

Leave of Absence

Tuesday, April 15, 1997

SENATE

Tuesday, April 15, 1997

The Senate met at 1.30 p.m.

PRAYERS

[MR. PRESIDENT *in the Chair*]

LEAVE OF ABSENCE

Mr. President: Hon. Senators, leave of absence from today's sitting has been granted to Sen. Carol Cuffy-Dowlat and Sen. Diana Mahabir-Wyatt.

SENATORS' APPOINTMENTS

Mr. President: I have received the following communication from His Excellency, the President of the Republic.

"THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO

By His Excellency ARTHUR N. R. ROBINSON, President and Commander-in-Chief of the Republic of Trinidad and Tobago.

\s\ Arthur N. R. Robinson
President.

To: MRS. NIRUPA OUDIT

WHEREAS Senator Diana Mahabir-Wyatt is incapable of performing her functions as a Senator by reason of her absence from Trinidad and Tobago:

NOW, THEREFORE, I, ARTHUR N. R. ROBINSON, President as aforesaid, in exercise of the power vested in me by section 40(2)(c) and section 44 of the Constitution of the Republic of Trinidad and Tobago, do hereby appoint you, NIRUPA OUDIT, to be temporarily a member of the Senate, with immediate effect and continuing during the absence from Trinidad and Tobago of the said Senator Diana Mahabir-Wyatt.

Given under my Hand and the Seal of the President of the Republic of Trinidad and Tobago at the Office of the President, St. Ann's, this 15th day of April, 1997.

Senators' Appointments
[MR. PRESIDENT]

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THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO

By His Excellency ARTHUR N. R. ROBINSON, President and Commander-in-Chief of the Republic of Trinidad and Tobago.

\s\ Arthur N. R. Robinson
President.

To: MR. VINCENT CABRERA

WHEREAS Senator Carol Cuffy-Dowlat is incapable of performing her functions as a Senator by reason of her absence from Trinidad and Tobago:

NOW, THEREFORE, I, ARTHUR N. R. ROBINSON, President as aforesaid, acting in accordance with the advice of the Prime Minister, in exercise of the power vested in me by section 44 of the Constitution of the Republic of Trinidad and Tobago, do hereby appoint you, VINCENT CABRERA, to be temporarily a member of the Senate, with immediate effect and continuing during the absence from Trinidad and Tobago of the said Senator Carol Cuffy-Dowlat.

Given under my Hand and the Seal of the President of the Republic of Trinidad and Tobago at the Office of the President, St. Ann's, this 15th day of April, 1997."

AFFIRMATION OF ALLEGIANCE

Sen. Nirupa Oudit made and subscribed the Affirmation of Allegiance as required by law.

OATH OF ALLEGIANCE

Sen. Vincent Cabrera took and subscribed the Oath of Allegiance as required by law.

TRADE MARKS (AMDT.) BILL

Bill to amend the Trade Marks Act, Chap. 82:81, brought from the House of Representatives [*The Minister of Legal Affairs*]; read the first time;

Motion made, That the next stage of the Bill be taken at the next sitting of the Senate. [*Hon. W. Mark*]

Question put and agreed to.

PAPERS LAID

1. Report of the Auditor General on the accounts of the Penal/Debe Regional Corporation for the year ended December 31, 1993. [*The Minister of Finance (Sen. The Hon. Brian Kuei Tung)*]
2. Report of the Auditor General on the accounts of the Penal/Debe Regional Corporation for the year ended December 31, 1994. [*Hon. B. Kuei Tung*)]

ORAL ANSWER TO QUESTION

**Parliamentary Committees
(Establishment of)**

10. Sen. Elizabeth Mannette asked the Attorney General:

- (a) Would the hon. Attorney General please state whether the Government plans to establish parliamentary committees to monitor the operation and functioning of ministries of government?
- (b) If the answer is in the affirmative, would the Attorney General state the time-frame for the implementation of this parliamentary procedure?

The Attorney General (Hon. Ramesh Lawrence Maharaj): Mr. President, this honourable Senate is informed that the Government plans to establish parliamentary committees to monitor the operations and functions of the state, including ministries of government, statutory bodies and state enterprises.

The Government, as part of its election pledge, indicated that if elected to office, it would reform the parliamentary system of government to ensure that government is truly accountable to the people and to Parliament. This Government recognizes that the existing system under which Parliament operates promotes secrecy in government and there is need for transparency and accountability.

The United Kingdom Parliament, since 1979, reformed its parliamentary system by introducing effective committee systems to monitor and scrutinize every government department. Those reforms were considered by some parliamentarians and historians to be the most important parliamentary reform of the century because they were intended to redress the balance of power to enable the House of Commons to do, more effectively, the job it was elected to do. Several other Commonwealth Parliaments have done likewise. We must do the same.

Oral Answer to Question
[HON. R. L. MAHARAJ]

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Closer to home, the Hugh Wooding Constitution Commission report, several years ago, recommended that parliamentary reform should have included the setting up of such committees.

The Ministry of the Attorney General has almost completed drafting the necessary standing orders and legislation to effect the reforms of the parliamentary system and to provide for such parliamentary committees. It is anticipated that within six weeks such legislation and standing orders would be introduced in the Parliament.

1.40 p.m.

ARRANGEMENT OF BUSINESS

The Minister of Public Administration and Information (Sen. The Hon. Wade Mark): Mr. President, I beg to move that item No. 13 on the Order Paper be deferred to a later stage of the proceedings.

I also beg to move that the Senate now deal with Motion No. 2 on the Supplemental Order Paper at this stage of the proceedings.

I apologize to both the Opposition and the Independent Senators for having to deal with this matter today, however, we, ourselves, received the amendments today. The amendments are very minor in nature and I have already spoken with the Leader of Opposition Business, Sen. Mohammed and Sen. Rev. Daniel Teelucksingh, in the absence of Sen. Prof. Spence, Leader of Independent Business in the Senate.

Agreed to.

COPYRIGHT BILL

House of Representatives Amendment

The Minister of Finance and Minister of Tourism (Sen. The Hon. Brian Kuei Tung) Mr. President, I beg to move,

That the House of Representatives amendment to the Copyright Bill, listed in the appendix, be now considered.

Question proposed.

Question put and agreed to.

Clause 22(1)(e).

House of Representatives amendment read as follows:

Delete the words “or public lending” and the words ”or lent” appearing in lines 1 and 5 respectively.

Sen. Kuei Tung: Mr. President, I beg to move that the Senate doth agree with the House of Representatives in the said amendment.

This is a relatively simple amendment where the words mentioned above are being deleted. However, for the ease of convenience I would like to read the amended clause so that Members of the Senate would have the benefit of the amendment:

“22(1) Subject to the provisions of section 25, a producer of a sound recording shall have the exclusive right to do, authorize or prohibit any of the following acts:

- (e) rental of the original or a copy of the sound recording, for the purposes of direct or indirect commercial advantage, irrespective of the ownership of the original or copy rented;”

Question proposed.

Question put and agreed to.

COMMUNITY SERVICE ORDERS BILL

[SECOND DAY]

Order read for resuming adjourned debate on question [March 18, 1997]:

That the Bill be now read a second time.

Question again proposed.

Sen. Nathaniel Moore: Mr. President, I rise to support this Bill. I remember we already had some discussions on it and I feel constrained to make a short intervention at this time.

On the matter of alternatives to custodial sentencing that is the burden of this Bill, there are many people—not only in Trinidad and Tobago, but in several other countries—who believe too much emphasis is placed on imprisonment of offenders in our corrective system. Reports are that our prisons are overcrowded and there are plans afoot to provide more space for offenders to be isolated from the community which they offended.

From all reports, prisons or jails, if you like, are expensive institutions. They are expensive, not only to construct but also to maintain. The need for security and

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well-trained officers make a high demand on the national purse, yet crimes are increasing and criminals are becoming more daring and determined. The experience is that serious crimes are on the increase in spite of the increased sophistication of the methods and equipment used to track criminals. Therefore, emphasis has to be diverted from merely tracking criminals and isolating them to institutions.

1.50 p.m.

Not that they must be caught and exterminated or eliminated but people must be taught to aspire to a higher type of living in which crime is not attractive. From childhood days, people must be taught that the better life is one of honesty, diligence and decency. When people learn to appreciate and benefit from decent and upright activity, crime would lose its glamour. One main line of action would be on prevention and correction rather than punishment. This is why all wise government spend more time, effort, money and other resources in providing schools, employment opportunities, training, wholesome recreational facilities and cultural enhancement programmes rather than on prisons, police stations, guns and such like.

In the meantime, we find ourselves in situations where we are hemmed about with all varieties and levels of severity of crime and we need to address the problem of containment and control until we could attain our ideals in the reduction of crime. In whatever way we can, we must separate the serious crimes from petty crimes. Dangerous criminals must be separated from the victims and the general peace-loving and law-abiding productive population, and efforts must be made then, to reform them. If there is no reformation of these people there should be no integration to come into the society. Petty criminals and first offenders must be given another type of treatment. This Bill provides that they can be assigned to community duties in order to make restitution for stolen items or the value of these items while they are treated, if it is determined, that they need additional treatment.

In the case of drug users, they may be sick people who need treatment for their ailment, not necessarily confinement or imprisonment. The real criminals are those who supply the drugs and the ones who deserve the serious penalties and, possibly, isolation for the protection of the community.

Mr. President, those persons and organizations that carry out extensive investigation into crime and penal systems, tell us that community service, as a form of punishment, is far cheaper than keeping the offenders in custody. I have

some information from experiences in other countries such as the United States of America and Canada. One of the main points we learn about the incarceration of criminals is that it does not, necessarily, help them. I now refer to a document called, *What Every American Should Know About the Criminal Justice System*. It is taken from a document called the *National Centre on Institution and Alternatives*. I quote:

“Q: Do prisons reduce crime?

A: No.

- Overall, high rates of incarceration have little or no correlation to rates of crime. States with high rates of incarceration may or may not have high rates of crime. States with low rates of crime may or may not have high rates of incarceration. Similarly, states that embark on massive prison construction programs may or may not show declines in crime.
- Most people admitted to prison or jail serve short sentences...”

In other words, most people are sent to jail for short periods and, in many cases, for minor offences.

- “The sentence does little to affect the underlying reasons for the criminal behaviour—so little prevents them from reverting to the same behaviour after release. 95% of people in custody are released within two years.
- A person in prison cannot commit crimes in the street...”

but surely he may return,

- “...especially in the context of drug crimes. When people are released, they are often worse off for the experience of having been in prison, which makes the streets less safe.”

Mr. President, this is the opinion of the authorities in the United States of America, that putting people in prison for certain offences does not, necessarily, transform them and so the case is made for reform of these people since they are not necessarily reformed in prison. Some of the measures advocated have been noted as successful programmes in the context of the United States of America.

Training from childhood days: Mr. President, there is a programme called the *Headstart* in which they train young people in the correct methods of behaviour which has shown that much fruit was borne in preventing drug treatment. Very often, people are put into prison for use of drugs and the experience in the United States is that it is better to treat these people rather than incarcerate them. So, treatment for drugs: providing recreational facilities in communities for young people and encouraging them to use those facilities.

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2.00 p.m.

Working with young people who have the tendency to follow gangs. Breaking up these gangs is another effective method. Education, in general. If people are educated, they are less likely to commit certain crimes. Schools that engage parents or caretakers in troubled communities show some results. In certain communities, parents are sent to work with the children, especially in training them to resolve their conflicts in a peaceful manner without violence. These are methods which have borne fruits and which are commended to us. Job training is another method.

