

*Leave of Absence**Tuesday, July 07, 1998***SENATE***Tuesday, July 07, 1998*

The Senate met at 1.30 p.m.

**PRAYERS**[MR. VICE-PRESIDENT *in the Chair*]**LEAVE OF ABSENCE**

**Mr. Vice-President:** Hon. Senators, I have granted leave of absence to Sen. Prof. Kenneth Ramchand from today's sitting of the Senate.

**PAPER LAID**

Report of the Task Force appointed by Cabinet to consider Legal Education in the Caribbean. [*The Minister of Public Administration (Sen. The Hon. Wade Mark)*]

**ORAL ANSWERS TO QUESTIONS**

**National Carnival Commission  
(Unsatisfactory Auditor's Report)**

**28. Sen. Diana Mahabir-Wyatt** asked the hon. Minister of Finance:

Could the hon. Minister tell this Senate what action has been taken in relation to the responsible staff members of the National Carnival Commission (NCC) following the unsatisfactory report on the accounts of the National Carnival Commission made by the Auditor General for the year ended July 31, 1993?

**The Minister of Finance (Sen. The Hon. Brian Kuei Tung):** Mr. Vice-President, the reports of the Auditor General on the receipts and payment of accounts of the National Carnival Commission, including the one for the year ended July 31, 1993, were referred to the Public Accounts Committee of Parliament. Consequently, it is my respectful view that this question may appear to be pre-empting the examination of the issues by the Public Accounts Committee.

I have discussed this matter with the hon. Senator and she is prepared to accept this answer.

**Government Employees' Provident Fund  
(Transfer of Funds)**

**29. Sen. Diana Mahabir-Wyatt** asked the hon. Minister of Finance:

Could the hon. Minister tell this Senate why the balance of the interest on investments made in the accounts of the Government Employees' Provident Fund for the years ending 1994 and 1995 was transferred to the Consolidated Fund contrary to section 34 of the Provident Fund Act?

**The Minister of Finance (Sen. The Hon. Brian Kuei Tung):** Mr. Vice-President, basically, this matter is also before the Public Accounts Committee. However, by way of explanation, let me say that what is before this honourable Senate are two reports of the Auditor General on the accounts of the Government Employees' Provident Fund for the years 1994 and 1995.

This honourable Senate would have noted that the Auditor General has dealt with a method of accounting and has not pointed out that any funds have been lost or missing. Basically, there is a difference of view in terms of accounting. Mr. Vice-President, that difference cannot be sorted out by an explanation by the hon. Minister of Finance.

Senators would be aware that section 119 of the Constitution of the Republic of Trinidad and Tobago provides for the Auditor General's report of this nature to go before the Public Accounts Committee. In fact, the Lower House has already referred these two reports of the Auditor General to the Public Accounts Committee. This procedure means that the Public Accounts Committee would conduct its investigations into the observations made by the Auditor General and would report to Parliament on its findings and recommendations.

Further, I would apprise hon. Senators that since the Auditor General has made these observations, and out of deference to the audit views, the account for 1997, which is the year in which those views were communicated to the Treasury, the surplus funds have been placed on deposit until the matter is resolved.

**COMMUNITY MEDIATION BILL**

*Order for second reading read.*

**The Attorney General (Hon. Ramesh Lawrence Maharaj):** Mr. Vice-President, I beg to move,

That a Bill to provide for community mediation as an alternative to litigation for certain summary offences and civil matters, be now read a second time.

Mr. Vice-President, this Bill is the first of its kind in Trinidad and Tobago and in the Caribbean region to introduce a new system of alternative dispute resolution in criminal matters and in some petty civil matters.

The Bill is not to give an amnesty to persons who are charged for the crimes mentioned in the Schedule of the Bill. However, it provides an alternative to court litigation for the resolution of some of the matters which go before the court. Another purpose of this measure is an attempt to sensitize those who are entering the path of social deviance about their responsibility to the community and to themselves, in a manner in which the penal system is not geared to operate.

This Bill had its genesis during the last administration, in that it decided to look at the question of mediation as an alternative to formal court hearings in petty criminal matters. Dr. Ramesh Deosaran of the University of the West Indies did a study entitled, *Mediation as a Community Alternative to Litigation for Young Offenders*. Mr. Vice-President, with your leave, I would like to quote from that document, dated November 23, 1994, page 5:

“A Cry for Help”

After detailing the statistics and the figures for young offenders, Dr. Deosaran stated:

“With such a picture of the young offender in mind, a study of 166 inmates, (14 to 20 years) at the Youth Training Centre was conducted in 1992 to find out what these inmates thought were the major reasons for their getting involved in crime and what they think would help them get out of crime. Almost all of them indicated that they still wanted to ‘go to school’ and find a means of living. Another common answer from these young offenders was that they got little or no ‘attention, love or understanding’ when they were growing up.”

**1.40 p.m.**

“Underlying these answers was their general feeling that the system had not been fair to them and that some other form of mediation or intervention would have been more appropriate if their propensity towards crime had to be alleviated.

These significant, social and psychological features of young offenders have not escaped the attention of the Ministry of Social Development.”

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The report goes on:

“However, given the above trends for young offenders, a critical point must be made: the formal legal and court route is apparently not able to deal with the magnitude of young offenders in the context of minor crimes and minor offences. And by implication, no matter how much additional human, physical or financial resources are pumped into intervention strategies, so long as the formal legal and court systems are used for determining such intervention, the existing frequency of young offenders...will continue if not increase. An alternative method of treating young offenders, a method outside the formal court system, is therefore due for serious consideration. The alternative proposed is a community-based system of mediation.”

Mr. Vice-President, based on that report which identified the need for a community-based approach to the treatment of young offenders, with less emphasis on incarceration and punishment and more emphasis on rehabilitation strategies, there was a task force appointed under the last administration to consider and give effect to the report. When this administration took office it adopted that policy because it believed that was the right way to go in dealing with young offenders. This Bill, therefore, was drafted and there are administrative measures being taken in order to try to prepare for when the actual law is made. The policy of this administration is to find alternative methods of punishment where it is recognized that this should be done.

Hon. Senators would recall that in 1997 the Government enacted the Community Service Order Act in which the emphasis was on some persons who were convicted not having to serve prison sentences within the prison walls but with the court ordering for them to do community service. In that law, as in this Bill, is an approach in which the Government is working with Non Governmental Organizations and the communities to implement this kind of legislation.

Before I go into the Bill itself, Mr. Vice-President, I would like to deal with the concept of mediation from a sort of international perspective as to how it has worked in these matters. Mediation is an informal, non-adversarial process whereby a neutral third person, the mediator, assists parties of a dispute to resolve, by agreement, some or all of the differences between them.

In mediation the decision-making remains with the parties and the mediator has no authority to render a judgment. It is not like an arbitration—it is probably part of arbitration, but it is not arbitration in the strict sense of the word—because the

mediator does not give a judgment, it is the parties to the dispute who would decide to resolve the matters and the mediator assists in that process. The mediator's role is to encourage the parties and to assist them to reach their own mutually acceptable settlement by facilitating communication and helping them to clarify the interest and issues.

Mr. Vice-President, in many countries of the world, including England and the United States of America, community-based mediation is being increasingly used by the legal profession and the courts as a viable option for resolving disputes. In Australia and New South Wales, it is now considered as a strategic tool in dealing with heavy caseloads and expensive litigation and more and more countries are recognizing that conflict can be successfully dealt with outside the legal system.

As the cost of justice escalates each year, more and more countries are turning to mediation because it has been seen where communities can benefit from using this method of dispute resolution mechanism. It has been realized that mediation, particularly in criminal matters,

- (i) provides psychological assistance to the victim;
- (ii) directs the young offender away from the criminal justice system to a more rehabilitating environment;
- (iii) has led to a reduction in crime in young juveniles.

Mr. Vice-President, mediation not only keeps the young offender away from the stigmatizing effect of the legal system but also seeks to provide the victim with the means of compensation in partnership with the offender as we would see in clause 9 of this Bill.

Community mediation offers enormous advantages and its underlying principle has been the resolution of disputes in a constructive rather than a confrontational manner. It is based on the philosophy of restorative justice which seeks to address the harm done to victims, the community and offenders arising out of the crime. This contrasts sharply with the traditional retributive justice which focusses simply upon adjudicating and punishing. Many factors have influenced the evolution of community mediation programmes throughout the world and these include:

- (i) the growing concern about the limited access to justice arising from court delays and rising costs.
- (ii) the reduced role of traditional dispute resolvers;

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- (iii) the changing perceptions regarding the appropriateness and effectiveness of the court process in resolving conflict;
- (iv) increased interest in the role of community members in resolving conflict.

Mediation is not a new dispute mechanism option. It has been a central strategy of many legal systems over the last quarter of a century and Norway was one of the first countries in the world to establish conflict resolution boards. However, I can think of areas in Trinidad and Tobago in which the panchayat system years ago is known to have been used. That was a form of mediation which had proven in those days to be a very effective mechanism.

**1.50 p.m.**

In Norway, in 1980 it established this conflict resolution board as a means of dealing expeditiously with its caseloads. These boards were seen as a forum for resolving conflicts outside the formal court system, and the process has worked so well in that country that there are now over 460 such boards established throughout Norway. France has also laid great emphasis on community mediation as a means of keeping juveniles out of the adversarial system. In New South Wales the system has worked well and has complemented the formal justice system. In Victoria and Queensland, victim offender mediation was introduced in 1991 and it has been proven to be very successful.

Mediation centres started in the United States as early as 1970. It was one of the major initiatives undertaken to cope with the high incidence of criminal behaviour among young people.

In Trinidad and Tobago, if we were to enact the Community Mediation Bill, it would have moved one step closer to fulfilling Trinidad and Tobago's obligations under the Convention on the Rights of the Child which advocates measures for dealing with children without recourse to judicial proceedings. This convention also requires young offenders to be treated in a manner which promotes the child's re-integration into the society thereby assuming a more constructive role.

Mr. Vice-President, one sees that Part I of the Bill deals with mediation in criminal matters. When one looks at clauses 3—6, one sees Part I of the Bill details the procedure for mediation in selected criminal offences of the type contained in Schedule I. It deals with the offences under the Summary Offences Act and they are regarded as not very serious offences. These offences include

various forms of assault, offences against property and the use of obscene language.

May I say at the outset, that this Bill before the Senate is in the amended form which came from the House of Representatives. The original Bill had been published for public comment. There were consultations, there were views expressed by organizations including the Law Association. It was after all those comments were taken into account and what was said in the House that the Bill is in this particular form. One of the points raised in the other place—I think it is my duty to mention it—is that it was thought that there should be more offences than the offences which are mentioned in Schedule I. That is to say, the Bill should have greater jurisdiction. We said we wanted to start with mediation in these offences but gave an undertaking that depending on how the process works, we would be able to expand the jurisdiction in respect of mediation.

Mr. Vice-President, when a person who is accused of the offences mentioned in Schedule I appears before the court, as long as that person is a first offender in the sense that he was never charged or convicted of an offence of any kind whatever—I know that one of the points which have been raised is, why do you say a person who has not been charged, because a person who has been charged and not convicted is presumed to be innocent. This is a matter which has been discussed at all levels; with the population, the interest groups, and it was felt at this stage it should be persons who have never had any brush with the law, if I can use that expression. Therefore, it was in that context it was felt that it should be limited to persons who have not been charged or convicted of any offence of any kind. That person would qualify to apply for the process of mediation.

Clause 4 of the Bill shows that when the person appears before the court he has a choice to have the matter heard by the court or by mediation.

“A Court, trying an offence alleged to have been committed by a person who is eligible for mediation, shall inform the defendant and the *de facto* complainant that they may, jointly or separately, apply to the Court for mediation.”

One sees, when the person appears before the court he can apply for mediation. Under clause 5, when the person applies, “the Court may adjourn the hearing of the complaint in order to allow him sufficient time to make his application.”

Where the person applies, he shall apply in a particular form as mentioned in clause 6 and it is directed to the courts.

Under clause 7 it says:

- “(1) A Court shall not approve an application for mediation unless—
- (a) it is satisfied that the complaint is amenable to community mediation;
  - (b) it obtains a report from a probation officer about the defendant and his circumstances and after considering the report and, if it thinks necessary, hearing the probation officer, it is satisfied that the defendant is a suitable person for mediation;
  - (c) the defendant and the *de facto* complainant agree—
    - (i) to the determination of the complaint by mediation; and
    - (ii) to waive their rights to initiate any further legal proceedings in respect of the matter complained of if the complaint is determined by mediation,

and signed as having so agreed in the appropriate place on the application form; and

- (d) the defendant and the *de facto* complainant agree on the person who is to be appointed as a mediator of the complaint and that person also consents to being so appointed.”

One sees that it is not an automatic situation. The court will look at the circumstances, it will get a report from the probation officer, it would see whether the offence is amenable, and look at all the circumstances to make sure that there is the necessary consent and so forth. It gives the court the discretion in order to make an order for mediation.

The application forms for mediation would be available at the court. It would be accompanied by an affidavit. The Bill states what would be the form of the application.

One notices that in case there is an agreement after the mediation process is completed, they would both agree to waive their rights to have any further proceedings in the court.

### **2.00 p.m.**

Mr. Vice-President, in clause 7, though the defendant may be eligible for mediation he does not automatically qualify for it. Bearing in mind that he is charged before the court, clause 7 allows the court to exercise discretion in determining whether the mediation should be approved. Each case has to be



decided according to its own circumstances. The magistrate must examine the facts and documents put forward by the applicant, but the court is entitled to be advised by a probation officer as to the applicant's suitability for mediation. The court must be satisfied on the basis of a probation officer's report and testimony that this defendant is a suitable person for the mediation process. The complainant must also agree that the matter be resolved in this form and they must both agree to the appointment of a mediator. Mr. Vice-President, this clause provides important checks and balances in the system, in that it ensures that the complainant's right of access to the court may be affected only by his or her agreement to allow the court the discretion to grant or refuse the application.

Mr. Vice-President, the purpose, effect and requirements of the mediation order are prescribed in clauses 8, 9 and 10. The court must appoint the mediator, refer the compliant to him or her, and must suspend its hearing for the complaint. However, before making the order, the magistrate will clearly explain to the defendant the purpose, effect and requirements of the order; the consequences following the breach of any of the requirements and the court's power of review. The defendant must be made aware that the making of the order does not discharge him of the offence as charged. He is allowed the final opportunity, having all the facts before him, to consider the decision and the magistrate acts accordingly.

Mr. Vice-President, having regard to the importance of the section, I would like to deal with it in a little more detailed manner. One sees where the court approves the application and under subclause (1) the court makes the order. Under subclause (2), one sees that the court would explain to the defendant, clearly and precisely, the purpose, effect, consequences and the power of the court under section 11. The court still has the jurisdiction to change the order during the period of time the mediation process is going on.

Clause 9 says:

“A mediation order shall—

- (a) have effect for such period not exceeding twelve months from the date of the order as may be specified therein;
- (b) require the defendant to submit during that period to the supervision of a probation officer assigned to the court;
- (c) contain such provisions as the court considers necessary for securing the supervision of defendant; and

- (d) contain such additional conditions as to residence and other matters as the court, having regard to the circumstances of the case, considers necessary for securing the good conduct of the defendant and his participation in the process of mediation.”

Mr. Vice-President, the order would provide the necessary safeguards to ensure that the defendant would be able to be supervised, and if he is not cooperating in the mediation process, steps would be able to be taken.

Clause 9(2) says:

“A defendant in respect of whom a mediation order is in force shall attend such mediation centre at such time as he is required by the mediator to attend in order to participate in the process of mediation, and on any such occasion, the defendant or the *de facto* complainant may be accompanied by an attorney-at-law.”

Mr. Vice-President, so one sees that when the mediation order is made, it is made for a period not exceeding 12 months. There are provisions later in the Bill, which would show that with the consent of the parties, *et cetera*, the court has a discretion to extend that period for a period not exceeding three months. What happens, therefore, is that one would see after I read the other subsection, that during that one-year mediation period, the mediator at mediation centres in Trinidad and Tobago—there would be mediators assigned to these centres—would also have the power to co-opt people from the community and would be able to talk to the parties in the dispute to try to see if there can be some sort of agreement between the parties. If it is a petty criminal offence, it may be that the person may do some work for the *de facto* complainant, community work, or may be involved in some rehabilitative work.

Mr. Vice-President, under clause 9(3):

“The process of mediation may, with the mutual consent of the parties thereto, require the defendant to do any...”

Or any combination—

“...of the following:

- (a) community service;
- (b) work for the *de facto* complainant;
- (c) participate in an educational or rehabilitative programme;

- (d) compensate the *de facto* complainant in an amount not exceeding five thousand dollars or such greater amount as the Minister may fix by Order subject to negative resolution of Parliament.
- (4) A defendant's obligations under subsections (2) and (3) shall, so far as practicable, be such as to avoid any conflict with his religious beliefs and any interference with the times, if any, at which he normally works or attends a school or other educational establishment."

Mr. Vice-President, one therefore would see that assuming a defendant appears in court and applies for a mediation order, subject to him filling out the necessary application, he goes back to the court, subject to the *de facto* complainant agreeing for mediation, and subject to the court agreeing that is a proper order for mediation, the court makes the order for mediation, appoints the mediator and the period of time would not be in excess of one year. During that period of time, there will be discussions and matters can be resolved by parties agreeing for any of these things to be done. During that period of time, the criminal action would be stayed for the period of time that the mediation process is going on.

Mr. Vice-President, clause 10 reads:

"Where, at any time while a mediation order is in force in respect of a defendant, the court is of the view that the defendant has failed to comply with any of the requirements imposed on him pursuant to section 9, including any failure to do satisfactorily anything specified in section 9(3), the court may issue a summons requiring the defendant to appear before the court at the time specified therein."

Mr. Vice-President, one sees that if the defendant at any time, is in breach of the mediation order or in terms of the order as mentioned in clause 9, the court has the power to summon him to appear before the court. Where the person even fails to do so, the court has the power to issue a warrant for his arrest and have him brought before the court.

Under clause 10(3), if the defendant fails to give any reasonable excuse in failing to comply with the requirements, the court may even revoke the mediation order and resume the hearing of the complaint. During the period of time the complaint is before the court, there would be an opportunity for the parties to resolve the dispute. If for some reason it is not resolved or there is no co-operation, the court does not lose jurisdiction in dealing with the matter.

Clause 11 reads:

“Where a mediation order is in force in respect of a defendant and, on the application of the defendant, the complainant, the probation officer or the mediator, it appears to the court that it would be in the interests of justice to do so having regard to the circumstances which have arisen since the order was made, the Court may—

- (a) with the consent of the parties, extend the duration of the order for a period not exceeding three months at a time; or
- (b) revoke the order and resume the hearing of the complaint which was suspended by the order.”

Mr. Vice-President, there may be cases in which, even though there have been some agreement and there was some work being done, it was thought that there ought to be some extension. In those circumstances and others, I am sure the court would have the power to extend the time.

Clause 12 reads:

- “(1) Where the probation officer under whose supervision the defendant is placed, is satisfied that the defendant has complied with the requirements imposed on him pursuant to section 9, the probation officer shall submit a report to that effect to the mediator.
- (2) Upon receiving a report under subsection (1), the mediator shall issue a certificate of completion in the form set out in Schedule 3 and shall forward the certificate and the report to the court which may then record that the complaint has been determined by mediation.
- (3) Where the Court records that a complaint is determined by mediation, neither the defendant nor the *de facto* complainant may initiate any legal proceedings in any court of law in respect of the matter so determined.”

Mr. Vice-President, one sees that during this period of one year or one year and three months, the parties would agree on whatever has to be done. During that period of time, if it is done—whether it is community service, work for the complainant, or just to participate in any educational programme—when the probation officer is satisfied that all those conditions have been complied with, he makes a report. The court will then consider that report in light of the fact that if

the matter is determined by mediation, obviously, that would be the end of the matter. If the matter is not determined by mediation, the court still has jurisdiction and will continue to hear the matter in the formal court process.

Mr. Vice-President, under clause 13, this is a matter that was raised. That is, the report of the mediator and any incriminating statement made by a defendant or by any other person who is involved in the mediation process, should not be admissible in a court. The purpose of this is, it is felt that if there must be a proper mediation process in which both the victim and the defendant are going to be frank with each other, there should not be anything held over the heads of the parties that in the event the mediation process does not work, whatever is said or done can be used against an individual.

**2.15 p.m.**

Mr. Vice-President, it has been advanced to us that there should be provision for these matters to be inadmissible in evidence in a court. We have looked at what other countries have done and it seems that the other countries which have done this kind of process, the majority of them have the situation where these matters are not admissible in evidence in any court.

Let me put it this way. Assuming, for example, the mediation process fails and the defendant, at the mediation process, had indicated that, yes, he was guilty, he really struck the individual. Obviously, in normal circumstances, that statement could be used as an admission against the defendant in a court proceeding. It was felt that if there was that kind of situation people would not be free in owning up to what they do in an effort to try to get the victim and the defendant understanding each other's problems and for the defendant to be able to fully confront the situation.

