

**SENATE***Tuesday, July 04, 2000*

The Senate met at 10.30 a.m.

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

**Mr. President:** Hon. Senators, leave of absence from sitting of the Senate has been granted to Sen. Vimala Tota-Maharaj during the period July 2, 2000 to July 8, 2000.

**SENATOR'S APPOINTMENT**

**Mr. President:** Hon. Senators, I have received the following correspondence from the Office of the President of the Republic of Trinidad and Tobago:

“THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO

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

\s\ Arthur N. R. Robinson  
President.

TO: MR. VINCENT CABRERA

WHEREAS Senator Vimala Tota-Maharaj is incapable of performing her functions as a Senator by reason of her absence from Trinidad and Tobago:

NOW, THEREFORE, I, ARTHUR N. R. ROBINSON, President as aforesaid, acting in accordance with the advice of the Prime Minister, in exercise of the power vested in me by section 44 of the Constitution of the Republic of Trinidad and Tobago, do hereby appoint you, VINCENT CABRERA, to be temporarily a member of the Senate, with effect from 4th July, 2000 and continuing during the absence from Trinidad and Tobago of the said Senator Vimala Tota-Maharaj.

Given under my Hand and the Seal of the President of  
the Republic of Trinidad and Tobago at the  
Office of the President, St. Ann's, this 3rd day of  
July, 2000.”

**COMMITTEES  
(Appointment to)**

**Mr. President:** Hon. Senators, I have appointed Sen. Jearlean John to the following committees replacing former Sen. Carol Cuffy Dowlat:

- (i) The Public Accounts Enterprises Committee;
- (ii) The Joint Select Committees of:
  - (1) The Reform of the Management Structure of the Parliament of Trinidad and Tobago;
  - (2) The Human Reproductive and Genetic Technologies (No. 2) Bill, 1999; and
- (iii) The Special Select Committee on the Shipping Marine Pollution Bill, 1999.

**CONDOLENCES**

**(MRS. ELMINA CLARKE-ALLEN)**

**Mr. President:** Hon. Senators, the Senate now pays tribute to a former parliamentarian, Mrs. Elmina Cynthia Clarke-Allen who passed away in Canada on Tuesday, June 27, 2000 and who will be interred on Thursday, July 6, 2000 in her home town Sangre Grande. The late Member was a former teacher, social worker, Senator and an elected Member of Parliament. She first joined the Parliament during the 1976—1981 parliamentary term having been appointed a Senator and served as a Parliamentary Secretary, firstly, in the Ministry of Education and Culture, and then later on during the said parliamentary term, as a Minister in the Ministry of Labour, Social Security and Co-operatives. In 1981, she fought the General Election and won the Toco/Manzanilla seat, and was thereafter appointed a Minister in the Ministry of Housing and Resettlement.

During her tenure, she represented this country at many conferences abroad, particularly conferences dealing with the status of women. The late Member leaves two nieces to mourn their loss.

On behalf of the Senate, I convey condolences to the bereaved family and the Clerk of the Senate has been instructed to send an appropriate letter of condolence. Members wishing to pay tribute may do so now.

**The Minister of Public Administration (Sen. The Hon. Wade Mark):** Mr. President, on behalf of the Government of Trinidad and Tobago, I would like to express our heartfelt condolence to the family of the late Elmina Cynthia Clarke-Allen. Her passing is, indeed, a great loss to the citizens of this country. It is

understood that she came from a generation of people who rendered their services to their community without hoping to be rewarded. I know it is not only the members of her family who will miss her, but also her former colleagues of the People's National Movement, and also the very large community of Trinidad and Tobago.

Mr. President, in celebrating the life of Elmina Cynthia Clarke-Allen we must recognize the contributions she made to this country. Many who knew her have claimed that she was a tower of strength and a great community worker, who was always willing to assist the less fortunate in the community. She is well remembered for her sterling contribution in many areas of national development. As a former teacher and social worker, Mrs. Clarke-Allen is said to have worked tirelessly in her pursuit of promoting the welfare of women in this country.

Indeed, she was well known for her involvement with several women's organizations having held the position of Chairman of the PNM Women's League, the Child Welfare League and the Day Nursery Association in St. Andrews County. She was also Commissioner of the Girl Guides Association and a member of the Federation of Women's Institutes and Groups.

Mr. President, as a former Member of Parliament, Elmina Clarke-Allen is well remembered for her devotion towards her constituents of Toco/Manzanilla where she served as a Member of Parliament from 1981 to 1986. Her history has been lauded in many areas already, and we just wish to join the national community in expressing our condolences on her passing.

May her soul rest in peace.

**Sen. Nafeesa Mohammed:** Mr. President, it is very sad for me to stand here this morning—having just returned to this august Chamber after experiencing the birth of a child and celebrating life—to pay tribute to yet another Member of Parliament who has passed from this world and has now gone to the great beyond.

The late Mrs. Elmina Clarke-Allen died last Tuesday at a hospital in Canada. Mrs. Clarke-Allen as we just heard had served as a PNM Senator between 1976 and 1981 and as a Minister in the Ministry of Labour, Social Security and Co-operatives under the stewardship of the late Dr. Eric Eustace Williams. In 1981 she became the Member of Parliament for the Toco/Manzanilla constituency, and was made a Minister in the Ministry of Housing and Resettlement in the George Chambers administration.

*Condolences)*  
[SEN. MOHAMMED]

*Tuesday, July 4, 2000*

**10.40 a.m.**

As my colleague just indicated, Mrs. Clarke-Allen served as Chairman of the PNM's Women's League and as Chairman of the Child Welfare League, St. Andrew and the Day Nursery Association, St. Andrew. She was a Commissioner of the Girl Guides Association and a member of the Federation of Women's Institutes and Groups in the St. Andrews and St. David's area.

From her activities in these areas, Mr. President, it is clear that Mrs. Elmina Clarke-Allen will be remembered as a grassroots woman; a very strong and dedicated community worker who was a team player and who was indeed a role model in our society. Most of all, she will be remembered by us as being a party stalwart who promoted the welfare of women, and so strong was her commitment and her involvement in the promotion of women's affairs and women's issues that my information is that just prior to her death, she even requested that women be her pallbearers at her funeral, and so it is going to be.

It is said that service to mankind is service to God. The late Mrs. Elmina Clarke-Allen was dedicated to serving not just the People's National Movement but, indeed, her community and certainly the country. On behalf of all my colleagues on this side of the House and on behalf of the People's National Movement, I extend condolences to the bereaved family of the late Mrs. Elmina Cynthia Clarke-Allen and as it is often said, it is from God we came and to God is our eventual return.

Thank you, Mr. President.

**Sen. Dr. Eric St. Cyr:** Mr. President, on behalf of the Independent Senators and on my own behalf, I join this honourable House in paying tribute to the life of Mrs. Elmina Clarke-Allen. Teacher, social worker, parliamentarian, minister of government, Mrs. Clarke-Allen epitomized a generation now sadly passing where service is given for the sake of serving our fellow human being. An end to all good things must be, and so, even as we mourn her loss, we have to keep pressing on.

On behalf of myself and the Independent Senators, we extend condolences to the family and all associated closely with her.

Thank you, Sir.

**Mr. President:** Hon. Members, as a mark of respect, I ask all to stand in a minute's silence please.

*The Senate stood.*

**OATH OF ALLEGIANCE**

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

**PAPERS LAID**

1. Second Report of the Auditor General of the Republic of Trinidad and Tobago on the Accounts of the Arima Corporation for the year ended December 31, 1987. [*The Minister of Public Administration (Sen. The Hon. Wade Mark)*]
2. Report of the Auditor General on the Accounts of the Arima Corporation for the year ended December 31, 1988. [*Sen. The Hon. W. Mark*]
3. Annual Audited Financial Statements of Taurus Services Limited for the year ended September 30, 1998. [*Sen. The Hon. W. Mark*]
4. Annual Audited Financial Statements of Taurus Services Limited for the year ended September 30, 1999. [*Sen. The Hon. W. Mark*]
5. Annual Audited Financial Statements of the Tourism and Industrial Development Company of Trinidad and Tobago Limited for the year ended September 30, 1998. [*Sen. The Hon. W. Mark*]
6. Report of the Auditor General of the Republic of Trinidad and Tobago on the Accounts and Financial Statements of the Sugar Industry Labour Welfare Committee for the year ended December 31, 1992. [*Sen. The Hon. W. Mark*]
7. Report of the Auditor General of the Republic of Trinidad and Tobago on the Accounts and Financial Statements of the Sugar Industry Labour Welfare Committee for the year ended December 31, 1993. [*Sen. The Hon. W. Mark*]
8. Report of the Auditor General of the Republic of Trinidad and Tobago on the Accounts and Financial Statements of the Sugar Industry Labour Welfare Committee for the year ended December 31, 1994. [*Sen. The Hon. W. Mark*]

**PRAEDIAL LARCENY PREVENTION (AMDT.) BILL****Presentation**

**Sen. Brig. The Hon. Joseph Theodore:** Mr. President, I beg to present the report of the Special Select Committee of the Senate appointed to consider and report on a Bill to amend the Praedial Larceny Prevention Act, Chap. 10:03 and a Bill to amend the Summary Offences Act, Chap. 11:02.

**SPECIAL RESERVE POLICE  
(REGULARIZATION)**

**The Minister of National Security (Sen. Brig. The Hon. Joseph Theodore):** Mr. President, I wish to thank you for the opportunity to address this House this morning. Hon. Senators would recall that on December 12, 1999 I addressed, in a fairly comprehensive manner, the whole question of the lack of promotional opportunities for Special Reserve Police. In my response at that time, I provided a historical background of the Special Reserve Police, I examined the structure, detailed the sanctioned strength and highlighted special instances in which some Special Reserve Police had been recruited into the regular police service. I also noted that given the constraints which existed with respect to regularizing Special Reserve Police, the most appropriate intervention was the drafting of specific regulations to govern the Terms and Conditions of Special Reserve Police.

Mr. President, it was recognized that in light of the many factors militating against regularization, the next best option would have been to enhance the terms and conditions offered to the Special Reserve Police. It is with some measure of satisfaction I now inform you that the Government has taken the decision to absorb eligible Special Reserve Police into the Trinidad and Tobago Police Service effective August 1, 2000. I wish to assure hon. Senators that this decision was not taken lightly. As noted earlier, work had been ongoing with respect to enhancing the terms and conditions of the Special Reserve Police. In fact, a Cabinet Legislation and Parliamentary Committee had been specially convened to consider the development of the Special Reserve Police Terms and Conditions of Employment Regulations, 1999.

As the committee sought to address all the ramifications of offering benefits to Special Reserve Police who would have originally been called out for part-time duty, but whose services extended to full-time duty, it became clear that it was no longer a feasible option to develop regulations that would not necessarily be in tandem with the current provisions of the Special Reserve Police Act, Chap. 15:03. Mr. President, the committee thus determined that the most effective solution would be the absorption of Special Reserve Police employed in full-time duties into the Trinidad and Tobago Police Service. [*Desk thumping*]

This decision was endorsed by Cabinet on April 1, 2000 whereby it was agreed in principle that absorption would encompass those Special Reserve Police who had been continuously employed on a full-time basis for periods in excess of

two years. It was also agreed that the practice of utilizing the services of additional Special Reserve Police for extended periods on a full-time basis would be discontinued with immediate effect.

Mr. President, most importantly, the Ministry of National Security was mandated to determine the mechanisms by which absorption would be effected. It is my intention to approach Cabinet within the next 10 days on the absorption of the Special Reserve Police.

One would understand that given the fluid structure of the Special Reserve Police and the various anomalies which existed in managing the Special Reserve Police, effecting these decisions required extensive discussion, consideration had to be given to the factors which would impact upon the absorption process and these include:

1. The rank at which the Special Reserve Police should be absorbed into the Trinidad and Tobago Police Service.
2. The criteria to be waived.
3. The mandatory criteria to qualify for absorption.
4. The anticipated expenditure once absorption is effected.
5. The type of training programme which should be developed to bridge the skills competencies gap between Special Reserve Police and officers of the Trinidad and Tobago Police Service.
6. The type of separation package which should be offered to Special Reserve Police who opt to terminate their services.
7. The retirement benefits applicable to those Special Reserve Police who are absorbed into the regular police service.

Mr. President, after due deliberation, it was decided that the following criteria would be waived to facilitate the entry of Special Reserve Police into the Trinidad and Tobago Police Service:

Academic qualifications: The entry qualifications for recruits into the regular police service is three CXC subjects inclusive of English and any other two subjects.

The qualification for appointment under the Special Reserve Police Act, Chap: 15:03, requires the candidate to be 18 years and over, of good character and able bodied.

**Physical requirements:** Entry into the regular police service requires a good physique, at least 5 ft. 6½ in. in height in the case of men, and 5 ft. 4½ in. in the case of women. It is to be noted that this waiver will not negate the need for all Special Reserve Police to successfully pass a medical examination to determine fitness for duty in the Trinidad and Tobago Police Service.

**Age requirements:** A regular police recruit is required to be not less than 18 years and not more than 35 years of age. However in this instance, Special Reserve Police will be absorbed despite their having already attained or surpassed the age of 35 years.

Mr. President, let me assure the Senate that even as the decision was taken to waive these criteria, it was recognized that various untenable employee relations issues would arise in attempting to accommodate Special Reserve Police alongside regular police who had met the entry requirements for the police service and had gone through five months of training. Thus, the recommendation has been accepted to absorb Special Reserve Police into the police service at the rank of police constable. Mr. President, this is in the best interest of stable employee relations in the police service.

