in the sale of Jamaat Property & transfer of property re AG v Abu Bakr and others
		6,325	
Sean Cazabon	6,000		wof. fees re Rosalie Roberts Safety Officer 1 v Altex Construction Ltd and Top Builders Ltd
	15,000		requisition fees re Insp. Millington v NH International Ltd; Safeway Access and Support Systems Ltd ; Turner Aiph Ltd

NAMES	AMOUNT PAID		PROJECT/ASSIGNMENT/MATTER
		21,000	
Sir Fenton Ramsahoye S.O	558,773		Professional services rendered Re: Advice on the implementation of the existing mandatory death penalty, Bnko Air Services LID and Advice on the termination of contract (SPORTT)
		558,773	
Stuart Young	115,000		brief on Joy Balkaran vs DPP
	17,250		Receipt and perusal of papers and instructions Conference with attorneys, conference with Minister of Works & Transport; settling pre action protocol letter; researching law; advising client; libel claim vs Sasha mohammed, Snr Multimedia Investigative Journalist CCN TV6 email to Gervon Abraham, Corn Specialist Mm of Labour
	103,500		legal fees re World GTL and World GTL St Lucia v the Republic of T&T and Petrotrin; Joy Balkaran vs DPP
	115,000		Fees Re: CLICO/CLF
		350,750	

NAMES	AMOUNT PAID		PROJECT/ASSIGNMENT/MATTER
Sonny G. Maharaj	230,000		Fees Re: Appeal No. 00042-2011 the Hindu Credit Union Co-operation Society v the Attorney General and Sir Anthony Coleman, QC (Appointed Commissioner)
		230,000	
Sushma Gopeesingh	50,000		Fees Re: Appeal No. 00042-2011 the Hindu Credit Union Co-operation Society v the Attorney General and Sir Anthony Coleman, QC (Appointed Commissioner)
	75,000		Hindu Credit Union vs AG and Sir Anthony Coleman (appointed Commissioner)
		125,000	

**Legal Matters Involving the State
(Details of)**

4. Dr. Keith Rowley (*Diego Martin West*) asked the hon. Attorney General:

With respect to the period June 1, 2010 to August 31, 2011 could the Attorney General identify each legal matter involving the State for which an out of court settlement has been approved and/or effected, identifying the attorney/legal team involved for the complainant and the total sum approved and/or paid to lawyers and to the complainants?

Pursuant to his reply to question 4, earlier in the proceedings, the Attorney General (Sen. The Hon. Anand Ramlogan) caused to be circulated to Members of the House of Representatives the following:

CASES SETTLED FROM JUNE 2010 TO PRESENT

	Suit Number	Parties	Attorney for Claimant	Date of Settlement approval	Total Approved	Damages	Interests	Costs	Total Paid
1.	Pre-action Protocol	Kelvin Ojoe v The Attorney General	Collin Selvon	12/7/2010	\$19,000.00				\$19,000.00
2.	HCA 4078/1995	Sumarie Dookhie v The Attorney General	Sunil Gopaul-Gosine	30/6/2011	\$23,564.80				\$23,564.80
3.	HCA 3909/1995	Ramcharam Mongru v The Attorney General	Sunil Gopaul-Gosine	30/6/2011	\$35,363.27				\$35,363.27
4.	HCA 397/1998	Mark Tsoi-A-Sue v The Attorney General	Marlon Sambucharam	7/7/2011	\$102,000.00				\$50,000.00

	Suit Number	Parties	Attorney for Claimant	Date of Settlement approval	Total Approved	Damages	Interests	Costs	Total Paid
5.	CV 2009-00312	Charles Osmond Cayones v The Attorney General	Freedom House Chambers - Ms. Cindy Bhagwandeem	4/5/2011	\$90,000.00 (exclusive of interests and costs)		9% from date of service to date of judgment	\$12,100.00	\$102,100.00
6.	CV 2009-1337	Harripersad Chanai v The Attorney General	Freedom House Chambers - Mr. Kevin Ratiram	24/2/2011	\$150,000.00 in full and final settlement				\$150,000.00 in full and final settlement
7.	CV 2009-02591	Johnny Maharaj v The Attorney General	M. Shalini Khan	14/5/2010	\$94,750.00 (exclusive of interests and costs)		\$11,355.00	\$13,703.66	\$94,750.00 (exclusive of interests and costs)
8.	CV 2009-00591	Selwyn Pascal v The Attorney General	Freedom House Chambers— Ms.Cindy Bhagwandeem	27/7/2010	\$153,900.00 Plus interests and costs			\$16,965.00	\$128,500.00 exclusive of costs

	Suit Number	Parties	Attorney for Claimant	Date of Settlement approval	Total Approved	Damages	Interests	Costs	Total Paid
9.	HCA 4088/1995	Rambhajan Hitram v The Attorney General	Sunil Gopaul Gosine		\$5,186.37 in full and final settlement				\$5,186.37 in full and final settlement
10.	CV 2010-0485	Nigel Rajcoomar v The Attorney General	Sunil Gopaul-Gosine	8/11/2010	\$41,800.00			\$6,572.50	\$48,372.50
11.	CV 2009-0007	Ganesh Maharaj (by his next friend Hardeo Maharaj v The Attorney General	D. Rambally instructed by S. Allahar (Daltons)	8/10/2010	\$96,000.00				\$96,000.00
12.	CV 2006-03888	Rooplal Chatoorie v The Attorney General	Cindy Bhagwandeem instructed by Kent Samlal (Freedom House)	17/11/2010	\$32,400.00				\$17,500.00