Mr. President, there is more to be done to prevent crime by using the rehabilitative method and education instead of imprisonment. I think we are in good company when we set about to provide legislation to use as alternative punishment, if you like, community service, in lieu of imprisonment. Now, community service is also cheaper. In fact, in Canada, it is calculated that it costs over \$54,000 per year to keep an inmate in federal prison. It costs just a little above \$1,200 to arrange a programme of community service for delinquents. It is concluded that it is cheaper to have alternatives to custody in many cases. We will therefore have a curbing of the criminal element.

It is also cheaper than the prison itself. Consider the cost of building the prison. It is better to spend the resources on schools and other educational programmes, and guidance, than to spend it on prisons. There is a big problem which has been voiced by people everywhere about instituting community service. I read in the newspapers not too long ago that one Mr. Rattray, from Jamaica, suggested that Jamaica has legislation for community service, but up to the time he spoke, it was seldom used because some people felt it inconvenient.

The experience is the same in Canada where it is found that although research has shown that it is cheaper to have a programme of community service for certain offenders, it is not readily used. This is where the problem begins. As Mr. Rattray suggested, the people who have to deal with these offenders—to bring the community service on stream—must understand that there must be a system and a period of training; even for the judges and probation officers, who will have to supervise these people in the field.

Most people have seen a need for reform but the willingness to implement it is not there. Now, there are some guidelines which are given here, Mr. President.

“...(roughly 65 percent) of Canadian citizens would rather see their government develop more community penalties and social programs than build prisons.

In fact, the history of Canadian criminal justice is replete with recommendations for the greater use of alternatives to imprisonment. To quote the Archambault Report of 1938:

‘The undeniable responsibility of the state to those held in its custody is to see that they are not returned to freedom worse than when they are taken in charge. The evidence before this Commission convinces us that there are few, if any, prisoners who enter our penitentiaries who do not leave them worse members of society than when they entered them.’”

Several reports which I have studied came up with the same conclusion. They have, therefore, advocated systems like the one we are advocating in this Bill today. We are in good company, and if experience has shown that the alternatives to sentencing are cheaper and more profitable, there is no reason why we should not, as rational human beings, implement such measures for the improvement of our society.

It is with these main points in mind—the greater benefits of community work to sentencing, the lower cost of community service to imprisonment, and the need seen in society for such measures—that I think the adoption of the measures outlined in this Bill are justified.

Mr. President, I beg to support.

2.10 p.m.

Sen. Martin Daly: Mr. President, no one can reasonably oppose the idea of community service as an alternative to prison. I think that it misses the point of this debate to simply recite the statistics from foreign countries in support of this Bill. The issue here, and for debate by us, is what are the appropriate circumstances in Trinidad and Tobago for community service orders to be made. I will be very surprised if anybody opposes the Bill in principle. This Bill is very hollow and, as I should hope to demonstrate, is devoid of very critical details.

Moreover, Mr. President, before I come to my criticisms of the Bill and the way it is framed, I would like to take up the theme of my colleague Sen. Teelucksingh. In his contribution he sought to locate this Bill in the context of the situation with crime in Trinidad and Tobago. I hope Sen. Moore's admission that crime is increasing will not force him to join the growing ranks of independents. Because I certainly hope that no one on the Government side is going to suggest that crime is anything other than increasing. The society is crime saturated and we

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cannot look at this Bill in isolation from the saturation of our society with crime and the fears of our populace. Sen. Teelucksingh put it very well when he located the Bill in that context and I quote from his contribution on March 18, 1997. I quote because I cannot do it better:

"Our society is disillusioned, displeased, and at the zenith of anger and outrage against offenders who have disrupted the communal peace and inflicted so much pain and suffering on law-abiding citizens. We cannot consider this Bill in isolation."

Mr. President, I like to take up that theme, because there is a very grave danger in citing overflowing prisons and poor prison conditions as a reason for passing a Bill to provide for the alternative of community service orders. There is a very grave danger because we will make the population afraid. I do not believe the population is in a very forgiving mood at the moment and this Bill has forgiving overtones. I think it is very important that we do not send the message—as Sen. Teelucksingh suggested—that we are going to be anything other than tougher on crime and I do not think we should send the message that we are in a forgiving mood.

What we must do is accept that this is a very important alternative to prison, but define very carefully the circumstances in which this option will be available to the court. I appreciate that the court, particularly the magistrates, should have the discretion, but at the same time we cannot give them a blank cheque which is what this Bill does. This Bill provides a complete blank cheque and we cannot do that, particularly in the present situation of increasing crime, and the fears of the population.

Mr. President, you know it is ironic that we are debating this Bill in light of the very contemporary controversy as to whether or not an assessment of the Government's performance is biased. It is very ironic, because the first part of that assessment had to do with crime. If only people would not mistake criticism and examination for bias we could improve this country. The fact is, that the Government has kept its promise and is well on the way to fulfilling its promise to equip the police better. No one has been saying that. The police are very visible, certainly in urban Port of Spain and surrounding areas and the police are better equipped, but has it made a difference? People are entitled to examine whether that has made any difference, and clearly, since crime is increasing, equipping the police by itself has not been the answer. So we need to be very careful.

As I should demonstrate, crime in our country is one of these issues that requires a bipartisan approach. Now, I have been advocating a bipartisan approach on a number of these issues long before we started to hear about national unity. I do not want the two things to be confused. The first thing that the bipartisan approach does is recognize that crime is increasing and no one political entity can claim to have the magic answer to the problem, and there has to be a high degree of co-operation. This Bill provides a good example for the need for a high degree of co-operation, where I daresay everybody, broadly speaking, is in favour of the courts having community service as an alternative. We have to work out in a bipartisan way, or I suppose in the Senate in a tripartisan way, what are the appropriate circumstances, which this Bill simply does not address.

I venture to say, that no one in this country would accept a community service order being made in the case of a crime of violence. I do not think anyone in this country would accept that right now. Indeed, we have had the benefit of a highly publicized seminar between the time this debate began and today, and every single speaker who was reported in the media made the point that this must not apply to manslaughter, murder in countries where the death penalty is not compulsory, rape and other crimes of violence. The judge from Zimbabwe was one of those who made the point very forcibly. He was not the only one; the Chief Justice of Jamaica, Mr. Justice Rattray, as pointed out by Sen. Moore also made that point. If that is the feeling of the community and the political feel of the country, the Bill must say so. It must say so.

Therefore, the first amendment which I have proposed is to clause 3 of the Bill, to exclude from community service orders, the offences of manslaughter, rape, or any offence involving violence, such as the Minister may by regulation prescribe. First of all, I am proposing it because I think the country demands it. Secondly, I am proposing it because we must not be sending the wrong signals to the ever-growing criminal community, and thirdly, because I think this clause, without some limitation, presents a blank cheque—it goes way beyond discretion—to the court.

Now, I want to explain why I have drafted the amendment in that way: manslaughter, rape, or any offence involving violence such as the Minister may by regulation prescribe. I have neither the time nor resources to sift through all the various crimes of violence and the degrees of violence involved in crime. To take a simple example. Shoving an old lady aside in the street and snatching her handbag, or her purse as we call it, off her shoulder and bursting the strap, and maybe bruising her arm might be technically violence, but that is the situation where

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violence was involved but no one would have an objection, necessarily, depending on the age and on the circumstances of the offender, in making a community service order. So it is incumbent upon the Government to very carefully specify, or tell us the types of offences for which community service orders will be available.

There are various categories of robbery, there are various categories of assault. It is totally lazy and unacceptable for the draftsman to present us with this blank-cheque situation. It is incumbent upon the Government, and, therefore, the draftsman, to categorize those crimes in respect of which a community service order should be available. I have done it by reference to regulations made by the Minister, because this Bill leaves everything to regulations to be made by the Minister. So short of redrafting the whole thing, I have tried to fit it into the scheme of the Bill, but that would have certain consequences so far as my amendments are concerned.

2.20 p.m.

That is one detail of which the Bill is completely devoid. What is the Government's view about the types of offences for which community service orders are suitable? I made the point and I am going to repeat, it ignores the mood of the country. The crime problem is not being solved, instead it is escalating; it is increasing and we have to find the reason why.

Mr. President, I think the presentation was done in complete isolation of any word from the Minister of Social Development, as to what policies he has in mind to prevent certain areas or the whole country from becoming breeding grounds for crime. I think that follows logically from Sen. Teelucksingh's submission that the Bill cannot be seen in isolation. I would have expected the Minister to tell us what plans his Ministry has to deal with the social conditions that breed crime. That is why I reject references to overflowing or cruel prisons as a reason, by itself, for the passage of this Bill. We need to hear about this.

Mr. President, apart from the ameliorating and social conditions that breed crime, we also need to hear from the Government about its plan for prison reform. I doubt that this measure would stop the prisons from overflowing. More importantly, as many commentators have pointed out, if the conditions of the prisons require that we "save" criminals from the prisons, then we need to know what are the Government's policies for penal reform and for improving conditions. Otherwise, these community service orders would become a soft option for the sentencing authorities and for those carrying out social policy.

There have been disastrous sentences. I remember Sen. Prof. Julian Kenny and I threatened to join a group on Independence Square, some 18 months ago, in connection with a sentence that was handed down in a rape case. There was a huge outcry and demonstrations about the issue. I suppose if a community service order was available, at that time, the rapist might have gotten one. God forbid, he might have been sent to some predominantly female institution to do his service. He would have been presented with a tree laden with fruit. This issue needs to be thought through very carefully.

Likewise, Mr. President, the Bill is completely devoid of any details as to how and where the community service is to be performed. This is left to regulation by the Minister. I would not like to think that any Minister would want to be responsible for that task by himself. I think it is unacceptable that this should be left to any Minister without debate in Parliament and some preview as to how this community service is to be performed.

I am not very impressed by the Canadian and American statistics because they have all sorts of infrastructural things—for example, crime commissions and sociological studies—that we do not have. I am in favour of community service orders as an option, but I think we go much too far to delude ourselves into thinking that there ought not to be some element of punishment, even within the community service order that is made. As far as I am concerned, if there is a shortage—I am just being hypothetical—of help in Government institutions, NGOs, or hospices, to deal with geriatrics and terminally ill patients, the type of the community service order that I would like to see is someone having to go to those places to see how people struggle to survive; to assist the Living Water Community and orderlies in the Government institutions with some of the more menial and unpleasant work which has to be done, in order to bring a modicum of comfort to persons who are terminally ill or geriatric.

I do not have the library which Sen. Prof. Kenneth Ramchand has when he wants to use unparliamentary language and quote a poet, but I would like persons who have to do community service, to do so in depressing, realistic conditions and to put their hands in some mess. Otherwise, what is the point of it? Are they going to be sent to do community service such as washing windows in a gym in East Port of Spain, or to wash cars in the prison yard? Is this what we have in mind? I do not believe that the Government is being so absurd. Between those extremes, there is room for much debate as to what this community service should consist of.

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I maintain that the cornerstone of this service must be menial, unpleasant work, but necessary for the survival of the less fortunate, the sick, the elderly, the terminally ill, orphanages and so forth, even mental institutions—in fact, all the places where it is difficult to get either paid or voluntary help. This serves two purposes, in that it contains an element of punishment and realism, and provides service which is hard to get in sufficient numbers. It would also bring those offenders face to face with some of the more unpleasant aspects of life.

I assure you, Mr. President, if one ever had to look after a terminally ill or geriatric person, one would understand that it takes almost heavenly love that most ordinary people do not possess, in those situations. That is what community service should do, because it would bring the offender face to face with real life and how other people live. I give these examples to demonstrate that this Bill is unsatisfactory because it is completely devoid of any details as to how community service is to be performed and in what circumstances. I am concerned about that.