Mr. Vice-President, I know this is a very difficult philosophy to accept at times but I have been seeing in the new trend that what the countries are doing is trying to get the victims and the wrongdoer face to face with each other. From the studies it is shown that these things do work. In these kinds of crimes—the summary offences—we have decided to see whether it will work in these circumstances in Trinidad and Tobago. It is in this context that I would like to explain clause 13 of the Bill.

In respect of mediation in civil matters—I must say, however, that when this concept was put out for public comment it was only on the basis of criminal matters but based on the representations which were made to us—there were lots

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of representations to the effect that there should be mediation in some civil matters in that there should be some of the provisions for mediation in civil matters. It is in this context that in clause 2 of the Bill we attempted to provide a mechanism whereby there can be a similar concept in civil matters. The civil matters which we thought we should include are the matters mentioned in clause 14 of the Bill. Matters under section 8 of the Petty Civil Courts Act; application for ancillary relief following the grant of a *decree nisi* of divorce or decree of judicial separation—it says on the Bill “a degree of judicial separation” but I think they really meant “a decree of judicial separation”—applications falling for determination by a court under the Matrimonial Proceedings and Property Act for the custody, education, supervision and maintenance of children; application for the maintenance of and access to children and maintenance of a spouse or defendant; applications for an order under the Domestic Violence Act, but before the order is made under the said Act and before any undertaking is given in respect of any matter under the said Act.

Mr. Vice-President, I should mention that in respect to the Domestic Violence Act, initially it was not restricted as it is now and when the matter was in the other place there was the feeling expressed that when orders are made under that Act, and if there are attempts to have mediation, the victim will normally be at a great disadvantage. Therefore, it was decided in the other place that we should have the application under that Act but before any order is made under the Act and before any undertaking is given with respect to any matter under the Act—an undertaking as to not going into a particular place or any such thing.

One would notice that under subclause (2) this Bill does not prevent either party from seeking to have the matter mediated directly with a mediator agreed to by both parties and where that mediation process fails and proceedings are instituted in respect of those matters, the court may make an order with respect to subclause (4). What it really means is that before proceedings are filed, it must be made clear that this Bill does not prevent people from trying to solve their differences, but if those situations fail then, obviously, one can apply under the Act.

Mr. Vice-President, under subclause (3):

“Where the parties opt for mediation under subsection (2) the Court shall adjourn for the parties to agree on a mediator and on the adjourned date the Court shall make an Order—

- (a) appointing the mediator agreed to by both parties;

- (b) referring any matter to the mediator for mediation;
- (c) suspending its hearing of the complaint.”

I think it should be the complaint or the case depending on the terms. It may be there has to be some cosmetic amendment there.

“(4) The Minister may by Order prescribe any other matters that may be subject to mediation in accordance with the Act.”

That is along the same procedure that we have dealt with under the criminal matters and in clause 15:

“(1) In respect of civil matters to which section 14(3) applies upon completion of the mediation process, the mediator shall issue a certificate of completion in the form set out in Schedule 3 and shall forward the certificate and the report to the Court which may then record that the matter has been determined.

(2) Where the mediation process fails, the mediator shall issue a notice in the form set out in Schedule 3, to the court which shall thereupon record that the mediation process was unsuccessful and shall fix a date for concluding the matter.”

Mr. Vice-President, it should always be recognized that the court does not lose its jurisdiction while the mediation process and while the aspect of the defendant's work or whatever the defendant may have to do in the matter is being done. It is only when the matter is determined by mediation or the mediator is satisfied in the case of a civil matter that the matter has been completed then the court will record the order.

It is a concept whereby during that period of time—a year or a year and three months as the case may be, or a year and six months—that it is hoped that in the civil and criminal matters people would obviously have settled their differences; they would have performed whatever work they had to perform; paid what compensation they had to pay and, at the end of that period, there would be a certificate sent to the court and the court would, obviously, determine whether it should make the order.

Part III of the Bill—I tried to go through this Bill in this way, sort of clause by clause, in order to try to explain it to Senators so even though it meant reading some of the provisions, I thought in this Bill I should do it that way so that Senators would fully understand the Government's position with respect to the

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Bill. Part III of the Bill deals with some of the miscellaneous matters. I think these are very important.

Clause 16 deals with the Minister ordering premises or making available premises or part thereof as community mediation centres which shall be available for mediation in criminal or civil matters and the mediator shall have the power to co-opt with the agreement of the party or persons from the community in which the mediation centre is located, whom he considers may have the expertise or the type of influence required for the particular mediation process and request the support of any social groups, community organizations or non-governmental organizations where support is required for the success of the mediation process.

Mr. Vice-President, what does this say? I think that this provision is important and I would like to give Members a little idea of how we see that this is going to work. Obviously, at the starting point there will be mediation centres in certain parts of the country. Mediators would be attached to these centres. These would be people trained, not as lawyers, but people who are trained in behavioural science who would have had some experience and training in this field in order to be able to settle disputes—to mediate.

We have had from the government of Argentina an offer to send a team to Trinidad and Tobago to assist us in one of the programmes for mediation. We have also had an offer—I am not too sure, I think it is from the government of Britain or the government of Canada—in order to do likewise. I am saying this because this is not going to be a process whereby one would merely pick one or two people from the community to settle these differences. There are going to be centres with professional people attached to them whose job would be to do that. They would be trained in that field. What they would have, however, is the power, with the consent of the parties, to work with people in the community whether it is an organization, an elder member of the society, Reverend, Pundit, Imam, religious person whoever he or she may be, or any other person to co-opt that person, to work with him in order to try to have discussions with the party.

Let us assume there is a petty dispute over a piece of land; a simple trespass matter or, let me say, there is an assault and battery dispute between neighbours; two young boys from one family and two young boys from another family. Normally, if there is that kind of situation the report is made to the police who would investigate and the police would have to charge one side because, depending on what the police find, they would get evidence which would



probably show that the two boys from land “A” injured the two boys from land “B” and, therefore, what would happen is that the police may charge the two boys from land “A”. That would be the normal thing, then that matter goes to court. It may go to the juvenile court or whatever it may be. What happens in this matter is that assuming that incident occurs and the two persons are charged, when the two persons appear in court and assuming there is a mediation order, these two families may have had disputes for a long time and these disputes would have caused the younger generation to take up the battles that have been going on for a long time.

A professional mediator—if I use that expression—would have all the training, knowledge and expertise but he or she may not, on his or her own, be able to get the parties together to solve the dispute or recognize the differences but there may be persons in the community who know both sides and who would be able to use their influence to try to get the parties together and by getting them together—they may have talks at their homes or at the centre—they would probably agree that, even with some little compensation paid or some mutual things done, they would have done it and when that is all finished, then the probation officer makes the report. The effect of that would be that the professional person would have worked with the community in getting the two families together and getting them to solve their differences without the court.

**2.30 p.m.**

So that although we talk of mediation, it is my duty to mention that it is not envisaged that it is going to be a system in which there are going to be people from the community mediating on a very loose arrangement. The aim is that it is going to be structured for there to be mediation centres; for there to be staff attached to the mediation centres; for there to be trained people; and, with the greatest respect to the legal profession, for lawyers not to be attached to it, because the whole aim of it is to take away the legalism and the adversarial nature from the mediation centres. [*Interruption*]

Mr. Vice-President, I did not know that I had spoken for so long.

Clause 17 of the Bill gives the Minister the power to make regulations. One would see that there is a method of accreditation; the qualification requirement for the mediator; the ethical standards to be observed; remuneration and other matters. Members would see there is some attempt there to set standards.

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Clause 19 provides for “Immunity from suit” against any of the mediators or any officials:

“...involved in mediation proceedings for any act or omission done or omitted...in the course of the performance of their duties.”

May I mention this is one of the matters which the Law Association took up and we acceded to that request because it was felt that we could not have people exposed to litigation in relation to what was done during mediation.

On the question of confidentiality, that, again, is a matter with which we agreed, because we recognized that there must be confidentiality in these proceedings and clause 20 deals with that matter. That is to say, no statement or matter should be disclosed in relation to the mediation process.

Mr. Vice-President, what must I say again on this Bill? What I would like to say in concluding is, I am sure, as with anything that is new, this is not going to be perfect. There would be problems. In all countries which have set up this thing, at the beginning, there have been problems. The important thing is that we have accepted the challenge to go with this—and when I say we, I mean the people of Trinidad and Tobago, in that the previous administration started it and we have continued it. This is not a partisan matter. It involves the improvement of the life of children and the future of the human resource of Trinidad and Tobago.

We have accepted that challenge and I think that I would like to commend this Bill to this honourable Senate. I think it is a measure in which we would see that we want to really reform all the laws dealing with family law and children.

As I am on my feet, may I say that a lot of work has been done with respect to the Family Court and family law reforms and one would recognize that we just could not build a court and say that is the Family Court. The law and the rules had to be reformed, both from the Rules Committee side of the High Court and from the substantive law side. There is a family law bill which has been subjected to a lot of scrutiny and consultation. Soon to come, also, there will be new family rules of the Supreme Court. This is all in keeping with the concept that the law relating to family and children has been totally outdated and this is all part and parcel of trying to deal with some first offenders, recognizing that most of the first offenders are young people and we want to provide a way in which they would not be contaminated with the court system.

Mr. Vice-President, I beg to move.

*Question proposed.*

**Sen. Joan Yuille-Williams:** Mr. Vice-President, I welcome this opportunity to make my comments on this Bill.

As one who was a part of the government which initiated this, I am happy to see that it has been moved a little further. I was getting a bit worried over the last few weeks when, as I read the daily newspapers, I saw a direction in fighting crime that almost got me worried; an enthusiasm to do certain things. One wondered whether the focus was going to remain at the end of the line, if I should say that; one wondered also, whether or not we were going to concentrate on the other end, because, these days we are talking about the preventive side of crime. Therefore, when I saw this Bill coming forward, I thought it was an opportunity to make this contribution.

The hon. Minister did say that this Bill was initiated by the last administration, or the genesis of it started with the last administration, and that it was part of the plan which they took forward. They adopted the plan. In his presentation, he talked about an extract from Dr. Deosaran, entitled "A Cry For Help".

In my contribution this afternoon, I wanted to let the Government know that when this was requested—mediation as an alternative—the research had to be done and this was part of a packet. I feel constrained to let this Senate know what were the other aspects of this packet, because one thing could not be taken out with the rest left in. There was the support. This was mainly for the first-time offenders, which I welcome, but we also looked at the question of how they could be saved before becoming first-time offenders. Somewhere along the line, I will show where Dr. Deosaran also alluded to one of the programmes which he felt should go in line with this Community Mediation Bill. Therefore, I feel that I must show what happened before, and I hope with the same enthusiasm and exuberance with which we are now dealing with the end of the line, we should deal with the beginning of the line. I will leave it there because I am sure you know what I am talking about.

The research would have told us that if we had listened and put things in place earlier, we might have prevented some of what has happened. Therefore, as a move into this packet was made and this was taken out of the plan, let me advise those who do not know and probably some people who did not even realize that this was part of a packet.

The PNM believed in a policy of having the community play an active part in crime prevention. I want to go back to some of the programmes which involved the community and which were for the purpose of saving those young people who, unfortunately, were looked at as first offenders.

One of those programmes was the national service programme. For those of you who would remember, one of the objectives of national service was to develop a sense of self-worth and discipline among youth. Any programme, therefore, which will do that will certainly help in the prevention of crime and also with this mediation for first offenders. In that respect, we used the national service programme and we had a programme in which we looked at the elderly in the community to assist the young people.

We did it in a two-pronged way in which we were trying to satisfy the needs of the elderly but, more importantly, we were developing the discipline among young people through service to the community. We intended to train young people to serve the community and, in this particular case, it was service to the elderly. I am sure there are those who remember that programme. It was called the Geriatric/Adolescent Partnership (GAP), the main purpose of which was getting young people reacting or communicating with the elderly. To do that, we had to give them certain skills so that they would be able to appreciate the elderly in the community.

That programme started as a national service programme and I think it should be there as part of national service. In the year when we left, 700 young people were being trained. We were hoping that with each year that would be increased with two cycles, so that 2,000 or 3,000 young people would be trained to be of service to the elderly. The important part of that was that during their training they would spend each day for four weeks, either at the home of the elderly or in an institution—we particularly liked the home involvement where they worked with the elderly, most of the time providing some kind of support for the elderly but, what they were really doing was interacting.

The elderly people almost adopted the young people whom we sent. Therefore, the hours they spent—if any one of those young people from that programme was spoken to, one would have noted the amount of advice they got from those same elderly people within the community; so much so that even after their four weeks had finished and they had gone off to the jobs or wherever, they found those people very useful to them for communication.

Mr. Vice-President, a number of our young people today do not even wish to speak with older people. They cannot communicate. That programme taught them how to communicate, so when problems arose it was easy for them to go to the elderly in the communities, or wherever, and communicate with them.

Sad to say, I have not seen any particular advertisement for that particular aspect of the programme for the year. I know that a placement is going on now for those of the young people who really liked what they were doing in terms of geriatric care and who have gone off into the world of work doing that. But that was not the main aim of the whole programme.

Some of those people who were trained went off into other jobs and that is fine. We were hoping to get many more people involved. I know sometimes funding is a problem, but these programmes might not be as high profiled as some of the others and we tend to overlook the importance of those programmes and give less funding to them.

Here, we are talking about community mediation. I am also talking about the manner in which the community would be influencing the lives of many young people and I am asking that we continue the programme because it was part of a packet, that Geriatric/Adolescent Partnership Programme, where we had those young people going out and interfacing with the elderly people in their communities.

That was not the only one of the community-based programmes which we had for this particular purpose. I am sorry I do not have the figures, but our research showed that a number of those young offenders were some of those children whom we call "children at risk". We had looked at the junior secondary schools, the shift system and, even some of the senior secondary schools. We found that after school, in the shift system, there were a number of young people whose parents were out at work; they did not have anyone at home to look after them and were left unsupervised. We also married that with a number of people in the communities who had skills to be offered.

Let me just say that we thought of marrying both. Could we not put a programme together, where these young people, after they left the morning shift, could go to some place in the community where the retirees in that community would be there to assist them in every form of activity, be it academics, or more importantly, culture, sports or some other area? Those going on the evening shift and left alone knew that they could go somewhere in the community and spend those hours before going to school. That programme was RAP and it is one in which the retirees were married with the adolescents.

**2.45 p.m.**

When we left office, we had already touched base with the Marabella Junior Secondary School, and for our pilot, we had applicants from that school and we

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had advertised for those of the communities who wished to be a part of the programme. We were just giving them a stipend and it did not matter how much we were paying them, but more importantly, I think the retirees were happy to be of service to the community.

We left the programme at that stage, unfortunately, and even though I was made to believe that it would have happened, it did not happen and I think at this stage the programme did not go any further. We are talking about young persons, children at risk; we are talking about first offenders here. I am talking just a step before, which was part of a package of what we could do with the young people in our society to prevent them from becoming first offenders. We had that programme and I am asking if the Government did not like how it was going to be administered—and we are not being partisan at this time—let us examine the programme and get it on stream because there is a need for it. Let us not confuse it with homework centres. I am talking about a place where these retirees, persons with something to contribute—and there are many school teachers, public servants and other persons out there with skills who are willing to communicate with young persons and give of their time. There are many persons in sport who know the development of it who are willing to work with those young persons; and with that interaction, these young persons would feel, here I have a mentor, somebody to talk to.

I am sad to say that programme was not continued, and I am hoping when the Minister is thinking in terms of this package, that would be included. As I said before, for some reason or the other some of these programmes are not as well-funded as the others and may not be as high-profiled as others would like to think, but they are very important if we are serious about preventing crime and helping the children at risk.

There are large numbers of children at risk, and people in the community who are willing to get together and I am asking the Government to continue to marry both groups. All the plans were there, this is only a part of that package. One of the things which I think might have happened is that some people looked at the social programmes alone not seeing what the other side of it meant, especially with the geriatric, by saying these are for elderly persons, and should be put in a place where the aged would benefit, as the case may be, not recognizing the importance which was being placed in terms of the young people interacting and communicating and getting advice from the older ones.

Those two programmes are extremely important and I urge this Government that if it is going into this Mediation Bill, to pick up the rest of the packet. It might not have been brought to your attention, or sold to you in that manner, but I have this opportunity to tell you that it was part of a packet. There were several things which went with the Mediation Bill, and those two programmes were part of that.

I remember last year I listened to the launch of a foster care programme at Bretton Hall and I am going back to the question of the foster care, because fostering is something that is used in several countries. A report of a task force in 1991 tells us that there is need for the provision of a temporary foster care system within the community which it hoped would standardize the level of care available to young people in times of crisis so that their physical, emotional, social and educational needs might be met. The social workers also said that fostering was a viable community-based approach to solving the problems of some children who need to be removed to places of safety on a temporary basis. It was also thought to have the potential of providing preventative care for children at risk and, therefore, I would urge this Government to look at foster care. We cannot go anywhere with what we are trying to do today if we do not put the money to fund some of these programmes. This is essential, it is important. It is all well and good to have the launch. I understand that there is a committee for foster care with eight persons, and a staff of one. It needs an injection of funding, or whatever, but these programmes are essential in helping to prevent and lessen the load of the numbers who would come in as first offenders.

We have to look to see what is happening to our children; they are at risk. It is all well and good to condemn them, and as we go to this Mediation Bill to do something for the first offenders—which I am not against, and would support—I am also saying that the other part of the package must be looked at. It has been left there and it is essential to look at what is there because it is important to us if we are truly interested in reducing crime and protecting our young people.

I want to look at another programme and to do that, I look at what Dr. Deosaran said in a report *MEDIATION AS A COMMUNITY ALTERNATIVE TO LITIGATION FOR YOUNG OFFENDERS* A PROPOSAL, January 9, 1995. In it, he recognized the linkages and that is what I am saying; I am considering those programmes as linkages. He said:

“Working linkages should also be established between the Community Mediation Centres on one hand and Neighbourhood Watch Groups, the churches and schools of each division.”

Here again, Dr. Deosaran saw that this could not go by itself and he is seeing a relationship between the Community Mediation Centres and the Neighbourhood Watch Groups.

Mr. Vice-President, Neighbourhood Watch Groups was one of the programmes which we left when we were in office. We had started it and there are still probably some tee-shirts around which says: Take Control, Join A Neighbourhood Watch Group. We had started building these programmes around the country and some neighbourhoods decided they were taking things into their own hands and were going about it in the wrong way.

When we talked about a Neighbourhood Watch Group, we were not only thinking in terms of protection of the community from those from outside who might do harsh things, but we were also thinking about protection of the young people within the community and all the Neighbourhood Watch Groups had a social side to them as well.

When these groups made their programmes, they looked at the social and cultural aspects and things they would do to help the community, and I am saying this was another programme in that package which the PNM government left and if we are going this way, there is need to appreciate the linkage which Dr. Deosaran put into his proposal. One linkage which he used was the Neighbourhood Watch Group which must be set up throughout the country to go hand-in-hand with the Community Mediation Centres and, as you know, aligned to this Neighbourhood Watch Group, we had the community policing and that has gone on but I am saying that I am not seeing anything further happening in the watch groups where the neighbourhood was taking control of their communities. Those were some of the programmes which needed developing.

We have been talking about what has been happening in other parts of the world and I remember coming to the Parliament when there were some visitors coming from England, if I am not mistaken, and we were talking about the Neighbourhood Watch Group and they told us about the same groups they had been having in their country, so this is nothing new to Trinidad and Tobago, but it is important to us because we should do everything we can to help our young people and those at risk.

I am trying to show the number of community-based programmes which had been introduced by the previous administration which formed a package of which this is only one, and if we are going to go through with this, which I think we



should, I am hoping that those who have the power to assist, this Government, would try to see if the other programmes of which I spoke could be brought on board. If not, all our direction and focus would be on the offenders and the defendants and we would have forgotten our children. There are a large number of our children at risk and they are looking to us. Are we just going to wait until we hear the cry for help, or are we going to take that early intervention to save the children?

Mr. Vice-President, I am hoping you would understand why it was necessary for me to talk about these programmes which had been there. It is not a boast of what the previous administration attempted to do, we are doing it because we care about the young people. We would support this Bill, but we are asking that as you go through with this you will see the other side. I know how difficult it is to convince people that programmes like this are very important as any of the others. I also know how difficult it is to say that you have to move with great haste to do it. I would wish to see, as I read the daily newspapers, headlines saying that these things are moving and people are moving along with them and producing these groups, or these programmes are going on just as I would read each day of what is happening to those at the other end of the line, such as what is going to happen to them and what dates it would happen and so forth. I would hope that we could put dates on which we could save some of these young persons who are depending on us.

I heard the hon. Minister talking about the Mediation Centres. I do not know if he is going to start this on a pilot project whenever it gets started, but if he does, I am hoping that he would inform us where it should be started. I looked at Dr. Deosaran's report and I think he had Carenage, Cunupia and Tobago. Whatever we do, let us not do it without the evidence of where we should do things, let us put self, party and politics aside and put these centres in places where the needs are greatest, if all of Trinidad and Tobago cannot be done at the same time. There is much evidence and data all around. If there is not, I think we should spend a little more time with the funding to see exactly where these centres are to be established. It is important for us to let something else control us at this time.