Absorption, however, will not be without certain checks and balances. Of necessity, certain specific criteria would have to be satisfied. For instance, Special Reserve Police who are 55 years and over cannot be absorbed into the police service, given that the age of retirement in the Second Division of the police service is 55 years. Additionally, those Special Reserve Police who are eligible for absorption would be exposed to a 10-week part-time induction training course to ensure that any existing skills and competency gaps will be comprehensively addressed to facilitate effective absorption into the Trinidad and Tobago Police Service.

**10.55 a.m.**

In order to ensure the transparency of the absorption process, the Commissioner of Police enquired and determined of the Special Reserve Police contingent, those officers who were interested in being absorbed.

Mr. President, as a consequence of this exercise, provisions are being made to increase the sanctioned strength of the police service to cater for up to 969 Special Reserve Police to be absorbed into the Trinidad and Tobago Police Service at the rank of constable. Of the 141 Special Reserve Police who would not be absorbed, 71 are 55 years and over, 24 do not wish to be absorbed and 46 are not recommended for absorption on the basis of unsatisfactory conduct and performance.



The 969 Special Reserve Police eligible for absorption will now receive a housing allowance and leave benefits which had previously been enjoyed only by regular police officers. All other terms and conditions will remain constant in keeping with the rank at which the Special Reserve Police will be absorbed. The additional cost to the Government as a result of this absorption is estimated at \$6.7 million annually.

In conclusion, I wish to inform this honourable Senate that the Chief Personnel Officer has been mandated by Cabinet to determine:

- (a) The separation package to be offered to the Special Reserve Police who cannot be and those who do not wish to be absorbed.
- (b) The retirement benefits that will be applicable to the 969 members of the Special Reserve Police who are to be absorbed into the regular police service.

Mr. President, this is indeed a landmark decision as it has brought to an end a long and trying period for these hundreds of special reserve policemen and women and their respective families. More significantly, it has been brought about through the efforts of a government led by the Hon. Basdeo Panday, Prime Minister of Trinidad and Tobago, a government which has sought to redress an outstanding situation which was allowed to continue for several decades.

I thank you, Mr. President.

#### PROCEDURAL MOTION

**The Minister of Public Administration (Sen. The Hon. Wade Mark):** Mr. President, I seek leave of the Senate to deal with Motion No. 3 on the Supplemental Order Paper followed by "Bills Second Reading".

*Question put and agreed to.*

#### SPECIAL SELECT COMMITTEE INTERIM REPORT

#### **Praedial Larceny Prevention (Amdt.) Bill**

#### **Summary Offences (Amdt.) Bill**

#### **Adoption**

**The Minister of National Security (Sen. Brig. The Hon. Joseph Theodore):** Mr. President, I beg to move the following Motion standing in my name:

*Be it resolved* that the Senate adopt the Interim Report of the Special Select Committee of the Senate appointed to consider and report on a bill entitled "An Act to amend the Praedial Larceny Prevention Act, Chap. 10:03" and a bill entitled "An Act to amend the Summary Offences Act, Chap. 11:02".

*S.S.C. Interim Report*  
[SEN. BRIG THE HON. J. THEODORE]

*Tuesday, July 4, 2000*

The Senate, by Motion made at a sitting held on Thursday, June 1, 2000, appointed the following Members to serve on a Special Select Committee to consider and report on a bill to amend the Praedial Larceny Prevention Act, Chap. 10:03 and a bill to amend the Summary Offences Act, Chap. 11:02 by June 20, 2000:

|                       |          |
|-----------------------|----------|
| Brig. Joseph Theodore | Chairman |
| Prof. John Spence     | Member   |
| Vimala Tota-Maharaj   | Member   |
| Jearlean John         | Member   |
| Danny Montano         | Member   |

Your Committee has, to date, held five meetings on the following dates:

Tuesday, June 6;  
Thursday, June 8;  
Saturday, June 10;  
Thursday, June 15;  
Thursday, June 29.

Your Committee wishes to report that it has not yet completed its deliberations and submits this report in accordance with the provisions of Standing Order 51(2).

Thank you, Mr. President.

*Question proposed.*

*[Cellular phone goes off in Chamber]*

**Mr. President:** Where is that taking place? Whose is it?

Please, please Senators and those strangers in the gallery, make sure that your cellular phones are switched off. We do not wish to have any further disturbance.

**The Minister of National Security (Sen. Brig. The Hon. Joseph Theodore):** Mr. President, I beg to move.

*Question put and agreed to.*

*Report adopted.*

**MINERALS (NO. 2) BILL**

*Order for second reading read.*

**The Minister of Energy and Energy Industries (Sen. The Hon. Finbar Gangar):** Mr. President, I beg to move,

That a Bill to regulate mining and to provide for matters connected therewith or incidental thereto, be now read a second time.

It is indeed my pleasure and honour to be afforded an opportunity to table such a historic and landmark piece of legislation, that is, the Minerals Bill, 2000, in this honourable Senate for the consideration of this honourable Senate.

Mr. President, you would be aware that about three weeks ago, we started debate on this particular Bill but we had to abort it because the wrong bill was, in fact, tabled to hon. Senators. At that sitting of this honourable Senate, the correct Bill was, in fact, tabled and I hope that Senators would have gotten ample opportunity to look in detail at the contents of this particular Bill and we are prepared this morning to go through in some detail.

Mr. President, the Minerals Bill, 2000, has the intention of creating a one-stop shop for the application and granting of licences for the mining of metallic and non-metallic minerals on both state and private lands in Trinidad and Tobago. It is indeed one of the most far-reaching pieces of legislation for the regulation of an entire industry in Trinidad and Tobago and, in fact, is one of the most comprehensive pieces of legislation associated with the energy sector, comparable to the Petroleum Act of the early 1970s.

The timeliness of this Bill cannot be overstated since Trinidad and Tobago is currently experiencing a tremendous amount of economic growth, fuelled by the consistently high crude oil prices over the past 12 months, coupled with the high levels of direct foreign investment of approximately US \$7 billion over the past four and a half years.

The benefits of this high level of economic growth in Trinidad and Tobago are reflected in the number of large construction projects that are in different stages of development at the moment, such as the Piarco Airport; the Atlantic LNG Trains 2 and 3 project; the construction of the Tobago Hilton Hotel; the imminent start of the Toco Ferry Port; the Highways Rehabilitation Programme and other infrastructure work, which all require a considerable amount of construction aggregate. This current scenario is reminiscent of the oil boom and the associated construction boom of the late 1970s to mid 1980s, during which time the number of active quarries peaked from 20 in the early 1970s to over 200 in 1985, but again fell off sharply to 20 in 1995.

The current sudden increase in the demand for construction aggregate must be managed in a proper way if we are not to repeat the mistakes of the 70s and the 80s. At that time, the regulatory agencies in Trinidad and Tobago were ill-prepared to manage the upsurge in the quarrying industry and this had devastating consequences on the natural environment.

At that time, the ever-increasing demand for aggregate by the construction sector resulted in the rapid clearing of approximately 1,500 acres of virgin forest on state lands; the concurrent destruction of natural habitats and wildlife sanctuaries; the destruction of the surface and ground water hydrology; the increased run-off and sediment load to the river and overall damage to roads, bridges and coastlines in the affected areas.

This is readily apparent to all of us who are familiar with certain parts of Trinidad, particularly the eastern area. In fact, many of us who have flown over this area would have seen the damage which has been done by the most indiscriminate quarrying activities which have taken place over the past 25 years. The damage inflicted on the environment by illegal and *ad hoc* quarrying practices in a poorly regulated industry has been estimated at approximately \$20 million, based on an average restoration cost of \$4,000 per acre. These problems, associated with the poor management of the quarry industry, were exacerbated by the under-reporting of the quantum of material won from the state land quarries by the Government employed checkers and the non-payment of royalties and economic rent over the last 25 years by the quarry operators.

In terms of dollars and cents, the loss to the country was approximately \$100 million, but that pales in comparison when one considers the damage, some permanent, which has been done to our environment.

There are a number of reasons for such a situation arising, but one of the most contributory has been because the quarry industry is, in fact, regulated by eight pieces of legislation that empowered several government agencies and departments to administer certain aspects of the quarry industry which include:

- (i) The Mines, Borings and Quarries Ordinance, Chap. 61:01 of 1907, which was intended to provide for overall regulation of the industry, particularly as regards the health and safety aspects of mining.

**11.10 a.m.**

- (ii) the State Lands Act, Chap. 57:01, 1917, which serves to administer and control state lands and monitor the removal of quarry materials and the collection of rents and royalties;
- (iii) the Town and Country Planning Act, Chap. 35:01, 1960, which provided for the orderly and progressive development of land in both urban and rural areas, as well as control over land use and permission to mine on private lands;
- (iv) the Public Health Ordinance, Chap. 12:04, which empowered local authorities to control activities which threaten public health, or pose a social nuisance;
- (v) the Explosives Act, Chap. 16:02, which regulated the possession and safe use of explosives;
- (vi) the Factories Ordinance, Chap. 20:02, which provided for the general safety within factories and safeguards for working conditions in factories;
- (vii) the Water and Sewerage Authority Act and the Water Resources and Water Conservation Act, Chap. 54:40, 1965, which govern the abstraction of water from ground and surface water sources and the control of water pollution; and
- (viii) the Environmental Management Act, 1995, which serves as the umbrella legislation for the management of the environment and establishes an environmental commission to deal with matters related to enforcement of the Act.

Mr. President, of these eight pieces of legislation, the Mines, Borings and Quarries Act was the only piece of legislation that dealt specifically with quarrying: what was deficient with respect to permitting and enforcement procedures, technical standards and environmental protection.

Moreover, none of these pieces of legislation gave authority to the Minister of Energy and Energy Industries to regulate the quarrying industry, although it has been recognized that the Ministry of Energy and Energy Industries has long been regarded as the competent body to properly manage that particular industry.

It is no secret and it is no surprise that this diffuse legislative framework created an archaic and inefficient bureaucratic structure to regulate the industry which, invariably, resulted in inordinate delays in the permitting and enforcement process, arbitrary and *ad hoc* decision-making, insufficient technical studies, and

the use of inadequate technology and equipment by quarry operators, sub-economic recovery of quarriable materials, high commodity prices, low quality products, artificial shortages of supplies, larceny of quarry materials from state lands—some say downright theft—the non-restoration of abandoned quarries and the non-payment of royalties for the extraction of material from state lands. This is, indeed, a most distressing situation when one looks at it from an overview standpoint.

Based on these problems, Cabinet, by Minute 3063 of November 28, 1996, mandated the Ministry of Energy and Energy Industries to prepare an interim minerals policy: a legislative brief for the enactment of new legislation to regulate the quarry industry, and an implementation plan for the creation of a regulatory agency within the Ministry of Energy and Energy Industries, to properly manage the mining industry in Trinidad and Tobago.

To prevent a crisis in the supply of quarry products to the domestic markets, during the interim period, while the reform initiatives were being pursued, Cabinet, by Minute 1677, of July 03, 1997, accepted the proposals of the Minister of Energy and Energy Industries for the implementation of the procedural guidelines for the allocation of quarries through the competitive bidding process, and directed the Ministry of Energy and Energy Industries to host a consultation on the legislative reform and institutional strengthening of the quarrying industry. Among the relevant government ministries which were involved in the consultation process which commenced on August 13, 1997 were:

- (i) the Ministry of Works and Transport;
- (ii) the Ministry of Planning and Development;
- (iii) the Ministry of Finance;
- (iv) the Ministry of Agriculture, Land and Marine Resources;
- (v) the Ministry of Trade and Industry;
- (vi) the Ministry of Public Utilities;
- (vii) the Ministry of Labour and Co-operatives;
- (viii) the Ministry of Housing and Settlements; and
- (ix) the Ministry of Tobago Affairs.

All issues relating to the harmonizing of procedures and policies on administrative reform and industry restructuring, together with those areas of overlap between the Minerals Bill and existing legislation on matters of

environmental impact assessment studies; pollution control; health, safety and the environment; permitting and enforcement procedures; the importation, storage and handling of explosives; the collection of royalties and the establishment of mineral reserve blocks were thoroughly ventilated and resolved during that particular forum.

Follow-up meetings and discussions were also held with the key individuals from the relevant ministries, departments and the Tobago House of Assembly that have stakeholders in the management of the minerals sector. Discussions were also held with private quarry operators and the Quarries Association. By and large, Mr. President, the inputs from these processes have been incorporated into the Bill which is now before us in the form of the Minerals Bill (No. 2) 2000.

Mr. President, arising out of these deliberations, the recommendations of the Minister of Energy and Energy Industries for the interim minerals policy has been the establishment of the Minerals Division within the Ministry of Energy and Energy Industries to manage the minerals sector, and the legal brief for the drafting of the Minerals Act to regulate the industry were revised to reflect the concerns of all stakeholders in the management of the industry and were, subsequently, accepted by Cabinet in Minute 2696 of October 08, 1998.

Mr. President, the Minerals Bill, 2000 is intended to regulate the exploration for mining, processing, importation, exportation and sale of mineral deposit, and is divided into eight parts and contains a little more than 50 clauses. In fact, it contains 51 clauses. The Bill has been deliberately written in relatively simple language for all of us to understand. I have selected certain areas of the Bill to bring to the attention of this honourable Senate, rather than going through the entire 51 clauses, which would have, in fact, taken me close to three hours. That is not permitted. I will go through some of the salient points in the Bill and provide the necessary clarification for hon. Senators.

The first clause I want to draw attention to, which is a major change, is clause 5, which gives the right for minerals to the state. Clause 5 states:

“Notwithstanding any right of ownership or otherwise, which any person may have to the soil on, in, or under which minerals are found or situated, no person shall explore for or mine minerals except with the permission of the State.”