Mr. President, I know very little about social development and I am a victim of poor, social development policies in the country. I do not have the wit to sit down and categorize the types of community service either. Thus, in one of my amendments I am proposing to fit in with the regulatory powers of the Minister, but specify more precisely—there are some general words here which seem to do just that—what the Minister must order by regulation. This is why in the regulations, I am asking for the introduction in 25(2) where it states:

"Without prejudice to the generality of subsection (1) the Minister may also make regulations to—"

I specify (a) prescribe offences involving violence upon conviction for which a court may not make a community service order and (b) prescribe the places where community service work may be performed. I want that specifically highlighted as an objective of the regulation. These general words, in my view, do not sufficiently focus on this important issue of how the community service is to be performed.

2.30 p.m.

Mr. President, what I am going to say now about my amendment has nothing to do with any particular Minister. I believe this is much too important an issue—particularly in the crime saturated situation in which we are—to leave this to be done by regulations without any further scrutiny. Since we have no opportunity of

finding out what the Government thinks is the appropriate kind of offence or community service, I have proposed that these regulations should require an affirmative resolution of Parliament so that we can find out, because we do not know but have only heard all these generalizations about community service. When those regulations are brought for the affirmative resolution of Parliament, we will find out what the Government's thinking is on the crucial issue of the types of crime and the type of community service which it has in mind. Moreover, I have put in a time limit within which the Minister "shall"—not "may"—bring these regulations to Parliament.

Here, Mr. President, I will have to strike a slightly controversial note. This Bill, in its present form, could be abused as a public relations exercise. I am not saying it is going to be, but we have certain developments in the information industry to which we must pay careful regard.

A bill in this form opens the way for the Ministry of Information to put one of the better looking gentlemen or ladies of the Government on our television screen with beautiful lattice work, with the nicely turned out interviewer and the potted plant in the corner and say, "Well you know, population, we are very serious about penal reform. We have passed a bill providing for community service as an alternative for prison. And you know, we are really cracking down on solving the problem of crime because we are going to save first offenders and young people from prison." That could easily take 15 minutes at 6.45. I hope that is not an original idea but the bill, in fact, will take us absolutely nowhere. It would just be a purely cosmetic piece of legislation and we have not debated the key issues in it. Indeed, Sen. Moore, I spoke *pro rata*.

Tobago has more independence than Trinidad. Sen. Moore gave us a more independent view. He did not only speak about increasing crime but he also spoke about the need to separate serious crimes from petty crimes and about rehabilitation. Until we know how this Bill is going to work and to whom it is going to be applied, it is nothing. Indeed, Sen. Moore pointed out the difficulties in implementation in Jamaica, of which the Chief Justice of Jamaica spoke in his very independent contribution.

So, I think it is incumbent on us not to waste time in saying that they have this in Canada and the United States, so we should have it also. It is incumbent on us to accept it as a good idea; accept it as I do—as a *bona fide* part of the Government's programme in which it is passing bills relating to the administration of justice. I accept that, but this, unlike some of the other bills which the

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Government has brought, is not going to achieve very much in its present form and it is not going to have the input of serious commentators because we do not know what the Government's thinking is on these crucial issues.

Quite different, let me take a contrast because there seems to be a great sensitivity about commentary on the part of this Government. When the Attorney General brought the bill in relation to alternate jurors, it was very specific about the circumstances in which they be used, the number of jurors who would be used and so forth. Likewise many of the other bills were quite specific about the circumstances in which this or that piece of infrastructure of the administration of the justice system is going to be interfered with. This lacks that kind of specific detail and, in my humble view, the only way it can be cured is by accepting that this is going to be worked out by regulation, but making absolutely certain that whatever philosophy or thinking goes into that regulation comes back to the Parliament for our scrutiny and discussion. That is the only way this Bill will achieve anything unless, of course, it is withdrawn and a much more detailed framework is presented.

I really want to soothe the sensitivities of the Government to commentary. Therefore, I think it is a good thing to bring forward a bill like this in the same manner that it is a good thing to bring forward alternative jurors, improvements in the preliminary inquiry system and all the other things that have been done in connection with the administration of justice. Regrettably, however, this Bill falls short in my respectful view, for the reasons which I have indicated.

I think it is very important also, that there be a positive obligation on the Minister within a specified time frame, to bring the regulations forward otherwise we could pass the Bill but without any regulations, it cannot be implemented. If the regulations were attached to it, maybe that might have been a different story.

Mr. President, those are my difficulties with this Bill. I have said it 10 times and I think that I better say it for the eleventh time—I think it is a good thing to bring forward this Bill and support legislation for community service orders, but I cannot support it in a complete vacuum. I have done what I can with the amendments which I am proposing but, Mr. President, it is very important to understand that you cannot choke and rob commentary in a society. That is to say, choke off commentary and rob people of their entertainment time by putting on someone to sit in front of a potted plant and talk in the terms of an information kit. That is pointless. In precisely the same way that I feel better about the Government's efforts and the keeping of its promise by putting more vehicles on

the road, I would feel a whole lot better, if instead of "choke and rob" on the media, we could have a full philosophical discussion about this very important measure in the proper place in the first instance, which is the Parliament.

Mr. President, we must not underestimate the difficulties which all the governments have had to face. One of the best commentators on jail was a former magistrate who went there. I quote.

"I found myself in a cell, eight feet by ten feet, with 15 other men. Our toilet was an open bucket. In such a small space men become agitated quickly and fights break out. Sometimes they would throw the contents of the bucket at other men."

This is a quotation from an interview given by former magistrate, Mr. Jagessar in the *Sunday Guardian* on Sunday, April 13, 1997.

Mr. President, can we responsibly leave this debate without hearing from this Government what it plans to do about these conditions, if they are true, because if from now until the end of the century, you send nobody to jail again but only make community service orders, there would still be this problem. It does not solve this problem to provide an alternative to prison. The alternative to having community service orders as an alternative to prison, should be grounded in a completely different philosophy and it should be part of an overall plan to ameliorate the social conditions which breed crime. Therefore, this requires an answer in the context of what we are discussing. We cannot approach it—none of the Senators has done so as yet—on the basis that because we have this problem, we are going to pass this legislation. I really think it is very important to understand what community service orders are and what their objectives ought to be. That is the difficulty we face on the penal reform issue.

Likewise, Mr. President, on the crime issue, I think it is important to understand the difficulties we face and they are not going to be solved only by election promises, even if fulfilled. They are going to be solved by taking a hard philosophical, sociological look at the society and the type of animals that we have become. That is what is required. And so, we have a lamentable record on domestic violence.

2.40 p.m.

One of my colleagues told me that the economists had ranked us in the world class of domestic violence, and we get statements and information tips, from time to time, on domestic violence. Those cannot solve the problem and despite the best

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efforts of the Minister of National Security—I mentioned this to him some time ago—all we hear from the police on domestic violence is platitudes, “Oh well, it is a serious problem and we are doing our best, but you know it involves the whole community.” That is a platitude.

It has come to my attention and Sen. Diana Mahabir-Wyatt has spoken about it as well, that when you go to a police station to report an incident of domestic violence they offer you two things: Do you want to prosecute? Or you can get an order under the Domestic Violence Act. That is not what they should be doing at all. It is a problem of training and philosophy. I deliberately chose domestic violence as an example, Mr. President, because I hope it does not have any political connotations.

At the John Clifford Sealy memorial, a foundation lecture was given by Dr. R. Reddock, senior lecturer and head of the Centre for Gender and Development Studies at the University of the West Indies, on Gender Relations: A changing Landscape. I quote from page 6 of the *Daily Express* of Monday, April 14, 1997:

“Reddock said Ministry of National Security statistics revealed that between 1990 and 1996, 41 women and 39 children were murdered in domestic-related violence.”

That period spans more than one government. It spans the infancy period of one particular government and a longer period of another. Does any honest commentator believe that the statistics for 1990—1997 or 1990—1998 are going to be any different?

I watched my television with unusual interest last night because of certain programme changes and I wonder now, what is going to be the Ministry of Information’s answer to David Rudder because I heard Rudder saying in his interview, in the course of discussing the use of public funds for calypso and so on, that these are savage times.

I know Rudder is generally accepted as someone who gets the vibrations very well. I do not think Rudder has ever run afoul of any minister of Government; his commentaries are usually very subtle and he has said we are living in savage times. I do not know if we are going to get another 15 minutes of programming to say that Rudder is wrong, because Rudder is right. These are the statistics—between 1990 and 1996, 41 women and 39 children were murdered in domestic-related violence—so that must give us some cause for thought.

Dr. Reddock goes on:

“Trinidad and Tobago is today one of the most violent countries in the region. We have seven shelters for battered women, two rape crisis societies and they are still inadequate to deal with the extent of the problem. Clearly, we must seek other mechanisms to deal with what is an extremely complex situation.”

If the Minister of Social Development has a plan to deal with this extremely complex situation, he must tell us what it is and locate this Bill in the context of that plan because I seriously believe that the population, as Sen. Rev. Teelucksingh has pointed out, would be very uncomfortable knowing, even if it is only theoretically, that a magistrate or a judge could lawfully make an order for community service for cases of domestic violence. I think the population would be appalled by that and, therefore, this Bill must have language that is balanced and must send very clear signals about its purpose. Without the details to which I have referred, I do not believe it sends the right signals.

So, Mr. President, I find myself in a dilemma. I join with Sen. Rev. Teelucksingh in congratulating the Government in bringing forward a Bill to make community service orders possible but I find the Bill hollow. I have neither the resources nor skills to redraft the whole Bill but I am proposing that these two critical issues: the types of offences in respect of which community service orders may be made, and what community service would consist of, should come back to the Parliament in the form of regulations requiring an affirmative resolution. That is the only way I can find myself out of the dilemma.

Therefore, in the most untroubled spirit that I can muster I ask the Government to seriously consider—I know it is only in Opposition that organizers of parliamentary business like affirmative resolutions, but I think this is the case for good and sound reason. We must proceed in this way in order not to increase the despair of the already troubled national community and in order not to send the wrong signals to the criminal community.

We have a very serious and very complex problem and we have to handle it with a great deal of sensitivity. We cannot solve it by putting out information kits or very blank statements about what is being proposed about these issues. They have to be concrete measures and they have to be properly debated by the national community. Therefore, Mr. President, although I support this Bill in principle, I think it is very important for these two missing crucial details to come forward in the debate in Parliament, either in the form of an amendment to the Bill by the Government or in some other form, but I am suggesting one form.

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I would rest very uncomfortably, if these two crucial issues are not specifically addressed by the Parliament. Thank you, Mr. President.

The Minister of National Security (Sen. Brig. The Hon. Joseph Theodore): Mr. President, I rise to make a small contribution in support of this Bill and also to clarify how I see the direction in which the Bill is pointing. I will quote from certain statements made by Sen. Rev. Teelucksingh and generally try to point out that while the Bill may seem to be going soft on criminals there are two sides to this whole exercise—one of extreme severity for major crimes and another of tolerance and rehabilitation for people who can be saved.

Mr. President, in the *Trinidad Guardian* of March 20, 1997, Sen. Rev. Teelucksingh is quoted as saying:

“I believe that we have to get tough on crime and I do not see the Bill sending that message.”

To me this Bill was not designed to send a message to get tough on crime. It appears that the Bill was designed to send a signal that we wish to reduce the incidence of crime. By dealing with first offenders and offenders whose crimes are such that some form of punishment, other than custody, could be imposed would, in fact, maybe deter people from becoming criminals later or remove the stigma of having been incarcerated in a penal institution. I speak primarily about the Youth Training Centre which is designed for young men between the ages of 16 to 19. I am advised that 50 per cent of the inmates are there for first offences.

2.50 p.m.