We are also talking about the mediators and I heard the Minister say that probably he had an invitation or an offer from Argentina or England for training, but I also know that most of the work in this study had been done by the University of the West Indies and I also know that there is an offer from there to help train these mediators and we have to be careful how we do what we do. I am

not saying that those from overseas may not have the skills, but I am saying that in times like this, in terms of mediation and cultural differences, there is need to be careful who we bring in to do this type of work. We know it has to be professionally done and I bow to the fact that we have professionals, but I think we must be very careful because sometimes we may put delicate programmes like this in the hands of foreigners—and I am saying this very respectfully—who not understanding our culture and society, we might not be doing the best thing. I am hoping as we decide to do the training, that we look very closely at what is here because with my interaction with the people at the university, Dr. Deosaran and his team who are doing all this work, it seems to me—and I think they have offered to do the training—we should look at that closely before we make a decision on whether we want to bring someone from outside to do it for us.

**3.00 p.m.**

I am very concerned about the selection of the mediators. I am hoping—and I think the hon. Minister did allude to it—that there is no political patronage or anything in the selection of the mediators. I was glad to hear that. A lot of impartiality is needed. The young people must feel very confident that they could approach the people, so a lot of care has to go into the selection. Remember in this society, this is a make-or-break for a number of those young people, and I think that we need to give them all the confidence that they deserve, we need to depoliticize the entire system. I am asking, therefore, that we take care in the selection of the mediators because it is important. Our young people, or those who will meet these mediators, will need to feel confident about the people they are working with and in what they are doing.

Mr. Vice-President, I was looking at the Schedule and, as I did so, I also looked at some tables from the *Caribbean Journal of Criminology and Social Psychology*, edited by Dr. Ramesh Deosaran, July 1997, Volume 2, No. 2. I am saying that we have to look at where we are aiming this. When I looked at it—and I heard the Minister say something just now as well—we have to direct the intervention to where the crimes are. I am looking at this table, “Offences Committed by Youths in the Three Homes”. This table tells me that robbery had the highest percentage. In fact, at the home for older boys, 60.7 per cent of them are there for robbery. I am not a lawyer, but I am wondering why those things like petty larceny and such are not in the Schedule. It is 60.7 per cent! You are going to miss those. I heard the hon. Minister say that they are going to try the system with those that are listed in the Schedule. I want to ask: What kind of assessment

are you going to make then that will inform what happens later when the largest number, the greatest area of the crime is not there? I am wondering: should you not have this in to see what happens? If you look at what happens at the end of the line, we are seeing a large number of them started with larceny as their first offences; the figures here clearly tell us. How could you do that? When I look at the home for older boys, 60.7 per cent for robbery; the next highest is drugs at 10.2 per cent. So you are missing a large percentage of those first offenders. Therefore, I am really pleading with you that you reconsider, based on the figures, because I do not think if you go through with this that it would really inform what happens after, because some of these are done quite infrequently, and that is not good enough to inform us. As I look at all the other areas, I am getting that happening. So I would like the Government to look at that area.

In fact, one of the things I know they were thinking of is that this Community Mediation Bill will reduce the backlog. It would certainly do it if you could point to some of these first offenders who are there for robbery. Someone would have described this as a toothless tiger, if that is not in it, because you will not derive what you want to derive from this Bill if you did not include robbery and petty crimes as one of the offences in the Schedule. That is very important at this time.

Mr. Vice-President, the original Bill had included civil matters as well. Permit me, therefore, to raise one area which I want to consider in the civil matters. Now, it might be a little difficult for a layman to go into this, but I am quite sure at the end of it all, you will understand what I am trying to get at. I am a former public servant, as you know. I am wondering whether or not a problem which has arisen with public servants could not go to mediation and be included in this area of civil matters? I am talking about overpayment and subsequent deductions from gratuity and other terminal benefits which are payable to public servants.

In the Exchequer and Audit Act, sections 83, 84 and 85 deal with the questions of unauthorized overpayments: overpayment on recovery, determination of responsibilities for overpayment and proposal for overpayment, but not all payments are unauthorized. In trying to look at this particular problem, I was shown the common law of restitution which may govern some of the payments. Under the laws of restitution, moneys paid under a mistake of law cannot be reclaimed by the payer, that is, the state cannot take it back from the employee. But most of the overpayments made by the state are authorized payments because they are made after some officer misread a regulation, thereby authorizing

payments to an officer at a grade higher than he may have been entitled to. Also, it noted that the Pensions Act, Chap. 23:52, section 24 prohibits deductions from pensions and gratuity. In short, there have always been serious questions in law to be settled when the Minister of Finance, through individual ministries, seeks to reclaim moneys overpaid years ago to public servants through no fault of their own.

I looked at *The Ombudsman 18th Annual Report, January to December, 1995*. I see in that report where the Ombudsman alluded to those in several cases; one entitled "A Case of Justice Denied". Mr. Vice-President, if you permit me, I would like to read the commentary he made on this, so that I could make my point a little clearer. The Ombudsman said:

"In previous Annual Reports, I had drawn attention to the injustice suffered by retired officers, from whose gratuity moneys, sums had been deducted in respect of 'overpayments' representing increments which were not due and paid by mistake.

These 'overpayments' ranged over a period of ten (10) or more years (in most of the cases) prior to the retirement of the officer. Apparently the departments concerned rely on very questionable legal opinions of the kind which I have referred to above and despite my attempts to intervene and show them the errors contained in such advices or opinions, the departments continue to rely on them and continue to notify the Comptroller of Accounts of such 'debts' which are automatically deducted from the retiree's gratuity despite the fact that the limitation period for the recovery of such debts had expired. It is only on the receipt of the balance of the gratuity moneys that the retired officer becomes aware of the overpayments made to him and of the amount deducted from his gratuity. This comes as a shock to him in the twilight of his years. By this unilateral action on the part of the department concerned and that of the Comptroller of Accounts, the hapless Complainant is not only deprived of the right to be heard and to state his case, but to the deprivation of his property without due process of law, rights which are guaranteed under the Constitution.

In any event, as I have pointed out above, such 'debts' cannot be deducted from pensions or gratuities because of the prohibition contained in section 23 of the Pensions Act, Chap. 23:52.

I have since pointed out to the departments concerned that if they differ with the considered opinions which I have expressed, they should seek the opinion and advice of Senior Counsel since their actions are affecting a large number of retired officers.

It is a matter of concern that such overpayments are discovered only after an officer has retired."

Similarly, in his report in 1996 which is a little closer, on page 6 he also mentioned:

"In previous annual reports I drew attention to the injustice and hardship suffered by retired public officers from whose gratuity benefits substantial sums were being deducted on the ground that increments not due to them had been paid for periods ranging between ten (10) and twenty (20) years prior to their retirement."

I wonder, and taking advice from the Ombudsman, whether we could not have the mediation process extended to public servants, where senior counsel and/or an industrial practitioner could act as mediators. His conclusion in respect of the case from the Ministry of Health was that:

"The Complainant's only hope it seems, is to bring an action in the Courts to recover the moneys due to him, a course which he is seriously contemplating. Of course this will entail expense, and delay and put him to further anguish."

Then he asked a question:

"Why was this particular individual subjected to such harsh and unconscionable treatment by those who were charged with the duty and responsibility of looking after his interests?"

I am sure, as a Government, we would not want to see people who have served us well for all these years, put to further anguish because of an error they had not committed. What I am putting to the Government at this time is, that this Mediation Bill could include a section for civil matters and have the mediation process extended to public servants.

Mr. Vice-President, in closing, I want to sum up by asking the Government to look at the programmes which went along with this Bill, they are as important as this Bill itself. In fact, I think they are more important, because they are intended

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to save those children who are at risk, save a whole society. There is need for funding and a lot more research to be done. I am asking that you continue along those lines. As I said before, this is a Bill that came out of work which had been done by the previous administration, soon after the first draft had got to this Parliament. *[Interruption]* We are not looking for political kudos or anything like that, but this is really very serious and I am sure that the hon. Minister would look into it.

I want to go back to something I said earlier in terms of funding programmes. The programmes of which I spoke escape the people who need to give them the importance that they need. It is hard sometimes to convince people of the importance of these matters. I know that the Government is at this time bent on doing things on the other end. I am saying, let us save those who might be going in that direction, not only the first offenders. Let us do what we can to prevent them from becoming first offenders. There is so much to be done, it is a joy to work with these young people and I think we owe it to them.

Thank you, Mr. Vice-President.

**3.15 p.m.**

**Sen. Diana Mahabir-Wyatt:** Mr. Vice-President, I am very happy to see this Bill finally come before this House. Although I accept the hon. Attorney General's assurances that it has had substantial effect in other countries like Australia, the United Kingdom and so forth, I worry about the application of this kind of legislation in all its provisions to Trinidad and Tobago, where there are different cultural considerations and the very real consideration of size. The problem of size can change, to a great extent, the way systems like alternative dispute resolution can work in certain instances.

I am, incidentally, very strongly in favour of alternative dispute resolution and always have been, particularly when it comes to the petty civil matters and criminal matters dealing with young offenders. I feel very strongly about the question of young offenders, and not just them only, but in most instances first offenders who are adults as well.

I am a firm believer in community involvement in dealing with disputes and problems that should remain in the community. I really do believe that this kind of mediation based in the community can lead to a reduction in crime, especially petty criminal action, praedial larceny and the like. I am quite sure it would save the

careers of a lot of young people if they can avoid the stigma of having a criminal record against them. I have also read a lot of literature about the effect of having the perpetrator meet the victim and realize the psychological distress they go through, and actually work in order to effect some sort of reparation. I think it may generally lead to rehabilitation of young offenders. As the Attorney General pointed out, the concept on which this is based is that we should be looking toward a constructive rather than confrontationalist approach to justice, and certainly I think that construction rather than retribution is the civilized way to go.

I am glad to hear him bringing this forward as a concept, because I find that so often in the society we get the negative approach in the handling of justice, which is retribution rather than rehabilitation. Certainly, restorative justice is a sign of civilization. Sometimes I wonder, given the savagery with which people approach the serious issues of the death penalty, whether we are not going backwards rather than forwards.

The question of constructive and restorative justice should be the basis of our entire penal system. I mean education, not only for young offenders which I think is starting to go ahead quite well, but also for adult offenders in our jails. At this point I do not want to hassle the hon. Minister of National Security by asking, once more, when will the new prison be opened. Since it has only been promised for the last three years and I have only been asking for the last three years, at the risk of being called a nag, I would not ask. I just hope that when that prison does open there would be educational opportunities for all offenders in it. I think this is constructive rather than confrontational.

Along that line, I read a headline from a newspaper dated Monday, January 12, 1998, I believe it was in the *Newsday*, which stated that the Prime Minister had signed an agreement with an Indian guru to do yoga in Trinidad and Tobago's jails. I am wondering when these kinds of educational programmes would start. Yoga and meditation have proven to be part of constructive forms of justice: they do, in fact, rehabilitate. We have a lot of local gurus who teach yoga and meditation, so I am wondering—until we get this gentleman from India, Sri Sri Ravi Shankar, to take the time to come here and carry out this agreement—why can we not get some of our local gurus to work on it.

Mr. Vice-President, be that as it may, there are two points in particular about this legislation that I am extremely concerned about and which I would address. They are, not surprisingly, the question of divorce and domestic violence. Would

the hon. Attorney General say whether clause 3 would only apply to people charged for the first time? Does this also apply to matters under clause 14(1)(b), (c), (d) and (e)? In other words, would this have to be someone who has approached divorce for the first time, or has been charged for the first time with domestic violence?

One of my major problems with this is, when we passed the Domestic Violence Act, one of the major concerns was the speed with which a woman who was subjected to violence, could take her case to a magistrate. It did not have to go through a long, involved procedure. She could go directly in and get a protection order. The provisions under this Bill seem to do a number of things; one of those, in domestic violence cases, is to make the procedure more lengthy. Under clause 5, if the person eligible to apply for mediation is the perpetrator of the domestic violence, they then become eligible to apply for mediation. He could tell the court that he wishes to apply for mediation and the court can adjourn the hearing of the complainant. This is before you can even get to that point with the new amendment, which causes another delay. The court can then ask that a probation officer give a report, which causes another delay. This can mean a lengthy delay in the granting of a protection order or undertaking, in a situation where somebody's life may be at stake, not only their physical life but their psychological and emotional well-being and that of their children. It is a long delay which completely wipes out the gains made under the Domestic Violence Act. I notice that there is a 12-month period during which this can go on, but this period can be intolerable in cases of domestic violence.

I notice that section 7(1)(c) says that the victim and the complainant have to agree to the matter going to mediation. I am trying very hard to put this in a way that would not sound sensationalist or emotional, but I do not think that logically this applies rationally in domestic violence cases. In these cases the violence is spasmodic, intermittent, ongoing and sporadic, and if, under the provisions of clause 14 of this Bill, it is a civil matter, the court can record that the matter has been determined, as a result of what goes on in mediation. I think that the problem here is, perhaps, that domestic violence is not a very well understood crime. It is only in very recent years that society has focussed on it. I do not think that there has been enough experience dealing with domestic violence and it has not been taken seriously as a crime for very long.

While I can totally accept that for cases of robbery, minor assault cases, young people living next door to each other and for family feuds mediation can work, in



domestic violence cases where there is a terrified, intimidated woman being made to meet and stand up to someone who had systematically abused, dominated and controlled her psychologically, emotionally, as well as physically, over a long period of time, to think that people like this can be sent to mediation to confront that person before a mediator, is not implying any kind of level playing field. At mediation, parties have to agree to the outcome and that terrified, intimidated woman is not going to be able, psychologically or emotionally, to do otherwise, than give in to whatever the controller and dominator is going to insist upon. I think it is cruel and unusual punishment, in this case, to subject a woman to that, and it makes it even more difficult for a victim of domestic violence to get any kind of help under the Domestic Violence Act.

One of the provisions of this Bill is also that either of the parties can get legal assistance in mediation. The Attorney General made the point that mediators are not going to be legal people, but social or community workers. That is wonderful, where it comes to youth and first-time offenders, but when it comes to domestic violence it does not work, because the perpetrator is usually, in 99 per cent of the cases, the male of the species, who usually has more money and is better able to get legal representation of a higher order. Domestic violence cases are not covered under the Legal Aid Act, women cannot get help for matrimonial matters under it and even if they could, they get what they are assigned, even if the law is changed, which I am sure it would be, sooner or later, in my lifetime.

The chances are very strong that the victim going for mediation before an untrained person with a trained lawyer is going to be able to rue the day. Even where she has a lawyer representing her, psychologically she is unable to not agree to what the perpetrator proposes, because this is the nature of domestic violence. This is why so many women who take domestic violence cases to court, once the case is being heard, withdraws it, because pressure is put on them. Certainly in our society, the mediator and people in many communities would put pressure on the woman to agree to whatever the perpetrator has to say. Mr. Vice-President, I beg the Attorney General to reconsider this. It is the one thing in this Bill which is really not appropriate for mediation and it has not proven anywhere to be appropriate for mediation. The whole concept he is basing the Bill on does not apply in these cases. I am going to move an amendment that this particular section be removed.

I would make a point about mediation in the case of divorce where it is not the same kind of thing. It is not as drastic as the case of domestic violence. I have a

problem about mediation in these cases because all the research I have read has shown that women almost, inevitably, come out of mediation in divorce cases worse off than men, partly for the same reasons I have just mentioned, because they can afford better legal representation than women can.

**3.30 p.m.**

The community tends to try to put pressure on the woman and man to get back together again because of the children or whatever it is. It has not gone unnoticed that most magistrates are male and that many of them show much more sympathy in divorce cases to the arguments of the male side rather than the female. Even with that, I would much rather the judge or magistrate in court decide this rather than a non-legally trained mediator. I realize the court does not lose its jurisdiction if the spouse digs her heels and refuses to agree. What happens is that she does not know she is getting an unfair deal because in mediation she agrees since she does not know what her legal rights are. Mediators and anybody who knows about mediation knows that mediators do put pressure on people to agree. Their job is to put pressure on people to agree so that they do not have to go to court.

Given the size of the society in Trinidad, this point applies both to domestic violence and to divorce. There is nowhere you can run. You can run but you cannot hide. The domestic violence cases which are trying to get the parties together again, are as I said—and I really mean it—cruel and unusual punishment. I get telephone calls at least once every other week in my capacity as head of the Coalition Against Domestic Violence, from women who have had to flee Trinidad and Tobago to go to the United States, Canada, and in some cases England, to legal centres there. They go as refugees because they know as long as they are here there is no place they can hide. To apply mediation to that kind of domestic violence case is just unfair.

I know that the Attorney General feels very strongly about legal matters and he does not change his mind easily, but I am hoping that he will take these arguments into consideration. I really have done a lot of research into this, having dealt for a long time with domestic violence. I am really frightened of what leaving that provision in can do in a country this size. We have had other instances where the Attorney General has been of great help in matters. One of those that I would just like to express my thanks for, is the granting of appeals in cases where sentences were too lenient. We have now had two of those where sentences have been changed as a result of that legislation going through. It took a long time but I am really pleased about it.

In relation to this, I would just like to do two things. One is, while I am not arguing that we remove divorce provisions and matrimonial provisions from this Bill, although I would like to, I would just like to warn women who are contemplating using mediation as a means of sorting out matters pre-divorce, that women almost inevitably come out worse at mediation than they would if they went to court. Trust the courts; they are much better than mediation is in divorce cases for women.

The second point that I would like to make again, is to plead with the Attorney General to consider removing that provision for domestic violence for mediation.

Mr. Vice-President, I thank you.

**The Minister of Culture and Gender Affairs (Sen. Dr. The Hon. Daphne Phillips):** Mr. Vice-President, I rise, of course, in support of the Bill, but also to address some of the issues raised by my colleague Senator, and the emphasis which was alluded to on the need to provide services, resources and programmes to address the end of the whole spectrum of the prevention of crime, particularly with reference to young people. I have a quotation here which I noted the Senator addressed and was very heavy on. She said, “Government is bent on doing things on the other end”, meaning the end of punishment, the end of incarceration.

Mr. Vice-President, I want to show that the approach of this Government has been, indeed, holistic. We are addressing problems of crime, youth and social crises at various areas of the society in a holistic way. We are looking at prevention, support, community empowerment as well as punishment where this is necessary. For example, one of the programmes referred to, the Geriatric/Adolescent Partnership Programme (GAPP), was, indeed, started by the past administration. I would like to assure the hon. Senator and this Senate, that not only has this programme been continued, it has been enhanced. In fact, every year since 1995, at least two batches of young people have graduated from this programme. I do not have the figures before me, but each batch graduates somewhere between 300—400 persons. The programme is active.

In addition, Mr. Vice-President, we have created an agency called a GAPP agency in November 1997, which registers all the persons who have graduated from this programme. These are young persons between the ages of 18 and 25, both male and female. They are registered with the agency that provides services to households, institutions and to whatever areas of the society in which such services are needed. These persons who need such services apply to the agency.

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There has been an active business going on with this agency which is employing these young persons, but which also gives support and supervision by the organizers and administrators of the programme. Members go to the homes or the institutions and check on their attendance, registering and performance of duties. Of course, this is also to protect the young people in case there is any attempt at abuse and so forth. So the GAPP programme is on stream, and as I said, it has been expanded in a way so that graduates of the programme are offered employment and are gainfully employed and could also expand their careers into fuller professional areas.

Mr. Vice-President, that is only one.

**Sen. Yuille-Williams:** Mr. Vice-President, through you, I was hoping that in the hon. Minister's contribution, she would have put my figures out. What I was trying to say is that the emphasis was not on these young people in the employment area. They act as a spin off. When we asked in 1995, 700 were trained. I understand that the hon. Minister is giving a figure of about 350 now. We are decreasing and, in fact, this year there is no intake so far. I am talking about every year as a national service programme.

There must be a difference between the spin off part of the training and a national service, where we are just bringing them in for that interaction with those people to develop and to communicate with them, then they could go back to whatever fields they have been working with. I am talking about that aspect of the programme. Probably we should move from 1,000 to 2,000 for the year, rather than just the employment agency of which I am very well aware, where some numbers are being employed. I am talking about those people who have already gone through the programme, gone through the introduction and have already developed in areas we would like. They like it and therefore have moved on.

When we left there, I remember sometimes when the speech was made, the kinds of criticisms that were given to me through the Parliament for the programme. If we were left with about 700 then, in 1995, I am expecting the national service programme to be expanded. Bring in those people, let them get the training and go out to whatever fields they want.

Mr. Vice-President, so the explanation that the hon. Minister is giving: it is not that I am not clear about the placement programme and those who are working. I am talking about a national service programme. It means any number of young

people all over the country coming into the programme, getting the training, that interaction and support is going on.

**Sen. Dr. The Hon. D. Phillips:** Mr. Vice-President, the hon. Senator also misunderstood what I said. The 300—400 are additional. At every graduation, they are added to whoever had graduated before. We have had graduations since the end of 1995/1996. So these are new people who have come on to the programme and graduated. The programme is continuing in that way but the agency has also been added.