*Minerals (No. 2) Bill*  
[SEN. THE HON. F. GANGAR]

*Tuesday, July 4, 2000*

The other clause in Part I of the Bill, which I want to draw attention to is clause 6(2), which defines which minerals come under this particular Bill. Clause 6(2) states:

“Stone, clay, sea sand, gravel, tar sands, and asphalt, raw materials generally used for construction, basic manufacturing and industrial purposes and such other minerals that may be specified by Regulations shall form Common Minerals; and metallic ores, gemstones and other precious and semi-precious stones and such other minerals that may be specified by Regulations shall form Special Minerals.”

The important point to note here is that it includes tar sands and asphalt and excludes oil and gas and all other such minerals or hydrocarbons which fall under the Petroleum Act.

With respect to Part II of the Bill, clause 8 gives the responsibility of the Minister; particularly so, clause 8(1)(b) which states:

“The Minister shall be responsible for—  
(b) granting, renewing, revoking or suspending licences for mining, processing, import and export minerals and other mining related activities.”

It gives the basis of this particular Bill.

**11.20 a.m.**

Mr. President, clause 9 makes reference to the person who will be responsible for actually administering or implementing the Bill, and that is the Director of Minerals. This is a position newly created in the Ministry of Energy and Energy Industries which will, in fact, administer the implementation of the Minerals Bill. The duties of the Director of Minerals are very clearly enunciated in clause 10 of this particular Bill. The powers of the Director are also clearly stated under clause 11.

Part III of the Bill deals with the granting of licences. Clause 13 gives the restrictions on the issue of licences, and clause 14 gives also restrictions on the powers to issue licences and excludes certain locations for which no licences shall be issued. It goes on to say:

- “(a) any burial ground or cemetery without the approval of the Minister to whom the responsibility for Local Government is assigned;
- (b) any land within such distance of a highway, road, rail track, aerodrome, power line or other public work...”



It goes on to clearly identify those localities in which licences may not be granted.

Mr. President, clause 15 is one of the most important clauses of the legislation. It sets forth the composition of the Minerals Advisory Committee which would have as its purpose:

“...advising the Minister on all matters relating to the exploration of, mining, processing, import or export of minerals and matters related thereto.”

The committee consists of senior officers of the public service headed by the Permanent Secretary of the ministry responsible for mines; the Director of Minerals; the Commissioner of State Lands; the Chief Technical Officer of the Ministry of Works and Transport; a representative of the Town and Country Planning Department; the Director of Forestry; a representative of the Water and Sewerage Authority; a representative of the Environmental Management Authority; a legal officer of the ministry responsible for mines; a representative of the Factories Inspector; a technical officer representing the Tobago House of Assembly; and a representative of the Ministry of Finance. That sets forth very clearly the composition of the Minerals Advisory Committee. We in this Senate are aware that this committee is totally devoid of any political appointees. *[Laughter]*

Mr. President, clause 15(3) states:

“The Permanent Secretary of the Ministry responsible for mines shall be the Chairman and the Director of Minerals shall be the Deputy Chairman of the Committee.”

Clause 16 clearly, again, outlines the duties of the committee.

Clause 17 is also a major departure from what currently happens.

- “(1) No licence shall be granted under this Act in respect of State land, except upon a public competitive bidding process prescribed by Regulations and in consultation with the Minister to whom responsibility for land is assigned.
- (2) Notwithstanding subsection (1), the Minister may, in the national interest and with the approval of the Cabinet, grant licences for mining and processing outside of the public competitive bidding process.”

I want to state, Mr. President, that over the past four and a half years the granting of quarries in Trinidad and Tobago has been done solely on the basis of the competitive bidding process. No quarries have been granted under clause

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17(2); that is only to be used in cases of absolute emergency, in the national interest, which I understand has a special meaning in legal language; so this is not an escape clause. Over the last four and a half years we have been guided by the interim minerals policy which calls for a process of competitive bidding, and that has been rigidly adhered to in the Ministry of Energy and Energy Industries.

With respect to other clauses in this particular Bill, I want to make the point very clear up front that this particular Bill applies both to private and state lands; the only difference is in state lands you have to go through a public competitive bidding process. If you have your own private land you have to get permission from the Town and Country Planning Division and then all the other provisions of this particular Bill will come into effect. So the burden of those who want to exploit the minerals upon private land is as severe as those who want to exploit that on state lands. The only difference is that, obviously, you do not have to go through the competitive bidding process.

With respect to the other clauses in the Bill, there are some factors I want to point out. Clause 21(1)(c) gives some of the conditions for a licence and it says that the licence:

“shall not be transferred or assigned without the written approval of the Minister...”

It means that the purpose of this is to ensure there is no speculation on state lands; that you are granted a licence for state lands and then you sell that licence to someone else. It cannot be transferred or assigned without the written approval of the Minister. Clause 22 gives conditions under which licences shall be issued.

Another important feature of the Bill, Mr. President, is clause 25(1). It says:

“Every person to whom the Minister has decided to issue a licence shall, before the issue of the licence, deposit with the director a bond in the form of a Rehabilitation Bond in such amount and form and subject to such conditions as may be prescribed for the proper rehabilitation of the land for which the licence is to be issued.”

Among the regulations we would make, would be the rules under which the public competitive bidding process would, in fact, take place. Part of that competitive bidding process that we would be using is a mining design plan which has to be submitted, even now, before you can get a licence. We will need to know what re-afforestation and rehabilitation measures are incorporated in your mining design plan before you are granted a licence, once this Bill is enacted. You

will have to put in place a rehabilitation bond in case you do not live up to your responsibility for rehabilitation and re-afforestation. That is taken care of under clause 25(2).

Another major clause in this legislation is clause 26, where you will have to put in place a performance bond which shall be held as security for the non-payment of royalties and other dues arising out of any breach of the terms and conditions of the licence, the Act or regulations in such amount and form as may be prescribed.

Mr. President, this question of quarrying and mining has to be taken extremely seriously, and while the insistence on a rehabilitation bond and a performance bond may appear to be draconian, it is only when you do that type of thing that you discourage the wanton destruction of the environment which has taken place and, I must say, is currently taking place, because a large percentage of the quarrying still being done in Trinidad and Tobago is, in fact, illegal.

Clause 28 allows that when someone dies, the licence may be transferred to the heirs, successors, or assigns of the deceased with the written consent of the Minister. One would think that is reasonable in the way we do our business.

Part IV of the Bill deals with enforcement and it gives the Director of Minerals the authority to enter people's land with their permission to do certain studies, take samples of specimens of soil, rock, minerals or tailings found on such land for the purpose of examination and assay. We have the right to enter even on private lands, with their permission.

Part V clearly outlines the rights and duties of the licensee and clearly indicates the obligation to which the holder of a licence has to adhere. Part VI of the Bill takes care of the health, safety and welfare of workers, and it is within standard practice. It protects young persons above 14 years and below 18 years as to how they would operate in a mine. No person under 16 years shall be allowed to work or to be engaged or permitted to work underground at any time. It also sets forth the utilities which are to be provided to workers who are working in mining operations.

Part VII, Mr. President, deals with one of the more important aspects of the Bill and that is protection of the environment. We have sought to harmonize this Bill with all other existing legislation, to make it compatible with existing legislation, and we say that every application for a licence under this Bill shall be accompanied by an environmental impact assessment and a certificate of environmental clearance. I see we have been presented today—it is very

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coincidental—with the final draft of the certificate of environmental clearance from the Environmental Management Authority. It seems that we are working in concert.

Every application must be accompanied by an environmental impact assessment and a certificate of environmental clearance, so as not to overlap the responsibilities of the other governmental agencies, including the very important Environmental Management Authority established under the Environmental Management Act.

Clause 45 reinforces what I have just said:

“The holder of a licence issued under this Act shall, in addition to the conditions set out under this Act, carry out the operations authorised by such licence in compliance with such standards and procedures as are prescribed for the carrying out of such operations by the Environmental Management Act.”

Part VIII of the Bill, Mr. President, deals with the penalties associated with one who breaks the law, a person who:

- “(a) explores for, or mines, processes, imports or exports, any mineral without a licence...
- (b) mines in an area that is not a mining zone...”

Then in subclause (3) it continues:

“A person who—

- (a) knowingly purchases any mineral from a person who is not the holder of a licence under this Act or trades in such mineral; or
- (b) knowingly makes a false statement or fraudulent representation in or in connection with an application of a licence under this Act...”

Another important clause in this Bill is clause 48. Notwithstanding the Government's intention to create a one-stop shop using the Minerals Advisory Committee, we have clearly stated under clause 48(1):

“The issue of a licence under this Act shall not in any way dispense with the necessity to obtain planning permission where such permission is required under the Town and Country Planning Act.”

**11.35 a.m.**

Clause 48, subclause (2) says:

“Where the approval of any other entity is required under any other written law with respect to the proposed operation, the issue of a licence under this Act, shall not affect in any way the requirement to obtain such other approval before the proposed operation commences.”

Clause 49 (1) says:

“The Minister may make regulations in respect of matters that are required by this Act to be prescribed or in respect of which regulations are required or authorised to be made under this Act.”

We have to put in place an interim position Mr. President, and clause 50 deals with the regulations made under the Mines, Borings and Quarries Act.

Clause 50(2) states:

“Notwithstanding the repeal under subsection (1), the regulations made under the Mines, Borings and Quarries Act shall *mutatis mutandis* remain valid as if made under this Act until such time regulations are made under this Act.”

Clause 51(1) sets forth:

“Any approval or licence granted to mine or to operate a quarry or to conduct quarry operations and in force immediately before the commencement of this Act shall continue to be in force until such approval or licence expires or until a licence is granted under this Act or until the expiration of six months from the commencement of this Act whichever occurs earlier.”

It, in fact, gives a grace period while people put their houses in order.

Mr. President, one of the criticisms we normally get in this Senate is whether we have the administrative framework to back the legal framework which much of our legislation requires. In this particular case, we have jumped the gun, if I may say so; we are already in the process of setting up the Minerals Division. Cabinet has already approved the staffing of the Minerals Division and, through the Director of Personnel Administration, the Chief Personnel Officer and the Public Service Commission, we are going through the recruitment process for this Mineral Division which will implement this particular Act.

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There is a full complement of staff. There is a director who will manage the affairs; one legal adviser, senior state counsel to provide legal advice on mining laws negotiation, and contractual obligations; one senior geologist, three geologists, one to discharge the functions of geological surveys, evaluation of mine design plans, environmental impact assessment reports, restoration and after-use plans and contract management functions; one geo-sciences surveyor; two geological assistants to assist the geologists in their routine work; one draftsman to co-ordinate the activities of the drawing offices; two others who will be assisting the geologists in their preparation of maps; two clerks to assist the technical staff; two clerk stenographers; two clerk typists; two mine survey technicians, four chain pole men to assist the mining survey technicians; six semi-skilled labourers to assist in the clearing of survey lines for the surveys; two foremen; ten checkers—very important—to be deployed in quarry mining operations nationwide to assist in the fiscalization of extractable materials for the determination of royalty payments; two drivers—very important—to transport the geological field show in the ministry's vehicle; four mining inspectors and charge hands to inspect mining operations throughout Trinidad and Tobago.

Mr. President, and Members of this honourable Senate, we have taken a holistic view of this entire industry, the quarries and mining sector, and the results are seen in the Bill which we have brought to the Senate today, the Minerals (No. 2) Bill. It is a Bill which has taken the better part of four years' ongoing, nonstop process to reach the stage where we are and the results are there for all to see.

With the proposed Mineral Act, all licensees operating on both state lands and private lands, as I said, must tender a performance bond or bank guarantee to the Director of Minerals before the commencement of any activity which can be forfeited for improper mining practice, or for failure to restore the site after the termination of the operation. These measures will alleviate almost a century of indiscriminate destruction of virgin forest, illegal mining, larceny of construction aggregate from state lands, nonpayment of royalties and the non-restoration of abandoned quarries that have plagued this industry for the last 30 years.

The ultimate goal, hon. Senators, is to restructure the mineral sector of Trinidad and Tobago into a competitive private sector industry with proper state regulation driven—

**Sen. Yuille-Williams:** I thank the Minister for giving way. In the last Bill, royalties were collected, I think by revenue officers, I am not quite sure. Could you tell me about the collection of royalties with this?

Secondly, Could you tell me about the process for the appointment of the Director?

**Sen. The Hon. F. Gangar:** Mr. President, the first question is one of royalties and we have found it a very dysfunctional arrangement—but that is the public service—where the Inland Revenue Department, what I think we used to call the Warden’s Office long ago, collected revenue and the Ministry of Energy and Energy Industries administered it. What has happened is that there is no co-ordination or the probability for co-ordination is diminished when there is more than one agency.

The intent of this Bill is for the Ministry of Energy and Energy Industries to collect the royalties similar to what happens in other areas. We feel that is a better way of controlling the industry. The question of the Director of Minerals—that is solely within the purview of the Public Service Commission.

Mr. President, before I gave way to the hon. Senator, I was saying that the ultimate goal is to restructure the mineral sector of Trinidad and Tobago into a competitive private sector industry driven by market forces that will deliver an adequate supply of high quality construction aggregate at the lowest possible price to the domestic market, our poor people who build houses, and also to our investors so we would continue to have an advantage over others with considerable emphasis on regulation, accountability, transparency and with due consideration to the environment, the health and safety of the workers.

Mr. President, I beg to move.

*Question proposed.*

**Sen. Danny Montano:** Mr. President, after listening to the Minister twice, I am very glad that we insisted that we take the opportunity to read this Bill very carefully before continuing with the debate. I remember on the last occasion, we were in fact, asked to stand down for an hour or so while we looked at the Bill very quickly and he wanted to continue with the debate right away, but we on this side objected to that. We wanted enough time to have a look at it, and I am very glad that we had the time.