Written Answer to Question

Wednesday, November 9, 2011

	Suit Number	Parties	Attorney for Claimant	Date of Settlement approval	Total Approved	Damages	Interests	Costs	Total Paid
13.	CV 2009-04527	Arthur Branson Jack v The Attorney General	S. Roberts instructed by C. Scipio (Roberts & Co)	6/7/2011	\$35,000.00				\$35,000.00
14.	CV 2008-02150	AnandKhoon Khoon and Others v The Attorney General	Sunil Gopaul-Gosine	8/11/2010	\$450,000.00				\$450,000.00
15.	CV 2010-00711	Cocal Retreat Ltd v The Attorney General	Stephen Salandy	20/10/2010	\$75,642.82			\$13,390.00	\$89,032.82

Written Answer to Question

Wednesday, November 9, 2011

	Suit Number	Parties	Attorney for Claimant	Date of Settlement approval	Total Approved	Damages	Interests	Costs	Total Paid
16.	HCA 97/2004	David Callendar v The Attorney General	Cindy Bhagwandeem	2/5/2010	\$63,000.00				\$63,000.00
17.	CV 2009-00535	Deborah Walkes-Hazzard v The Attorney General	Sushma Goopiesingh	11/3/1011	\$160,000.00			\$13,200.00	\$220,637.06 (damages inclusive of interest and costs.
18.	CV 2008-00266	Paristan Sitahal and Mohan Ramdath v The Attorney General	RLM & Co	27/3/2011	\$60,000—1 st Claimant \$80,000—2 nd Claimant			\$30,000.00	\$220,000.00

	Suit Number	Parties	Attorney for Claimant	Date of Settlement approval	Total Approved	Damages	Interests	Costs	Total Paid
19.	CV 2008-04614	Gabriel Gour and Gideon Cour v The Attorney General	Freedom Law Chambers	13/4/2011	\$112,500.35 1 st Claimant \$75,000.00 2 nd Claimant			\$15,525.03— 1 st Claimant \$11,400.00 2 nd Claimant	\$148,078.98 —1 st Claimant \$95,400.00— 2 nd Claimant
20.	CV 2009-00528	Richard Sudama v The Attorney	Freedom Law Chambers	22/9/2010	General				\$55,000.00
21.	CV 2009-00810	Dolly Harry v The Attorney General & anor	Mr. Ryan Cameron	16/12/2010	\$72,000.00	\$50,000.00 \$10,000.00		\$12,000.00	\$72,000.00
22.	CV 2009-01610	Kieron John & anor v The Attorney General	Freedom Law Chambers	16/5/2011	\$90,000.00 (\$45,000.00 per claimant)			\$14,025.00 (\$7,012.50 per	\$104,000.00 claimant

	Suit Number	Parties	Attorney for Claimant	Date of Settlement approval	Total Approved	Damages	Interests	Costs	Total Paid
23.	CV 2009-01256	Veeda Bharath v The Attorney General	Mr. Daniel (holding for Mr. Rennie Gosine)	14/12/2010	\$36,450.00				
24.	CV 2008-00415	Daron Joseph v The Attorney General	Gerald Ramdeen	4/10/2010		\$340,000.00 together with 8% interest from February 8, 2008 (date of claim) till October 4, 2010			
25.	CV 2006-02892	Constable Allan Gilman #14098 v The Attorney General & anor	Denyse Gouveia	28/3/2011	\$35,500.00	\$28,000.00 plus \$7,500 costs			

Written Answer to Question

Wednesday, November 9, 2011

	Suit Number	Parties	Attorney for Claimant	Date of Settlement approval	Total Approved	Damages	Interests	Costs	Total Paid
26.	CV 2010-470	Norman Hades & Frederick Roberts v The Attorney General	Joy Phillip	14/2/2011		\$141,991.00 (inclusive of interest)		\$13,948.00	
27.	CV 2008-4025	Jeni Embrack v Private Allister and The Attorney General	Mervyn Campbell	1/1/2011		\$207,316.00 (exclusive of interest)		\$30,073.00	
28.	CV 2010-02849	Yassodra Dhanraj v The Attorney General	Cindy Bhagwandeem	22/11/2010				\$10,000.00	

Written Answer to Question

Wednesday, November 9, 2011

	Suit Number	Parties	Attorney for Claimant	Date of Settlement approval	Total Approved	Damages	Interests	Costs	Total Paid
29.	CV 2010-00089	Pinnacle Construction Ltd v The Attorney General	Shastri Roberts	26/7/2010	\$7,500.00			\$7,500.00	\$7,500.00 (costs only no award of damages/ interest)
30.	CV 2010-01959	Danraj Dwarika v The Attorney General	HansrajBhola	10/7/2010	\$28,391.75 x 2	\$25,000.00 per Claimant		\$1,850.00 per claimant	
31.	CV 2009-00841	Sunil Narine v The Attorney General	Cindy	21/6/2010	\$69,992.00	\$68,142.00 Bhagwanden		\$1,850.00	

	Suit Number	Parties	Attorney for Claimant	Date of Settlement approval	Total Approved	Damages	Interests	Costs	Total Paid
32.	CV 2007-02000	Fabien La Roche & Ors v The Attorney General	Gerald Ramdeen	4/10/2010		\$420,000.00 (\$120,000.00 For 1 st Claimant, \$140,000.00 for 2 nd Claimant \$160,000.00 for 3 rd Claimant, plus 8% interest per claimant from June 13 th 2007 (date of claim) till October 4, 2010 (date of judgment) Prescribed cost			

