SENATE

Tuesday, September 26, 2000

The Senate met at 10.03 a.m.

PRAYERS

[MR. VICE-PRESIDENT in the Chair]

LEAVE OF ABSENCE

Mr. Vice-President: Hon. Senators, I have granted leave of absence to Sen. Brig. The Hon. Joseph Theodore from sittings of the Senate with effect from September 26, 2000 to September 28, 2000 and to Sen. The Hon. Vimala Tota-Maharaj with effect from September 23, 2000 to October 1, 2000.

SENATORS' APPOINTMENT

Mr. Vice-President: I have received the following communication from His Excellency 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: SENATOR DAVE COWIE

In exercise of the power vested in me by section 40 and section 44 of the Constitution of the Republic of Trinidad and Tobago, and all other powers thereto me enabling, I, ARTHUR N.R. ROBINSON, President as aforesaid, acting in accordance with the advice of the Prime Minister, do hereby revoke, with effect from 26th September, 2000, your appointment to be temporarily a member of the Senate, made by Instrument dated 18th September, 2000.

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 25th day of September, 2000."

Mr. Vice-President: You will recall that Sen. Dave Cowie was acting in the absence of Sen. Ganace Ramdial. I have also received this other communication from the office of His Excellency 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: DR. ANNA MAHASE

WHEREAS Senator Ganace Ramdial is incapable of performing his functions as a Senator by reason of his 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, ANNA MAHASE, to be temporarily a member of the Senate, with effect from 26th September, 2000 and continuing during the absence from Trinidad and Tobago of the said Senator Ganace Ramdial.

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 25th day of September, 2000."

"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: MRS. ELAINE TEEMUL

WHEREAS Senator Joseph Theodore is incapable of performing his functions as a Senator by reason of his 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, ELAINE TEEMUL, to be temporarily a member of the Senate, with effect from 26th September, 2000 and continuing during the absence from Trinidad and Tobago of the said Senator Joseph Theodore.

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 25th day of September, 2000."

"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: DR. GEORGE DHANNY

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, GEORGE DHANNY, to be temporarily a member of the Senate, with effect from 26th September, 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 22nd day of September, 2000."

OATH OF ALLEGIANCE

The following Senators took and subscribed the Oath of Allegiance as required by law:

Dr. Anna Mahase, Mrs. Elaine Teemul and Dr. George Dhanny.

10.10 a.m.

FINANCE (SUPPLEMENTARY APPROPRIATION) BILL

Bill to provide for the supplementary appropriation for the service of Trinidad and Tobago for the financial year ending September 30, 2000 [*The Acting Minister of Finance, Planning and Development*]; read the first time.

Motion made, That the next stage of the Bill be taken at a later stage of the proceedings. [*Sen. The Hon. W. Mark*]

Question put and agreed to.

PAPER LAID

Second and Third Periodic Report of the Republic of Trinidad and Tobago—International Covenant on Economic, Social and Cultural Rights. [*The Minister of Public Administration (Sen. The Hon. Wade Mark)*]

SELECT COMMITTEE REPORT
SHIPPING (MARINE POLLUTION) BILL

Presentation

The Minister of Works and Transport (Sen. The Hon. Sadiq Baksh): Mr. Vice-President, I have the honour to present the Report of the Special Select Committee of the Senate appointed to consider and report on a Bill entitled "An Act to provide for powers and jurisdiction in relation to pollution of the seas from ships, preparedness and response for oil pollution emergencies, liability and compensation for pollution damage and matters incidental thereto".

ORAL ANSWER TO QUESTION

Payment by State
(Privately Owned Land in Tobago)

18. Sen. Dr. Eastlyn Mc Kenzie asked the hon. Minister of Housing and Settlements:

A. Could the hon. Minister state whether all privately owned lands acquired, used or entered upon in Tobago by the state for development projects have been paid for?

B. If the answer is in the negative, will the Minister state in detail:

(i) those parcels of lands not paid for;

(ii) their acreage, location and boundaries, date used or acquired, owner/s and purpose for which the lands were acquired/used;

(iii) the reasons for the delay in effecting payment?

The Minister of Housing and Settlements (Hon. John Humphrey): Mr. Vice-President, the Minister of Housing and Settlements wishes to inform this honourable Senate that six parcels of land which were acquired by the state for development projects in Tobago have been paid for. Compensation has been effected to the following persons:

1. John Armstrong
2. Samuel Cowie
3. Levi Guy
4. Loveland O'Brian
5. T. C. Scipio
6. Sybil Pitt

Compensation in respect of six other parcels which have been formally acquired has been delayed for reasons outlined at Table A. Table B outlines the parcels of land utilized by the state to date but which have not been formally acquired.

Mr. Vice-President, the tables are lengthy and if I quote from them, it would take up a lot of the valuable time of the Senate, so I will ask your permission to lay the tables, rather than to quote them.

Mr. Vice-President: Sen. Dr. Mc Kenzie, I presume you will accept that suggestion.

Sen. Dr. Mc Kenzie: Yes, Mr. Vice-President.

Mr. Vice-President: The tables will be made available to you.

Vide end of sitting for written part of answer.

ARRANGEMENT OF BUSINESS

The Minister of Public Administration (Sen. The Hon. Wade Mark): Mr. Vice-President, I beg to move that we proceed to "Bills Second Reading" instead of "Motions" and, specifically, the Finance (Supplementary Appropriation) Bill, 2000 by the Minister of Finance, Planning and Development.

Agreed to.

FINANCE (SUPPLEMENTARY APPROPRIATION) BILL

The Minister of Tobago Affairs and Acting Minister of Finance, Planning and Development (Dr. The Hon. Morgan Job): Mr. Vice-President, I beg to move,

> That a Bill to provide for the supplementary appropriation for the service of Trinidad and Tobago for the financial year ending September 30, 2000, be now read a second time.

Mr. Vice-President, the House of Representatives met on Friday, September 22, 2000, and agreed to an increase in the 1999/2000 appropriation by the provision of supplementary funds in the sum of $415.272 million. Given the increase of $415.272 million, the 1999/2000 appropriation will now be $15.388975216 billion.

The increase is in respect of the following heads of expenditure:

Head 18—Ministry of Finance, Planning and Development. The supplementary funding of $415.272 million is required to facilitate the transfer of funds to the Interim Revenue Stabilization Fund. On May 10, 2000, Cabinet agreed to the establishment of the Revenue Stabilization Fund to address the inherent volatility in international oil prices and the impact on the fiscal position. It was intended that this fund would be established by statute and the necessary administrative arrangements and safeguards would be put in place to govern the deposits into the fund and also withdrawals from the fund.

In addition, the legislation would address the procedure and criteria for investing the assets of the fund and the framework for its accountability. Therefore, the Attorney General and Minister of Legal Affairs was mandated by Cabinet to prepare for the approval of Parliament, the necessary legislation that would govern the fund. However, to give effect to the stated intention of the hon. Minister of Finance, Planning and Development to establish the fund from the excess in oil revenue in this fiscal period, it is necessary to transfer the sum of : $415.272 million from the Consolidated Fund to the interim fund established under section 43(2) of the Exchequer and Audit Act, Chap. 69:01.

It is estimated that in fiscal year 1999/2000, we will realize approximately $629 million more than we had budgeted, therefore, we are appropriating $415.272 million of this amount for transfer to the Interim Revenue Stabilization Fund. This is to ensure that in this fiscal year we would have delivered on our commitment.

May I assure this honourable Senate that we are not borrowing more than the country can afford since we are mindful that the debt we incur today will be the responsibility of future generations. We must not be restricted to investing from our savings only. Prudent management demands that we use other people's savings to increase our productive capacity and our ability to adapt to technological change in order to be competitive in the global economy.

I may also add, Mr. Vice-President, that we have to be mindful of our past. One famous philosopher did say that those who do not remember their history are doomed to repeat it. We did, in fact, go through the agony and trauma of experiencing large oil windfalls in the 1970s which we did use for investment in infrastructure; we did manufacture a set of subsidies and transfer payments that benefited a large cross section of the population; but, because we did not manage the long-term investment properly, when oil prices fell in the early 1980s coming down to $8.00 a barrel, I think in 1985/1986, and in real terms lower than in the previous 25 years, the country went into a great deal of trauma, some of which we still see the delayed effects.

I may add in that context that one of the unfortunate consequences of that experience was that while the oil windfall was coming in, there was not a consensus in the national community that we needed to have wages reflect long-term productivity and long-term economic realities, with the consequence that every Christmas there was a “backpay” and every time there was a union agreement, whatever the unions demanded, they received it, so that when the real world dawned upon us, we had a profile of disbursements of transfers and emoluments that could not have been sustained. The best explanation for the disaster that we encountered following 1986 had to do with that long-term fixing of a level of payments and disbursements that were not consistent with the real world of economic structure.

What we are doing here is, in fact, engaging the country into an understanding and an appreciation that we do not want to go back there. We do not want to have to undergo that kind of trauma again and, more than that, we are signalling to people that the time preference for consumption and investment has to be modernized in the context of pre-emption.

Just to illustrate, the statistics available from Moody's revealed that in 2000, this country's external debt ratio compares favourably with countries with similar credit grading. These countries include Mexico where it is 19 per cent; Chile where it is 19.2 per cent; Poland, 8.3 per cent and Qatar, 29 per cent.

This Government is committed to providing the citizens of this country with the best quality physical infrastructure we can buy. In order that the continued growth and development of the country is assured, we must not be ashamed to declare that we are spending for quality and that we are investing in quality.

When we assumed office, the water and electricity systems, the road network, the airport and other social infrastructure, needed drastic overhaul. Financing of these facilities required huge injections of capital that could not then be got from internally generated funds of the said enterprises, or from transfers from the Treasury. It was, therefore, necessary, over the past five years, to finance these infrastructure projects by borrowing on the local market, or through concessional borrowing from multilateral agencies. This Government sees the provision of these services as part of its responsibility to foster and to stimulate the growth and development of our country.

The establishment of this fund will ensure that in years to come, the revenue flows needed to meet the expenditure required to continue the development of Trinidad and Tobago would be assured, even during periods of depressed oil prices, because the intention is to have these funds invested in a portfolio of assets which would reduce the risk of any adverse fluctuations in the capital and asset markets. Therefore, these funds, I repeat, would be invested offshore in securities, in bonds and in stocks, in such a portfolio as would minimize the risk of any volatility in the market for those assets.

10.25 a.m.

This measure is intended to be a temporary one, pending the enactment of more comprehensive legislation, which we will bring—*[Interruption]*

Sen. Daly: I am sorry, Mr. Vice-President. I thank the Minister for giving way. My intervention may be premature, as it turns out. Could the Minister indicate what is the reason the statute was not brought right away? Why are we having an interim measure? Could he say?

Dr. The Hon. M. Job: This is because the statute requires the draftspeople in the Ministry of the Attorney General and Ministry of Legal Affairs to make sure they have an adequate measure so when it gets here, the good Senator over there would not have too much problem tearing it to bits. That takes some time.

Sen. N. Mohammed: How long would that take?

Dr. The Hon. M. Job: The Attorney General would be the better person to answer that. I am sorry I cannot answer.

This measure is intended to be a temporary one, pending the enactment of more comprehensive legislation which, we will bring to the Parliament and which is in the process—following on the question—before the end of this parliamentary term. We hope to do that.

Mr. Vice-President, I wish to advise Senators that this Bill will increase the 1999/2000 appropriation by $415.272 million. The total amount to be appropriated for the year 1999/2000 will, therefore, be $15.388975216 billion.

Mr. Vice-President, I beg to move.

Question proposed.

Sen. Danny Montano: Mr. Vice-President, it was disappointing to listen to the—I do not know if it is the new Minister of Finance, Planning and Development, or—the other Minister of Finance, Planning and Development. I do not know if the other Minister of Finance, Planning and Development is coming back, because there are stories about that. Notwithstanding that, I was disappointed with his presentationn. Clearly, when asked a very elementary question: "When is the legislation coming to Parliament to enable this?" the Minister could not answer the question. He looked down at his speech and he still could not find the answer. Obviously he did not read the speech before he came here. I find that extraordinary: to not know how to answer that question. What is the Minister coming here to tell us, that he does not know what is going on? *[Desk thumping]* We are talking about the people's money, $415 million of the people's money. He casually says: "Listen, we have to isolate this from the Consolidated Fund." He mumbled a few sentences. I do not know what he was saying. I really do not understand what he was saying. I would like to know where the money is, where it is going, what it is going to be invested in, and what are going to be the terms and conditions for its use. That is what I would like to know. *[Desk thumping]*

I find it is an extraordinary state of affairs. I find it extraordinary, that in this day and age—obviously they really do not care about what is taking place anymore. *[Desk thumping]* Parliament is going to close down in a few days and, obviously, they just simply do not care to get it right anymore. They are treating this Parliament with disrespect. *[Desk thumping]*

It is not that simple an issue. The Minister spoke about the recession we had gone through between 1985 and 1991. He talked about the commitments that had been made. What about the commitments that this administration is making? The Minister spoke about balancing his portfolio of debt and so on. Mr. Vice-President, they have got it wrong. They have got it all wrong! I have said so over and over again.

The first thing I find that is extraordinary, is that last week—Senators would recall—when we were debating the budget, the Minister of Finance, Planning and Development, in his winding-up, in response to certain comments; that is to say, the other Minister of Finance, Planning and Development; had indicated that he had a preference for borrowing on the local market, as opposed to the foreign market, because of the exchange risk. The debt that we have is relative to this fund that we are setting up. I would come to that in a moment. The Minister expressed the preference for borrowing in local dollars, rather than in foreign currency because of the exchange risk. Mr. Vice-President, I found that the most extraordinary statement to be made from a Minister of Finance, Planning and Development. The Minister is the ultimate guardian of the foreign exchange and the rate of foreign exchange. He is the ultimate guardian, not the Central Bank. It is the policies and strategies of the Government that dictate what happens, ultimately, with the exchange rate.

How can the Minister of Finance, Planning and Development, say that he is going to reduce his foreign exchange risk by increasing his debt, including TT dollars? Mr. Vice-President, what is he saying to the rest of the public? What he is telling us is: "Look fellas, I have no confidence in the TT dollar, buy US dollars. What we should do is dollarize." I have no difficulty if that is what he was saying. He has not said that. In fact, he is advocating not holding on to TT dollars. What he is saying is: "You are on your own insofar as the exchange rate is concerned."

Everybody knows everywhere in the world, every country makes an effort to manage its foreign exchange rates. Every country in the world does that. There is no such thing as a free, floating currency anywhere in the world. Our currency is exactly the same thing. Speaking on behalf of the Government—how can the Minister say: "Catch as catch can, it is not my affair." How can he say that? How can he be so irresponsible? How can this UNC administration be so irresponsible as to make a statement like that: *vis-à-vis* the foreign exchange risk? How can they do that?

Much has been said about the level of debt. The reality is—just to remind Senators in this honourable Chamber—that the total public debt in 1995 was $18.8 billion. Today it is $29.9 billion. Of course, the Minister is boasting about the level of his foreign reserves.

Just in June, with the US$250 million loan and the Japanese Yen loan, we have approximately TT$2.2 billion coming into the system. Of course, that cannot be spent all at once, so it is really sitting in the foreign reserves account. It is building the foreign reserves and also building the debt at the same time. That does not make any sense. What we are doing here, with this $415 million, is precisely the same thing: we are building up debt to do the infrastructural works to which the hon. Junior Minister of Finance, Planning and Development, or the other Minister of Finance, Planning and Development, rather vaguely referred. At the same time we are trying to set aside cash balances. In other words, you are literally borrowing money to put in a fixed deposit. I do not know where this money is going. I do not know how or where it is going to be invested.

10.35 a.m.

Mr. Vice-President, how many citizens of this country go to the bank, borrow money and say, "I want to borrow money to make a fixed deposit". I do not know anybody who does that and, certainly, I do not advise that kind of strategy; that does not seem to make a whole lot of sense. I think that a revenue stabilization fund can make a certain amount of sense if the conditions were slightly different, but the conditions that we are facing now with the level of debt increasing as it is, brings the debt levels to almost perilous levels; we are talking about $30 billion.

What we are talking about, as we saw in the debates last week, is where state agencies are now being squeezed and literally having to mortgage their assets in order to raise funds to pave roads. [*Desk thumping*] Is that the so-called infrastructural works that the hon. Minister of Finance, Planning and Development is talking about, the paving of roads? That strikes me as being extraordinary! We are going to isolate $415 million while we have borrowed money from everybody in the country to pave roads. That is a policy and a strategy of which I fail to see the economic wisdom. I just fail to see the economic wisdom of that.

In the United States of America and Canada they are beginning now to pare down their debts from their surpluses. The Minister of Finance, Planning and Development is boasting that he has surpluses, we see deficit, but he says surpluses. When you have a surplus, what you do with the surplus is either save it

in this way or you pare down your debt, but with the level of debt that we have we should be paring down the debt, not isolating cash advances. What we are virtually doing is saying that we are keeping this for a rainy day when the price of oil falls to lower levels; if and when it falls to lower levels. So we will borrow the money now in the event that it happens later. Mr. Vice-President, how does that make a whole lot of sense? Why borrow it now? Why not deal with that if and when it arises? That is the issue here.

Let me just show you something. Much has been said by this Minister and the other about the debt levels and the ratio of debt to GDP and so on and so forth. When I was making my contribution in the Senate I said that the debt ratio between the total debt and the gross domestic product at market prices was more or less the same thing as it was back in 1995. The reality is that that, in terms of Trinidad and Tobago's economy, is a very misleading statistic, because of the level of exports from the petroleum sector. What tends to happen, and I have said this before, I think it may have been last year or the year before, that, perhaps, a far more relevant statistic to Trinidad and Tobago is the gross national product (GNP), and that is what we should be looking at.

The gross national product is the indigenous production levels of the country, that is what we should be measuring, because the GDP would go up if the price of oil goes up. Nothing has really changed, but the GDP would go up by the increase in the price of oil. Not all of that revenue is actually going to accrue to the citizens of Trinidad and Tobago. They belong to the oil companies, and it is only through the taxation regime that it comes into our economy. Therefore, it is the far more relevant ratio that we should be looking at. In fact, any prudent individual would not be looking at the GDP, but at their debt service ratio as well as their ability to reduce the debt over a period of time from their revenues.

Now, in order to make myself clear: I am sure that most of us here and almost every citizen in the country over the age of 18 has had to approach a bank for soft loans to buy a car, house or whatever it might be, at some point or another. When the bank starts to look at your affairs, they are not concerned with the level of the GDP, they are concerned only with your ability to repay, and your ability to repay comes from (a) your revenue. They look at the amount of your revenue, your earnings and the level of your expenditure and commitments in terms of other loans or whatever; that is what they look at. So your ability to borrow, any citizen in the country, his ability to borrow, and any company in the country, their ability to borrow, depends on their earnings, expenses, surpluses and profits. It has very little to do with the GDP.

Indirectly, it may be related to the GDP in the sense that if the economy as a whole is improving it is likely that companies, especially dealing with the market place, might do a little better, but it is only an incidental thing that the bank as an economist might look at in terms of the future risk. But the thing is, what they look at is the certainty of your current revenue and the existing certainty with which you can service your debt. When you look at that, that is only plain, simple common sense, that you can only borrow what you can afford to pay back.

Mr. Vice-President, the ratio between debt and earnings in 1995 was 2.1:1; that was the ratio. In the year 2000 it is 2.5:1; the debt to earnings ratio is increasing, that is the significant issue and that is the only sensible measure that you can use. Nobody can come to the Parliament and fool you and say compare it to the GDP and all this sort of nonsense; it does not wash; that does not make any sense. The GDP is subject to inflation and can be inflated by forces that have nothing to do with government revenue. It has nothing directly relative to Government's income and Government's ability to service its debt; there is no direct relationship. The relationship comes from Government's income. The debt to Government's income in 1995 was 2:1, today it is 2.5:1, that is an increase in the ratio of about 18 per cent; that is what we are talking about.

What we are talking about is this: as the Minister himself referred, back in the period 1986 to 1991, during a very severe recession coming from the dramatic fall in the price of oil, what could any country have done in order to continue with the development of infrastructure, in order to continue with the business of government? You have to take the measures that are going to put the country onto a path of growth and development. Therefore, what any prudent government would do, if it is wise, is borrow under very constrained circumstances. They will borrow, they will invest in the productive sectors of the economy to make sure that things get better.

During 1991—1995 that is precisely what the People's National Movement administration did, and the economy began to turn around as early as 1993. As early as 1993 the economy began to turn itself into a growth path [*Desk thumping*] and we were through at that point with the recession. But coming out of that and having gone into debt in order to achieve that—and any businessman will tell you that that is proper thinking under steadied circumstances as you start to go into a period of unprecedented boom over the last 5 years, what has this administration done? They have pushed that debt ratio to 2.35 times Government's revenue.

What have they built? I have been looking around for the equivalent of the Hall of Justice or the Twin Towers. I have been looking around for a road that they have actually built. They have widened a section of the Churchill Roosevelt Highway by building on the shoulder. All they did was pave the shoulder of the

road that was already there; they actually have done very, very little. [*Desk thumping*] The distribution of water through the country was a project that was started by the People's National Movement administration, they simply carried on the plan as it was, but they have actually built and done very little, and the question begs itself. Where has the money gone and what do they plan to do with it? How do they plan to use this $415 million?

The Minister comes here and explains to us why he is doing it and what it is, that it is a revenue stabilization fund and so on and so forth, but he has not told us what it is going to be used for, how it is going to be used, what the conditions must be for its use and how it is going to get there. Mr. Vice-President, he is going to isolate these funds with the legislation, I can assume, and put conditions on it, and having mortgaged everything but the kitchen sink in the country, the next administration is going to find itself tied by the leg. That is going to be a PNM administration, and they know it. [*Desk thumping*] So they are mortgaging our future and sterilizing funds and saying, "You cannot use this except under certain circumstances." I find that to be extraordinary!

I for one am not in the habit of borrowing money to create savings. I do not mind borrowing to invest in a revenue yielding enterprise. I do not mind borrowing to build schools, because that is the future of the country. I do not mind borrowing to build water mains; I do not mind that. I do not mind borrowing to build roads. I do not mind borrowing to build hospitals, but to borrow just to put it where? In somebody's pocket? I do not know, I have great difficulty with that; and I would like some serious answers from the Minister and to treat this honourable Senate with some respect. Give us some serious answers. [*Desk thumping*] What are you going to do with the money? Where is it going to be held? Where is it going to be invested? How is it going to be invested? What are going to be the terms for its ultimate release?

Mr. Vice-President, these questions have been begged and they have not yet been answered, and I would like some answers.

Thank you.

Sen. Martin Daly: Mr. Vice-President, I sometimes think that being in the Parliament is almost an impossible task. I spent all of yesterday working on a bill that we have to debate later today, which comprises 92 pages and which contains some unprecedented provisions to which I will draw attention in due course. Trust me, Mr. Vice-President, I spent nearly the equivalent of three full days preparing

for the debate on the Proceeds of Crime Bill. I asked other lawyers to volunteer time, because it does not matter how long something is on the Order Paper, the pressures of work are such that you cannot really devote time to it until you know for certain it is going to be debated.

Now the relevance of that to what is before us now is this: at 5.00 o'clock yesterday afternoon when I was about to leave the office—I am always pleased to see any member of the parliamentary staff, they are always very cheerful, they always make you feel like a human being—one of the members of the parliamentary staff, the white van that we enjoy seeing so much, arrived with an envelope. I met him in the reception room and I opened it there and then and I saw that we were to debate this morning a financial measure, and when I looked at it, all I had was a Bill that purports to make a transfer to the Ministry of Finance, Planning and Development; that is all I got.

I deduced from that that this must be the Oil Stabilization Fund, because it is $415 million, and that has been much talked about in the last week or so. I certainly at that stage could not start thinking seriously about the Oil Stabilization Fund.

10.50 a.m.

We arrived here this morning and we got an envelope that now contained some information about the Oil Stabilization Fund which I opened five minutes before this debate started. I have very definite ideas about how this fund should be established, but however it is established, I need to understand what it is the Government has placed before us. When I read this explanatory document, I see that our approval is being sought under 113(3) of the Constitution and I invite everyone to take out their Constitution and look at it, and while I am thinking : about this problem, one of my colleagues asked me if I have looked at 113(3) and I start to see enormous problems about the validity, not the merits of what we are doing. The Oil Stabilization Fund is a wonderful idea and it should have been done a long time ago and anything this Government says by way of propaganda about what a wonderful thing it is that they are doing it, they deserve to say it, but of course, they must create the fund in a sensible and credible way.

This Bill does not establish this fund in a valid, sensible or credible way as I would seek to show. As you would well know, Mr. Vice-President, because we share many professional interests, one of the most urgent questions about funds nowadays—whether they are mutual funds, pension funds, government funds—is how do you segregate a fund in order to place it beyond the reach of creditors, liquidators and other contingencies. That is a big debate all over the world in connection with all kinds of funds.

If you are going to have an Oil Stabilization Fund which is meant to be a kind of sacred cow, a set of savings against a rainy day, if you are serious that is what that fund is, then you would create it in such a way that (a) it cannot be touched easily and (b) if it is touched at all, the population would know that you are touching it and you would have to justify why you are touching it. That is the point. I am not getting into some argument, this is much too serious. It makes me feel it is almost impossible to carry out my duties as a serious parliamentarian because I have had 40 minutes to think about this, having spent all my time preparing for a completely different debate.

One interpretation is that the Government would like us to pass anything at all so they could go on the hustings and say we created a fund. I cannot be a party to that, despite the fact that we have fundamental, philosophical disagreements. Minister Job is one of the persons whose *bona fides* I am always disposed to accept without much inquiry and so I propose to conduct this debate on the basis of the technical validity and the usefulness of what the Government is doing.

My premise is, if you are creating an Oil Stabilization Fund for the purposes which you have said, I repeat, it should be established in a way that it cannot be easily touched, and established in a way that if you touch it, you have an obligation to let the public know that you have touched it and for what reason. That is the essence of debate. Assuming for the moment that what we are doing is constitutionally valid and you transfer this money to the Ministry of Finance, we have to know how it is going to be held, who can touch it, and for what purpose. Simply putting it in the Ministry of Finance does not get us anywhere because presumably then, however money is disbursed in the Ministry of Finance—it could be disbursed for anything. I would have expected the Government—and I do not think it is at all difficult, and it is a question of priority and if this is a high priority in the Government, it is not the first time that they have made the Chief Parliamentary Counsel (CPC) draftspersons set up all night to prepare the appropriate legislation.

Of course, I do not think it is difficult at all. If I had to do it, I would put it in a separate account in the name of the Corporation Sole; I would provide if that money is to be used, its use must be subject—I would prefer an affirmative resolution, but at any rate, a negative resolution of Parliament so that I know exactly where the fund is. I would require that the Corporation Sole account for the fund quarterly so that I would know exactly who is holding the fund, exactly where they are holding the fund; every quarter you would have to tell me whether

it has been used, or whether it has been borrowed against, or any kind of disposition of that fund. Then I would require that the proceeds of that fund cannot be used unless you have, I would say at least a negative resolution of Parliament, but I would prefer an affirmative resolution so we could have a debate. What is the problem with a debate?

Suppose the Government decides it is going to use half of the fund for some—we decide we want to have our own communication satellite. We would need to debate whether that is an appropriate use of the fund. If it turns out that NBC and so forth has blanked us from all global communication, we might have to take half of the fund to launch our own communication satellite, but we would have to debate it. That is my point. So I do not accept whether this is valid or not, that this is the way to create a fund which is earmarked not to be used except in cases of emergency and, therefore, it should be segregated and we should have notice of any time it is being used.

Of course, we cannot debate this because we have received this arbitrary kind of pre-emptive notice that we are doing this today. In fact, we are doing it today. Last week we had to do the Proceeds of Crime Bill or else, now we have to do this, or else. There are people here who are technically competent to discuss these financial matters far better than I. I am just registering my protest that something that is so important and so valuable has been sprung on us by notice at 5.00 p.m. yesterday afternoon. I think it is quite appalling and I am entitled to say so, and I do not think that is how we should conduct the people's business.

Mr. Vice-President, I would not bore anybody about what I consider the essential invalidity of what we are doing. What I know is that the further explanatory paper we got a few minutes ago says: It is therefore necessary to seek parliamentary approval in accordance with section 113(3) of the Constitution.

Mr. Vice-President, I invite you and all the other Senators of this Chamber to look at 113(3) and see whether this is a 113(3) case. To me, it palpably is not, it is a matter of the ordinary English language. You do not have to be a lawyer. It is a matter of ordinary English language to see it is not a 113(3) case. The Leader of the Independents today suggested to me maybe it is a 115 case, but I did not even have time to think about that so I could not even ask the Minister to give way to ask him whether 113 was a misprint for 115. I do not think it is a 115 case either.

Who has sent this Minister here to do something under the provisions of the Constitution which is the supreme law? It is not an ordinary law, this is a constitutional matter, and who has sent the Minister here? I am not criticizing

him. Who has sent the Minister here? Assuming they do not want to have a segregated fund and all these other things which are merit matters, who has sent the Minister here with the advice that we can do this under 113(3)? Now, it is a money Bill, and we do not have a vote, but I am not satisfied that this is a 113(3) case and I would not allow this. However it is, we do not have a vote; I must register my dissent that this is not a 113(3) case.

This is not some sterile, legal point, we have an obligation to do things that are valid and we have an obligation to do things that are credible. I say the setting up of this fund in this way whether it is valid or not is not credible because it just becomes part of the Ministry of Finance's kitty and I am really surprised that the technical people would have allowed this to come forward in this form. If we have the usual spirit of independence between the technical people and the Minister, I am surprised that they have allowed this to come forward. Maybe there is some point I am missing.

May I make it very clear, Mr. Vice-President, and I must make these points in a qualified way because I first found out about this at 5.00 p.m. yesterday afternoon, and I first got an opportunity to understand what the Government is doing five minutes before we sat. I do not think that it is an appropriate discharge of our parliamentary duties to deal with $415 million on notice at 5.00 p.m. yesterday afternoon. If any of these points to which we are referring are valid points, this is not a question of RAM and MPM and DLP and PNP, that is not the issue. The issue is about dealing properly and validly with $415 million of the people's money and that does not have any side on it. That has to do with something: we have a sacred trust to deal with the people's business in a valid and credible way.

I am extremely fed up and have been so for some time about these parliamentary arrangements. I have not protested them for a long time. I have done my best like all the rest of my colleagues. Under normal circumstances, when you are invited to become a Member of the Senate, *prima facie* you commit to come in here from 1.30 p.m. to 6.30 p.m. on a Tuesday afternoon subject to emergencies. Now, 10.00 o'clock in the morning is a regular thing, and another day in the week is a regular thing, and on top of that even when you make the sacrifice and try to do the work, this kind of thing is sprung on you. I do not care if they say I am impartial, I am close to tears about this. I cannot believe that I have to examine a Bill dealing with $415 million when the first I knew about it was the delivery of a sterile piece of paper at 5.00 p.m. yesterday afternoon.

I am really quite upset about it, Mr. Vice-President. I do not think it is either valid or credible and this has nothing to do with attacking anyone. It has to do with carrying out the sacred trust of those who put us here. The Senate as an institution is an important part of our constitutional arrangements. Only last week I spoke about making sure that all the building blocks of our constitutional arrangements are properly in place and we cannot discharge our duty under those conditions. I wish to protest in the strongest terms, the short time we have had to look at this, the lateness with which the material has been delivered, and the inability to debate these points even informally. I do not want to make a public fuss about this if I can avoid it. I would have much preferred to have an opportunity to go to the Minister and say: "Look Minister, I am concerned that we are acting 113(3), what are your people saying?" I do not want to score any points over $415 million, but how can I carry out my duties? I am exhausted, I have spent three days working on another piece of legislation and this is what we get today, the $415 million.

Mr. Vice President, to summarize, I think this is quite pointless to simply put $415 million under the general head of the Ministry of Finance, I think we should have a specific segregated fund with safeguards about how it should be used and public notice that it has been used, and I question it because I have not had time to think about whether this is a 113(3) case under the Constitution. May I emphasize that it is Constitution with a capital "C". It is very important that we do these things correctly.

If I am right, then I am troubled. I say without reserve, let me put an exemption clause, I have not had time to study it, but on the face of it, it does not seem to me to be a 113(3) case. It does not even seem to me to be a 115 case, but of course, if I had more time to think about it, I could have discussed it with the Minister informally and we could have got along with the business.

Overarching all of this, I am going to repeat my protest that we cannot deal with $415 million on the kind of notice which we have been given, particularly when we have had to address another quite extraordinary piece of legislation. So I leave it to the experts to flesh out how a stabilization fund should be set up and see whether there is any value in these points which I have made, but I really find it impossible to discharge my parliamentary duties under these conditions.

Thank you.

11.05 a.m.

Sen. Dr. Eric St. Cyr: Mr. Vice President, we had notice of a Revenue Stabilization Fund—I think somewhere in October 1999—and when it was mooted first, I think the consensus was that this is an excellent idea and what we were concerned about then was how best to do it.

Before I get into the debate on the fund itself, let me take up on a point raised by Sen. Danny Montano, which is a serious point that we must clear our minds on, namely, does it make sense to borrow which, invariably, would be at a higher cost, while at the same time, we have savings which we would place, invariably, at lower return? I think that sometimes it is wise to borrow even when there are funds which could be put in reserve for special purposes. For one thing it would force you to examine more carefully what you are borrowing for, whereas if you use your own funds you probably would subject the project to less stringent evaluation, and that is a simple case in point.

But I do not want to pursue that particular line because I could give the example, internationally, that the International Monetary Fund saw fit in the 1970s, to establish what is called the Compensatory Financing Fund (CFF), which is used to make loans to nations whose main exports have suddenly run into a major price fall, so that their balance of payments would be seriously jeopardized. I think, myself, that in looking for a justification for this Revenue Stabilization Fund, that is the direction that we must look to justify it. We had the experience during the 1970s when the first oil boom sprang upon us that, in order to show as the very distinguished Prime Minister and Minister of Finance of the day, that there was no surplus to be consumed away lightly he devised the method—I am talking about Dr. Eric Williams, Minister of Finance—of creating a number of funds into which he would appropriate moneys for specific capital works and so render them not available for use on current account. So I think that is the first basis of rationalizing a fund.

It is also important that where your exports are subject to high price volatility and so your revenues would be very volatile, your planning of your expenditures would be better done if you could somehow stabilize your revenue. And I think in my view that should clinch the argument for having a Revenue Stabilization Fund and I must say that I fully support the creation of that fund. *[Desk thumping]*

The point I think we want to debate is how should we do it. I gave some thought to this last night and I believe that there are some technical ways that this could be properly done. I believe if we do not do it properly there is already evidence that we will misuse it. *[Desk thumping]* The evidence is this. In the 1999/2000 Budget the hon. Minister of Finance chose a $16 US per barrel of oil

on which to base his budget, and it is in that budget that he also told us that if prices exceeded the US $16 he would use the extra revenue to create this fund, and we said, "that is a wise and good idea." *[Desk thumping]* We are told somewhere along the way that, in fact, the average price of oil during 1999/2000 was of the order of US $27. But, you see, in the year in which the realized price of oil exceeded the budgeted price, we already raided the fund—the fund created so that if the price realized fell short of the price we budgeted, we would make up the difference. In fact, the price realized far exceeded, and what he has done out of $629 million he has raided the fund to the extent of $218 million. And so seriously if we are going to establish this fund for the purpose of stabilizing our revenue flows, and so better be able to plan our expenditures for the proper development of the nation, we have to put some proper rules by which we would use that stabilization fund. *[Desk thumping]*

The note we got yesterday says, "that it is to meet expenditure for the service of the financial year." Well, it is not. It is a special financing provision we are making. *[Desk thumping]* More worrying, is the note we got today which said, "that Cabinet agreed that two/thirds of the excess revenue, which is approximately $415 million be transferred. In other words, already this fund is being treated as in the discretion of Cabinet, so that the purpose of stabilizing against unseen price fluctuations need not be fulfilled if it is in the discretion of the Government.

If we are to seriously set this fund up to stabilize our export earnings against price fluctuation, the first thing that must be done is that the fund must be held in foreign exchange, invested properly so that we maximize the interests earned to take care of Sen. D. Montano's concern that we would be borrowing where we could have financed from those funds our own capital. Equally important, there must be a return on those investments abroad to maintain the current value of those funds. So we have a fund held in foreign exchange invested with those two purposes in mind.

11.15 a.m.

The second thing is, we would have to put in place a method by which we would assist the Minister of Finance to choose the price of oil on which he bases his budget. You see, he went from US $16 last year to—I think he told us the price at which he budgeted this year was US $22. Well, that cannot be an arbitrary, judgment-determined figure. I believe that technically what we should do is calculate the average price of oil over, say, a 25 to 30-year period, but because of the changing value of money we have to express that average price of oil in terms of the current purchasing power of the dollar.