Mr. President, the general objectives of the Bill can be lauded and I think we can agree with the general strategy and objectives of it, but it is the actual method of drafting that we cannot agree with and we are not going to agree with and I would bring these to the attention of hon. Senators as we go on. This is in fact a piece of environmental legislation. That is what we are dealing with here, it is to control and deal with the environment. What concerns me greatly is that while, as

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the Minister says, it may be several strides ahead of the existing legislation, he said that a large part of the quarrying done presently is illegal. What is going to change? The people are going to be quarrying illegally unless the Government puts the machinery in place to police it, nothing is going to change.

It begs the question—if they are aware of the activities that have been going on for the past four and a half years—why have they not done anything about it? I think it is a tragedy to come into the Chamber and parade as if all of a sudden something is going to change because of this so-called fabulous piece of legislation. Mr. President, we are not fooled, nor are we fools. We understand the mere fact that most of the words of the Minister are political rhetoric and in fact, very little will actually change and in the wrong hands, this piece of legislation would be very dangerous.

In looking at the previous legislation, there are at least three things in the old Act that have not been brought forward in the new one and I would ask the Minister to explain why that is so. The previous section 4 required that in the conduct of any quarry there had to be a certified qualified manager, he had to be certified. In other words, the state wanted to know that he knew what he was doing. He must have reached a certain level of competence in the field of mining and quarrying. I see no such requirement under this legislation, so it does beg the question as to who, in fact would be doing the quarrying and we would see that is an issue later on.

Section 19 of the old Act required that any person conducting a mining operation or a quarrying operation had to advise the ministry of any accidents that took place, that of course, would facilitate the enquiry into the actual operations and the conduct of the mining operation. I have seen no such requirement under this legislation.

The old section 33 specifically exempted vicarious liability from the operators of mines except that the inspector or the Minister could himself institute proceedings under special circumstances, understanding the nature of quarrying activities and the dangers involved. I think that was an important piece of legislation and I wondered why that had not been brought forward into the existing legislation.

Mr. President, I am not a legal expert, but in looking at the clauses of this Bill and I am looking at clause 3 at the definition of the word: “‘mineral’ means a naturally occurring substance that can be mined, whether in solid, liquid or gaseous form...”



It is going to include water. As I see it, it is going to include water. I do not think water is intended, because the winning of water is an entirely different process, but in truth and in fact, the winning of water and the drilling of wells is now going to be captured by this piece of legislation with all the attendant requirements under it and that is going to be extremely cumbersome. I would like a definitive statement from the Minister that that is not what is intended, or whether it was accidentally included.

Mr. President, I frequently wonder whether the Ministers on the other side actually read these Bills before they come here, and in fact, not just read some script that has been handed to them.

**Sen. Gangar:** Mr. President, on a point of clarification, and I went through this very carefully, but just to provide some clarification to the hon. Senator. Clause 6 clearly states:

“For the purpose of proper implementation, minerals that come under the purview of this Act shall be broadly categorised as Common Minerals and Special Minerals.”

Clause 6(2) goes on to further define what are common minerals and special minerals and it does not include water.

**Sen. D. Montano:** Mr. President, I thank the Minister. I read the Bill and I did read clause 6(1) and (2) but I am not convinced, and it seems to me that water is still included. However, we can ask the legal experts to decide.

### 11.50 a.m.

Clause 5 categorically states that no person shall conduct any mining except with the permission of the state. I want you to go to clause 47 as well, where it says that, basically, it is exempting the state or the Minister or any of his officers from being sued—I guess for any action done or not done as the case might be. Mr. President, I have some difficulty with that. My difficulty with this is—in fact, it is involved in another clause as well—that, in the circumstances where a person has a viable mine—quarry or whatever it is—he has minerals that can be extracted and have tangible value.

But there are several avenues and opportunities for the state to refuse a licence here not only because of the environmental considerations. In fact, this Bill—as we would see later—gives the Minister *carte blanche* to refuse a licence. So the question is: persons who have properties that have valuable minerals and resources on them, surely, if they are refused a licence they must be entitled to

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claim compensation from the state. But this Bill is allowing the state to refuse licences to persons who have viable minerals and viable quarries or whatever, from being allowed to exploit the mineral wealth of their properties, without being able to claim compensation from the state. We, on this side, cannot agree with that. That cannot be right. That seems, to me, to be fundamentally outside the Constitution. Surely, you should be allowed to do what you want with your property within reason, and if not, then you must have compensation; especially if the property is the kind of property that can only be used for quarrying or mining. Mr. President, that cannot be right.

We move on to clause 11. I had some difficulty with this because you must understand that the supervision of the Director of Minerals and the licensing of quarries is primarily for two purposes. This Bill really only has two purposes: one, to ensure that the operations of a quarry conform to certain environmental standards and to protect the environment, generally. Secondly, of course, to ensure that the operations are safely and properly done. There is a third issue in terms of the revenue collections and so forth, but that is a lesser issue. The two major issues here are safety and the environment but, Mr. President, clause 11 allows the Director of Minerals to—

“(a) supervise exploration, mining, processing and other operations authorised by a licence issued under the Act and to give directions to the licensee as to the conduct of such operations.”

In other words, the Director of Minerals literally has the authority to enter a mine or a quarry and to dictate what, where and how much can be mined and at what rate. In other words, the Director of Minerals can literally have the authority to run that mine or the quarry itself. I do not think that is what is intended.

Certainly when we, on this side, look at it with the view that we have on this side of trying to protect the environment, that is not what we would do. What we would be saying is that he can give directions, insofar as the safety of the operations or environmental matters are concerned, not specifically as regards the production levels or where they should mine or whatever—because I have seen some of the quarries, and I have seen faces of a cliff and I know that certain parts of a cliff are more productive than other parts. The Director cannot surely be authorized to walk in there and dictate operations to the detriment of the efficiency of the business operations. I cannot see that the Director should have any authority whatever to deal with the business aspects of the operations. That is outside the purview of this legislation surely. So what is it doing in here?

Does the Minister read these things? It must be confined to the activities of the environment and safety, and that should be it. It goes on:

Clause 11 gives the Director the right to—

“(f) enter into and inspect any land..”

It does not say “with the permission of the owner, or with a warrant or anything of the kind.” It gives him the right to enter in paragraph (f) and to give directions to do whatever he decides, without being accountable to anybody. That cannot be right. That has to be outside the Constitution. It is unconstitutional to do that. *[Desk thumping]*

Mr. President, the Minister, in his contribution dealing with clauses 29 and 30, specifically, referred to—and he made a big do out of it—that entry required the permission of the owner and so forth, but that clause does not relate to this one. This gives the Director of Minerals an absolute right to enter. No, Mr. President, we do not agree with that. *[Desk thumping]* We would not agree with that. He can be given the right to enter with the permission of the owner or the occupier of the property or the licensee as the case might be, upon reasonable notice, to give directions *vis-a-vis* the environmental issues and the safety operations of the mine or the quarry, but for no other purpose. We cannot agree to that.

Clause 15 establishes the Minerals Advisory Committee and this is the committee that has to advise the Minister. There are 12 members on it and the Minister himself said that because of the structure of the committee, there would be no political appointees. Very good. I agree entirely with that. We have no difficulty with that.

Clause 17 says that a licence would be offered for the mining of state lands, must be granted under a public competitive bidding process. Assuming that the licence must be granted with the advice of the Minerals Advisory Committee, why on earth would the Government say that the Minister may in the national interest grant licences outside the public-bidding processes? Mr. President, that is institutionalized corruption. And we on this side are not going to agree to that clause. Not in this Chamber! *[Desk thumping]*

### **12.00 noon**

Mr. President, we have seen far too many instances over the past four and half years of exactly that sort of nonsense and we have made a lot of noise about it. The airport contract is one; the granting of the cellular licence is another one. Are

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we going to institutionalize that kind of nonsense? Mr. President, no! Never would we on this side agree to that kind of frivolous nonsense! *[Desk thumping]* That is corrupt! That is total corruption!

In clause 19(2) "...the Minister may grant or refuse the licence only with the approval of the Cabinet." And, presumably, on the advice of the Minerals Advisory Committee—according to the Minister—a non-political organization but then clause 20 comes along and it states:

"The Minister shall refuse to issue a licence...where, in his opinion, such operations would be against the interest of the public, taking into account—"

A whole number of issues dealing largely with the environment.

Mr. President, any site that has been set up and has been tendered for or has been organized must first of all have an environmental impact assessment from the Environmental Management Authority. So, the Environmental Management Authority would have approved it; the Minerals Advisory Committee would have approved it; the Director of Minerals would have approved it, and the Minister is going to sit and give us some cock-eyed explanation that he is not going to approve it? Why should we give the Minister that kind of political clout in a matter where there is no politics in it at all! *[Desk thumping]* Why we cannot just leave it to the technocrats? In other words, if it is that what was truly intended was that "The Minister shall refuse..." acting on the advice of those three parties that is, the Minerals Advisory Committee, the Environmental Management Authority and so on, if that is the case, I do not have a problem. The Minister cannot just decide that he is going to refuse to issue a licence just like that. The Minister must be acting on advice, and it must be put inside here that he is acting on that advice. It cannot be that he is acting on his own discretion which he takes to the Cabinet. No, that is wrong.

Mr. President, look at the trend and then go back to clause 17(2) where "...the Minister may, in the national interest..." grant licences to whomever he feels like.

**Sen. Mohammed:** Give it to who they want.

**Sen. D. Montano:** Mr. President, come on for heaven's sake! I know we only have a few months left to the next election but good heavens, we are not going to agree to that. The Minister must think that we are either crazy or stupid to think that we are going to sit here and approve that. *[Desk thumping]* Mr. President, no.

Furthermore, when licences are legitimately refused on the advice of the Minerals Advisory Committee and so forth, the reasons must be set forward and it must be made public. It must be completely transparent. One cannot just say, no, I am not going to give it to you, I am going to give it to someone else. The reasons must be made public and the advice from the agencies that are required to approve these things must be clearly set out stating it did not recommend a particular operator. It must be completely transparent. I do not believe that the Minister or the Government should be given any political discretion in a matter such as this. This is an avenue for complete corruption.

Mr. President, I would also like to suggest that in clause 22 (i) which states:

“the licensee shall afford the Director or his authorised representative access to any premises in which any activity authorised by the licence is carried on and to make available to such officer, all books, records and other documents...”

Mr. President, no. If one follows the form in clause 11(h) where there is a similar situation, one would see that the books and records referred to are the books and records required to be kept by the licensee. The Director or anybody else has no business inspecting the financial records of the licensee, because that is what you are giving him here. It can only be those records required to be kept. We all know what that would be—that would be the amount of earth that has actually been mined and milled and so forth, for the purposes of the calculation of royalties. In terms of the other aspects to inspect his payroll records and so on that is not the purview of the Director of Minerals.

Clause 24 states:

“A licence issued under this Act may be renewed after the expiration of the period specified in the licence...”

Mr. President, again, for the purposes of transparency, if it is not renewed, there must be a complete detail of the list of reasons as to why the licence has not been issued, and those reasons must be supported by comments of the technical advisers in the process.

Clauses 25 and 26 require bonds for the rehabilitation and performance for non-payment of royalties. I think that is a very good thing. However, in the granting of these licences, one of the things that ought to be made certain is that all the conditions that are laid down for any licensee are identical for any other licensee and, therefore, there must be some stated parameters for setting out the level of bonds that are required for each operation. In other words, without using

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the discretion of the Minister to discourage or refuse a licence to an operator effectively makes it impossible for a particular operator to continue by raising the level of the bond to such an enormous amount that the licensee cannot afford to pay the premium for the bond. I am suggesting that the bonds must be based on certain specified criteria and should not be left to the discretion of any part of the process. It must be set out.

Clause 38 deals with the issue of young persons and it is, indeed, very interesting to see what the Minister has proposed here. The Minister boldly sets out to say that the new legislation was going to protect young persons between the ages of 14 and 18 years. Mr. President, 14 years! This Minister envisages that 14-year-old boys and girls should have to go to work in a quarry or a mine. Fourteen-year-olds! The National Insurance legislation does not cover any employees below the age of 16, but the Government is going to take 14-year-olds out of school and put them in a quarry!

**Sen. Mohammed:** And school places for all.

**Sen. Shabazz:** From the Common Entrance Examination.

**Sen. D. Montano:** We have heard this Government say that it wants to make high school mandatory. How is the Government going to do that with a 14-year-old unless he is absolutely brilliant and has finished his A'levels at age 13? I cannot see that; we cannot agree with that. Fourteen! No. We cannot agree with that. Fourteen-year-olds must be kept in school and that should be the focus—*[Desk thumping]*—and not jammed up in classrooms with 60 and 70 students. They must be given a proper opportunity to get a proper education.

Mr. President, in closing, really, I would draw your attention only to clause 47 which I mentioned earlier. I have significant difficulty with the fact that the state—under this clause and also clause 5—would have complete immunity from process and would, under no circumstances, have to compensate an owner if he felt that his licence had been improperly revoked or that he had not been granted a licence that he should normally be entitled to, particularly, in terms of the transition rules. The licensee should be given every opportunity to make good a situation. I definitely feel that, at least, the licensee should have the right to sue the state to recover what he feels is justly his.

In closing, I would summarize to say that we could agree with the general objective of the Bill. We agree with the fact that the environmental laws must be strengthened; we agree that the environment must be protected and that the state must take the responsibility to lead in that sphere. However, it cannot be at the

expense of the private citizens; it cannot be that properties could be entered into without due process of law; it cannot be that the Minister is granted a political discretion to grant valuable licences to friends and associates of his party. No, we cannot agree to that.