Written Answer to Question

Wednesday, November 9, 2011

	Suit Number	Parties	Attorney for Claimant	Date of Settlement approval	Total Approved	Damages	Interests	Costs	Total Paid
33.	CV 00490 of 2009	Prakash Parasram v The Attorney General	Cindy Bhagwandeem		\$183,566.31				
34.		Proposed action of Anushka Seepersad v The Attorney General	Dipnarine Rampersad	5/5/2011		\$40,000.00			
35.	CV 2010-05107	Victor Anthony Grant v WASA and The Attorney General	Frank Seepersad	6/7/2011		\$141,600.00			

Written Answer to Question

Wednesday, November 9, 2011

	Suit Number	Parties	Attorney for Claimant	Date of Settlement approval	Total Approved	Damages	Interests	Costs	Total Paid
36.	CV 2010-04396	Dylkael Charles v The Attorney General	Gerald Ramdeen	13/6/11	\$50,000.00			\$50,000.00 in full and final settlement of the matter	\$50,000.00
37.	CV 2008-03943	Shirley Thomas v The Attorney General	Rennie Gosine	23/2/11	\$63,711.49			\$63,711.49 in full and final settlement of the matter	\$9,428.12

Written Answer to Question

Wednesday, November 9, 2011

	Suit Number	Parties	Attorney for Claimant	Date of Settlement approval	Total Approved	Damages	Interests	Costs	Total Paid
38.	CV 2009 - 01790	Sylvan Stewart v The Attorney General	Freedom House Law Chambers	26/6/11	\$100,072.00			\$93,572.00 in full and final settlement of the matter	\$93,572.00
39.	Pre-Action	Duane Kevin Niles v The Attorney General	Lemuel Murphy	19/10/10	\$7,500 \$10,000.00			\$10,000.00 in full and final settlement of the matter	\$10,000.00

	Suit Number	Parties	Attorney for Claimant	Date of Settlement approval	Total Approved	Damages	Interests	Costs	Total Paid
40.	H.C.A. 3908 of 1995	Rajkumar Seurattan & Samdaye Seurattan v The Attorney General	Sunil Gopaul Gosine	File cannot be located so date of approval cannot be ascertained with certainty However, the Opinion for settlement is dated 18 th May 2010 and the Consent Order entered 14 th June, 2010	\$12,289.81			\$12,289.81	Costs taxed

	Suit Number	Parties	Attorney for Claimant	Date of Settlement approval	Total Approved	Damages	Interests	Costs	Total Paid
41.	cv 2008 - 04614	Videsh Ramsingh and Mukesh Baboolal v The Attorney General	Freedom House Chambers	27/1/11	\$70,000.00				\$70,000.00 per claimant in full and final settlement
42.	Pre-action	Darren Mitchell v The Attorney General	Sophia Chote	8/10/10	\$25,000.00				\$25,000.00 in full and final settlement
43.	HCA 1540 of 2001	Sunil Sugnah, Shirley Sugnah & Mukesh Boodram v The Attorney General	Cindy Bhagwandeem	12/4/11	\$501,000.00	\$150,000.00			\$200,000 total damages inclusive of interest and costs

	Suit Number	Parties	Attorney for Claimant	Date of Settlement approval	Total Approved	Damages	Interests	Costs	Total Paid
44.	HCA 3910 of 1995	Sciwdial Boodhan v The Attorney General	Sunil Gopaul Gosine	File cannot be located so date of approval cannot be ascertained with certainty However, the Opinion for settlement is dated 18th May, 2010 and the Consent Order entered 14" June, 2010	\$28,706.73			(inclusive of costs) \$28,706.73	Cost taxed

	Suit Number	Parties	Attorney for Claimant	Date of Settlement approval	Total Approved	Damages	Interests	Costs	Total Paid
45.	CV 2007 - 02461	Mohan Mahabir v The Attorney General	Mr. Rajiv Persad; Mr. Faraaz Mohammed	26/6/11		\$70,000.00			\$50,000 damages inclusive of interest; costs to be assessed certified fit for advocate
46.	HCA S1752/2002	Marvin Mario Edmond v The Attorney General (old rules)	Messrs. Roopnarine & Co.						\$55,000 damages inclusive of interest; costs to be assessed certified fit for advocate

	Suit Number	Parties	Attorney for Claimant	Date of Settlement approval	Total Approved	Damages	Interests	Costs	Total Paid
47.	HCA S 1720/1994	Fiztarthur Piper v The Attorney General	Mr. Hansraj Bhola	20/8/10		\$15,000+ interest at 6% from ^{19th} Dec. 1993 to ^{12th} Oct 2010) [\$30,300]		Cost to be taxed in default of further agreement	\$15,000 plus interest at 6% from date of service to judgment; costs to be taxed in default of agreement
48.	CV 2008-01436	Kamal Samsundar v The Attorney General	Messrs. Roopnarine & Co	12/1/2011		\$225,000			\$175,000 damages \$35,000 costs

	Suit Number	Parties	Attorney for Claimant	Date of Settlement approval	Total Approved	Damages	Interests	Costs	Total Paid
49.	CV 2007-000360	Rosemarie Dipnarine v The Attorney General	Ms. Cindy Bhagwandeem	19/10/2010		\$125,000 plus interest @ 12% for approx. 3 ³ / ₄ yrs (approx.		Prescribed costs (\$180,000)	\$150,000 inclusive of interest and costs
50.	CV 2009 09788	Milford Prince v The Attorney General	Imran S. Khan	20/7/10	\$50,000.00				\$50,000.00 plus interest at 6% (general damages) \$10,000.00 plus interest at rate of 3% (special damages) \$11,715.76 (costs)