**Sen. Shabazz:** Mr. Vice-President, just for clarification in order to put this in the right perspective, how many new persons are there on the programme this year? Could you give us those figures please?

**Sen. Dr. The Hon. D. Phillips:** The GAP Programme takes in recruits twice every year. In fact, when we came into the programme it tended to be restricted to certain areas. We have expanded it to new areas in which it had not been practised before. Because of the financial difficulties in oil prices, we plan to have only one programme in 1998. The intake for that programme was planned for the second half of this year because of the funding problem, but the programme is very much on stream. We have had two intakes in 1996/1997. We have had graduation for that programme and we have, indeed, expanded it to areas outside the traditional centres.

Mr. Vice-President, in 1998 we also introduced what we call a drop-in centre programme. This is a programme that is instituted in 22 community centres in Trinidad. We recently got assistance from the United Nations Development Programme (UNDP) to add four additional centres, making it a total of 26 centres, where persons in the community—men, women and children—have access to trained social workers and councillors in community centres, to deal with their various problems.

This programme is carried out by a university-trained social worker or councillor, as well as a member of the community police who sits in the community centres, and a member of the staff of the Ministry of Culture and Gender Affairs, to address the problems that people have, whether they be domestic-related or other kinds of stress-related problems, including youth. We have opened a window here for young people to come and discuss their problems in privacy and in confidence. This is another area that we have opened at the community level so that people have access. This is one need we found. People have problems usually,

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and many times for young people, those problems are related to family and family life situations.

**3.45 p.m.**

We have opened these centres and we pay these trained people at going rates for carrying out this service to the community. We have introduced this programme in 26 areas in this country to address the needs of people in this area because we found that this was necessary. People have needs, stresses and domestic situations for which they need attention. This is also in the area of prevention, before the violence, abuse, incest and the various other things that occur in the household erupt, we are giving people a door.

We have the community police with us so that they can address issues and areas in which they are proficient. The community policing is also another area which was opened up recently for issues related to prevention, not issues related to punishment. As a preventive mechanism the community police have proven to be a very important mechanism in the society; a friendly police to whom all kinds of problems are addressed. Indeed, Mr. Vice-President, the community police in this particular drop-in centre programme told us that the most frequent issue with which they deal in the community is domestic and family violence situations. They were so pleased that we opened this centre that they have given us their full support and now we refer people from the hot line, from the community police and from all areas where they have problems to these centres which are open every day in these 26 communities. We are addressing the problems from the preventative aspect.

In 1997 the Ministry also created a cultural emersion programme in schools where the children are exposed to aspects of the culture in the school programme. We call it an emersion because we are going there for a whole long period, engage the children in various aspects of the culture and we have found, from their own reports and from the reports of the teachers, that their academic work improves and their concentration and focus improve when they are exposed to these cultural aspects of the programme. We have found now that the teachers are asking to be trained in the area of cultural emersion so they can carry on. We started it as a pilot project in 1997 and we have been continuing it and we have been getting requests from several schools for this particular programme.

In 1997, as well, there was an attempt made to place all children who sat the Common Entrance Examination and who did not have another chance in some

kind of facility where there is structured and organized work so that they will not be just running on the streets. As you know, Mr. Vice-President, we are working towards the elimination of the Common Entrance Examination by the year 2000 and the placement of every single child in a facility so that the children will not be just running all around and exposed to the evils which may be lurking out there. We are addressing the issue and, I am saying, in a comprehensive and holistic manner.

The Ministry of Sport and Youth Affairs has been addressing the issue of the development of sports for young people. In 1997 they introduced something called a five star programme. I am reading here from the Year End Review 1997:

“Ensuring mass participation and promotion of excellence in sport and physical activity throughout Trinidad and Tobago, the Ministry initiated the Super Five Community Sport Development Programme in July 1997. The programme engages young people in communities in a purposeful and constructive use of their time, promoting and encouraging healthy living while creating employment opportunities via the recruitment of additional coaches, maintenance of facilities and vending. More than 96 communities were involved in the programme in 1997. The major features of the programme included skill development and remedial sessions in communication, literacy and numeracy skills.

It provided an avenue for further specialized training in five sporting disciplines namely swimming, netball, cricket, tennis and hockey. The Sport School targeted participants between the ages of 15-17 years who were selected throughout Trinidad and Tobago.”

Mr. Vice-President, in addition, there has been a concerted effort to enhance, develop and create new sporting and recreational facilities because we know that all these are important in the lives of young people. Again, I quote:

“The development of adequate sporting facilities and the promotion of youth oriented programmes aimed at encouraging young people to pursue excellence in sport are avidly promoted by the Ministry of Sport and Youth Affairs.

In this regard the Ministry conducted major rehabilitative and improvement works in 1997 with the aim of providing adequate facilities for sport development throughout Trinidad and Tobago.

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The completion of the South West Indoor Sport Arena in Point Fortin, the Regional Indoor Sport Arena in Tacarigua and the La Horquetta Community Swimming Pool which were completed in June 1997 are all part of this development thrust.”

There are others and they continue to be expanded in 1998.

Sports development is another way in which this Government is attempting to deal with the needs of the youths and the need to get them off the streets and get them into constructive activities.

We have also—and that was alluded to—begun to re-establish and rehabilitate the foster care programme where children are put in the care of families. There is an attempt to have children reunited with their own families if that is possible and if not, to put these children in caring households where they can get some of the love and attention we know they need. We know, for example, and we have all said it, that most of these young people who end up in the youth training centres and so forth have experienced lack of care, love and attention that all young people need. The rehabilitation of the foster care programme is an attempt to put them in a one-to-one situation with people from whom they can experience love and caring so as to affect their own personality development.

**Sen. Yuille-Williams:** Mr. Vice-President, I really could not sit here—we must be honest with ourselves—I was just talking about the foster care system. I would ask the hon. Minister how many people there are in foster care. There is a foster care committee that is working now. There is only one staff member so far. That system has not been put in place. There are no children now, as such, in foster care. I could not sit here and allow that to happen. I have done my research, I even have the documents to prove.

**Sen. Dr. The Hon. D. Phillips:** Mr. Vice-President, I do not have the documents before me but I know that the Minister of Social Development brought to Cabinet recently a Note to expand the number of staff in the foster care unit. This is why I say the whole thing is being rehabilitated because the Minister is concerned and has been looking for funding, facilities and staff to rehabilitate this foster care unit. It is not just standing there as we met it when we came. There is action to develop that unit, to put staff in place and to put resources and facilities to place people.



I know of a gentleman who is a doctor and a friend of mine—I am not going to call his name—who adopted a child through this system. He adopted a four-month old baby. That is adoption but I know that whole system of adoption and foster care is being rehabilitated. It is active and there is a board. We are seeking staff, facilities and funding for that programme.

The Ministry with responsibility for women's affairs, now gender affairs, has also created—and, I am sure, for the first time—programmes to deal with young men. We have been trying to deal with the issue of domestic violence and we have incorporated male programmes. We have had two successful male awareness weeks in the last year or so and we have put in place programmes for young men. That whole exercise is new. It is not easy to get men to talk about certain kinds of issues and we are trying to create innovative ways to attract men. But there is an attempt to do that because, of course, young men are the most predominant in terms of criminal activity; getting into trouble and danger and, of course, activities relating to violence in the home and in the community. We are attempting, through programmes for men and programmes reaching young people where they are, including the Civilian Conservation Corps which has many members who are young men and are in training programmes dealing with gender issues, gender sensitization and gender training which we think is an aspect of prevention of so much of the crime and family-related criminal matters that come before us. We are addressing men's issues and problems though we need to put much more emphasis in that area as well.

Again, Mr. Vice-President, I am alluding to the holistic approach which we are taking at the level of prevention. We also support community-based initiatives that people in the community create. We have been doing this in the last two years with quite a bit of funding. We have been trying to support community groups and we insist they be registered with us so that we know who they are and we can monitor them and assist them in initiatives which they undertake, especially if they are related to community, young people and women. For example, we have been supporting those community groups that would hold holiday camps for young children. Indeed, I have a note here from a member of the community who asked me if I could step out of the Senate a while and talk to her please: "We would like to have some answers for our women's meeting tomorrow afternoon. We registered, as you advised and sent in proposals to you to help school children over the summer holidays." This just came to me today. These kinds of initiatives we support all the time. Communities which want to do things for people and, indeed,

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this kind of summer camp thing is important because it is a time when young people are on the streets and have nothing to do. Some of their parents are working and if the members of a community want to hold a camp to train, supervise, entertain, help and direct the children, we support these kinds of initiatives, particularly to the extent that our funds allow.

**4.00 p.m.**

In this way, we also promote empowerment of the people. We do not do everything for them, but we support initiatives where they need technical or financial support. In this regard, also, we support projects for women and for young people, as well as projects related to community employment and community empowerment. In this regard, Mr. Vice-President, a Community Development Fund has been established for use in social and physical infrastructure projects and those projects developed by non-governmental and community-based organizations. Through this fund, we are able to assist some of these projects.

Recently, the Ministry of Culture and Gender Affairs established what we call a Women's Enhancement and Leadership Institute and we have had one session at this institute so far. We all know that when we train and empower women, we train the whole family; the whole family benefits. Indeed, the wider community benefits. We are also engaged in carrying out various kinds of training and enhancement for women so as to allow them to better handle, guide and direct their children, because this enhancement institute does not only give people training in a skill, but a whole personal development. In fact, we only take people who have skills in this institute and try to develop and enhance them in a range of areas, including those who want to get into entrepreneurial activity, showing them how that is done; but, also, bringing up gender, esteem and self-development issues. These things, of course, affect those children and young people whom these women direct and control.

Also, in the Ministry of Social Development, we recently launched a programme with the business community. It is an "adopt-a-community" programme where we involve the business community as well at the community level. We are convinced that working at the community level is the best way to address the problems and to prevent problems in our community; we are convinced as well that working with all our social partners: the NGOs, the business community, as well as of course, with Government, is the way to go.

The idea behind the “adopt-a-community” programme, launched just a month or two ago, is that businesses, operating in the various communities, would take on certain aspects of the needs of those communities. That is a programme, part of which deals with employment of youth, or training, or other aspects related to life in the community. We have all these agencies looking out in the community; we are not only for grabbing the criminals and punishing them; we are very much in the area of the prevention, support and empowerment.

Indeed, the very Deosaran report—in fact, when we came into office there was a Deosaran Crime Plan and this Government took into account the contents of that crime plan. In fact, we formed a committee made up of all the Ministers in the social ministries which included education, national security, social and community development, women’s affairs, sport and youth affairs. All these Ministers were on this committee to study with Dr. Deosaran, his crime plan, to see how we could tailor our activities in relation to some of the proposals of that crime plan.

That committee, headed by our own Minister of National Security, has been working with the Deosaran Crime Plan, has formed various sub-committees to deal with the various aspects of that plan. Therefore, we have taken that into account and many of the recommendations of that plan are being implemented.

We, in the Division of Culture, are now moving to intensify the village-based cultural folk tradition that we have had. We are intensifying it; we want it to be carried out in each village and community in this country, to create out of that, a county community festival and concept. In that regard, we are also involving youth in schools; we are involving the whole village and the community in a county cultural folk festival and tradition. This, I am sure, is part of a whole larger mechanism that will help to keep the youth off the streets; out of drugs; out of crime; and out of the prisons.

Mr. Vice-President, one other example of our support for community-based initiatives is the Toco Foundation, the Toco Centre project. That project has had contributions from several ministries—Ministry of Works and Transport; Ministry of Information; Ministry of Sport and Youth Affairs; Ministry of Community Development. It has had contributions in kind and in cash and, of course, it has also had contributions from international agencies.

The Toco Foundation has been able to create a project which involves youth, women, men and the community at large, in various areas. It has been able to create the first community radio—Radio Toco—and this has been fully supported

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by our Government. These, we see as activities which will contribute to the reduction of crime and these show that we want to do something and have been supporting those who do something for the youth in our country.

This Toco project has created a number of little initiatives which are so creative and interesting, such as nature guides, to go through all that forested area. There are young people committed to preserving the environment and who are trained in carrying out that kind of activity. These activities we support.

The Ministry of Agriculture, Land and Marine Resources has what is called a “youth window” which helps youth—this is a new project—from rural areas who want to enter into agricultural projects. This is carried out in collaboration with the Youth Training Employment Partnership Programme/Trinidad and Tobago (YTEPP) and that programme is also expanded.

We have created, for example, in the Ministry of Community Development a “grow box” technology which the Youth Training Employment Partnership Programme/Trinidad and Tobago (YTEPP) is now teaching and which allows young people and women, as well, to grow large numbers of produce in small areas to sell on the market.

In these and various ways, this Government is contributing in a holistic manner to the prevention of crime, where at both ends of the crime spectrum—not only at both ends, but also in the middle—we are doing what is necessary to address crime at all levels.

Thank you very much, Mr. Vice-President.

**Sen. Yuille-Williams:** I was trying to catch your eye before the hon. Minister sat.

**Mr. Vice-President:** She has already concluded her contribution.

**Sen. Muhammad Shabazz:** Mr. Vice-President, when we heard the presentation of this Bill, indeed we heard the hon. Attorney General claiming that we should not be political about this Bill and, it was our intent not to really be political about this Bill—

**Sen. Cuffy-Dowlat:** Oh, really!

**Sen. M. Shabazz:**—because, as he said, this is a Bill that we had piloted. As a matter of fact, he almost talked me to death—I guess what he missed in June, he is trying to get in July in terms of talking—but I was able to withstand it and we

could carry on to talk about the importance of this Bill. Because, indeed, this is a Bill that we started, as he said. We brought this Bill forward.

**Sen. Cuffy-Dowlat:** Not in its present form.

**Sen. M. Shabazz:** The thing is, though, that having heard Sen. Yuille-Williams speak, I wonder why there was this defence of what was happening with the Geriatric/Adolescent Partnership (GAP) Programme. Why was the hon. Minister trying to show so much? Because, in truth and in fact, what Sen. Yuille-Williams was projecting is that we should have a community attitude, not only with mediation, but community generally.

I remember when we were speaking about this year's Appropriation Bill, one of the points that I remember bringing forward was the kind of moneys being taken from the Geriatric/Adolescent Partnership, other programmes and where that money was being put. Of course, I do not know why the hon. Senator tried to defend that the Geriatric/Adolescent Partnership Programme was doing so much. The fact is that there should be a community spirit to this whole thing and that is where it was.

As a matter of fact, Mr. Vice-President, at times I say I do not like that regime and how it operates and it is at times like this when I hear the Senator speak, which makes me again not like that regime too much. Because, if the Senator said that she was doing so much in community development, as well as in culture and everything else for this country and for the young people, and she was only left with gender affairs, then this Government cannot be good to do something to the lady Senator who has been working so hard in that area. Unfair people! That is the truth.

The truth is that we are going to support this. There are things that need to be changed. There are things that we will ask and we want to be made clear to us. We listened to the hon. Minister and something we noted on this side is that the hon. Minister in her contribution, spoke about the question of getting ideas; how well this programme has done in England and the United States. We appreciate that. It is good to know that at times, England and the United States are followed.

**Sen. Cuffy-Dowlat:** When it is positive.

**Sen. M. Shabazz:** Because there are times when the hon. Minister chooses not to do that, depending on how it goes. If he is going to come up with a new idea, with something to carry the thing forward, I think that we will appreciate

that. Wherever he gets it from, fine. It has been put forward on this side that the University of the West Indies has been doing programmes of such nature and we would like to call on him to look at what the University of the West Indies has been doing, rather than bringing people—because it happened here when we did the International War Crimes Bill and, again, we heard what England did; what America did; what Wales did, in order to put forward the theory that it was a good bill. What Trinidad and Tobago did was good enough because there are times, of course, the hon. Attorney General has shown that as an Attorney General, he is different from whoever he is, because he can be two people.

**Mr. Maharaj:** Two or four?

**4.15 p.m**

**Sen. M. Shabazz:** The point is if you are bringing forward a proposal, bring it on what your intent is, because you bring very strong cases when it suits you about not going England's way because yours is the better way. We do not want to hear that. We are saying it is a good programme, but there are certain concerns.

When we are talking about the community aspects, let us remember that it is indeed a very good point brought forward. We are talking about trying to stop the first time offender and this is a Bill where we speak about young offenders. We are clear that it is about first time offenders because if the hon. Attorney General who is much younger than I am, commits a crime, the point is he will not be a young offender, but a first time offender. We feel that the intent is to deal with first time offenders. We are not sure whether the Bill is dealing with young offenders, but we are going to take the argument in discussion that the intent is for first time young offenders.

There are certain crimes which are mentioned in this Bill and I ask whether the Attorney General's intent is to look at other crimes which could be brought to this Bill. I saw the Attorney General taking note of the question of robbery when the Senator spoke about the 60 per cent of youths who are involved in robbery and petty crimes. How could that be brought into this Bill to help that system and these first time offenders?

The community programmes are necessary to stop the youths from being first time offenders, but the youths having committed a crime for the first time, what is going to happen to the system after that? Are they just going to be brought into a system where there is going to be mediation and leave them like that? Is there some system to continue dialogue with them and turn them away from this direction?

We talked about crime, and what is happening to the criminal system. We know that crimes in the country are increasing, regardless of how this regime tries to put it over to us. Time and time again they have told us that crime is on the decline but they are asking for a certain type of punishment which would be a deterrent to crime. Crime is on the increase so we want this type of punishment. Tell us the true status of crime, whether it is increasing or decreasing. That is all we want to know and if it is increasing, we have other proposals which they can look at to see how best the problem of crime can be solved.

Mr. Vice-President, there is the matter of the condition of the Boys' Industrial School which seems to have gotten worse over the last two years. If they are talking about helping young persons, get in there and try to develop that school and make it a better place for the inmates.

Mr. Vice-President, we left them with the Maximum Prison system in Golden Grove to deal with the congestion that they are having. What are they doing with that system? They seem always to put the cart before the horse when they are dealing with crime or perhaps I should say the radios before the jeeps. They buy radios first and then see if they could get jeeps to fit the radios into, and that has been their attitude with most of the things which they have been doing and continue to do.

The Community Service Bill was passed and they said in another place that the order would be ready and assented to by June 1, 1998. To date, I am certain that it has not been done. June seems to be a very unfortunate month for them to do things. It was not proclaimed by June 1, 1998 and if it has been proclaimed after that, very well, but the last check showed it was not done in June.

Mr. Vice-President, the hon. Attorney General said that they are going to bring people in who would be trained. We want to know who those people are. When we asked how many persons the GAPP employed this year, that question was never answered. It was said that people were sent to other places and they are looking to transform the programme into the next half of the year, but the question was never answered. We want to know who are the mediators. What type of qualifications do you expect from them? How are you going to deal with them? Who are the people you are going to put to link with them? Who are the people to administer the programme?

A number of bills have been brought to this Parliament and they will continue to bring bills, bills, bills, and we understand the importance of these bills, but the

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point is, we need to see proper infrastructure. If bills are being brought, we need to plan the time-frame and how it is intended to implement them. There is need for more clarity on these things. We do not want a bill to be passed and when it is time to implement it there are a number of problems which were not looked at and other things arise which cannot be dealt with. It is better to bring fewer bills and know that there is the infrastructure to implement those that are passed.

Many bills have been brought to this Senate that have been passed which are either not proclaimed, and if proclaimed there are problems when they are to be implemented. It is sad!

Mr. Vice-President, if we are talking about helping young persons—and the Attorney General is speaking as though he is very concerned about young persons—there are young persons in prison for a very long time without bail. The Attorney General should see what could be done about the bail system and let the policy about helping young persons be holistic, whether he is going from the top end to the bottom end, whichever end. If he is going right down the line as the Senator has said, we are taking it at both ends of the spectrum. Do it properly. Do not be over enthusiastic and over zealous about one end and not look at it from the other end.

Save these young people. If your enthusiasm on that end is very strong, you would not have to be enthusiastic at the other end. That is the reality. The point is to find a system. Look at the bail system and what is happening in the prisons and try to find a way to relieve these young people. Set up some of the programmes and policies which we had in order to help them.

Mr. Vice-President, you have always told me not to deal with the Floor. When they do not do what they promised, they talk about how long the PNM had been there and why it did not do it. They want to put the blame on us. If they were doing it they would never blame anybody. They would say: “This is what we did.”

The hon. Minister of Public Administration used to say what he had done for labour. I could remember the last time when the Attorney General was in this Senate and he said he must be complimented because he paid everybody within this period and before. That is because they were doing it; they did not blame the PNM for not doing it, they did it and they took the compliments.

All the information which the Minister had been bringing—he might no longer bring information to this Senate because he is not the authority for information



again, Dr. Griffith is; it is the PNM that provided the information for the UNC. The point is that the PNM now provides the information because the information network was not good and still is not good. The point is when they are not doing it they say the PNM was there for 34 years.