In the *Sunday Mirror* of March 23, there is a statement alluded to Sen. Teelucksingh which says:

“Our society is unable to deal with the small offenders, he declared.”

I would like to think that the Bill is attempting to deal with the small offenders before they become part of the prison population, and as public opinion has it, become trained in the art and become criminals afterwards. There is the perception in the society that the prison is a breeding ground for criminals and that so-called innocent young people who find themselves in that situation will not benefit from the time they spend there. The same article in the *Sunday Mirror* of March 23 goes on to state:

“The kind who simply jump over your fence.

Our society does not have that kind of compassion again.”

This is sad, that our society should become so coarse as not to have compassion for a young person who may have jumped over a fence. I would like to see a bill of this nature satisfying the need to provide an alternative form of punishment to the magistrate who hears a case such as this: Somebody gets into your yard for one reason or the other; the police comes and arrests the person; he turns out to be a young man of 16 or 17 who may have been there, for whatever purpose he claims to have been there. The options available to the magistrate are a fine, probation or, perhaps, a sentence to the Youth Training Centre.

Generally the population regards these institutions at Golden Grove as prisons, so calling it the Youth Training Centre does not make it less a place of incarceration than the Royal Gaol. Since we are dealing with public perception, I have to depend on what the public thinks to interpret what the hon. Minister of Social Development is attempting to do with this Bill.

Basically, we are looking at giving the magistrate some alternative, because should that person be fined, one runs the risk of his being unable to pay the fine and there is the likelihood that he may go on to some other form of illegal activity to raise the money. Let us say, he has no choice; fails to pay the fine and serves a prison term—I think many people do not understand that a sentence to the Youth Training Centre is for three years, not six or 12 months. This person between 16 and 19 is at a very impressionable time in his development to be in an institution.

Albeit the Youth Training Centre does have a rehabilitation programme; there is an educational programme; there are sports facilities; it is quite a well organized place, but I am not quite sure that most of the young men who are there right now appreciate what is being done for them in order to have them rehabilitated and take their place in society. It is the view that, maybe, family, church or neighbours are what young people of this age require during these formative years of their lives.

One could look back and take it for granted that these people may have dropped out of school; they may have come from families where there is no supervision or guidance. It is my view that community service will provide a certain degree of guidance. Again, the point raised by Sen. Daly—which would be resolved at a later time—where will this community service be done? This is important. Who will supervise it? The Bill caters for the probation officer supervising the work and the magistrate does have a discretion, but before he makes such an award, he must ensure that the award can be carried out by the person to whom the order has been granted.

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For what it is worth, I am quite satisfied that barring further details in the regulations which would be debated at an appropriate time, that the court, according to the Bill, and I will quote clause 6:

“A court shall not make a community service order under this Act unless the offender consents, and the court is satisfied—

- (a) after considering a report by a probation officer about the offender and his circumstances and, if the court thinks it necessary, hearing the probation officer, that the offender is a suitable person to perform work under such an order;”

It was never envisaged that a probation order can be made against every and any offender. It goes on to state:

“(b) suitable arrangements can be made for him to do so.”

That is, carry out the community service.

Quite frankly, the Bill, in the main, does address the need for an alternative form of punishment other than custody. Again, I would like to quote from the *Sunday Mirror* of March 23, where the hon. Sen. Teelucksingh is also alleged to have said:

“I have a problem with the Bill, he said.

How will we handle the Chuck Attins?”

By the time they reach to the “Chuck Attin” stage, they are in a different category from these people who will be dealt with by this Bill. I would like to think that what the Bill will contribute to is a lessening in the number of “Chuck Attins”, because these people would have been given some counselling. They would have been part of a programme which will not take them away from their families and it would probably not deny them an opportunity to perform some work and, depending on the nature of the family from which they come, making a contribution to the maintenance of the household. But to put this person in jail—at the YTC—he would not be earning any income there and he would be separated from his family. I feel that his development process could be hampered by the mere fact that he is a member of such an institution. Different people have different reactions to being confined or incarcerated.

In the prison at present, one of the measures being adopted is psychological interviews. The prison officers themselves, as part of their training, are being

taught psychology in order to understand how to deal with prisoners. It is no longer the days of simply being locked up and punished. There is a programme that is being developed. I am prepared to admit that there is no fantastic rehabilitation programme taking place in the prison system. In fact, such a programme, we anticipate, will be allowed to develop with the commissioning of the new prison and which will allow the prison officers to use the facilities that have been provided in the new prison that would be opened at Golden Grove.

3.00 p.m.

Mr. President, I would be able to speak in more detail on this later on, but it was raised by Sen. Daly. As I said, I admit there is no fantastic programme. A certain degree of rehabilitation does take place in the major prison at Golden Grove in the form of animal husbandry and the growing of fruits and plants, which has reduced the demand by the prison population on the Government for funds to feed themselves. The prison is almost self-sufficient in food.

Again, we are looking at a more scientifically oriented prison reform programme which will be permissible once we have the space, and the prison officers are allowed to devote more time. The programmes are not run by prison officers alone. There are NGOs and experts in the field who have volunteered their time. I cannot go into the details of who does what, but it is not a hit-and-miss programme that is attempted by untrained prison officers.

Mr. President, I would again refer to the article of March 23, 1997 in the *Sunday Mirror* where the hon. Senator stated:

“Teelucksingh pointed out that the participants would sit around all day and do nothing, and insist that they were paying back society.”

I hate to think that the probation officers could be so inefficient or insensitive to simply allow their charges to go about doing this community service without supervision.

What I also understand—and I heard the Minister of Social Development mention it—is that in the main these persons would go to agencies, very much as Sen. Daly said, a home for the aged or some organization, where they will be given a task; so they are really under two forms of supervision. The persons who run the place would be told what these offenders are expected to do and then there is the probation officer, whose business it is to ensure that the people report on what they are supposed to do. There are provisions in the Bill to deal with those who fail to fulfil the requirement of the order.

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Mr. President, the point I want to make is that we should not lean too heavily on looking for harsher forms of punishment. That has its place, but this Bill, which is part of a larger attempt by Government to deal with the crime situation, has to be understood. We are dealing with one sector of the—I hesitate to say—criminal population: offenders, who either deliberately or unintentionally might have become involved in breaking the law and might have had to go to court. In these cases there are considerations: What is the situation of this person's family? Is this person married? Does he have children? Is this person working?

Mr. President, again I want to make it clear that all the considerations of the matter will be studied as the situation of the person who is before the magistrate is taken into account. For example, there may be a young person who, regardless of age, is a first offender, has a job, is the breadwinner and is a respectable person up to that point. Let us assume that this person is faced with a fine and, for one reason or another, he is unable to pay the fine; no good Samaritan would offer to pay this money in the hope that it would be returned to him one day, so the offender goes to jail.

My point is that it is time we start being more humanitarian and not allow the situation to make us too callous and hard, thinking only in terms of sending more people to jail. If this Bill is passed, this person would then be one of those whose circumstances could be considered and be the recipient of an alternative form of punishment.

This is basically the point I am trying to make. One must look at the Bill as it is intended, not forgetting, of course, that there are other aspects to the whole issue of dealing with crime. In fact, we can look at punishment as a deterrent, prevention and rehabilitation and, maybe, prevention is the area we are seeking here. I fully agree that we must find a way to deal with these minor offenders and it should not only be either getting off or going to jail.

Mr. President, in closing, I simply appeal to Senators to view the Bill as, maybe, contributing to lowering the risk of persons who are potentially biased towards breaking the law. By having an alternative to custody in the form of community punishment we may save certain persons who, had they gone to prison, would have followed a criminal bent. In this way we may be able to save a number of persons who, through community service, will understand and recognize that that is not the way to go, and that they have been given a second chance. Again, there are provisions in the Bill to deal with situations where a person does not follow the conditions as laid down. That person, in fact, can be arrested and sent to jail.

Mr. President, it is not that a person can simply not pay attention to the Community Service Order and do as he pleases; there are certain sanctions. I suggest that this Bill is a very worthwhile one, particularly at this time when the perception in Trinidad and Tobago is to become more harsh with everybody and seek only to arrest people and get them out of circulation. We cannot go ahead building prisons. I have said already that, in my way of thinking, building more prisons is not the way to solve the crime problems.

I look forward to the continued support that I have been getting, Mr. President. Most people do not feel that the Ministry of National Security would take care of crime, but the situation is that by the time it reaches the stage where it comes to my ministry we are dealing with a criminal. The ministry admits this, and we are working together with various other ministries such as the Ministry of Sport and Youth Affairs, the Ministry of Education, the Ministry of Community Development and Social Services and the Ministry of Culture and Women's Affairs, to deal with this issue in a holistic manner.

I welcome this Bill as a very important part of the entire programme that the Government is following to reduce the incidence of crime.

Thank you, Mr. President.

3.10 p.m.

Sen. Dr. Eric St. Cyr: Mr. President, like everyone else who has spoken before, I support this Bill before us. In doing so, however, I endorse the concerns raised by my colleague, Sen. Rev. Daniel Teelucksingh, that we should be careful that in the context in which we are addressing this problem, we do not err by sending a message that we do not want to send.

I also endorse the detailed discussions of Sen. Daly that we have to be more specific on the exclusions and types of community work. I do not know if he developed this point, but he alluded to the fact that we must be specific about where the community services are pursued or performed. Where community services are performed, we do not want people to become disillusioned or embittered in any way, while at the same time, it must come forth clearly as part of a punishment.

Our justice system and the subset, the penal system, have been rather biased in a certain direction. I believe that a penal system has three dimensions, namely, retribution, whereby punishment and sanctions are applied, for example, fines and

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flogging. Capital punishment is still on the books although we have been reluctant in going in that direction. We have been custodial in that we deprive people of their liberty. We think usually of the other side of that coin, that is, to protect society from undesirable criminal types who cannot order and discipline their lives, from having liberty to offend others.

The basic point is that we have been relatively strong on retribution, but very weak on the other dimensions of the penal system, such as redemption, correction and reformation, that is, helping offenders to reform their lives. We have also been very weak on the dimension of restitution which is a fundamental element of any justice and penal system.

What I see that causes me some happiness is a change in direction. I agree with Sen. Daly that we must ensure that we get the direction fine-tuned correctly. I support this Bill which points us in a new and correct direction. It does not go very far in the direction, but it is most important that firstly, we get the direction and, the pace at which we pursue could come later on. It is said that a journey of 1,000 miles begins with the first step. It is in that context I see this. Looking at the Bill I see that there must be careful discrimination between the types of offenders to which this would apply.

I am impressed by clause 6. It states:

“A court shall not make a community service order under this Act unless the offender consents, ...”

I think that is a correct principle. There should be a change in one's perspective and attitude, and one must understand what is being done and agree to co-operate. I know this opens a window for people playing games, but it is still a correct direction in which to go. I suspect that we give very wide leeway to the magistrates and judges who would be making judgments on these issues. We want to ensure that in addition to their legal training they would also be trained in the other areas which would equip them for delivering judgments for the different types of offences.

I am less happy with a point in clause 25, that we must pay for offenders to travel and meet their expenses. I know they are doing work which has value and the implied costs should be covered, but I am not happy with that. Subclause (2) mentions that we do not abuse people by making them do too much work in one day and we do not disrupt their lives otherwise. In other words, I am saying that I favour the humane dimensions of this Bill. Offenders must be willing; there must

be a sense of remorse for what they have done and agreement with what is being done in terms of reformation. The provision of community service causes them to repay society in some little way for the crimes they have committed. That takes care of the principle of restitution to which I alluded.