With those few words, I thank you. [*Desk thumping*]

**12.10 p.m.**

**Sen. Prof. Julian Kenny:** Mr. President, when this Bill was first debated, we were given a particular document. It was the incorrect one. I cannot blame the hon. Minister for this. Somewhere, somebody has been in error, and I just wonder whether this matter has been investigated, because somebody has been the cause of several of us wasting an awful lot of time in preparing for the debate.

Mr. President, I am old-fashioned in that when there are major pieces of legislation, I go through great trouble to write it all out. I am not allowed to read it, of course, but I write it all out, and in preparing for the first debate on the basis of a Bill containing 25 clauses, I think I spent probably five or six hours doing the reading and then typing it up. And, it is all totally wasted.

I have now had to start all over and spend a few hours again doing this. Mr. President, I know that when one is young, time does not really matter, but when one gets to our age, as you know me too well, a few hours spent on totally useless effort is really quite distressing. I sincerely hope that somehow, this matter is investigated. If somebody is found to be at fault, some form of disciplinary action should be taken against that person. It is not the first time it has happened, and I am really most distressed at having wasted so much time.

Indeed, it occurred to me that having looked at some of the public hearings on the investigation into the Judiciary, perhaps in the not too distant future we might see a similar investigation into the work of Parliament. We cannot have people spending their time totally wasting it on somebody's incompetence or somebody's carelessness or somebody's error, and I do wish that the matter will be looked into.

Mr. President, before going into the specifics of this Bill, I must first of all say that I am very happy about seeing legislation of this kind come to us. Like Sen. Montano, I was rather taken aback being asked whether we could debate it on the basis of an hour's reading. While I was very anxious three weeks ago to enter the debate, I think that the wiser counsel prevailed and we had an opportunity to look at the Bill in more detail.

Looking back at the past five years at my particular interest in environmental legislation, I have seen very little which has actually passed into law. In fact, there are only two things that have been passed into law: the re-enactment of the Environmental Management Act, and the amendment to the Forests Act. This is all. We have Bills on our Order Paper—environmental legislation—and certain parts of the legislation on the Order Paper are, in fact, even of greater importance than this very important piece of legislation. I refer particularly to the Planning and Development of Land Bill, the Parks and Protected Areas Bill and the Wild Life Bill. These are very important pieces of legislation, and I do not know that we are actually, in the course of the life of this Parliament, going to address them.

We have to look at this legislation, in my view, as part of a package of environmental legislation. I consider it extremely important legislation, but at the same time that we are considering this, we must really be thinking of the broader legislation, how do we plan the physical development of the country and how can we go for three years and this Bill is just allowed to lapse? So, it is a matter of great concern to me that we are debating a very important piece of legislation prior to debating the very serious Planning and Development of Land Bill.

Mr. President, let me make it quite clear that I support the general policy of this legislation. I think it is long overdue. The Minister referred to flying over the eastern part of Trinidad and it is like a lunar landscape. This thing has happened over the past 25—30 years. There appears to have been absolutely no attempt to regulate it. I think that Government must be commended for bringing this particular legislation to us. I support the legislation in general principle. I do, however, have certain major concerns with the Bill.

My first concern is the question of the requirement for a special majority. Mr. President, in the previous Bill, this was accepted. If you looked at it, you saw at the start of it, the usual recitals in the preamble. This has been deleted. It must have been deleted with a very good reason. I have not seen any reason for the deletion. Indeed, when one reads in clause 5, it states:

“Notwithstanding any right of ownership or otherwise which any person may have to the soil on, in, or under which minerals are found or situated, no person shall explore for or mine minerals except with the permission of the state.”

Mr. President, this comes into a hard clash with our Constitution. It comes face on with a big bang.



I am glad that Sen. Daly is not here, because he is, of course, our legal luminary, but reading the Constitution, the rights enshrined in the Constitution give us the right to enjoyment of property. *[Desk thumping]* This is something which differs from the constitutions of other countries where it is the right to property and that is the right to acquire property, to own property, to dispose of property. Ours is the right to enjoyment of property.

Mr. President, if we go to High Court Action No. 2443 of 1982 which is an action brought by Prakash Singh against the Attorney General, the High Court has ruled about this particular subsection of our Constitution when the High Court was discussing or adjudicating on enjoyment of property. The High Court said it must not be limited to the rights to property in the strict legal sense and must not be so limited. In other words, our Constitution gives us a right to enjoyment of property, and this Bill comes into collision with our property rights. Therefore, I suggest that this problem ought to be corrected right at the start and we ought to go back to the norms of requiring this special majority. *[Desk thumping]*

Mr. President, I would go further. I do not think that we can just simply say that the hon. Attorney General says it does not require a special majority and brings it to Parliament. This is not acceptable, because we have the proven demonstration that Bills may be brought to Parliament for passage by a simple majority and after the political debate goes on, we then go back to the requirement for a special majority. This is what happened with the re-enactment of the Environment Management Act. I cannot accept this. I think that the Minister, in his winding up, must explain to us, must show us that this thing does not interfere with our rights to enjoyment of property. *[Desk thumping]*

Mr. President, I go further to point out that later on in the Bill when we deal with enforcement, we would realize of course, that a private citizen sitting in the private citizen's property may not even explore for minerals on his or her property. We are not talking about mining; just simple exploration. If one explores for minerals without a licence, as written in the Bill, one is liable to a fine of \$200,000 for exploration on one's own property. That is what this Bill says. If one continues to do this, one might find that one is on a second offence; it is a fine of \$300,000. I think this is an issue that really has to be settled before we actually consider supporting the Bill.

Mr. President, I have some other concerns and my major concern is the problem that arises with the Environmental Management Act, 2000. I would just like to read a bit of the preamble, and the preamble requires the authority to co-ordinate, facilitate and oversee execution of the national environmental policy and

programmes, to promote public awareness of environmental issues and to establish an effective regulatory regime which will protect, enhance and conserve the environment.

This is a responsibility of the Environmental Management Authority, and clearly, any legislation that deals with the environment has to fit in to the Environmental Management Act.

**12.25 p.m.**

Mr. President, I warmly applaud the Government for injecting into the Bill, environmental concerns and environmental protection, but I would point out that, particularly in clause 12, I think it is, and clause 44, in the drafting of these clauses, there is a drafting problem.

Under section 35 of the Environmental Management Act, there is the requirement for Environmental Clearance Certificates and I think the Minister is quite right to refer to documentation, the Certificate and Environmental Clearance Rules, which we have received today. In fact, these rules are the final draft. They have been around for about two years. What Senators may not be aware of is that there is a schedule to these rules and this schedule was approved by Cabinet about two years ago.

I would like to refer to the schedule to the rules. In particular, the rules set out a series of activities that all require Environmental Clearance Certificates and I will not go into all of them but, for example, clearing, excavation, grading and land filling of an area of one hectare or more, requires a clearance certificate. In other words, clearing of the top soil from the savannah would have required a clearance certificate. There are other things; I think clause 24 is the activity which makes it quite clear. The activity is: establishment of a facility for non-metallic mining and processing. Then, the definition is: the establishment, operation, expansion, reconditioning or abandonment, inclusive of associated works of a facility for mining, processing or storage of clay, porcellanite, limestone, oil sand, sands, gravel or other non-metallic minerals.

So, the law as it stands now, requires or would require an Environmental Clearance Certificate. The only thing that is holding it up is the Environmental Commission. This cannot become law until we have the commission in place and, Mr. President, I am going on like a broken gramophone record, but the Environmental Commission was coming in 1997; in 1998; in 1999. It was coming by the end of 1999. It was coming by World Environment Day which has gone and I do not know when it will come.

I do not think that time will permit me to lodge another question asking about the timetable for the establishment of the commission, but all these laws that are being drafted under the Environmental Management Act cannot become law until they are laid in Parliament and they cannot be laid until there is a commission.

I do not know what is holding it up but, to come back to the Bill, I would point out that in clause 44(1)—I am jumping ahead—which deals with environmental protection, it says:

“Every application for a licence under this Act shall be accompanied with an Environment Impact Assessment and a Certificate of Environmental Clearance issued by the Environmental Management Authority...”

Now, I suggest that this drafting is at fault here. The requirement is really for an Environmental Clearance Certificate. That is what is required. To get an Environmental Clearance Certificate, it is mandatory on the developer to meet with the Environmental Management Authority and have the terms of reference for an Environmental Impact Assessment (EIA) established; to do the EIA; to have it reviewed and then to get the certificate. So that I have, in fact, circulated an amendment to clause 44 where I am suggesting that it be rewritten in a certain way.

I would point out, too, Mr. President, that clause 44(2) is totally unnecessary in that you cannot get an Environmental Clearance Certificate unless you have an EIA and the EIA will be determined by the authority. The terms of reference for doing it will be determined by the authority. The mechanics of having the EIA done—if, for example, the client proposes to mine somewhere, he goes to the Environmental Management Authority with the proposal which sets up the terms of reference. The terms of reference lead to the client spending some money during the EIA and then the EIA is submitted to the authority.

**Sen. Gangar:** With all due respect to the hon. Senator regarding the EIA being unnecessary, as the hon. Senator would know, an environmental certificate of clearance is only a two-page document. An EIA is a voluminous document which sets forth what is the probable impact on the environment and what are the mitigating circumstances you are going to put in place and that should accompany a licence because whoever it is—the quarries advisory committee—must have that information at hand in the granting of a licence.

**Sen. Prof. J. Kenny:** Thank you, Mr. President. In response to the Minister, I am fully aware of the fact that the certificate is merely a certificate but the point I was making is, to get the certificate, you must have the EIA done and with the EIA,

the process is an iterative process. The final EIA report is not necessarily the same as the initial report. You have a development. You are proposing to mine sand, quarry, rock or what have you and you get your consultants to do the EIA with the terms of reference determined by the Environmental Management Authority.

When the report comes in, the authority's procedures subject the EIA report to a review process and in that process, the people who do it may not necessarily be employees of the authority. They may, in fact, be recruited from outside Trinidad and Tobago and this is the procedure.

When that review process comes in, there is a deficiency list and that list is given to the consultants who did the EIA. They correct all their work and then a final report is approved. Now, my proposed amendment proposes in clause 44 that—well, it is being circulated, I think:

“Every application for a licence under this Act shall be accompanied with...a Certificate of Environmental Clearance issued by the Environmental Management Authority...”

And a copy of the final Environmental Impact Assessment. This is the way it ought to be drafted. But I go on further to suggest that it is not necessary to include clause 44(2).

I am proposing instead that all that is really necessary here is that the committee may request any additional site specific or process specific information. The point is, I do not think it is very good form for spelling out what an EIA ought to be. All the things required there: the preservation, the character, the environment including the fauna, any possible effect on the water base—these are all standard EIA requirements. In fact, EIA requirements go beyond the list that is there. So, I am suggesting an amendment which I think would make it a rather cleaner operation.

Mr. President, I would point out as well that when you apply for a licence, it is a licence to explore as well as mine. Now, I do not think, with today's technology that it is necessary to require an EIA for, say, exploration for gravel. It is possible with modern technology to do ground studies of one kind or another without actually disturbing the environment. You do seismic studies of one kind or another without disturbing the environment.

My suggestion is that a problem arises with requiring an EIA for exploration, bearing in mind that the geology of Trinidad and Tobago over the years has been prepared, drawn and mapped. The finished product from the Ministry of Energy

and Energy Industries has been done by eminent geologists who just walk the territory so I think there ought to be a separation of the requirement of an EIA for exploration.

Mr. President, there is something that bothers me about some terms in the interpretation clause. The term "rehabilitation" suggests that this means to restore the previous condition or to improve on previous condition. I suggest that the conventional term today is "remediation" rather than "rehabilitation". I will tell you why.

If you go into a forested area and you find a source of gravel, you remove all the forest cover and you start mining the gravel. Then, what are you left with? A hole in the ground filled with water. Now, a site like that cannot be restored. All you can do is remediate it, that is, in the case of a gravel pit, you might shape the banks or you might plant special vegetation, but it certainly will bear no resemblance to the original.

Similarly, with rock quarrying, if you go after limestone, there is a problem. If you blast a hillside by removing the thick vegetation cover, there is no way that you can restore that to the original condition. What you might do is remediate it.

There are a few other points I would like to raise. I have some concerns with Part III of the Bill relating to licences. Clauses 15 and 16 relate to administrative arrangements and I question why they are not in Part II. You see, if you have a part of a bill that deals with administration, all the administrative arrangements ought to be laid out in that part that says "ADMINISTRATION". Here you are, dealing with Part III where you are dealing with licences and part of it is, I think, the Minerals Advisory Committee. I think that all the administration ought to be put into one part.

Again, I know the Minister said that the term "national interest" is a term that lawyers understand. Elsewhere in the Bill, it says against the interest of the public and against the public interest. Now, I think this is loose terminology. If there is a legal meaning "national interest", let us understand what that is. I would suggest actually that in one of the particular clauses, that is—let me see if I can find it.

Anyway, there is such a document as the National Environmental Policy which is a requirement of the Environmental Management Act and I would suggest that rather than say something is against the public interest, it might be better to word it "contrary to the National Environmental Policy", which is something which has been laid in this Parliament. It is a requirement of the Act and it is something that has a meaning because you can read through the entire National Environmental Policy and see whether this thing is inconsistent with it.

Mr. President, I have prepared one major amendment to clause 44, which I am asking to be circulated and some other minor amendments which were editorial in nature, which I have also asked to be circulated, which can be done in committee stage.

**12.40 p.m.**

Mr. President, going back to clause 6, it defines “minerals” but, above it, in clause 5 it states:

“Notwithstanding any right of ownership or otherwise, which any person may have to the soil on....”