Do you know why they cannot implement all these bills, put the prison system right, and give the youths what they are asking for in two years? Because they are technically begging people to extend their time to 34 years to see if they can do it. What we did in 34 years, they cannot do in two and a half years and the people are going to bring them back to implement it over the next period. As a matter of fact, the Community Mediation Bill and a number of bills which they had brought and were successful, were drafted under the People's National Movement and they know that. They have changed their position and as the Attorney General said most of them feel that they are four in one, in truth they are not.

**Mr. Maharaj:** We offer mediation to the PNM.

**Sen. M. Shabazz:** In this Bill, where it says to compensate the *de facto* complainant in an amount not exceeding \$5,000. That might be a good figure, but there is need to look at that amount.

The Minister may fix the order relative to negative resolution of Parliament. Somehow because of our concept of the negative resolution, we would prefer if it comes to the Parliament to be debated. We are seeing some bills coming up with this negative resolution and we need to be careful with this regime when it talks about negative resolutions. They could take an oath and change right away; they could take another position and change right away. That is what they are doing all the time. They are for something today—and it is shown by the Leader.

**Mr. Vice-President:** This may be a convenient point to take the tea break.

**4.30 p.m.:** *Sitting suspended.*

**5.04 p.m.:** *Sitting resumed.*

**Sen. M. Shabazz:** Mr. Vice-President, I was just about to wrap up before we took the tea break. The important points here are that, again, we are saying that we will support this Bill. We are asking though, that it be looked at in a more holistic type of way, where we would deal with it from the angle of crime prevention, and even when crime has been committed, that you will mediate and solve it, and there will still be facilities to continue the communication to help young offenders go in the right direction. There must also be proper things set up

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for them afterward: proper sporting and cultural facilities, and things like that, which will take them away from the wrong direction.

An important point which was made was that there must be some rapport with the elders in the villages and communities, so the elders will know who the young people are and be able to guide them. If we can have a more peaceful setting among the youths, we will be able to come back to this system where the elders will be able to guide and talk to the youths.

Just one point I would like to go back to. The hon. Senator spoke about the difficulties with doing some of the things because of the fall in oil prices. I want to tell her that I am really glad that she has been truthful on this issue, because we have been saying here that the oil prices have really been giving them trouble in carrying out some of their programmes and they have been denying it. We know that—she has admitted it—and I hope that the other senior people in her party would not come down hard on her and take away anything more from her. Sometimes they have that tendency when one speaks the truth, especially when we accuse them sometimes of half-truths, not full truths. I want to compliment her again on her statement about the oil prices and difficulties which arose as a result. I believe that. I accept that as a fact.

I would like her to know that we definitely wish that the oil situation could change, so that they could be in a better position to implement their programmes. But where the oil prices are giving them problems, try not to touch the programmes with the young people, the programmes that will build and develop the communities. Because with or without money, even if we have to make certain sacrifices, the community has to be strong. I would like it to be recorded again that I would really like to thank the hon. Senator for saying what many of them did not have the will to say on that side. I do not know if it is only directed to her ministry, but I feel it is a general, all round statement, and maybe if the Minister wants to tell me off the record, she could tell me, because I want to think they are really having financial problems. That is why they need to look at where they are carrying their money, how they are spending their money, what they are utilizing their money on, and that they will use the taxpayers' money effectively to keep their communities and the country running effectively, to keep it going strong.

I really want to say, from hearing that truth from that hon. Minister, that my heart feels full this afternoon. I feel that the Parliament would be going somewhere when we could start to have the truth coming out like that. I have said it more than

once because it is a joy in my heart hearing that truth coming from a Member on that side. Every time we have come here since the budget, we have been telling them the oil prices will give them trouble, but they have been saying they will manage, the oil cannot affect us. We told them that again and again. Today, it was so good to hear the truth coming from the Minister of Gender Affairs and Culture. As a senior Cabinet member, I am glad to hear her say it, not that I am glad the oil prices are giving them trouble, but they have come to the realization of that truth. We ask them to look at that.

Let them note the areas they are going to cut and put a lot more attention into the running of the country. Let us go back to the community based programmes. Let us deal with the elders. Let us deal with areas that are under pressure for sporting facilities. With regard to the areas that are flooding, let them not neglect these areas and turn their backs on them, particularly when those areas are theirs. Of course, it is due to the oil situation that they are having problems to implement their systems and whatever things they want to put into place, and we understand that. We are thankful to get that truth out of the Minister. Even though we felt some of the things she said may not have been correct, that was the one truth that we were very happy to get from her and we know God will bless her.

Finally, in closing, we hope that whole regime over there could understand—and following the light of this Minister—that the one you are trying to make the least among you, she shall rise, probably to be the head among you. Follow her, talk the truth, understand and go the right way, forget half-truths, innuendoes, untruths. That truth came out, not from somebody who is four in one, but from somebody who is one in one. *[Laughter]*

Thank you, Mr. Vice-President.

**Sen. Prof. John Spence:** Mr. Vice-President, I regret that I have to disagree with my colleague who has just spoken with respect to oil prices, because I really cannot understand the point which is being made about oil prices. My understanding is that oil revenue contributes 15 per cent to Government revenues, and they have fallen by about 20 per cent, so that means a 3 per cent fall in Government revenues. Now, it seems to me that in a budget the size of the one which we have here, a 3 per cent fall can hardly be of any significance. Quite frankly, I do not think that the fall in oil prices justifies any cut in expenditure in as important an area as has been pointed out by the hon. Minister. Indeed, the hon. Minister herself has emphasized the importance of that area, so to me it is

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surprising that due to a very marginal decrease in Government revenues, that it should have had that 50 per cent cut in the programmes to which she referred.

At the same time, we seem to be able to find hundreds of thousands, perhaps millions of dollars, to not only pay lawyers from overseas to have a campaign which is intended to kill, but to have stand-by teams of lawyers who are to be paid more hundreds of thousands of dollars. *[Desk thumping]* So I cannot agree with the hon. Minister that the fall in oil prices really has any effect at all, because we can find the money when it is necessary. She herself has pointed out that it is necessary to find the money for these programmes.

Mr. Vice-President, having said that, I want to say that I am particularly glad to see a Bill of this nature come into Parliament at this time, particularly when, quite frankly, I myself was beginning to get really alarmed at our society which seems to be after blood and not prepared to look at corrective programmes. So this, I think, is an extremely important development. *[Desk thumping]* I am very happy to see that the Government has brought it, particularly at this time.

I have one or two points which I hope would be considered. One, I think, is important. The other one is really a matter of whether the Bill would not be tidied up a bit by a rewording.

The first point which I think is extremely important is in clause 3 where it is suggested that persons would not be eligible for mediation if they have been charged with an offence or convicted. It is the "charged with" which has me particularly concerned. I know the hon. Attorney General said that this had been discussed extensively in the other place, but nevertheless, I consider it to be extremely important, not just for this Bill, but because it seems to be going towards a development which is suggesting that being charged is of significance.

Now, as far as I am concerned, our whole legal system is based on the fact that being charged is not of significance, it is the conviction which is of significance. Because the charge, in fact, may be spurious, it may be in error, it may be due to misidentification of the persons, any number of things might have occurred while a person has been charged, other than the person's wrongdoing. It may not be a wrongdoer, it may be a perfectly innocent person who has been charged. In all jurisdictions which have our type of legal system, being charged is not considered to be of significance in law. So why are we, in fact, passing a law which will put this matter of being charged into some significance? So, it is a matter, I think, that is outside of this particular law, because it is now establishing a principle which I

think we should not really establish. I certainly would not vote for this Bill as long as it has that particular provision in it.

**5.15 p.m.**

The other one is just suggesting that the possibility for mediation should be extended throughout the process of conducting a case, up to the time that the conviction is made. It might still be in the course of a case being heard, the judge, magistrate or parties might decide and agree that it would be better to go to mediation even after it is commenced. That is really a suggestion I do not feel as strongly about it as I do about the issue of including, in the inevitability for this process, those who may have been charged.

In clause 5 the proposal I made is merely a consequential one if one is going to have the mediation done at any time during the process of conducting the case. Mr. Vice-President, that is my main point of disagreement with this Bill. On the whole, I think it is a very good development, I am extremely pleased to see this is the way the Government is going.

With respect to ineligibility, it may be more difficult to distinguish between various convictions. For example, I would not have thought that one would have considered a traffic offence. One may be convicted of parking too near a corner or some other minor traffic offence, but as I read this—if I am correct—it would mean if a young person was convicted of some minor offence like that, he or she would then be ineligible for this course of mediation. That seems to me to be a pity. I do not know, from a legal point of view, if it is possible to then break down the offences that one has been convicted for to make one somehow eligible. That is something that might be considered, although I do not feel as strongly about that either, as I do about the case of only being charged.

Thank you.

**Sen. Cynthia Alfred:** Mr. Vice-President, I think everyone agrees that this Bill is indeed a very important one and should be treated as such. Before I go into my main discourse I think perhaps it is a good idea, in respect of the agenda of this Senate, if we could have Bills that relate one to the other so that when we make decisions we complete a programme, so to speak. In other words, if we have this Bill today, perhaps the next one could deal with the prisons, the other one could deal with something that is related. In that way we have in our minds an idea of where we are going. Sometimes one Bill comes today and next five weeks another one comes, and they are all related, we find it is like jumping from one thing to the

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next. Perhaps that could be taken into consideration when the agenda is being drawn up for the Senate.

The philosophy behind this Bill, obviously, is to save the young people and, by extension, the country. When we talk about saving the young people, these are not just words. Everyone agrees there is a need to save the young people from themselves and perhaps the stresses brought about by society. For if we do not now save our young people, in 20 or 50 years from now we will not have a proper country. Therefore, we have to look at the social and sociological implications of this Bill.

We have to remember, first of all, that we are talking about people. In his presentation, the Attorney General spoke about families. I base most of my discourse on prevention—which quite a number of Members have spoken on—and the question of families. As I talk about families I quote from Jean Jacques Rousseau who was a great essayist and a philosopher. I quote from one of his papers *The Social Contract or Principles of Political Right*. He started off in this particular part by saying:

"Man is born freely; and everywhere he is in chains."

Strange enough, when I was about 16 years old this expression was mentioned. I was in Form 4 at that time in high school. I have never forgotten it. It applied then, is relevant now and it shall be relevant 1,000 years from now because, in fact, man is born free but he is enchained by society, emotions, the physical, the mental and the environment. Some of them he creates himself, but the fact is he is chained by these, and we as a society, especially the older ones, have to do something positive; not just words, but actually do something. I am going to talk about how we can solve that problem.

The author goes on to say:

"As long as a people is compelled to obey, and obeys, it does well; as soon as it can shake off the yoke, and shakes it off, it does still better;"

Again, this refers very specifically to the Bill we are discussing.

"The most ancient of all societies, and the only one that is natural, is the family..."

The family then may be called the first model of political societies: the ruler corresponds to the father, and the people to the children: and all, being

born free and equal, alienate their liberty only for their own advantage. The whole difference is that, in the family, the love of the father for his children repays him for the care he takes of them, while, in the State, the pleasure of commanding takes the place of the love which the chief cannot have for the peoples under him."

Having said that, we see how very relevant these quotations and this Bill are to one another, because we have to go back to the whole question of the family structure. Where it is evident that the relationships in families have broken down then the state would have to play its part in getting families together.

In so doing, I suggest that the Ministries of Community Development, Culture and Gender Affairs, the Ministry of Tourism—I mention the latter because right now in Tobago there is an escalation of crime—the Ministry of Agriculture, Land and Marine Resources, and perhaps other ministries such as the Ministry of Planning should also get involved. The hon. Minister made mention of some of the things that the ministries are doing, but I am not convinced—and I do not think many of us are—that enough is being done for the good and welfare of the young people; I am concentrating on the young people. By saying that I mean, we can talk from now until the end of the century and into the next millennium, but we need to put systems in place. What I would like to see is perhaps a committee on which there are representatives from various ministries, because all the ministries are concerned directly or indirectly with young people. They are certainly all concerned about the people of Trinidad and Tobago.

Thus, whereas it might be good for one or two ministries to have certain programmes, let them come together and get their priorities right. The Attorney General said that human resource: the young people and all the people in the country, are our best resource, and unless and until we really attack that problem of how to deal with our greatest resource in the proper way, then we would be wasting time.

This Community Mediation Bill is a great thing but it would be so much better if we were to go prevention-wise. I heard so many other speakers talk about prevention, obviously we are all thinking along the same lines. I had occasion to speak to prison officials and got some very enlightening information. I was told about the types of persons who commit first offences and go into prison. There is a certain type who, from the time he comes in, claims innocence until the time he leaves. The senior officials who told me that also said it was very difficult to deal

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with someone like that because, in fact, one does not really know if the person is innocent, and if the punishment given that first time is too harsh, then the implications for his later life could be terrible. That is one type of person who goes into prison.

Then they said there was another type of person whose concept of prison life was one where there was a certain amount of freedom, a place where one can do everything one feels like doing. His ego does not allow him to understand that once he goes into prison that his freedoms are taken away. He feels that he is big and can go into prison anytime and do whatever. Of course, we know that is not so and that is why I come back to the whole question of family and ministerial intervention. Educate the young people! Some of them really do not know. They think prison life is a glorified one.

Before I go to the other types, I was also told that those on the ego trip, when they get outside—and they would have made friends with other prisoners inside, some of them repeaters—they want to continue this whole question of being a sort of big man in the society, because some of them really believe that having gone to prison was a good thing. Can you imagine that! It is like somebody saying that he went with a woman and she was HIV positive and he thought it was a degree! [Laughter] And this actually happened! It is the same as going to prison thinking it is such a good thing, only to discover after—if he does discover—that going to prison was not good.

Then there is another kind, the intellectual: the one who has all his faculties in place and should know better, but feels that he is brighter than everybody else, so when he commits a crime he does not expect to be caught. When he is caught, however, and goes to prison, even in there he still feels that he has more intelligence than the prison officers. Now, that is a dangerous kind of person! Very early on, we have to educate them so they would know that their intelligence should be put to better use than to feel they can show-off and show others that they are better than them, when they are not.

When that same intellectual goes out, what does he do? He initiates other jobs; maybe he went in for robbery the first time, when he goes out, he finds some of his friends and says, "Let us do this job." He masterminds the whole thing. They commit a crime and are caught, so while his friends may be the first time offenders, he now becomes almost seasoned and we then have a criminal in the making. We have to look at these young people and educate them.



There are those who think nothing of “making a jail”. These are the people who want things the easy way. They do not want to work. When they go to jail they are fed three times a day and so forth, and as soon as they get out they commit a crime and go back into prison again, because to them prison is a place, that although they have certain things to do, it is an easy way out. They get meals, they are fed, they are happy and they continue to go to jail just so that they can have things “easy”.

**5.30 p.m.**

Prison, Mr. Vice-President, is a place of punishment but to some young offenders prison is a home. I have met many prisoners, because I work with the prison, who go back into prison time and time again because they cannot fit into society. They go in the first time and when they go back out their families and friends do not want them, they are subject to peer pressure, people ostracize them so they go to the place where they feel safe; they go to prison time and time again. We cannot just sit back and say we are going to do nothing. We have to do something and even though we have mediation which will come afterwards, we have to try to prevent. Young people are different and they think differently so we have to try to harness all their resources in such a way that they will not think of going to prison or committing an offence where they have to be incarcerated.

Then, Mr. Vice- President, there are those who go in for something like maintenance but when they get out of prison they might have lost their jobs. What happens? Maintenance is hardly an offence in the real sense; it is not a criminal offence. What happens when they get out of prison and they do not have a job? Having had a taste of prison life and finding that it is not as bad as they had thought, they go and commit a crime—a real crime this time—because they have no work, they have families to feed and so they commit a crime. Now these are second time offenders, therefore, they have no part in the mediation programme for first timers.

One of the officers said to me that people—it was a very edifying thought—are controlled by the environment. That was his thinking. He said people are controlled by the environment and they are controlled by certain ministries controlling certain areas and he brought the point here about drug users; the young offenders. I am going to talk about the drug people in a minute. He says in a community, when there are derelict houses and areas where young people can go and take their drugs in peace, so to speak, then it becomes habitual. The point he

was making is there are certain areas—I know for a fact in Tobago one of them is called the nest—where the drug users go and what he is saying is some ministry or department must have responsibility for those areas; clean them up, get rid of the derelict houses and get rid of the situation that makes the drug users feel comfortable to use areas like those. The point is well taken. He says even if the property where these users go is owned by private individuals, let Government make some arrangements with the private people. Either they fix the areas themselves; clean it up or whatever or pay the Government to do it. But what he is saying is, if you remove the temptation, then only something good can come out of this.

Mr. Vice-President, I noticed that in the Schedule drug users were left out. I know, and everyone knows, that drug abuse is a serious crime but I was told that many of the first offenders, particularly in Tobago, are drug users. Not the pushers, not the barons, but the users and we can only conclude that the users are the victims. They are not the ones who started the thing in the first place. They become the victims. Unfortunately, those who oversee the crime and inveigle the first-timers to get into the drugs, in most cases they get off scot-free. What we are saying—and I am putting it to the hon. Attorney General—is that if we are going to save our young people we have to look for the areas where they commit the most offences and one of them is in the use of drugs.

I know that police would raid a house two or three o'clock in the morning but who are they picking up? They are picking up the users, the victims, not the barons, not the pushers or the traffickers; they are picking up the users. When they pick up the users what do they get out of that? They go to the court and the court gives them two to three months the first time, the next time may be five to six months. The thing is, we are told and we know it is medically true, that once these young people get hooked on the drugs, especially the cocaine, it is almost impossible to get it out of their system. Therefore, we have to protect them from the beginning. If, in fact, they take it for the first time and they go to court and they are sent to prison, we have to put systems in place to prevent them from taking the drug. If we do not do that we would have failed in this whole question because our young people are drug ridden. After the first time it becomes much easier to do it a second time and that is how it goes. Therefore, I would ask the hon. Attorney General to include drug users, not traffickers, so that they will be put on the sort of programme that will help them to keep out of the drug scene.

Another officer said to me—he spoke about drug rehabilitation centres—that we do not have any drug rehabilitation centres in Tobago. There are one or two places where people are trying to help, but there is no well worked out programme where there are centres for persons, especially those who would have taken drugs for the first time. He says even where there are centres there is no follow up because there is no personnel. Mr. Vice-President, we need to look at this not just as something where they commit a first offence and they go for mediation. Okay, that is one part, but what happens when they go for mediation the first time? They might get off in eight out of 10 cases. They probably say to themselves, “Man, I can commit a small thing and go for mediation again.” The fact that mediation can only be for the first time does not register and there we have, again, a criminal in the making. Please, Mr. Attorney General, through you Mr. Vice-President, see if you can put systems in place where the drug users can go and have their habit corrected before it gets too engrained.

A prison official—I think I was talking to philosophers—said to me when society fails, if society fails, the results are evident. He said the number of young offenders incarcerated time after time is an indication of the extent to which society has failed. Therefore, Mr. Vice-President, we have plenty work to do.

That brings me back to the whole question of community and of government ministries’ involvement. Years ago I was involved in the cultural field. Best village and all these programmes were part of my responsibility. I remember when one would go to a village and up to two or three o’clock in the morning there were young people practising for best village. Do you know what happened some years afterwards soon after the Assembly came into being? They “played politics”. Politics is about people and the good and welfare of people, not trying to destroy people but the politics was played and one of the Members of the Assembly—anybody can check it out afterwards—made it his responsibility to go around to the various groups and say to them not to take part in the Prime Minister’s Best Village Trophy Competition because it is Eric Williams’ thing.

Mr. Vice-President, do you know how much damage that did to the young people? I had to go around and explain to them. I said if it was Eric Williams’ thing he would have said Eric Williams’ Trophy Competition but it is “Prime Minister”, whoever happens to be Prime Minister, but the damage was done in a lot of areas in Tobago. For quite a few years Tobago did not take part in Best Village. Those same young people, if they were involved in cultural activities would not have had the time or the inclination to get involved in drugs or petty

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crimes. They need something to use up their energies and if they do not have cultural activities and sporting facilities they are going to go the other way and that is exactly what happened. [*Desk thumping*]

We need to put corrective measures in place. Yes, the Mediation Bill but most of all put programmes in place for prevention because everyone knows the adage “prevention is better than cure”. The mediation is treating the result but we want to treat before it reaches that stage.

Finally, the Minister of Culture and Gender Affairs told this House all about what was happening in sports including the completion of many recreational facilities started by the previous government. She tried to link some other initiatives of the Ministry with the Bill discussed this afternoon. However, the hon. Minister tried to defend the inability of her Ministry to expand certain programmes. Using the fact of the falling oil prices is not good enough. I make this point because I am afraid over the years cultural, sporting and social activities have not been given the importance and the prominence they deserve. The thing is, even though oil prices drop, look to the people because it is the people who are the greatest resource. If you do not have well-balanced, well-defined and healthy persons, you do not have a country.