	Suit Number	Parties	Attorney for Claimant	Date of Settlement approval	Total Approved	Damages	Interests	Costs	Total Paid
51.	CV 2008-02755	Afisha Mc Cleod v The Attorney General	Lemuel Murphy	17/7/10					Settled on the issue of liability
52.	CV 2010-4710	Sean Dennon v The Attorney General	Forts Chambers	8/5/11	\$61,1225.00 (inclusive of interest and		costs)		\$59,800.00 (inclusive of interest and costs)
53.	CV 2010-03515	Alexander Nicholas v The Attorney General	Gerald Ramdeen	15/4/11	\$45,000.00 (with interest to be added at a rate of 6% per annum)	\$17,300.00			\$73,240.00 (inclusive of interest and costs)
54.	TD 86/2005	Communication Workers Union v Nucore and NMTS	(Union negotiated)	7/2/11	\$17,000.00				\$10,500.00

	Suit Number	Parties	Attorney for Claimant	Date of Settlement approval	Total Approved	Damages	Interests	Costs	Total Paid
55.	CV2008-01678 of 2010	Farida Gajadhar v The Attorney General	Asaf Hosein	21/7/2010		\$44,797.04		Prescribed	\$44,797.04 plus costs \$7,619.52
56.	CV 2009-3619	Keon Wight v The Attorney General	Ryan Cameron	15/3/2011		\$70,000 general \$20,000 exemplary \$15,000 spec		Prescribed	\$117,573.98
57.	CV 2007-03468	Shaheed Mohammed v The	Freedom House Attorney General	17/11/2010		\$110,000		Prescribed	\$110,000 costs prescribed
58.	CV 2009-03270	Keron Douglas v The Attorney	Mark Seepersad General	8/12/2010		\$70,000		Inclusive	\$70,000

Written Answer to Question

Wednesday, November 9, 2011

	Suit Number	Parties	Attorney for Claimant	Date of Settlement approval	Total Approved	Damages	Interests	Costs	Total Paid
59.	CV02146of2007	Eugene Mendoza v The Attorney General	Freedom Law Chambers	2/1/2009		\$68,000.00		\$7,700.00	\$52,650.00 (consent order dated 19 th April, 2010)
60.	CV 2007-02810	Boysie Gunpat v The Attorney	Roland Dowlath General	15/2/2011		\$34,4000.0 0		\$25,000.00	
61.	CV 2008-01039	Khooblal Balram v The Attorney	Alvin Ramroop	19/1/2011 General		\$48,600.00		\$15,000.00	

	Suit Number	Parties	Attorney for Claimant	Date of Settlement approval	Total Approved	Damages	Interests	Costs	Total Paid
62.	Advice to the Ministry of National Security	Police Constable Carl Murray Personal injuries	No attorney	22/5/2010		\$43,000.00		No costs payable	
63.	Advice to the Ministry of Tourism	Kevin Jaimungal v The Attorney	Freedom House General	6/9/2011		\$47,525.00		Global settlement	
64.	Pre-action letter	Compensation Samuel Joseph	Mr.Rick G. Ramparas &	13/9/2010		\$10,000.00 Co.		Global settlement	
65.	HCA S-227 of 2002	Jason Augustus v The Attorney General	Roopnarine & Co.	1/4/2011		\$30,450.00. This amount has not been accepted by Claimant		Global settlement	

	Suit Number	Parties	Attorney for Claimant	Date of Settlement approval	Total Approved	Damages	Interests	Costs	Total Paid
66.	CV 2010-02728	Curtis Campbell v The Attorney General	Sunil Gopaul Gosine	2/2/2011	\$65,000.00 (Inclusive of interests and costs)				
67.	CV 2009-04162	Vernon Edward Wilson v The Attorney General	Gerald Ramdeen	22/11/2010 (Consent order entered)	\$250,000.00		23/11/2010)		
68.	CV 2010-03079	S. Jagmohan & Sons v The Attorney General	Pollonais & Blanc	2/2/2011	\$243,489.21 (Inclusive of interests and costs)				
69.	CV 2009-01101	Arif Phillip v The Attorney General	Joseph Honore	Consent order entered 20/9/2010	\$140,000.00 (Inclusive of interests and costs costs)				

	Suit Number	Parties	Attorney for Claimant	Date of Settlement approval	Total Approved	Damages	Interests	Costs	Total Paid
70.	CV 2009-04396	Carol George v The Attorney General	Freedom House Chambers	Consent order entered 1/5/2020	\$100,000.00 (Inclusive of interests and costs)				
71.	CV 2009-02464	Konig Dick v The Attorney General	Freedom House Chambers	31/3/2011 (Consent order entered 6/4/2011)	\$136,544.00 (Inclusive of interests and costs)				
72.	5/14/679	Maxwell House v The Attorney General	Freedom House Chambers	22/11/2010 (Consent order entered 7/12/2010)	\$44,000.00 (Inclusive of interests and costs)				

	Suit Number	Parties	Attorney for Claimant	Date of Settlement approval	Total Approved	Damages	Interests	Costs	Total Paid
73.	CV 2008-0009	Elvis Hamlet v The Attorney General	Rennie Gosine	11/10/2010	\$240,000.00 (Inclusive of Interests and costs) interests and		costs)		
74.	CV 2010-04849	Mahlon Williams v The Attorney General	Gerald Ramdeen	13/7/2011 (Consent order entered)	\$250,000.00	14/7/2011			
75.	CV 2011-0615	Anthony Christopher Mauge v The Attorney	Freedom House General	7/7/11	\$8,500.00				\$8,500.00
76.	CV 2008-02460	Kendell John v The Attorney General	R.M. Simon &	22/02/11					\$274,997.00