In other words, technically the economists would say that one would need, hon. Minister—I think I could talk to you in this language—a Paasche price index to deflate the dollar as one goes along. So that in the year 2000, if they are measuring the average price of oil, say, between 1973, year by year, and 2000, they would not be taking the $2 in 1973 as the same $2 in 2000 because a US dollar bought far more in 1973. They would have to convert all these annual prices to the purchasing power in the last current year.

Dr. Job: Just to refresh my mind, because the Senator said Paasche, I remember when we did those things the Senator spoke about Paasche and Laspeyres. Why not Laspeyres? Why Paasche?

Sen. Dr. E. St. Cyr: Well, the Laspeyres would be a base-year weighted price index so that one would be expressing the later-year values in terms of earlier-year values. But one is holding those funds now and one wants the value now, so one has to use the current-year weights to adjust the earlier prices and bring them all to current-year values. That is why one has to use a Paasche deflator rather than a Laspeyres deflator.

Okay, so we have an average price of oil over, say, 20, 25 or 30—I would say 30 would be the longest period and 20 would be the shortest period—and we would use that price as the budget price of oil. Now, this technique is used in several instances. For instance, our portfolio of foreign investments whose value would fluctuate day by day, depending on the market price of equity and bonds—one does not keep one's books in day-to-day fluctuating prices. One chooses a book price in which to keep one's accounts and at the end of the year when one is closing the books off, one uses the market price then to adjust everything. So, the concept is general.

The first point I want to make is that, if we are going to do this thing properly, the price at which the hon. Minister would calculate the revenues from oil would be objectively determined as the average current weighted price over a 20 to 30-year period. The second thing he has to do is to measure the fluctuation of that price and, again, the technique to use there is to calculate the standard deviation over that period so he then has a measure of average fluctuation or variation of the price of oil. He now has to use again an objective technique to say how much out of the fund he will take in if prices fell below his budgeted price.

I would say point one: if realized prices exceeded one's budgeted price, the rule should be, all the surplus must go into the fund because if one does not build the fund up when one has surplus, one will have nothing to draw on when one is short. [*Desk thumping*] So rule one is that all one's surplus coming from an

excess of realized price over the budgeted price must go into the fund and one builds it up; and hear me, there is nothing wrong with having assets. Hear me; when we had money in this country, the Central Bank would earn several million US dollars by trading and it amazed me that we killed the goose that used to bring us a golden egg every year. [*Desk thumping*] So this is why my concern is: have we as a nation learnt how to manage our economic system in the context in which we operate [*Desk thumping*] against the background of our experience over the last 30 or 40 years?

When we come now to the shortfall in the price of oil, I would like to suggest the following guiding principles. If the realized price of oil falls short of the budgeted price of oil by one standard deviation or less, then we recoup 100 per cent of the shortfall. If the realized price falls short of the budgeted price by two standard deviations, I would suggest that we recoup 75 per cent of the shortfall; and if the Minister works it out he would see that he has a sliding scale, as it were. So one is preserving, as it were, the integrity of the fund. If the realized price falls short of the budgeted price by three standard deviations or more, I would think we should take 66 per cent of the shortfall; and we can sit down and I could show the Minister that this will work very easily.

Mr. Vice-President, I would like to sum up. I fully support a Revenue Stabilization Fund. [*Desk thumping*] In that Fund perhaps we should not only have oil but we should have the major commodities deriving from gas, which is our new staple, not oil. We should set up the Fund in a way that is technically correct, and we should use this technique to stabilize our revenues so that we could better plan our expenditures on capital account.

There is, Mr. Vice-President, something I have learnt over the years; that when one speaks, if one says several things nobody hears any, [*Laughter*] and so it is wise that when one speaks one says one thing, so I would like to stop at this point. Thank you, Sir. [*Desk thumping*]

Sen. Nafeesa Mohammed: [*Desk thumping*] Mr. Vice-President, looking at the attempt that is being made here this morning with the Finance (Supplementary Appropriation) Bill that was circulated—I think only yesterday we received copies of this apparent supplementary appropriation—this is yet another classic case of this Government putting the cart before the horse. Here it is yesterday, very late in the afternoon, we received a copy of this Bill that seeks to—and if I may just read the Explanatory Note for what we received yesterday, it says:

"The Bill seeks to supplement the appropriation provided for by the Appropriation Act, 1999/2000 by authorizing the issue from the Consolidated Fund of the sum of four hundred and fifteen million, two hundred and seventy two thousand dollars for the financial year ending September 30, 2000 under the Head of Expenditure set out in the Bill."

Mr. Vice-President, as we look at the actual Bill, at no point does it say what the purpose of the appropriation is supposed to be. It was only when we came into this Chamber here this morning, in fact some five minutes before the commencement of the proceedings here this morning, that I was able to actually see a note that seemed to have been circulated this morning which I would like to read for the record. It says here:

"THE SENATE

TUESDAY 26TH SEPTEMBER, 2000

THE FINANCE (SUPPLEMENTARY APPROPRIATION 1999/2000)

BILL 2000

The Bill seeks to provide funds in the 1999/2000 Appropriation to allow for the establishment of an Interim Stabilisation Fund.

Cabinet agreed to the establishment of a Revenue Stabilisation Fund to address the inherent volatility in oil prices and its impact on the fiscal position. It also agreed that the Attorney General and Minister of Legal Affairs cause to be prepared the necessary legislation for the operational and administrative structure of the Revenue Stabilisation Fund."

Now, Mr. Vice-President, we recall last year in the budget presentation when the hon. Minister of Finance made mention of the establishment of a Revenue Stabilization Fund. Certainly in terms of the idea of setting up such a Fund, we on this side have very little quarrel with such an idea. What is unfortunate is that since last year the idea was mentioned in the budget presentation and more than a year afterwards the hon. junior Minister of Finance, now acting for Minister Kuei Tung who is apparently out of the country, came here this morning with a Bill that is seeking to appropriate sums of money into the Fund, yet to this date we have not had the privilege of seeing the actual legislative framework under which this fund is supposed to operate.

11.30 a.m.

This note here says that Cabinet agreed to the setting up of the fund and for the Attorney General and Minister of Legal Affairs to prepare the necessary legislation. When was this Cabinet Note agreed to? Was it agreed to since last year when the budget was being presented? If so, why have we not yet received the draft legislation that would seek to set up this fund so that we would have an idea of the manner in which this fund would be administered; how moneys would be appropriated; how moneys would be expended; and we will have the appropriate checks and balances so, at least, we in this Parliament would have the opportunity to scrutinize the legislation, and to see if the administration of the fund would be in the best interest of the country.

Mr. Vice-President, as it stands, what the Government has done here this morning, is yet another example of this Government taking the Parliament of this country for granted. They have brought this Bill and we have absolutely no idea as to where this money is going to go; how it is going to be spent; who is going to control it; and how it is going to be administered, and this is on the eve of an election in the country. We have to be concerned about the use of the funds that the Government is hoping to put in this particular fund.

Mr. Vice-President, what is worse, is, the manner in which they are seeking to set up this fund, certainly, seems to go against the spirit and intention of our Constitution in this country. Clearly, it amounts to almost an abrogation of the Constitution. Mr. Vice-President, we know that in our Constitution there is a specific heading which is “Chapter 8” and the heading is “Finance”. In this part of the Constitution it deals with the establishment of the Consolidated Fund. We know that the Consolidated Fund is a very special fund in the country, and it is not such an easy thing to interfere with the funds in the Consolidated Fund. If one has to appropriate funds from the Consolidated Fund, then it should be done in accordance with the law.

Mr. Vice-President, section 113 of our Constitution deals with the authorization of expenditure from the Consolidated Fund and that is an entrenched provision of our Constitution. It is a provision that you cannot easily tamper with. Clearly, when you look at the purpose for which this appropriation is being sought here this morning, one really has to wonder whether it really falls under section 113 of the Constitution. More than that is the fact that this Bill is seeking to appropriate some $415 million into a fund. I would continue with the note that we received here this morning and it says:

"During the fiscal year 1999/2000, it is estimated that Government will realize excess oil revenues of approximately $629 million. This amount has been included in the Revised Estimates of Review for fiscal year 1999/2000. Cabinet agreed that two-thirds of the excess revenue which is approximately $415,272,000 be transferred to the Revenue Stabilisation Fund by the close of the current fiscal year ending September 30, 2000.

Pending the enactment of legislation to establish the Revenue Stabilisation Fund, the Minister of Finance, Planning and Development has put in place an interim arrangement to facilitate the transfer of the amount of $415,272,000 from the Consolidated Fund in this fiscal year ending September 30, 2000 by the creation of an Interim Stabilisation Fund."

Mr. Vice-President, this measure here is our concern this morning. This note talks about pending the enactment of legislation. By setting up this interim fund in the manner in which the minister is seeking to do it here this morning is a case where there are no checks and balances. We do not have the opportunity as Members of Parliament to look into, not just the merits of the fund, but the manner in which the fund will be operating.

This note also talks about an order and, in fact, it seems the fund has already been established and it says:

"This Interim Fund was established on September 21, 2000 in accordance with Section 43(2) of the Exchequer and Audit Act Chapter 69:01 which states:…"

And it goes on to refer to section 43(2) of the Act.

Mr. Vice-President, my question is: where is the order? There is an order that the Minister seems to have passed. Where is that order?

"It is therefore necessary to seek Parliamentary approval in accordance with Section 113 (3) of the Constitution for supplementary funding out of the Consolidated Fund…"

Mr. Vice-President, this just confirms how this Government has been operating whilst in office. Here is a glaring case of trying to pursue a measure, or trying to set up something where there will be, again, no accountability, or little or no accountability and transparency in what is being done.

Mr. Vice-President, if it is that the Government had brought a Bill before us here this morning seeking to set up the fund, then it means that we would have had the opportunity to look at the legislative framework in a very careful and systematic way, and make a very substantive contribution in terms of the operation of this fund. It is not just $400,000 the Government is putting into this fund. It is $415 million and they are asking us to agree to something without us having the benefit of the doubt as to: where the money is going to go; how is it going to be administered; or, when it is going to be spent. That is the unfortunate part about this attempt here this morning, especially, when one looks at the track record of this Government and how they have been misusing the public funds in our country.

We have no difficulties if any Government in this country paves roads and do certain infrastructural things. That is what governments are here for, to improve the conditions of the lives of the citizens of the country. Mr. Vice-President, when you are governing, you must do it within the rules and regulations that are prescribed. That is why there is a Parliament in the country. That is why we are here as parliamentarians to ensure that in the governance of the country there is accountability and transparency, and to ensure that the laws of the land are being observed.

Mr. Vice-President, we heard a lot of it. For example, last week, we spoke at length about the manner in which the road paving frenzy is being carried out. It is a case where we are asking to see how moneys are being spent. If you just take the road-paving situation where Tidco is issuing bonds to raise money to pave roads in this country, who will be accountable to whom? Where are we going to see how these contracts are being awarded? It is the same kind of situation with this fund that the Government is seeking to set up here. There is little or no accountability and we would have preferred to see the legislation.

Mr. Vice-President, imagine, since last year, the Government announced the idea of a fund like this, or boasted about the setting up of a fund like this. The Government had one whole year to bring the necessary legislation and now, just days or weeks before the general election in this country, they are now seeking to rush through this order. The Minister of Finance, Planning and Development who touted the idea is not here to pursue it. We have to wonder, is it going to be a slush fund? When the Government appropriate this money, is it going to be part of the election funding? We have to wonder about it! These are legitimate concerns. It is $415 million!

Mr. Vice-President, we expect with this general election, soon they might be flying in helicopters and throwing down blue notes from the sky to try and fool and induce people in this country, but people are not stupid. The appropriation of this money is a very serious matter. Whilst we agree with the idea of setting up a fund, there would be a lot of merit in such a fund. At the same time, we are very concerned about the manner in which it is being set up. So in the interest of greater accountability and transparency in the system, we are asking the Government to please try and do it in the right way. Perhaps, the Government should defer this matter and bring the draft legislation before the Parliament, and let us have a proper debate on the matter and then try to appropriate the moneys.

11.40 a.m.

But do not come here and take us for granted and expect us to agree in a blind way, to the appropriation of $415 million where the particular Minister would have control of that fund and we do not know how, where and why he is going to be spending that money. We need to get more particulars. We need more details, Mr. Vice-President. It is a very serious situation.

More than that, it goes against the spirit and intent of the Constitution in terms of the Consolidated Fund. You cannot so easily appropriate money from the Consolidated Fund. There are checks and balances in our Constitution and, as parliamentarians, we would like to have that opportunity to have a say in this matter. That is not an unreasonable request. That is why we are here. You cannot come and take us for granted, as you have been doing, railroading your way in whatever you are doing, eroding our fundamental institutions in the country. We are here as a check and balance in the system and we are simply asking that if you want our support in a measure like this, do it in the right way. Bring some more details.

When are we going to get the legislation? The hon. Minister was asked that question and he could not answer. We would like to know something. When would the legislation be brought into the Parliament to set up this fund? They have had a whole year. How long would we have to wait again? Would we get it before the general election? When? Let us defer this until it comes.

Dr. Job: I think I said the matter was with the Attorney General. That is the instruction and we expect to bring the legislation before the end of this session.

Sen. N. Mohammed: I am very glad that the hon. Minister—I know he said it was in the hands of the Attorney General and I know they are all members of the Cabinet and the right hand should know what the left hand is doing—said they expect to bring it before the end of the session. If that is the case, then let us defer the appropriation until we get the legislation and then debate the matter.

Sen. Mark: We cannot do that.

Sen. N. Mohammed: More than that, Mr. Vice-President, I am even of the view that in the setting up of this fund, we have to wonder whether we would need a constitutional majority to do something like this.

Sen. Mark: Ooh!

Sen. N. Mohammed: Sen. Wade Mark wants to dismiss that lightly. We are talking about the Consolidated Fund.

Dr. Job: After September 30, we cannot appropriate money from last year's fund. This is why we have to do it now.

Sen. N. Mohammed: That is where another question arises. With all due respect to the Minister's concern about the September 30 deadline by which funds cannot be appropriated, the further question that arises is: In terms of this fund and the moneys that are being appropriated, would it be an appropriation that under normal circumstances would fall into that category under section 113 of the Constitution that deals with ordinary appropriations? I suppose if a ministry is out of funds and you have to make a sudden appropriation, you come with a supplemental appropriation bill like this one and you make the appropriation. That is in a normal case, but this is not a normal case.

They are talking about appropriating a significant sum of money and you want to set this up into a fund. All we are saying is, in doing so, give us the opportunity to have a say. Let us have a proper debate on it and when you are setting up this fund, we want to be assured that the administration of this fund will be properly provided for. That is why we are here. That is why there are checks and balances in the system.

The way they operate, at all levels, is that they want to boast about their performance, but they do not care how they are railroading themselves and eroding institutions like the hon. Sen. Carlos John when he illegally paved the savannah. Some people may have been glad that the savannah was paved, but the manner in which it was done was illegal. It was contrary to the laws of the land. It was contrary to the Town and Country Planning Act and other pieces of legislation and he was rewarded with a seat in the Cabinet for that illegal act.

That is the hypocrisy that is existing in our country, where, at the highest level, when the laws are broken like that: what do you leave for people at the lowest level? That is the example we are getting. All we are saying is that we want to see this thing, if it is to be done, let us try to do it right and let us have the machinery and the mechanism to ensure that such a fund is properly set up and administered.

We are dealing with taking out funds from the Consolidated Fund. That is no ordinary matter; no ordinary act. It needs to be done properly. I, certainly, would have liked to see the order. There is an order to which they referred, that was made on September 21, 2000. Where is that order? Should it not be that these matters—because I think in the Exchequer and Audit Act, Chap. 69:01 of the laws of Trinidad and Tobago, it says at section 45(2) dealing with transfer of certain accounts to the Consolidated Fund, and dealing with regulations, that:

> "All Regulations made under this section shall be laid before Parliament as soon as may be after they are made."

One would expect that if such an order is made, let us have an opportunity to debate it. That is our complaint. We are being deprived of that opportunity of scrutinizing this fund to know how it is going to be administered. You cannot take us for granted like that.

Look at the haste. Late yesterday afternoon, we received the Bill and it was only this morning, five minutes before the commencement of the proceedings, that I saw the purpose for it. They want to sit here and try to railroad this measure through.

We really object to the manner in which they are seeking to deal with this very important matter. [*Desk thumping*] We have grave concerns about it and we are asking that they rethink their position and, perhaps, defer this appropriation until the appropriate legislation is brought to the Parliament for us to have a proper debate on this measure.

Mr. Vice-President, I thank you.

Sen. Diana Mahabir-Wyatt: Mr. Vice-President, I will not make a political speech.

Sen. Shabazz: We have to.

Sen. D. Mahabir-Wyatt: I simply would like to endorse the views made by Sen. Dr. St. Cyr in relation to three things.

First of all, like everybody else, I agree with the purpose of the Revenue Stabilization Fund. I think that most of us have agreed with this from the time it was originally proposed, but I would like to underscore a few of the points he has made, one being that it should be a compulsory allocation. In other words, it should not be discretionary that it be one-third or two-thirds of whatever revenues come over the budgeted figures.

Second, that this should be in relation not just to oil, but natural gas, methanol, urea and other energy-related industries.

Third, that the principle of preservation of the integrity of the fund be adhered to, that it cannot easily be broken into; it cannot easily be used for something else; that it be made a separate and distinct fund and subject to the usual scrutinies and reporting mechanisms that such funds would be.

Lastly, I would very, very strongly endorse the view that the fund be kept in foreign exchange. Because of the vagaries of international fluctuations of currency and our own vulnerability when it comes to imports and exports, I think that point is absolutely vital.

I am not quite sure what the procedure is in relation to the section under the Constitution. I would request the Minister kindly to put us straight as to what that is, because it certainly does not look like section 113(3) to me either, unless the Constitution as we now have it, has been amended and the numbering is, therefore, different. But I would ask him to give us some information on that because I think it is confusing everybody.

In light of the points made by Sen. Dr. St. Cyr and Sen. Daly, particularly those in relation to the preservation of the integrity of the fund and the vital point about foreign exchange, I would add my voice to theirs in requesting that these safeguards be put in the legislation before we are asked to endorse it.

Thank you, Mr. Vice-President.

The Minister of Public Administration (Sen. The Hon. Wade Mark): Mr. Vice-President, I thought it was necessary to rise and at least make a limited contribution to this very important measure, the Finance (Supplementary Appropriation) Bill, 2000.

First of all, I would like to extend on behalf of all of us on this side, our regrets for whatever inconvenience we may have caused our colleagues on that side, but as you know, finance matters are very serious ones and we are operating with a new financial year, as all of us are aware and, as such we had to seek the support of the Senate in having this Bill go through all its stages today.

As we all know, the financial year ends on September 30 and there are certain measures that have to take place in the context of the very commitment that reference has been made to by a number of our senatorial colleagues in their contributions.

Mr. Vice-President, this is a government of transparency; it is a government of accountability and it is a government that is seeking at all times to be as open as possible, given the stage of development we are at. I am certain that within the next five years, having regard to the legislation that we have brought to this Parliament, Trinidad and Tobago would be a stronger society. The democratic fabric would be strengthened and, certainly, no government in the future, as we have experienced in the past, would be able to deny the country and the citizens, the right to access very important information. That would lead to greater transparency and accountability.

Mr. Vice-President, I think that some of the points that have been raised this morning had me a bit baffled because here it is that this government, in a very responsible manner, has taken a decision to stabilize its revenue base from proceeds from oil in excess of what we have budgeted for. Of course, the Minister of Finance, Planning and Development did say in the 1999/2000 Budget when we had budgeted an oil price of US $16, that if we had excess earnings, that he would, in fact, move towards establishing a Revenue Stabilization Fund.

The fact is that we have taken a decision at the level of the Cabinet to have such a fund established and appropriate legislation is being drafted. The Ministry of Finance, Planning and Development has a role to play in that legislation; the Attorney General and Minister of Legal Affairs also has a role to play in that legislation and some of the very pertinent points that were made by Sen. Dr. Eric St. Cyr, I am sure that those points are already incorporated in many respects, and when the Bill comes to Parliament, certainly, it will have another chance to at least take into account some of those vital ingredients in his contribution in this particular measure.

11.55 a.m.

We are holding on to a commitment. We are honouring a commitment. Before the end of the financial year, which is September 30, we have to put two-thirds of the moneys that we have earned, in excess of the US$16 that we had budgeted for, in this Interim Revenue Stabilization Fund. *[Interruption]*

Sen. Mahabir-Wyatt: I wonder if the hon. Minister would let us know when he is making his presentation why it was only two-thirds, rather than the whole amount?

Sen. Daly: Would the Minister also let us know, where is the fund?

Sen. The Hon. W. Mark: In terms of the rationale, Sen. Mahabir-Wyatt, the decision, as I said, was taken by the Cabinet. I do not have the note before me at this time, to indicate to you what the exact rationale was. What I do know is that—*[Interruption]* Well that is coming, Sen. Daly. It is not proclaimed as yet, but it is coming. Sen. Mahabir-Wyatt, I take your point. I am sure that we can give an explanation as to the rationale for the two-thirds of the $620 million that was earned. I do not have the explanation here and now. I would certainly deal with that at another stage, or if the Minister of Finance, Planning and Development is able to do it before the end of his contribution.

The key point here is that I recall, in the past, many funds were established as special funds, and they all had to come to the Parliament. We have gone a step further. We are not just establishing funds: we are bringing legislation to establish an Interim Revenue Stabilization Fund to look at all the points Sen. Dr. St. Cyr mentioned and to ensure that it would not be used in a whimsical fashion. We want to ensure when we put that fund there—whether we are putting it in a foreign country or a foreign exchange account, as the case may be—we want to ensure that it is isolated and, therefore, insulated. When that legislation comes to Parliament, all of us are going to have an opportunity to ensure, in the interest of Trinidad and Tobago and our nation, that we have a solid institutional framework established in Trinidad and Tobago, to safeguard the patrimony of our country in the context of our excess earnings.

I thought we ought to have been complimented as a government, for honouring its pledge and commitment: to put that sum into a fund. Once this becomes law, a fund will be established, an Interim Revenue Stabilization Fund.

Sen. Daly: Where?

Sen. The Hon. W. Mark: In the Ministry of Finance, Planning and Development of course. Of course, at the end of the day, we are going to bring legislation to deal with the matter. That is what we are doing.

Mr. Vice-President, as far as we are concerned, we have done our duty. We have not completed our mission, but we have done our duty. This is why I am saying when we hear contributions from the other side, our advice on this matter—except we want to challenge, we can—*[Interruption]*

Sen. Shabazz: Who advised you, Jack?

Sen. The Hon. W. Mark: We did not say anything about Jack. Mr. Vice-President, we have something called the Exchequer and Audit Act, Chap. 69:01. Under section 43(2) of that Act it reads:

> "Whenever moneys are appropriated by Parliament to establish a fund, the Treasury may establish a fund to which moneys so appropriated may be credited and from which moneys may be expended for the purposes for which the fund was established and the Minister shall, by Order amend the First Schedule by the addition of the title of the fund."

If we are to establish a fund, it cannot be done in a whimsical way; it has to come to Parliament for parliamentary approval. That is why we, again, have been advised—maybe our advice is wrong—that is what we have been advised. It is therefore necessary in those circumstances to seek parliamentary approval in accordance with section 113(3) of the Constitution for supplementary funding out of the Consolidated Fund for the purposes of establishing the Interim Revenue Stabilization Fund.

Under section 113(3) of the Constitution it says:

"If in respect of any financial year it is found—

(a) …that a need has arisen for expenditure for a purpose for which no amount has been appropriated by the Act;…

a supplementary estimate showing the sums required…shall—"

Sen. Daly: This is not expenditure.

Sen. The Hon. W. Mark: Mr. Vice-President, Sen. Daly has a point of view; he could be wrong. We have an advice and we are putting it on the record. If we are wrong then, obviously, we can be corrected.

Sen. Daly: In the interest of freedom of information, what is the expenditure? I thought we were saving this money. Does the advice say what is the expenditure that you are catering for?

Sen. The Hon. W. Mark: Mr. Vice-President, this matter as I said, is very important for the citizens of this country. The elected MPs in the other place who are elected by the people of this country, agreed with this measure. Of course, they took into account the various views that were expressed in the context of the legislation to come. The fact of the matter is that the Government has taken steps to establish this Interim Revenue Stabilization Fund to have that money placed. We are hoping, very shortly, to bring to this Parliament, the Interim Revenue Stabilization Fund Bill. Sen. N. Mohammed, we cannot postpone this piece of legislation. It has to be passed today, that is why we agreed to bring it today.

The question here, Mr. Vice-President—*[Interruption]*

Sen. Daly: Mr. Vice-President, on a point of order. We did not agree to anything coming today. The announcement that was made on Tuesday was that we would be doing the Proceeds of Crime Bill. I think that is a misleading statement. Who "we" agreed? We did not agree on anything.

Sen. The Hon. W. Mark: Mr. Vice-President, we always live in a society in which we have emergencies. Obviously, this is an emergency. As Leader of Government Business, I have been very democratic in giving notice way in advance. Every time we sit, I give my colleagues advance notice. If, for some reason, we have an item that I did not inform my colleagues about—*[Interruption]* I had a responsibility to do it. Mr. Vice-President, we have a responsibility to establish this Interim Revenue Stabilization Fund, and this is what we are doing. We are not about "pappyshowing" people. We are a Government of law and order, therefore, proper rules are established in order to deal with this.

When they speak about accountability and that we are abrogating the Constitution and it might require a special majority, that is nonsense. There is no abrogation of the Constitution.

12.05 p.m.

The PNM is accustomed to that, not we. Mr. Vice-President, I think that this is a very important measure. I think we should get total support from the Opposition and the Independents on this measure. I think everyone has agreed with the

purpose of this fund. It is unfortunate, as I said, that the Bill is going to come subsequently, but we just want to make sure that the sum is, at least, plucked out of the Consolidated Fund and set aside in an interim stabilization fund, so that, for instance, we will have the fund properly established when the Bill takes effect.

I feel that if we understand what is taking place we would, in fact, be fully in appreciation of the Government's commitment to honour its pledge. It is not a slush fund. It is not an election fund. It is a fund that is designed to insulate from the general Consolidated Fund, the extraordinary earnings that we have realized as a result of the oil bonanza. You wasted it; we are trying to preserve it; that is what we are trying to do here. That is what we are trying to do, preserve; so even if, God forbid, and the masses of this country take God out of their thoughts and vote for this thing they call the People's National Movement, we would have put something in place. Not for the PNM, but for the country, for the future of our nation; that is what we have done. [*Laughter*]

I thought you would be happy about that; I thought you would have been happy about that. This Government is preserving. We are not on any election binge; we are trying to do whatever we can in a responsible fashion; prudent management, that is what we are about. That is why the Opposition cannot take us, they feel that we should be as irresponsible as they were; that is why, Mr. Vice-President. As far as we are concerned, we are doing our part. We are, in fact, establishing a society in which, for instance, we can preserve the integrity and credibility of this nation.

I thought it was necessary to, at least, clear the air, to some extent. As I said, maybe we will get new advice in the future, but for the time being the advice that we have is the way that we are going this morning. I want to indicate that it is difficult; we cannot entertain Sen. Mohammed’s request for a postponement of this matter. This matter is very urgent and we have to proceed accordingly.

Mr. Vice-President, I thank you.

Sen. Muhummad Shabazz: Mr. Vice-President, I want to assure the hon. Minister of Public Administration, as everybody else who has spoken has done for the morning, that nobody objects to this fund; nobody at all. Everybody seems to be in agreement with the fund and finds it to be a very good thing, an excellent thing. As a matter of fact, when this was spoken about at the last budget, everybody found that it was, indeed, very good.

There are two things that have come up so far: one, the question of whether the way the fund is done is illegal, and that was put forward very, very well by Sen. Martin Daly; whether it is legal, yes or no. The hon. Minister said that he has advice. Advice from where? We do not know; he never seems to give his source, because that advice seems not to be really very good advice; he is aware of that. We have heard Sen. Montano and Sen. Mohammed. The question of whether the fund is legal is important.

Another point that was brought up here this morning was the time frame in which we were given to work with this Bill. It was disrespectful, almost dishonest, and the Minister is speaking about honouring what they set out to do. I feel he should say, "We will keep our pledge," and not talk about honour. That is a word that should not be in the dictionary of that Government again. Take honour out of the UNC dictionary; it is not a word for there. Keep your pledge, but you cannot honour it, because honour is not a thing that you are about.

The time frame, the rush is another issue. Why did he have to rush this Bill? What is the big emergency that this Bill had to come to us in this kind of way, in this kind of manner? That is what we are talking about, no time to think about it. You want us, as parliamentarians, as people who have to give you the okay, no time to even think, because you rush it, because you do not want people in Parliament to think about it, to make intelligent and credible contributions so that we can send out to the nation that this is why this thing is being done. That is why you are rushing it.

Why did you not put it for this afternoon, discuss other things this morning and tell us on the lunch break, at least, spend an hour to discuss it? You do not want to do that; you want to rush it so that people will not get time to think. Thank God there are great thinkers on the Independent Benches and on this side; thank God for that. [*Laughter*]

There is another point: the hon. Sen. Prof. St. Cyr sounded like an economic evangelist this morning, [*Interruption*] but positive and good points to you. I listened to him; I may not have gotten all, but I am certain that what he said was very profound. You have no intention of listening to that; you do not want to hear that at all. You are going to get up and dismiss that in a very dumb and very stupid way, because you have already started to dismiss it.

Sen. Mark: Mr. Vice-President, on a point of order. I think that he is misleading the Senate. I took into account the very salient points that have been made by Sen. Dr. St. Cyr. I did indicate that, for instance, the Government would take those things on board and when the Bill comes to Parliament we would have another chance to deal with it, so I did not dismiss his points.

Sen. M. Shabazz: I think that they are going to dismiss it in a very simplistic kind of way. They are going to dismiss it by talking about the People's National Movement this and the PNM that. They are going to dismiss it in that kind of way, and it really should not be done like that.

Mr. Vice-President, why are we rushing this thing? I need to look at it from another angle. I need to look at how this money is going to be spent. Just now I heard a Senator say, "I am not going to make a political speech." We must also look at it from a political angle, because this is a time of political trickery, political treachery, political all kinds of things, and we see it coming from that side, a side that is saying double or zero. They gave nothing or double.

What did they do? The airport is supposed to be one figure, they doubled it or nothing [*Laughter*]. InnCogen, one figure, they doubled it or nothing. They are doubling everything or nothing, and not only that, we have interpreted it to mean doubles or nothing, because they "ketching" people with doubles or nothing. Mr. Vice-President, but let me get back to where I am at; doubles or nothing. [*Crosstalk*]

Mr. Vice-President, how is an election called in Trinidad and Tobago? The Prime Minister alone has an election date. [*Crosstalk*]

Sen. Mark: I take strong objection to that.

Sen. M. Shabazz: Hold on; it is the prerogative of the Prime Minister alone.

Mr. Vice-President: I would like to be assisted with the relevance of that line of reasoning.

Sen. M. Shabazz: Yes, Mr. Vice-President. If you give me a little time I would show you the relevance. If I do not, you can cut me.

The calling of the election is only in the hands of the leader of Government. [*Crosstalk*] Hold on, he has that prerogative. When this Bill and this figure are rushed through here, this is how we see it out there. After we pass it here, the election could be called on Monday morning. [*Crosstalk*] If election is called on Monday morning after we pass this Bill, what happens with this fund?

Sen. Mark: Mr. Vice-President, on a point of clarification. We take objection on this side to that point, because just recently—[*Interruption*]

Sen. M. Shabazz: I am continuing to talk, Mr. Vice-President. May I continue if it is not a point of objection? Thank you, Mr. Vice-President. [*Crosstalk*]

Listen again; we could pass this Bill here today. They are saying that they are not debating this Bill properly at all, and it could be passed here today. On Monday if we hear that an election is called, where do we go from there? What is the discussion? We would not know how the funds are going to be spent; we would not know what they are going to do with them, how they are going to deal with them. That is, indeed, where our concern is on this side, that $400-and-something million.

We heard about the road tax, and nobody could account for it effectively. We are hearing about so many different things that are coming up in this Parliament and out there, that I must speak from the angle of the people. I may not be able to see it from the economic perspective that Sen. Dr. St. Cyr has seen it, because that is where his training is. I have to understand it from what is happening with us as a people out there. [*Desk thumping*]

I stood here the last budget debate and let them know that this is a serious point. When they interfere with the money like that, one day it is going to be like a father in a home taking care of his children, giving them everything, and one day when that father just falls down from a heart attack and dies, you realize that all the money he had was borrowed money, that you could lose your house and the car was not really yours. This is what is happening in Trinidad and Tobago right now. [*Desk thumping*] They have mortgaged our country for so much that we do not even know how much it will cost us eventually, and by the time they are finished in the next few months, we, the people of Trinidad and Tobago, will be crying and bawling because of the amount of wrong things they have done, and the manner in which they have done it.

This is an important point. We are talking about administrations gone, one of the greatest problems the People's National Movement has with this Government, we did not have with the NAR administration before. I would like to say this and put it on record. If the NAR told you that they had $10 billion, believe you me, they had $10 billion. When this Government tells you that they have $10 million, they could have $30 million or they could have $5 million. This Government will tell you today, "Well, look we have "X" amount of dollars in this fund here, but they really do not have it, they borrowed it yesterday, put it in and when you talk today, they take it out tomorrow; that is how this Government operates. [*Desk thumping*]

We could have dealt with the other administration, because, at least, we thought that they were credible in what they were saying. We do not have that choice with this Government. This Government told us that the airport cost $1 billion; you know we are now finding out that because of the interest on the money that they borrowed, the interest that we would have to pay, it could cost us nearly $3 billion.

Sen. Cabrera: Mr. Vice-President, I rise on a point of order. According to section 35(1):

> "Subject to the provisions of these Standing Orders, debate upon any motion, Bill or amendment shall be relevant to such motion…"

I seek your ruling. [*Crosstalk*] [*Desk thumping*]

Mr. Vice-President: Yes, Sen. Shabazz, I would like you to stay away from the airport and all those references. You made, at least, two references in your statements so far to the airport project; I do not see its relevance.

Sen. M. Shabazz: Okay; Mr. Vice-President, the point I am making is that this fund which is—it is sounding like it is $400 million. You know why they do not want it be referred to as more than two-thirds? Because we will be talking in terms of $.50 billion and $.75 billion, so they keep it under the $.50 billion mark, $400-and-something million, so it would not sound as big.

I do not want to specify any project, but there are projects which this Government is doing that are going to twice and three times the amount. Mr. Vice-President, everything is doubling or nothing. I must say it again, because this is the emphasis: doubles or nothing.

Let us just walk a little down the road. What is now happening is that we are in an election campaign [*Crosstalk*] and this is where the game is, but money does not win an election. We are in an election campaign. What is the emergency? "Dey doh care!" Many promises; this is a serious point: every budget we have read here was supposed to be a budget that would have no deficit, there would be surpluses, and in every budget there is a deficit.

I stood here and heard the hon. Prof. St. Cyr speaking about this Government and the Minister of Finance, Planning and Development using a nice word. He said that the fund was there, but the Minister "raided" the fund.

12.20 p.m.

I would like us to use a different word from raided because raided could only mean one thing you know. You all raided the fund and I think that is a serious thing. The Minister raided the fund and the amount of things they raided. I do not like the word "raided", but it seems to be a parliamentary word. The amount of things they are raiding and still raiding and will continue to raid, it is very difficult for us to approve this fund without taking time to study it. *[Desk thumping]*

If they are raiding, it means—well I do not know if the people who are raiding are raiders, but they are raiders because they are only raiding and this is what this Government is doing continually. *[Laughter]* They are only raiding and raiding and raiding and we have to do something about these raiders of our money.

Sen. Mark: I take strong offence to that.

Sen. M. Shabazz: There was no objection when it was put into *Hansard* that—

Sen. Mark: Mr. Vice-President, on a point of order. I take strong offence to the Senator regarding our side as raiders. We are parliamentarians, we are Senators and he is imputing improper motives. I would like him to withdraw that term.

Sen. M. Shabazz: Mr. Vice-President, I am only taking what is in *Hansard.* The Minister was raiding, and I am saying a person who is raiding is a raider.

Sen. Daly: On a point of order. Mr. Vice-President, I am really sorry, but we do not want to get to the sewer rat stage. There is an objection and I do not know why the Senator is not giving way so that you can rule.

Mr. Vice-President: Sen. Shabazz, *Hansard* will in fact record that the word used by Sen. Dr. St. Cyr was in fact "the fund was raided". However, the context in which you decided to use the word raider, in my view, imputes improper motives. Therefore, I would like you to stay away from that connotation. There is nothing wrong with the word raided in a certain context.

Sen. M. Shabazz: Thank you, Mr. Vice-President. Mr. Vice-President, I will only stop at raiding. They have been raiding and I say that is indeed very sad, Mr. Vice-President, indeed very sad.

Mr. Vice-President, it is real difficult at times, but we have to deal with it. The point that has been made is really a question of why should we be approving this Bill? Why, why, why? As I have told you, I am bringing it from the people's position for us out there and I speak for many people who might not be able to analyze it like these honourable Senators here and like the people on this side may not be able to analyze it, but at the end of the day they will be feeling it.