I would advise the hon. Minister for Culture and Gender Affairs to get busy with the programmes that were started before and get them going again in a meaningful way because it is so easy to say yes, we are doing this, yes, we are continuing that, but if these things are happening, I am afraid, the general population really does not know and that is not good enough. Everyone must feel part of the action and the action is to gather the young persons around you and make them feel that they are, indeed, part of the society in a meaningful way, but the only way you can do this is by initiating programmes that will really help; not say that the oil money has decreased. Is that an excuse? That is certainly not a reason. The Minister of Culture and Gender Affairs should get with the Minister of Finance and the Attorney General and everybody sit down and say, listen, what are our priorities? And, of course, the only answer one can come up with is our first priority—our people. Break that down a bit, our second priority is our young people. I should put all together and say our first priority is our people and the development of our people. Once you establish that, everything else falls into place.

Mr. Vice-President, I would like to end by saying that I agree with Sen. Mahabir-Wyatt on the question of domestic violence. I do not think domestic violence should be included in the mediation process because as she explained—which I would not go into—it would negate whatever ground was gained when that particular Bill was brought so, definitely, not domestic violence.

Again, the question of divorce. If you are going to have a mediator, then the mediator must be of a legal mind but, more than that, as the hon. Senator said, let the courts deal with divorce because we know how damaging and how upsetting divorce can be.

**5.45 p.m.**

The last point I would like to make, Mr. Vice-President, comes back to the question of drugs. It was not put in because in the Community Mediation Bill, it is one person or persons against another person or persons but, in the use of drugs, I would say it is an offence of one person or persons against the state. Perhaps we can use that argument to have it as one of the mediation processes, as a person against the state. When they take drugs, they are violating the law, and by violating the law, they are doing so against the state. But I do believe if we do not put in first-time drug users, this Bill would not be half as effective as indeed it can be.

I thank you very much and hope that some of these provisions would be put in place.

**Sen. Mahadeo Jagmohan:** Mr. Vice-President, thank you very much for the recognition at this time to make my contribution on this Bill.

The hon. Attorney General alluded to it in a very minute way at a certain stage in his presentation, but this Community Mediation Bill is, in fact, a measure that is very much akin to the panchayat system that existed mostly amongst the East Indian immigrants and even amongst many people of East Indian origin who were born in Trinidad and Tobago. The word panchayat is a two-syllable Hindu word. “Panch” means community and “ayat” means decision—community decision on the basis of discussions.

Mr. Vice-President, the Bill is a good one. I did not mean to mention anything because, as though things were working out, everybody thinks that we would forget about politics and talk about the Bill.

When I was driving down here, I heard a Hindi song on Radio 103, the English interpretation of which is that a little child is telling the mother, “Mom, sing for me a song that will have nothing about king and queen.”

**Hon. Senator:** What is the name of the song?

**Sen. M. Jagmohan:** [*Hindi recited*] [*Laughter*]

This was getting a message over to me that if I have to speak in the Parliament today, I do not talk about PNM and UNC. It was getting a message to me, but the Attorney General alluded to 35 years of so and so, therefore, I had to talk about it.

One very serious news item on the same radio station was a report coming out from St. Lucia, that the serving Prime Minister is soon to talk with the next Prime Minister-to-be of Trinidad and Tobago [*Desk thumping from Opposition Bench*] about coming to an understanding on how to get the majority decision to deal with the West Indian Court of Appeal and the Privy Council. I kept thinking about all these things.

**Hon. Senator:** Mr. Valley?

**Hon. Senator:** Dr. Rowley?

**Sen. M. Jagmohan:** The Bill is not a bad measure but, somehow, we on this side are sympathetic with the main point raised by Sen. Diana Mahabir-Wyatt on the question of domestic violence and my colleague, Sen. Alfred, spoke on it. We are concerned about that.

We are looking very closely to see who would be the mediators. In the ancient panchayat system to which the Attorney General alluded, the police sergeant of the station mediated; the shopkeeper mediated; the school master mediated; the Imam, as well as the Pundit, mediated; or, if some other “fella” had a big belly and a long moustache, or he was known to have a big house and money in those days, or he had plenty cows or horses, he, too, could have mediated.

The position is the Attorney General has not set any guidelines on how mediators would be selected and so forth, but I wish to speak for a few minutes on this Bill. I will come back to the question of the mediators in a short while.

On page 6, clause 2, the second paragraph reads in part:

“‘mediator’ means a person having adequate knowledge of, and experience in mediation...”

Well, who will have the adequate knowledge and experience of mediation when, in fact, this will be a new innovation or a new law? We know in industrial relations, they appointed individuals and called them by different names to settle grievance

matters. We know different large organizations set up committees. But, who will be the mediators? Will the Attorney General explain this? How would mediators be sourced? It should not only be retirees, because some retirees are giving bad advice to a certain Minister in Government, pulling back legislation and all kinds of things. We hope these are people who have their senses intact.

What is very important—I will talk about it later as well—is that somewhere reference is made to the remuneration for the mediators. Mr. Vice-President, if this is being based on the ancient panchayat system and salaries are placed for the mediators, that system will get watered down and people drawn from the community will have to be moved, with lawyers, attorneys or other people having to deal with it. That is with respect to clause 2.

Further down in clause 2, the mediation centre is referred to, and I am thinking about costs. The Minister already talked about the oil problem and so forth. Are there going to be new buildings constructed by the Government? Or, will we be using existing buildings which will be refurbished? That will be a very expensive exercise. Then, whilst the legal advisor to the Government is the Attorney General, and the chief legal officer of the Government is the Attorney General, the reference here is “Minister”. Which Minister is it going to be? Minister of Legal Affairs? The Attorney General?

**Sen. Kuei Tung:** I am.

**Sen. M. Jagmohan:** The Minister of Finance. Well, that is more trouble. Or, is it going to be the Minister of Social and Community Development? We do not have any problem with whichever Minister it is, but early in the day, this must be established.

**Sen. Mohammed:** The Attorney General likes to run all the Ministries.

**Mr. Maharaj:** Am I an athlete?

**Sen. M. Jagmohan:** Clause 3 of Part I “Mediation in Criminal Matters” states:

“A person who is charged for the first time with an offence listed in Schedule 1 and who has not been charged with or convicted of any other offence is eligible for mediation.”

What if he is exonerated by some other process in the law before mediation time reaches? What kind of consideration will be given there? That is something we wish to talk about.

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Clause 5 says:

“...the Court may adjourn the hearing of the complaint in order to allow him sufficient time to make his application.”

What is sufficient time? Who decides sufficient time? The Minister or the magistrate in front of whom the matter will come first?

These are serious questions. I am not talking for lawyers and I am not talking for magistrates, I am talking for the poorest of the poor and the layman on the street. What is the position there?

On page 7, clause 5(3) reads thus:

“No inference of guilt shall be drawn from the fact that the defendant applied, or indicated his intention to apply, for mediation.”

It is a nice thing to put this in a piece of legislation as part of the statute of the country but, knowing Trinidad and Tobago as we all know it, the moment a man applies, people will say, “You see he, he frighten.” “He guilty.” “He have something to hide.” “He want to settle.” “He don’t want to go in open court.” “He ‘fraid’ what the witnesses go say.” That is the position here. I am just clearing that. The Government has no control over that.

Mr. Vice-President, the Attorney General might not be aware. The Minister—*[Interruption]* I beg your pardon, Sir, I do not always hear well. If the statement is repeated, I will be helped.

**Sen. John:** He say he find yuh sounding just like me.

**Sen. M. Jagmohan:** That is a compliment. Sen. John is a high profile man with world rating. *[Interruption]* No, I know you will get hot if I say world class.

Back on the Bill, I go to clause 7(a):

“It is satisfied that the complaint is amenable to community mediation;”

Later on, it talks about probation officers. I am wondering if any of the Ministers—the Minister of Finance or the Minister of Public Administration—is aware that there is a very acute shortage of the probation officers in the country right now. There are a number of vacancies. Sometimes, one probation officer is looking after the business of three counties, because they do this on a county basis.



The Chief Personnel Officer argues that there is no competent person to promote as Acting Probation Officer, or there is no-one in the relevant range who can be promoted. This is more confusion if so much responsibility is placed on the probation officers and there is not an adequate number of probation officers in the service with no succession training taking place. What will happen? There is a big problem there. Presently when a probation officer goes on leave, there is no leave relief. Take note of that, Government, please.

In clause 8(c), it appears as though the Bill intends to give a great deal of power to first-time offenders. That has to be looked at carefully.

Permit me to read clause 9, Mr. Vice-President:

“A mediation order shall—

- (a) subject to section 11(a), have effect for such period not exceeding twelve months from the date of the order as may be specified therein.”

Twelve months is too much of a long time for this exercise. In my humble view, six months is more appropriate.

### **6.00 p.m.**

Clause 8(b) and (c) refer to the position of the probation officer and there are not many, but clause 9(2) is frightening and I think the draftsmen would have their knowledge but they are saying things in a particular way. This clause says:

“A defendant in respect of whom a mediation order is in force shall attend such mediation centre at such time as he is required by the mediator to attend in order to participate in the process of mediation, and on such occasion, the defendant or the *de facto* complainant may be accompanied by an attorney-at-law.”

That is confusion. The mediation process did not have the input of service, or the advocacy of an attorney-at-law but the defendant disobeyed, or did not react in any way and you are telling him now that he may walk with a lawyer.

Mr. Vice-President, we are urging the Attorney General to rethink this clause. The lawyer whom the defendant would be allowed to take with him—lawyers are trained and learned persons who have a certain skill. Which lawyer is just going to sit down there and not say anything? Any lawyer who is worth his salt would want to talk on behalf of his client.

Clause 9(3), says:

“The process of mediation may, with the mutual consent of the parties thereto, require the defendant to do one or any combination of the following:

(a) community service;”

That is okay, but look how dangerous this part is:

(b) “work for the *de facto* complainant;

People are very sensitive, and old wounds are easy to open up in social conflicts in the community, and bad blood could be created by the defendant giving community service to the complainant. Consideration should be given to strike out this part. If any service is to be offered by the defendant, it should not be for the complainant, it should be for community organizations, the churches, schools or the Minister of Works and Transport may want a roundabout maintained and the defendants could do things like that. They can even clean the General Hospital, but do not send them by the person whom they might have wronged for service. That is dangerous.

The Attorney General has left the Chamber and he is the expert on this Bill. On page 10, clause 9(3)(c) says:

“(c) participate in an educational or rehabilitative programme;”

This sounds very good if a defendant has the equivalent of matriculation to attend university for tertiary education. I am wondering if the rehabilitative process would allow him to go to university where he would work towards obtaining tertiary education. This should be explained. It is a very encouraging piece in this Bill.

Clause 9(4), on page 10 says:

“...if any, at which he normally works or attends a school or other educational establishment.”

Will this law control school principals? I know for certain that school principals suspend students for a week, two weeks, a month and finally expel them for minor things. It seems as though we are giving these defendants a nexus with schools and it is creating some serious thinking as to whether this can work. There is need to look at this.

Mr. Vice-President, in clause 10, there are a number of areas which refer to the probation officer and that is my problem. When this Bill becomes an Act of Parliament, can implementation take place effectively?

Clause 12(3) is written in a way that needs clarification. It says:

“Where the Court records that a complaint is determined by mediation, neither the defendant nor the *de facto* complainant may initiate any legal proceedings in any court of law in respect of the matter so determined.”

We are wondering whether this is shutting out appeals totally and some consideration has to be given here.

Mr. Vice-President, under Miscellaneous Provisions, there is something which looks good on paper. Clause 16(2) says:

“The Mediator shall have the power to—

- (a) co-opt with the agreement of the parties or persons from the community in which the Mediation Centre is located,”

If the parties agree to co-opt, that would be all right, but no interpretation is given to this. One or two parties could co-opt with somebody from the community, then the defendant could be in trouble sometime or the other. I spoke about this already.

Clause 17(b) says:

“the ethical standards to be observed by the Mediator in the performance of his duties;

- (c) the remuneration of mediators;

The remuneration of mediators is the problem. I would have thought by reading this it would mean that the remuneration is on a case by case basis, but if it is so, it seems to me there would be greater progress and efficiency, if it is, otherwise the person becomes an employee of the state or an officer of the court, or whatever, then we are in for more public—

Clause 19(1) says:

“No legal proceeding may be commenced against the Mediator or any person or official involved in mediation proceedings for any act or omission done or omitted to be done in the course of the performance of their duties.”

This is simple and straightforward, but is this clause going to protect the public servants the way they should be protected? This has to be explained. It seems as though the public servants will have a role in the mediation process. There are a

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small number of persons in Trinidad who have a way of holding people in mind and that kind of thing. We are hoping that the Attorney General would think seriously about some of these points which I attempted to raise.

Mr. Vice-President, the Bill, if properly operated when it becomes law, can be of great help to people. I am wondering when we say first offenders, if a person or a youth is apprehended by the police and that young man or woman is charged for an offence but is freed by the court and a second offence occurs, what are the legal ramifications? Does it mean that person would not qualify for mediation, or will he qualify? These are our concerns. I have raised them openly in good faith.

I have observed today that the Attorney General seems to be in a somewhat jovial mood. Maybe it is the Prime Minister's statement in St. Lucia to talk to the future Prime Minister of Trinidad and Tobago—meaning Mr. Patrick Manning my political leader—about the Privy Council and the West Indian Court of Appeal. However, we wish to say that we are extremely happy that we initiated proceedings for this Bill. When one checks the works of Shakespeare—those of us who have the time to read history—one would understand that all of Shakespeare's works were not completed at the time of his demise and many other literary giants had to come forward to complete his literary work.

Thank you Mr. Vice-President.

**The Minister of National Security (Sen. Brig. The Hon. Joseph Theodore):** Mr. Vice-President, I rise in support of this Bill to provide for community mediation as an alternative to litigation for certain summary offences and civil matters. I can confirm that this Government is going about the business of reducing crime in a holistic manner and I shall mention some of the areas which formed part of a larger programme. Some Members on the other side alluded to certain programmes such as the community involvement and the shift system.

Community involvement from the police point of view, took the form of community policing. When we came into office, we met what was called a community policing motor cycle section with motor bikes which went about with no particular directions or instructions and we found that many of the bikes were put aside when they broke down and they remained unrepaired. We formed the Community Policing section which incorporates these motor bicycles and I would read the objectives of the community policing plan.

**6.15 p.m.**

This is the plan for 1996—1999. It says:

"The objectives of the Community Policing Section are:

To promote an understanding of the police role in the community.

To develop closer working relationships with the community and keep open lines of communication between citizens and the Police Service."

This is what people have been saying here today. The community is the key to dealing with the deduction in crime, demand reduction, and there must be a partnership as far as the community is concerned with the police and, as one Senator mentioned, the police groups and the church. It goes on:

"To give leadership and support to activities in the community which will lead to human betterment and progress.

To help develop and maintain relationships between the police and community groups, organisations and schools.

To collaborate with members of the community in developing police sponsored programmes to help reduce crimes.

To work with educational organisations (technical, vocational and academic) to improve relations with youths in the community.

To help communities resolve their problems.

To assist in maintaining a positive public image of the Police Service."

**PROCEDURAL MOTION**

**The Minister of Public Administration (Sen. The Hon. Wade Mark):** Mr. Vice-President, in accordance with Standing Order 9(8), I beg to move that the Senate continue to sit until the conclusion of the matter now before the Senate.

*Question put and agreed to.*

**COMMUNITY MEDIATION BILL**

**Sen. Brig. The Hon. J. Theodore:** Mr. Vice-President, coming out of this community policing programme, we can see the relationship with the youths in the area. This is something Sen. Yuille-Williams did not mention, but I know the establishment of police youth clubs is one of the programmes which was started.

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We have continued to develop the police youth clubs and there has been some expansion. I think over the last two years we added about six to eight more police youth clubs. The intention is to have a police youth club in every district. I am afraid that when I first heard about police youth clubs, I thought they related only to the children of police officers, but the police youth clubs deal with the children of the community. They run courses for them, and I met with several police officers who belong to the community detachment who are trained. They are teaching various skills to these young people, even sign language to deal with the hearing impaired. For what it is worth, the purpose of the community policing is to operate—as was mentioned—almost like advisors and counsellors within the community. We want the police to be once more regarded as people to whom the residents can go with their complaints, not with problems after they occur.

Another thing which is taking place is the expansion of the community watch groups. It was mentioned that in the early days, some of the community watch groups which came out of the interest of the people within the districts took on a bit of a vigilante attitude and approach. For a while the community watch groups seemed to have died out. There is still this demand from the community. So what we have the community police doing is taking requests from various districts and residential areas, and the people in the area are required to go to the police and indicate that they want to have a community watch group. What the police do is direct and advise them how best this watch group can operate and work together with the police. They are really not there to carry out arrests or to apprehend people; they are there to keep their eyes and ears open, as we are trying to do in all the communities, and alert the law enforcement agencies of any strange behaviour. Like Sen. Alfred mentioned, these drug blocks where people gather, the police have to rely on the community and the families to point out when strange people are seen in the area and when empty houses seem to be occupied when they should not be. Right now, the community police are established in all the police divisions; there are eight in Trinidad and one in Tobago. The intention is that within each district there will be a community police organization.

More than that, I believe we heard the Minister of Culture and Gender Affairs point out that the police are, in fact, working with her ministry. We are also working with the Ministry of Community and Social Development and the Ministry of Sport and Youth Affairs. So the community police are taking the role within the community to become more familiar with what goes on in the community, to become more in tune with the mood of the people in the community

and be there to assist. The community police are, in fact, receiving ongoing training on how to deal with matters of domestic violence. Again, it is a preventative mechanism. Their mission is to avoid confrontations. When the police cannot cope with a situation, there are professional counsellors available within the ministry on whom they can call. Police are not pretending that they have the answers, but the intention is to let the police become more involved in community activities.

Right now police representatives attend county council meetings and they are supposed to be there, because a number of things which happen in the community will have to be addressed by the police. We also get letters from the council sometimes, complaining that the police are not looking at certain things. The community police, while it appears to be almost a separate part of the police service, is designed to expand and, eventually, every policeman and policewoman would be a community police. This is really the intention, because the complaints are that the police have somewhat distanced themselves from the community. So this effort is to bring them in closer contact with the community.

As part of the effort in crime prevention, to try to keep these young people away from crime and out of jail, which fits in with this Bill that is before us here today, I want to simply read the purpose behind developing police youth clubs. I will quote again from the *Community Policing Plan*:

"The Section will embark on a massive police youth club drive as a crime prevention strategy. A police youth club will be established in each police station's district. This strategy will cause a bond to be established between the police and the youths in the communities. The youths will be actively engaged in community activities. They will be trained to deal with peer pressure and be provided with a platform for self expression and the exchange of ideas."

It sounds pretty highfalutin, but this is what people need.

It was said earlier that when these young people get involved in sport—I think Best Village was mentioned—they are occupied, they have their peers and they are guided away from this dependence on crime.

With regard to the matter of the family. What I like about this Bill and I think is very positive is that, by not having people incarcerated where they can perform other activities, they are still available, they are still at home. We seem to agree that we are dealing with young people, adolescents and first offenders; although a

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first offender need not be a young person, it could be somebody who has gone through his life quite happily, perhaps not having been caught and when the time comes and he is picked up he is still a first offender, but I, like the other speakers, would emphasize the responsibility for the youth of our country. Some of those young people are bread earners. They probably have to work to look after their siblings. In our single parent homes, young men and women who are 15 or 16 play a very vital part in assisting in the family structure. So, to keep these people out of a place of confinement is also a service to the family. It allows the family to stay together. It allows the people to pay for their crimes without having to be taken away from the family on whom the family may have become very dependent.

We know, as was pointed out by Sen. Alfred, what they are faced with when they do go into jail and the ideas they come out with. I was hearing only last night on the radio a question and answer from an American station: why is it young people get involved with gangs? It is simply because the gang is the family which he does not have and the gang leader is the parent, the person from whom he would take example. So, we go back to a much broader responsibility that we have in this country. I am glad to see that—except for Sen. Jagmohan straying a bit—we did not get too involved in the politics of the thing. We realized that this is something we all need to do for the younger generation, your children and mine.

So basically, the matter of the youth clubs and assisting in the development of the watch groups have been made the responsibility of the community police. They are the ones who are dealing with those. They do have their blue jerseys and they are looking to me to get some more money to finance them, that is why I keep insisting they are still part of the police service.

We talked about foster care. One of the things which the community police are doing right now is taking over abandoned police stations. Right there in Four Roads, around the corner from where, I think, a fire officer lives, next to the fire station, that is being converted now to a halfway house. It is part of the police contribution to domestic violence. Because when there is a problem, one has to separate the attacker from the person who has been attacked and the police feel happier having the person virtually on the compound, but not in the station, in a house, perhaps with a caretaker or a matron who would at least be with the person until the matter has been sorted out, until mediation or whatever has taken place, that either the couple could come back together or the family or children do not suffer as a result of what has happened. We have had complaints in the past that people will go to the police station and complain about abuse and be told, "That is



a family thing, go back home". Well, the community police are designed to be more appreciative, sympathetic and understanding when complaints like those are brought to their attention.