Nowhere, in the interpretation clause, is the word “soil” defined, and soils range through a wide range of categories, from gravel soil, to sandy soil, to clayey soil, to topsoil. Soil may not be used in construction but, certainly, soil is used in landscaping of all sorts of industrial activity. I am getting a bit worried about clause 5.

There are parts of Trinidad where people build, not on soil but on clay. There are parts of Trinidad where clay is exposed at the surface. There are parts of Trinidad where there are structures which are on rock. If one goes to any of the offshore islands or any of the buildings around San Fernando or parts of the Northern or Central Range, one is dealing with, not soil, one is dealing with people who are building structures on what is rock or clay. I think there needs to be some tightening up of the terminology there.

It is my view that there are so many problems and points that need attention; many of them have been raised by Sen. Montano. I have only raised a few of them. I think when we are dealing with legislation which clearly—at least in my view—comes into collision with the Constitution, that we really ought to refer this to a select committee.

Thank you, Mr. President.

**Mr. President:** We will break for lunch at this stage.

**12.45 p.m.:** *Sitting suspended.*

**1.45 p.m.:** *Sitting resumed.*

**Sen. Nafeesa Mohammed:** Mr. President, I must say I was taken by surprise just a few seconds ago. Notwithstanding that, I would like to start off my contribution on this Bill this afternoon by thanking all my parliamentary

colleagues and, indeed, you Sir, for the very kind wishes that were expressed to me in light of the birth of my son. This being my first day back in this august Chamber, I must say that I have had to reflect on the last few weeks in my life, because here it is we are in this Chamber to debate the Minerals (No. 2) Bill.

Over the past few weeks I have found myself in an environment where there is that sense of purity and innocence that prevails, and having to return here and looking at the Bill before us and listening to the hon. Minister's presentation, it has brought me back to reality now, and has made me even more committed and more determined to do whatever I can and, indeed, to do whatever we on this side can do to ensure that good, proper and sound government is returned to Trinidad and Tobago, in the shortest possible time. [*Desk thumping*]

I say this because while I sat here and listened to the hon. Minister's presentation, he sounded very well. I am sure his intentions are, indeed, very honourable in terms of his presentation of the Bill; but in his winding-up remarks, in the last few words he mentioned before he took his seat after presenting the Bill, he said that this Bill would promote accountability and transparency.

Mr. President, I do not wish to be unparliamentary, but, certainly, the Minister is saying that, but if we look closely at the provisions of this particular Bill we would see that, if anything, there is very little room for transparency and accountability insofar as the provisions are concerned. The bottom line with this particular piece of legislation that we are debating here this afternoon is that it seems to us that the intent and purpose behind this Bill is really to give the Minister unbridled power to grant quarrying licences to their friends and whoever else may have supported them.

When you look at the provisions you would see—in fact, before I came here this afternoon and having looked at the Bill, I realized that when some weeks ago a similar bill had been presented it had to be withdrawn from the Chamber because the wrong bill was circulated. What this highlights is a classic case of bungling incompetence. With all due respect to the hon. Minister, I must say that the buck stops with him; and whoever may be responsible for it, at the end of the day it is the hon. Minister who would have to take responsibility for it.

**Sen. Gangar:** Mr. President, on a point of order and a point of clarification, I think the hon. Senator is misleading the Senate. The Chief Parliamentary Counsel has admitted responsibility that her department sent the wrong bill to Parliament and it has nothing to do with the Minister or the Ministry. I just want to make that clarification.

**Sen. N. Mohammed:** I must thank the hon. Minister for his attempt at clarifying the issue, because we are not aware that any such explanation had been forwarded; certainly not to us or not in this Chamber. I sat here this morning and I did not hear it.

**Sen. Gangar:** But you were not here three weeks ago.

**Sen. N. Mohammed:** Granted I was not here; the fact of the matter is I am not blaming the Chief Parliamentary Counsel, I am blaming the hon. Minister for the bungling that took place. The buck stops with him.

**Mr. President:** Let us proceed.

**Sen. Gangar:** You do not understand parliamentary procedure.

**Sen. N. Mohammed:** The reason this is such an unfortunate situation is because when you look at the Bill that was previously circulated and you look at the Bill that is before us now, you will see that the provisions in both Bills are very, very different, and it tells you that behind the scenes something has been playing out, so that is why we want as much transparency as we possibly can get with respect to the real intent and purpose of these Bills.

Mr. President, in the first Bill that was circulated and which has been withdrawn you will see that there are elaborate provisions that deal with the requirement of a three-fifths majority of votes in Parliament in order to get that legislation through Parliament. How is it that in the new Bill we are looking at today, the requirement of that provision is not there? How is it?

Now, I know that some people may be looking at the matter and what have you, but here it is we have a Bill that certainly deals with people's property rights and we on this side, as the official Opposition in Trinidad and Tobago, have a duty to ensure that there are checks and balances in the system. If it is that people's rights are going to be infringed, rights that are enshrined in our Constitution, we have to ensure that whatever provisions or measures that are being initiated should be done with due process and that you do not go about just willy nilly interfering with the people's rights. This has been a trait of this UNC administration.

Mr. President, this is the first major concern that we have with this particular piece of legislation, because as you go on to look at the provisions there are provisions that deal with, I think, the powers of the Director of Minerals in clause 11, powers to enter and inspect any land mines or other premises *et cetera*. In many other respects, as the Minister himself pointed out, this Bill deals with



mineral rights as it relates to private property and, indeed, to state lands, so that we have to be concerned. We are saying that whatever you are doing we would like to ensure that it is done properly. That is why when you look at the first Bill you would see that there was provision for a special majority, and now in this second Bill that provision has been taken out. We want to know why and we want to be reassured on that matter.

But, Mr. President, that is not the only difference between the two Bills. The content of the Bills themselves, the first Bill had, I think, just four parts; the current Bill has eight parts to it. In Part I of this Bill—well, my colleague had raised the issue of the definition of mineral and the question of water resources being involved in this. But when we look at clause 5 of the Bill it says here:

“Notwithstanding any right of ownership or otherwise, which any person may have to the soil on, in, or, under which minerals are found or situated, no person shall explore for or mine minerals except with the permission of the State.”

In the first Bill there were, in fact, provisions that would have involved compensation—there is a statement here, “they are entitled to fair and reasonable compensation by the State”. In the current Bill, no such provision has been made.

As we move on, Mr. President, Part II of the Bill seeks to set up the administrative mechanisms—if we can use that expression—for the implementation of the provisions in this Bill. From what we have been able to gather, the Ministry of Energy and Energy Industries is going to be the agency that will be responsible for the operations of this Bill. In this administration we are seeing in Part II of the Bill, clause 7:

“...the Minister shall be responsible for the general administration of this Act.”

But, Mr. President, when I read on to clause 9, to me, there is some conflict and confusion with these two provisions, because clause 9(1) says:

“Subject to section 7, the Director of Minerals, appointed by the relevant Service Commission, shall be in charge of the implementation of the Act.”

So you have provisions dealing with the powers of the Minister and you have elaborate provisions that now give the Director of Minerals very extensive powers with respect to the implementation of this Bill. So who really is the authority?

To me it is just a bundle of confusion; it is not clear which agency really or which individual will be in charge, ultimately, for the administration of the measures in this Bill, mainly the granting of licence and what have you.

In clause 11 it says:

“Subject to sections 7 and 8, the Director shall have the power to...”

And there are a number of things listed for the Director to be in charge of, but in the first Bill that was circulated those powers were, in fact, being conferred onto the Minerals Division of the Ministry, the new division that the hon. Minister spoke about.

As my colleague, Sen. Montano, pointed out, perhaps, our greatest concern with this Bill really lies in Part III which deals with licences. It is very clear, Mr. President, that in this particular part or, indeed, in the Bill there are no safeguards, there are no checks and balances and no provisions that will make the process of the issuing and the granting of licences a transparent process; contrary to what the hon. Minister of Energy and Energy Industries said in his presentation earlier today.

I refer, for example, to clause 13(1). If you look at the earlier Bill, by way of comparison, in the Bill that was presented some time ago there was a clause 13(1) that dealt with applications for licences. This provision here says that applications for licences shall be made to the Minister in accordance with the regulations and notice thereof, and shall be published in the *Gazette* and in at least one daily newspaper circulated in Trinidad and Tobago. Mr. President, I have looked at the Bill that is before us today and there are no such provisions in this Bill; no procedure has been provided to deal with the publication of applications to give notice to the country that “Mr. X” or “Mr. Y” or “Miss X” or “Miss Y” had applied for a licence to deal with mineral rights.

When we are talking about minerals we know for practical purposes that we are dealing moreso with the issuing of quarrying licences in Trinidad and Tobago, because I am not aware that in our country we have precious gems and other minerals that you would find in South America and so forth; but, basically, the main item that these licences are required for is to deal with quarrying activities. Here is a situation where the Bill is silent on that issuing of licences. There are some general provisions dealing with licences, prohibition of mining without a licence, restrictions on the issue of licences, restriction on powers to issue licences and so forth.

**2.00 p.m.**

In the midst of all these provisions dealing with licensing, there is a provision to deal with a Minerals Advisory Committee. I will make a comment with respect to clause 50 that it really should have been in Part II of the Bill which deals with the administration aspect of the procedures because clause 15 deals with the establishment of the Minerals Advisory Committee and if you are talking about the administration of the provision of the Bill and you have elaborate provisions to deal with the administration, then by all means consider having that provision in Part II of the Bill as well. Instead, it has come tucked in between the provisions dealing with licences. It is just one aspect of the drafting of this Bill which I felt could have been improved.

Mr. President, coming back to the issuing of the licences, the fact remains that there are no real checks and balances, no real procedures, no real machinery provided to ensure that in the issuing of licences there will be fairness and transparency because as we see throughout this Bill, extensive powers have been given to the Minister, whoever he may be. And if so much power is being placed in the hands of one individual, certainly, we would all like to know that whatever is being done, is being done in fairness to all concerned. That is why we are so taken aback with clause 17 of this Bill because they are, in fact, institutionalizing the corruption about which we have been talking; literally legalizing the opportunity for wheeling and dealing and giving licences to friends and family. That is what you will get out of clause 17 because whilst, on the one hand, clause 17(1) speaks about the public competitive bidding process, and the Minister boasted that over the last four and a half years, all licences were done on the basis of competitive bidding, on the other hand, clause 17(2) says:

“Notwithstanding subsection (1), the Minister may, in the national interest and with the approval of the Cabinet, grant licences for mining and processing outside of the public competitive bidding process.”

In that particular section, there are no provisions or guidelines stipulated as to when that national issue would arise. The Minister made mention of an emergency situation, but that is not in the Bill. What kind of emergency? It is very vague, and in effect, it is a residual power that the Minister will have and they will be able to do what they have been saying they want to do and they are accustomed doing and they have been doing, and that is, to do things in a way to get around that bidding process.

*Minerals (No. 2) Bill*  
[SEN. MOHAMMED]

*Tuesday, July 4, 2000*

We have heard statements about doing away with the Central Tenders Board made from the highest authorities in this country. We have heard it coming from other Ministers, and you know even if there are problems associated with the tendering process in our country today because the Central Tenders Board Act may be in need of reform, or the system may be a bit too bureaucratic, what we should be trying to do is strengthen the procedures that are involved and improve the system, not to go around the country talking about doing away with that system. This is one check and balance in our system of government to ensure that when bids are taking place they are being done in accordance with the laws and the rules and regulations.

Mr. President, it simply reflects what we know has been passing for Government in our country over the last four and a half years. That is how they have been operating, just trying to get around the corners to have a free hand and to do as they please and we have to express our concern in the strongest possible way especially with regard to clause 17 in this Bill. Whatever the intent and purpose may be behind this legislation, even if we wish to support this Bill, we cannot support it in its present form especially insofar as clause 17(2) is concerned. We just cannot support it.

This Bill states that the Mines Borings and Quarries Act is being repealed. We know that is a very old piece of legislation; I believe it was passed way back in 1907 and maybe, over time there may have been two or three amendments to that Act and it is obsolete, it is outdated, granted that is so. We have heard the Minister make mention of the construction boom that is taking place in the country and we must say thanks to the People's National Movement that that construction boom was started prior to their coming into office in 1995 and we recognize the need to ensure that systems are in place to cater and cope with the kind of activities we are talking about. Because with a construction boom, obviously the need for the materials that they use and the quarrying activities would have been increased and, therefore, we recognize that there are problems with the system and there is a need to reform it, but all we want to ensure is in that process of reforming and improving the system that whatever we are doing we do it right; with fairness and we do it properly.

As far as we can see this Bill as drafted, the main intent seems simply to give the Minister that power to grant and to revoke licences as he sees necessary. They want no checks and balances in the system, they just want a free hand to grant licences to whomsoever they want.

If one looks at the quarrying operations in this country, we know that a lot of the activities take place particularly in the eastern part of our country. I am sure when people are travelling in an aircraft and they look down as the aeroplane takes off, they will see the kind of activities taking place because the evidence is there. With quarrying operations, we have been experiencing a very serious pollution problem with our rivers and watercourses in the country. We acknowledge that is a big problem that has to be dealt with and this is another reason we have concerns with this Bill.

There are very serious environmental concerns and problems that arise with respect to quarrying operations and dealing with mineral rights, and now that we have the Environmental Management Authority in existence and operating, one would expect that the Environmental Management Authority would be a key player in this process, but instead what we are seeing here is a centralization of all the powers and procedures in the Minister's hands in the Ministry of Energy and Energy Industries and we have to be concerned about that.