On the wider societal issue, my support for this Bill is based on these conceptions. On the one hand there is a society in which growing up is a complex issue these days. In the time when most of us here were growing up, I do not think that the society was nearly as dangerous to grow up in as it is now. We must consider that our young people face tremendous difficulties. In addition to that, I do not know that parenting is as good as it was 50 years ago. I do not know that grandmothers' and neighbours' community parenting support the young people nearly as much as was the case in years past.

3.20 p.m.

So, on the one side there is a pool of young people with many things coming at them on the television and other media, and at the end of it, the prisons where, once one gets in, rather than just being punished, one is likely to learn how to be more criminal. If I can stop any young offender from rubbing shoulders with persons who have been in the game before, I would think that a great success.

I see in this Bill an attempt to cut off the first-time offender from the training ground for being a better criminal. We are attempting to say to someone who has committed a minor crime that he can do better; he need not go in that direction; he can stop and become a solid citizen. I really think that if we do not do that we would be increasing the flow from the society into the prisons, which are already crowded. As it were, we stand in the gap between the society and the prison.

I would, therefore, like to view this as a major step in the direction of penal reform. Let me hasten to say that in my view it is one small piece of a bigger package. Let me also hasten to say that we do not want to be naive. There will be some offenders who will think that we are joking and who will take us for a ride, but those would have been on their way to being hardened criminals anyway. Those whom we would arrest and put back on track, I genuinely think would be in the majority. I think this is well worth doing and I would lend my full support to it.

I would have been happy to have had some details of the type of work to be done and to have seen certain exclusions made explicit in the Bill. I would also have been happy to have seen some more guidelines given to magistrates.

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I also see an increased burden on probation officers and community workers. I hope for greater involvement of the community in working with young people. We no longer have adults willing to take young people as apprentices or simply spending time in their company. We are all so busy that we have left our young people far too much on their own.

I congratulate the Minister on the direction in which we are setting out, but we need to be careful to put in the checks and balances. I feel certain that this move is in the right direction.

I thank you.

Sen. Philip Marshall: Mr. President, I wish to support this Bill, but I think it is important to go back to the drawing board and incorporate some other ideas.

I am concerned, first of all, about its implementability. With respect to clause 25, in terms of the regulations, the Minister would have to have record-keeping of an order which would add to the overheads and budget of the Government. I think, therefore, that although there are many good ideas incorporated in the Bill, they would not be implemented.

I have one over-riding theme to contribute to this Bill. It seems only to deal with young first offenders where, in our society today, it is the adults who are not the role models. Why limit this to our young offenders? In many cases, white collar crimes go unpunished because people feel that maybe the person is at a certain level within an organization and he should not go to prison. I think that maybe the best way to extract justice from them is to make them—and they should have the background—serve the community in a wider sense.

A basic message is: Let us start with our adults. Let us ensure that the provisions of this Bill ensure swiftness of justice in certain areas. What about a breadwinner who is lost from a family because of a negligent driver, by someone who may have consumed too much alcohol? Is it not best to have some form of retribution for the loss of that breadwinner in the form of a contribution by the offending driver? Why not, in cases where someone is a salaried person, a mandatory deduction of a certain percentage of that person's salary?

I would like to see this Bill implemented. Other Senators in their contributions have talked about having communities, NGOs and other organizations, make a list to some central repository of what is required in the form of assistance, so that we could have in advance a near detailed inventory of what needs to be done. There

should be a situation where the courts can have quick implementation of exactly what needs to be done, in terms of community service, by an offender. Let us therefore not think only in terms of young first time offenders, but also in terms of adults who should provide that role model.

Mr. President, let me assure you that if people have to give of their time and effort along the lines Sen. Daly has talked about, we will have a change in behaviour. It is so easy simply to pay a fine and ignore the damage one has done to people as opposed to making people serve and repay, in tangible terms, the victims of their actions.

This Bill should become a way of life in this country. Let us, throughout the length and breadth of this country, communicate the importance of a new role model, of adhering to the law and having behaviour where our young people would realize that when they breach what is acceptable, the law would swiftly deal with them.

I thank you.

3.30 p.m.

The Minister of Community Development, Culture and Women's Affairs (Sen. Dr. The Hon. Daphne Phillips): Mr. President, I rise in full support of the Bill. I wish to state that—as other Senators have—all criminals cannot be imprisoned. That is not the way to go, Mr. President. We all agree with that.

This Government has been accused of concentrating too much on equipping the police officers with cars and so forth, as if cars could solve our crime problems. Mr. President, that has been part of the programme on television. This Bill is part of the wider concept of what is necessary to deal with the crime situation before us. We know that imprisonment is not really the answer because of the high degree of recidivism that takes place; to the extent that rehabilitation is not available in the prison system and the social conditions which contribute to the offensive act are not taken into account.

Mr. President, far from the idea that this Government is pussyfooting or playing doll's house with crime, it is trying to view crime in a more holistic manner and to deal with it at various levels. Part of addressing crime, certainly, has to do with providing facilities for the police, but the other part has to do with understanding the social reality around us.

One of Sen. Daly's comments is that the society is crime-saturated. It is precisely this Bill that is needed to address this issue of crime in this country in a

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balanced way. He said that the Bill cannot be considered in isolation. Mr. President, it is certainly not being considered in isolation.

Mr. President, with your permission, I want to identify some case studies of actual persons—this is not hypothetical, persons who have been exposed to imprisonment, particularly young persons, the Bill does not give an upper limit to the age level—who have experienced imprisonment for what I consider trivial crimes, and whose social conditions were not taken into account. Before I do that, though, I want to emphasize the importance of rehabilitation. Rehabilitation is one of the possibilities which community service offers.

Last year, two 16-year-old girls were on the front page of the daily newspapers, accused of larceny of \$5.00 from a 12-year-old boy. They went to court and were sentenced to 18 months imprisonment. They were placed in the women's prison, because unlike the males, there is no youth training centre for women. As I said, they were sent to the women's prison on 18-months sentences for having stolen \$5.00. Mr. President, they have to serve this time in prison, however, if there was a community service arrangement this, of course, would not be the case. They would have been saved from the prison experience and from having a criminal record which limits their social involvement in the society.

Moreso, Mr. President, one of these girls whom I mentioned earlier had a history of family disorganization. She was sexually assaulted at an early age. She was placed in one of the homes for girls. She ran away and it was during this time that the larceny of the \$5.00 took place. She still has no place to go after her imprisonment because the home does not facilitate her re-entry. Her father is on a murder charge. Her brothers are in various detention centres. The social circumstances in this individual's life are the background of her committing this crime. Mr. President, this means that imprisonment is not going to cure this young lady's problem; in fact, it would worsen it. This needs to be taken into account and we need to find a community service relevant to the circumstances of this young woman.

There is a 15-year-old young man who is in custody—again, for larceny of a small value—awaiting trial. He is almost languishing in prison, he is poor and cannot post bail and so forth. Again, he has a family situation in which he is powerless. This young man is suicidal and has to be looked at all the time.

Mr. President, permit me to go through two other cases. Again, I must repeat that these are real cases. There is the case of a 19-year-old and during his first nine

years he lived with a person who was not his mother—this was because his mother was unable to provide care for him at the time. His father was a serious drinker. He remembers having an older brother but is not sure of his whereabouts. When he was about 14 years old he moved in with his stepfather and mother. Mr. President, these are his words: “My stepfather always used to drink and curse as well as physically abuse my mother.” This young boy objected to this abuse, showed his displeasure in engaging in physical fights with his stepfather and this resulted in both parties being warned by the police.

He was sent to live with his maternal grandmother. He later returned to his stepfather’s home. At that home he was accused by his mother of stealing money. The accusation was further compounded by him being beaten for the alleged offence. Mr. President, it just goes on. The mother found out that it was really the stepfather who had taken the money. His mother apologized but he packed his belongings and left for his grandmother’s home. He is now between all these various homes. He soon left the grandmother’s home and now lives on the street.

Mr. President, he was described as given to truancy. He kept the company of what is described as undesirables. He spent long hours in the streets, returning home late at nights. He was disobedient, rude, disrespectful, rebellious, deviant and a boy with a penchant for indisciplined behaviour. This boy was found in the yard of one of the senior comprehensive schools and he was thought to have had the intention of stealing. This is the offence which brought him to court where he was convicted and committed.

3.40 p.m.

Mr. President, the social conditions of this boy’s life-history is a disorganized family, moving from household to household, being beaten and abused, ending up on the streets roaming, being in a school yard and taken by an unknown person to court, being convicted and sent to prison. These are the kinds of situations that contribute to crimes and imprisonment of these young people. It does not improve them, it only causes recidivism. This boy has no known relative or guardian to whom he can confidentially turn.

In situations like this, community service, through the organization of probation officers and social workers, would take the boy’s whole condition into consideration and place him accordingly. The community service would also give him discipline, control, counselling and skill, thus making him into a better person.

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Mr. President, with your permission, I would like to go through one other situation which is somewhat similar. It concerns another boy whose parents separated when he was five years old and he lived like a nomad. This identifies the various places he lived, however, he had two major addresses. He was exposed to bouts of violence and abuse, administered again, by a stepfather. He then moved out of the house at about age 10. He lived like a turkey in Tobago, sleeping wherever night caught him.

He spoke of collecting bottles and hustling to earn his livelihood and to support his alcohol consumption. At age 10, he could easily be described as a drunkard and a vagrant. He lost contact with his father when he was about five years old, and his mother when he was about 10 years old.

Under the influence of alcohol he was knocked down by a vehicle and was admitted to the Port of Spain General Hospital. From there, he was then transferred to one of the children's homes. In this period, he spent about a year at the St. Ann's Hospital, perhaps for his frequent substance abuse. The lad spoke about receiving brutal punishment from his stepfather when he complained about being hungry and ate more food. He vividly recalled being tied naked to a tree and flogged mercilessly.

Prior to his committal to the home, he resided in various places with a godmother and she, too, was then evicted by her elder son. Again, he had no home to go to. He absconded from the children's home and returned to Tobago. Within six months he was before the court and, subsequently, committed on a charge of breaking and entering to steal. Those are the social circumstances of these young people whom we put in jail. They go to the courts and get committed to a prison and that is the beginning of their criminal career.

Mr. President, a community service arrangement would take account of the social conditions in these situations. These are just two of a large number of case studies which I managed to get from one of our welfare officers. In all the circumstances, the family arrangements and situations were very disorganized. If we are saying that we have to be brutal to these people, we have to flog them, imprison them and be harsh with them, we are not going to get anywhere; all that we are going to get is more crime. In these kinds of circumstances, part of our prevention is to put mechanisms in place for rehabilitation.

I have a little data here from the women's prison and these are just summaries. The number of women convicted and serving sentences between one month and a

year averages 100 per year. The offences range from possession of apparatus for cocaine use to obscene language and larceny. The ages range between 17 to 35. For offences like these—we are not speaking about violence, murder, rape and the large difficult crimes, we are speaking about little things such as obscene language and larceny of small amounts of money or goods—the rehabilitation in the women's centre is limited and, in some cases, it cannot take place for the offenders and the follow-up care is non-existent.

Another problem area which I noted—in relation to the people who are imprisoned—are men on maintenance charges called affiliation and arrears. That is, men who are not working and who are imprisoned for the upkeep of their children. In these cases, if men are not working and they are put in jail, their families still do not get the benefit of any financial support from them. Mr. President, although I am fully in support of men supporting their families, if the men are out of work—and unemployment is a reality for some people—maybe a community service in which they have to care for their own children, may be a form of service for these men until they get work.

I have the case of another young man who was imprisoned for three years for loitering. These kinds of situations are abundant and it is the kind of offence which causes the prisons to be overcrowded. That is what we need to look at, again.

3.50 p.m.