	Suit Number	Parties	Attorney for Claimant	Date of Settlement approval	Total Approved	Damages	Interests	Costs	Total Paid
77.	HCA No. 3192 of 1997	Heimchand and Patricia Samaroo v The Attorney General and PC	Roopnaine & Co.	25/05/11	Narcis				\$140,000.00
78.	CV 2007-03716	Shunnel Roopchand v The Attorney General	Freedom House General						

**Office of the Attorney General
(Investigations Conducted)**

5. **Dr. Keith Rowley** (*Diego Martin West*) asked the hon. Attorney General:

Could the hon. Minister indicate:

- (f) the name, profession and nationality of each of the persons appointed by him or the Office of the Attorney General to conduct investigations into T&TEC, the Sport Company of Trinidad and Tobago, Petrotrin, NIDCO, HDC, eTeck, UTT and the Scarborough General Hospital;
- (g) the date(s) and the terms of reference of each engagement and the amount of money paid to each of these persons to date;

- (h) whether these investigations are complete and if not, the precise stage of each investigation as at August 1, 2011;
- (i) when each investigation is likely to be completed; and
- (j) in the case of non-nationals so appointed, how many times each of these persons visited Trinidad and Tobago in the course of their investigations, the dates of these visits, the cost of each visit and the duration of their stay?

Pursuant to his reply to question 5, earlier in the proceedings, the Attorney General (Sen. The Hon. Anand Ramlogan) caused to be circulated to Members of the House of Representatives the following:

MINISTRY OF THE ATTORNEY GENERAL

APPENDIX for Q 5(b)

Alix Partners	1,578,763		re prof services in legal matter - IMS Data Processing; Forensic Investigation - SIA; Udecott; Forensic Investigation - SIA; Project IT Petrotrin; IMS Data Processing; Project IT General
	2,593,525		re prof services in legal matter - IMS Data Processing; Forensic Investigation - SIA; Project U Petrotrin; Project IT General; Project U Petrotrin
	2,557,905		re IMS Project TT - Petrotrin; IMS Project U - Petrotrin; Project U - General; Udecott Project Management; Project U - Petrotrin; IMS Data Processing
Alix Partners Ltd	6,545,610		re Project IT General; Project IT General; Project IT General; IMS Data Processing; IMS Project U Petrotrin; Udecott
	2,149,837		re prof services in legal matters Udecott Project Management; IMS Project IT - Petrotrin; Project TI - Petrotrin; IMS Data Processing
	1,986,231		re Project U General; Project IT General
		17,411,871	
AFA Law	407,776		re investigations into State Owned Enterprises; investigations into State Owned Enterprises
	171,925		re investigations into State Owned Enterprises

	839,145		Re: Professional Charges into State Owned Enterprises; Reviewing Work Plan for UIT and SPOUT with AlixP and interviewing witnesses; Revising letter of Suspension and attending meetings
	420,010		Re: Professional Charges into State Owned Enterprises; Drafting Terms of Reference for UIT and NIPDEC and List of Documents required from UIT. Petrotrin and NIPDEC; attending meeting with AlixPartners and Allan Newman QC
	291,529		re investigations into State Owned Enterprises
		2,130,386	
Ernst & Young Services Ltd	1,220,466		re professional services rendered for elech investigation; professional services rendered for
	1,506,273		re professional services rendered for elech investigation; professional services rendered for Petrotrin investigation
	919,160		re professional services rendered for elech investigation; professional services rendered for Petrotrin investigation
	1,963,075		re professional services rendered for elech investigation; professional services rendered for Petrotrin investigation
	2,993,964		re Petrotrin and eTech matter
		8,602,937	
Gerald Ramdeen		652,000	Fees RE: Investigation into the affairs of the Petroleum Company of T&T, UIT and SPOUT
Lindquist Forensic Accounting Investigation	491,896		re legal matter - ETM/CEICPC and Udecott matters
	222,453		Investigations into Brian lara Stadium, Legal Affairs Tower, NHIC and Land Date,
	436,879		Investigations into Brian lara Stadium, Legal Affairs Tower, NHIC and Land Date, ETM/CE/CPC

	171,976		re investigation into ETM/CE/CPC and Udecott matters
		1,323,203	
Vincent Nelson	1,573,865		re legal and financial investigation into Petrotrin; eTech
	1,095,325		re legal matter -Petrotrin
		2,669,190	

ATTORNEY GENERAL'S CHAMBERS

**TERMS OF REFERENCE
in relation to**

Evolving Technologies and Enterprise Development Company Limited

1. INTRODUCTION

The Ministry of the Attorney General has engaged the services of lawyers and forensic accountants to conduct an investigation into allegations of financial impropriety, corruption, non compliance with specified rules and practices and misconduct in public office in relation to the affairs of Evolving Technologies and Enterprise Development Company Limited ("eTecK").

2. OBJECTIVES

The main objective of the forensic investigation is to undertake a critical analytical review and evaluation of the legal, financial and management practices employed by the eTecK and the Ministry of Trade and Industry in relation to the upgrade of the Hilton Trinidad and Conference Centre and the Tobago Hilton ('Hilton Hotels') and the construction of the Alutech Research and Development Facility ('Alutech') at Tamana in Tech Park, Wallerfield, Unibio Gas to Protein Pilot Project ('Unibio Project') and the Medical Transcription Services and Training Project ('MTS') to determine any irregularities and/or deficiencies. [should we include the Tobago Hilton?]