If this fund is misused, or misspent because they have a way they do things and really do not care if it is legal after. There was a situation which was brought up by Sen. Mohammed and we have the hon. Minister saying go to court with it which they know will take time, and while it is taking that time, while the grass is growing, the people are suffering and this is what they are doing.

Mr. Vice-President, I want you to see it is the people's side that I am bringing it from. When this happens—*[Interruption]* When these funds and moneys are misspent, ill spent, what happens is that the people will feel it. The hon. Minister asked the question: What have we done? We ask the same question. This country did not start running in 1995 you know, it did not begin when they took reins of power. They found a solid platform left by our administration and the one before us. They are reaping—really and truly they are picking fruits, where they did not plant the trees. We are going to run them out of that vineyard just now. The grapes and the fruits are going to come back to those who deserve it.

This fund which we are looking to pass—*[Interruption]*

Hon. Senator: Not "fun", "fund".

Sen. M. Shabazz: Well it is fun for them. *[Laughter]* This fund is really fun for them while they are doing it in the way they are doing it. If this fund is badly spent, it will affect the people of Trinidad and Tobago, and I do not want to talk about Tobago because they will feel it the most.

Mr. Vice-President, you are talking about sending two-thirds of the fund of $415 million and we are hearing that a school opened in Tobago with no chairs and benches. That is what I am speaking about, how money used improperly by this Parliament could affect the people of Trinidad and Tobago. That is what we are talking about and they want us to approve it because they are saying it is an emergency and we see no emergency. We are hoping that when this fund is approved that there will be no—well raiding is parliamentary—raiding from those funds, none at all.

We are frightened. *[Laughter]* We on this side are getting more and more frightened all the time. Not only are we getting more frightened, we are not frightened for ourselves because everybody on those benches and everybody here will survive somehow in this country. Maybe everybody in this Parliament would survive. It is the people on the street who may have problems in surviving when they ill spend these moneys.

Sen. Mohammed: That is right.

Sen. M. Shabazz: It is the people who sit in the public gallery and listen to us who will have problems when they ill spend this money, Mr. Vice-President.

They try to make my contribution a joke, they laugh but this is not a jokey thing, Mr. Vice-President. *[Laughter]* This is serious business. Do you know why they are laughing at it? It is because they know how serious the point I am making is, but they do not care. They will laugh at it because if the people feel it, as long as what they are hoping at the end of the day the people will forget everything and put them back into office and they will have all the funds to make fun with. That is what they are about.

Mr. Vice-President, we need to be careful about that. Again, we on this side—and I have heard no contributions made where anybody disagrees with the fund. As a matter of fact, there are a number of things they do that we probably would not have disagreed with if we were not aware of how they operate. They operate in a manner that you need to watch them and you need to be careful. We on this side promise we will continue to watch them from now until election time, and we will continue to watch them in a manner—Sen. Phillips, I will talk to you after, you are in a sad state. They put you in a way that they should not have. I coming back in Wade Mark seat.

Mr. Vice-President, at this point in time I ask this Government to be careful, to watch how they are spending this fund when it is approved, because there is no choice, but I want to think, and I think I am correct, this is the feeling I am getting, that as soon as we pass this, election will be called. Not one of them has the date, but we know who has the date and we know that election will be called and we have a right to feel that because we see people gone to the Olympics to come back quickly.

Mr. Vice-President, on that note, I close by asking this Government to be careful. Let us say it is nothing or something, not this double or nothing.

Thank you, Mr. Vice-President.

The Minister of Energy and Energy Industries (Sen. The Hon. Finbar Gangar): Mr. Vice-President, I rise to take part in this debate, I had not intended to, but seeing that so much controversy has been generated I think it is only fair that we put the particular piece of legislation in its proper perspective.

The Minister of Finance, Planning and Development in his 1999/2000 budget presentation signalled his intention to establish a Revenue Stabilization Fund out of any excess petroleum taxation revenues which might arise during the course of the fiscal year 1999/2000. That is a fact, and it was stated in the budget presentation for the period 1999/2000.

Mr. Vice-President, we are aware that Trinidad and Tobago is a small oil-producing country. In fact, we are what you call in an unfortunate scenario, we are price takers rather than price makers, where our production of crude oil is so very small, probably less than 0.1 per cent of world total crude oil production, yet, our economic fortunes hinge upon this particular commodity.

We are aware of the volatile situation with respect to crude oil and its pricing regime. During our last five years—I had cause to mention it in my budget contribution—the price has oscillated from $9.81 in 1998 to $36.00 a barrel two weeks ago, and today it is down to $30.00 a barrel. Again, it demonstrates the volatility of the market and that is what precisely this fund is all about.

Mr. Vice-President, you would recall that up to the period 1995, this country was in a state of recession, the inflation rate attained a double digit level, the unemployment rate reached a high of 22 per cent and the fiscal and current account balances remained in unstable positions and we had two devaluations of the exchange rate. It is for precisely this reason that the Minister of Finance in his budget presentation made provision for the establishment of a Revenue Stabilization Fund.

I sympathize with hon. Senators this morning because I think they suffered from a lack of basic information as regards the philosophy behind the setting up of the Revenue Stabilization Fund and some idea of the mechanics of how it is going to operate.

Mr. Vice-President, the intention of the Revenue Stabilization Fund is that it should be a vehicle for promoting fiscal discipline in the event of windfall revenues from petroleum; it should serve to cushion the effects of unexpected drops in oil prices, and finally it should strengthen the public’s saving.

The Minister of Finance did not make this provision here overnight, a note was brought to Cabinet on April 28, 2000 and it is important that I look at it and advise hon. Senators of some of the basic philosophical concepts which are going to govern the setting up of the Revenue Stabilization Fund.

12.35 p.m.

The distinguishing features of the Revenue Stabilization Fund is that the resources should be invested in foreign currency securities issued by sovereign states which have investment grade status as specified by at least two reputable rating agencies; that the assets should not form part of the reserves of the Central Bank of Trinidad and Tobago and should not be used for intervention in the local foreign exchange market. However, the assets should form part of the international reserves of the country.

That legislation should be introduced to govern the operational and administrative structure of the Revenue Stabilization Fund; that the assets should not form part of the Consolidated Fund but should be subject to audit by the Auditor General and that the responsibility for the management of the fund should lie with a Board of Trustees. The Board of Trustees should be empowered to delegate part or all of its responsibilities to the Central Bank of Trinidad and Tobago. The Board of Trustees should make arrangements for the Revenue Stabilization Fund to be audited and should also be expected to prepare reports for its activities for laying in Parliament annually. All of these provisions will be incorporated into legislation when it is introduced at the appropriate time. All that we are trying to do today is to make the appropriate transfer of funds so that we can take care of the accounting procedures before September 30.

I want to say while we apologize for bringing this piece of legislation today, I was in the other place when it was only approved there late on Friday afternoon. So I think it is a matter of the exigencies of the particular situation. I want to give this honourable Senate some other ideas of what is intended because a lot of work has gone into the setting up of this particular fund.

The first one is that the deposit to the Revenue Stabilization Fund should be mandatory when petroleum taxation revenue for the quarter is 10 per cent or more than the petroleum taxation revenue anticipated in the budget for the quarter. That where a deposit to the Revenue Stabilization Fund is mandatory the deposit should be at least a minimum of 67 per cent of the total positive petroleum taxation deviation for the quarter.

I want to quote some of the more important pieces as to how this fund should operate. Mr. Vice-President, one of the most important things is that many oil-producing countries have this Revenue Stabilization Fund, and significant sources of revenue have been derived by these oil-producing countries from such funds. One wonders, during our oil windfall of the 1970s, why the PNM administration did not seek to do something else because one of the advantages of this is the interest, which would accrue, from investment.

Another point is that the deposits to the Revenue Stabilization Fund should also arise from the interest dividends and other income earned by the assets of the RSF. All the earnings of the RSF should be deposited to the RSF. Three working days before the end of each quarter the Ministry of Finance should liaise with the Board of Inland Revenue, the Treasury and the Ministry of Energy and Energy-Based Industries to determine the likelihood that a deposit would be mandatory for the quarter under reference. That is basically the synopsis of what we are thinking about for deposit.

With respect to withdrawals, I know this generated much of the debate. Withdrawals from the RSF should be permitted when there has been a negative deviation of at least 10 per cent from the petroleum taxation revenue anticipated in the budget. Where a withdrawal from the RSF is permissible, the maximum amount that may be withdrawn with respect to the quarter should be determined by reference to two tests. Firstly, the withdrawal in respect of any quarter shall be no more than the lesser of

(a) the negative petroleum taxation deviation for the quarter under reference.

(b) 25 per cent of the balance of the RSF at the beginning of the quarter.

Mr. Vice-President, those are the basic mechanics of how this fund is going to operate and the basic policy guidelines which are going to be used in drafting the appropriate legislation.

As I said, the management of the RSF would be done by a Board of Trustees and they should appoint the Central Bank as manager and may, when appropriate, appoint a reputable foreign investment banker to manage a portion or all of the assets of the RSF. The manager should *inter alia* be responsible for the day-to-day management of the RSF subject to the broad guidelines to be established by the Board of Trustees.

The terms and conditions of the manager's engagement should be set out in a management agreement which stipulates, *inter alia*, the management fee structure, the broad investment strategies to be pursued by the manager and that the Central Bank maintain the books and records of the RSF on behalf of the Board of Trustees.

I made this intervention to demonstrate two things: one, that there is no political chicanery in this thing; there is no political trickery; there is no attempt to hoodwink the population; that it is not an *ad hoc* measure; it is something which has been well thought out; international consultants have been engaged in the entire process; we have learnt from other countries as to how they have done their setting up of a Revenue Stabilization Fund, and I want to assure hon. Senators that the support of this particular piece of legislation will only redound to the benefit of Trinidad and Tobago in the long term.

Thank you very much, Mr. Vice-President.

Sen. Rev. Daniel Teelucksingh: Mr. Vice-President, we are all very happy for the intervention of the hon. Minister of Energy and Energy-Based Industries. *[Interruption]* Yes, certainly, we should have had this first. *[Desk thumping]* But I would like to associate with all those who have seen—and I am sure it is the national community—that this has been a very progressive proposal in the 1999/2000 Budget. That is in the last budget. This provision to establish an oil stabilization fund certainly received national support and I join with all the other speakers in complimenting the Government once more.

My first reaction would be like that of a lay-person. Last evening when I got the information that we are going to deal with this Finance (Supplementary Appropriation Bill) today, I really had hoped to hear where, on the world's financial market, would $415 million be invested. I have been interested in this fund and I want to link this to my understanding of a fixed deposit and a savings account. I really thought that there would be a fixed deposit on the world's financial market and it would not be in a kind of savings fund that we can go to anytime. This is a layman's understanding of this investment.

I want to comment, nevertheless, on an issue raised by the hon. Acting Minister of Finance when he said of Government's policy. I quote:

"We are not borrowing more than we can afford."

I just want to tell you this, Mr. Vice-President, that past administrations have also said that. We are not borrowing more than we can afford. He further added:

"Those who do not remember their history are doomed to repeat it."

And I remember; and we all remember the squandermania and injudicious financial management in the oil boom days.

We do remember that. [*Desk thumping*] We are going to remember our history.

12.45 p.m.

Mr. Vice-President, the question of the public debt has always been an issue for national concern. Long before the IMF and through the dark days of structural adjustment, borrowings on the international financial markets, and domestic borrowing also, have been the subject of intensive public scrutiny because they have caused this nation and our people much pain and grief. No one likes the kind of excessive conditionalities that have been connected to our total debt burden, not in the year 2000 but for decades. We need to understand that although we have been freed from the clutches of the IMF, we have been committing ourselves not to the IMF but to other international lending agencies.

The name has been changed but we borrow from the Inter-American Development Bank, Citibank, the Bank of Tokyo and banks in the Euromarket. We have been doing that all the time. The last administration did it too, borrowing not from the IMF but from the financial markets of Europe and from Tokyo and so forth. The commitments are basically the same. Maybe the conditionalities might be easier, but we are borrowing and we continue to borrow. I think what we need, in the good as well as in the lean years, is for public debt to be closely monitored by the total Parliament and not by the Cabinet. I have a problem with this. Borrowing by all state enterprises, Mr. Vice-President, Government institutions and the Minister of Finance should be done with parliamentary approval and not merely with Cabinet approval. This is a problem with our constitution.

The Minister is telling me about remembering my history? I will tell you more, Sir. The public ought to be made aware of financial commitments and obligations by Government and, ultimately, the people, because governments and Cabinets change, and we fail to understand that. I believe that no government should continue to borrow, both on the domestic and foreign markets, and later declare the nation's obligations to these debts in budgetary documents that are given once a year. Besides that, it is also being announced at the same time that we may be irrevocably bound to these loan contracts. Cabinets in the past and present bind heavy burdens for the nation to carry, and we know very little about them.

Mr. Vice-President, you look through the host of documents we have *vis-à-vis* the closing fiscal year, it is the first time that some of us in the Parliament know about certain loan transactions. It is the first time that—some of us are not privy to all those Cabinet Notes. I have been hearing about other people who get Cabinet Notes. We are not privy to those. It takes us a year to see, in those big, yellow documents and so forth that are given to us at the end of the year, that some state enterprises borrowed millions and millions of dollars from the Bank of Tokyo and elsewhere. But this is really the people's burden. Mr. Vice-President, this is one area of parliamentary reform that is urgently needed in our country. We continue to manage the nation's finances as in the old colonial days.

This is a colonial relic, [*Desk thumping*] when the governor-in-council had a handpicked three or four people who managed the nation's treasury. The Minister is talking about "Those who do not remember their history are doomed to repeat it". We are repeating it. What we see today in our present parliamentary system, Sir, is the governor-in-council with his handpicked people who manage the nation's treasury, and "not a dog bark" [*Desk thumping*]. Mr. Vice-President, Cabinet, as far as I understand my history, since independence, all those fellows who revised our Constitution, the old colonial Constitution, as far as I am concerned and I understand my history, they have retained the ancient colonial governor-in-council, and this is nowhere close to democracy.

They had a reason to do it, all those who revised the Constitution and gave us the independence and the republican Constitution. The sad fact though—although I heard a speaker on the Independent Benches call for openness and transparency and more information and so forth—is that no sitting government, past and present, since independence, Mr. Vice-President, was ever willing to share this kind of responsibility and honour in public spending with the people of the country, who are the real proprietors of the treasury—none—and they had a reason. No sitting government is willing to tackle this business of reform as far as the management of funds is concerned.

I think that it will be wise—it is always wise—that there be parliamentary awareness and parliamentary approval, and public education too, as to the need and the reason for loans and the commitment and obligation as far as national indebtedness is concerned. We need to do this, not once a year, but as often as it is required that we go on the domestic and the foreign financial markets to borrow. Why, I ask, does our parliamentary tradition in this matter—in response to what the hon. Minister said—continue to retain this prerogative in a system which in the colonial days was dictatorial; and it continues to be dictatorial?

What we have today, and the last administration, all through independence and the republican status we have enjoyed, is a dictatorial system, and it is there in the *Hansard* for many years. I learnt this term. The first time I heard the term was from Sen. Mark, and then I realized he was correct. He spoke in those days of the dictatorship of the Cabinet. It continues. I thank you very much. [*Desk thumping*]

Sen. Prof. Kenneth Ramchand: Mr. Vice-President, I have a very brief contribution. The details provided by the hon. Minister of Energy and Energy Industries concerning philosophy and the mechanics more than consolidate our support for the Revenue Stabilization Fund. [*Desk thumping*] It is an excellent argument, but, Mr. Vice-President, as far as I understand it, I do not think that this debate is about the merits of the Revenue Stabilization Fund. [*Desk thumping*] What is before us is something being done "for the time being" and I have a set of questions, to which an ordinary citizen would like to have answers, as to why it is necessary to do something "for the time being". What is the necessity or urgency for the interim measure? Nobody has explained that necessity. Why is September 30 a deadline? What disadvantages would flow from not observing a deadline of September 30? I would like to know what are the consequences. Secondly, why is the money being transferred to the Ministry of Finance? So I feel that, as an ordinary citizen not involved in high financing, Mr. Vice-President, I would like to have answers to those questions. I thank you. [*Desk thumping*]

Sen. Joan Yuille-Williams: [*Desk thumping*] Mr. Vice-President, I will also be quite brief. I know it is quite late but I think I needed to make some comment on our debate here this morning. First of all, like most of the Senators on this side, I was not privileged to receive the documents. In fact, I only received one and was not even aware that this was part of the debate this morning.

I must say that even though I heard the Leader of Government Business talk about the manner in which this House is run, and he almost wished to say efficient, I would wish to say that if I had to grade him on the way the House has been running, in terms of the notices and our preparedness for debate, he would have certainly failed, because this is not the first time. It has been continuing throughout the term where we have come to the Senate trying to be prepared only to get a call the night before, or even the following day, that things have changed. I do not think it is always emergencies. If that were the case, then we have been having emergencies for the whole term and changing the times. So therefore I do not think the Minister should compliment himself on what has happened and therefore I could not accept his apology for what had happened today because it will continue as long as we are here.

Mr. Vice-President, I really wanted to compliment the speakers that I heard on this side of the House this morning concerning this Bill. Something must have happened somewhere because some of us were really educated as to the whole process, the whole Fund, and I do not want to call names, but it is good sometimes for us to listen; and I hope the Government listens. I am making this comment because I was speaking to a Senator this morning who actually told me that after five years he felt that he had not achieved much, to put it in his terms. I do not think those were the exact words. What was the reason for it?

It was five years of having prepared oneself to come to this Parliament, five years of giving what one considered sound advice and five years of seeing what one has said not taken up by the Government; in other words, to say almost five wasted years. I know that particular person would have been very saddened to know that one had put so much forward and people just listened and did not try at least to accept some of the advice that came, and sometimes it was the politics that blinded our eyes.

Today we have heard some sound advice and when I heard it going on and on I said to myself, "We are at the end of five years. I wonder what will be taken up?" When I heard the Leader of Government Business talk, again in this hysterical manner in which he was talking, I said, "He has missed the point for another session". Here were people trying to work along with a piece of legislation, trying to say what should be done and what could be done, and although he knows very well that he is going to take up these suggestions—I hope, at some point in time as they do the legislation—yet he continues to pretend that what people were saying on this side did not make sense, or probably did not add to what he was saying.

The hysteria did not bother me because we have been accustomed to it for a long time. I have been accustomed to it for many years, but I think people need at times, even though they are on opposite sides, to really recognize people's work. People take time to prepare their work and come to Parliament and sometimes some of us could just come in here and just allow things to happen. I was told here once, "If you continue to go through research like that you are just assisting : the other side", but we feel we have a responsibility to the national community. I hope that people would really listen and take note of what is being said here this morning. We all learnt. We sat at the feet of some of the masters.

In terms of what has happened, when I listened to the hon. Minister presenting—and I am going to say this quite clearly—I felt that somebody took advantage of the Minister or the Minister took advantage of himself, because when he did his presentation of the legislation—if we wish to call it legislation—I am sorry, to me he was not too *au courant* with what was happening as a lot of us felt we did not understand it. Some elementary questions as to what is happening, when it will happen and why it is happening, he was not able to answer. Therefore, I feel that even that—I am sure he was prepared to come today with this bit of legislation. If it took him all night last night I thought he should have spent some time going throughout, and I am wondering, where is the team on that side?

Since coming to the end of the debate we saw some Members on that side struggling and, I am sure, hoping that other people will just keep quiet and allow time to pass so that they can come forward and put some sense into what is being said. I kept asking myself, "Where is the team in that, that the Minister could come to this Parliament and make a presentation and somebody else had all the answers?" I think we need to find out what happened. It did not go well for the Parliament today, but at least at some point before the debate was finished we got a little insight into how this Stabilization Fund is going to operate.

1.00 p.m.

Mr. Vice-President, I am very glad for this fund. When I first saw this note and I saw two-thirds, I said to myself: "two-thirds?" Where is the other one-third? It came to me and, therefore, people would ask the question and even those who were shouting out very loudly, if they did not have the answer, they should say so.

I remember it was almost a year ago that this fund was set up and it took the Government one year to bring the legislation. So, therefore, this emergency that arose last week or last night—and even though it was passed last Friday in the other place—is no emergency. It is one year now the Government is trying to bring this legislation, and even before the budget, people have been asking about it. I have asked the Minister of Finance, Planning and Development myself about it and he said that the money was there but we got nothing coming forward. So do not tell me that the Attorney General's office is working hard on it. This was one year ago and the money was just there and now we are hearing that two-thirds of the money is going into this fund, and we ask ourselves where is the other one-third.

Mr. Vice-President, it strikes me like this—we are just talking about $415 million or $600 million. We talk about millions and hundred-dollar bills in this place now. It is just that and the Government spends the same way because the money is there. The price of oil has gone up and the Government is not careful. This is why we are in this position quarrelling here today and people are asking these questions and they are so concerned. The Government has no regard for money. Anything they want to do they find a way to get around it and to get it done and that is the concern, not the fund. It was said from day one that we all agreed with the fund.

Mr. Vice-President, I heard people talk and I got the feeling that the Government does care about how our moneys are spent, and $415 million is a little thing. Last night, I was looking at an editorial and when I looked at the cost of that overpass on the Churchill Roosevelt Highway, I said: "Good grief, where did the Government get that money to spend to put that overpass?" It is no big thing! Any amount of money! And the Government just went along like it. That is the problem here and that is why people here are concerned.

Mr. Vice-President, we were not happy when people talked about where the fund was in a sterile area. We felt that some of the money could have been taken out. We were not happy about it. The Government made people lose confidence in them when they came unprepared without giving us the facts. That is the whole thing about it.

I remember talking quite recently just after the budget debate about the way in which the Government gets its money or spends its money and the argument about the national debt came up and people said: "Well, you did not have the true figure." We went through that all the time. The Minister of Finance, Planning and Development gave us one figure but there was so much money being borrowed, especially by state companies and, therefore, those figures were not there and these are some of the biggest debtors the Government has out there.

Mr. Vice-President, we came here and heard about the matter where Tidco was given the opportunity to borrow money; we heard about the Urban Development Corporation of Trinidad and Tobago Limited (UDCOTT); the Maintenance, Training and Security (MTS); and the Water and Sewerage Authority is doing the same thing. Everybody is borrowing and nobody cares because the Government wants to do certain things, and they are doing it in such a way that it does not come to the Parliament. There is where lies danger. The Government is finding other ways of getting the money and they are not coming to the Parliament so it is not being credited. It reminds me of our talk when we were discussing something that happened in the energy sector, especially, with the sale of the last company that Petrotrin bought—Trinmar.

I remember we were always talking about the energy sector and I do read and talk to people a lot about it. This is in keeping with how the Government is using the money and not caring about it. This has nothing to do with corruption. This just has to do with being very careless. When the Minister said—I think it was $150 million that Petrotrin paid Texaco for Trinmar. I wonder if anybody found that there was something strange. I remember and knowing the facts, if one understands that that $150 million was almost $45 million or $35 million above what it should have been.

Mr. Vice-President, I understand that an offer was made by a state company and the consultant did a review of the assets and so on and I think it was valued at $80 million—I am subject to correction. So that if you wanted to buy that company the consultant said that you would have had to pay about $80 million. I think it was Garfield Klein and Associates. The state or the company did not accept that offer and another offer was made. I knew of the offer that was made. I knew it for quite sometime before it was made and it was $47 million, but that was quite low. I know Texaco was not going to take $47 million for a company, which our own consultant said, was $80 million, so Texaco walked away from it. In the agreement it was stated that if you get the first offer and you did not take it and you wanted to take it again—sorry.

Mr. Vice-President: Senator, sorry to interrupt you. I do not see the relevance between your line of discussion and the Bill.

Sen. J. Yuille-Williams: Sorry.

Mr. Vice-President: I will suggest that you return to the Appropriation Supplementary Bill before us because you have strayed significantly. I have allowed some latitude but I do not see the relevance.

Sen. J. Yuille-Williams: I was trying to show as it is in this case—and I wonder if there is a relevance—in terms of how we value the money, and that is why the Government could come here and say, two-thirds of the money going for this and another one-third going elsewhere. That is what I am trying to show. I am just showing cases where the Government has not valued money. I thought I could use an example of a case and I am trying to lead up to it if you would permit me, Mr. Vice-President.

Mr. Vice-President: With reference to any particular matter it is not a problem, but you have gone into details in a transaction here which is inviting someone from the other side now to respond, and I really do not want to have a deviation to that extent introduced into the legislative debate.

Sen. J. Yuille-Williams: Thank you. I will just close this part of it by saying that when we did decide to accept the offer we had to pay $150 million that the international bidder put forward and, therefore, we had lost about $45 million. I will probably look at that example again at another time. As I sat here listening to this, I was just trying to show how the Government just does not care about money and the value of money. The Government is running into billions for everything.

We all know what the stabilization fund is going to be. We all know that it was going to be put into some sterile area to be used when the price of oil went down. We all know that it was the excess the Government was going to put in this fund. We thought the Government was going to put all the excess into the fund, but eventually we found out that was not going to be. The Government could not say where the money was going to be kept, and seeing that it was only two-thirds of the amount nobody says anything about the next one-third and, therefore, we had to be concerned about it.

Mr. Vice-President, as someone said, we had the road tax and permit me to say that the road tax was another type of fund and the Government had to come to Parliament every six months or so and say what was done with that tax. Since, I have been in this Parliament; I have not seen at any time anything coming to this Parliament here which tells us how the road tax has been spent. It is another type of fund. I am just trying to show the relevance. Of course, money has been collected from the road tax fund and we do not know where that money has gone. We have not been seeing how it was spent, but what we saw afterwards is that the Government is finding other ways to find money to do road improvement and one must be concerned. One must look at patterns of how things go along to see why people are concerned about this matter and let us not miss the boat.

Mr. Vice-President, we are not saying no to this stabilization fund. It is an excellent idea. I have been looking at it and we could never tell when the price of oil will go down and the money will be there, but we need to be comfortable and know that the money is there and it is going to be used in those times when it is most needed, and it is not going to be pulled down to do other things that have already started. The Government started by not putting the full amount already, and who knows what is going to happen. I am also trying to show that there has been a pattern. So if today we are uncomfortable, it is not that we are not supporting the fund but it is because we have been looking at a pattern of how spending is going.

1.10 p.m.

If you look around this country, you will ask: From where is the money coming? It is like money is going out of style. Anything you want to see or do, it is being done. Somebody is paying for it somewhere because if we look through the figures there, we cannot find who is paying for it. State companies, our business debtors, they are the ones borrowing on our behalf. It is ours and we need to be concerned about how money is spent.

My point today is, I do not see it as any hysteria and I do not think that people on the other side should think that we should not be concerned. I also feel that we could have done much better than to come at this late stage—it was one year now and you ask yourself: Why come now in this form? Is it that they did not want to put the full facts here so that we could really go through it with a fine-tooth comb and make our contributions? Is it that they do not want us to see how it is going to be done? That could be another reason why they came with this interim thing at this late stage, because this should not be any interim thing. It was a year ago. Therefore, we start to wonder: What is the Government's real position on the whole thing? They do not want us to be part of it. It has come as an interim and it will come later but after they have passed this.

My contribution this morning simply says that we need to be confident. We need to have confidence in what is happening. We need to have answers to questions. We need to know when things are going to happen. To tell us that we are going to get it before the parliamentary term ends, it is going to end soon and we are saying that if we are going to get it then, why was it not ready now? How long before the parliamentary term ends?

The hon. Minister had many facts that he presented and we are very grateful to him. Clearly, if they wanted to do it, he has it; he could share it with us. I do not know why he did not because he has the facts; he has answers. I do not know what the hon. Attorney General's office has, if they have anything like that with them.

Therefore, one has to ask: Why did they not come with it? What is the big difference for waiting? If they do not want us to criticize it, that is why we are here, to make suggestions to improve everything. We have really come a long way. We are here at 10 o'clock this morning to do work and if you are coming with any emergency, it should not have been the interim. After one year, there is

nothing interim. There is no emergency. You should have come with something that we could work on and, at the end of the day, we could leave this Parliament being comfortable with what is happening. The parliamentary term is going to end shortly and I can assure you that you are not going to bring anything back here for us. We have to go out with the interim and that is not what is necessary.

I thank you, Mr. Vice-President.

The Minister of Tobago Affairs and Acting Minister of Finance, Planning and Development (Dr. The Hon. Morgan Job): Mr. Vice-President, the measure that we are debating today is about setting up an interim fund which would not have the conditions attached to it as the Revenue Stabilization Fund that we are planning to bring a Bill to Parliament to deal with. Therefore, there was no intention to come here today to discuss the terms and conditions of putting money into the Revenue Stabilization Fund, because we are dealing with an interim fund. From the concern of Sen. Yuille-Williams and other Senators over there, I got that they thought we should have been discussing the Revenue Stabilization Fund and all the conditions of putting money into and taking money out of the Revenue Stabilization Fund.

Clearly, that is not the purpose of why we are here so there is no point in me doing that, and when people are making allusions as if to say that I should have done that and because I did not do that, I was not prepared. I think they are missing the fundamental point.

Notwithstanding that, I say thanks to all the people who asked questions and made contributions because they were all valid. I think in terms of the education process, talking about some of these things now is, indeed, a help in terms of guiding the mind. For that, I thank people like Sen. Dr. St. Cyr, Sen. Daly and those on my side who made contributions, but I think it is fair, in dealing with some of the discussions, to remind myself and the audience of an institution called *sacra congregatio de propaganda fide* which was set up sometime in the 17th Century by the Roman Catholic Church to help defend itself from critics. It is from there that we get the English word "propaganda". Indeed, some of the contributions over there are purely in the nature of propaganda.

I also make reference to the fact that it seems to me that in the other place and here, there seems to be a tendency for people to want to criticize my bona fides as if I have no reason to be Minister of Finance, Planning and Development. I do not want to deal with that but when I hear people making statements concerning macro-economic variables—one speaker was saying that we should use gross

national product and not gross domestic product. Sen. Dr. St. Cyr is an economist and here I am sitting wondering: What is the meaning of that? What is the importance of that? What is the difference between gross national product and gross domestic product?

If you take the difference of them, for any country, it is very small and, in any event, they are what you would call in economics and statistics, positively correlated to each other. There is the problem that they are not really different, except that gross national product deals with the income earned by citizens of a particular territorial integrity in other jurisdictions, so gross domestic product has to do, if you take the example of Trinidad and Tobago: What is the total factor earnings of all the factors of production within Trinidad and Tobago? If you add to that the earnings of citizens of Trinidad and Tobago in other jurisdictions, you are talking about gross national product. I am saying that for most jurisdictions, those two things are not very different. When you tell me that I must look at debt in terms of gross national product instead of gross domestic product, I do not know what we are quibbling about.

Indeed, Mr. Vice-President, with respect to debt, this seems to be a big issue that we are going to the country with, that the debt went up to $29 billion or something like that. The public is not properly edified. Again, it sends my mind to the meaning of the word "propaganda". I have a table here and I think we have to deal with that because the question of the Revenue Stabilization Fund—and most of the speakers over there were linking it with the question of debt and Government borrowing widely, putting us in a hold and we are going to be in serious distress after the next election. What are the matters of fact? Let me just read this into the record.

In 1991, we had in current prices, the gross domestic product was $22.379 billion and the Central Government external debt was $5.255 billion. That, Mr. Vice-President, was 23 per cent. In other words, the gross external debt was 23 per cent of the gross domestic product. In 1992, the gross external debt—Central Government external debt—was 26 per cent of gross domestic product. In 1993, it was 38 per cent; in 1994, it was 34 per cent; in 1995, it was 30.7 per cent; in 1996, 27.7 per cent; in 1997, 27.5 per cent; in 1998, it was 24.1 per cent. In 1999, it was 21.8 per cent; in the year 2000, it was 21.4 per cent.

Important to notice is that in the year 2000, the gross domestic product is estimated to be in excess of $50 billion. You have had a gradual increase in the GDP over the years before 1991 and continuing from $22 billion in 1991 to $50 billion in the year 2000, so that the ratio of external debt to GDP has, in fact,

declined. That is a matter of fact. In terms of debt service that we have for this external debt, the percentage has declined even more dramatically. Whereas in 1992, external debt service as a percentage of exports of goods and services was 32 per cent; it came down in 1998 to 9.7 per cent and in 1999 to 7.8 per cent and rose a little to 10 per cent in the year 2000 which is a drastic reduction from what it was in 1992, more than one-third.

The problem I am alluding to, Mr. Vice-President, we are discussing this Interim Revenue Stabilization Fund and an occasion is taken to say things about debt that are, in fact, misleading and the public needs to be aware of these things. Then, they make these spurious and specious allusions about competence of people on this side. I do not know why we should be dealing with that.

If I may make some comments on some other things that were said. I think Sen. Dr. St. Cyr's presentation was a gem of a piece and, indeed, as I said, we did not come here today to discuss the Revenue Stabilization Fund. If I might use a statistical term, a lot of what Sen. Dr. St. Cyr was saying is positively correlated or very much like what the Minister of Finance, Planning and Development and what Cabinet had agreed to, in terms of the reasons why we should have the fund and the kinds of interventions that must be made to put money into the fund and take money out of it. Whereas Sen. Dr. St. Cyr was talking about standard deviations and so forth. For people who do not study these matters, what he was really saying is: We need to have some measures of the risk of the particular situation with respect to revenue inflows and where we set the oil price, so that the standard deviation is used as a measure of risk and to tell us when we should trigger putting money in and taking money out.

In fact, for those of us who are not so schooled, it is better and the Cabinet did, indeed, agree to use the idea of certain percentages—10 per cent; 15 per cent. You budgeted for US $16 and the oil price went up 15 per cent above that, you would start to put money into it and if when you budget for US $16 and, in fact, it fell to $10, you look at the percentages and decide. All these things have been planned so when the bill comes to Parliament later on in the session for debate, all these matters would be debated. This was not the time for us to do that. As I said, I am going to concur with the people in the Opposition who did ask these questions because they are relevant, germane and pertinent questions.

With those few words, Mr. Vice-President, I do not know if there was much else of substance in relation to the Bill that I needed to talk about. I say that I am thankful to all the people who have made contributions.

Mr. Vice-President, I beg to move.

Question put and agreed to.

Bill accordingly read a second time.

Dr. The Hon. M. Job: Mr. Vice-President, in accordance with Standing Order 63, I beg to move that the Bill not be committed to a committee of the whole Senate.

Question put and agreed to.

Question put and agreed to, That the Bill be read the third time and passed.

Bill accordingly read the third time and passed.

Mr. Vice-President: Senators, at this stage, we will take our lunch break. We will return at 2.45 p.m.

1.24 p.m.: *Sitting suspended.*

2.45 p.m.: *Sitting resumed.*

PROCEEDS OF CRIME BILL, 1999

Order for second reading read.

The Attorney General and Minister of Legal Affairs (Hon. Ramesh Lawrence Maharaj): Mr. Vice-President, I beg to move,

> That a Bill to provide for the consolidation of the confiscation of the proceeds of drug trafficking and to provide for the confiscation of the proceeds of other crime and the criminalising of money laundering be now read a second time.

Mr. Vice-President, I am happy to say that this Bill—which is a Bill to give effect to the Vienna Convention on Drugs, and the Financial Action Task Force's recommendations, which this country and several countries of the world have committed themselves to—was unanimously passed in the other place. It is a Bill which comes to this House with the support of the elected representatives of the people. I have no doubt that the distinguished Independent Senators would recognize the importance of this Bill and would see that it has been long overdue in Trinidad and Tobago.

Mr. Vice-President, the Vienna Convention on Drugs, which was passed as a result of the international community convening in Vienna in December 1988, recognized that the international community could not deal effectively with drug trafficking and transnational organized crime and serious crime, unless countries of the world took steps to criminalize money laundering and put in their laws, the

confiscation of the proceeds and profits of drug trafficking. What has happened since then, is that countries of the world have had to go that course if they wanted to show that they were serious about drug trafficking and crime, and really wanted to do anything serious about drug trafficking and crime.

Subsequent to the Vienna Convention on Drugs, there were recommendations of the Financial Action Task Force, which have been adopted by countries of the world, and which this country undertook to implement. They are known as the "40 Recommendations". Some of the recommendations, which are pertinent to this matter include recommendation No.4, which states:

> "Each country should take such measures as may be necessary, including legislative ones, to enable it to criminalize money laundering set forth in the Vienna Convention.
>
> Each country should extend the offence of drug money laundering to one based on serious offences."

One of the things this Bill does, is to extend money laundering to cover not only laundering the profits of drug trafficking, but also laundering the profits of serious crimes as mentioned in the Schedule—all indictable crimes mentioned in the Schedule. It is to comply with what our undertaking is internationally, and also to put the necessary legal framework to ensure that people do not profit from crime.

Recommendation No.8 deals with ensuring that financial institutions, banking institutions and non-banking financial institutions must have supervisory regimes in all countries. This includes bureaus of change, in order to ensure that there are regulations to disclose suspicious transactions—recommendations 8 and 9—and to have these suspicious transactions reported to an authority, and to have disclosure of suspicious transactions. In other words, the recommendations of the Financial Action Task Force requested countries to alter, to a great extent, the banks' secrecy laws.