Sen. Yuille-Williams mentioned the Civilian Conservation Corps. We have continued with the training. We have made one change. The direction for the Civilian Conservation Corps which is designed—according to the brief I got—as an opportunity for earning, it was a job, and it was also designed to raise the self-esteem of a number of these young people who are between the ages of 16—25. These are the ones who fall between the cracks and are not exactly 14-plus, these are the ones who do not make it through the education system. The programme is going very well. Fourteen hundred are brought in at each intake. The period was only for three months. What we are doing now is trying to lengthen the period, because we found that in three months not enough could be done to guarantee that each of these young persons would receive some structured form of training. So, the intention is, now that we are coming to the end of the three year programme for funding, we are looking to restructure the programme to make it more training-oriented, with a stipend that is being paid. They have been working with the Ministry of Agriculture, Land and Marine Resources with the whole matter of reforestation and to deal with the environment.

### **6.30 p.m.**

More recently, with the floods we had in San Fernando, we realized that we had to start preparing for the next rainy season from now. [*Laughter*] The National Emergency Management Agency (NEMA), our relief organization, is being structured to use the Civilian Conservation Corps (CCC) in a preventative mode, to prevent fires, to deal with clearing fire traces, cutting away dry bush and so forth, which spread fires, and by the same token, to be available for relief operations.

In fact, NEMA is actually going back to being a more coordinating agency rather than a relief agency. The name gave people the wrong impression. They felt that NEMA was simply there to wait for something to happen then they would arrive with all their equipment and trucks to sort it out. NEMA does not have any equipment. I think their staff consists of three coordinators, a director and some secretarial staff. It is now being redirected to get more involved in the planning and development aspects of Trinidad and Tobago. As far as developing of housing estates and so forth NEMA would be there.

I compare it to the fire service which is required to inspect public buildings when they are being constructed, renovated or refurbished, to ensure that public safety is taken care of. There is quite a lot for the Civilian Conservation Corps (CCC) to do. I am pleased to say that we had a consultant come in late last year whose report was very favourable. It stated that these young people were doing very well. We have made quite a few discoveries, there is a lot of talent. We have put a trace on these young people to find out what happens to them when they leave the system. This is a new plan to follow their careers and if necessary, assist them where they need the assistance.

**Sen. Prof. Spence:** Mr. Vice-President, I do not want to give the impression that I do not think what was mentioned is an excellent programme, it is. In respect to the planting of forests, however, the four acres that the CCC did, would not address the 10,000 hectares that were burnt last year. [*Laughter*]

**Sen. Brig. The Hon. J. Theodore:** The hon. Member's point is taken. This happened by the way, in other words, it was not programmed. What we are trying to do is to programme it. We have the manpower, but what the director and I found happening, is that depending on what course was going on at the time, they would be made available to participate. By that I mean, if there was a course in auto mechanics some of these children might do that, or hairdressing. If the next batch only got to clean up a memorial or some historic area and plant a few trees, that was what they would do. We are now structuring it so that, at least, parents would know, when their children enter the programme they would have some vision as to how they would be employed and what they expect to come out at the other end. This is all part of the prevention that we need to ensure that the crime level goes down and that these young people become less inclined to go toward a life of crime.

Again, because of the conditions in the Bill, even if any of these young persons were to make a mistake, it does not condemn them. They do not end up with a bad police certificate of good character which could interfere with their further employment later in life. It is a good move, and I am sure the hon. Attorney General, in his closing address, would be able to deal with a number of the points raised. I would simply concentrate on where the Ministry is involved with the other ministries.

To develop on what the Minister of Culture and Gender Affairs said, we do have a team made up of the Ministry of Sport and Youth Affairs and the Ministry

of Education and the Ministry of Social and Community Development. What we are trying to do is find out what these ministries were planning to do that would impact on the crime situation. We could not tell them what to do but we asked what they were doing, because if we knew we could use their resources to impact on the crime situation. Again, the police are involved.

If there is a programme in an area, for example, if there is a village with no sporting facilities, and the police want to set up a small cricket or basketball league, we are not going to try to put everything up, but I would speak to the Minister of Sport and Youth Affairs about developing that area. The statistics and analyses from Professor Deosaran, on the crime situation give us a fair idea of where crime is predominant and the age group involved.

I would not go into much detail about the crimes the people at the Youth Training Centre have committed but right now 240 young men between the ages of 16 and 19 are incarcerated. That is a critical age for somebody to be away from home. I hope this Bill would address some of these problems, certainly not all. I say to this honourable House that the Ministry is very much in favour of reduction. We have joined the Ministry of Social and Community Development with demand reduction, because we recognize that if demand reduction takes hold and people get less involved with drugs and alcohol, it would make our lives much easier at the other end.

We talked about the prisons. I said from day one that I do not think building more prisons is the answer. I am not in a position right now to tell Sen. Mahabir-Wyatt when the maximum security prison would be opened, but we are working on it. It is finished, but testing is taking place. *[Interruption]* There is a certain minister from the PNM who knows why and how he stopped it.

From the prison standpoint, there is one other aspect that the Ministry of National Security is involved in, and that too is prevention in a way. We set up programmes so that when people come out of prison they can fit back into society and simply do not go back to commit the crimes they committed before. Right now it is not being done fully, but we are finding out the background of the various people who come in, why they are there and what crimes they have committed. Various programmes are being designed to accommodate certain groups of people. There is a wide discrepancy between the causes, but there is a certain amount of commonality as well among persons who go into the prison system, particularly those who go back for the second time.

One of the problems we have found, referring again to this same halfway house concept, is that people leave prison directly and go straight back outside. We are trying to phase that out, so the programme within the system would address one aspect of their problem, and another programme has to be initiated to start pointing them in the direction of returning to society. These are what we would classify as the rehabilitation programmes that are in place.

The new prison has a large workshop facility. I do not know if any of the Members were aware that the prisons had a display at the Queen's Park Savannah about two weeks ago. There is a lot of talent. What we need to do now is find a marketing strategy to have these programmes as an ongoing thing, because for people to make clothes and ornaments only to put them on display does not make sense. Those that are not sold get put away in a corner somewhere and it could be more distressing than encouraging. I personally feel that the prison population has responded positively to this initiative and the idea is basically to make people more aware of what is going on. We had calypso competitions down at the island prison and we have had various concerts. There are prisoners from the Youth Training Centre (YTC) who have gone on tours.

The prison has its share of dealing with people who have been incarcerated. The police have their role to get involved in demand reduction and lessening of crime, but we all have to work with the society and the community. I am very pleased to be in a position to support this Bill and I think it has come at a very opportune time because it would certainly assist the police.

**Sen. Yuille-Williams:** I listened to the hon. Minister's figures when he spoke about the Youth Training Centre (YTC). I do not know if he has an idea of the offences that were most prevalent. This is important to me.

Secondly, I noticed that the hon. Minister has the neighbourhood watch groups of the Ministry of National Security, and I know this vigilante aspect is very prevalent and we are trying to control it. But I am also thinking, very seriously, whether the social aspect of this group in charge of the community, the other aspect of it, in terms of the relationship with the police, whether that is being passed on to the community. If we look only at that kind of vigilante group, even a softened one, we would have lost the purpose of this group. I am sure when Professor Deosaran referred to that relationship he was trying to determine whether all aspects of the people within the community were really taken charge of by that neighbourhood watch.

**Sen. Brig. The Hon. J. Theodore:** Mr. Vice-President, I see the watch groups as being very similar to the involvement the police have in villages and smaller communities where they get to know the neighbourhood and the residents. In a watch group, perhaps in a large housing area, it may not be as easy to get across. What the police do is call the organizers in, the people who will form the nucleus of this watch group, brief them at the station and ask for their assistance.

What they do basically is, if they are patrolling the area—I assume some people go around in their cars if they are members of a watch group—they must know what to look out for. They have to be sensitized to what is suspicious and what is not, and report it. We do not want them to take action. Many of these people are armed, they have licensed weapons. We tell them that it is not for them to confront these people but tell the police to keep an eye on them.

It is not going to happen overnight; they are different people with different attitudes. What we try to get over to them is that they must not feel it has come down to them to deal with the criminals. That is a job for the police. This is how the watch groups are going. As I said, we do not impose it on housing areas, we wait for them to suggest that they would like a watch group. If it was their idea, you would find that the relationship would be far more positive and they would not be doing it because they have lost confidence in the police, but because they could be of some assistance and help to the police in what they are doing.

Mr. Vice-President, as far as Tobago is concerned with this recent spate of crimes, you would have read in the newspaper that the Commissioner has been over there a couple times. It is funny that the complaint is that a large number of the police in the stations there are from Tobago. The feeling is that they are too familiar with the area.

**6.45 p.m.**

This seems contrary to what community police do. We want the community police to go in the area and get familiar with it so they will know who is a stranger and who belongs. Again, we are looking at the Tobago situation because, with the sort of communication we have with the outside world, this is what gets on the Internet. Steps are being taken right now. In fact, the two people involved in the recent robberies were put before the court yesterday and they are being dealt with, but the important thing is to—

**Sen. Alfred:** Mr. Vice-President, I do not know if I should make this point but those two or three persons are from Trinidad and that was very worrying to us because, apart from the spate of crimes that are committed by Tobagonians, there are Trinidadians going over and making mischief as well.

**Sen. Brig. The Hon. J. Theodore:** Well, I am afraid this is one of the hazards we have by having a twin island state; it is Trinidad and Tobago.

The police are being put on notice. The same concept applies that people must report and must complain and if they do not react, there are persons to whom one can complain that the police are not reacting. I think we have a habit in Trinidad and Tobago that we complain three or four times, get fed up and do not bother again, then about a year later, when something happens, we pull out all the old complaints we never made and make them all at once and say, "Look at all these things that have been happening and nobody has done anything about it." If nobody says anything it is going to be difficult for us to know what is going on.

The whole community involvement is what the matter of crime prevention is all about, because we do not want to allow things to happen, have victims, have families broken up and then the police arrest and the matter goes to court. That does not solve anything. It is the whole matter of what you leave behind; the children and relatives who are left without parents or brothers and sisters as a result of what goes on.

Again, I want to support the Bill and re-emphasize and agree with the contributors from the other side that it is a community business and we should all work together on this to reduce the crime in our country.

Thank you, Mr. Vice-President. [*Desk thumping*]

**Sen. Nafeesa Mohammed:** Mr. Vice-President, it is always very reassuring to note that the hon. Minister of National Security is, in fact, a Member of the Cabinet of this UNC coalition Government. I say this because whenever he speaks we detect a certain level of openness, honesty and good faith which we wish would extend to all his other Cabinet colleagues. We certainly hope and pray that he would continue to hold his ground, be firm and assert himself and do not allow others to encroach on his particular portfolio. I see the hon. Attorney General smiling. I do not know for what reason.

The hon. Minister of National Security spoke at length about the whole question of community policing and we on this side certainly wish to indicate that

this development in our society is something that we support wholeheartedly. In fact, we would like to commend the various police officers who have been actively engaged in this process of community policing. We would all remember that—I think—it was around 1994 when this whole system was put in place and we are very heartened to know that it is really functioning and it is being expanded. We want to congratulate the hon. Minister of National Security for pursuing this particular measure.

Mr. Vice-President, we have heard a lot in the Senate Chamber this evening with respect to the Community Mediation Bill and more than once the question has been asked about who will be the mediator. I know the hon. Attorney General in his winding up will refer us to the definition clause, that is clause 2. But when we look at the definition of mediator in clause 2 on page 6 of this Bill, all we see is:

“‘mediator’ means a person having adequate knowledge of, and experience in mediation, approved by the Minister to be a mediator by Notice published in the *Gazette*;”

My colleague Sen. Jagmohan asked which Minister will be in charge of this mediation programme. That is one concern.

The other concern is that in terms of the selection of these mediators, give us some indication as to how it is going to operate. It may well be an administrative measure, but is it that you are going to select mediators say, for example, on the basis upon which you select justices of the peace where the hon. Attorney General has the sole discretion in determining who will be named justices of the peace? Give us some idea as to how you will select these mediators.

The hon. Attorney General made it clear that mediators will not be attorneys-at-law but it speaks here about persons with experience in mediation. What does that mean? That you would have some kind of qualification, whether it is some degree in social sciences? Or is it going to be a Pundit, Imam or Priest? How are you going to determine? We merely wish to get some more information about the criteria that will be used for the selection for these mediators.

The other issue is in respect of mediation centres. Again, you may say this is an administrative matter but throughout this Bill it refers to mediation centres and a process taking place in these centres. Is it that you are going to use the community centres throughout the country as mediation centres? Is it that you are going to use a procedure whereby persons can be referred to some room in one of the

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magistrates' courts in the various districts on the island? We would like to know something more about these mediation centres. Is it that the Government is going to construct new centres? We certainly wish to know.

What I gather with the Deosaran Report is that a recommendation was made that there be a pilot project in certain areas. Is it that you are going to try it out in certain areas, let us say North, South and Central? Please give us an idea how you are going about dealing with this very practical aspect of the legislation.

By and large we have already indicated our support with respect to the intent and purpose of this Bill. We commend this piece of legislation. We view it as a very significant piece of legislation that will assist but when we move on to clause 2 of this Bill, mediation in civil matters—Mr. Vice-President, I think it was Sen. Mahabir-Wyatt who raised concerns about having mediation in certain types of civil matters and she made specific reference to matters under the Domestic Violence Act and divorce matters.

The fact of the matter is that very often when you are dealing with domestic violence it is a case that the parties who may be the victims of domestic violence may simply want the violence to stop. They may not necessarily want their marriages or family life to be broken up. Very often a person who is inflicting blows is a person who needs help and the purpose behind the Domestic Violence Act is to offer a quick form of protection for persons who are at risk, because we had seen a year ago when a number of people were killing their spouses. This is an important piece of legislation in our country.

What is really needed is proper support services to be put in place. We need proper counselling services to be made available to families, especially to those people who may be in abusive homes and who need help. In extreme cases where it is a clear-cut case and the victims need protection, an order from the Magistrates' Court is an important device to protect those persons. We certainly would not like to see the operation of this Community Mediation Bill coming in between this type of situation where a victim needs immediate protection, yet when the matter comes up before the court, it is adjourned for a period of time to have some kind of mediation. When the party goes home one does not know if more blows will be inflicted. Perhaps, after some kind of interim order is made by a magistrate the parties may be referred to some kind of mediation and maybe they may wish to withdraw the complaint or pursue some other course of action. Maybe it can be looked at from that angle.



Apart from the Domestic Violence Act we see that this Bill is being made applicable in respect of applications for ancillary relief matters following the grant of a *decree nisi*. When it comes to the field of family law or matrimonial matters we know that for some time now in our country there has been talk about the establishment of a family court. The hon. Attorney General made mention of the fact that they are working on the family court. We are calling on the Government to pursue the establishment of this family court with a little more vigour, enthusiasm and exuberance. Perhaps the hon. Attorney General can divert his exuberance and enthusiasm from the particular course he is pursuing now and focus more on establishment of this family court because here is where, if we establish this court, we know that we can have all those facilities put in place; proper counselling services and everything else.

It is an area where so many families and persons are affected and sometimes need appropriate help. My colleague, Sen. Jagmohan, referred to the panchayat system. I have been involved in several mediation attempts with respect to spouses who may be having problems between themselves. Very often, Mr. Vice-President, it is possible that after appropriate intervention, sometimes a family can be brought back together. But if things are so acute between the parties and they have such fundamental differences between them and it reaches the stage that there is really no other choice but for them to go their separate ways, and if it is that the matter actually reaches to the divorce court, then, by all means, let the court deal with those matters. When you are dealing with divorce matters and ancillary relief matters, there are several legal issues that are involved in these types of matters and the hon. Attorney General has already indicated that mediators will not be lawyers. If at one point you need lawyers, it is at the point when you are dealing with these divorce matters. When the petition is actually filed in court and the matter is before the court, let the lawyers and judges deal with it.

Certainly, if it is possible to mediate before it actually reaches that stage, fine, but parties to a marriage would need to know their respective rights. Women and men would need to know what rights they have when it comes to matrimonial aspects. They need to know who should get what, how much, what should happen to the children, what custody rights entail, what are access rights. Parties need to be advised on these matters and they need lawyers to assist them at that point. Therefore, we would ask the hon. Attorney General to look at this particular provision.

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I understand that the Law Association has called for the inclusion of these family matters in the Bill. But certainly, if it is possible to amend it to such an extent that there can be mediation up to a point, but when the matters are before the court, by all means, let the court deal with the matters. Of course, at any point during the court proceedings itself it is always possible to enter into a consent order; that can still happen.

**7.00 p.m.**

My colleague pointed out that another big area of concern we have with the Mediation Bill is the issue involving our probation officers. I gather that the whole intent and purpose of this Community Mediation Bill is to put in place a system that will help in terms of the administration of justice. The whole intent is to encourage some form of alternative dispute resolution and, if we are serious about this and we want this system to work, with matters being dealt with expeditiously in the courts, then there are certain things on which we need to focus. They may be considered administrative, but these are matters that the hon. Attorney General needs to look at.

Very often, when one goes before a magistrate to deal with a maintenance or custody matter, the magistrate or the parties may request a probation officer's report; and when one is in court, very often it is very difficult for there to always be a probation officer in the courtroom. It is found that when the matter is adjourned, on the adjourned date, the report is still not ready for the court to deal with the matter.

What is required is for attention to be focussed on improving the conditions under which our probation officers have to operate. If anything, we certainly need more probation officers in order to assist in all our courts, moreso, if it is that this Community Mediation Bill envisages there will be a new system that is going to make demands on our probation officers, we certainly hope that the hon. Attorney General, the Minister of Finance and whoever else may be involved, will be able to deal with this burning problem where there is a shortage of probation officers who are operating under very terrible conditions and, in terms of salaries and so forth, that is another issue.

There is one other concern I have with the Bill and that is with respect to the granting of a mediation order. I think under the Summary Courts Act—the hon. Attorney General will be the expert in this field—there is a particular section 71 where, very often, persons appearing before a magistrate for certain summary

offences, will ask for a reprimand and discharge order and no record will be made of their conviction. When we are dealing with these mediation orders with respect to first-time offenders, I would just like to enquire whether this is a matter that will be recorded, or whether no record will be made, if it is that such an order is made.

Mr. Vice-President, we know that over the past several months, we have been hearing a great deal about alternative dispute resolution. In fact, I remember it was sometime last year when the Chief Justice of our country had spoken at length about encouraging this system of alternative dispute resolution. There was a conference taking place and I am sure the hon. Attorney General would have been very instrumental or involved at the time in the whole process of judicial reform. We on this side will certainly support measures designed to speed up the administration of justice and it is in this context that we are in support of the idea of alternative dispute resolution.

With respect to this Community Mediation Bill, we merely wish to urge the Government to be more enthusiastic over implementing measures like this Bill and, as my colleague, Sen. Joan Yuille-Williams, pointed out at the beginning of her contribution, this Bill is just part of a package that was left behind. We would like to see the same level of enthusiasm and exuberance from the Attorney General directed to these particular areas, so that we can help our young people and we can help our citizens at large—

**Sen. Mark:** It is a pity.

**Sen. N. Mohammed:** —and not give the impression that as a government in power, you are so barbaric, you just want to deal with it at the other end of the line.

**Sen. Mark:** Unlike the PNM. You all forget the fact that you murdered a man.

**Sen. N. Mohammed:** Let us start from the beginning. If you want to show that you care, start at the beginning and try to nip it in the bud. [*Interruption*] Instead of going through the back door to tamper and interfere with our judicial process, let us start with it from scratch.

Hon. Attorney General, we make this plea to you; we know that you mean well and it is a lot of energy and enthusiasm that you are exuding on these very serious matters, but we are asking you, in the interest of all the people of Trinidad and Tobago, to redirect and channel this energy, exuberance and enthusiasm along these lines where the people at large in the country will benefit.

Thank you very much, Mr. Vice-President.

**The Attorney General (Hon. Ramesh Lawrence Maharaj):** Mr. Vice-President, may I express thanks to all Senators who have spoken on this debate. I have tried, in making my contribution, to resist partisan politics in this matter but, having regard to some of the matters mentioned, I think I ought to put the record straight.

It is not correct that we met any package of legislation; it is not correct that we met any draft mediation bill. What is correct is that there was a report by Dr. Deosaran and there was a task force appointed three years later as a result of that report, but nothing was done about the report of the task force. That is what we met on mediation.

In respect of family law reform, we did not meet any package of law reform measures for family law. As a matter of fact, I will tell you that in November of 1996, a committee was appointed by this Government to look at family law reform. That committee reported and based on that report, it identified five priority areas which were in need of reform. These areas were:

The establishment of a children's authority;

The need to introduce a proper system of foster care reforms to the Adoption of Children Act;

The licensing of child care and day care centres; and

The establishment of a family court.

You would recall that with respect to the family court bill the Law Commission prepared a paper in 1982 and, for the first time, a bill was introduced in the Parliament in 1986 but the bill was withdrawn from the Parliament. Since that time to the time we took office, nothing was done in respect of that family court bill, so I do not think that I could sit here and allow these statements to be made, giving the impression that we have procrastinated in these matters. On the other hand, we have expedited these matters.