3. SCOPE

The terms of reference for the legal and financial forensic investigation will include, but not limited to an examination of the following issues:

(A) In relation to the Hilton Hotels:

- All Cabinet Decisions and Minutes, in particular Cabinet Minute 2656 dated 4 October 2007; Cabinet Minute 2142 dated 31 July 2008; Cabinet Minute 2792 date unknown; Cabinet Minute 2210 dated 13 August 2009 and Cabinet Decision dated 3 December 2009 (No. unknown)
- Loan Agreement with First Caribbean International Bank • Letters of Comfort issued by Ministry of Finance
- Government Guarantees

- All eTecK Board Minutes, Management and Project Reports
- Details of shareholders and Board members of eTecK
- Business and strategic plans
- Invitations to Tender for the three Phases of the upgrade
- Tender and Bid documentation in relation to the 5 Packages • Procedure for selecting consultants
- Letters of Award and contract documentation in relation to construction work
- Evaluation reports in relation to selection of contractor • Budget documentation
- Details of Cost overruns
- Accounting and other business records, financial statements and bank accounts
- Procurement manuals and Tender Rules and Procedures • Prequalified list of contractors, contractors and suppliers
- Public Sector Investment Programme setting out details of funding • All Internal audit reports
- And interview all relevant personnel involved in this project

(B) In relation to **Alutech Research and Development Facility ("ARDF")**

- Joint Venture between National Energy Corporation ('NEC') and Sural Limited
- Details of due diligence report into Sural bearing in mind the Republic Finance and Merchant Bank's judgment for US\$8.6 million in **November 2006**
- MOU between NEC and Sural dated 10 February 2005
- Project cost for development of ARDF
- Ministry of Energy's policy in relation to joint venture arrangements relating to companies in the energy sector
- Project financing for ARDF (Equity and loans)
- Corporate filings of Alutrinit Limited and Alutech Limited
- Articles of amendment of change of name to Alutech Limited from Alutrinit
- All Cabinet Decisions and Minutes regarding the restructuring and financing of Alutech
- All Minutes of Meetings of Alutech and eTecK
- Details of the PCB loan, loan agreement and repayment

- Details of changes in shareholding made on 10 November 2008 and composition of Directors
- Cabinet Note in October 2007 (TI(2007)110 regarding the funding of the design and construction of ARDF
- Cabinet and Ministry of Trade approval for construction of ARDF
- All correspondence between Ministry of Trade, Ministry of Energy and Alutech and in particular letters dated 24 July and 3 September 2008
- Details of all equipment bought by Alutech during 2008 and their current location bearing in mind that construction contract was not signed until August 2009
- Alutech's corporate presentation dated August 2008
- Cabinet Minute 2379 dated 28 August 2008 in relation to fiscal incentives
- Details of GORTT's repayment of 100% of FCB's loan of TT\$108.9 million during 2008 using its equity contribution whilst owning 40% of the shares in Alutech
- Procurement Manuals
- Tender Procedure and Rules in relation to the selection of contractors, consultants and suppliers
- Invitation to Bids for construction of ARDF
- Evaluation Reports on bid offers in particular Carillion, Inversiones and Construction 2000
- Evaluation Report of Acuitas Caribbean Limited
- Carillion Contract dated 17 August 2009
- Details of Environmental Clearance
- Details of Infrastructure Development Fund under MTI(Q293) • Details of cost overruns; outstanding invoices
- Current status of project
- All internal audit reports
- The accounting and other business records, financial statements and bank accounts
- And interview all relevant personnel involved in this project

(C) **Ubidio Project**

- all documentation held by eTecK in relation to this project,

to include without limitation cabinet decisions, board minutes, feasibility studies, accounting and business records, financial statements, bank accounts, contracts of whatever nature, emails and other correspondence

(D) Medical transcription Services and Training Project

- all documentation held by eTecK in relation to this project,

to include without limitation cabinet decisions, board minutes, feasibility studies, accounting and business records, financial statements, bank accounts, contracts of whatever nature, emails and other correspondence

Senator Anand Ramlogan

Hon Attorney General

October 2010

ATTORNEY GENERAL'S CHAMBERS

TERMS OF REFERENCE

in relation to the

Petroleum Company of Trinidad and Tobago Limited

1. INTRODUCTION

The Ministry of the Attorney General has engaged the services of lawyers and forensic accountants to conduct an investigation into establishing or refuting allegations of fraudulent, corrupt or coercive practices that may be linked to bribery, extortion, collusive bidding/bid rigging, phantom bidders, leaking of bid information, tampering with bidding documents and bid manipulation in relation to the affairs of the Petroleum Company of Trinidad and Tobago Limited ("Petrotrin").