Mr. Vice-President, the Parliament of Trinidad and Tobago also, in passing the Mutual Legal Assistance Act about two years ago, recognized that it was also implementing the Vienna Convention on Drugs when it set up a legal framework to assist this country and countries with mutual exchange of information in the investigation, detection and prosecution of drug trafficking and other serious crimes.

As a matter of fact, in that Mutual Legal Assistance Act, it was recognized that Trinidad and Tobago can get assistance and request assistance from other

countries in which there is an agreement between Trinidad and Tobago and that country in respect of what will constitute an offence against the laws of Trinidad and Tobago, for which there will be the sentence of death or imprisonment for a minimum term of not less than one year. It has been recognized that—in respect of mutual legal assistance which forms part of the anti-drug trafficking and money laundering legislation, which countries have been guided by, and have undertaken to pass—it must cover serious offences, and even offences in which the imprisonment is one year.

In Trinidad and Tobago, under the present set-up, the Trinidad and Tobago Government in 1995 decided to have some guidelines for financial institutions, under the Financial Institutions Act, in order to try and assist in implementing the recommendations, the Financial Action Task Force insofar as money laundering is concerned and, insofar as making disclosures and reporting suspicious transactions. Those recommendations were adopted by the Caribbean Financial Action Task Force which, in turn called upon Caribbean countries to implement them. In 1995 there were guidelines. The guidelines took into consideration the recommendations and tried to implement them. But, the recommendations of the Financial Action Task Force are that there ought to be legally enforceable regulations.

The Financial Action Task Force has set up certain criteria for assessing whether countries are serious in the fight against drugs. Some of the criteria include whether there is the absence of regulations or ineffective regulations and supervision for all financial institutions in a given country or territory, on shore or offshore, or an equivalent basis with respect to international standards applicable to money laundering.

At present, in Trinidad and Tobago, the anti-money laundering guidelines only apply to licensed financial institutions under the Financial Institution Act. It excludes insurance companies, real estate brokers, accountants, *et cetera*. Therefore, Trinidad and Tobago has fallen short of the criteria set by the Financial Action Task Force and the Caribbean Financial Action Task Force.

2.55 p.m.

Another criterion that Trinidad and Tobago has fallen short of is criterion No. 6, lack of a legal or regulatory obligation for financial institutions or agreements between supervisory authorities and financial institutions or self-agreements among financial institutions to record and keep for reasonable and sufficient time documents connected with their clients as well as records of national and

international transactions. The reason Trinidad and Tobago has not complied with that is because at the present time the anti-money laundering guidelines, which incorporate record-keeping requirements, are not enforceable as law and, therefore, do not constitute a legal or regulatory obligation on the part of licensees. The past regime undertook to have the necessary legislation brought into force.

There are other criteria which I will not read in detail, but suffice it to say that Trinidad and Tobago, like all other countries in the world, are subjected to an examination to see whether the necessary criteria set down in the Financial Action Task Force recommendations have been complied with. I would like hon. Senators to know that quite recently the Financial Action Task Force published a report identifying 15 jurisdictions as non-cooperative in the fight against money laundering. Six of these jurisdictions are members of the Caribbean Financial Action Task Force. They comprise: the Bahamas, Cayman Islands, Dominica, St. Kitts, Nevis, St. Vincent and the Grenadines, and Panama.

Mr. Vice-President, Trinidad and Tobago is, therefore, on record as promising the international community that it would come with legislation to implement these guidelines. It has not only undertaken to do that, but the Government past and present recognized that unless it does that, there would not be the proper legal framework to really deal with drug trafficking, money laundering, confiscation of the proceeds of drug trafficking and money laundering. It would not be able to deal with serious crimes, money laundering for serious crimes and confiscation as a result of the profits from serious crimes. This Bill, in effect, takes on board what is already in existence as part of the Dangerous Drugs Act in dealing with money laundering and confiscation of profits from crime. It extends the offence for confiscation of the proceeds of crime by, in effect, including serious crimes, apart from drug trafficking.

The principal objectives of the Bill are to deprive persons of the proceeds of and benefits derived from the commission of serious offences against the laws of Trinidad and Tobago, to provide for the forfeiture of property used in or in connection with the commission of such serious offences, and to enable law enforcement authorities, effectively, to trace such proceeds, benefits and property. According to the Bill, the property is not taken away except in accordance with due process of law. As I explain the Bill it will be quite clear that a government or law enforcement officials cannot just take away property.

According to the Bill, where the matter is referred to the High Court the court will have to make a determination if it is satisfied that a person derived benefits

from an offence. The court would then assess the value of those benefits and would order the person to pay such value to the state. So there is the intervention of the court. If a person is dissatisfied with the order of the court, there are appeal processes. The confiscation order is an order for the payment of money.

There could be the mistaken belief that confiscation is forfeiture, but confiscation, under the Bill, is where the court assesses the value and issues an order for the payment of money. Forfeiture is authorized under the Bill, but it deals with respect to property, where the property is used in the commission of the offence. For example, if a ship is used for the transportation of drugs, then the court would have the power to forfeit the ship to the state, or to forfeit the airplane, motor car or whatever it is.

Mr. Vice-President, the removal of assets from those who have benefitted from drug trafficking and serious crimes, or I would say drug trafficking—persons who have been convicted—is provided for by virtue of the 1994 Dangerous Drugs Act. The provision was made for the confiscation of the proceeds of drug trafficking in 1994. This Act amended the Dangerous Drug Act of 1991.

The Proceeds of Crime Bill seeks to go even further, to deprive those who have been convicted of any specified offence. Any "specified offence" is defined in the definition clause.

> "'specified offence' means an indictable offence or an offence specified in the Second Schedule;"

The Second Schedule, in effect, states what those offences are. This was amended in the other place, and it is an indictable offence and other specified offences under the Income Tax Act, the Corporation Tax Act, the Value Added Tax Act and the Copyright Act. It is to deprive those who have been convicted of an offence, and the confiscation can only take place, obviously, if it can be established in a court of law that there is benefit derived in the commission of a particular offence.

With the passage of this Bill, the relevant sections in the Dangerous Drugs Act which deal with confiscation will be repealed. Some of those provisions are re-enacted in this Bill, as provisions involving such confiscation would be included as part of the comprehensive scheme for confiscation under this Bill.

The Bill makes a clear distinction between a specified offence, which is defined as an indictable offence or an offence created under the Income Tax Act,

the Corporation Tax Act, the Value Added Tax Act and the Customs Act, and a drug trafficking offence, the latter, that is, a drug trafficking offence, attracting a separate procedural approach with specific inherent distinctions in the assessment of the benefit derived and the type of confiscation and forfeiture orders made.

A person can be convicted of a specified offence either at the level of the Magistrates' Court or the High Court. By virtue of clause 3, in instances in which a person has been convicted in the Magistrates' Court of a specified offence, the magistrate or the Director of Public Prosecutions can send the case to the High Court for the determination of whether a confiscation order should be made in circumstances in which it appears that a benefit has been derived from the commission of the particular specified offence.

With respect to a person convicted of a specified offence before the High Court, the court of its motion or by a written notice from the Director of Public Prosecutions can make a determination as to whether the offender has benefited from the commission of the specified offence.

You have a machinery, whether it is in the Magistrates' Court or in the High Court. The Director of Public Prosecutions can request the court to consider whether a person has benefited, and you have a situation where the High Court can send to the Magistrates' Court, when there is a conviction, for that to be considered. But you also have a situation where in the High Court, if there is a conviction, the court also on its own motion can consider the matter. Let us assume, therefore, that the High Court is considering the matter, the court will have to consider whether the person has benefited from the offence.

If I can take Senators to clause 3(2):

> "The Court shall first determine whether the offender has benefited from the commission of the specified offence in respect of which the offender has been convicted unless the specified offence in respect of which the offender has been convicted is a drug trafficking offence in which case the Court shall determine if the offender has benefited from drug trafficking."

One sees the distinction between a conviction of drug trafficking and a conviction of another offence. In respect of drug trafficking, as long as he has benefited from it, whether it is that drug trafficking offence or not, the court can investigate all the matters from which he has benefited. If it is not drug trafficking, the court can

only investigate as to whether he has benefited, made profit, from that particular offence.

For example, since this is very popular these days with people, if a politician is convicted for corruption and it can be shown that the politician has benefited from this corruption, then the court can investigate to see how much profit this politician has made from the corruption, and the court would have the power to confiscate that profit in favour of the state. If a drug dealer has been convicted of murder and the drug dealer has made profit as a result of this crime, and it can be shown that by committing this crime he has made profit, then the state would have the power to confiscate, in favour of the state, the profits made from that murder. If a drug dealer has been convicted of drug trafficking and it can be shown that he has made profit from other offences of drug trafficking, the court has the power to take all that profit into consideration and make an order.

This is not law only being passed in Trinidad and Tobago, this is law which the Commonwealth countries and heads have agreed to implement and this is also law which other countries have passed. There are different kinds of forfeiture laws for serious offences. For example, in the United States of America you can have asset forfeiture without a criminal conviction. There are civil forfeitures in the United States.

In Trinidad and Tobago we have adopted the approach, as most Commonwealth countries, that the court cannot investigate as to whether you are going to confiscate profits from crime unless the person is convicted of a crime. The condition precedent for your having an investigation conducted in the court is that the state must prove beyond a shadow of a doubt, beyond any reasonable doubt, that you either have committed drug trafficking, corruption, murder or some serious crime.

3.10 p.m.

As a matter of fact, the United States of America has recently passed something called a Drug Kingpin Act where you do not even have to have a conviction, they could just reasonably suspect that you have been trafficking in drugs and you have money in the bank, and they can freeze your assets and if you are a foreigner, they can take it and you answer afterwards. I am not saying that we are going that route. We are going the route where you must first have a criminal conviction, then you have an investigation by the court. Both sides can be heard, you can retain the best lawyers in the world on both sides and if your property is confiscated, you can appeal to the Court of Appeal, or the Judicial

Committee of the Privy Council. When that finishes, you can probably appeal to the Caribbean Court of Justice so there is no question of Government taking away property, or police taking away property, it is full due process of law.

Why is it that the international community had to do this? The international community had to do this because it has been recognized that you cannot get at the organized criminal syndicates, the drug barons or persons who make profit from crimes unless you are able to take their profits away from them and, therefore, if governments are serious about it, this is the kind of law they have to pass, and some of the countries which have passed laws like these include Australia, Canada, Germany, France, Hong Kong, Italy, Japan, Singapore, United Kingdom, and the United States of America. In the regions you have Barbados, Antigua, Guyana, St. Vincent and the Grenadines.

Mr. Vice-President, if we go back to what I have been reading, in clause 3(2) one sees therefore, that in respect of drug trafficking there is a different yardstick. Clause 3(3) explains.

"For the purposes of this Act a person benefits:

(a) from a specified offence that is not a drug trafficking offence where—

(i) he obtains property as a result of or in connection with its commission and his benefit is the value of the property so obtained;

(ii) he derives a pecuniary advantage as a result of or in connection with its commission, and his benefit is the money value of the pecuniary advantage;"

Mr. Vice-President, with respect to drug trafficking, therefore, the benefit is given a much wider meaning to encompass any payment or reward in connection with the commission and by virtue of clause 4, the court in making a confiscation order, must in its determination of the actual quantum have regard to whether the victim of the specified offence has instituted or intends to institute civil proceedings.

By clause 5, provision is made for the calculation of the amount that an offender could be required to pay under a confiscation order when an offender is convicted of a specified offence other than drug trafficking, in instances in which the Director of Public Prosecutions exercises its power to have the High Court make a determination as to whether there has been a derived benefit from the commission of the offence.

Mr. Vice-President, the benefit however must be $1,000,000 or more either for the particular offence or an aggregate, or other benefits derived from a previous specified offence that is not the drug trafficking offence. Let me see if I could explain this.

Under the existing law as it applies to drug trafficking, what happens is that whether the profit derived is $5.00, $50.00, $1,000,000 or $2,000,000 it is treated on the same basis. This Bill attempts to do what other countries have done and if the profit is more than $1,000,000, if the Director of Public Prosecutions believes that the profit is more than $1,000,000, he can refer the matter to the court and the court can make certain assumptions. I want it to be made quite clear that these assumptions are not assumptions which the accused person cannot rebut or show to be untrue and if the court decides they are not following it they must say they are not following it.

If one looks at clause 5(1)(a), it says:

> "(a) one million dollars or more;

And clause 5(2) says:

> "When the Director of Public Prosecutions gives notice in accordance with subsection (1), the court shall, subject to subsection (4), make the assumptions specified in subsection (3) made for the purpose—
>
> (a) of determining whether the offender has benefitted from the commission of a specified offence; and
>
> (b) if he has, of assessing the value of the offender's benefit from the commission of the offence.
>
> (3) The assumptions referred to in subsection (2) are—
>
> (a) that any property appearing to the court—
>
> (i) to be held by the offender at the date of conviction or any time in the period between that date and the determination in question; or
>
> (ii) to have been transferred to him at any time since the beginning of the relevant period, was received by him, at the earliest time when he appears to the court to have held it, as a result of or in connection with the commission of a specified offence;

So that is one assumption the court can make, but in making that assumption, the accused can show that that assumption is wrong.

> "(b) that any expenditure of his since the beginning of the relevant period was met out of payments received by him as a result of or in connection with the commission of a specified offence; and
>
> (a) that, for the purposes of valuing any benefit which he had or which he is assumed to have had at any time, he received the benefit free of any other interests in it."

So there are assumptions as you will see under the Act which the court can make but which the accused can show that it is wrong and the court would have to say that it has not made those assumptions.

The relevant period in respect of an offence where a person has benefited from a commission of an offence which is not a drug trafficking offence. You will see in clause 5 subclause (8) the relevant period for this section means the period not exceeding six years prior to the commencement of the proceedings and ending on the date of conviction.

Mr. Vice-President, clause 5 shows the assumptions and if it can be shown that the assumptions are inaccurate, that the court does not have to accept it and would have to say it does not accept it. With respect to drug trafficking under clause 6 the term "benefit" is given a wider meaning and it encompasses all payments or rewards obtained by the offender, and the value of the benefit in the aggregate of the payments or rewards so received.

Mr. Vice-President, the court is empowered to make similar assumptions as already indicated with respect to benefits derived from drug trafficking.

Clauses 7 and 8 of the Bill deal with the calculation of the amount of the confiscation order. In making the order the quantum shall be equal to the benefit derived from the offender, or the amount that might be realized at the time the order is made and this kind of procedure is similar to legislation throughout the Commonwealth in this area. The standard of proof required is proof on a balance of probabilities. That is not the conviction, but in respect of the forfeiture matter on a balance of probability.

The making of a confiscation order is premised on the fact that there has been a conviction and as you will see from clause 11 the court first determines the

confiscation proceedings before imposing sentence. The power to impose an appropriate sentence on the offender is not affected by the making of the confiscation order.

Mr. Vice-President, I should mention that this Bill did not come just like that. There was a draft Bill which was subjected to the widest possible consultation. As a matter of fact, there has been consultation with the financial institution, banking community, all stakeholders over a period of three years. There were proposed amendments, and consideration, and even in the other place when the Bill went there it was subjected to amendments and the Government did not bring this Bill requiring a special majority, but the Opposition stated that out of an abundance of caution it wants that because it wants nobody to challenge this Bill and the Government accepted the amendment to put the preamble for a special majority.

I am giving you this to show the kind of bi-partisan support the Bill had and the recognition that it did not want anybody to challenge the Bill because the Attorney General was of the firm view that it did not need a specified majority because there was no law, rights, or anything being taken away, but in order to accommodate the Opposition, we accepted the amendment and brought it here with a special majority, not that it cannot change if we feel otherwise.

Mr. Vice-President, under clause 13 an onus is placed on the Director of Public Prosecutions to furnish the court with a statement. I know the Senate knows that we have come here with Bills that require special majority already and when we got the support we went ahead with it and, therefore, if we were not getting the support what the Government did was to amend it in a certain way and convert it into a simple majority Bill. I feel sure that with the support of the Opposition in the other place that will not be necessary in this matter and I feel very confident that the Independent Senators would not want us to do that in this Bill.

In clause 13, an onus was placed on the Director of Public Prosecutions to furnish the court with a statement relating to matters relevant to determining whether the offender has obtained a benefit and/or an assessment of such benefit. The Director of Public Prosecutions may then furnish the court with a further statement by his own action, or by a directive from the court.

If the statement tendered by the Director of Public Prosecutions contains allegations which the offender accepts, the court is entitled to treat such

acceptance as conclusive of the facts. The court has the power to request of the offender an indication by him as to the extent of the allegations he accepts and with respect to the allegations he challenges the matters he proposes to rely upon.

If the offender fails to supply the court with the information as requested, the offender would be deemed to have accepted every allegation contained in the statement apart from the allegation that he has benefited from the commission of the offence.

By virtue of clause 14, the offender may be ordered by the court to furnish it with any information specified in the order and a failure by the offender to comply with such order without reasonable excuse enables the court to draw any inference from the offender's inaction as it deems appropriate.

Under clause 15, the Director of Public Prosecutions, if he did not exercise his power after conviction in the Magistrates' Court to send a matter to the High Court for determination as to whether a confiscation order should be made or if before the High Court did not give notice to the court to proceed to a confiscation order, but he subsequently has evidence which would have justified such actions by him, the court can consider the new evidence in the light of all the circumstances and proceed as though the notice had been given at the appropriate time.

Mr. Vice-President, there may be instances in which there has been a determination of the confiscation proceedings in which it was found that the offender did not benefit from the commission of an offence and by virtue of clause 16 if the Director of Public Prosecutions has evidence which was not considered by the court which made the determination, but which, if so considered, would have led the court to another finding, the Director of Public Prosecutions may apply to that court for it to consider the evidence. The court then has the power after considering the evidence to make a fresh determination as to whether the offender has benefited from the offence.

Under clause 17, provided that more than six years have not passed since the date of the conviction of the offender, the court is allowed to review the assessment of the amount of a confiscation order if the Director of Public Prosecutions is of the view that the value of the benefit was greater than that assessed by the court.

If the court is so satisfied, it shall have the power to increase the amount of the order to such an extent as it thinks just in the circumstances. In making its new

assessment, the court may consider any benefit received by the offender from the commission of the offence after the making of the original determination.

3.25 p.m.

Clauses 18 to 21 deal with the power of the court to make restraint orders preventing the offender from dealing with property, which may be the subject of a Confiscation Order. Such orders may be made only on application by the Director of Public Prosecutions, supported by an affidavit containing statements or information supporting the grounds stated therein. When such an order is made the Court may appoint a receiver to take possession of and manage the property. Similarly, the court may make a charging order on the realizable property of the offender, thereby securing payment to the state where a Confiscation Order has not as yet been made.

The procedure for making a charging order is similar to that of a restraint order. The court has the power to appoint a receiver to deal with all of the realizable property and may order any person in possession of the property to vacate. If the order is large and the property to be realized diverse then a receiver can be appointed to sell the assets. The role of the receiver is to deal with the property in order to satisfy the amount of the Confiscation Order. If the offender or the receiver makes an application to the High Court, indicating that the realizable property is inadequate for the payment of any outstanding amount of the order, the court shall issue a certificate to that effect. The Director of Public Prosecutions, has the power to apply to the court to increase the amount to be received under the Confiscation Order, and in such circumstances, the court may vary the order with respect to the amount that is now realizable and increase the term of imprisonment or detention fixed in respect of the Confiscation Order.

Clauses 25 to 28 and clause 35 deal with the power of the court to make a Confiscation Order in the absence of the offender; and in certain circumstances to cancel an order, so that where an offender has died or is abroad, the Director of Public Prosecutions may apply to the court to make a Confiscation Order against the estate of the person. The court is mandated to hear the persons who are likely to be affected by the making of the order. If a Confiscation Order made in these circumstances, is against the person who is subsequently acquitted of the offence, the court shall then cancel the Confiscation Order. Upon the cancellation of an order the person who has suffered a loss as a result of the making of the order, may be awarded compensation by the court.

Under clauses 29 to 30, where a person against whom an order has been made is not convicted or his conviction is quashed, or he is the recipient of a presidential pardon, the High Court may order compensation to a person making an application who held realizable property. By virtue of clause 31, if an offender does not pay the amount of an order in the stipulated time, interest accrues and becomes payable by him as part of the order. Further, the offender shall be liable to imprisonment for non-payment. If the offender fails to pay any interest that has accrued, the High Court may, on the application of the DPP, increase the term of imprisonment fixed for the default of payment.

Clauses 32 to 34 deal with the power of the court to make orders and issue warrants, enabling police officers to have access to and take possession of documents and information which are relevant in assessing whether the offender has obtained the benefit from the commission of an offence. There are certain conditions that have to be satisfied before such an order is made.

Clauses 36 to 37 provide for external Confiscation Orders to be subject to the provisions of the Bill. Clauses 38 to 42. The senior customs officer on duty at the port, or a police officer of the rank of sergeant or higher on duty would have the power to seize and detain any cash if he has reason to believe that it is the proceeds of, or to be used for the commission of an offence. Cash so seized shall not be detained for more than ninety-six hours unless authorized by a magistrate, who must be satisfied that there are reasonable grounds for justifying that detention. And the party against whom an order has been made, as I said, has the right to appeal to the Court of Appeal and to further appeal.

Part II of the Bill deals with money laundering. So Part I of the Bill deals with confiscation and forfeiture and most of the provisions of this part of the law are already in our legislation. The only major difference is that it is not only in respect of money laundering for drug trafficking and confiscation for drug trafficking, but it is money laundering for all serious offences, and confiscation of the profits of all serious offences. There are some improvements, for example, the ones about the assumptions which have been the improvements and the developments in the law and what Parliament has been doing and which has been required by the international community to make the system fairer for the state and for the accused persons.

Part II of the Bill deals with money laundering. Clause 43 prohibits laundering of money or other property, derived or obtained directly or indirectly from drug trafficking. Money laundering is committed where a person can seize, dispose, disguise, transfer or bring into Trinidad and Tobago, or remove from Trinidad and Tobago—money or other property, knowing or having reasonable grounds to suspect that it is drug trafficking.

Clause 44 prohibits another aspect of money laundering which is the concealing or disguising of property directly or indirectly representing the offence of proceeds of a specified offence or drug trafficking. Clause 45 relates to money laundering offences—because of time—I assume Senators would have read the Bill. Clause 47 provides a defence to persons who may have acted in relation to property, in contravention of clauses 43 to 46, but disclose to a police officer a suspicion or belief that the property directly or indirectly represents another person's proceeds of a specified offence.

Clause 49 provides a defence similarly afforded in clause 47 and 48. Under clause 50, a police officer or other person would not be guilty of money laundering when he is acting in good faith and on reasonable grounds in connection with the enforcement of the provisions of the Act. Clause 51 prohibits the disclosure to a person of information or other matter that is likely to prejudice an investigation. This is something new. It is called the offence of tipping off and it is found in other legislation. So if you tip off; you tell people that the police is coming to investigate you and you tip them off and you frustrate the investigation, then that is an offence.

Clause 52 makes it an offence for a person who, in the course of his trade, profession, business or employment, becomes aware or suspects that another person is engaging in money laundering and does not disclose it to a police officer.

Clause 53 specifies that for an offence committed the penalty—under sections, 43, 44, 45, 46, 51 and 52—on summary conviction is $10 million and imprisonment for 10 years and on conviction and indictment to a fine of $25 million and to imprisonment for 15 years.

Clause 55 requires every financial institution or persons engaged in relevant business activity, to keep and retain records relating to financial activities in accordance with the regulation under clause 56. One would see that financial institutions are defined under the Act in the definition section. Financial institution is a bank. A financial institution under the Financial Institution Act and a building society and all the others mentioned there. It also says, "Relevant Business Activity" mentioned in the First Schedule.

"Real Estate Business

Motor Vehicles Sales

Courier Services

Gaming Houses

Jewellers

Tool Betting."

So these organizations are required to keep records and they must report suspicious transactions. The whole purpose of this is to ensure that you do not have anonymous accounts *et cetera.*

Basically, these rules have been there, on a voluntary basis, but there is no way to enforce them because the country was required to put something in place in the interim. Under clause 58 there is a Seized Assets Fund which will be established and will be comprised of cash and property confiscated and the finances of the fund are to be used in accordance with subclause (3) for the purpose of community development, drug abuse, demand reduction, and rehabilitation projects and law enforcement and there is the power to make regulations for the Bill.

There have been some amendments in the other place, and I assume that Senators have those amendments before them, but in trying to do this section very quickly, one should remember that clause 55(2) says:

> "Every financial institution or person engaged in a relevant business activity shall pay special attention to all complex, unusual or large transactions, whether completed or not, and to all unusual patterns of transactions, and to insignificant but periodic transactions, which have no apparent economic or lawful purpose.

3.35 p.m.

Mr. Vice-President, in the other place we did circulate a draft of the Financial Obligation Regulations which we had in mind. I do not know whether Senators have received them, but under those regulations you would see that:

> "…every Financial Institution which in the course of a transaction receives cash, bank cheques, drafts, money orders or travellers cheques…in the amount of $10,000 or more shall keep and retain a large cash transaction record that indicates…

(i) where the money is received…"

As well as in other cases. I am just giving an idea of the regulation, because regulations have to be made. Also in respect of:

> "Every person who in the course of relevant business activity receives money in the amount of $50,000 or more, shall keep and retain a large money transaction record that indicates…"

The name, *et cetera*, of the person. So that there will be regulations to give effect to this Bill. But what we have before us, Mr. Vice-President, is the Bill which would give the legislative framework so that persons, other than persons convicted of drug trafficking, will find that if they profit from these crimes the court can order their property to be taken away in favour of the state. Persons who launder money, other than in respect of drug trafficking, they can be prosecuted and they can have their money taken away.

Mr. Vice-President, why must we combat money laundering? People who commit crimes need to disguise the origin of their criminal money so that they can use it more easily. The fact is, the basis of all money laundering, whether it is that of the drug trafficker, organized criminal, the terrorist, the arms trafficker, the man involved in corruption, the credit card swindler, money laundering generally involves a series of multiple transactions used to disguise the source of financial assets so that those assets may be used without compromising the criminals who are seeking to use the funds.

Through money laundering, the criminal tries to transform the monetary proceeds derived from illicit activities into funds with an apparently legal source. So it will be readily seen to any ordinary person that one cannot really seriously get at money laundering unless there are laws to permit these suspicious transactions to be reported and laws that can be enforced by which one would be able to trace these transactions. It is in that context that the Government has been setting up institutions such as a multi-agency task force for the investigation, a specialized task force, to assist the police with financial investigations. It is in that context also that the Registries are being modernized—the Land Registry and the Companies Registry—so that it will be easier to get records. It would be easier for the public to get records and we would be able to facilitate better investigations in these matters.

Money laundering, Mr. Vice-President, has a devastating social consequence and it is a threat to national security because it provides the fuel for drug dealers, for terrorists, illegal arms dealers, corrupt public officials and other criminals to

operate and expand their criminal enterprises. In doing so, criminals manipulate financial systems, both home and abroad. Unchecked money laundering can erode the integrity of a nation's financial institutions. Due to the high integration of capital markets, money laundering can also negatively affect national and global interest rates as launderers reinvest funds where their schemes are less likely to be detected rather than where rates of return are higher because of sound economic principles.

Mr. Vice-President, organized financial crime is assuming an increasingly significant role in money laundering that threatens the safety and security of peoples, states and democratic institutions. Moreover, our ability to conduct any question of policy on crime cannot be effected unless we deal with the profits from serious crimes. In recent years, crime has become increasingly international in scope and the financial aspects of crime have become more complex due to rapid advances in technology and the globalization of the financial services industry.

Modern financial systems permit criminals to order the transfer of millions of dollars instantly through personal computers and satellite dishes. Money is laundered through currency exchange houses, top brokerage houses, jewellers, casinos, automobile dealers, insurance companies and other trading companies. Private banking facilities, offshore banking, shell corporations, free trade zones, wire systems and trade financing all have the ability of masking illegal activity. The criminal's choice of money laundering vehicles is limited only by his or her creativity.

Mr. Vice-President, it is a challenge to governments to act. They must have the will to act. They must have the strength to act and they must act in spite of opposition. We are very fortunate in Trinidad and Tobago in that so far in the other place the Government received no opposition to these measures. We would hope that the people of Trinidad and Tobago would not receive opposition to the measure. The Government, for the last three years, has been receiving comments, has met with different stakeholders, has painstakingly met with them, discussed with them and considered their proposals.

The Government is still willing to hear recommendations; but what the government is not going to compromise on is passing legislation to deal with the court ordering the profits from all serious crimes to be taken when people are found by the courts to have profited from those crimes. The Government will not compromise on the fact that money laundering must involve all serious crimes.

The Government will not compromise on having banks and financial institutions recognize that the laws of secrecy have to be relaxed to the extent to which the international community has recognized that it is in the public interest. Mr. Vice-President, I beg to move. [*Desk thumping*]

Question proposed.

Sen. Danny Montano: Mr. Vice-President, this legislation was passed in the other place with the support of the Opposition and certainly we on this side would like to see legislation of this sort passed and succeed. [*Desk thumping*] There can and must be no doubt that we on this side are committed to stopping the scourge of drugs in the country, the trafficking thereof and the laundering of the proceeds from drug trafficking. However, Mr. Vice-President—and I hope that the hon. Attorney General will hear what I am about to say and take it to heart—we would like very much to support this legislation, but this is the Senate where legislation is given a second look; and we have done precisely that. We have given it a second look. [*Desk thumping*]

We are in support of the general thrust of what the Attorney General is doing here. We have no difficulty with what he is trying to do here, but we do see some problems with it. Quite frankly, when I was looking at this a few days ago I tried to see whether I could, in fact, fix what I thought were some of the problems and I realized that on my own I was really out of my depth. I really could not do what I felt I needed to. The more that I got into it the more confused I became and I said, "I really cannot do this on my own". I began to feel very strongly that what we should ask the Government Benches for is to send this to a special committee of the Senate to try to deal with some of the reservations that we have. While I had a number of issues and questions throughout the length of the Bill, I was not in fundamental disagreement with it. I had some difficulties and some very real difficulties when I came to clause 32, which is where I would like to focus the meat of what I am about to talk about.

Clause 32 deals with the powers of investigation, so what I am passing over for the time being, Mr. Vice-President—because I know that there will be others who would deal with some of the other issues coming up to clause 32—but as a practising accountant I looked at clause 32 and I saw problems. Now, I have discussed this with the banking fraternity, I have discussed this with my colleagues in industry and business and they were expressing the same concerns that I felt and they are these, Mr. Vice-President. A specified offence, as the

Attorney General has indicated, is not just a drug offence, it is not just the issue of drugs—in fact, it is not a drug offence at all; it is a wider offence. The problem is, what clauses 32 and 33, in fact, do—they both deal with the same thing—is they give the police tremendous powers of search and inquiry—powers to investigate.

In other words, at this point and I listened very carefully to what the Attorney General said, but how I read it at this point—and I read it carefully—is that an offender or a person suspected of an offence, not yet charged, and not yet convicted, but under suspicion only, can be investigated under these very, very wide powers. Now, Mr. Vice-President, when it comes to drug trafficking or the laundering of money from the proceeds of drug trafficking, I have no difficulty with this as it relates to such. In other words, if clauses 32 and 33 were to be confined to drug offences and the money laundering from drug offences, I would have no difficulty. But as it stands now, what clause 32 can and will probably be used for are income tax investigations.

Now, under our existing laws, the Board of Inland Revenue does not have the authority under any law to go on what I would describe loosely as a fishing expedition. In other words, Mr. Vice-President, the Board of Inland Revenue cannot go to all of the banks in the country and say, “Does Ramesh Maharaj do business with you?” and, “If he does, we want to know what he is doing”. If they have information concerning a specific bank account or a certain deposit account or whatever, they can make inquiries in that regard. In fact, there are certain limits as to just how and when they can make inquiries, but they cannot just go on a broad fishing expedition.

Now, Mr. Vice-President, let me just say again here, insofar as this might relate to drug trafficking or money laundering of the proceeds of drug trafficking, I do not have a problem. I am minded of the case of, I think it was Al Capone in the United States, who was a big-time gangster, but who was eventually jailed by the authorities for tax evasion when everybody knew that he was a big-time mobster and a murderer and so forth, but the only thing that they could actually get him on was tax evasion. Now, I do not mind that. If in the investigation of a real criminal, then, one comes up with income tax information, that is one thing. I have no difficulty with that. But I do have tremendous difficulty with just going on a blanket search of anybody.

3.50 p.m.

Mr. Vice-President, our income tax laws here are not evenly and uniformly applied right across the country, and we are now facing very unusual circumstances and let me just explain what I mean. The Minister of Finance, Planning and Development is on record as saying—and, in fact, I have had it confirmed personally to me, by the Chairman of the Board of Inland Revenue—that the emphasis now and in the next few years, in terms of the board's investigation and inquiry into the compliance of citizens with income tax, is going to be focused on the top 800 taxpayers. That is the policy of the Board of Inland Revenue.

So, the point is, if you are already within the tax net, you have to comply with the tax regulations and you are already paying taxes. The more tax you pay is the more likely you are to be investigated by the Board of Inland Revenue. I know also that it is the policy of the Board of Inland Revenue to audit every oil company every single year, because that is where they feel most of the money is and the emphasis is there.

Mr. Vice-President, the problem with that is, the Minister of Finance, Planning and Development is also on record as saying that the business levy is only, and continues to be justified because there are companies that do not pay any income tax and they go on like this year after year, and they do not pay any income tax and, therefore, the way of getting them to pay is to charge them the business levy. Mr. Vice-President, I have to tell you that cannot make any sense. It cannot make sense to hassle the top 800 taxpayers when you firmly believe that there are people who are escaping the tax net, and you know who are they. How do you justify that?

Mr. Vice-President, bear in mind that when the Inland Revenue Department is investigating, they are investigating the top 800 taxpayers, the ones who are already making every effort to comply with the income tax laws. I have difficulty with this. I have had conversations also with the Chairman of the Board of Inland Revenue insofar as efforts being made to get persons to comply with tax laws.

It is a known fact that the central part of our island tends to produce a smaller return per population than the urban centres in the south and north, and yet there is an anomaly where the banks in the central part of the island have huge deposits, and those branches lend to the urban areas in the north and south. So how is it that the banking sector has so much cash reserves in the central part of the island and, yet, makes such a relatively small contribution to tax revenues? It does not equate!

The reality is that the Inland Revenue Department needs to have an office somewhere in the central part of the island and to make the appropriate effort. Mr. Vice-President, in my previous comments, I would have to exclude those companies operating in the Point Lisas estate. I am not talking about them. I am talking about outside of that in the private sector. I have a difficulty then when the Board of Inland Revenue is given powers this broad, and as far as I know, this does not exist in any other jurisdiction.

As a matter of fact, I was having a conversation recently with an advisor from the Internal Revenue Service from the United States, and he tells me that they would like to have laws like what we have already, and their laws are not as strong as ours and, yet, everybody here knows how everybody is frightened of the IRS. Our laws are stronger than theirs in terms of search inquiry and audit and so on. As far as I know, they do not have something like this insofar as income taxes are concerned, and this I find to be onerous at this point and it would be unfair and it will be unfairly applied.

When the system is working fairly and properly that may be a different thing, but it is not working the way that we would have expected it at this point, and it will create tremendous bias and, therefore, I would ask Senators to consider that clauses 32 and 33 should specifically relate, for the time being, to drug offences or offences under the Dangerous Drugs Act and to money laundering of drug offences—from the proceeds of drug trafficking. That is what I would like to see there.

Mr. Vice-President, I have had long discussions with bankers, attorneys and the business community, and they are completely opposed to that insofar as it relates to income taxes. The hon. Minister talked sometime early about the proceeds of crime—politicians taking bribes or fraud and so on—and that is a subject for integrity legislation. I am on record talking about that early when that Bill was brought to Parliament. I feel that ought to be dealt with differently. This has got to be dealt with in a different way.

In terms of the confiscation of the property, that is a separate issue. There is no big argument about the principle behind that, but here I have great difficulty. I also had difficulty with clauses 45 and 46. I think this is under Part II of the Bill dealing with money laundering. What it says is this:

> "A person is guilty of an offence if, knowing or having reasonable grounds to suspect that any property…proceeds of …
>
> (a) conceals…; or
>
> (b) converts…
>
> for the purpose of assisting any person…"

Mr. Vice-President, it seems to me that we are missing the point here. When one reads clause 46, supposing he does not think that there are reasonable grounds. Somebody else looking at it might say, you should have known under the circumstances. Supposing he does not think so. Supposing he is perfectly satisfied with the explanation that he or she has received. I am speaking here without the benefit of having seen the regulations, because I do not know what is inside it and I do not really know what banks and financial institutions have to report to the specified authority, which incidentally has not been identified. I could not really identify who or what is the specified authority. So it seems to me that it is a very subjective standard as to exactly what were reasonable grounds.