It makes you wonder about the role of the Environmental Management Authority in this process because one would have thought that authority was intended to be an independent authority, independent and free from ministerial direction and control, and although provisions have been made in Part VII or Part VIII of the Bill to deal with the protection of the environment, on the one hand, you are saying if you are applying for a licence it must be accompanied by an environmental impact assessment and a certificate of environmental clearance issued by the Environmental Management Authority, but on the other hand, whilst all these provisions are there, we know that the Minister has that ultimate power to grant the licence, revoke it, or to do as he pleases. So it is a bit contradictory in terms of the provisions of this Bill and we have to be concerned because we are dealing with the energy ministry in our country and we know that given all the ministries that exist in our country, when it comes to our energy resources, the energy sector is perhaps the most important in our economy and the Ministry of Energy and Energy Industries is a very important ministry.

We have to express our concerns about setting up a mechanism which we understand has already been set up even though the legislation is only now in Parliament and we are now discussing and debating it. From the Minister's own admission and references to the various Cabinet Notes and Minutes, it is clear they have already put the mechanisms in place, and we must express our concerns about all this authority and power being placed in the hands of the Minister and the Ministry.

*Minerals (No. 2) Bill*  
[SEN. MOHAMMED]

*Tuesday, July 4, 2000*

Mr. President, in recent times—and those of us who follow the news and read the newspapers—we have seen some very serious reports coming out about activities in the Ministry of Energy and Energy Industries and I refer you to an article in the *Newsday* of Tuesday, June 27, 2000 on page 7 which says:

“NP’s upgrade programme temporarily suspended

The Project Implementation Unit (PIU) of the National Petroleum Company Limited (NP), which comprised about 12 experts seconded to the company, was yesterday suspended for two weeks until an independent audit of changed orders resulting from the upgrade of nine service stations in packages A, B and C, are completed.”

Mr. President, we have been reading reports about cost overruns and what have you, and when I read the reports that have been coming out, it is like a lover’s quarrel that is taking place. Do you know when two persons are in love with each other and suddenly they fall out of love all kinds of allegations and fights take place? This is what seems to be happening. There is tremendous confusion taking place with regard to National Petroleum Company Limited, and certainly the Ministry of Energy and Energy Industries is involved in it and the hon. Minister must know about what I am talking and that is why we have to be concerned. In this Bill, the legislation is seeking to set up an administrative machinery that is going to be based in the Ministry of Energy and Energy Industries and recently the acting Prime Minister of our country, Sen. The Hon. Lindsay Gillette, was sent in to troubleshoot and try to deal with the problems that are existing. I am sure we will find out much more about that, but that is where we are at in Trinidad and Tobago today. We are dealing with very serious issues.

Here, we are dealing with a Bill that is seeking to repeal an old Act that has been there for so many years and one would have thought that a very holistic approach would have been taken, one that would have involved a process to ensure that at the end of the day we have a very good piece of legislation in place with proper checks and balances to ensure that there is fairness and equity in whatever is being done when it comes to the mineral resources of our country, but what we are seeing instead is just licence; and licences are free for all where one group of individuals would have that power to give licences as they see fit. There are very little or no checks and balances in the system because there are no provisions for the publication of application for licences and moreso, if a licence has been granted to someone to do quarrying operations, we have no way of finding out who got that licence.

In the past, or at least in the previous legislation, I saw provisions in place for the publication of the grant of licences in the *Gazette* or indeed in the daily newspapers, but in this Bill, no such provisions exist so it is very difficult for us to believe the hon. Minister when he talks about this Bill promoting accountability and transparency because that is far from the truth.

With all due respect, this piece of legislation is really simply a mechanism to enable the present Government to give licences to whomsoever they wish, it is unchecked power, and we have to be concerned about that.

**2.15 p.m.**

Mr. President, this issue of the competitive bidding process is really a scandalous issue. The point that we need to bear in mind is the fact that when we are dealing with energy matters, we are dealing with mineral resources of our country; we are dealing with the reform or the updating of our laws and reforming our legislation to keep up with the times. Granted, new issues arise now; we have new technology in place; we have all sorts of changes that have taken place since the time when the 1907 Act was passed, an Act that was based on the British provisions to deal with mines and mineral rights and what have you, and conditions that existed in Britain at the time; granted, that we need to update our system and make it more relevant to our times, where so much more activity is taking place when it comes to quarrying operations and so forth, my plea to the Government is that whatever we are doing, let us, at the end of the day—especially as this matter is an energy-related matter; this is the kind of matter that we should have a non-partisan approach towards dealing with, because at the end of the day all of us in Trinidad and Tobago—whatever little resources we have in this blessed land of ours, our natural resources—whether it involves hydrocarbons or minerals, whatever it is, at the end of day we will all like to know that we are using these resources in the most effective and efficient way to ensure that all the people of Trinidad and Tobago would be able to benefit from it.

So it is in this process if you are talking about changing the laws, repealing the old Mines, Borings, and Quarries Act of 1907 and replacing it with this Minerals (No. 2) Bill, all that we are saying is to, please, ensure that you do it properly; please ensure that there are provisions in this Bill so that at the end of the day, the procedures that any citizen of this country would have to go through, in order to get a licence to operate a quarry or whatever it is, that it would be a fair system: there would be equity, justice and fairness in the system and it will not simply be a case of curry favouring some one or some group of individuals. But that there are proper checks and balances in place to ensure that when a person applies, his

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application would be treated on a basis that is fair and transparent. That is the critical point. We want to ensure that there is transparency in the process and in these provisions it is clear that those provisions are lacking to facilitate transparency in the process.

If anything, the Bill is concentrating too much power in the hands of the hon. Minister—whoever that Minister may be—and certainly the establishment of the Director of Minerals and the extensive powers that are being given to the Director of Minerals are powers which, in effect, would have some kind of infringement on people's property rights involved in the process, and we have to make sure that if that is what is intended, or that is what is being provided for, that it is done properly and with due process. And we are not sure that the Bill, in its present form, really caters for that. We want to see that at the end of the day this Bill—if we are to support it—is appropriately amended.

We have expressed our concerns particularly with clause 17 of the Bill, where the Minister, on the one hand, boasts about competitive bidding but, on the other hand, is maintaining that residual power in the national interest. What is the national interest? Can you define the national interest in that particular clause? Can you make it a lot clearer, or have some guidelines as to when that clause would be invoked? If you cannot do it or you do not wish to do it, then delete that clause from the Bill and perhaps we would be more minded to support it. Certainly, the issue about the constitutional majority and so on, we would like that issue to be addressed as well, because we feel very uncomfortable with the present provisions because the Bill clearly seems to cater or allow for people's property rights to be affected. Therefore, if we are doing so, then let us ensure that it is done properly.

Mr. President, as we mentioned before, in terms of the environmental issues, we know that these quarrying operations have a very serious impact and bearing on our environment. We are concerned that the provisions in the Bill that deal with the protection of the environment seemed to be creating a situation where efforts will be duplicated. Because on the one hand you are talking about an environmental impact assessment and a clearance certificate, and on the other hand, you are talking about the Minister still having all those powers. And then there is a Director of Minerals with extensive powers too. So which agency would really be in charge? Which agency would have the ultimate power? Will the Environmental Management Authority be able to operate as the Act allows—or at least the intent of the Act in 1995 was to set up an authority that will have that level of independence in its operations and authority.



So that if you are providing for these requirements with respect to the clearance certificate and what have you, we are seeing a situation that is in conflict because the hon. Minister would still have that overriding power. Is it the Minister of Energy and Energy Industries alone to be in charge? Will the Environmental Management Authority really have a say in the process, or would the hon. Minister be able to just override whatever the EMA may say—which is just making a mockery out of the Environmental Management Authority? If that is the case then we really have to express our concern, and we would be hard-pressed to support the Bill in its present form.

We recognize that there is a need to reform the laws and we would like to see them updated. We recognize that there are problems in the system, the collection of royalties, and the revenues that are involved. The system needs to be beefed up. But let us, at the end of the day, especially as it relates to our energy sector, be able to put our heads together and come together in a non-partisan way to be able to deal with this kind of issue.

We cannot sit here and simply support a Bill that is, at the end of day, just going to allow Ministers in the UNC Government to grant licences to whomsoever they wish, without us, as citizens of the country knowing to whom these licences would be granted and very little information being provided. We just cannot allow it.

Before I take my seat—I did not have the opportunity, I was not here at the time, but I see a new face in the Senate Chamber, Sen. The Hon. Carlos John, and I simply want to say that I wish him all the best and it is only a matter of time before our country is returned to a very good, sound and stable government under the People's National Movement.

Thank you very much.

**Sen. Dr. Eastlyn Mc Kenzie:** Mr. President, I would like to begin by saying to the hon. Minister of National Security how—I am sure many of the Special Reserve Policemen—happy they are that the Government is doing something about their situation. I want to suggest to him that just as he is waiving some of the criteria for the regular members of the police service, that he would encourage those Special Reserve Policemen who are not up to the level of the constables now in the regular service to keep upgrading themselves and making sure that they fit in. But I am certain that they are happy. There are a number of them who serve here in Parliament and I am certain that they feel a bit more secure. I want to say congratulations to you and your Ministry and also to say thanks on behalf of those who I know have been really feeling very uncertain of where they stand.

Mr. President, I would just like to make a very brief statement on the Bill before us. I think, Sir, that the intention is excellent; that we should try to regulate what happens with our quarries, rivers, streams and whatever have you. But there are a few concerns I have which I would like the hon. Minister to take into consideration.

I want to go to page 4 of the Bill, clause 8(2) which says:

“No licence shall be granted for mining of State lands without the written consent of the Commissioner of State Lands.”

I do not know how this ties in with the Tobago House of Assembly where state lands fall under the Tobago House of Assembly. I know there is a big confusion now in Tobago between the Minister of Housing and Settlements and the Secretary for Housing in Tobago about state lands and the giving out of housing at \$5.00 per square foot and \$7.00 per square foot. I know there was a threat, or a challenge, I probably should say: in three weeks’ time you give the land over at \$5.00 or else, and the Secretary in Tobago has said that “I am waiting for the ‘or else’.” So I do not know whether you would get some answers for this.

**2.25 p.m.**

Mr. President, I go now to page 7. Again, in clause 14(g):

“land vested in any Municipal Corporation, without the approval of the Minister to whom the responsibility for Local Government is assigned; and”

Again, what happens to the Tobago House of Assembly there? They are again responsible for state lands. Sir, I hope you will take this into consideration.

I go to the composition of the committee and note that there are 12 persons. I wonder whether any consideration was given to any of the environmental non-governmental organizations?

Mr. President, I go to page 9. My learned colleague assured me that in the Environmental Management Authority operations there would be a process of allowing public comments before a licence is granted. My concern was whether there would be any opportunity for the public to comment on applications for licences.

On page 15, clause 35(2) states:

“Where the Director determines that the land has not been rehabilitated or resorted to a satisfactory condition...”

My question is: What if the licensee owns the adjoining block? In other words, I am disturbing and not rehabilitating the land adjoining the other person's land. I think this gives the assumption that this piece of land on which one is quarrying will be adjoined by another person's land. But what if the lands and the quarry are mine? I hope that some sort of consideration would be given to that.

Mr. President, I would like to draw to the attention of the hon. Minister—from assistance given to me by way of investigation from an environmental non-governmental organization—that right now in Tobago there is illegal mining of gravel, rotten rock, coral and sand. Although there is a rule in effect that says, “There should be no beach mining in Tobago,” there is illegal mining of gravel in Louis D’or River, Richmond and Goldsborough; rotten rock at Union, Orange Hill, Plymouth and Grange Estate; coral at Mt. Pleasant; sand mining on the beaches at Little Rockly Bay, Courland Bay, King Peter’s Bay, Studley Park, Stone Heaven Bay, Kilgwyn Bay, Bloody Bay, Castara and Buccoo. What bothers me even more, Sir, is that I understand that much or most, if not all, of this is done by the Tobago House of Assembly. I want to know, Sir, who will control the Tobago House of Assembly? *[Laughter]*

Mr. President, I want to make a suggestion about the implementation of the Act, because I think there is where we always fall down. I will give you an example that was given to me. A truck was caught with gravel coming out of a special river and the owner was taken to court and the owner won the case. Why was this? Because the Government law says that the person must actually be caught red-handed taking out the gravel. If they are finished loading and had just driven about two yards, they were not caught red-handed; therefore you cannot win your case. So, I am asking whether you should only look at the actual sand mining being in progress when you catch them or whether you can look also at the possession of the material if you catch this truck coming out of the riverbed just driving off the embankment and you could say, well, prove where you got this from; prove possession rather than prove that I did not see you actually mining it. So these are the points that I would like to suggest. I think that the one dealing with the Tobago House of Assembly is a very serious one and I hope that when you are challenged, as the Secretary for Tourism and so on in Tobago was, who would challenge your Minister of Housing and Settlements and say, “Ah waiting for yuh for the ‘or else’”? You could come up with the ‘or else’.

Mr. President, thank you very much, Sir. *[Desk thumping]*

**The Minister of Public Administration (Sen. The Hon. Wade Mark):** Mr. President, I reserve my right to speak on this matter. I want to say that from the outset. But in light of the various concerns expressed by both the Opposition and Independent Benches on some of the clauses of this particular Bill, we seek the support of the Senate through the President to have this matter adjourned at this time so that we can proceed to another Bill and, that is, the Homes for Older Persons Bill. Mr. President, through you, if we have the support of the Senate we will adjourn this particular debate at this point in time so that the Government will give consideration to some of the views that have been expressed by the Opposition and Independent Senators. We will probably come back to this Bill in about two to three weeks' time.

**Sen. Prof. Spence:** Mr. President, may I just ask whether any informal mechanism could be arranged so that the Government has the opportunity of consulting with some of the persons who have treated the Bill very seriously and looked at many clauses in detail.