2. OBJECTIVES

The main objective of the forensic investigation is to undertake a critical analytical review and evaluation of the legal, financial and management practices employed by Petrotrin in relation to the Gasoline Optimisation Programme ("GOP") and the Ultra Low Sulphur Diesel ("ULSD") Plant to determine any irregularities and/or deficiencies. The GOP comprise the following five projects: Upgrade of the Fluid Catalytic Cracking Unit (FCCU); Isomerisation Complex; Continuous Catalyst Regeneration (CCR) Platformer Complex; Alkylation/Acid Unit and Utilities and Offsites

3. SCOPE

The terms of reference for the legal and financial forensic investigation will include, but not limited to an examination of:

- a) The pre-feasibility study commissioned by Petrotrin in 2003.
- b) the approval granted by the Standing Committee on Energy in June 2004

- c) the approval granted by Cabinet Minute No. 1946 dated 28 July 2005
- d) the 15 year amortizing Bonds issued by Petrotrin/Citigroup Global markets Inc to finance capital expenditure on GOP.
- e) Cabinet Minute No: 2389 dated 15 September 2005 in relation to the establishment of a Gas to Liquids Plant
- f) The circumstances leading to the cost overruns and delays in commissioning the plants in the GOP with particular reference to:
 - the process employed in identifying, evaluating and selecting contractors and consultants
 - the financial and technical competence and experience of contractors and consultants
 - the justification of reimbursable against lump sum contracts and hybrid reimbursable/lump sum contracts to understand their impact on the cost of the respective components of the programme
 - conflicts of interest in PMC and EPMC contractual arrangements and their impact on good governance
 - a critical examination of all economic feasibility studies, approvals and methods of financing
 - the efficacy of contract terms and conditions agreed between the parties to determine whether there has been proper accountability and management of the project concerned
 - analysing the nature and extent of any allegations of impropriety during the execution of the works
 - determine whether the actions of the parties followed established and approved procedures that were transparent and consistent with the intended strategic and operational policies of Petrotrin
 - Identifying any major events that occurred during the execution of the GOP contracts that may have a bearing on current disputes with World GTL, Bechtel and Fluor
- g) The circumstances leading to the current arbitration dispute with **World GTL ("WGTL")** in relation to the **Gas to Liquids Plant** and in particular issues relating to:
 - the process leading to the identification, evaluation and selection of WGTL as a Joint Venture partner
 - the financial and technical competence and experience of WGTL including the conduct of an appropriate due diligence
 - the strategic and operational intent of the Joint Venture Agreement and the roles and responsibilities of the parties
 - a critical examination of the economic feasibility study, approvals, methods of financing, shareholding arrangements and rights and obligations of the parties.
 - The process adopted in the selection and acquisition of used plant and equipment from Delaware, Mexico and a Texaco refinery
 - an analysis of the nature and extent of any allegations of impropriety during the execution of the works

Written Answer to Question

Wednesday, November 9, 2011

- Determining whether the actions of the parties followed established and approved procedures that were transparent and consistent with the intended strategic and operational policies of Petrotrin
 - Identifying the key events that occurred during the execution of the works that has led to the current dispute
- h) The circumstances surrounding the award of an EPC contract to **Samsung Engineering** in relation to the **Ultra Low Diesel Plant** with particular reference to
- the tendering process
 - allegations of bid rigging
 - selection of bidders
 - evaluation of bids
 - the technical and financial competence of tenderers • the form of contract utilised
 - the adequacy of the tender price
 - cost overruns and the reasons therefore
- i) the reasons for the increase in costs due to delays caused by the EIA Study for the CCR and Alkylation/Acid Units
- j) GOP Audit Reports
- k) GTL Audit Reports
- l) the accounting and other business records, financial statements and bank accounts to determine whether there has been any financial irregularity
- m) interviews of all relevant personnel involved in the initial and implementation stages of the projects.

Senator Anand Ramlogan

Hon Attorney General

October 2010

ATTORNEY GENERALS CHAMBERS
TERMS OF REFERENCE
in relation to the
Trinidad and Tobago Electricity Commission

1. INTRODUCTION

The Ministry of the Attorney General has engaged the services of lawyers and forensic accountants to conduct an investigation into allegations of financial impropriety, corruption, non compliance with specified rules and practices and misconduct in public office in relation to the affairs of the Trinidad and Tobago Electricity Commission ("T&TEC")

2. OBJECTIVES

The main objective of the forensic investigation is to undertake a critical analytical review and evaluation of the legal, financial and management practices employed by the T&TEC and the Ministry of Public Utilities in relation to its procurement system and its Street Lighting Implementation Unit ("SLIU") to determine any irregularities and/or deficiencies

3. SCOPE

The terms of reference for the legal and financial forensic investigation will include, but not limited to an examination of:

- a) the procedures and processes employed in the procurement system to identify any breaches relating to the award of contracts.
- b) the Tender Rules and Procedures relating to the procurement of goods and services and award of contracts to ensure proper compliance.
- c) the systems and processes adopted by the SLIU to determine compliance with all relevant laws, regulations, rules procedures and practices
- d) any breaches of the legal and regulatory framework governing the tender and award of contract
- e) allegations of bid rigging in relation to tender and award of contracts
- f) the budgets generally to ascertain whether there has been excessive or improper expenditure
- g) the accounting records, financial statements and bank accounts to determine whether there has been any financial irregularity
- h) the Report of the Central Audit Committee of the Ministry of Finance for the period July 2009.
- j) of all relevant personnel at T&TEC's head office, regional offices and SLIU

Senator Anand Ramlogan

Hon Attorney General

October 2010

ATTORNEY GENERALS CHAMBERS
TERMS OF REFERENCE
in relation to
The Scarborough General Hospital Project, Tobago

1. INTRODUCTION

The Ministry of the Attorney General has engaged the services of lawyers and forensic accountants to conduct an investigation into allegations of financial impropriety, corruption, non compliance with specified rules and practices and misconduct in public office in relation to the affairs of the Scarborough General Hospital Project ("Scarborough Hospital") from 1996 to the present.