In clause 46 he is guilty of an offence if he receives this property and has reasonable grounds. Supposing he does not have reasonable grounds, is that the defence? By whose yardstick are we measuring reasonable grounds? I do not see how that is going to work. I do not want to be facetious, but clause 47 deals with the disclosure to the authorities like the police and so on of any matter that a person might be suspicious of and so on, and shall not be treated as a breach of any restrictions upon the disclosure of information.

Mr. Vice-President, I am assuming here they are talking about the privilege that lawyers have with their clients and that sort of business. If that is so, how is that going to work? How are people going to be properly defended under the circumstances? When I was discussing this matter with a particular businessman he was suggesting that—and I say this facetiously—of those lawyers who receive big fees from drug traffickers should have their property confiscated as well when the fellow is convicted.

4.00 p.m.

Mr. Vice-President, I had also a problem with clause 55 where the financial institutions have to report:

> "(2) ...complex, unusual or large transactions...
>
> (3) ...to the designated authority in the form specified in the Third Schedule…"

I had a problem with that and I will tell you what my problem was. It seems to me that it does not place an onus on any specific individual or calibre of officer within the financial institution. In other words, what you will eventually find is junior clerks, in order to carry favour with the politicians or whoever, start

sending off these forms from the Third Schedule for perfectly innocent transactions about which they may not have any specific knowledge. That is the problem I had here. It cannot be just as broad as that.

We have got to clean this up in such a way that some authority within the financial institution must be responsible for submitting these forms. It cannot just be anybody. I mean, that would be ludicrous. Nobody would have any privacy in this country at all about anything and people would start being investigated for all sorts of silly things. This is not Nazi Germany and I am sure the Attorney General does not want that kind of state here, but that is exactly the kind of thing that I see taking place if we do not deal with this. I really do not know how to fix it but I just make the comments for the benefit of those who might have a suggestion.

That was really it and I would like to underscore the points I was making about the tax issues, because it is really extremely problematic when there is a situation where there is a policy on the part of the Board of Inland Revenue to focus on the top 800 taxpayers of the country but, yet, the Minister of Finance, Planning and Development is saying now that anybody whose only source of income is from a salary, no matter how large it is, they no longer have to file a tax return. The problem with that is that people are going to fall outside of the tax net. Yes, they can be looked at from the employer's side of things, but their personal affairs are going to fall outside of the tax net.

Supposing somebody who is 25 years old just got a nice job at Neal and Massy or wherever. He is a young man. He starts to do quite nicely and he does not have to file a tax return. As he starts growing, he gets a promotion and so forth. He starts investing, buys property and starts to have an income. He is completely outside of the tax net and will never be identified. He may grow to be one of the largest income earners in the country but he was outside of the tax net and as long as he maintains his job, nobody ever sees it. Nobody ever sees what he is getting into.

Sen. Daly: That is right.

Sen. D. Montano: And the rest of us get—I would not use the word "persecuted" because I am sure that the Board of Inland Revenue does not intend to persecute anybody, but it sure feels like it. When you narrow the focus, it becomes unfair. My point is that what we have in existence right now is a tax regime and a compliance regime that, as it is now, is unfairly applied. Now, that is not a problem of this Attorney General. I fully appreciate that, but clauses 32 and 33 are setting it up to make that level of unfairness dramatically worse and I really cannot agree with that.

I ask the hon. Attorney General to consider what I have said and if he is prepared to narrow this, for the time being at least, to confine these powers of search and inquiry investigation to drug offences and the proceeds of drug offences, I have no difficulty with that.

With those few words, I would leave it to the rest of the Senators.

Sen. Martin Daly: Mr. Vice-President, it is a hard day for those of us who care.

Mr. Vice-President, there is a great deal that is wrong with this Bill. It can be fixed, but it can only be fixed by dialogue. Now, it appears to me that in some quarters of the Government, there is a determination to demolish or remove what is loosely called "Opposition". I listened with some dismay to the Attorney General's presentation and I am going to do the same as Sen. Montano. I am going to, as calmly and in the mildest language as I can, point out those sections—and there are many of them—of this Bill that do not suit our circumstances in Trinidad and Tobago. I will get to that as a matter of specifics.

First of all, I would like to begin with what I consider to be a few philosophical propositions. Some of these I have made before; some I have not.

When we are considering legislation like this, Mr. Vice-President, it is unarguable that we are departing from the usual norms of our criminal justice system and some of our constitutional arrangements. That is unarguable. That is a fact. No one disputes that there is a strong case for departing from some, but not all, of these norms, because you cannot attack drug trafficking and money laundering without a departure from those norms.

If this Bill were confined to drug trafficking and money laundering, many of my problems with it would be removed, but not all. The fact is that it is not confined to drug trafficking and money laundering. One of the things that concerns me about the Attorney General's presentation of this Bill, is that he kept talking about serious offences but, you see, this Bill does not deal with serious offences. This Bill deals with specified offences and I think it is instructive that the Attorney General kept referring to serious offences, because if, of course, you said to me—murder, for example, if you can take an obvious example. Murder is a serious offence that is an integral part of the business of drug trafficking and money laundering so we need to extend the legislation beyond drug trafficking and money laundering, to murder. I would have no problem with that either.

What I cannot accept is that it is impossible, at least as a start—and all this business about satisfying our international obligations, I will come to them—it is not possible for us to make a careful start with this legislation if we need to have it extend beyond drug trafficking and beyond money laundering, to serious offences; we itemize precisely those serious offences that are, obviously, linked or are an integral part of drug trafficking and money laundering and no more. I cannot accept that we have to say "every indictable offence", never mind, and I will deal separately with the introduction of offences under various, let us call them, taxing statutes, as a justification for having this legislation cast so wide.

I do not think I have said anything that is remotely controversial and I am surprised that the Attorney General, on a Bill that requires a special majority, talked about the Government would not compromise on this and would not compromise on that. That is, first of all, if you like, the starting point. What are we legislating for? If we are departing from traditional safeguards, how far are we going to depart? That is the first question.

Secondly, I absolutely reject that if this Bill has been passed "by the elected representatives" that we do not have any work to do. I do not accept that. First of all, if the Government has a policy and it cares to make it part of its manifesto that the Senate should be abolished or non-elected Members should not be part of our : constitutional arrangements, make that an issue and take it to the people. But, the fact is we have a Constitution which is supreme law. It is generally accepted that the Senate is a "second look" place, as it is put by Sen. Montano and it is generally accepted that the value of the Senate is that people are not elected, whether it is an anachronism or not. I happen to think it is an anachronism and, indeed, Sen. Prof. John Spence wrote a very learned article about it which was published in the *Parliamentarian*. I happen to think it is an anachronism but it is there. That is no justification for us not making a root and branch examination of any piece of legislation that comes here. It is a very poor argument under our constitutional arrangements.

Indeed, many times, governments would tell you that they are glad there are certain things that they really feel pressured into, or maybe on which they would like to have a second look, that they can bring them here and have a second look. Unless we are going to pass a bill to abolish the Senate or to abolish non-elected representation as one of our checks and balances, let us not waste time about whether elected representatives passed it.

For one thing, the elected representatives have a disadvantage which I do not have and which none of my colleagues have, which we referred to on the last occasion. Nobody can go on a platform and say we are supporting drug dealers because we want certain legislation amended. They can say that about the Opposition and maybe people will accept it. Nobody is going to accept that of any of us, so that is one constraint of which I am free. I am not under any pressure to agree to anything, whether it comes form Vienna, Uganda or anywhere else.

Now, with regard to our international obligations, of course, other things being equal, we should support any legislation that the Government brings in support of our international obligations, but as far as I know and, again, if we are going to change the law, let us change it, whatever was signed in a treaty, does not become the law of the land until it is accepted by the "domestic" Parliament, for want of a better word.

If we are abolishing that provision, let me know and then, of course, I would not have had to be here since 10.00 o'clock this morning; I would not have had to spend three days examining this Bill, and as far as I know, that is the law and it is there for a good reason, because it is not everything that you sign to in a treaty, that is palatable or acceptable at home politically.

For example, there are things that people might agree to, because of the religious configuration of a country, is not acceptable in that particular country. So far as I am concerned, it is axiomatic that within one's treaty or international obligations, when you come to pass the enabling law, you have to suit local conditions.

Now, let me mention two things that exist in other countries and in stronger countries that do not exist here. I am not going to enter into anything dealing with the courts today but it is ironic that here, again, we are putting everything into the courts, but let us leave that. We do not have, and I think it is axiomatic, any true separation of powers between the legislature and the executive in this country, so let us forget about the courts. We are not going there today because that is just going to get everybody emotional and excited. We have no genuine separation. The legislature here, so far as bills that can be passed by majority, is just an extension of the Executive.

4.15 p.m.

I pass no judgement on this, I merely say it is a fact. For example, we had two Tobago Senators who were effectively dismissed by the Government because they did not agree with them. I am not saying it was wrong, but those are our arrangements.

When you have legislation like this—you have to bear in mind it affects civil liberties, this is thing to lock "yuh" up—the consensus that has to be obtained in the legislation that has genuine separation from the Executive, is in itself a safeguard. There are backbenchers. In some parties in big countries there are right wings, centres, and left wings all in the same party. You have to get a broad consensus. If you are going to put people's civil liberty at risk, again, you have to have certain building blocks in place.

It is all very well for a country that has massive gridlock in its government arrangements—I happen to think gridlock is a good thing. I do not like governments to do much unless it is really urgent. You have a country that has massive gridlock in its arrangements, where, in order to make any major legislative steps, they cannot even abolish the so-called marriage tax in the United States because the President, the Congress and the different wings of the parties cannot all agree on what else should go with it. They cannot tell us that we must do this, because our conditions are different.

Even more germane to this Bill is yes, everything that is done can be challenged in the courts. One can go to the courts before the property is seized, before a receiver is put in, and all these different things. That is very useful, if there is a country with a well-developed legal aid system. Our legal aid system, despite the considerable improvements made by this Government, is pathetic. I congratulate the Government for having made the improvements. The fact is, if due process, so-called, is instituted wrongly or maliciously, against you under this Act, you would be "broken" by the time you have vindicated yourself—completely "broken". The point about it is, that is all very well for countries to tell us we must do this, because they spend zillions of dollars on legal aid. This is a quite separate problem from whether the courts are efficient or not. I am not entering that argument, because that argument has taken on a sort of obsession of its own. I am not entering into that argument. The courts could be extremely efficient, you could have the brightest, best, and most straightforward judges in the world, it costs you money.

The Independent Counsel in the United States cost the United States $51 million to investigate something called White Water which was a land estate deal. The point about it is that the people who are accused—recently I read a book that deals with this. I will come to it. When they start a trail on you in the United States—who I assume was one of the people telling us to pass this Act—when they targeted Susan McDougal—everybody watches television—that was the woman in shackles who would not give evidence against President Clinton.

Wen Ho Lee, familiar, we would have to talk a little about Wen Ho Lee today. When one is wrongly or maliciously targeted by legislation like this that invades one's civil liberties, one is completely—"yuh broken to tief", let us put it in local parlance. That has nothing to do with whether the lawyers charge you reasonably or not, because you are set upon a five-year, tenyear, whatever trail it is, to establish that you are really innocent.

We had a big argument the last time, about the burden of proof shifting. I do not want to get into any technical argument. The point is, they are going to realize the property unless you show the court why not. Whether you want to have a technical argument about burden of proof or not, it is you to "ketch". Once they finger you, it is you to "ketch". You have to spend money to extricate yourself from that.

It is no good telling me that this is international obligations and other countries have it. Other countries have zillions. I have not had the time to look it up because this Bill took me so long to prepare and we had the unexpected diversion this morning. Other countries spend zillions of dollars on legal aid and, on top of that, many of the countries that are pushing this on us, have different systems for the recovery of damages. Whether it is right or wrong, one's ability to get punitive damages, if one is wrongly attacked by the state, is very great. We have very restrictive rules about aggravated and exemplary damages.

I am not passing any judgement on whether we should have these things. I am merely showing that merely because a particular country has a law, does not mean that we have to have it if the social conditions, cultural arrangements, or constitutional arrangements are different in our country. I pointed to three things: punitive damages, legal aid, and separation of powers requiring broader consensus. We are dealing, all the time, with civil liberties. Once you get caught up in a system wrongly, you can be "broken" psychologically, emotionally and financially. Your family can be destroyed.

Take the case of Wen Ho Lee. They put 59 charges on him. Espionage is another area where the traditional safeguards are reversed because it is so hard to prove that somebody is a spy. We just had a high-profile case. Let me just summarize it. Everybody must have seen it. They held a middle-aged Chinese man called Wen Ho Lee. They dropped 59 charges on him. They kept him in solitary confinement, sometimes in shackles, for six months. They could justify everything they did. They said, first of all, the solitary confinement is necessary, because if you have classified information in your possession, one can talk it to

somebody in a jail, who can talk it to somebody else, who can talk it out. That is a perfectly logical justification for solitary confinement. That is an immediate penalty, which you suffer when they start a trail under this Act. I do not understand the part about shackles, and I do not want to be dramatic.

What happened six months later? The government had no provable case, so they do a plea bargain on one of 59 charges. The judge lets him out of solitary confinement on the basis of time served; that is, the amount of time he was locked up. Now, his life is not the same. It is just not the same! I am sure the scientists will tell you that a man who spent six months in solitary confinement would never be the same. That is what happens to you, if the state can invade your traditional civil liberties. That is not a healthy thing. For drug trafficking and money laundering, it may be necessary to invade traditional civil liberties.

May I make it absolutely clear, I do not have a problem with the intention of this Bill. We are fortunate, because we live in a country where due process is guaranteed under the Constitution, and no government can dilute it, unless they get a special majority. A special majority, apparently, has become a dirty word, but it is there for a reason. It is there for the reason that if you are going to do something different or dramatic, you must get a broad consensus, and those are our constitutional arrangements.

It is no good saying that this legislation—the Vienna Convention requires it, the Americans want it, the multi-lateral lending agencies want it, whatever. We have a sacred duty as parliamentarians—whether you are bound by orders of your party, or your executive or not—to examine this legislation to see whether it goes too far, or whether there are things in it that are excessive. That is the philosophical position from which I always defend civil liberty. Those are some of the things that we have to consider philosophically, when we approach legislation like this.

Mr. Vice-President, may I say—I know I will get comfort from the Government on this—withholding a vote from the Government, particularly, in the Senate, is a very serious matter. I doubt I have done it three times in nine years. In fact, I was wrongly criticized by this present administration for the fact that I did not vote against a particular piece of privatization legislation in another era. I tried to explain to people why not. If at the end of the day, the Government has a privatization programme, they have to amend the statute, you try to get the statute amended as best you can, to put in as many safeguards as you can. But it is a very hard question, at the end of the day—whether that is the elected government's manifesto—you are going to frustrate it.

4.25 p.m.

When it comes to civil liberties I have absolutely no such qualms, because you cannot make the invasion of someone's civil liberties part of your manifesto. So I have no such qualms when it comes to civil liberties. I try as far as possible to see if we can work out legislation by consensus, whether we can have dialogue and get these things worked on, but when it comes to civil liberties, I have no such qualms.

Do you know what is laughable in some of these countries that we have to follow? In the city of London, for stock fraud they still have degrees of self-regulation, but they tell us that our money laundering guidelines are no good because they do not have the force of law. For stock fraud in the city of London they still have large areas of self-regulation. That is so laughable.

In the United States of America you can sell stock short. Sen. Gillette, in particular, will correct me if I am wrong, you can sell stock short, and we have cases right now where 15-year-old children on the Internet are putting out a “bad rake” about a stock and it goes down 60 per cent of the value in three hours. And they are going to tell us what laws we must have? As far as I know, I have not checked it recently, Sen. Carlos John and Sen. Gillette will tell me if I am wrong, I do not think you can sell stock short in our stock market, I think it is an offence. Am I right?

Sen. C. John: Yes.

Sen. M. Daly: So why are they telling us that we must have this law? There was a company called Umex, its stock price went down 60 per cent in three hours on the basis of something that went out on Blumberg Information Television. Because it was Blumberg everybody accepted the “bad rake”, the company stock went down 60 per cent, and a 15-year-old boy was able to destroy the stock of two big companies by putting out a “rake” on the Internet.

They are telling us what laws we must have? They are assessing us for financial rectitude? I think selling short is a huge financial wrong, so they cannot assess me and tell me what makes me in Trinidad and Tobago financially rectitudinous, because selling short is the biggest crime of all and definitely assists in money laundering. "So dey cyar assess me, we go assess weself." That is the point of a Parliament like this.

Perhaps, Sen. Wade Mark will understand why I could not take on the Oil Stabilization Fund, I have given a lot of thought to this, because I do not want anybody coming here today and telling me anything about signing with drug barons or any rubbish like that. These are very serious issues affecting our civil liberty, and if a country is allowing you to sell short, it cannot come and assess me for anything.

Of course, if he were a Back-Bencher he could make his support vocal, but he is nodding and smiling at me with great encouragement, but that is as far as he could go, because he is bound as part of the Executive. I refer to one Member whose looks are very encouraging and who knows a lot about the stock market, but he cannot say anything more than that. [*Laughter*]

Can I, therefore, Mr. Vice-President, just finish with the philosophy and then, depending on what arrangements you want to make, I will then get to those particular clauses in the Bill, about which I am concerned, but I just want to make sure what we have covered.

The first fundamental problem I have is that I cannot accept a bill that makes this legislation apply to every indictable offence and those specified sections of tax offences; I just do not accept it. Therefore, the first thing I want to be able to do is sit with the authorities, whoever they are, and discuss what specified offences we are going to start with, and if we find out later that we need more, we can add to the list; but I cannot accept it. I think it is too great an invasion into our civil liberties. I do not accept it.

May I point out one more thing; consider a safeguard like this, and then you will signal to me, Sir, whether you will like me to pause now or complete my contribution. This is very important. May I just be allowed to finish this?

Sen. Montano is quite right, our tax laws are far more invasive than those of the United States of America. In fact, when this whole question of money laundering and so forth became a hot topic—I do so much free work for this country it is a shame—I spent the morning with the United States ambassador and showed him our tax laws, and how easy it would be, under our tax laws, to get after people who are reputed drug barons. He was amazed, and has since gone to seminars around the world carrying a copy of our tax laws with which I provided him. How easy it is.

They say you must not speak ill of the dead. If a man gives a full page interview in a broadsheet newspaper in which he says, "I am a simple farmer, but last year I built a murti…"—I hope I am pronouncing the word correctly—"for $1 million on the income of a farmer," the income tax people should be there the

next day and say either, "This is your return; you say you are earning $500 a month," or "Where is your return if you have $1 million to build a church and boast about it?" You do not need this law to do that. Once the Inland Revenue assesses you, then you are bound by that assessment; you commit perjury if you make a false assessment and they have huge powers.

If I can just complete this point; we do not need to apply this to tax offences of any kind, because Customs, Inland Revenue, and VAT authorities have every power under the sun that they need, and some that they do not need.

It is ironic as Sen. Montano has mentioned, that the Governments want to invade our civil liberties to the extent contained in this Bill, but they have abolished individual tax returns. I pointed this out in the debate already: one of the reasons individual tax returns were important in the context of money laundering is that you could not form a company and get a tax file number and a VAT number unless the promoters of the company submitted their last six years' tax returns. So now any money launderer could form a company, because he does not have to worry about showing that he filed his tax returns. It is completely inconsistent.

One of the things we need to discuss is whether in the context of the objectives outlined by the Attorney General, we really should proceed with what I consider a really foolish suggestion, that we do away with individual tax returns.

Now, Mr. Vice-President, is this a convenient time as we said?

Mr. Vice-President: Sen. Daly you have used just about 30 minutes of your speaking time. I propose to break for tea and reconvene at 5 o'clock.

4.31 p.m.: *Sitting suspended.*

5.03 p.m.: *Sitting resumed.*

Sen. M. Daly: Mr. Vice-President, philosophies concerning civil liberty really do take a little time to restate. I am really going to sacrifice much of what I have to say on the detailed provisions of the Bill because I really think it is very important.

A matter to which I was going to refer before the tea break was simply this; I do not have time to read it, but as sweeping as the powers of the Board of Inland Revenue are, when they are required to get information they have compulsory powers to demand information under section 117 of the Income Tax Act, and they all have powers, once you object to an assessment, to ask the bank for

information. It does not have original powers to go into the bank as you know, but even there, when the Inland Revenue demands information from your bank, you have seven days to go to court to get a declaration of your rights, and that is a very salutary provision.

In fact, when I was a temporary judge in 1980, I had cause to consider this in a case in which a very eminent counsel here—now I am not suggesting that it is going to be possible in the context of money laundering and drug trafficking necessarily to give somebody time to go to court to get a declaration because what they will do is destroy the evidence in the meantime. I merely cite it as an example of our tradition of being sensitive to people's civil liberties and privacy and their information. That is our tradition.

The other thing, of course, and I know that at least one of my colleagues shares this view very passionately. I merely say this; I do not share the current philosophy that the correct or only prescription for dealing with trafficking in drugs is interdiction, I said so in a previous debate. I certainly do not share another colleague's view about what should be the legal status of drugs. I merely say that I do not accept that the only way to deal with this is interdiction and when I hear the Attorney General talking about countries assessing us, I will like to assess them in what they are doing about their demand problem.

They are requiring all these things of us and threatening to sanction us because we are either the suppliers or trans-shipment points on the route. What are they doing about their demand problem? Have we made any assessment about what they are doing with their demand problem? One could argue if one was cynical, that they cannot deal with the demand problem because in Beverly Hills they carry it around in cigarette cases, maybe they are completely hypocritical about it. I totally reject the fact that the whole burden must be put on our backs. I totally reject that.

Why are you worrying about what I am sending you? Stop your people wanting it and, indeed, we now have this absolutely amazing situation where they are going into Colombia and providing huge sums of money to fight the narco traffickers and they are going to use a defoliant which has been named "agent green" to distinguish it from "agent orange". I cite for example an article in the *London Times* of August 27, 2000: "Agent green casts shades of Vietnam over Colombia. These defoliants are going to be used in Colombia without any regard to what long-term effects it may have on the civil population. They are going to drop this—is it a fungus? They are going to drop this—it is biological warfare really, am I right? Or botanical warfare, and they have no idea when they drop this substance in the jungles in Colombia what effect this is going to have on the native population, and I use the word "native" advisedly.

I am not impressed by any argument that other countries have it, or they are assessing us. I think it is time they assess what they are doing about the problem. I think we have to take a very cool and dispassionate look at all this. I could be cynical but I really want to appeal to the Attorney General's good sense, I want to take a leaf out of Sen. Montano's book and make these points as mildly as possible.

One could talk about the selling of the Lincoln bedroom you know. Who judges the judges? I think that is a phrase that might appeal to the Attorney General in his present mood. They are selling the Lincoln bedroom and going to Burma and collecting money and they want to assess us, what we are doing about laundered money? Where do you think all that money for the Lincoln bedroom comes from? Do you think it dropped out the sky? I do not have a problem telling any of these guys—whether you meet them in a cocktail party or on Washington circuit—assess yourself. Physician heal thyself. Is that not the expression? You are trying your best with me. Physician heal thyself. Why are you worrying about what I am selling you? Do you think the money for the Lincoln bedroom is coming from good sources necessarily?

There are serious philosophical questions which, in my view, militate completely against any argument that we have to do this. For the avoidance of any doubt, Mr. Vice-President, let me make it very plain. I would support virtually any measure that is targeted at drug trafficking and money laundering. I have no basic problem with that part of the Bill that deals with confiscation of assets of any crime. I am prepared to go that far.

In the Attorney General's non-negotiable demands we agree on the first one. I have very little problem with that part of the Bill that deals with confiscation of proceeds of all crime. So we need not have a problem about whether he is compromising on that or not, whatever that means, because I know we have a say. I have very little problem with that. There are a few technical drafting things that I would like to deal with but, basically, I do not have a problem with that.

I certainly have a problem with having specified offences meaning every indictable offence, and some offences under the taxing statutes as opposed to named serious offences. If he is not compromising, what could I say? I know I have my constitutional duty.

With regard to bank secrecy laws, I do not agree with everything in this Bill. I am not going to speak on that part of the Bill for three reasons: first of all, I declare an interest, I have professional and business links with financial institutions, so it is not appropriate for me to defend bank secrecy laws.

Secondly, as part of the consultations which the Attorney General had with this Bill, I was instrumental in having the bankers put their point of view to the Attorney General. They were not very successful when I look at what is the shape of the Bill now, but I am not entering that arena, that is something that could be dealt with in committee. There are some provisions in there which place obligations on people who work in banks and what is worse, make it possible for persons who work in banks basically to set up anybody, but I do not want to spend much time on that.

I do not accept that because this Bill has been the subject of consultation and has been dealt with in the House of Representatives, and what we say must be dismissed and cannot be examined. How can I accept that? We have a constitutional obligation. If this is the last stop on the Bill, then we have to take time over it and I would remind Senators of what I said this morning. We are not full-time parliamentarians, we all have paying jobs and we do not have research assistants, and I spent three full days working on this Bill. I could not do it before, I had other things to do and Sen. Mark is bringing me here on other days to deal with Anti-Personnel Mines and all this kind of thing. What am I to do? I am not a full-time parliamentarian. When the Bill is hot and ready to be dealt with, and certain to be dealt with, that is when I do my research. So you are going to tell me I am too late, the Bill has been around for too long? I absolutely reject that I cannot examine a Bill at every stage.

Mr. Vice-President, I also think if we are going to be dealing with bank secrecy laws—I am not going into the merits—the appropriate place to do that is in the framework of the Financial Institutions Act because that is specialist legislation and it properly belongs there, because as soon as you interfere with one building block, you are interfering with others.

I was never impressed with the party that preceded you in Government, because basically I am never impressed with Governments with a capital "G", but I remember when the Financial Institutions Act was being passed in 1993, Sen. Mansoor, as he then was, and I had a tremendous fight with the then government. Oh it is too late, Washington says we have to pass this Bill. It is in keeping with the Basle criteria. As you know there had been this Basle committee and Basle said you had to do this or else you are dead, and you had to have these prudential

criteria, or else you will be finished with. We were subject to the same threats. The Bill has been around for three years, blah, blah, blah but, at the end of the day—they were not always very gracious about it—we were able to persuade the government at that time that what Basle required about the very important question of capital-based lending ratios *vis-à-vis* capital base did not suit Trinidad and Tobago. Why? We have an underdeveloped capital market.

Most companies here use borrowed money to finance their business and, therefore, if you made the ratios too narrow or too restrictive, you will stifle business here. Eventually we got the government to agree. It did not suit our country. The capital lending ratios that they wanted suited big countries where you had a highly developed capital market with venture capital and all that. Those lending ratios did not suit us, it would have killed business here, so we were able to persuade them, despite what Basle said.

I have already pointed out what are some of the things we have to take into account here. So I absolutely reject the fact that we are in some kind of eleventh hour position where Senators cannot have a say, and Mr. Vice-President, in relation to the Tourism Bill which we were told it was life and death, we did not even have an official select committee, but a group of people volunteered to get together in an informal committee and we met and did constructive work and sorted out the kinks in the Bill. So what is this business about we have to pass it today and we have to stay here until midnight? I cannot accept that.

5.15 p.m.

Mr. Vice-President, could I, in the short time that is left, just raise some of the problems I have with this Bill in relation to Trinidad and Tobago? I am not interested in what they are doing in Montserrat, British Guyana or anywhere else. It is a small point but I must mention. I am not going to fuss over it. I would ask Senators, first of all, to look at Section 10, where an offender is defined as someone against whom proceedings have been instituted for an offence whether he is convicted or not. Maybe, that is the only way they could draft it, but that is really a very bad signal. From the time this Act engages you, there is the label "offender". Now that is a terrible signal. I do not want that there. And I would not ask for a committee just to clean that up. But this textural theme runs all the way through that, somehow, from the time the authorities finger you under this Act, something is really wrong.

May I show, Mr. Vice-President, how when you interfere with one building block what else you interfere with? Of course, lawyers should be on the list in the Schedule. Mr. Vice-President, you will know the reasons why lawyers cannot be put there. Because every time someone gets a lawyer of his choice, as a defendant in a case against the state; and the state thinks the lawyer is too bold, too brave, too macho, too good, too efficient, too fearless; they pin a money laundering charge on him, and get a restraining order and "bam" he cannot represent the client again. So there is a violent conflict between a practical matter—sure, there must be attorneys who launder money—where, from the time you finger him he has to come off the case.

That is how John Gotti was convicted. He had a lawyer called Bruce Cutler, who was a very aggressive person, and he got Gotti off four times and then eventually they fingered Cutler for money laundering and he had to stop representing Gotti and surprise, surprise, the Government won the case. Now, Cutler was not a likeable person you know. He was not nice like the Attorney General and I when we are in our defending roles. Cutler made Johnnie Cochran look like a poodle. That is how they got John Gotti in jail. Bruce Cutler defended him successfully three or four times and then they got Cutler off the case because they fingered him for money laundering and that meant he had a conflict with the state, and he could no longer ethically represent Gotti, and surprise, surprise, Gotti went to jail. I am not passing any judgment on whether Cutler was guilty or not. There again, if you say, "Oh, well you must put in lawyers," but then you have that problem. These are very, very delicate and sensitive issues.

Anyway, let us go on. I mean it is a pity that I have to almost exhaust myself showing why we should spend a few days in Committee to fix this Bill but, so be it. May I just point out that all of the sections starting roughly from 13 to 23, and in particular section 20, talk about the court making a charging order on someone's property. Take it very simply. There are two people living in a matrimonial home, the husband gets convicted of an offence that is relevant here. The wife is the innocent party, she does not know anything about it, it is the matrimonial home; it is mortgaged to the bank; the High Court can come in and charge the property. That is under clause 20.

Under clause 21(2), the court can appoint a receiver and the receiver can put the house up for sale. I am not being dramatic. It is practical. I want to discuss this in Committee. I do not want to leave this to anyone's discretion. An innocent wife and children whose husband is convicted can in a trice, find her back against the wall because the matrimonial home, of which they may be joint tenants; I do not

know how this affects joint tenancy, I need to find out—may be sold, so to speak, over their heads. I am not being dramatic. I want to know what happens to things like single-dwelling, matrimonial homes. The husband might have all his money in Panama and the only asset here is the matrimonial home in which they are joint tenants and "bradam" she is out? I think we have to examine that. I do not know if that is the effect of what the receiver can do. Because as far as I can see the charge placed by the court is in priority to all other charges, even the one held by the bank. But I am not discussing bank business today. It is not proper that I do so.

Mr. Vice-President: Hon. Senators, the speaking time of the hon. Senator has expired.

Motion made, That the hon. Senator's speaking time be extended by 15 minutes. *[Sen. D. Mahabir-Wyatt]*

Question put and agreed to.

Sen. M. Daly: Could I move through it very quickly? I am just trying to use practical examples. On page 45 subsection (4) at the bottom of that page says:

> "The court may order any person having possession of realisable property to give possession of it to any such receiver."

That is the wife or the spouse.

Page 46 subsection (8) provides for—

> "…a reasonable opportunity … given for persons holding any interest in the property…"

Suppose the wife has no interest; suppose they are not joint tenants; suppose she does not have any interest in the property. She is just the innocent spouse who is in possession of the husband's house; she cannot even go to the court as far as I could see. And I think we have to fix that.

You cannot confine the persons who could go to the court to stop the receiver selling the property to persons who have a legal or equitable or some kind of technical interest. There may be people in there who should not be put out for very good reasons. And I want to know why they cannot have representation before the court? And I want to know how they are going to afford representation before the court? Particularly, if there is a restraining order on their assets. I want to cater for those things.

I agree with everything that Sen. Montano has said about clauses 32 and 33. It is completely unacceptable.

> "32. (1) A police officer may, for the purposes of an investigation…into—
>
> (a) specified offence;
>
> (b) whether a person has benefitted from…"

et cetera, could go to a judge and say that he wants particular material.

Now, the Attorney General has talked much about due process. I do not have much time to explain how I see due process working. But the point is, the judge is going to act on the material that is placed before him. He could be the greatest judge in the world. If the material that is placed before him is bogus and he makes an order and they rip up your carpet. Do you understand what I am saying, Senator? When the police come and rip up people's homes—some of us have had that experience or have been present when it happened—the judge can only act on the material and we cannot pass legislation without safeguards of against setting up or blackmail. We must not do it! If I am to be told that I must be party to that because you know we do not have enough time; too bad, I know what I have to do. And I agree with Sen. Montano in that section in particular which must be confined to drug trafficking and money laundering, not even murder. Because you are invading the sanctity of someone's home, and the information could be bogus.

Part II deals with money laundering. I do not like clauses 45, 46 or 47 because they are based on suspicion. I do not accept that somebody who suspects something can be set up. Even though I am pressed for time I like practical examples. I once sold a car in our family. I think we got $50,000 or $60,000 for it. I went to the bank—where I am supposed to be known—with a cheque from Mel's Automotive and I gave the name—because you have to be living in Mars not to know who is Mel's Automotive. I go to the cashier to deposit the cheque, and they say to me that I must fill out a "source of funds" declaration as to where I got the money. I was astounded. I am going with a $50,000, a Mel's Automotive cheque, for selling a car in the family! Now, I did not have a problem. Fine—an overzealous clerk doing her duty.

But, suppose she decided that she did not like the look of me; or, I was a DLP, so this is a good opportunity to set me up; or, she disliked what I said in the Parliament "long time"; or, "ah bounce she on *J'ouvert* morning". She could send that information and it would be an irregular transaction. It could easily comply here with whatever the word is—"irregular"—and so on. *[Interruption]* Clause

55(2) well, I did not reach there yet, but thank you very much. That is a practical example of something that could happen to me—a cheque from Mel's Automotive because we sold a car in the family. "So what happen if she decide she not accepting my explanation and she suspicious of wha' I tell she and she go to de police wid it? Wha' is my position? Carpet up, chandelier dong, tiles rip off the bathroom walls, looking for de t'ing". You know what search and seizure is?

I do not like clause 50 because it completely exonerates policemen without what I consider submission safeguards, even though it talks about good faith and reasonable grounds. I do not like Clause 52 because it is based on suspicion. One of the things I would propose in the Committee—which I think is inevitable, whether it is formal or informal—is that we change "suspicion" to, at least, "honest belief" and that there must be charges against people who make malicious reports. We must have that safeguard where, if someone makes a malicious report, it is jail for them, not for me, and they have to do it on the basis of an honest belief. We must have that! Thank you, Dr. Dhanny!

I do not like Clause 55(3) because it is based on suspicion. I do not like Clause 55(2). How could an ordinary clerk in the bank know whether a transaction I have made has no apparent economic or lawful purpose? Suppose for the first time in my life, like the Attorney General, I get a big murder case and I get a big fee like he used to get *[Laughter]* and "ah never deposit dat kina money before? Dey go jam mih, and plenty people want mih do criminal case. I jus' doh like de feel". [*Interruption*] No, I am talking about me, not you, Sir. I am just expressing my aspirations. [*Laughter*] But how can a clerk in the bank know whether a transaction I am doing has no apparent economic purpose? Suppose my rich uncle, wherever, died and left me money; and suppose they do not accept what I am saying? Or suppose, despite that, for some malicious reason, they decide to report me? There must be an offence against that.

5.25 p.m.

Then, Mr. Vice-President, we have our good friend. There is much more but I am running out of time. Let us look at our good friend, the designated authority. This is unbelievable. This is on page 81 subsection (7). Now, there is a designated authority, not a police officer, not anybody we recognize under the Constitution, "eh". It is a designated authority and the designated authority is somebody the Cabinet "pick" and "dey have lawyers as a candidate for gettin' pick. Well, partner, I doh know". Suppose they pick a lawyer who has Costa Rican tendencies to be the designated authority? "We dead!" Look at what happens here. The designated authority can go into the bank, allegedly to see whether the bank is keeping proper records.

Now, when he goes to the bank to see if they keep proper records, he is seeing Sen. John's, Sen. Gillette's—I am leaving out Sen. Gangar—and Sen. Wade Mark's business. "Wha', he go blind heself so he only seeing de form ah de books and not wha' in de books?" That is madness! And somebody picked by the Cabinet? An attorney-at-law or an accountant or—let us leave off this Government because I really want to be in their good graces today. The PNM had picked accountants to run the Airports Authority. He had to fire them because "dey mess up de wo'k". So suppose they pick "one ah dem" accountants as a designated authority and "dey goin' to look in Sen. John books?" [*Laughter*] Now, "dey really goin' to look to see if de book in de right form, eh; if de copybook is double-line or single-line, and dey seein' all de money watching dem so, bram, bram, bram, bram, bram" and dey say, 'Well, he workin' C.L. Financial, boy, but Duprey cyar be payin' him so much money'. Inside! Whattap."

What is worse about this is, it is completely disharmonious, if I can coin a word, with the duty of the Inspector of Banks. There is an Inspector of Banks who, under the Financial Institution Act, goes into the banks on a regular basis to make sure that their books are kosher and to make sure that they are treating properly with debts and so forth. So if we must have this provision at all, and I accept we may need to have it, then let us give it to the Inspector of Banks who is used to doing this and who is used to blinding himself to what he sees in the books, as opposed to the form of the books; a long-standing, official authority who can do this very job, not some flunkey appointed by a Cabinet. How can we have this?