Mr. President, I just want to identify, with your leave, two cases in which rehabilitation was afforded to two young men and this changed their lives. The first one, an 18-year-old boy was the second of seven children. His mother left the matrimonial home when he was a few months old, because of the constant physical abuse to herself and her children, even when she was pregnant. She returned to her mother's home and obtained a divorce from her husband, who never financially supported the children.

So, with parents separated, the boy continued to grow up under the care of his grandmother who described him as always demanding attention, even as a baby. This boy attended primary school; he sat and passed common entrance and he went to a junior secondary school. He dropped out of school in Form 2, preferring to 'lime' rather than attend school. He used to play truant from as early as Std. 4 in primary school. Eventually, he left school, in spite of numerous scoldings. His grandmother tried in vain to persuade him to return to school. Instead, he ran away to his mother's home.

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Again, we find this movement from one home to another. Finding no support for his unacceptable behaviour from his mother, he then left her and proceeded to share a room with a 23-year-old man in a house. When he was about 14 years old, he was arrested and charged with breaking and entering. He was then committed to one of the homes for boys. He was allowed to spend one month in the July/August vacation with his grandmother and, once he was outside, he did not return to the home. In fact, he told the mother that he was going to the home. Instead, he packed his bags and left, but he did not return. It was only when the mother got a call from the welfare officer that she knew he was not there.

Eventually, this boy also became a streetchild, a fugitive, a truant, a delinquent. He was arrested and charged for his second offence, the larceny of a shirt and a pair of pants, and again, he faced the court and was committed to the Youth Training Centre. This time, he was exposed to rehabilitation. He went through classes in the food service department, then he transferred to leathercraft and shoe-making; he got a skill and he made his own shirt and pants. He also achieved a very high level of proficiency in a number of trades. He represented the centre in a rugby competition, learned to play hockey, paint, play the steelpan, and he also participated in drama and the choir.

What I am saying is that this boy was exposed to rehabilitation, albeit, in a centre. What was the outcome of this? He had regular visits from his mother and grandmother, and developed a stronger bond with the latter. He was making steady progress. He learned to develop public speaking skills, and wanted to become a radio announcer. His family still talks with pride about the speech he made when he was out on one of his weekend visits. He went to a wedding and made a speech; the wedding guests cried when they were told of his background and the progress he was making.

He expressed a desire to have a career in broadcasting and went to broadcasting classes. He also went to Servol and gained some basic skills. One of his teachers made the comment that he was one of the finer and excellent lads in the institution. He demonstrated the ability to be responsible. He carried out instructions to the detail, as given. He exercised great initiative and showed the hunger to learn and develop himself on a continued basis—an excellent all-round lad. This is a young man with a similar background to the others, but who was exposed to rehabilitation. I have another example, but I do not want to bore you with it because it is similar in terms of the background home situations of all these people which indicate that their family lives were disruptive and left much to be desired.

The point is, the path on which we are embarking, on this Community Service Orders Bill, is one which must take into account how crime is caused. Why do our young people, men and women, commit some of the crimes? Why are we having these high levels of youth crimes—and, of course, the Bill is not only for young people—but looking at the youth, we need to take account of what has happened in their home situations; conditions over which they, as young people, perhaps have little or no control, and we need not only to punish them, but to rehabilitate them. Regardless of their early beginning, we need to bring them back into society, and this will help stop the crime. This will help reduce the burden of crime that the society faces.

Mr. President, as I said, this is not pussyfooting and playing doll's house with crime. This is attempting to look at the social dimension; attempting to look at the human aspect; attempting, while we provide the cars, the equipment and the Rapid Response, to take account of the social conditions—what is happening in the family; what is happening to women, the domestic violence that some of these young people are exposed to, so early in their lives.

Community service offers rehabilitation. It offers the development of a social conscience, the development of social skills, learning to get along, discipline, to interact with others. It offers skills development, learning to do things—especially for those young people who have no skills—and future employability. Mr. President, this is a course of preventing, stalling the crime that is happening. If we take all these people and push them in jail, we will not solve the crime problem. It will get worse. We know there was some reference made to Canada, England and America, but we know from the experiences of those countries, that community service has worked.

4.00 p.m.

If I can just be permitted to quote from this book, *Working with Offenders* by Gill McIvor. I am just going to talk about some of the benefits that have been found in other countries. This is talking about community service:

"A high proportion of offenders ... felt that they gained something from their experience of community service. Some felt that they had acquired new skills ... whilst others had refreshed old skills. Some unemployed offenders felt that the experience was helpful in 'getting the feel of the tools again' whilst many employed offenders resented having to give up 'free' time, especially at weekends, to undertake their work. Many had a sense of satisfaction with a

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'job well done', whilst others were content to have helped someone in a very constructive way. These sorts of responses were common among all offenders, no matter what type of work which was undertaken or whether it was carried out in an individual agency or a group project.

Many offenders actually enjoyed their experience of community service, probably because they were getting something constructive out of it. Some ... value was essential to maintain attendance rates ..."

So according to this account, all community service, whatever the experience, the job, or the locations, was rewarding and beneficial to those who experienced it and to the wider community.

There is the question about whether we dictate in a Bill what exactly these people should do and where they should be placed. Because, in some of these cases that I have outlined, it is not the best thing to put these people in any home for old people or any other, as suggested by Sen. Daly. It has to do with what their conditions are and what was the nature of their so-called criminal act. So we need to do a proper assessment by our social workers of the individual, and look at what rehabilitative measures can be put in place to help that individual—in a certain family situation and circumstances—out of his or her problems.

So community service, again I must say, is serious business and it is an attempt to look at the additional needs which the Ministry of National Security does not address. We must bring the social to the forefront, we must take account of what has happened to these young people and the older ones, and why they are doing what they are doing. In all cases, it has to do with their own experiences in the family or perhaps because they have no family.

Mr. President, again, I support this Bill. I think it is good for the country and for those who will experience the community service. It is good for community development, it is good for women, because all our women have to go to jail because there is no youth camp for them, as exemplified by the girl at age 16—someone who stole \$5 and was given an 18-months sentence.

Mr. President, I thank you.

Sen. Pennelope Beckles: Mr. President, as I rise to make my contribution on this Bill, I start by making some comments on the last speaker's presentation. When I listened to her presentation, I think that what is clear is that the issue raised by Sen. Daly in relation to specifying the type of offences to which this Bill should be applicable, becomes even more important. It is not a question of whether or not

a person who has committed a crime is poor that it means a community service becomes more applicable, or whether the person comes from an environment in which there are family problems. The issues raised by the Minister of Community Development, Culture and Women's Affairs show that, as they relate to crime, the situation is extremely complex and there are several other related issues that need to be dealt with if we are to really deal with the issue of crime. There are larger issues—family, psychological, philosophical issues, issues relating to economics—and several others that are extremely relevant if we are to solve the issue of crime.

Several of the instances that the Minister raised under this Bill may not really allow the persons referred to, to even qualify for community service. She focussed more on the issue of rehabilitation. Yes, community service may be a measure in which you can rehabilitate convicted persons but again, we have to go back to the whole issue of whether or not this Bill, in its present form, has mechanisms in place to allow for the sort of the rehabilitation of which the Minister spoke and the comparisons which she gave. The whole issue of supervision and whether or not the probation officers and persons who will be so assisting are quickly trained to deal with the implementation of this Bill is a totally different question.

Mr. President, for example, the Minister of Community Development, Culture and Women's Affairs raised the issue of men who cannot pay maintenance doing community service. It is very interesting, but my experience is that there are many men who prefer to go to jail rather than pay maintenance, and I think it would be very ironic if those same men are able to benefit from community service. It is heard very clearly in court that, "I prefer to make jail than to pay maintenance," and I do not think such a man should be able to have the benefit of community service. I would hate to think that that is one of the functions of the Bill, and one of the things for which it would be so intended. Because there is another Bill that will come up in relation to the victims being able to be compensated. We should find jobs for these men who are saying that they genuinely cannot find jobs, but I do not think the women of Trinidad and Tobago would be happy to hear that men who are not paying maintenance could access community service and go around sweeping drains and certainly, are still not able to maintain the children. It is a larger issue, when they finish serving their community service, they go back into society and the children are not still maintained.

In terms of all the several examples that the Minister of Community Development, Culture and Women's Affairs raised, the critical question is how do we really ameliorate all these social conditions and social evils? That is the issue,

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and is this Bill—as she seems to suggest—going to be able to do that? I think the answer to that is "No." I know that Sen. Teelucksingh can defend himself and I do not mean to defend him, but the point is that the issue he was raising, which I think the other side seems to misunderstand, is the whole issue of crime and community service is an extremely complex one. To simply get up and say that this Bill is one of the ways in which we are going to solve crime, I think is totally far from the truth. In most instances, the crime has already been committed. What we are trying to do is, in most instances where we have the first offenders, to avoid those persons getting into more crime at a later stage. That is why in dealing with this issue, it really cannot be one of isolation.

Mr. President, the Minister of National Security indicated, and I think the Minister of Community Development, Culture and Women's Affairs also said that, that there is no fantastic rehabilitation programme in the prison. I would like to say that presently in Trinidad and Tobago, we have prison officers who are actually conducting drug rehabilitation programmes and several of the persons who go into the prisons have or have not been convicted for drug offences, but who have the tendency to get involved in drugs, have been assisted in a large measure by prison officers who have taken special courses—some of them of their own initiative, and are helping those persons.

Particularly in the women's prison, simply because of where it is located, there are several female prisoners who have rehabilitated themselves, who have learned to cook and do all sorts of different things—sewing, and so forth. I think that is the direction in which we would want to go, but again, that is also the larger picture in terms of the whole issue of penal reform. So that whilst we would want to go much further, it is not true to say that we do not have a considerable amount of rehabilitation already existing.

4.10 p.m.

Mr. President, insofar as this Bill is concerned, it is very innovative. As a matter of fact, I think it is desirable. The critical issue though, is whether or not we are really satisfied at the end of day when the Bill is ready to be implemented, that everybody would be crystal clear as to what is really the intention of the Bill.

The Minister of National Security mentioned several times that he would like to think that the Bill is really to deal with small offenders. I would like to think so myself and I believe several others as well. Unfortunately, that is not what the Bill says and it does not leave anyone in a clearer position in terms of what offences attract community service. At the end of the day, we should not have to wonder

what the Bill is dealing with. I believe we must be absolutely clear. Therefore, those who have the responsibility to implement this legislation should have no doubt in their minds about the categories of offences to which this Bill applies.

I refer to a report of the Commission of Enquiry, which was appointed to enquire into the existing conditions at the prisons and to make recommendations for reform, in the light of modern concepts of penal practice and rehabilitation measures, which was done in 1980. That report goes into a bit of history and indicated that the prison was built since 1812 to house some 200 prisoners. Today it houses more than 2000. Since that time, regulation 251 made under the West Indian Prison Act, 1838, stated:

"Every convicted prisoner sentenced to hard labour, unless excused by the medical officer on medical grounds, shall from the beginning of his sentence be employed in useful work."

Since that time several of the prisoners were actually able to assist in doing services at the Botanical Gardens, several Government buildings, and they actually also did some sort of mining at Laventille. Therefore, quite a long time ago, the situation existed where prisoners were doing some form of community service, but at some stage it appears that that was totally stopped.

Clause 3 of the Bill refers to specific circumstances in which questions of doing community service would arise and the nature of the order. Notwithstanding the fact that this Bill refers to offenders over 16 years, I would like to think that at some point in time, it could be considered that community service should also apply to juvenile offenders.

Looking at the statistics, very often, several juveniles subsequently graduate into committing more serious offences when they become adults. Thus, if it is accepted that, at this stage during their juvenile years, one could probably influence these persons, it is quite possible to allow them to do community service. It does not have to be service similar to that of the adults, because they could be sent to churches, to clean up buildings and several other things. But I think that this is the particular time in the life of a young person during which the greatest impression could be made—if we are really serious about controlling crime—and not necessarily wait until the person reaches age 16.