2. OBJECTIVES

The main objective of the forensic investigation is to undertake a critical analytical review and evaluation of the legal, financial and management practices employed by the National Insurance Property Development Company Limited ("NIPDEC") and the Ministry of Health in relation to the design and construction of the Scarborough Hospital to determine any irregularities and/or deficiencies

3. SCOPE

The terms of reference for the legal and financial forensic investigation will include, but not limited to an examination of:

- a) the August 1998 Feasibility Study Report commissioned by the Ministry of Health
- b) the August 1999 Design Brief issued by NIPDEC
- c) the level of construction, engineering and financial expertise available within NIPDEC to undertake projects of this nature
- d) the evaluation process and the selection of consultants and award of contracts to Stantec Consulting International Limited design services and construction supervision services.
- e) the pre-qualification process for contractors.
- f) the evaluation report and award of contract including any negotiations in relation to the conditions of contract.
- g) the report of the independent local consulting engineers appointed by NIPDEC to examine the design of the two tier retaining walls
- h) the process adopted to ensure that all construction material and equipment brought onto the site are fully protected and an inventory prepared to ensure that such material is being properly incorporated into the works
- i) the procedure for checking the contractor's monthly valuations before the issue of interim payment certificates
- j) the procedure for ensuring the validity of instructions for variation and their valuation
- k) the reasons behind the suspension of the works and subsequent termination of the contract by the contractor.

- l) the disputes between NIPDEC and NH International (Caribbean) Limited
- m) an examination of delay and disruption claims made by the contractor
- n) the degree of site supervision undertaken by Stantec
- o) the ITB, tender offers, evaluation reports, construction and consultancy contracts (China Railway Construction Corporation Ltd and Genivar LP) and revised contract value in relation to the modified design- build contract for the remobilisation of the works during 2008
- p) any breaches of the legal and regulatory framework governing the tender and award of contracts
- q) any breaches of the procurement practices of NIPDEC, Ministry of Health, IDB and Ministry of Finance
- r) allegations of bid rigging in relation to tender and award of construction and consultancy contracts
- s) the budgets generally to ascertain whether there has been excessive or improper expenditure and in particular the pre-tender estimate of the Quantity Surveying consultants, Hart & Leonard
- t) the accounting records, financial statements and bank accounts to determine whether there has been any financial irregularity
- u) the sourcing and remuneration of consultants to determine whether proper procedures have been followed.

Appendix for Q 5 Part (e)

MINISTRY OF THE ATTORNEY GENERAL

Could the Honourable Attorney General indicate:

(e) in the case of non-nationals so appointed, how many times each of these persons visited

Trinidad and Tobago in the course of their investigations, the dates of these visits, the cost of each visit and the duration of their stay.

Name of Investigator	No. of Visits	Dates of Visit	Cost of Visit (Airfare, Hotel and other expenses)
Mr. Martin Hall		11—13 August, 2010	\$3,186.42

		14 August, 2010	\$4,440.94
--	--	-----------------	-------------------

Name of Investigator	No. of Visits	Dates of Visit	Cost of Visit (Airfare, Hotel and other expenses)
Mr. Fuad Akbar Ali		11—14 August, 2010	\$4,550.94
		18—30 Sept, 2010	\$58,540.00
		3—13 Nov., 2010	\$58,540.00
		30 Nov,—8 Dec, 2010	\$58,540.00
		16-27, Jan, 2011	\$57,877.75
		27 March—2 April, 2011	\$59,370.00
		22 May—01 June, 2011	\$58,785.40
		20 July—21 Aug, 2011	\$48,817.00
		No date indicated on Tax Invoice (date of bill 29/08/11)	\$49,763.40

Appendix for 05 Part (e)

Name of Investigator	No. of Visits	Dates of Visit	Cost of Visit (Airfare, Hotel and other expenses)
Mr. Alan Newman		18—30 Sept, 2010	\$58,540.00

		3—13, Nov, 2010	\$35,480.00
		30 Nov—8 Dec, 2010	\$52,392.80
		16 Jan—7 Feb, 2011	\$58,027.75
		15—22 March, 2011	\$59,658.90
		6—13 April, 2011	\$47,740.00
		14 May, 2011	\$58,274.00
		4—18 June, 2011	\$59,825.00
		6—18 July, 2011	\$59,645.00
		6—12 Aug, 2011	\$59,720.00
Other Team: Mr. Joao de Almeida Ms. Catherine Jung Ms. Linsey Ann Major Ms. Lucy Wicksteed		17—30 Sept, 2011 18—25 Sept, 2011	\$104,130.00

Name of Investigator	No. of Visits	Dates of Visit	Cost of Visit (Airfare, Hotel and other, expenses)
Ms. Jayantila Patel		19—30 Sept, 2010	\$16,000.00

Name of Investigator	No. of Visits	Dates of Visit	Cost of Visit (Airfare, Hotel and other expenses)
Mr. Bitu Bhalla		13—22 July, 2011	\$59,645.00
		4—10 Sept, 2011	\$593,330.00

Appendix for Q 5 Part (e)

Name of Investigator	No. of Visits	Dates of Visit	Cost of Visit (Airfare, Hotel and other expenses)
Mr. Vincent Nelson		30Jan—5 Feb, 2011	\$6,770.00
		27 Feb—4 March, 2011	\$6,749.00
		27 March—02 April, 2011	\$7,298.00
		5 April, 2011	\$741.75
		22 May—01 June, 2011	\$7,485.40
		9—18 June, 2011	\$7,485.40
		11—17 July, 2011	\$7,395.60
		21—27 Aug, 2011	\$7,398.75