Now, I want to go to committee in order to be able to redraft this to say, "Okay, if the banks have to keep certain types of records, make that part of the portfolio". Give the Inspector of Banks more people and make that part of his portfolio because "he done watching de books already" to see if they are otherwise kosher in different ways. But I cannot sit here—I do not care how long this Bill is in circulation—tonight in committee, at whatever ridiculous hour they keep us here, to try to fix all these clauses, and I do not have all the expertise to do it any way. I am just a mere lawyer. We need to have people who understand finances; we need to have people who understand crime, whether they are practitioners of crime or not; and we need to have people who understand how they do these things in order to fix all these things.

So as far as I am concerned, Mr. Vice-President, there is an overwhelming case for fixing the definition section where "specified offence" and the "Second Schedule" are concerned. There is an overwhelming case for taking out the tendentious references to "offender". There is an overwhelming case for providing for the protection of innocent parties who are involved with persons who are fingered by this Act. There is an overwhelming case for fixing this Act to consider carefully whether the charging order should be given automatic priority over other fixed charges, never mind whether it goes to the court or not. There is an overwhelming case for considering whether we should put it on the person who says they are wronged by the charging order to have to spend the time and the money to go to court to get their rights vindicated.

There is an overwhelming case for considering in committee whether we should not give rights of audience before the court to mere occupiers, people who do not even have any interest in these properties. There is an overwhelming case for amending the bank secrecy laws under the aegis—I think today I am having the big one. There is an overwhelming case for making sure that if we are changing the bank secrecy laws that we do it under the Financial Institution Act and, in particular, we put it under the department of the Inspector of Banks. There is an overwhelming case for not permitting people to come into one's premises for any of these reasons that are specified in clauses 32 and 33, unless they are specifically tied to drug trafficking and money laundering.

There is an overwhelming case for not giving the Inland Revenue Department more power, which they will inevitably get once we specify the taxing offences in the Second Schedule. There is an overwhelming case for providing a specific offence for people who maliciously lie or set-up other people for blackmail. There is an overwhelming case for changing every single thing in this Act that is based on suspicion to at least an honest belief. There is an overwhelming case, Mr. Vice-President, for looking at this question of what constitutes unusual activity in any type of business, whether it is—I accept that real estate and pool halls and all these different things need to be looked at, but there is an overwhelming case for providing safeguards.

There is an overwhelming case for getting rid of a so-called designated authority, who could be some flunkey appointed by a Cabinet that could manipulate him. Mr. Vice-President, I do not know how much time I have left, but I want to emphasize that not one of these remarks is intended to impugn the integrity of this Government or any of its predecessors. They are merely to show

that when one departs from the traditional safeguards of civil liberty, one creates a situation where somebody like a Susan McDougal, a Wen Ho Lee, or anyone else, could be unreasonably and unfairly targeted by the state or flunkey agents of the state and effectively have their lives destroyed.

I do not accept that there is any country in this world that can assess us to find out if we have financial rectitude. They had better look into the Lincoln bedroom and all these other places before they start assessing us. Look under their own bedcovers first. Look into their own stock market first. Look into all the Internet fraud. So, Mr. Vice-President, I hope that at least the Government will give me a hearing, if for no other reason than that I have been so incredibly restrained about the subject for which I would die, which is civil liberty. Thank you, Mr. Vice-President. [*Desk thumping*]

Sen. Rev. Daniel Teelucksingh: Mr. Vice-President, our corpus of legislation concerning the narcotics trade, I believe, is certainly very faithful indeed to more than the Vienna Convention and their friends expect of us on drug trafficking and associated crimes, inclusive of money laundering. We have : certainly done our part in tightening the relevant legislation. I still remember in August of 2000, last month, we further strengthened and updated the 1991 Dangerous Drugs Act by increasing penalties for drug trafficking. For example, you remember certain fines for conviction being increased from $50,000 to $100,000 or three times the street value of the drugs and prison terms being increased from 10 years to 25 and, in some instances, to 35 years, and we even went further.

I am subject to correction here—just a layman looking at this kind of technical legislation—but in August in that amendment to the Dangerous Drugs Act, I believe it might be for the first time we saw emerging a new element in our law, namely, life imprisonment, which means the natural life of a person. I do not know much about law but I think last month it was the first time I saw a definition for life imprisonment meaning the natural life of a person, and this came up in our consideration of how we must deal with the "narco" trade. Mr. Vice-President, this principle, this very important one I am reminding you of, does not even govern legislation for other serious offences.

So we have gone a long way, and how much more serious can we be in Trinidad and Tobago? Our friends in the European Union, including the Privy Council or Amnesty International, would not want us to go further with the death penalty, even if our Government would be interested in that. I feel, Sir, it is

comforting and assuring to see the Bill seeking out the sharks and the big fish. This is how I, a layman, am looking at it. This Bill is seeking to flush out the sharks and the big fish in the drug trade; offenders who are really involved in money spinning, and I mean big money. One of the clauses talks about a million dollars and more.

Mr. Vice-President, I have always asked this question, as so many of the lay people in this country. Maybe I could ask the hon. Attorney General. He will have more information. Does he really believe that we have drug cartels in Trinidad and Tobago? I have always read and heard about drug cartels. Have we discovered, do we really have drug cartels in Trinidad and Tobago? I would ask this question of those who know. How come the police can only catch and haul to the courts the small dealers and the pipers near the traffic lights? How come these are the only ones? They could "ketch" a piper under a traffic light and the fellas on the block, but who belong to this thing called the drug cartel or cartels? Have we ever caught any?

How come in the large haul, I ask, of illegal drugs, Mr. Vice-President, or the destruction of large marijuana plantations, the main offenders seem to escape us? The movers and shakers of this trade in Trinidad and Tobago seem to be so slippery for everyone, including the police. Mr. Vice-President, I am subject to correction again, but the last "drug lord" who was executed I think, if I understand the case correctly, was on trial for murder and not for drug trafficking. He was not caught for drug trafficking—a layman following the case. Have we ever caught a drug lord or were we ever able to identify or dismantle a drug cartel? Their operations have been frighteningly sophisticated and smart.

I rise to support the objective and the purpose of the Proceeds of Crime Bill, the legislation before us. The objective and the purpose I support wholeheartedly, and all the efforts of this Government to deal with this monster in our midst, I identify with. But, in addition to all the experts have said, I just want to point out one observation I have made while glancing through the Bill. I had to glance through because I could not understand so much of it. I just want to point out to you, Sir, two clauses occupying only a few lines, clauses 5 and 6. I have some reservations about the possible impact and consequences of these clauses, which I will describe as the assumption clauses, where the words "assume" or "assumption" are used 20 times. It is one of the sections that came to my mind last night while looking at the Bill. In two clauses in a few lines the words "assume" and "assumption" appear 20 times.

5.40 p.m.

Mr. Vice-President, through you, I want to ask the Attorney General, how will the system and this legislation be fair and just to a person when his property or his rights and freedom depend so much on assumptions. *[Desk thumping]* Will this word and the methodology that is involved in it and the kind of philosophy and thinking weaken this legislation, the objective of which I love and I support? Will this legislation be weaker? The intention of this legislation is good but we are assuming 20 times.

Mr. Vice-President, are these clauses the Achilles heel in the legislation? Why did the legislative drafting expert retain that kind of terminology in a serious Bill like this as forms of evidence? You tell me! In a judicial culture like ours with so much emphasis on human freedom and rights. It is a very important matter and it applies today.

Mr. Vice-President, are you concerned about the "August story", the floating cocaine—packages of the drug being washed on our shores along the southwestern peninsula from Mayaro to Icacos, in an apparent $50 million cocaine deal that may have gone sour and, in addition, a Guyanese body in a box? Have you considered within recent times—maybe last weekend or the weekend before—two Venezuelans and two Trinidadians appeared before a San Fernando magistrate for offloading at Mosquito Creek 97,978 kilos of marijuana. This must be plenty. During the last school week—are we concerned about a 15-year-old student at a Siparia college, who was found with marijuana half past eight in the morning in his school bag? On the same day, at a Point Fortin Secondary school—the same morning and almost the same time these boys are going to school—another boy was found with drugs in his possession. Are we concerned? I think we really have to get at the aristocrats of this trade, and these two Bills, in August and September have all been geared towards trying to flush out the aristocrats of the trade—the real big boys and the drug lords who are the million-dollar dealers. We have seen the tentacles of this trade that they manipulate and operate reaching into the classroom and touching the young people of our nation. It has reached all levels in society.

Mr. Vice-President, I feel the time has come when in addition to our legislation—because our legislation can hardly succeed by itself no matter what we do at this level—if we do not mobilize the entire community in this war against illegal drugs then we are going to lose. We need a serious media—a more definite and positive media education as far as the war is concerned about illegal

drugs. We need a drug awareness programme for the entire nation. We need this programme and it has to be done on an ongoing basis as a means of supporting this kind of time and effort and so on in providing the nation with strong legislation and powerful laws.

Mr. Vice-President, I support wholeheartedly the intention, purpose and objective of the Bill and if, perhaps, we can tidy up the other things, I would like to see the approval of this legislation.

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

Sen. Prof. Julian Kenny: Mr. Vice-President, I was rather taken aback at the Attorney General's introduction in reference to Independent Senators. I do not know why we were singled out. I have also been rather upset that there is no compromise on this at all—this is what we are going to have and you have to support it. That is the approach to it. I use as an example of the problem of legislation and, particularly, following treaties. There are many treaties. In fact, in one of the earlier questions, I think, we have identified no less that 63 international treaties, not bilateral treaties, but international treaties that require domestic legislation of one kind or another.

Mr. Vice-President, I have been involved in one Special Select Committee dealing with a piece of legislation, which was laid here in the Senate. In fact, we have received the report of the Special Select Committee today, and while the subject matter of this particular legislation is not relevant, the approach, I think, is highly relevant. I refer to the report which we have received today of the Marine Shipping Bill which is a piece of legislation drafted to meet our requirements to international treaties in particular, the Marpol Treaty which deals with marine pollution and other treaties.

I will point out that when this Bill was laid it went to debate. In the debate, it was pointed out that there were certain problems. The problems are not as deep as the problems that Sen. Daly referred to in the Bill under debate. I did not count them but there appeared to be, at least, 15 where we have an obligation to address every one of them. They were not trivial matters. I mention this particular treaty partly because I was on the select committee and I ended up being a chairman of a sub-committee that looked at the Bill.

The report is a very interesting report, but the important thing to note here is that when the hon. Minister of Works and Transport brings this Bill back to the Senate, he is bringing amendments. There are 29 pages of amendments. We are not talking about three or four or five. There are 29 pages of amendments coming

from the Minister of Works and Transport—page after page of amendment—and this is meant to bring this treaty legislation, which we are required to pas, into harmony with our own legislation. In the treaty legislation there is terminology that does not appear in any of our legislation. A simple one is “administration” when we mean a particular thing. So here we have routine treaty legislation, and we are meeting the terms set for us by international authorities and organization.

Mr. Vice-President, we go through an exercise that started in January that required an awful lot of work. I think there were nine or 10 meetings of the sub-committee and it required inputs from a range of different institutions in this country, both state institutions as well as stakeholders outside. We ended up with a report from the chairman of the committee, which tidies up this piece of legislation, and brings it into harmony with our domestic legislation. It is on the basis of my experience with this, and listening to the debate I arrived at a certain conclusion which is, this Bill really belongs in a select committee.

When the Independent Senators are singled out on the Government side, Senators have to perform along certain lines otherwise they are relieved. *[Laughter]* On the Opposition side, they, presumably, move along party lines, but Sen. Montano has made a perfectly valid point about what this institution is and what this Senate is.

5.50 p.m.

Mr. Vice-President, this is our Constitution and every time I hear the term "elected representatives" I get a bit nervous because I did not seek a seat here. The Constitution places me here and like Sen. Daly and others, I have an obligation to speak; I have an obligation to listen to the debate and I have an obligation to arrive at my own personal judgment. It is not a party judgment. It is not a question of what the party tells you to do—that side or this side—and, in fact, this Bench never has a caucus. You may see us talking. Much of the time we are trying to seek clarification. I was asking Sen. Daly earlier about the terminology that someone is guilty of an offence. I thought that the only way one could be guilty of an offence was if a court finds one guilty of an offence. We ask questions when you see us speaking, but we do not sit as a group and say, "This is going to be the position."

I, in fact, have no idea how people stand. I know how I stand on this and my stand is very simple. I support legislation that aims at doing something about, as Sen. Rev. Teelucksingh says, the czars in this business. I support legislation regarding money laundering related to this issue of drug trafficking.

To hear Sen. Daly speak about these other things and not being legally qualified. When you hear some of the things and you look at them, you say my—I could not use the word. Really, we are rushing something. What is there to be gained by allowing this to go to a committee? I know that Parliament is going to be prorogued. What is wrong with having it lapse and bringing it back when the final session of Parliament reconvenes, I think on October 8 or 9. It is possible that a committee could meet within a matter of a week or 10 days, then bring the thing back into a form that would be acceptable to all of us. [*Desk thumping*]

There must—I cannot say, "There must be". It is highly desirable, in an environment like this that there ought to be some sort of spirit of compromise. This is a very important piece of legislation, a very important field with which we are dealing, but I am very concerned and I would reserve my position on having it pushed through this afternoon.

Thank you, Mr. Vice-President.

Sen. Diana Mahabir-Wyatt: Mr. Vice-President, I will not take up the time of this honourable Senate in repeating what everybody else has just said. I have listened with a great deal of interest to this debate. In fact, I had not intended to speak on it, but I have been so impressed by the arguments I have heard today that I thought I would just like to make a couple of statements and ask a few questions.

First of all, I agree entirely with the laudable intention of this Bill. I think that people have been getting away—I was going to say with murder—with crimes for too long in this country, particularly crimes of fraud where the victims suffer and there is no means of redress for most of them. Insofar as the drug trade and money laundering is concerned, I will not repeat what everybody else has said. I think we are all in agreement in our horror of that particular trade, crime and whatever is associated with it.

I also have to admit that this Bill is completely over my head. It is specialist legislation. I have absolutely no grasp of financial and tax legislation and I hate to admit it in front of Sen. Carlos John, but I did not even know what "selling stock short" meant. I do hope before I leave today somebody will explain it to me.

Sen. Daly: There are two boys here who can tell you. [*Laughter*]

Sen. D. Mahabir-Wyatt: But some of the terms in this legislation worried me. I know what "indictable offences" are because the hon. Attorney General has educated me on that, particularly in relation to the Domestic Violence Act. I thought that including all indictable offences under the specified offences did make it very broad and I would just like a bit more guidance on: Why all indictable offences? Because all indictable offences can be almost anything.

Sen. Prof. Kenny: Kidnapping.

Sen. D. Mahabir-Wyatt: Well, kidnapping, yes, but that is also related to money. There are other indictable offences which, as I understand it, are offences which can attract more than a five-year sentence which is not necessarily that kind of offence. I am attracted to the point made by Sen. Daly that any offence should be tied up, at least by association, with the drug trade, and murder. There are various other things. I will get on to that in a minute.

I am also extremely concerned about the confiscation of property clause where it comes to innocent parties, like wives and children, who have had absolutely nothing to do with it and have to suffer because they have absolutely nothing to live on afterwards. I do know that there is a particular clause in the : Bill—I am just looking for it now—where it says that the court can take into consideration if they come and make a presentation before the court, but it does not say that the court has to accept that and I am worried about that.

I am worried, also, about the possibility of blackmail. Clauses 32 and 33 bothered me, perhaps not quite as much as they do other people because I know we have something similar in the Domestic Violence Act. On page 58 where they talk about "relative", all of a sudden:

> "'relative', in relation to a person…"

can be almost anyone:

> "(b) brother or sister of the spouse or cohabitant of the person;"

This is really very wide and that person can also be searched and have their personal affairs looked into, simply because somebody with whom they may not even be acquainted, has been involved. That worries me a bit. The blackmail possibility worries me.

I realize that when we come to clause 55, which worries me as well, we are talking about “relevant business activities”, but I have some queries here. In real estate business, there are some very small real estate people—not big, huge ones—who operate in various parts of the country, and I know that you have put the net wide enough to include the most likely offenders, but you can really run some small business people out of business just by the legal fees. They are often, because of the income restrictions, not liable for even what Legal Aid there is and Sen. Daly's point comes in again. I have a couple of questions.

One is: Why are casinos not covered under relevant business activities? Surely those would be natural money laundering. Betting shops and gaming houses, I had on my list as well. Why are those not included? They say “gaming houses” but not “betting shops”. Is a betting shop the same as a gaming house? I am not very informed about that particular industry.

The other question I had was under the Second Schedule: Why is insurance fraud not included? We have got other things, like income tax, corporation tax, value added tax and customs and copyright. But, surely one of the offences that is often tied up or associated with this kind of thing would be insurance fraud where you burn down a property, or otherwise destroy something in order to collect the insurance which is a fraudulent activity which would seem to me, to have fallen naturally under this, but it has not.

I know that in other bits of legislation and I am thinking particularly of the domestic violence legislation, where we ran into a problem with entering into premises, that we did include very specifically worded provisions for instances where it could be shown that this was done for malicious reasons, or it was done wrongfully, or somebody was arrested wrongfully. I think that the suggestion—and I forget at the moment who made it—that we should have a definite offence for charges for malicious reports, which, being a small country—and the size of the country makes the difference, but also the particular culture we have—does, I think, give people justified worries that these kinds of reports can be made. It does not even have to be in relation to business activities or trying to put somebody out of business. It could be something like a matrimonial case. Well, practically all matrimonial cases have malicious reports of one kind of another. I wonder if we could take a look at that as well?

The Bill, to me, as I said, I realize is way over my head, and these questions are perhaps easily answered, but I was very impressed with Sen. Daly's arguments. There is something that is rather Kafkaesque about some of these provisions, particularly in the light in which he put them, and I would add my plea to those of other Senators who have spoken for the work of a small committee over the next few days, just to try to clear up some of these anomalies. Because I think everybody wants this Bill to be passed. I mean, we all do.

Sen. Daly: We all do.

Sen. D. Mahabir-Wyatt: I wish I could offer to help but I do not have any kind of expertise. I think if we can corral Sen. Daly, Sen. Montano and some other people who have got expertise—Sen. Dr. St. Cyr perhaps. I do not have any right to volunteer him because he is an Independent, but people who do have some understanding of this. I think we would all feel much more secure and very grateful to the Government for letting us contribute so that we can all support it.

Thank you, Mr. Vice-President.

Sen. Laila Sultan-Khan Valere: Mr. Vice-President, thank you for giving me this opportunity. I would be very brief.

I do agree with my colleagues here that the objective of this Bill is a very good objective. I know laws are made to punish criminals and to protect law-abiding citizens. But in this Bill, the way it is worded, I feel, as a law-abiding citizen, that I am very vulnerable. I am at risk because the way the net has broadened so much, this is not only related to the criminals but it puts all law-: abiding citizens at risk because the way it is worded is so vague, and I must say vague. I do not understand too much about the law but what I do understand is the power of words. I find many words that are used in drafting this Bill, are very loose and vague. Anybody could interpret them in any way. Words have a lot of power.

There are words like "assumption". I have just read a book from the Toltecs. Those are the Mexican wise men and one of the rules, they say, is that we must be very careful we do not make too many assumptions. Well, 20 assumptions on two pages, I would suggest would be too many assumptions and we know when you assume what that means. [*Laughter*] We do not want to do that to anybody. [*Desk thumping*]

The point I am making here is that laws must be more specific because they can be abused and misused, as if you make too many assumptions, there will be too many mistakes. The wording has to be changed. Too many things are based on “suspicion”, “in good faith” and things like that. It is loose. Who are the “designated authorities”? We have to be more specific with our laws.

I would suggest that this should be redrafted. We need to look at it so that law-abiding citizens would feel protected by the laws that are made in this land. We have to be careful, I agree. We have to punish the criminals but, at the same time, do not punish law-abiding citizens, because what is happening is, I am feeling that I could be guilty before being proven innocent. I thought you were supposed to be innocent before being proven guilty, but if you are being labelled an offender before you even reach the court, then you are guilty before being proven innocent and I do not think that is what the law is meant to do.

6.05 p.m.

I think we have to look at our approach to this law, and also the philosophical underpinnings. I would like to strongly suggest, with my colleagues, that we go back to the drafting board and look at this Bill again, and make it something that is really tight, so that only the criminals would be punished and not law-abiding citizens.

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

Sen. Dr. Eastlyn Mc Kenzie: I just want to bring to the Senate a few of those types of domestic experiences. Firstly, I think there should be, in the Bill, something, to punish people who like to trump up charges: who cannot prove what they are saying. That is one of the things I would like to see.

Secondly, while we were debating, certain experiences came to mind. I remember distinctly, how very much hurt I was when there was this case of a family who had a certain amount of money in the bank, and one of the clerks at the bank disclosed this to bad friends, and they kidnapped the young lady because they knew. They got that confidential report from within the bank. I thought, if we are now making it so easy that we could feign to have an application for that kind of information without, probably any grounds, and the information could get into the hands of the wrong people, even though we are saying the police, I think we have to be very careful.

I remember, very distinctly, we had a former Minister of Education who had some information about drug trafficking and drug traffickers. He called in the police and informed them about the information he had about those drug traffickers and so on. By the time the police got back to their headquarters, one of the people whose names he had given, called him to say: “You have just called the police to report about my drug trafficking trade, well I will straighten you out.” He came on the television and spoke about it. Again, you do not know whom to trust.

Mr. Vice-President, I listened and I looked at the Schedule. I saw where we have relevant business activity. We have them listed. I would tell you from on the ground, one of the biggest areas of money laundering in this country is the Lotto. I am not talking about where people buy a little—I have never played—quick pick and that type of thing, but the people who buy lottery tickets, or those who have tickets that must be cashed.

I have been reliably informed that, sometimes, these drug traffickers will be at the places where you go to cash your tickets. If a person has a bet that is worth $10,000, they would say: "I would give you $15,000." You give me $15,000, because I am not a suspect. I just had $2 and I played and won. You give me $15,000 and I am giving you a ticket for $10,000, I have gained $5,000. Okay, it has been a long time and I wanted a bed by American Stores—I will buy my bed, fridge, stove and wire my house. I have spent $5,000 of drug proceeds. The $10,000, that drug trafficker has a legitimate bit of paper in his hand. He has a legitimate claim, because he has a ticket that he has bought that is legitimate. He takes this ticket to the Lottery Board and gets his cheque because he won.

I am saying we do not know what is on the ground. You have to really go down to the grassroots level to see how some people get rid of the dirty money in different ways that we think we could capture with this Bill. We really need to do : some underground work, and we will see where this comes short and falls short. We have to look at areas like these, and stake out these places where these people come and get real hard drug trafficking money. They pass it off through that type of thing.

Mr. Vice-President, I am in full agreement with trying to punish drug lords and people who gain money illegally. I am in full agreement with the intention, objective, and purpose. But I could say that the Bill is incomplete in certain areas; as I told you about the Lotto. The Bill could punish innocent people. Apart from that, it could set up innocent people, and it could also give crooked people in legal institutions, a free hand to disclose people's legal and private business. I think we should really look at it again, towards strengthening the wording of the Bill and making it detailed and specific, rather than making it so loose.

Thank you, Mr. Vice-President.

Sen. Prof. Kenneth Ramchand: I rise to express my misgivings about the Proceeds of Crime Bill, 1999. I want to begin with the long title of the Bill, which is:

"An Act to provide for the consolidation of the confiscation of the proceeds of drug trafficking…"

to which I have no objection.

"…and to provide for the confiscation of the proceeds of other crime and the criminalising of money laundering."

The title is misleading, Mr. Vice-President, because there are three items in there, one of which is unrelated to the other two.

Item one: "the consolidation of the confiscation of the proceeds of drug trafficking"; item three relates to "the criminalising of money laundering". But, I cannot see a connection between those two and the element that is sandwiched between them, "to provide for the confiscation of the proceeds of other crime". If you read this title, Mr. Vice-President, you might miss item two. You might think item two is part and parcel, and integrally related to one and three, but you would be mistaken. The word "other" tells you it does not have any connection with those two. It seems to me that this second element, is attempting to ride in under the cloak of items one and three.

Mr. Vice-President, it is my submission that you have two Bills here. I am willing and able to support one. I have to resist the other, not because it is useless but, because it needs more thinking about.

6.15 p.m.

Now, the Bill that I am prepared to support—I am on record as one who believes that there is no measure too severe to be taken against those who traffic in drugs on the large stage and those who carry out every conceivable kind of violence and intimidation against those who compete with them or double-cross them or stand in their way. If this were simply and clearly a piece of legislation against money laundering and drug trafficking, it would have my wholehearted support.

I do not even think it is a draconian position, but I take this strong position, not because of any international convention. Like Sen. Daly, I say, let those countries deal with their demand problems. I take this position because I am traditionally opposed to people telling us about patents, people telling us about copyright, people telling us how to design our new schools, and people telling us how to organize our syllabuses, coming from the outside and structurally adjusting and controlling us by threat or promise; promising to lend us money, and we feel that is a gift and we do what they want us to do. So I am against these people coming from the outside to structurally adjust and control us, and so my natural stance is, I am not doing this because of any international convention. I am doing it because of what drugs are doing to the young people of our country; the part that drugs have played in the rise of crime in our country; the part that drugs have played in the break-up of family and community.

Mr. Vice-President, I think that the problem in our society is a very deep-rooted one, and the way we would solve it in the end is to build the kind of society where fewer and fewer people—[*Interruption*]

PROCEDURAL MOTION

The Minister of Public Administration (Sen. The Hon. Wade Mark): Mr. President, on a procedural motion; in accordance with Standing Order 9(8) I beg to move that the Senate continue to sit until the conclusion of the Bill that is before this honourable Senate, as well as the following Bills: An Act to provide for the establishment of a Sentencing Commission and for other related matters; an Act to amend the Petroleum Act Chap. 62:01; and an Act to provide for the assessment, care and rehabilitation of socially displaced persons and for related matters.

Question put and agreed to. [*Crosstalk*] [*Laughter*]

Mr. Vice-President: Sen. Prof. Ramchand you may proceed.

PROCEEDS OF CRIME BILL

Sen. Prof. K. Ramchand: Mr. Vice-President, as I was saying, the long-term solution to the problem, which will never be a complete solution, but it is as far as we can go, is to build the kind of society where fewer and fewer people need drugs, and to cut down on the demand for drugs in our country. But in the meantime, as I have intimated, drug dealers are multiple murderers who commit their crimes by premeditation and no punishment can too severe for them. Never can it be said of them: forgive them, for they know not what they do.

If the Attorney General would like to come back, would like to split this Bill in two—

Mr. Maharaj: No, we are not splitting it.

Sen. Prof. K. Ramchand: Still, I would like the *Hansard* to record that this is my wise suggestion to the Attorney General. If the Government would split it in two and come back with "an Act to provide for the consolidation of the confiscation of the proceeds of drug trafficking and to provide for confiscation of proceeds of other crimes related to drug trafficking and the criminalizing of money laundering", he would have the votes, not only of the elected representatives of the people, but the people who are here according to the Constitution.

The second Bill within this Bill is problematic under two main heads, the first I have already alluded to, that it is riding in under the protection of a Bill against drug trafficking and money laundering. I feel we must not allow it to ride in under that cloak.

The second reason is that the second Bill touches in an arbitrary, unsystematic and unphilosophical way upon a whole area of crime against which the hands of the law seem to be tied, and I can sympathize with the Government for wanting to get at this area, because the law really seems to be quite helpless against some of it. But you cannot deal with this area until we think hard about it and define that area and then work out how we are going to devise legislation to deal with what, for convenience, I would call white-collar crime.

White-collar crime is a major area of crime in this society which the law does not seem to be able to deal with. So many young people pay their money for concerts and when they go to the concert no band turns up, and they have no recourse against the organizers. So many insurance companies insure your car for $60,000 and when your car gets stolen they tell you, "Well, we insured it for $60,000, but the real value is $30,000 and you cannot do anything against them. So many banks impose sudden charges upon you which you had not been expecting. So many lawyers double-charge you. So many people charge, they appear in court for you, your case is not called and you still have to pay. There are all kinds of white-collar crimes in addition to the well-known types of fraud that take place, and the tax evasions that take place.

I notice in dealing with the white-collar crimes here the state is only dealing with white-collar where the state is being deprived of taxation. It is not bringing up white-collar crimes where ordinary citizens are victims, so I feel that we have to think in terms of all kinds of white-collar crimes. Include all the crimes that the Government wants to deal with in this Bill, but there is a whole set of other white-collar crimes that need to be added.

We have a vague, vast, all-inclusive territory in this Bill in which it is possible to find proliferating packs of specified offences that are not drug trafficking. That is the only defining that is done. There are “specified” offences that are not drug trafficking, and that is a pretty wide field, Mr. Vice-President. I have to refer to things that other speakers have referred to, words like suspicion, assumption, malicious information, false report, innuendo, *et cetera*, all of which suggest the possibility of arbitrary apprehension, so much so that an ordinary, decent, law-abiding citizen has to be terrified by this thing; I find it threatening.

I do not commit any crime; people say I eat certain kinds of cookies, which is not true [*Laughter*] but I do not commit any crime that should make me tremble, but when I read this Bill I get “frightened”. Maybe in some way I am not filling up my income tax form right, maybe I did not pay VAT or something, so I am

terrified by this Bill No. 2 inside of here, because the methods of investigation, the methods of bringing to court, the methods of gathering evidence which would include rushing into my house and searching on the slightest pretext, all of these do not add to my peace of mind.

I have to emphasize Sen. Daly's point; I doubt that it needs emphasizing, that there are many innocent people connected with people who are going to be caught by these laws—wives, children, mothers and so forth, who would be knocked out of their homes by the confiscation procedures.

Mr. Vice-President, just to summarize, I want to say that I sympathize very much with the intention of the Bill. I am wholehearted in my support of the elements in it that have to deal with drug trafficking and money laundering. But I am really calling upon the Government to look at the whole area of white-collar crime and to come with a : specific piece of legislation dealing with white-collar crime, which is a crime against, not only the state, but against many innocent citizens.

Thank you.

Sen. Dr. Eric St. Cyr: Mr. Vice-President, I will be very brief, but I think it is important to say that I too fully support the purpose of this Bill, to bring to book the crimes associated with drug trafficking, money laundering and associated crimes. However, I think that as it stands, this draft Bill can put in danger many of the freedoms that we now enjoy—many law-abiding citizens.

My own position would be that I do not give away, what freedoms I have lightly, and so I would really hope that we could iron out what difficulties there are that need to be ironed out so that we could get on with the purpose that we all support, and trust that my own hand would not be forced not to support the Bill.

I thank you.

The Attorney General and Minister of Legal Affairs (Hon. Ramesh Lawrence Maharaj): Mr. Vice-President, I got into difficulty because I said that the Government is very firm in its policy in this Bill, that it does not intend to compromise its policy, that although I indicated that we would consider

submissions which have been made, but we are not prepared to yield to Opposition in compromising our policy. Because of that some of the distinguished Senators have taken the view that I did not want them to express a view. I think that was very unfair.

As a matter of fact, the record of this Parliament would show that this Government has always considered—and legislation has been amended here largely as a result of input from the Independent Senators. I think it is very unfair for some of these distinguished Senators who spoke on that particular issue to give the impression that the Government was saying that it wanted a constitutional change, it did not want them to talk or to express their view. It is just not correct and it was most unfair.

It may be that some of these matters appeal to the newspaper and they make very good reading, and it may be that whenever the Government speaks, the opposition to what it says should be corruption and taking away civil liberties, because the talk has been made that this Bill takes away civil liberties. That is not the truth, because if that is the truth then the Opposition in the other Chamber voted to take away civil liberties. That is not the truth.

As a matter of fact, before I deal with some of those matters I want to say that the Government never said that the fact that it was passed in the other place meant that the Government is not amenable to considering suggestions, but it is a fact of life. It is a fact that in the other Chamber the Bill was passed unanimously. It is also a fact that the Government said there also that it was not prepared to compromise on the policy of the Bill. I told this honourable Chamber that when we were there we went with the Bill with a simple majority.

6.30 p.m.

It was the Opposition that said out of an abundance of caution for it not to be challenged and that it may succeed that we acceded to the amendment.

Mr. Vice-President, I want to put on record, because there have been much opinion that this Bill has loose language, it could put innocent people in trouble and it takes away freedom. I say that this Bill was introduced in the House in 1997, and based on that introduction, it was subjected to consultations by the Stockbrokers Association of Trinidad and Tobago; Remittance Services; Automotive Dealers; Real Estate Agencies; the Bankers Association; Trinidad and Tobago Chamber of Commerce; some of the trade union movement; the banking community again, after there were amendments, and the Central Bank.

The Bill is in conformity with legislation which has been passed in other countries, and it was revised by one of the international leading experts on money laundering who has written a leading book in the United Kingdom, Mr. Andrew Robert Mitchell QC. Before the Bill came with a simple majority, the Government received the advice of Mr. Geoffrey Robertson, QC who said it does not need a special majority because it does not take away anybody's rights without due process of law.

I said in this Senate that if it becomes necessary and the Government has to amend the Bill to take out the special majority, it will do that for the Bill to pass. The reason we say that, and we make no apologies for it, is that it has nothing to do with whether this alone can solve the drug problem and the money laundering problem because we all know that this alone cannot solve the drug problem and the money laundering problem.

As a matter of fact, Sen. Daly should know that most of the provisions in this Bill under the section dealing with confiscation of the proceeds of drug trafficking and money laundering are found in the 1991 and 1994 Bill. Some of the clauses he talked about are already in law and when we were making this presentation, we said that some of those provisions are just reenacted because we are consolidating what was there with this. I was at pains to point out that we already have laws in Trinidad and Tobago to confiscate the proceeds of drug trafficking and all we were doing, as far as confiscation was concerned, was extending it to cover serious crimes and serious crimes as defined in the Bill is all indictable crimes plus the specified offences under the Income Tax Act and the other Acts as mentioned. So that the same procedure which has been used for the confiscation of the proceeds of drug trafficking which has been enforced in Trinidad and Tobago, 1994 to now, nobody said it was taking away anybody’s rights and taking away freedom. That has been there and that same procedure has been used for other offences.

Mr. Vice-President, it does not need any Einstein in law to know that in criminal offences there are two crimes: serious and not serious, and the laws of Trinidad and Tobago have recognized that serious offences are indictable offences. Then, for some reason or the other, the money laundering section of the Bill is the law of Trinidad and Tobago and it is in existence. The procedure is

there that the money laundering laws that are in existence apply only to laundering the proceeds of drug trafficking and what we are doing is to extend it to cover laundering the proceeds of all serious crimes and the crimes specified in the Schedule. So it is no new philosophy coming in.

There was a lot of talk from Sen. Daly about philosophy. It is no new philosophy, as a matter of fact—

Sen. Daly: I thank the Attorney General for giving way, but I think the record will make it crystal clear that I said I had no problem with the confiscation provisions. My problem was extending it and that is why I explained the philosophy about extending it. I have no problem with what they are reenacting.

Hon. R. L. Maharaj: Mr. Vice-President, I made it quite clear also that the philosophy of extending it to all serious crimes is a commitment which the government gave—not this Government—all the governments of the world. I do not think that Sen. Daly understands what is happening in the world with respect to these matters. It seems as though he has some hang ups about Britain and the United States of America and therefore, he sees everything as the United States of America. This has nothing to do with the United States of America.

I was at pains to mention that the Vienna Convention on drugs has nothing to do with the United States of America, it has to do with the international community getting together in order to deal with drugs, and it was recognized that you cannot deal with drugs in one country in a particular way and deal with it in another way in another country. All countries had to co-operate to pass a model legislation because you can have a man in Trinidad and Tobago operating and doing all the money laundering and does not have to move from Trinidad and Tobago. You could have a man in the United States of America operating affecting Trinidad and Tobago and he does not have to move from the United States of America to Trinidad and Tobago. So the whole concept was that you have a global village with respect to investigation and detection and that is how the Vienna Convention on drugs arose so that all countries would take a position and say we are passing laws to make money laundering in respect of drug trafficking a criminal offence. We are going to pass laws so that courts would have the power to confiscate the proceeds of drug trafficking.

Then I went further, the international community got together again and came up with 40 recommendations which have been advocated by the Financial Action Task Force. That has nothing to do with America, it has nothing to do with Britain. The fact of the matter is we in Trinidad and Tobago were a part of that. Then we had the Caribbean Financial Action Task Force of which we are a part and we agreed that in order to form part of the international community in the fight against drugs, we have to take steps to criminalize, not only the proceeds of drug trafficking, but money laundering in the proceeds of other serious crimes. We also took the decision that we have to pass legislation in order to confiscate the assets of serious crimes.

Mr. Vice-President, I also read that in the region, countries that have not done that have been blacklisted because there are criteria which have to be used and if governments of the region all got together—I am talking now not about the UNC Government or the UNC/NAR Government, but about the Government of Trinidad and Tobago getting together, because this legislation is years overdue—and agreed to do this.