**Sen. W. Mark:** Mr. President, whilst we are not going to select a committee, I am certain that the hon. Minister of Energy and Energy Industries will pull together a team of persons from both the Independent and Opposition Benches so, at least, they can collaborate and coordinate to ensure that we have the finest Bill at the end of the process.

*Question put and agreed to.*

*Debate, by leave, deferred.*

**2.35 p.m.**

#### **HOMES FOR OLDER PERSONS BILL**

[Second Day]

*Order read for resuming adjourned debate on question [May 25, 2000]:*

That the Bill be now read a second time.

*Question again proposed.*

**The Minister of Sport and Youth Affairs and Minister of Social and Community Development (Hon. Manohar Ramsaran):** Mr. President, I wish to preface my presentation by extending appreciation to Members of this honourable Senate for the support which they have expressed for this particular Bill. I have noted with great interest the constructive comments on and criticism of the Bill, and for that I am extremely grateful, especially when we deal with the older persons of Trinidad and Tobago.

**Mr. President:** I am just clarifying something here. I do not believe we had yet reached the stage where the Minister was required to reply, because according to the notes I have here, eight members had already spoken and there is no indication that the Minister was required to reply. So, Senators who wish to contribute may now be allowed to contribute. I am sorry about that, Mr. Minister.

**Sen. Diana Mahabir-Wyatt:** Mr. President, I would like to start by congratulating the hon. Minister for bringing this Bill to Parliament. For many, many years I have been concerned about the state in which many of the homes for the elderly in Trinidad are kept, and the way in which our elderly citizens have been treated in those homes. There are times when it has been really past the point of being abusive to a point where I would consider it criminal negligence.

I have had personal experience of elderly people who are difficult to care for, seeing them strapped to beds where they could not get up and just kept there because there was not adequate nursing care and there was not adequate administrative care for them. That people should suffer that kind of indignity seems to me to be bordering, as I said, on criminal negligence. I think the most important thing about this Bill is the establishment of, not only the Board, but also the Review Committee. I would like to just take a couple of minutes, if I may, to make the point about both of these boards.

In relation to the first one, there was one minor point which I should mention: that is, that we need a clear definition for “Home for Older Persons”. In the legislation it says:

“Home for older persons means a house or other premises used as a place for the care and housing of older persons whether for reward or not.”

I have a home, Mr. President, in which I care for someone because that person is over 65 years. According to the definition here, it is therefore a home in which an older person is being taken care of. The fact that this older person is a member of my family is not excluded by this particular legislation. If that older person's sister who is unwell needs care and I say, “Right, let us also bring home the sister who is older than the older person to be looked after”, which is a family situation, according to this definition, that will be covered as well.

I do not think it needs much playing around with, but it should be made clear that we are not covering necessarily a domestic situation in which people live together with family connections, or I think the expression we used in the Domestic Violence Bill, was “in a family relationship”. Sometimes there are people in a family kind of relationship who are not blood relatives. I would just like to make that exception. I think it is important that we make it clear.

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The second thing, as a matter of public policy, I think with all our social services, we have agreed—at least I think we have agreed as a nation—that the people who are most concerned with whatever we are legislating for should be consulted in the establishment of the legislation, and also in the carrying out of the legislation. When we established organizations like the Coalition for the Rights of the Child, we made sure there were children on the board of the coalition. In other words, people between the ages of 11 and 18 are actually members of on the board who help to make policy.

On page 9, Part II, under clause (4), there is established an Older Persons Care Board, but there is no stipulation under subclause (2) that anybody on that Board should be somebody over the age of 65, or over the age of 60. I am deeply concerned in this country over the extent of the prejudice which exists on the basis of age. I think that we have far more prejudice against age than we have against race, gender, ethnicity, religion or any other of the various different social categories that are defined, for example, under the Equal Opportunity Bill.

Setting the age of 60 or 65 as retirement age was something which was done by Bismarck in Germany in the late 1800s in order to provide for jobs in factories for young soldiers coming back from the Franco-Prussian War. If I am not mistaken, I think it was 1871. Mr. President, why are we being ruled by Bismarck? What has the Franco-Prussian War got to do with Trinidad and Tobago?

I am not yet in the 60—65 age bracket, but many of my colleagues here are, and a great many of my friends and colleagues otherwise in Trinidad and Tobago are, and I have not noticed a diminution in their mental capacity just because they have passed this mystical age of 60. In fact, from the medical evidence which is mounting up continuously, people's intellectual capacity keeps on growing long past the age of 65 or 75, as long as, like any other muscle, they keep exercising it. While the speed of thinking and some aspects of memory may slow down, certainly their ability to reason does not.

I am wondering why it is, if we are setting up an Older Persons' Care Board, we do not have any persons who are defined specifically as “older persons” on that Board. According to the definition, an “older person is a person who is 65 years and over.” Surely, if we want to know what kind of care older persons should get, we should ask the older persons themselves. I would suggest, first of all, that we have the stipulation that on any board of this sort there should be somebody who is representative of the population for which the board has been established.

The second thing that I would like to get some sort of direction on, and I do not want to open up a hornet's nest here, but clause 4(4) says:

“A person who has a financial interest in a private hospital or a private home for the care of older persons shall not be eligible for membership on the board.”

Mr. President, I want to know why? Private enterprise is legitimate in this country. I do not think there are any laws against it. There is nothing in here which is immoral or illegal about private enterprise. We have private hospitals, private institutions to care for children, we have private schools, we have all sorts of private enterprise. The people who run homes for the elderly or homes for children on a private basis have a sharp eye for what is efficient and what is productive in terms of value and cost and their experience could be invaluable on an Older Persons' Care Board.

I am wondering why we are going to the extent of deliberately excluding them as though there is something inherently unethical or immoral about being in private enterprise or having anything to do with a private hospital or a private institution for care. At a time when we are involved in a globalizing system where privatization of institutions—everything from security to hospitals to schools—is part of the public policy, I would just like to have an idea as to why there is a specific exclusion of anyone, and it comes in two places: clause 4(2)(e), and clause 4(4). I would like to know, Mr. President, why this is so.

Mr. President, I think by and large this is an extremely good Bill, and I am very grateful that finally the time has come when we know we will be getting, whether it is a fee-paying institution or whether it is a government institution; whether it is for profit or not for profit—I do not think any of those things matter—any such institution will now be subject to inspection and to care which I think any organization which is open to the public should be.

At clause 28 there is a facility review team which is set up under the Minister for the purposes of making sure that the institutions conform to the regulation. Once again, there is nobody in (a) to (i), no representative of the persons for whom the care is intended; in other words, for example, no person over 65 chosen by the Trinidad and Tobago Association of Retired Persons or, however you want to put it. I do think that we should pay respect to citizens in this country who are going to be affected by legislation we pass by, wherever possible, making sure they are represented on the boards of governing committees and review teams, just as we do with the environment and with any of the other forms of legislation we pass.

Thank you, Mr. President.

*[Desk thumping]*

**Mr. President:** Let me advise Members, I know that we have an air-conditioning problem. The Marshal has advised me that work is going on right now with a view to rectifying this situation, so we will go on until 3 o'clock. If it does not improve, we will have to take a decision on what we will do from then.

**Sen. Prof. Kenneth Ramchand:** Mr. President, I just have a few remarks to make about this Bill—maybe not specifically about the Bill, but the way in which the society as a whole treats or manages its older people. I want, first of all, to agree with Sen. Diana Mahabir-Wyatt about the appalling condition of some of these homes and about the inadequacy of the care that the inmates receive. I call them inmates because in my experience, they are virtually prisoners in these homes.

Mr. President, I have had the very painful experience of being part of a family that put its own older relative into one of these homes; as it turned out, about six of these homes. One gets an advertisement, one makes an appointment to visit the home and inspect it, and when one goes there, it smells clean, one receives well-dressed attendants, one is convinced by the matron or the manager that one's parent will be well taken care of, somebody will bathe her every day, they would change her clothes, and so forth, and so one is impressed. But after two weeks, when one visits the place, the stench of urine, the stench of dirty clothes, the stench of unwashed people, the dilapidated condition of the people one is not visiting—because if one tells them that one is visiting one's relative they would spruce up and clean up that relative, but the other ones hanging about in the galleries and corridors are a true reflection of how they are kept.

I do not have to go into too many details, but I know I have had the experience of somebody close to me being in about five different homes. It is not a case of it is cheaper, the lower the class of the accommodation. It is very expensive. In those places too, there is no provision for a doctor to visit, and the ladies who serve as attendants do not seem to have any nursing training. They do not even look muscular enough to bathe or clean the patients. So, Mr. President, I just want to agree that these homes really need to be looked at and, therefore, I commend the Minister for the little step that is being taken in that direction.

**2.50 p.m.**

But, Mr. President, I think the problem is a much larger problem than that. All kinds of changes are taking place in the way our society is run, changes in the values of society, changes in the nature of the family and all of these are having their impact—the breakdown of family life—as a direct bearing on this problem.



I know that when I was growing up, grandparents stayed in the home of their children. The grandparents had a room in the house. The grandparents were part of the household. If you got licks, you would go by a grandparent. If you wanted a little pocket change, you would go by a grandparent. You would call upon the grandparent to arbitrate and to mediate. The grandparent had a special place to eat, a special place to sit, then people came and talked to the grandparent.

I think that what goes wrong with our older people is not simply the breakdown of the body and the loss of bodily functions, but a gradual slackening of the will to live because they are not really living because they have nobody to talk to; nobody respects them; nobody looks up to them; so they are deprived of their place in a living structure.

Mr. President, I think if we have to pass legislation about homes for older persons and if we are going to depend upon private individuals who, invariably, run these things as commercial enterprises; if we are going to depend upon them, then I think the case is lost. I think there may well be a case for the state giving the lead in the establishment of homes for older persons and the state may give that lead in several ways.

There are many homes or houses where, when you ask the family, "Why do you not have your grandmother living here?" They say, "Well, there is nobody in the house during the day and she will be by herself", or "There is not enough room", or "All the children are at school", and so forth.

One of the ways in which the state might assist is to give grants to people to build annexes to their homes, or additional rooms in their homes for older persons. One of the ways in which the state might help is, if you have older persons staying in your house with you as part of your family, maybe the state could ensure that there are District Medical Officers who can be called upon to make weekly visits to the homes to examine these old people to make sure that physically they are all right, to talk to them and give them counselling if they need it. Those are some of the ways, but the main way, I think, is for the state to actually think about building homes for older persons because you need very special equipment.

Sometimes I sit and think about it. If I have an older relative who is incontinent and who has to be washed about six or seven times a day, it is just impossible to do this in a sanitary way if you have to do it six or seven times a day, so I sit and invent a machine that I can roll them on to and wheel them into something like half a barrel, then wheel them out and dry them. Now, that may seem preposterous, but it is just an illustration that these people have special

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needs and the homes or houses in which they are being kept have to be designed to accommodate those special needs. Most of the houses that are converted to homes for older persons were ordinary three and four-bedroom houses that people have said, "Okay, we are going to take in some old people", and they tried to do it on the cheap.

I am not even sure about what kind of supervision of the diet is done. If you have seven elderly people in your home for elderly persons, do you go and find out from their families whether this one can take sugar; whether that one can take milk; whether that one is pure vegetarian. I doubt very much that this is done. So that invariably in these homes, there is one meal a day. Sometimes you have to starve because there are things you are not allowed to eat, or things that make you sick.

I believe that while it is good for us to try to introduce legislation to alleviate some of the disadvantages of the homes that exist at the present time, a more comprehensive policy of taking care of older people, which would include their accommodation, which would include medical care, which would include social relations, needs to be envisaged.

One of the things I find that old people need a lot of is just space. When I first went abroad to the United Kingdom, at first I used to be surprised and then I became very pleased to see that every time the sun shone, all these old geezers would be wheeled out into Princess Street Gardens and they sat on the benches taking sun, had a little icecream in their hands and you passed and said, "Hi. How are you?" Or, you see them at the foot of Arthur's Seat, again, taking sun, talking to little children and so forth.

I think that in the design of the homes for older persons, we need to take account of that need for space and to give these people a sense of leisure and space, too, to encourage them into various kinds of activities that will make them feel they are real people.

I do not want to belabour the point. I do not think I am being original. I welcome the legislation, but I really wish the Government would pay serious and comprehensive attention to the larger social, economic and cultural problems that have created the conditions in which older people now have to live.

Thank you.

**Mr. President:** The Marshal has gone to check out the air-conditioning again. He told me that the workers are on the roof and he is trying to make contact with them on the roof. There is a suggestion from one of the male Members that we relax the dress code for the time being, but I am not too sure what the women will do. [*Laughter*] I think I would want to suspend for about 10 minutes and come back with definitive information and take it from there.

I will suspend for 10 minutes. We will resume at 3.10 p.m. and determine what we will do from there.

**3.00 p.m.:** *Sitting suspended.*

**3.12 p.m.:** *Sitting resumed.*

**Mr. President:** Hon. Senators, we cannot be given any specific time by which the repairs can be undertaken. The Leader of Government Business wants to make a proposal.

#### ADJOURNMENT

**The Minister of Public Administration (Sen. The Hon. Wade Mark):** Mr. President, in light of the difficulty that we are now experiencing, and the fact that we cannot be given any guarantee that the fault would be addressed or corrected, I would like to move that we adjourn this honourable Senate at this time, and we resume on Tuesday, July 11, 2000 at 10.30 a.m. so that we can make up for lost time today.

Mr. President, I beg to move that this Senate do now adjourn to Tuesday July 11, 2000 at 10.30 a.m. We shall continue the Homes for Older Persons Bill and the Finance Bills that we have on the Order Paper. I think they are Bills Nos. 3, 4, 5 and 6.

*Question put and agreed to.*

*Senate adjourned accordingly.*

*Adjourned at 3.15 p.m.*