Clause 6 of the Bill provides the circumstances under which the order may be imposed. The person must consent and suitable arrangements ought to be made. Mr. President, I think this is a particularly important section as it relates to our

situation where there are many single mothers. One would want to be careful that, if that person has to do community service, some sort of arrangements could be made to ensure that the family structure of the entire society is not adversely affected.

Clause 7 of the Bill deals with the fact that the magisterial district must be specified in the order. This section raises some very interesting questions. What we have not done is to find out what society thinks about community service. It could be assumed that most people would agree that, for many minor offences they would be quite happy with community service. But in the very recent international conference that was held at Mount Hope—and I thought it was a very good idea for the Government to hold that conference and bring persons from all over the world to share some of their ideas in terms of how they have implemented community service—it was gleaned that the Bill in its present form needs to be looked at a little closer if it is to be implemented successfully.

One of the persons at that conference indicated, for example, that in the St. James area a survey was done to ascertain the views of the people on community service, and 60 per cent of the persons interviewed actually said that they did not want anyone coming there to do community service. They really wanted to find the criminal and deal with that person. We do have instances over the last couple of years in villages and other areas where, if a person involved in criminal activity were found, the community dealt with that person decisively. Therefore, if this Bill is going to be implemented, we need to ensure that our community is educated to appreciate what the consequences are to ensure they properly "buy-in" to this piece of legislation.

Mr. President, Justice Garwe, a High Court Judge of Zimbabwe, in his presentation, shed some light on some of the matters which they had implemented to ensure that the community actually understood what their Bill is about. He stated that a national committee undertook a series of regional training events around Zimbabwe to raise the awareness of key figures in the general public, and to train magistrates and others working in the justice system as to the purpose and operation of community service orders. Numerous documents were produced, including guidelines for heads of institutions, monitoring forms for recording the requirements of the offender for community service and his or her performance whilst carrying out duties.

4.20 p.m.

Mr. President, what they actually did, was train a committee which went to all parts of the island, not only just sensitizing the population, but also ensuring that

special training programmes were set in place for all the persons who would have been responsible for implementation of that community service and, therefore, by the time it actually happened, the entire community would have been aware of it. Mr. President, they did not only deal with offenders and the persons to implement, but the families who actually were involved in terms of these offenders were counselled.

Mr. President, that brings me to the point really, of whether or not it is sufficient to simply think of community service and not think of it together with counselling. In this age of peer pressure and sometimes the ease with which some persons can be tempted, we have to ask ourselves, "Is it sufficient to say, go and do community service at X or Y place?" I think that is why Sen. Daly made the point about the conditions under which the person should probably operate but we need to go even further than that because some persons who are given the worst conditions under which to do community service, do not necessarily benefit from it to the extent that they do not get involved in criminal activity on another occasion.

Therefore, I think that one of the areas that we ought to look at very carefully, is the whole issue of counselling those persons who are going to be involved in community service to ensure that the likelihood is that they do not again get back into any sort of criminal activity. I think if that were done we may very well ensure that those persons may not be repeat offenders. In addition to the depressing conditions under which they may work, I think that counselling may become something that is actually critical.

Mr. President, that brings me to clause 8:

"The Chief Probation Officer may appoint persons to assist probation officers in the discharge of duties under this Act."

Mr. President, we have to ask ourselves whether we want to give one person all that authority to appoint persons to assist probation officers. I suggest that that section ought to be very closely looked at and, maybe, it may be better to have a committee of persons rather than one person. It is not specified here to appoint persons. We do not know who those persons are; we do not know what are the qualifications; we do not know whether those persons are to be trained.

Mr. President, when you read the Bill, it is very clear that this area with which we are dealing, which is a new area to some extent, requires some sort of specialist training and, therefore, we may have a situation where persons are appointed who may not be specially trained to deal with persons who have committed crime.

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Whether it be simple offences, such as simple larceny or obscene language, at the end of the day if the intention is to ensure that those persons remain first offenders, then the persons who have the responsibility to supervise these persons must have special types of training. Mr. President, I am suggesting that section which gives the Chief Probation Officer total and absolute power to appoint those persons should be looked at very closely.

Mr. President, I just want to go now to clause 25 and mention two aspects of that. That clause reads as follows:

“The Minister may make regulations for the performance of work under a community service order, for arrangements for a person to perform such work, and for carrying into effect the provisions of this Act.”

Clause 25(2) (a), (b), (c), (d) and (e) not only gives the Minister too much work, but I think the powers here are extremely wide.

When we look at the Domestic Violence Act, for example, where there was a similar section, what we find is that in many instances to date, specific places that should be deemed places either of safety or places where people should go for counselling have not yet been named and, therefore, we are going to find ourselves five or 10 years in the future, not yet effectively having dealt with it. I think that it would be extremely helpful if we were to get into a situation where we should actually specify what these regulations are and to define carefully, the circumstances under which community services should be had.

Mr. President, if we have a situation where the Minister can make provisions for payment of travel and other expenses in connection with the performance of work under an order, on one hand we have a situation where we are saying that it is extremely costly to maintain a prisoner. And yes, we may want to argue that it is extremely cheaper to have a situation where we pay persons to go to work but I am not sure whether or not we have actually done the calculations to be able to be comfortably satisfied that the community service will be cheaper.

Mr. President, if I might just refer to the 10th Anniversary Lecture of Women Working for Social Progress—“Crime and Punishment: A Different View”, by Professor Maureen Cain, who gave an idea as to what it costs in order to maintain a prisoner at Golden Grove or at the Royal Gaol. She stated that:

“Add to this the cost of TT \$66,333 per annum (6) per inmate cited in the *Annual Statistical Digest* published by the CSO.

What do we get for our money?

- (1) men more angry
- (2) men professionalised
- (3) men with broken support systems outside
- (4) men with self esteem down to zero - in a less trendy phrase, men with their spirits broken
- (5) men who are now unemployable.

So this is what we buy for sixty-six thousand three hundred and thirty three dollars (\$66,333) per offender per year.

Think about it. Is our need for vengeance so great that we must keep on shooting ourselves in the feet in this way? And, let me add one last fact. In 1993 sixty-nine per cent (69%) of the men (and women) imprisoned had NOT committed an offence involving violence. Most of them were there for theft, which we may not like, but it should not, and they would not, cause us to walk in fear (Note: 14% of offenders imprisoned had committed a drug related offence)."

Mr. President, from her investigation, she was saying that almost 70 per cent of the persons in 1993 who were in prison had not committed violent crimes. Mr. President, I think that is the sort of information that we would want to go by if we really want to properly inform ourselves in terms of this legislation.

Mr. President, it brings me to the point of the whole issue of the probation officers who would have the responsibility of ensuring that this legislation is properly implemented. If we take a situation, for example, in Tobago, with a population of 50,000 persons or thereabouts where there are only two probation officers presently. Those two probation officers have the responsibility of dealing both with the High Court and the Magistrate's Court and if it is particularly in Tobago, where we seem to want to be focussing on tourism—and those of us who have been paying attention to the newspaper as it relates to the criminal activities coming out of Tobago would realize that a lot of attention would have to be placed on Tobago. The question then arises that if we are going to ask these two probation officers in Tobago to deal with the entire area, it would obviously be absolutely necessary that more than two probation officers be appointed for Tobago.

4.30 p.m.

Now, Mr. President, Tobago has been fairly proactive in terms of already setting in train what they called their community servicing and family outreach projects. The community has already come into play in terms of dealing with a lot of first-time offenders and in terms of preventing crimes from taking place, and this Bill if implemented, would set in train other issues, but I am sure that two probation officers clearly would not be sufficient to deal with this situation.

Mr. President, if then I were to deal with Trinidad, where we have a situation of not more than 30 probation officers to deal with a population of approximately one million people, which means dealing with the High Courts and the Magistrate's Courts. If we were to go by the statistics that there are 5,000 prisoners both in the Royal Gaol and Golden Grove and to think how many matters are pending in Trinidad and Tobago, it is extremely difficult for 30-odd probation officers.

The probation department has recently been accredited as one of agencies to deal with the whole issue of domestic violence, as it relates to counselling. So we now have a situation where—I do not think it is difficult for us to admit that probation officers are almost overworked—the responsibilities that they are now given under this Bill, would result in them being more overworked and underpaid, and I think, if it is as a Parliament we are going to accept that they are the persons who have the responsibilities for recommending to the courts, doing the investigations and coming up with necessary recommendations, then we would have to look at their salary situation again.

Mr. President, probation officers are presently in Range 34 while medical social workers and psychiatric social workers are in Range 36. If we were to do an analysis of the turnover of probation officers in Trinidad and Tobago during the last five years, it is going to tell us that we need to look at the department very seriously.

Very often, the probation officers, having obtained their degrees in social work, are offered better jobs and quickly leave the department. If we agree that this is a specialist field and they are not only just preparing reports but are now actually going to be supervisors, then we have to look at this whole department again.

Mr. President, at present the probation officers merely deal with preparing reports for the courts but with the introduction of this Bill they are going to be supervising and that requires specialist training. If we were to examine how many probation officers we have in Trinidad and Tobago, how many of them are trained

to deal specifically with community services—I do not want to suggest none, but I would say that bearing in mind that this is a new Bill, we would probably find one or two persons who, on their own initiative have received training with respect to the implementation of this particular Bill. It is something we have to look at very urgently to ensure that those in the department who have the responsibilities for supervising and implementing this legislation are quickly trained.

There are several places, for example, Jamaica would be able to assist us in terms of some of the difficulties in implementing their community services programme, and they would be able to assist some of our local probation officers in terms of sharing their experiences and how they have dealt with the training of probation officers.

In the county courts in Cleveland, Ohio there are actually separate divisions that deal with community services. There are several institutions where we can access information in order to ensure that we are on the right track.

Mr. President, one of the other areas that we want to look at is that the probation officers, even though they are few in numbers, are not exempt from jury service.

While in court last week, I recognized one of the senior officers who had to attend jury service, and it was only by virtue of him indicating the extent of his work that he was exempted. The point is, if we only have a few probation officers to implement this legislation, we may want to look at whether or not they may not be one of the categories of persons that we want exempted from jury service.

I think that if we are to ensure that this legislation is as effective as we would like, one of the critical things is ensuring that when we attract and train the right persons, that we not only just keep them but ensure that they are extremely dedicated to the cause and properly compensated.

Mr. President, like most of the other speakers, I say that the Bill is a step in the right direction. I do not agree that the Bill in itself would stop crime because I think that is taking an extremely simplistic view. I am sure that the society and those who very often are being charged for simple offences and held over the weekend in prison, in a situation like the one described by Sen. Daly would get some relief. I do not think it can help us if we have a scenario where we send some of our minor offenders alongside persons who have committed more serious crimes. So I think this Bill, in some way, will obviously deal with that sort of thing, and there is the situation where there are options in terms of sentencing.

The hon. Minister of Community Development, Culture and Women's Affairs referred to a particular case where a person was convicted and sentenced to two years for loitering and I recalled last year the Attorney General indicating that one of the areas that he was addressing was the whole issue of sentencing in terms of its inconsistency. In my humble view, two years for loitering is rather excessive. There may have been other factors that the court may have considered in sentencing, I really cannot say, but the point is that simply says that the whole issue of inconsistency of the sentences needs to be addressed. I also think that sometime last year there was a training session with the judges in order to deal with that situation. When we hear of such a situation, I think it only underscores that we need to look at the picture from a holistic point of view.