If Opposition Senators and Independent Senators have a problem with clause (a), clause (b), clause (c), clause (d), yes, no government would want to shut out anybody. I have no problem with that, but to come here and give the impression that this Bill is taking away civil liberties, is not correct. To give the impression that because the word "assumption" is used and because it is not properly drafted it is not correct, it is misadvised because we have assumption in criminal law now. It is called by a different name "inferences". Under criminal law, a person can be convicted on the basis of inferences and that is assumption drawn from certain facts. That exists. Some of the best criminal convictions are based on : inferences because the inferences are like a chain, the links are all embedded together and you cannot come to any other conclusion.

So when you say if a man makes a transaction he does "a", he does "b" he does "c" there are certain assumptions, and I was at pains to point out that these are not assumptions that the other side would not be able to disprove because under the Bill, the person would be able to disprove it and if the court does not agree with the assumptions, the court has to say expressly it does not agree so the man will know he is not accepting the assumption.

Mr. Vice-President, with the greatest respect, the contention that because it has assumptions in the Bill, because the Bill is so drafted that innocent people can be affected, I do not know whether hon. Senators really appreciate what is happening here. What is happening is that under the confiscation of assets, how could anybody be put in any jeopardy which could be, in my respectful view, exaggerated to the extent that it has been.

Under the Bill, the only functionary, apart from the judge who can institute this kind of inquiry before a court, is the Director of Public Prosecutions. The Bill expressly says that no policeman can do it, no person in the bank can do it. It is the Director of Public Prosecutions and I will read it.

"3(1) Where a person is convicted of a specified offence in any proceedings—

(a) before a magistrate's court and where—

(i) it appears to the magistrate that the person convicted may have benefitted in accordance with subsection (3) and has or may have realisable property; or

(ii) it appears to the Director of Public Prosecutions that the person convicted may have benefitted in accordance with subsection (3) and has or may have any realisable property, on application by the Director of Public Prosecutions,

the magistrate shall after passing sentence send the case to the High Court for determination as to whether a confiscation order should be made;"

So in the Magistrates' Court, it is only the magistrate or the Director of Public Prosecutions could cause the matter to go to the High Court for investigation to determine whether the person has benefited and the Director of Public Prosecutions is the person under the Constitution, and before he sends that, he must have a basis for doing so. Because if he sends it without any basis, it is not as if he is sending it and the defendant or the accused would not have an opportunity and he would not have a lawyer and a court, because they would have to have basis.

When it goes before the High Court, the High Court shall, if the Director of Public Prosecutions gives a written notice to the court that he considers it would be appropriate for the court to proceed under this section, or if the court considers, even though it has not been given such notice, it will be appropriate for it to proceed. The only two functionaries who can cause such an investigation to be made by the court are the Director of Public Prosecutions and the court itself; the High Court or the Magistrates' Court.

Mr. Vice-President, when you look at the Bill and I ask Senators to take it, they could go anywhere and read it, they could ask anybody. When you look at this Bill, there is a situation where in every way the accused person, before an order is made, has every opportunity to advance his case and he has the opportunity to retain a lawyer. If he is dissatisfied with the decision of the High Court, or the Magistrates' Court, he could go to higher courts. So I do not know how persons' freedom and innocent people can be affected because I think we operate on the basis that no legal system is infallible. As a matter of fact, if you want a case in which that has been said, *Maharaj versus the Attorney General No. 1*.

The judicial committee of the Privy Council said no legal system is infallible, courts will make mistakes. So we have to operate on the premise that the legal system can be fallible because it is only God is infallible.

Mr. Vice-President, the other part of the Bill, the impression is being given—or that is how it has come out—that anybody in the bank could cause somebody to get locked up. That is not correct. What happens here under the money laundering provisions—but before I go to money laundering. We have in the confiscation set up that before you can have any court investigation as to whether you have profited from crime and you have made profit, for your property to be investigated there must be conviction in the criminal court. You must be convicted for drug trafficking or for a conviction in the criminal court. So that is a safeguard. It is not as in other countries that you can go without a conviction and have that investigation, so you must have a conviction in the criminal court, and for you to get a conviction in Trinidad and Tobago, the prosecution must prove to the court, either to the magistrate or the jury, proof of the offence beyond : all reasonable doubt. If there are doubts, the person is entitled, in law, to be acquitted. So that is the first safeguard.

The second safeguard is that it can only go from the court or from the Director of Public Prosecutions so that even if the bank reported it to the designated officer, and the designated officer without any basis, reported it to the police and the police have to take action, it has to go to the Director of Public Prosecutions. Unless you will say that the holder of the office of Director of Public Prosecutions, whoever he or she may be, will just flimsily take it to the court.

6.45 p.m.

Mr. Vice-President, the other part is the money laundering part of the Bill. According to the Bill the formula is that in order to know what is happening; in order for the state to be able to properly investigate, there must be some system of having suspicious transactions reported to a designated authority. Some countries have said all financial transactions must be reported to a designated authority. So

that whether it is suspicious or not, the bank has to send all those transactions to the designated authority. We have opted for the suspicious transaction, leaving it to the bank or the financial institutions obviously with a power to monitor them.

Let us say the bank does not put proper people to set up this thing and an officer who has some spite against Sen. Daly decides to report him to the designated authority. The designated authority cannot take that and go to the DPP. If he takes it and it does not have any basis—because the offence is not "suspicious transaction". That is not the offence; the offence is money laundering. And money laundering has to show that you have concealed or disguised it. Therefore, the suspicious transactions are there so that, in effect, there will be investigation. So that if it is found that Mr. "A" is depositing moneys but his business does not have that kind of income. Or, he is importing goods and a lot of goods are being imported, and there are gross inequalities, that does not mean to say they could go and lock him up. What has to happen is that there must be a financial investigation and there must be evidence upon which the Director of Public Prosecutions can act. And it was only then the matter comes into play.

So that I do not know of any other means, that any state can deal with these matters. Mr. Vice-President, when this administration took office, there were the money laundering laws with respect to drug trafficking; there were the confiscation laws with respect to drug trafficking but there was no mechanism to investigate, to see whether there was any money laundering; any profits derived from drugs.

So that although the law was there, there was no mechanism, and therefore, a multi-agency task force was set up as a model—as the British Government used—as the American Government used; as the Canadian Government used; in which you got financial investigation units and investigation was being done. It is because of that, there is now, in a lot of the drug trafficking cases, restraint orders. So that people cannot dispose of their property because the courts were satisfied that there is a basis on which you could go for confiscation of assets after the conviction is obtained.

We had one instance so far of proceedings completed. I think one of the Senators asked. It was a case in Chaguaramas, a gentleman from Cedros in which the court ordered the confiscation of his property. In respect of the Dole Chadee matter, which I think was raised and it is my duty to tell you that one of the things that baffled me when I became the Attorney General, was that Dole Chadee had several charges of drug trafficking/possession pending against him for years

before, and he was never convicted, never tried. There were preliminary enquiries but he was never tried. If he was convicted then the law, with respect to proceeds of drug trafficking, could have been triggered in respect of his property or property which he passed on to others. It is because we was not convicted of drug trafficking that there could not be a property investigation by the court.

On the other hand, even if there was evidence that he made money out of the commission of other crimes, you could not have gone against his property because we did not have a law which says that we could confiscate the proceeds of serious offences.

If I did offend Independent Senators, I am very sorry, because I did not intend to offend you. I do not think that the records of this Senate would show that the Government, at any time, neglected or just threw away your submissions. But I think the Government has asserted its right to disagree with Independent Senators when they do not—and I think that you would support that; and I think that the Government is entitled, as you are entitled, to express your views strongly and emotionally when you consider it should be done.

As a matter of fact, I would say, as a Minister, I benefit tremendously when the Independent Senators oppose, criticize and disagree because then I am able to see the law on other sides. And it would not be a Minister properly directed if the Minister decides that he is going to completely exclude what other people say about any measure. Because if that is the case, then that is not the function of a Minister. That is not the purpose of this place.

I think we are all here for the same purpose. I do not think any Senator here would like this Bill to fail. But I think Independent and Opposition Senators would recognize—and I mention it in this context that when a Government is elected it has a mandate to the population, and one of the mandates that the Government gave to the country, is that it was going to pass laws to deal with the confiscation of assets of all serious crimes; that it was going to pass laws in order to ensure that the courts would have the power to confiscate the assets of all serious crimes, and money laundering would cover all serious crimes. That is a mandate we gave to the population in 1995. That is why I say if it is we are wrong we would face the electorate. If this Government is wrong in saying that it is stubborn; it is uncompromising in respect of that policy, the electorate, I am sure, in a short space of time, would have an opportunity of saying you are wrong, vote them out.

I cannot understand—I have tried, and for the last few hours that I have been here, I have had the privilege and the honour of serving this country at levels with respect to the fight against the drug trade, and I have been able to see this thing from the other side. I used to see it as a defence lawyer. I do not think that any lawyer in this country —with the greatest respect to lawyers—has tested the law in the civil, criminal or public law field as I have done. I have got attacked for it; I have been humiliated for it; but I have taken the position that a lawyer has a duty—even though it is an unpopular cause—to take up the matter. But I have seen this from the other side, and I am very fortunate. I thank God for it. I have seen it from the other side.

Mr. Vice-President, what I want to say to this honourable Chamber that if it is that Parliaments of the world do not co-operate in ensuring that Governments and people have the necessary legislation and legal infrastructure and legal framework to deal with the drug trade and serious crimes we would be fighting a losing battle.

6.55 p.m.

Mr. Vice-President, I do not think I want to say any more on this measure, except to say that what I will be prepared to do is, if we go to committee stage I will look at the clauses with which Senators have problems. I would persuade the Leader of Government Business in the Senate to defer, just before we finish the committee stage, so that I have an idea what the clauses are. We will come back on another date and try to see whether I could either change or convince Senators that this should be the way to go. [*Desk thumping*] Mr. Vice-President, I beg to move.

Question put and agreed to.

Bill accordingly read a second time.

Bill committed to a committee of the whole Senate.

Senate in committee.

Mr. Chairman: Senators, we have before us the Bill which constitutes 61 clauses. I will just draw to your attention the fact that there are amendments, which came from the other House, which are consolidated with the Bill before us

right now. We have no circulated amendments but we have heard that there may be some issues to be raised as we go through. My proposal is, rather than go through clause by clause, we will take it in tranches and if you could indicate as we go through, say, in tranches of 10 clauses, that there is a clause in that particular tranche, we will then take those 10 on an individual basis. Do I have your agreement?

Sen. Daly: I do not understand. Is it 10 and 10?

Mr. Chairman: No, no, we will take the individual clauses of any one group of 10. So we will take clauses 1 to 10, and if there are any amendments in those, we will then take it as 1, 2, 3, 4, 5, 6, 7, 8, 9 and 10; or, if there are amendments in clauses 11 to 20 or 21 to 30, as the case may be. So just indicate, as we go through, whether there are any issues in the next 10 clauses that you may want to raise.

Mr. Maharaj: Mr. Chairman, I wonder whether in some of the clauses that have been raised by Sen. Daly, for example, would it make a difference if some of those clauses are identical in the 1991 and 1994 Act?

Sen. Daly: No, because my position has been absolutely misrepresented. I made it plain from the start that I had no problem with the confiscation provisions whatever, other than their extension to other crimes. I have no problem with what is in the existing law and I have no problem with what is repeated here. I have a problem with it being extended. So that the first amendment I am proposing has to do—[*Interruption*] Well, I understand we have a problem and I think I also have a right to disagree.

Mr. Maharaj: No, I am not saying that you decide, Sen. Daly, but I am saying that we have a right to disagree with you.

Sen. Daly: But I do not want to be represented as now raising a problem with something that is already in the law. I do not have a problem with that.

Clauses 1 to 10.

Question proposed, That clauses 1 to 10 stand part of the Bill.

Sen. Daly: Mr. Chairman, I have a number of matters I would like to raise.

Mr. Chairman: We will take clauses 1 to 10 individually.

Clause 1 ordered to stand part of the Bill.

Clause 2.

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

Sen. Daly: Mr. Chairman, I would like the Government to consider, assuming they are serious about listening to what we have to say—I would like on page 12, I can only do it by page—I would like the Government to consider expansion of the First Schedule on page 12 to include some of the things that were mentioned here. To do with the lotto, I would like to suggest horse racing is something that would have to be looked at.

Page 12, the subclause that deals with:

"The Minister may, by Order, amend the First and Second Schedules."

I would like at least a negative resolution of Parliament, but preferably an affirmative resolution, because I think it is very, very important that each time we extend this legislation, whether you think it curtails civil liberties or not, that we know about it and we have some opportunity to debate it. So I am proposing that page 12 be—[*Interruption*]

Mr. Chairman: Subclause (2).

Sen. Daly: Subclause (2)—well, first of all I am proposing the definition of "relevant business activity" insofar as the Schedule needs to be looked at and subclause (2) needs to be looked at, at the very least for a negative resolution, but I know that Sen. Wade Mark knows the virtues of an affirmative resolution. On pages 16 and 17—are we doing it clause by clause?

Mr. Chairman: Clause by clause. Let us take this.

Sen. Daly: Well, that is what I have on clause 2.

Sen. Mahabir-Wyatt: Mr. Chairman, I did ask a question which was not answered. This is really genuinely a question about insurance fraud not being under the Second Schedule and I was wondering if it was appropriate—I do not even know if it is appropriate. There is appropriate legislation so that it is covered there. It just seemed that it was consistent with the other kinds of financial offences.

Mr. Chairman: Could we take one issue at a time? The first issue, as I read it, is the issue of the ability of the Minister to amend the First and Second Schedules and we have a recommendation from Sen. Daly. The second issue which I am flagging here, Sen. Mahabir-Wyatt, is a suggested amendment to "specified offence"?

Sen. Mahabir-Wyatt: Yes, in reference to the Second Schedule.

Mr. Chairman: We will come to that when we are through with the first issue.

Mr. Maharaj: Mr. Chairman, do I respond, therefore, to the first one about "relevant business activity"?

Mr. Chairman: Yes.

Mr. Maharaj: On "relevant business activity", Mr. Chairman, what the Bill does is it puts a certain number of agencies to start with, but this can be extended from time to time, and all that I can say is that this has not been done just like that, it has been done as a result of studies. So if there is some inclusion, whatever inclusion, I will consider it.

Sen. Daly: I am suggesting—you see, I do not understand what is happening. I thought what we were adopting was that we were going to make suggestions which they would go away and consider. I did not understand that we were going through—[*Interruption*]

Mr. Maharaj: We are going through each clause and then we will revisit the clauses that we have not dealt with.

Sen. Daly: Tonight?

Mr. Maharaj: Yes.

Sen. Daly: Oh, I see. That is not what I understood.

Mr. Chairman: My understanding is, if there is any need to return for additional consideration, the Attorney General has indicated he is prepared to do that. But if, in fact, issues that are raised here can be dealt with here, the preferred thing is to deal with them here. What I am hearing is that there is a suggested amendment to subclause (2).

Sen. Daly: Well, I have more amendments on that page.

Mr. Chairman: Well, let us deal with them one at a time.

Sen. Daly: Well, I am suggesting in relation to subclause (2) that we provide, at minimum, for a negative resolution, just so we know and there is the opportunity to debate it, in the event that some bizarre amendment is made to the Schedule.

Mr. Maharaj: But, Mr. Chairman, before we reach there we have "relevant business activity", so we cannot go there. So if the hon. Senator indicates to me what he wants added, I would see whether I could consider that now or whether the policy would be the same, that we leave it as it is and we can always add to it, because, by adding, there will be certain complications.

Mr. Chairman: I think, if I am reading Sen. Daly correctly, he is prepared to leave the "relevant business activity" definition and Schedule intact, it is just that the provision under subclause (2) where it can be enlarged—[*Interruption*]

Mr. Maharaj: Oh, I see what you mean. So that, if there is an amendment to that, it would mean that it has to come back to Parliament.

Mr. Chairman: A negative resolution.

Mr. Maharaj: And leave it at that.

Sen. Daly: At the very least. But, you see, this is the problem of trying to do it this way. This is the problem of railroading it tonight. We have first got to decide—I mean, I would like to take out the words "indictable offence" and I would like "specified offence" to mean:

"'specified offence' means an offence specified in the Second Schedule."

So the whole architecture changes. That is why I would have liked an opportunity to put up some written amendments, because my position is that this Bill should apply to drug trafficking, money laundering and a list—I do not mind if it is a long list—of specified offences such as murder, kidnapping, whatever, and that affects the architecture of the First and Second Schedules. But I have not had an opportunity to prepare written amendments. It may be that we will end up with only one Schedule. I do not know. Because what I would like the Government to consider is whether it is not possible, however long the list, to say that a specified offence means the offences specified in a Schedule, and we will list them—murder, kidnapping, whatever.

Mr. Maharaj: Well, Mr. Chairman, what I could do is I could leave clause 2 for the time being and Sen. Daly, before the next day, can submit the list that he wants, how he wants it—[*Interruption*]

Sen. Daly: Well, that depends on when the next day is, of course.

Mr. Maharaj: The next day we plan to be Thursday.

Sen. Daly: The point is, I do not know if we are coming with the Schedule separately but, as I have made plain, I would like the Government to consider whether it is necessary to include all of these—I am using the words loosely—taxing statutes.

Mr. Chairman: The Schedule here is, in fact, the subject of separate treatment.

Mr. Maharaj: So do we agree that we leave subclause (2) and we proceed with the—[*Interruption*]

Mr. Chairman: Subclause (2) will be flagged and deferred to the next session.

Sen. Daly: What is happening next time? Are we resuming committee?

Mr. Chairman: Yes.

Sen. Daly: On Thursday?

Mr. Chairman: That is the proposal that I am hearing anyhow. Sen. Mahabir-Wyatt, can I invite you to state your position with regard to the definition of "specified offence"?

Sen. Mahabir-Wyatt: It was a question, Mr. Chairman. I was just asking, was there a reason why insurance fraud was omitted from the Second Schedule? I just do not know because I do not know enough about financial—[*Interruption*]

Mr. Chairman: Could we deal with that when we deal with the Second Schedule in its entirety?

Sen. Mahabir-Wyatt: Sure. No problem.

Clause 2 deferred.

Clauses 3 and 4 ordered to stand part of the Bill.

Clause 5.

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

Sen. Daly: I would like the Government to consider—I did not pick it up the first time around. I do not agree that an assumption and an inference are the same thing. I think they are fundamentally different. I have consulted with my colleagues in other disciplines and I have been encouraged in my view that they : are fundamentally different. I would like us to defer clause 5, if that is how we are doing it.

Mr. Maharaj: Mr. Chairman, we have looked at this and we have got expert advice. This is part of other legislation. We have looked at it and I really do not see any useful purpose—[*Interruption*]

Sen. Daly: Well, rather than waste time, since I want my position recorded, let us have a division, because I do not agree. I am not vexed. I just do not agree. I do not care what Mr. Expert abroad has said. This is a different thing.

Mr. Maharaj: Well we have looked at it. It compares with other legislation too, Sen. Daly.

Sen. Daly: Fine, not a problem.

7.10 p.m.

Sen. Rev. Teelucksingh: Can I add to that since I have an interest in these two clauses? I know that the hon. Attorney General spent sometime in explaining to us the use of the word "assumption" in law. He has simplified it and I was very happy to have that explanation from him and I want to thank him for that. Could the Attorney General help me, and the answer is either yes or do you just leave it there? I just want some guidance here with respect to my problem with that term.

Mr. Maharaj: Yes, I did not hear you.

Sen. Rev. Teelucksingh: I was thanking you for your simplification to us laypeople about the force and use of the word "assumptions" in law. Is it possible then to have crystallization, a summary of what you say in the interpretation section in helping us to define "assumptions"? Is it possible? I am just asking.

Mr. Maharaj: I think this section is very clear and it tells you what the assumption would be. If one looks at clause 5(2) of the Bill it says:

"…the court shall, subject to subsection (4), make the assumptions specified in subsection (3) made for the purpose—

(a) of determining whether the offender has benefitted…

(b) if he has, of assessing the value of…

(3) The assumptions referred to in subsection (2) are—

(a) that any property appearing to the court—

(i) to be held by the offender…"

These are assumptions. It also provides that these assumptions would be told to the accused and they would have a case of disapproving it. In any event, the court has to make findings on a balance of probabilities and the evidence that these moneys were derived as a result of the crime. So the assumption does not *ipso facto* prove the offence as a result of the crime.

Sen. Daly: Not really.

Mr. Maharaj: As a matter of fact if that is the case a lot of the Bills—in fact, this has been working in England, Australia and countries which have had it. Mr. Chairman, as a matter of fact, when a judge directs a jury based on the facts that a

person went into that room and when that person came out he or she was found with hair on his or her possession belonging to the victim. One can infer from that that he or she was in contact with the victim. That is an assumption based on facts. So here is an assumption based on certain facts. So it is not strange to the criminal law.

Sen. Daly: No. There should be a division.

Mr. Chairman: There is a division on clause 5.

The committee divided: Ayes 16 Noes 4

AYES

Mark, Hon. W.

Baksh, Hon. S.

Phillips, Hon. Dr. D.

Gillette, Hon. L.

Gangar, Hon. F.

John, Hon. C.

Baksh, N.

John, S.

Gray-Burke, Rev. B.

John, J.

John, W.

Cabrera, V.

Dhanny, Dr. G.

Teemul, E.

Mahase, Dr. A.

NOES

Daly, M.

St. Cyr, Dr. E.

Ramchand, K.

Sultan-Khan Valere, L.

The following Senators abstained: N. Mohammed, D. Montano, M. Jagmohan, M. Shabazz, J. Yuille Williams, E. Job, D. Mahabir-Wyatt, Rev. D. Teelucksingh and Prof. J. Kenny.

Question, on original clause, put and agreed to.

Clauses 5 to 9 ordered to stand part of the Bill.

Clause 10.

Question proposed, That clause 10 stand part of the Bill.

Sen. Daly: Mr. Chairman, I would like to propose that the word "offender" in clause 10(b) be replaced by the word "accused". Traditionally, I know when proceedings are instituted prior to conviction you are referred to as the "accused". I take strong exception to the word "offender".

Mr. Chairman: And all consequential references should be changed accordingly?

Sen. Daly: Well, of course. I would be surprised to meet the English Queen's Counsel who says you should call someone an "offender" before a conviction. *[Interruption]*

Mr. Chairman: Sen. Daly, the Attorney General has suggested that this issue be added to the list of deferred items for consideration.

Mr. Maharaj: I think Sen. Daly must understand that he must not only get his way.

Sen. Daly: My way? Well I could go home. It is all right.

Mr. Maharaj: I think, he thinks that he must get his way.

Sen. Daly: Not at all. I would like that remark to be withdrawn. I am being railroaded into producing amendments by Thursday. I got clarification through you—

Mr. Maharaj: I am saying that we are asking for this matter to be deferred. Do you have an objection to that?

Sen. Daly: Do what you like.

Mr. Maharaj: If you have an objection to that you could say that you have an objection. You want what you want deferred but the Government must not have what it wants deferred.

Sen. Daly: I am taking exception to the suggestion that I want my own way. I made a proposal.

Mr. Maharaj: But you seem to want your way.

Sen. Daly. Not at all.

Mr. Chairman: There is a suggestion from the Attorney General that this matter should also be deferred.

Mr. Maharaj: I am withdrawing and going ahead with it. I will go ahead with "offender". I was going to explain it but Sen. Daly thinks he alone has the answers for the explanation.

7.20 p.m.

Mr. Maharaj: Mr. Chairman, it is not offensive to say that a person is an offender. The person is convicted for an offence because, in effect, what you have is a person who is convicted for an offence. He is an offender.

Sen. Mohammed: What if he is not convicted? A man is taken to be innocent until—

Mr. Maharaj: That is why I asked for it to be deferred so it can probably be redrafted to put in place the ones that are referred to as the accused person and the ones who are convicted offenders, because the Bill also deals with offenders.

Sen. Rev. Teelucksingh: We will consider it deferred.

Mr. Chairman: The suggested amendment is deferred.

Clause 10 deferred.

Clauses 11 to 19 ordered to stand part of the Bill.

Clause 20.

Question proposed, That clause 20 stand part of the Bill.

Sen. Daly: I do not know what other type of language to use, Sir, because, particularly in my contribution, in local parlance, I begged 'sweet'. [*Laughter*]

Mr. Maharaj: Do not beg.

Sen. Daly: I do not beg. That is one thing. Under clause 20, Sir, I do not know what is the justification for providing for an *ex parte* application if the person is convicted already.

Mr. Chairman: That is in subclause (3)?

Sen. Daly: Yes, subclause (3). I do not know what is the justification for an *ex parte* application and I do not know particularly—what word could I possibly use, Sir? I do not particularly like in subclause (d), the words:

> "...without prejudice to the generality of this paragraph, such conditions as it thinks fit as to the time when the charge is to become effective."

I think that “effective”—it is just my humble opinion, I do not care whether anybody agrees with it—is giving the judge the opportunity to make a retrospective order and, as far as I know, generally, it is one of the things in our jurisprudence that you refrain as far as possible from making orders or legislation retrospective. You generally try to make it prospective and that has very far-reaching consequences because depending on what the realisable property is, there may be other stakeholders—can I use that as an inoffensive word—involved and I do not accept that in every case, the person who has an interest should have to come from behind to get the order altered.

In other words, I think it should be an *inter parte* procedure and there should be no indication that the order could be made retrospective. I would like the Government to consider that. I do not know how we deal with that without an amendment. I just think that retrospective is a very serious thing and I believe there are legions of authorities that talk about not making things retrospective. I would like that to be considered, particularly if you have a restraining order, if you are worried about the person disposing of the property and you already have the advantage of a restraining order, why do you have to make it retrospective?

Sen. Mark: Where is that, Sen. Daly?

Sen. Daly: Clause 20(3)(b) on *ex parte* and subclause (3)(d), the last three lines.

> "...such conditions as it thinks fit as to the time when the charge is to become effective."

It means that anybody who has a legal charge, a mortgage, a debenture, anything, can just find that the court had retrospectively overthrown their *bona fide*—another principle that is normally protected is a *bona fide* purchase of a value without notice. I do not think we should put in retrospectively, at least, at this stage.

If we had time to do proper amendments, maybe we could provide for an order being made retrospective, subsequent to the person being heard but I do not want to wake up one morning and find that my interest in a property has been

effected on an *ex parte* application retrospectively and I have to make the running. At least, if we are going to provide for the order to be retrospective, it should be at a later stage in the confiscation proceedings. That is the best explanation I can give.

Mr. Maharaj: Mr. Chairman, this provides that the property which a person may have, can be sold, but the state interest would be protected, the charging order, and this gives to the thing that if you go *ex parte,* the person can transfer the property if you go *inter parte* before you get an order so it gives the court—and it is not unusual for the court to have the power to make an *ex parte* application. If the court does not want to hear the matter *ex parte*, it can hear it *inter parte*. But, certainly, it is a question where, if you have property and the property has to be sold and the property is being sold, in other words, the property can be sold subject to the charging order that the state interest is protected. The state quantum should be protected. These charging orders are made under the existing law.

Sen. Daly: I thought that the problem here was that you could make the state's charging order retrospectively, jump ahead of somebody else who has a valid charge. What is the meaning of the words?

> "...such conditions as it thinks fit as to the time when the charge is to become effective."

Mr. Maharaj: The charging order is to protect where the property can be sold and the property is sold subject to the charge in favour of the state where it means that the state interest is protected at that amount.

Sen. Daly: But, what happens to a prior charge, a legal charge?

Mr. Maharaj: Well, it is as the court thinks fit.

Sen. Daly: Anyway, I am noting my position, Sir. I realize this is a losing battle.

Mr. Maharaj: This does not change any priority law or anything like that but this is in the existing law under drug trafficking.

Sen. Daly: Sir, can I save everybody the pain? I do not agree. I would not call for a division.

Mr. Maharaj: It is there in the law.

Mr. Chairman: Do I take it that the amendment is still before us?

Sen. Daly: I do not have an amendment but I asked the Government to consider it. I do not have an amendment. I have not had time to do one.

Mr. Maharaj: With the greatest respect to Sen. Daly, I really do not see that it arises.

Question put and agreed to.

Clause 20 ordered to stand part of the Bill.

Clause 21.

Question proposed, That clause 21 stand part of the Bill.

Sen. Daly: Sir, I would like clause 21(8) to be considered to broaden the class of persons who can make representations to the court so they do not have to have an interest in the sense of a property interest, a legal interest or an equitable interest or whatever. I think that is in protection of the innocent spouse and children and whether it is in the law or not, if I missed it the first time, I did not miss it now.

Mr. Maharaj: What clause is that?

Mr. Chairman: Clause 21(8), is it not?

Sen. Daly: Yes, Sir. Clause 21(8). I do not like the qualification of holding an interest in the property, particularly in light of the fact that in subclause (4) on page 46, someone who has bare possession can be made to give it up. Somebody in their possession without a property interest may have some representation they wish to make to the court. So a spouse without a legal interest in the property has a problem, in my view. I am prepared to accept if I am wrong because I have not had time to think about it.

Mr. Maharaj: Do you take the position, Sen. Daly, that an interest in the property would include a legal or equitable interest?

Sen. Daly: Yes. That is what I am saying and that is what I am worried about, so a wife who has been kept off the deed by her dominant criminal husband. I mean, we have to live in the real world, too.

Mr. Maharaj: I would have thought that interest covers:

> "The court shall not, in respect of any property, exercise the powers conferred...unless a reasonable opportunity has been given for persons holding any interest in the property to make representations to the court."

That interest there would include legal or equitable interest.

Sen. Daly: Yes. But it would not include bare possession. The wife who is not on the deed—

Mr. Maharaj: But a wife has an interest in a property.

Sen. Daly: I do not think that is right when you look at subclause (4) where the draftsperson has made a distinction between possession and interest. It bothers me. That is why I begged as sweetly as I could for time for us to think about these things. It is a common feature of life in Trinidad and Tobago, up to today, that many spouses do not have a joint bank account and are not put on the property deed and if we had Back Benchers, the women would agree.

Mr. Maharaj: I would accede to Sen. Daly's request and consider this matter.

Mr. Chairman: Okay. Clause 21 is deferred for further consideration.

Clause 21 deferred.

Clauses 22 to 31 ordered to stand part of the Bill.

Clause 32.

Question proposed, That clause 32 stand part of the Bill.

Sen. Daly: May I respectfully suggest, Sir, that in clause 32(1) we delete (a), (b), (c) and (d) and replace them with the words—I will have to read the whole thing for it to make sense to other Senators. Instead of having (a), (b), (c) and (d) on pages 53 and 54, have:

> "A police officer may, for the purposes of an investigation, in or outside of Trinidad and Tobago into an offence against the Dangerous Drugs Act or on an offence against Part II of the Act."

Part II is money laundering. My reason, which I tried to articulate in the debate, was that this had nothing to do with the court or conviction. This is giving a power to investigate and to go to a judge in relation to material of a particular description and I do not mind what is said about my point of view, I say the Director of Public Prosecutions and the judge can only act on the basis of the material that is presented and if we are going to completely blind our eyes—and I am not saying this about Trinidad and Tobago in particular—that we have rogue cops; that things are planted on people; then we are really living like Alice in Wonderland.

I do not want to give this power to go and look for things even if you have to go to a judge, because the judge and the Director of Public Prosecutions are only a safeguard if the material that is presented to them is honest. If we are going to suggest that people do not plant things and people do not build bogus cases, then we are not living in the real world. I am sorry if that is offensive but that is how I feel about it.

Therefore, if we are going to give that power, I would like it specifically confined to dangerous drugs and money laundering. Even in relation to money laundering or in relation to dangerous drugs, the planting opportunity still arises and I do not know why we have to have this search provision, additional to what is in the ordinary law, where you get a search warrant and go and look for something. I just do not know what this adds to the existing law but, at least, let us confine it to drug trafficking and money laundering.

Mr. Maharaj: Mr. Chairman, we cannot agree to that because if you delete that as Sen. Daly wants it, then we would not be able to investigate properly in order to achieve the objective of the Bill. I cannot understand the objection because clause 32 says that:

"(1) A police officer may, for the purposes of investigation, in or outside of Trinidad and Tobago into—

(a) a specified offence;

(b) whether a person has benefitted from a specified offence;

(c) the extent or whereabouts of the proceeds of a specified offence; or

(d) drug trafficking,

apply to a judge for an order under subsection (2) in relation to particular material or material of a particular description.

(2) If, on such application, the judge is satisfied that the conditions in subsection (6) are fulfilled, he may make an order that the person who appears to him to be in possession of the material to which the application related shall—

(a) produce it to a police officer for him to take away; or

(b) give a police officer access to it,…"

So, the judge has to make this order and the judge makes an order for him to produce it or for him to get access to it and the Government really cannot accede to Sen. Daly's amendment.

7.35 p.m.

Sen. Daly: What is the normal search warrant procedure? Normally, if you want to get evidence, do you not go and get a search warrant and specify what it is you are searching for? Why do we need this?

Mr. Maharaj: We need this if persons have material before them, they would have to hand it over. If they do not want to hand it over, the police would have access to it.

Sen. Daly: When you get a search warrant, and you find what you are looking for in the search, do the police take it away? My simple question is, what does this give us that the normal search procedures do not give us?

Mr. Maharaj: If you look at the 1991 Act, you will see that is the kind of power that is given to judges in order to make life easy for law enforcement officers, subject to the production—this is equivalent to section 48 of the 1991 Act. It is nothing new.

Sen. Daly: It goes to specified offence. It is new. It goes wider than dangerous drugs.

Mr. Maharaj: That is where we have the problem. The fact that you want us to change it, and we do not want to change it, does not mean that it has to change.

Sen. Daly: So we cannot talk about it and have a division about it?

Mr. Maharaj: But we are talking about it.

Sen. Daly: Fine!

Mr. Maharaj: In any event, even if we change "specified offence" to what it means, it will still be "specified offence". Clause 2 is still under consideration.

Sen. Daly: Are we deferring this?

Mr. Maharaj: No, we are not deferring this.

Sen. Daly: Why did we defer clause 2?

Mr. Maharaj: Whatever definition "specified offence" is agreed to, it would mean a specified offence.

Sen. Daly: You have my view, Sir. I respect it as respectfully as I could. I believe that there are policemen who plant things and give wrong information to DPPs and judges.

Mr. Maharaj: Mr. Chairman, with respect to any legislation that you are passing, if you go to take the position that policemen would plant, you would not pass any legislation. Every legislation which comes with respect to the criminal law would never prevent policemen, if they do plant, from planting. The fact of the matter is that you cannot sit back and, because you have instances of police abuse at times, say that you are not taking any procedure to solve the problem.

Section 48 of the 1991 Act is the same thing insofar as it applies to drug trafficking. The policy of the Government is other offences. You are against other offences. *[Interruption]* Yes, we do not agree.

Sen. Prof. Ramchand: Mr. Chairman, I am not contending with the Bill, I just want to point out something to you all. The past tense of the word benefit, in English spelling, is "t" and the American spelling has "tt". I feel we should stick with the English spelling. Wherever we say "benefitted", we should go back to "benefited". It is inconsistent to have American spelling coming in with British spelling. The English past tense has "t" and the American spelling has "tt". For consistency, we should stick with the English spelling.

Sen. Mahabir: Mr. Chairman, just before you go on to the vote on this. Could I ask that we defer this? You cannot vote on this until you have decided on the definition of "specified offences". This refers to specified offences. Until we know what is going to be included under specified offences: whether we are going to keep indictable offences, or whether we are going to list a whole different list of what specified offences are, it does not make sense to vote on a consequential clause, which both clauses 32 and 33 are. I would not know how to vote, until I know what "specified offences" are. That is one of the deferred clauses that we are going to be looking at.

Mr. Maharaj: Mr. Chairman, I am sorry to say this, but I cannot agree with Sen. Mahabir-Wyatt on this one. Whatever the specified offence is, whatever it means, the policy means that the person must be able to go to a judge to get this kind of order. If the specified offence is even what Sen. Daly or the Independent Senators want, that would be a specified offence. It is a procedure in respect of the information that has to be obtained.

In section 48 of the Dangerous Drugs Act, 1991, it is the same power given to the police. Therefore, it gives power to go to a judge to get material in order to be able to deal with these matters. Even if the specified offence does not include all the indictable offences, it will be a specified offence because that would be defined in the definition section. As a matter of policy, the Government really cannot take away this tool for the police.

Sen. Mahabir-Wyatt: I was not actually suggesting that it be taken away, just that we have a chance to measure it against the specified offences.

Question put.

Sen. Mohammed: There is a division.

Mr. Chairman: Was a division called for? We have a division on clause 32.

The committee divided: Ayes 17 Noes 10

AYES

Mark, Hon. W.

Baksh, Hon. S.

Phillips, Hon. Dr. D.

Gillette, Hon. L.

Gangar, Hon. F.

John, Hon. C.

Baksh, N.

John, S.

Gray-Burke, Rev. B.