I will take the opportunity to say that since this report in 1996, there has been much consultation. As a matter of fact, as part of the family law reform, there was a Cohabital Relationships Bill, because that was a matter in the 1981 legislation in respect of succession matters. There was a situation where we had to recognize that these relationships existed and, coming out of these matters, this Government went ahead with that.

The Domestic Violence Act and the reforms that are coming are as a result of what happened during the term of this administration, bearing in mind that since 1990, the Law Commission had proposed legislation for reform of the domestic violence laws in Trinidad and Tobago.

So, to give the impression that the PNM government had this on the burner, that we had extinguished it for a period of time and we are now coming with this matter, is not correct.

For example, one of the distinguished Senators here, Sen. Diana Mahabir-Wyatt, had raised the issue some time ago about the Succession Act in relation to children not born as a result of lawful marriages not being able to benefit and we gave an undertaking. Based on that, we are also in the process and we have actually drafted a dependants relief and succession bill which will give dependants of a testator the right to apply to the courts for reasonable provisions to be made out of the net estate of a deceased testator who had failed to provide adequately for those persons. All this had to deal with children in situations like these.

We are also finalizing a revised adoption reform bill which would, in effect, reform the law in respect of adoption. In a few weeks' time, some of these matters will form part of the package which we have now put together. No package was there. As a matter of fact, we have put together a maintenance orders facility for enforcement bill which seeks to replace the old law and which would satisfy the demand for the international enforcement of maintenance obligations. The bill seeks to repeal a 1920 law and proposes to put forward mechanisms which would facilitate the enforcement of maintenance orders by nationals of Trinidad and Tobago resident abroad and would also enable this state to offer and grant such facilities to nationals of other states. It has to do with maintenance of children, whether they live in or out of Trinidad and Tobago but are born from nationals of Trinidad and Tobago.

Mr. Vice-President, there is also the Matrimonial Proceedings and Property Act which is also being revised in order to have it reformed. There is also going to be the matter of looking at the mediation process in respect of divorce matters on a specialized basis and we are reforming the Children Act in relation to children's homes and institutions.

There was a task force appointed with recommendations made. That is being done in order to implement the obligations which this country took in respect of the United Nations Convention on the Rights of the Child.

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So, to say that these measures were there and were not implemented is not correct. As a matter of fact, I think it would be correct to say that this area of legislation has been neglected—the laws relating to family and children, and children reform and family law reform—by the past administration. I am happy to see they are supporting measures like these because these measures should have come here years ago. They are long overdue.

**Sen. Yuille-Williams:** Mr. Vice-President, I do not know whether the response that the hon. Attorney General was making when he spoke about “package” was in reference to what I said. I did not talk about packets of legislation, I talked about this Community Mediation Bill in terms of what was given to Dr. Deosaran and his team to do and I talked about the supportive programmes, which I think the Minister has clearly showed the existence of—the Geriatric/Adolescent Partnership (GAP); the Retirees/Adolescent Partnership (RAP); Community Policing; Civilian Conservation Corps; and as he quite rightly said, the Police Youth Club. I am talking about the programmes which were there. I do not know if anybody else here talked about a package of legislation. If you did get that from me, I think it is incorrect; that is not what I referred to at all.

**7.15 p.m.**

**Hon. R. L. Maharaj:** I am very indebted, therefore, if there is agreement that there was no package of legislative measures in order to deal with family reform, but I think the Senator did mention it and that has been responded to and I think we are *ad idem* on the fact that we need those kinds of measures.

Mr. Vice-President, in relation to this Bill itself, I think that we must understand that it is not going to take away the right of the court to deal with these matters. The court would only be able to offer mediation if the two parties agree, so if any of the parties does not want mediation, there is no basis for a compulsory order of mediation.

The second matter is that this is going to be a service provided by the state and initially, it could not be in all parts of the country. Based on the task force report, there had to be three areas to start with: Cunupia, San Juan and Scarborough and it is on that basis that this administration decided it was going to start with persons who are public officers trained to do this job. Therefore, there was a training programme and 12 persons have already been trained in the mediation procedures and there are further training programmes being conducted.

Mr. Vice-President, if the training centres are equipped with public officers who are trained for this particular kind of job and it is felt that there is need for other help from private enterprise, the Cabinet has the authority to employ persons on contract; that has been happening all the time. The question of where we are going to get the mediators, that is the answer to it.

If one looks at the Bill, one sees that it is recognized that there must be qualification and clause 17 says:

“The Minister may make regulations for the carrying out of the objects of this Act and, without limiting the generality of the foregoing may make regulations prescribing—

- (a) the method of accreditation and the qualification requirement for the Mediator in each particular case ;”

For example, a mediator in an assault and battery case would not have the same kind of qualification for mediators in respect of family matters. Therefore, one would have to have different criteria in the regulation, and the mediator would have to fulfil those criteria. The aim is to get standards, that is why there will be ethical standards to be observed by the mediator in the performance of his duties. The Bill shows that there would be regulations and standards and obviously if it starts to function and is not functioning well, there are avenues to challenge it—when I say to challenge it—in the Parliament.

I want to give the assurance that the aim of the Government is to provide a service to the population so that persons can utilize the service even before they go to court. That is why there are situations where, in respect of civil matters and there can be mutual agreement for mediation, the services would be available to persons before they go to court and during the court process. Any time during that process: that year, or year and three months, if one of the parties believes he or she does not want the mediation, he or she can apply and the court would have to vacate the order because it has to be by consent.

The aim of it therefore, is that in the criminal matter, there would not be a situation of reaching section 71 of the Summary Courts Act because if the matter is determined by mediation, it is as if the case were not there and that is the whole purpose, to get rid of the record and the person having to go to court, and the necessity of the person having to go through the penal system.

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Mr. Vice-President, I am indebted to Sen. Dr. Mc Kenzie, she is not here, but she wrote me a note and if I may say so, she obviously understood that what we are trying to do initially is to deal with the criminal matters in which it would be as if it were between individuals. So when one looked at an assault and battery, aggravated assault, damaging property and the other offences, it is to start off this process because it is a new one. If it is started with robbery, drug trafficking and matters like those, one would find that those are persons, from the statistics, who are not necessarily the first offenders. Therefore, what we wanted to do was to start off the process with matters like these, and as the system progresses and confidence in the system and expertise grow, we would be able to expand it. That is the purpose of limiting it in this way. If we take on the robbery and the drug trafficking and those matters, we may not be able to man the system initially. I give the assurance, as I gave in the other place, that it is recognized that we would have to increase these offences and we are committed to do it, but we would have to do it on an incremental stage.

With respect to the issue of expanding it with respect to payments made to public servants on retirement, may I say that one recognizes that there is that injustice and there should be ways to correct that, but I think this is the wrong Bill to put that in because that would be dealing with claims by individuals as against the state. Maybe we should look at reforms, or the laws governing the Ombudsman to see whether there should not be some kind of procedure to deal with those matters on an expeditious basis, but to deal with that in a claim against the state in a Bill like this, would not be the right place to deal with it.

I do recognize that it is a serious problem and as the Senator would recognize, it has been a problem which has been in existence for years now, and the fact that it has been existing for years and nothing has been done about it, is no excuse not to deal with it. The problem has to be dealt with and I wish to give the undertaking that I made a note of it and the Law Commission has prepared a Bill in order to reform some of the powers of the Ombudsman which I would try to get into.

It has been said by my good friend Sen. Shabazz, "bill, bill, and more bill": yet, the Opposition is calling for reform; it is calling for the system to change, for new rules to be put in place, and for reform of legislation. Mr. Vice-President, one of the duties of Parliament is to pass laws. Under the democracy which we have, laws cannot be changed except by reforming the laws, revising the laws and enacting new ones and that is the most important function of Parliament. The laws cannot be changed by decree; that would be unconstitutional. I would have thought that



the Opposition would have recognized that we have to have bills. I understand that what we are doing would have taken the PNM 34 years to bring some of these bills and they cannot understand how they are coming out so quickly. *[Laughter]* I do apologize if they are too much to read, and there is no time to read them, or there are other things to do. We are committed to certain reforms and we would have to have bills, bills, bills and more bills.

With respect to some of the matters, I must say that Sen. Mahabir-Wyatt has persuaded me to exclude the domestic violence and I think she has made a very strong case in having it excluded, and I wish to say that we would exclude it. I thank her very much for her contribution on that point, because when one examines the argument, one sees there could be more injustice done in having it included.

With respect to Sen. Prof. Spence's proposed amendments of clause 3, that a person who has not been charged with an offence—he made the point that it is not so much that particular measure, but it involves an important principle and the principle is that there is a presumption of innocence in our law and the fact that a man is charged, does not make him guilty and if a measure like this is put into legislation, it can be a serious precedent. I must say that this is one of the matters which have attracted my attention and on review of the matter, I agree with Sen. Prof. Spence and the amendment would be effected accordingly. With respect to the other matter which Sen. Prof. Spence has raised, I want to offer him an explanation and see whether he would agree with that.

Mr. Vice-President, if a case starts and one has to have mediation, there would have been evidence already, that is why we try to put in the Bill, at least for the initial stages, for when the matter is called up and there is no commencement of the matter.

I do not propose to deal with each point which has been made but I think I have dealt with all the issues which have been raised.

**Sen. Yuille-Williams:** You said that 12 public officers were already trained. Could you tell us who trained them and in what aspects of the mediation? There are the civil and criminal aspects. What has happened to the offer of the University of the West Indies in terms of training mediators? Could you please enlighten us on that?

**Hon. R. L. Maharaj:** All I can say is that I understand that the University of the West Indies was involved in the training and 12 persons have been trained. I do not know all the details of the training. They have been trained under the Ministry of Social Development in family mediation procedures. The training is also continuing and there is a training programme with respect to the mediation for criminal matters which is going to be developed and would take place. I am also informed that there is also expertise from abroad who would come.

I am glad this question was raised because sometimes we seem to resist that we have to get expertise in areas in which these things have succeeded. For example, when we had the Community Service Orders Bill and we had to go to Zimbabwe in Africa where that has worked quite well, we sent persons from the Ministry of Social Development and the Ministry of the Attorney General to Zimbabwe and it proved quite helpful in the implementation of that particular law. Similarly, this is a concept which we had never done; no country in the Caribbean has done it, no country has institutionalized it in this way and we have to look at systems which are similar to ours.

Apart from doing this, if we get offers from countries which have had it and we can get assistance, we should not refuse it. We are living in a global village and, therefore, we have to be able to accommodate without probably agreeing at all times to what other people do. That is why we have adopted the policy that we have to work with the communities and the non-governmental organizations in implementing alternative methods for punishment in these matters.

**7.30 p.m.**

It is in this context that although we are using the expertise at the University of the West Indies, we recognize that there is experience in other countries from which the country can benefit.

**Sen. Dr. St. Cyr:** Mr. Vice-President, would the hon. Attorney General permit me one question. I see under clause 9 reference to "attends a school", which means that some of the people to whom this Bill would apply would be minors. Would their parents have the authority to consent to mediation on their behalf? How would that work?

**Hon. R. L. Maharaj:** "Attends a school" may not necessarily mean—it could be a 17 or 18 year old.

**Sen. Dr. St. Cyr:** But the general principle of the minors. How would minors be treated?

**Hon. R. L. Maharaj:** There is a principle in court that, as long as the person is a minor, the magistrate would not deal with it unless the parent or guardian is there. But there may be instances where a person is not a minor and would be going to school. The law is that as long as in the criminal jurisdiction there is a minor, the person would not be able to go to court and the magistrate would not listen. But it is not something that should have to be specified.

Mr. Vice-President, I beg to move that the Community Mediation Bill be now read a second time.

*Question put and agreed to.*

*Bill accordingly read a second time.*

*Bill committed to a committee of the whole Senate.*

*Senate in committee.*

**Mr. Chairman:** We have circulated in front of us four sets of amendments. One by the hon. Attorney General, one by Sen. Prof. Spence, one by Sen. Joan Yuille-Williams and the fourth by Sen. Diana Mahabir-Wyatt. We have 21 clauses and three Schedules.

*Clause 1*

*Question proposed, That clause 1 stand part of the Bill.*

**Mr. Maharaj:** Mr. Chairman, may I propose the amendment; instead of "1997" it should be "1998".

**Mr. Chairman:** Okay, the short title will be "The Community Mediation Act, 1998".

*Question put and agreed to.*

*Clause 1, as amended, ordered to stand part of the Bill.*

*Clause 2 ordered to stand part of the Bill.*

*Clause 3*

*Question proposed, That clause 3 stand part of the Bill.*

**Sen. Prof. Spence:** Mr. Chairman, I wish to amend clause 3 as follows:

(i) Delete the words 'charged with or' at the beginning of line three.

Mr. Chairman, I wish to withdraw the second part of my amendment.

*Amendment withdrawn.*

*Question put and agreed to.*

*Clause 3, as amended, ordered to stand part of the Bill.*

*Clause 4 ordered to stand part of the Bill.*

*Clause 5*

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

**Sen. Prof. Spence:** I wish to withdraw the following amendment:

5 In subclause (1) line 4, add the words 'at any time' after the word 'complaint'.

*Amendment withdrawn.*

*Clause 5 ordered to stand part of the Bill.*

*Clause 6 ordered to stand part of the Bill.*

*Clause 7*

*Question proposed, That clause 7 stand part of the Bill.*

**Mr. Maharaj:** Mr. Chairman, I propose that clause 7 of the Bill be amended as follows:

7(1) A. Insert at the end of paragraph (d) the words 'in the prescribed form'."

B. Delete paragraph (a) and substitute the following—

'(a) it is satisfied that the complaint is in respect of a matter listed under the First Schedule'.

*Question put and agreed to.*

*Clause 7, as amended, ordered to stand part of the Bill.*

*Clause 8*

*Question proposed, That clause 8 stand part of the Bill.*

**Mr. Maharaj:** Mr. Chairman, I beg to move that clause 8 be amended as follows:

- 8(2) Substitute for the word 'resume' in the last line of paragraph (c) of subsection (2), the word 'commence'.

*Question put and agreed to.*

*Clause 8, as amended, ordered to stand part of the Bill.*

*Clauses 9 and 10 ordered to stand part of the Bill.*

*Clause 11*

*Question proposed, That clause 11 stand part of the Bill.*

**Mr. Maharaj:** Mr. Chairman, I propose that clause 11 be amended as follows:

- 11 Substitute for the word 'resume' in the first line of paragraph (b) the word 'commence'.

*Question put and agreed to.*

*Clause 11, as amended, ordered to stand part of the Bill.*

*Clause 12*

*Question proposed, That clause 12 stand part of the Bill.*

**Mr. Maharaj:** Mr. Chairman, I wish to withdraw the following amendment:

- 12 Insert the words 'or any other person' after the word 'complainant' in subsection (3).

*Amendment withdrawn.*

*Question put and agreed to.*

*Clause 12 ordered to stand part of the Bill.*

*Clause 13 ordered to stand part of the Bill.*

*Clause 14*

*Question proposed, That clause 14 stand part of the Bill.*

**Sen. Mahabir-Wyatt:** Mr. Chairman, I have an amendment to clause 14 to delete subclause (1)(e).

**Mr. Maharaj:** Mr. Chairman, we support that amendment. May I also propose that 14(3) be amended as follows:

"14(3) Substitute for the word 'complaint' in paragraph '(c)' the word 'application'."

**Sen. Yuille-Williams:** Mr. Chairman, I have listened to the response of the hon. Minister on the problems of overpayment to public servants. I think he appreciated the problem and I think he has also given the guarantee that he will address this shortly in another area. Therefore, if this is so, and I know it will be addressed, I wish to withdraw the amendment as follows:

14 After subclause (i)(e) add (f) to read as follows:

'(f) Matters arising under the Civil Service Act 23:01, the Statutory Authorities Service Commission Act 24:01 and the Regulations made thereunder and/or other Acts of Parliament and regulations made thereunder regulating the relationship between the state and its employees'.

*Amendment withdrawn.*

**Sen. Mohammed:** Mr. Chairman, in clause 14, there is a minor typographical error 14(1)(b) where it should be "decree" instead of "degree".

**Mr. Maharaj:** Thanks a lot. Mr. Chairman, may I explain what I am amending in 14(3)(c). It seems as though the draftspersons used the words "complaint" for a civil matter and they substituted "suspending its hearing of the application", but I would want to reamend that. It really should be "suspending its hearing of the matter". Instead of "complaint" or "application", it should be "matter". So clause 14(3)(c) should now read:

"(c) suspending its hearing of the matter."

*Question put and agreed to.*

*Clause 14, as amended, ordered to stand part of the Bill.*

**7.45 p.m.**

*Clause 15*

*Question proposed, That clause 15 stand part of the Bill.*

**Mr. Chairman:** There has been a circulated amendment by the Attorney General.

**Mr. Maharaj:** Mr. Chairman, I do propose that the clause be amended as follows:

Substitute for the word 'may' in the last line of subsection (1), the word 'shall'.

*Question put and agreed to.*

*Clause 15, as amended ordered to stand part of the Bill.*

*Clause 16*

*Question proposed, That clause 16 stand part of the Bill.*

**Mr. Maharaj:** Mr. Chairman, I propose that clause 16 be amended as follows:

16(2) Substitute for the words 'whom he considers' the word 'who' in lines three to four of paragraph (a)."

What we have to do there is really cosmetic.

**Sen. Marshall:** Clause 16(a) states:

"co-opt with the agreement of the parties"

I suggest that there should be a comma after "parties" and removal of the word "or". It would then read:

"co-opt with the agreement of the parties, persons from the community..."

**Mr. Maharaj:** Yes.

**Mr. Chairman:** Subparagraph (a) would then read:

"co-opt with the agreement of the parties, persons from the community in which the mediation centre is located, who may have expertise or the type of influence required for the particular mediation process; and"

*Question put and agreed to.*

*Clause 16, as amended, ordered to stand part of the Bill.*

*Clause 17 ordered to stand part of the Bill.*

*Clause 18*

*Question proposed, That clause 18 stand part of the Bill.*

**Sen. Dr. St. Cyr:** Mr. Chairman, should clause 18 be subject to parliamentary resolution? It seems that important—our being able to.

**Mr. Maharaj:** What I propose to do is delete clause 18 because under 14(4) the Minister is given power to add to the schedule, not take away what Parliament has agreed to. I beg to move the deletion of clause 18.

**Sen. Mahabir-Wyatt:** Mr. Chairman, I am not sure that I understand. Is clause 14(4) the same as clause 18, because subsection (4) says:

"...prescribe any other matters..."

**Mr. Maharaj:** In clause 18 it could mean add or take away. The way it is done in clause 14(4). It says:

"may... prescribe any other matters."

So the Minister may prescribe any other matter, but he cannot take away what has been agreed to by Parliament. It is in that context I propose to delete clause 18. [*Cross talk*]

**Sen. Mahabir-Wyatt:** I think that there is a typographical error there. It should be "may by" not "may be".

**Mr. Maharaj:** We recognize there are some grammatical errors. They could be corrected at the drafting.

*Question put and agreed to.*

*Clause 18 deleted.*

**Mr. Chairman:** The subsequent clauses would now be renumbered 18—20 as opposed to 19—21.

*Clauses 18, 19 and 20, as renumbered ordered to stand part of the Bill.*

*Schedule 1.*

*Question proposed, That the First Schedule stand part of the Bill.*

**Sen. Yuille-Williams:** Mr. Chairman, I did not agree with the Attorney General's response to the fact that robbery should not be included because I feel that the Bill is weakened by the omission. It has become toothless. I am not going to press it, but I hope that it would very shortly include robbery on that Schedule, otherwise it would not be addressing the problems we have at the moment.

**Mr. Chairman:** Are there any other comments on the First Schedule?

*Question put and agreed to.*



*Community Mediation Bill*

*Tuesday, July 07, 1998*

*Schedule 1 ordered to stand part of the Bill.*

*Schedule 2*

**Mr. Chairman:** The heading of it would change from 1997 to 1998.

*Question put and agreed to.*

*Schedule 2, as amended, ordered to stand part of the Bill.*

*Schedule 3 ordered to stand part of the Bill.*

*Question put and agreed to,* That the Bill, as amended, be reported to the Senate.

*Senate resumed.*

*Bill reported, with amendment; read the third time and passed.*

#### ADJOURNMENT

**The Minister of Public Administration (Sen. The Hon. Wade Mark):** Mr. Vice-President, I beg to move that this Senate do now adjourn to Tuesday, July 14, 1998 at 1.30 p.m.

Last week we did indicate that we would be going on to the Cohabital Relationships Bill but we have deferred this matter until maybe sometime in the not-too-distant future in terms of late July. In the meantime we are going to proceed with Bill No. 5 which is the Squatters Regularisation Bill.

We also propose that if we are able to complete that Bill, we will then deal with Bill No. 6, the Summary Offences (Amdt.) Bill and thereafter go to Bill No. 7, the Prisons (Amdt.) Bill.

I inform my fellow senatorial colleagues to be prepared for any activities next Tuesday. We give the Senators three Bills to prepare for.

*Question put and agreed to.*

*Senate adjourned accordingly.*

*Adjourned at 7.57p.m.*