Mr. President, there are two other very brief points that I want to raise. What makes this Bill a good bill in principle, particularly notwithstanding that there are several areas that I think need to be addressed quickly, is that we have a situation in the prison where chicken pox and tuberculosis are rampant. There was a recent survey with respect to AIDS in our prisons and if we accept that if 16 men are placed in a cell over a long period of time, it is almost an expectation that that would flow.

The report that came out two or three weeks ago stated that some persons are not going to even appear before the court or serve their sentences because the whole issue of AIDS is becoming very serious. If we have a person going to prison for a minor offence and he ends up in a situation where he is exposed to chicken pox and AIDS, I think this is not really the direction we would want to go as a society.

4.40 p.m.

I draw to the attention of this honourable Senate that whilst it may be very easy to say that this Bill is going to deal with crime, we have a responsibility, as well, to look at the way people perceive us. That is why the picture has to be a fairly holistic one. In the *Independent* newspaper of March 24, 1997 at page 3, Mr. Jones P. Madeira was reporting on an article from *The Economist* magazine. He said the headline of that magazine stated: "Take out life insurance before you enter." The place they were referring to happened to be Trinidad and Tobago.

Hon. Senator: Take it out at Maritime.

Sen. P. Beckles: Well, I do not know if it would be with Maritime, but nonetheless, they did not mention Maritime. The article states, and I quote:

"...take out a life insurance before you enter...' although nowhere in the text does it provide any detail of the Trinidad and Tobago situation.

The table, headlined 'drugs, poverty, bad police,' and intended to detail murder rates per 100,000 population, showed TT with a rate of 12.6 in the late 1980's and early 1990's, rising from a rate of 2.1 in the late 1970's and early 1980's.

The most recent comprehensive survey of crime in Trinidad and Tobago done by the Central Statistical Office did show a phenomenal increase in serious crimes in this country... It pointed to an increase of 71.5 per cent or an average annual growth rate of 6.5 per cent between 1983 and 1993."

When we have this kind of report, particularly when we want to focus on tourism, I would imagine that some sort of response would have been made to this article, although if it is based on statistics it would be extremely difficult to challenge. It is in that context I say that if we can stem crime by any means, that is to say, by this or any other Bill, I do not think that anyone would have difficulty in supporting it. We must always ensure that whatever legislation comes to Parliament for implementation, we have all the mechanisms in place so that five or ten years from today we do not have to set up a committee to look into the legislation; examine the shortcomings and recommend amendments.

From the conference that was held last week, we do have a wealth of information. There are several other countries which have implemented it and can assist us so that some of the shortcomings of this Bill can be dealt with adequately.

Thank you, Mr. President.

Mr. President: Hon. Senators, even though we are well into tea time, after discussion amongst the three leaders and the Chair, I would permit the hon. Attorney General to make his contribution so that he may be allowed to leave the Chamber to attend to urgent business outside the Parliament building.

The Attorney General (Hon. Ramesh Lawrence Maharaj): Mr. President, I am indebted to you and honourable Senators, but I would say that having regard to the time factor, I would try within the 15 minutes to see whether I can make my contribution. If I do not, I would ask you to accommodate me to continue on another occasion.

I decided to intervene in this debate because this is the first time that we are going to have, in Trinidad and Tobago, the principle of restorative justice being part of our criminal justice system. I would like to make it quite clear that this Bill, in no way can give the message that the Government is "soft on crime"; it is not being tough on crime or it is playing doll's-house with crime. This Bill, in effect,

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deals with punishment in a different form. The Bill is not exonerating anyone from punishment. The Bill authorizes punishment, but it gives to the magistracy and the judiciary a discretion as to whether punishment would be community service orders—performing work in the community. It is not exonerating persons who are convicted of crime to get away with their wrongful acts. It is recognized that this new principle in criminal justice is successful, especially in dealing with young persons who, if they are sent to prison, can become contaminated by the prison environment.

The aim of this Bill, really, is to deal with offenders who fall into a certain category so that the primary focus would be on the rehabilitation of the offender, so that there will be human development with respect to him to prevent him from being contaminated in the prison environment and from committing crimes on a regular basis.

We must consider that the majority of cases which occupy our criminal justice system concern persons between the ages of 16 to 25, and even in cases where they are over the age of 25, the records show that they had some brushes with the law in their youth. One therefore sees the necessity to try to save the youth of our nation and protect our most important human resource—the young people of our country.

I would like to state also that if the impression is given that persons who have committed any offence—whether it be rape, or whatever it is—can automatically be given community service orders, that is not correct. As a matter of fact, countries which have used this system of punishment have had to decide which model they were going to adopt. For example, it has been very successful in Zimbabwe. Their model is similar to ours where the magistracy and judiciary have guidelines as to how to operate the Bill.

Sen. Daly would know that if legislation attempts to interfere with the judicial discretion of the judges or the magistrates, there are certain consequences. Therefore this Bill was drafted on the basis that we would use the Zimbabwe model insofar as there would be guidelines used by the judiciary and the magistracy in ensuring that any person being given an effective prison sentence of 12 months or less, would, in effect, benefit from that particular order.

If it is the feeling of this honourable Senate that we should have these things specified in the legislation, I do not have any problem with that. But I want to give the assurance that the intention was that persons who are convicted of rape or

violent offences, certainly would not be part of this kind of programme. As a matter of fact, in the Zimbabwe guidelines, it is specifically stated for the judiciary and the magistracy that such offences would not form part of it. I have no problem with putting it as part of the legislation. I want to give that assurance. The whole purpose of this legislation, really, is to try to save our young people who were ending up in difficulties and were becoming addicted to prison life.

4.50 p.m.

It is recognized that if a government must have a strategy on crime, as this Government has—this Government is doing everything possible to prevent crime; it is also giving the police the necessary resources to catch the criminals; it is ensuring that the criminal justice system is so reformed that the innocent is acquitted but the guilty is convicted; it also wants to ensure that criminals are properly punished. In that context, I do not think that it is fair to give the impression that this Government is not serious about crime; not doing its best or becoming soft on crime, or trying to send a signal that it would forgive them.

I do not want to go into all the measures. As a matter of fact, the country was in such a mess in respect of dealing with crime, that when one looks into all that this Government has done, one would see that in spite of the Herculean task which this Government performed, it has not been able to solve the problem in that short space of time. Perhaps, over the years, if there were proper administration in this country, our young people would not have been in the difficulties that they are in today and we may not have had to pass this kind of measure.

This Government had sent a signal very early that it would deal with crime and the criminal justice system. It has reformed some of the laws and set up a specialized unit to deal with money laundering and drug trafficking. One sees what is happening and knows that the majority of crimes in Trinidad and Tobago are connected directly or indirectly with drugs. One of the issues we have to deal with is that we cannot be emotional in dealing with punishment. Sentencing is an integral part of the criminal justice system. We have to recognize that there are different grades of punishment. If the purpose of punishment is to rehabilitate and people have to be reintegrated in society, we must be brave to take steps to ensure that those reforms are effective. We must not use emotional slangs and say that one measure is not an answer to the crime problem and certain measures would make a dent in the crime problem. We must show that if this is not introduced now in Trinidad and Tobago, the young people would not be saved from the prison system.

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In his book, *Justice For Victims and Offenders A restorative Response To Crime*, Martin Wright defines restorative justice as a form of criminal justice based on reward and repayment; actions to repair the damage caused by crime, either materially, or at least in part, or on a symbolic basis. The writer continued, that payment is usually performed by the offender in the form of payment or service to the victim, if there is one and the victim wishes it, or to the community, but can include the offender's co-operation in training, counselling or therapy.

We are introducing a new principle in the country. We recognize that persons would have to be trained to administer this piece of legislation. We agree that much work has to be done with respect to its implementation. We certainly do not want this piece of legislation to be like the Litter Act, passed but not implemented. This Government has decided to collaborate with international, local and regional non-governmental bodies, to work with them and for them to work with us to implement it. This has been the approach of this Government. It recognizes that it cannot solve the problems of Trinidad and Tobago alone and it needs support and co-operation. It must work in partnership with the community. This is a manifestation of that principle and policy, that even in the field of the administration of criminal justice, this administration can work with it to implement this legislation.

One cannot put every detail of how matters would be implemented in legislation. For example, with regard to community service work, that would be done either in state institutions or non-state institutions. There would be governmental employees and non-governmental workers assisting in the implementation of this legislation. Community groups would become part and parcel of the programme because the young offender would have to get back into the community. That is the concept we are using in this legislation.

We recognize that the probation department would have to be upgraded and probation officers would have to be trained. This legislation is about the concept, policy and principle. If we want to put everything in it, we would not finish with paper. If legislation is passed and it is not working, and the Opposition or Independent Senators can show that, the Standing Orders provide machinery to bring it to the attention of Parliament and the public.

On behalf of the Government of Trinidad and Tobago, I give this assurance, that it recognizes that this legislation and other similar legislation which would form the package in respect of the new direction in the administration of criminal justice, must be implemented to the maximum for it to be effective.

This Government has recognized that for too long there has been no emphasis on victims' rights. In this context, the Government is concentrating on the victim. This legislation would satisfy the victim because the offender may have to work for the victim, or in the community where the victim lives. The offender would be part and parcel of programmes to which the victim would also be a member. Therefore, the victim would get the satisfaction that he/she is compensated in some form for the injury which has been done.

5.00 p.m.

Mr. President, one sees the radical reforms which are taking place in Trinidad and Tobago. There is now a Compensation For Victims Of Crime Bill out for public comment. Therefore, one sees that there is an emphasis, that regardless of what the position is, the Government recognizes that when persons are victims of crimes, whether they be virtual complainants or whatever the situations are, the state has a duty to ensure that they are, in effect, compensated in some form in order to be on equal terms with the accused person in the adversarial system.

Mr. President, having regard to the time I do regret that I could not complete. I thought that I would have had one half of an hour, but I do apologize and am indebted to you and the Senate for its indulgence.

PROCEDURAL MOTION

The Minister of Public Administration and Information (Sen. The Hon. Wade Mark): Mr. President, I beg to move that the debate on the Community Service Orders Bill be continued at the next sitting of the Senate.

Question put and agreed to.

ARRANGEMENT OF BUSINESS

Mr. President: Hon. Senators, you will recall that it has been agreed that "Introduction of Bills" will be taken at a later stage of the proceedings. I think it is appropriate to take that item now.

Agreed to.

INTELLECTUAL PROPERTY (MISCELLANEOUS AMDTS.) BILL

Bill to amend the Geographical Indications Act, 1996, the Patents Act, 1996 and the Protection Against Unfair Competition Act, 1996, [*The Minister of Legal Affairs*]; read the first time.

Motion made, That the next stage be taken at the next sitting of the Senate [*Hon. W. Mark*]

Question put and agreed to.

LAW REFORM (PENSIONS) BILL

Bill to provide for the preservation and linking of pensionable service in the Public Service, the transfer of values of superannuation benefits between the public service and certain statutory boards, the payment of superannuation benefits to temporary employees and unconfirmed public officers, the abolition of marriage gratuity and matters related thereto, [*The Minister of Public Administration and Information*]; read the first time.

Motion made, That the next stage be taken at the next sitting of the Senate.
[*Hon. W. Mark*]

Question put and agreed to.

ADJOURNMENT

The Minister of Public Administration and Information (Sen. The Hon. Wade Mark): Mr. President, I beg to move that this Senate do now adjourn to Tuesday, April 22, 1997 at 1.30 p.m. At this time we will focus on the Government's Motion on Excise Duty (Petroleum Products) Order, 1997 as well as the Finance Bill, 1997.

Question put and agreed to.

Senate adjourned accordingly.

Adjourned at 5.04 p.m.