John, J.

John, W.
Cabrera, V.

Dhanny, Dr. G.

Teemul, E.

Mahase, Dr. A.

Ramchand, Prof. K.

Sultan-Khan Valere, L.

NOES

Mohammed, N.

Montano, D.

Jagmohan, M.

Shabazz, M.

Yuille-Williams, J.

Job, E.

Teelucksingh, Rev. D.

Daly, M.

St. Cyr, Dr. E.

Kenny, Prof. J.

Mrs. D. Mahabir-Wyatt abstained.

Question agreed to.

Clause 32 ordered to stand part of the Bill.

Clause 33.

Question proposed, That clause 33 stand part of the Bill.

Sen. Montano: Mr. Chairman, for the record, it would seem that essentially the proposal that was made for clause 32, we would propose for clause 33. It is basically the same issue.

Mr. Maharaj: Mr. Chairman, my response is the same. I want to put on record, that these are measures which appear in the Dangerous Drugs Act. I recognize it applies only to dangerous drugs, but they are measures which apply in order to give effect to the objective of the Bill. The 1991 Act was passed by the last administration.

Sen. Montano: Mr. Chairman, for the record, we certainly would support investigations into dangerous drugs, trafficking and money laundering. But the extension as is contained here, we are not in agreement with.

Mr. Maharaj: There is a problem with policy. The policy is that we are either wrong or right about it. Our policy is that it applies to other offences.

Sen. Montano: Yes, Sir, we have a problem with your policy.

7.45 p.m.

Question put.

The committee divided: Ayes 15 Noes 11

AYES

Mark, Hon. W.

Baksh, Hon. S.

Phillips, Hon. Dr. D.

Gillette, Hon. L.

Gangar, Hon. F.

John, Hon. C.

Baksh, N.

John, S.

Gray-Burke, Rev. B.

John, J.

John, W.

Cabrera, V.

Dhanny, Dr. G.

Teemul, E.

Mahase, Dr. A.

NOES

Mohammed, N.

Montano, D.

Jagmohan, M.

Shabazz, M.

Yuille-Williams, J.

Job, E.

Daly, M.

St. Cyr, Dr. E.

Kenny, Prof. J.

Ramchand, Prof. K.

Sultan-KhanValere, L.

Mrs. D. Mahabir-Wyatt and Rev. D. Teelucksingh abstained.

Question agreed to.

Clause 33 ordered to stand part of the Bill.

Clauses 34 to 40 ordered to stand part of the Bill.

Clauses 41 to 44 ordered to stand part of the Bill.

Clause 45.

Question proposed, That clause 45 stand part of the Bill.

Sen. Daly: Mr. Chairman, regarding the use of the word "suspect" in clauses 45, 46, 47, will the Government consider whether we can reconstruct it so that we tie it to "an honest belief" or, at least, to "belief"?

I would also like the Government to consider together with that what is the barest minimum alternative, some specified offence, where someone maliciously misinforms the police, because I still think it is possible to set someone up with information that even an honest policewomen would think is accurate at the time. I think, at the very least, if we are going to be encouraging this sort of snitching, which is basically what it is, there ought to be some specific penalty to act as a deterrent for people who would consider, for whatever reason, wrongly trying to set someone up; it is just a real world provision.

I think it is something that the Government could consider and draft. I do not really see how that would take away from the force of the Bill. At least you are letting people know that they cannot just misuse this if they feel like it, without a penalty. I think your English advisors would be familiar with the concept of wasteful employment of the police and things like that.

Mr. Maharaj: It seems as though Mr. Daly for some reason is not happy with the English advisors.

Sen. Daly: No, I am very happy with them; they do not live here, they cannot go to jail here.

Mr. Maharaj: But it so happens that the English advisor is an expert in a field in which you are not versed. If you were versed, then we could have asked you.

Sen. Daly: But he lives in a different country.

Mr. Maharaj: He lives in a different country, but this law is not localized now, Mr. Chairman. The law relating to drug trafficking and money laundering is not confined to national boundaries. It forms part of the international globalized village, and, therefore, some of these expressions are common, because in the interpretation of the laws they appear in different Commonwealth courts. So "reasonable grounds to suspect" is the phrase or the words which have been used, and we will have great problems changing the words to use other words.

In respect of the other matter which Sen. Daly has raised, if on Thursday he comes up with some other proposal as to how to deal with it, I will be able to look at it and consider it.

Sen. Daly: May I just say respectfully, without any rancor, I am inviting the Government, for the protection of the citizens which it governs, to draft a provision which would provide that protection.

Mr. Maharaj: Sen. Daly can come with up with a draft. I would also consider it and would report to the Senate on the next occasion. In respect of his first proposal, I cannot accede to it, because it is part of the jurisprudence in these matters.

Sen. Rev. Teelucksingh: We are discussing the question of the use of words and the power behind words. Look at clause 47, "suspicion or belief". I like that; somehow or the other I would prefer that clause you just used, "reasonable grounds to suspect or believe". You said it. Instead of suspicion or belief, why do you have suspicion? Why do you not eliminate those and have one thing? Reasonable grounds; I come to the police, I bring something to the notice of the police, because I have reasonable grounds to.

Mr. Maharaj: What clause 47 says is that if he discloses to the police his suspicion or belief, then he would not—

Sen. Rev. Teelucksingh: I am looking at clause 47.

Mr. Maharaj: I am looking at 47 too. If he discloses to the police his suspicion or belief, then he would not be guilty of an offence. In respect of clause 45 it states:

> "A person is guilty of an offence if, knowing or having reasonable grounds to suspect that any property is, or in whole or in part directly or indirectly represents, another person's proceeds of a specified offence or drug trafficking…"

There is where the offence is committed, but in clause 47 it says that if he discloses his suspicion or belief, in respect of the property, to the police officer, he does not commit a breach.

Mr. Chairman: We had a suggestion that an additional clause be considered to take care of Sen. Daly's suggestion, and we have an undertaking from the Attorney General that he would consider it. Other than that we have no amendments before us between clauses 45 to 50.

Sen. Prof. Ramchand: Mr. Chairman, I cannot understand clause 45, because it says "is represents":

> "A person is guilty of an offence if, knowing or having reasonable grounds to suspect that any property is, or in whole or in part directly or indirectly represents…"
>
> You cannot have "is" and "represents".

Sen. Mahabir-Wyatt: Could I, perhaps, help Sen. Prof. Ramchand there? That any property is another person's proceeds or any property represents another person's proceeds. [*Crosstalk*]

Mr. Maharaj: It is correct, because "any person knowing or having reasonable grounds to suspect that any property is", means another person's proceeds of a specified offence, "or drug trafficking or in whole or in part directly or indirectly represents another persons…" so it is in three instances.

Mr. Chairman: Any other questions concerning clauses 45 to 50?

Clauses 45 to 51 ordered to stand part of the Bill.

Clause 52.

Question proposed, That clause 52 stand part of the Bill.

Sen. Prof. Ramchand: Just an explanation for a layman, clause 52(2) states:

> "Subsection (1) above does not make it an offence for a professional legal adviser to fail to disclose any information or other matter which has come to him in privileged circumstances."

Is that in the client relationship? What are the privileged circumstances?

Mr. Maharaj: There is something known as legal professional privilege, and in all of the legislation that privilege is protected. The Act provides that if, obviously, there is criminal conduct, a lawyer can be prosecuted. What a client tells a lawyer, I think you have to protect that privilege. It is just like what a person tells a priest.

Sen. Prof. Ramchand: That is what I was wondering.

Question put and agreed to.

Clause 52 ordered to stand part of the Bill.

Clauses 53 and 54 ordered to stand part of the Bill.

Clauses 55.

Question proposed, That clause 55 stand part of the Bill.

Sen. Montano: Mr. Chairman, in clause 55(3) I would like the Government to consider the following change: to remove the word "suspicion" and use the word "belief", bearing in mind that it is upon belief that "the transaction could constitute", so there is still some reservation, but it does raise the threshold somewhat. I would also like after the words "relevant business activity" to include the following words: "through an officer authorized by his Board of Directors to do so, shall report the suspicious transaction," that would alleviate my concern over anybody in one of these organizations making a frivolous report. The report must come from an authorized representative of the organization.

Hon. Senators: Yes.

Sen. Montano: So it would read:

"Upon belief that the transactions described in subsection (2) could constitute or be related to illicit activities a financial institution through an officer authorized by its Board of Directors to do so shall report the suspicious transactions."

Mr. Maharaj: Mr. Chairman, in the regulations those things can be dealt with, who on behalf of the bank and the financial institutions—but I do not think that we could put in this legislation "an authorized officer", because that is a matter for the regulation. The banks would have to determine which department would see about this. I could consider that for the regulations, but in respect of clause 55(3) itself I do not think we want to amend it to include that. With the other aspect—[*Interruption*]

Sen. Montano: Why not?

Mr. Maharaj: I do not think that it should be here. I have been advised that it should not be here, but it is something which we will have to consider in the regulations.

Sen. Montano: I understand that you do not want it here, but just tell me why.

Mr. Maharaj: I do not know the implications at this stage if it has to have an authorized officer. It is something we would look into and consider it for the regulations. It is not material to be in the legislation.

Sen. Dr. St. Cyr: As it stands, only the corporate secretary of that financial institution can take this action. As this drafting stands, only the corporate Secretary of that institution could take this action required as it is drafted here. Well, a financial institution is a legal personality. The corporate secretary is the one authorized to speak.

Mr. Maharaj: Mr. Chairman, that is an administrative matter, so to put legislation to say who would have an authorized officer and who the officer should be, that is a matter for the financial institution. Notwithstanding that, I would be prepared to consider it and have it in the regulations, but I do not think that I could put it in the Bill, because I do not know what consequences that would have. This is a matter in which the financial institution would have to report the suspicious transaction. In any event, if the suspicious transaction is not reported, it will put the financial institution at risk. So the financial institution would have to ensure that there are administrative measures in order to report it.

It may be that we will have to consult with the financial institutions who the authorized officer would be or if they want us to put an authorized officer. I certainly do not want to keep back this piece of legislation, because I have to put an authorized officer from the financial institution, and that is so major that this piece of legislation cannot be passed. I do not want to take a decision to include it when I see that it is not necessary to include it.

Sen. Daly: We can solve the problem this way. Oddly enough, on this occasion I agree that there have been a lot of developments in the law about who is the directing mind of a corporation, as you would be aware, Mr. Vice-President. So the obligation placed on a financial institution there would have to be interpreted in the light of the recent developments about who is the directing mind of a corporation. But if you look at subsection (6) on page 81—and I want to say as little about this as possible for the reasons I said—perhaps, if you have a specified compliance programme.

8.00 p.m.

At (6)(d), you have appointment of a staff member responsible for continual compliance with the regulations. Perhaps we could amend that to say:

"The appointment of a staff member responsible for continual compliance with this Act and the regulations."

My point being if it is an important part of the compliance programme, the financial institutions will now have to have such an officer. Why can we not say that they must appoint somebody responsible for compliance with the Act and the Regulations?

Mr. Maharaj: *[Inaudible]*

Sen. Daly: Well, that is progress indeed. Well, I would like to propose we say: "for continuing compliance with this Act and the Regulations.

Sen. Dr. St. Cyr: Or simply change the word "Regulations" to the Act

Sen. Valere: I want to ask a question of the Attorney General. In clause 55(4) which says: "When the report referred to in subsection (3) is made in good faith," can I ask for an explanation of what is "in good faith"? How do you determine it? Is there some concrete way in determining "in good faith? I imagine that is a critical factor here.

Mr. Maharaj: That is something that the law determines, but "in good faith" means that you honestly believe this is the report, as far as you know to the best of your ability. That is the legal expression used over the years to describe "in good faith"

Sen. Valere: Is there any concrete way of saying, yes, it is in good faith because you did, this, this, that or you had the facts at hand or is it just a matter of opinion?

Mr. Maharaj: No, no, if this has to be analyzed, it is a judge who will determine it, a court will see all the circumstances and determine whether you acted in good faith, that you acted to the best of your honest belief.

Sen. Daly: Mr. Chairman, I want to raise something on subclause (7).

Mr. Chairman: Go ahead, Sen. Daly.

Sen. Daly: As I tried to explain, Sir, I really do not know how to speak to the Government anymore. The point about it is that if you take clause 55(7)—and

really this is another quite worrying provision—in conjunction with the amendment made in the other place. A person appointed by a Minister, okay you have qualifications, an Attorney-at-law, an accountant, a police officer not below the rank of Inspector with expertise in financial investigations. Put aside the qualifications for the minute. Can we really even on the broadest, the most global view of this legislation, seriously contemplate some person appointed by a Minister? I accept he has qualifications, but I am not on the qualifications. That some person appointed by a Minister can enter the premises of a financial institution to inspect records. I know it is guarded by the fact that he is looking at it simply to make sure there is compliance with the compliance requirements. But the point is in the course of the examination of those records, he is bound to see personal information.

Could we please, I really have tried to explain myself as undramatically as possible all evening. Can we really see some person appointed by a Minister being able to walk into your bank and look at the bank's records? If this is what the global compliers want, why can we not put it on the Inspector of Banks? They are already charged with certain duties and even if you do not like the Inspector of Banks do you really want to know that a Minister could—I mean this is an awesome power. It is an absolutely awesome power and I am really trying to say it as calmly as possible. Some person that the Minister or the Cabinet thinks is appropriate. It is not about this Government. The possibility for leaks and abuse. I do not know how else to explain myself. I just do not like the idea that the Minister could appoint somebody to go into a financial institution to look at the records, albeit for a guarded purpose. In the real world he will see all the information the Inspector of Banks will see and I do not like it at all, and I am surprised that we are not guarding it better.

Mr. Maharaj: Mr. Chairman, the Inspector of Banks is appointed by the President, which means, he is appointed by the Cabinet and he can go into banks and do the same thing. In respect to this money laundering regime, the administrative requirements are that the designated authorities must obviously be a fully dedicated unit.

If you try to understand the system, you have the suspicious transactions reported, and you have financial investigations, so it would not work. We have examined that. It would not work with the Inspector of Banks. It would not work. We have spent three and a half to four years looking at all these matters because one of the concerns the banks have raised is that it should be the Inspector of Banks. We have worked with the Central Bank, there have been discussions and it just would not work.

Sen. Daly: It is not in the perspective of the banks, it is in the perspective of the ordinary citizen whose affairs would be exposed when this person goes in. This is one person appointed by a Minister. It is really a lot to put in the hands of someone.

Mr. Maharaj: Forgive me, Mr. Chairman, when the Parliament passed the legislation for the Inspector of Banks, was it not the government appointing the Inspector, was it not the Cabinet appointing the inspector who was going to look at all the records, whether they were suspicious or not? What is the difference with this one? Do you want us to put the President shall appoint? Because it will be the same thing you know, it will be the Cabinet.

Sen. Daly: The Bank Inspectorate is something which has been there for a long time, it has a track record. If it cannot be the Inspector of Banks, all I am saying is that I am concerned that one individual, however well qualified, has this kind of awesome power. You are vesting all this in one person.

Mr. Maharaj: One has to understand that in Trinidad and Tobago it is because you did not have any measures to check that the people did not know who the money launderers were and you have to have a system to know if the bank and financial institutions are complying, you have to have somebody to be able to check from time to time to see if suspicious transactions are reported. Therefore, what do you do, do you put a policeman? No, you put somebody who is appointed in the same way as the Inspector of Banks.

If this person looks at the records—just like the Inspector of Banks looks at the records—and if he divulges the records he is accountable. Would he not be accountable? Do you have any accountability in the other legislation? This is where you are dealing with people who are committing crimes.

Sen. Daly: I have come off the Inspector of Banks you know, I tried to explain that the Central Bank is part of a statutory body, it has a certain track record and tradition and I am only concerned about the fact that we are appointing some new one-man authority. Where is the provision in here if he perverts the information he acquires, if he abuses his position? I have heard the Attorney General speak even in his present capacity about abuse of power, there is not one expressed little indication that I can find. It has been very onerous, there is not even one expressed indication if this fella abuses the information, he is not on any sanction, any accountability.

Mr. Maharaj: Mr. Chairman, you know Sen. Daly has not been passing legislation only now, he has been passing it all the time under previous administrations. The whole principle is governments are accountable to the

Parliament. If the Cabinet makes an appointment and the person is misusing or abusing his powers and the Cabinet does nothing about it, apart from the person to be amenable to the courts even now with public interest litigation, the Government is accountable to Parliament if it does not take steps about the person.

Sen. Daly: Where is the criminal sanction if he misuses the information? What is wrong with that for goodness sake? It is not a question of being accountable to the Parliament.

Mr. Maharaj: If there is a proposal that you want to put criminal sanction, let us have it, we will look at it.

Sen. Daly: I am just inviting you to consider bringing one forward for the benefit of the citizens that you govern. It is quite unusual—

Mr. Maharaj: Mr. Chairman,

Sen. Daly: May I finish, Sir? I mean in all the Central Bank legislation, I believe, and in other things, you make express provisions for confidentiality, why are we leaving it out of this?

Mr. Maharaj: If Sen. Daly is very versed in that and he wants to make a suggestion, we would consider that on Thursday. The fact of the matter here what we are dealing with is the designated authority appointed in the same way as Inspector of Banks.

Sen. Daly: I can see that, but there are confidentiality requirements and in this case—

Mr. Maharaj: But confidentiality has to take second place sometimes where crimes are being committed and one of the problems in this piece of legislation is that there is a feeling that banks, financial institutions or real estate business, motor vehicle sales, and courier services that you cannot look at their records.

Sen. Daly: I am not making these respectful points from the point of view of the banks, I am making them from the point of view of the citizen who has his information in there. All I am saying is if we have to concede this, can we not at least put a little signal in here that this person should be confidential, meaning that he should not misuse the information and provide a fairly heavy sanction if he does.

Mr. Maharaj: Mr. Chairman, I will be prepared to consider that and look at it, but in the meantime can we proceed with subclause (7) please.

Mr. Chairman: Are there any other contributions? May I remind you that we have already approved the amendment for subclause (6).

Sen. Daly: *[Inaudible]*

Mr. Maharaj: No, I am prepared to consider what sanction we would have, but in any event, clause 7 would go ahead. He has to have that power.

Sen. Prof. Ramchand: *[Inaudible]*

Mr. Maharaj: I am not saying what I would agree to, I am saying I am prepared to consider the proposal.

Sen. Daly: Well, at least see, what the proposal is, and then we can link it into (7) in some way.

Mr. Maharaj: Mr. Chairman, I do not want in any way to impede or water down this Bill. I do not want to do it. This is a Bill which took four years and there was a lot of consultation with banks, financial institutions and so forth. I am saying that in any event, the Government would want 55(7). Sen. Daly is saying that he wants to put a proposal as to how to penalize in case there is an abuse of information and we will consider that independently—

Sen. Daly: I am respectfully asking for an opportunity to consider the whole question of what form the designated authority should take—

Mr. Maharaj: No, no, no.

Sen. Daly: I mean, I am not even allowed to finish my request? I am asking for an opportunity to consider what form the designated authority should take and what sanctions, if any, should be attached to the office.

Mr. Maharaj: Mr. Chairman, that has occupied the Government's attention for the last three and a half years. We had proposals, counter proposals, discussion and so forth and I would still be prepared to consider it on Thursday, but in the meantime, not the whole question of designated authority.

8.15 p.m.

Sen. Daly: Well, I am proposing the deletion of clause 55(7)

Mr. Maharaj: You want to delete clause 55(7)?

Sen. Daly: Yes, I must put my position on the record. If you would not even give me the opportunity to see if I can improve on it, what do you want me to do? I cannot get 48 hours?

Mr. Maharaj: It is amazing.

Sen. Daly: It is not amazing, it is appalling.

Mr. Maharaj: Mr. Chairman, I did not want to say this before, this is not 48 hours you know. This Bill has been before this Parliament a long time.

Sen. Daly: I am proposing the deletion of clause 55(7).

Mr. Chairman: With respect to clause 55(7), Sen. Shabazz do you have a comment on that?

Sen. Shabazz: On what?

Mr. Chairman: A proposal to delete clause 55(7).

Sen. Shabazz: Mr. Chairman, all I am saying is that since we are coming back on Thursday to consider other things and we have to be here, I see no reason why this cannot come back on Thursday. I really would ask the hon. Minister— *[Interruption]* Oh, gosh, have some manners "nah", Mr. Mark. You are behaving so unmannerly lately.

Mr. Chairman, I am asking the hon. Minister that since we must come back here on Thursday to discuss other things, can we not bring this one back on Thursday?

Mr. Maharaj: The Government has other matters to do also, and if it is that this is going to be used as a delaying matter, it is quite clear that the designated authority has occupied consultation for years. The Opposition amended it and put an amendment in place. They accepted it. But I am prepared to consider if there is additional clause to consider to be able to deal with any misuse or abuse of power. And I think it is very unreasonable to ask the Government to delay this when the policy of the Bill is to have the designated authority in this form. This has occupied four years of consultation, technical, *et cetera*, and it came up with this.

Mr. Chairman: We have a proposal for an amendment to clause 55(7) to delete its entirety. Any contributions as regard that proposal?

Sen. Dr. St. Cyr: Mr. Chairman, what I am concerned about is if we are to put some restriction on the behaviour of the designated authority, how could we do that except we delay clause 55(7) until we see the proposed addition. In other words, what I am understanding is that we are agreeing to clause 55(7) but we simply want to put a restriction on the behaviour of the designated authority.

Mr. Maharaj: There is no restriction on the designated authority. The designated authority will have the authority in clause 55(7). The proposal is, that there must be some clause that in case he abuses or misuses his power, how to deal with it. And that could be dealt with in a different clause. But there is no doubt at all that you must have a designated authority.

As a matter of fact, if Senators would have seen that Governments must have designated authority to go into the banks and look at these records. It could not be a judge; it could not be a policeman; it could not be the Inspector of Banks because they have to go and look, not only at banks but at real estate business, motor vehicle sales, gaming houses, jewellers, pool betting and if we increase it to casinos, *et cetera.* So where there is a designated authority there must be an office with a person.

Mr. Chairman: I want to remind you all that what we are on here is the question of the amendment involving the deletion of clause 55(7). There is a separate undertaking by the Attorney General, that quite apart from the deletion or retention of the clause, he is prepared to look at the inclusion of a new clause.

Sen. Mahabir-Wyatt: Can I just say one thing before we get on to that because it is still in relation to this clause? I was just wondering, in relation to the discussion about the confidentiality aspect of the designated authority, obviously, we need to have the designated authority. But without the confidentiality clause could it be a clause (d) under this? This person may enter into the premises of : any financial institution and the information which he or she gets must be kept confidential. Would not that naturally come under clause 55(7) if we are going to do it?

Mr. Maharaj: No, Mr. Chairman, it would not naturally come under Clause 55(7). I am getting the impression that we are really not focusing our minds here. Clause 55(7) says:

> "The designated authority or a person authorised by the designated authority may enter into the premises of any financial institution—
>
> (a) to inspect any business transaction record or client information record kept by the financial institution or person engaged in a relevant business activity pursuant to this Act and the Regulations made thereunder and ask any questions relevant to such record and to make any notes or take any copies of the whole or any part of any such record;"

First, there can be no doubt that in our policy the designated authority must have that power.

> "(b) to determine whether a compliance programme has been implemented; and

(c) to determine whether there is compliance with this Act or any Rules or Regulations made thereunder;"

The point Sen. Daly is making that if he abuses his power, divulge and breaches whatever rules, that there could be some sanction. I am saying that I am prepared to consider that but it does not alter the fact that this is the function of the designated authority.

Sen. Daly: Would it be bold of me, in the interest of freedom of information, to find out why the designated authority is one person? For example, was it considered that the designated authority might be—I am just calling a figure—a group of three who could, in turn, delegate their power? I am just having a problem with somebody outside of a tried and tested institution like the Central Bank having this kind of power. Does it have to be only one person? That is why I would like an opportunity to see if I can make a suggestion.

Mr. Maharaj: Mr. Chairman, to start this Bill off we decided that we will start with one person because of the sensitive areas, and the person would obviously have a department. The Bill is not cast in stone, it could come back and be extended. There could be many designated authorities or whatever. But to start off the Bill we have to have that.

One of the things that have kept back this Bill for four years—which almost did not get off the ground—is all the discussion on this designated authority. I am getting the impression that there is some attempt to frustrate the passage of this Bill.

Sen. Shabazz: Mr. Chairman, the hon. Minister is getting a wrong impression.

Mr. Maharaj: It is quite clear that there must be a designated authority; it is quite clear that all the people we consulted with recognize that there must be a designated authority; that legislation provides for one; but you come back here now and you see objection and frustration.

Sen. Daly: Mr. Chairman, can I state for the record, that there is no way I am trying to either object or frustrate. This is new territory, and I believe it has far-reaching consequences and I believe we have to strike balance. And in the interest of balance, since this is the only opportunity I am having in my constitutional capacity of an Independent Senator, I am probing and exploring these things, not to frustrate or object to anything, to make sure we get the balance in these

awesome powers right. That is my position. That is the last thing I would say for the evening. I am proposing that clause 55(7) be deleted.

Sen. Shabazz: Mr. Chairman, the Attorney General is quite clear in what he is saying. He has worked it out in his mind, and it is just that a lot of us here have not worked it out. Maybe, by the time we work it out and get back here on Thursday, we would have worked it out so well that he may not have to take any long time on it. We are really asking him if he could just be kind enough to give us until Thursday to come up with it so that we could work it out properly. We would be grateful.

Sen. Dr. St. Cyr: Mr. Chairman, I thought that we had advanced the discussion substantially and there is agreement that Clause 55(7) would stand. Except that we would like to add something that will deal with the abuse of the power. But my question is:

Mr. Chairman: No, no. We have a proposal before us for the deletion of Clause 55(7).

Sen. Dr. St. Cyr: With respect, Sir, I think that is a sort of position that is likely to not really advance what we are doing. In other words, we have talked ourselves into a corner.

Mr. Chairman: As far as I am concerned, I have before me a proposed amendment. It has not been withdrawn. I have to put it to the Senate.

Sen. Daly: Mr. President, all I am asking is that the undertaking be extended to the fact that not merely that it will be considered, but consistent with all of the other legislation it deals with these sensitive matters, the Government will come with an amendment for confidentiality provisions and criminal sanctions. That is all I am seeking.

8.25 p.m.

I mean, they are not even willing to do that if it is a good idea? To undertake—[*Interruption*]

Mr. Chairman: I have heard the Attorney General give an undertaking that he is prepared to look at the issue of confidentiality—[*Interruption*]

Sen. Daly: And sanctions.

Mr. Chairman: And sanctions.

Mr. Maharaj: Mr. Chairman, Sen. Daly is not going to, if I may say through you, put words in my mouth. This legislation is very technical legislation and, in

effect, it has taken us a very long time and I am not going to say today here that I am going to agree to what is proposed. What I am saying is that I am prepared to consider that if there is a clause which comes forward, I myself would look at it to see whether we could put a provision in order to prevent any kind of abuse. I feel very confident we should be able to do it. If on—[*Interruption*]

Sen. Daly: I am going to withdraw my proposals.

Mr. Maharaj:—behalf of the Government, Mr. Chairman—[*Interruption*]

Sen. Daly: It saves time.

Mr. Maharaj: No, it is a matter of principle. If on behalf of the Government I am saying that we will be prepared to look at that, but let us go ahead with this clause because there can be no doubt about it, and we having a fight here as to whether it should be part of this clause or another clause, then obviously something is wrong somewhere.

Sen. Daly: I withdraw my proposal, Sir.

Mr. Chairman: The proposal for the deletion of subclause (7) has been withdrawn and you have heard the undertaking by the Attorney General to consider the inclusion of an additional clause to take care of abuse. Did I misrepresent you, Mr. Attorney General?

Mr. Maharaj: I said that umpteen times. I think Sen. Daly is probably not hearing well today.

Mr. Chairman: It is now on record. What the Attorney General has said he has said—[*Interruption*] [*Laughter*]

Sen. Shabazz: But when it comes to—[*Inaudible*] Can I ask the Attorney General that?

Mr. Maharaj: Mr. Chairman, if I had to respond to Sen. Shabazz—[*Interruption*]

Question put and agreed to.

Mr. Chairman: He is only going to consider it.

Mr. Maharaj: If I had to respond to Sen. Shabazz—it is all right. Let me—[*Interruption*]

Clause 55, as amended, ordered to stand part of the Bill.

Clauses 56 to 61 ordered to stand part of the Bill.

First schedule.

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

Mr. Maharaj: In relation to what the Senators have raised, Mr. Chairman, I think we would reserve the First and Second Schedules until we come back on Thursday.

Mr. Chairman: On this issue I just thought I would draw it to your attention that, in fact, if we look at the amendments coming from the other place, they have an amendment to clause 55 which deletes subclause (8) and substitutes a new subclause (8) which reads as follows:

> "The Minister may, by Order, subject to negative resolution of Parliament amend the First and Second Schedules."

I think that was one of the things that we deferred which, in fact, appears now to have been taken care of in the other place.

Sen. Daly: Can I ask something about the Second Schedule which I simply do not understand? I do not know if we have enough time—just so I understand it.

Mr. Chairman: The Second Schedule is as amended in the other place.

Sen. Daly: Well, there is something on the other page.

Mr. Maharaj: It is a separate amendment.

Sen. Daly: I have it in front of me but there is something I do not understand and I am going to ask what it means.

Mr. Chairman: Well, let us try and deal with it, Senator.

Sen. Daly: On page 3 it says, under the words "The Corporation Tax Act":

> "Section 19 of this Act incorporates the following provision of the Income Tax Act to Corporation Tax Act."

I simply do not know what it means. I am not saying it is not sense, I just do not know what it means. What is the Act that is incorporating what? I do not know what it means. Maybe when we come back to the Schedules we could get the explanation.

Mr. Maharaj: I think if you read section 19 of the Corporation Tax Act it incorporates the provision of the Income Tax Act.

Mr. Chairman: My understanding is that it incorporates section 119 of the Income Tax Act.

Sen. Daly: I have looked at them and I do not understand it but I am sure it is my—[*Interruption*]

Mr. Maharaj: Section 19 of the Corporation Tax Act says that section 119 of the Income Tax Act applies, which deals with fraud. May I just tell hon. Members that in respect of the Second Schedule, because we are reserving that in any event, what was there was amended so that the sections in the Corporation Tax Act, the Income Tax Act and the Value Added Tax Act could have dealt with the sections dealing with fraudulent behaviour, and it was limited to those matters.

Sen. Daly: So that is why I think it is such a considerable advance and why it would be so easy, following that, to have a First Schedule, in the same way that we were able to take out of five fairly voluminous statutes specific provisions that we felt were linked with this subject, it should not be beyond the wit of all of us to find—[*Interruption*] "Buh I cyar finish a sentence over here?"

Mr. Maharaj: I think we crossed that hurdle by allowing that matter to be resolved on Thursday and the matters which we say are all serious offences. So if Sen. Daly wants to put all the indictable offences on a Schedule, I do not know, but we will deal with that on Thursday.

Mr. Chairman: So the First and Second Schedules have been deferred.

First and Second Schedules, by leave, deferred.

Third Schedule ordered to stand part of the Bill.

Mr. Chairman: There is a Preamble and my proposal is—[*Interruption*]

Mr. Maharaj: Mr. Chairman, can I ask for that to be deferred because we may have to consider its position, depending upon the views of the hon. Senators, and in relation to the Bill.

Mr. Chairman: In fact, the Preamble would normally be dealt with last after all amendments are treated with, so I propose to defer consideration of the Preamble until we have fully ventilated all the issues concerning the substantive parts of the Bill.

Preamble, by leave, deferred.

Mr. Chairman: Maybe we can just recap what items have been deferred to Thursday. Off the record. [*Discussion off the record*] I will recap now the deferred items.

Mr. Maharaj: The first deferred item is clause 2.

Mr. Chairman: Is everyone with us? Clause 2.

Mr. Maharaj: After clause 2, clause 10.

Mr. Chairman: Clause 2, clause 10.

Mr. Maharaj: Clause 55.

Mr. Chairman: Clause 55.

Mr. Maharaj: The First and Second Schedules and the question as to sanctions for the "designated authority" and abuse.

Mr. Chairman: Okay clause 2, clause 10, clause 55, the First and Second Schedules, the Preamble and consideration of whether there is going to be any— [*Interruption*]

Mr. Maharaj: And clause 21, sorry.

Mr. Chairman: Sorry, clause 21 also. Could I repeat that for everyone's benefit? Clauses 2, 10, 21, 55, First and Second Schedules, Preamble and consideration of that issue of the authority's abuse. These will be the subject matter of the next sitting of our committee.

Sen. Daly: Before we leave the committee, Mr. Chairman, could we get some idea of when we are resuming the committee? Is that the first thing on Thursday? Could we get some time that does not change at 5 o'clock tomorrow?

Sen. Mark: On Thursday.

Sen. Daly: Yes, but what time? Is it the first item or what?

Sen. Mark: Thursday at 1.30.

Question put and agreed to, That the committee be adjourned to Thursday, September 28, 2000 at 1.30 p.m.

Mr. Chairman: We will return to the Senate.

Senate resumed.

Mr. Maharaj: I wish to report that the Bill was considered in committee and it was agreed that there are certain clauses of the Bill which would be completed at the next sitting of the Parliament on Thursday at 1.30 p.m.

Mr. Chairman: Hon. Members, at this point I think we suspend for dinner. I think 45 minutes should do. We will resume at 9.15.

8.35 p.m.: *Sitting suspended.*

9.15 p.m.: *Sitting resumed.*

SENTENCING COMMISSION BILL

Order for second reading read.

The Attorney General and Minister of Legal Affairs: (Hon. Ramesh Lawrence Maharaj): Mr. Vice-President, I beg to move,

That a Bill to provide for the establishment of a Sentencing Commission and for other related matters, be now read a second time.

Mr. Vice-President, let me at the outset point out that the Bill now before this honourable Senate is not intended in any way to bridle the wide discretion of the courts in imposing sentences. That discretion is to be found in section 68 of the Interpretation Act Chapter 3:01 in subsection (1) which provides as follows and I quote:

> "(1) Where a punishment is provided by a written law for an offence against the written law, the provision indicates that the offence is punishable by a punishment not exceeding that provided."

And in subsection (2) which is the most relevant to the matter in hand it says:

> "Where in any Act or statutory instrument provision is made for any minimum penalty or fine, or for any fixed penalty or fine, as a punishment for a criminal offence, such Act or statutory instrument shall have effect as though no such minimum penalty or fine had been provided, or as though the fixed penalty or fine was the maximum penalty or fine, as the case may be."

Mr. Vice President, indeed, if honourable Members were minded to look at the Bill they will see in clause 5(3) the following words:

> "Nothing in this section limits any discretion that a court may have in determining a sentence."

Mr. Vice-President, even if there is a sentencing commission to deal with the broad guidelines of sentencing—and that is the object of the Bill—it is clear that the discretion of the court remains in tact.

That there has been a great disparity of sentences as well as apparent inadequate sentences imposed by courts is well known. For example, in the case

of the *State vs Oscar Wilson* in 1995, a man who had raped and indecently assaulted an 11-year-old girl was sentenced to six years imprisonment. While in the case of the *State vs Sherwin Ashton* a man who had raped a common-law wife of his friend was sentenced to five years' imprisonment. Although the maximum term for rape is life imprisonment, it does not normally exceed 15 years, as was stated in the case of Edwin Farfan, when the Court of Appeal acknowledged that in this jurisdiction a term of life imprisonment imposed by a competent court does not on the average exceed 13 to 15 years.

Mr. Vice-President, there are several instances in the public press where reference was made to what appeared to the writers to be woeful in consistencies in the sentences handed out by the courts. For instance, in the *Trinidad Guardian* dated December 8, 1997, Mr. Israel Khan, one of the leading criminal lawyers at the Bar had this to say and I quote:

> "It is not uncommon in this jurisdiction that a certain judge on a particular day would sentence an accused person to 15 to 20 years for a particular crime, while another judge presiding in the court, next door", in the same building, under the same roof, would sentence another accused to 7 to 10 years for the same type of offence committed under similar circumstances; and having the same sort of antecedents pertaining to his character as the accused who is being sentenced to 15 to 20 years."

In the *Trinidad Express* dated May 21, 1997 reference was made to social psychologist Mr. Derek Chadee's lecture "Sentencing: a social psychological assessment". An extract of that article reads as follows:

> "According to Chadee, a wide disparity between sentences by different judges has caused public concern. He cited the five-year sentenced imposed on Christopher Sirju by Justice Anthony Lucky for killing his wife and attempting to murder his two children. He compared it with the sentence Justice Lennox Deyalsingh passed on Everton Mapp for causing grievous bodily harm to his wife: 25 years and 30 strokes."

An interesting article by Francis Joseph appeared in the *Trinidad Guardian* on November 23, 1997 headed: "Lucky escape for Centeno" and again, in the *Trinidad Guardian* on November 28, 1997 by Miss Dana Seetahal under the article headed: "Sentencing; luck of the draw?"

In Miss Seetahal's article she drew attention to the inconsistency of sentencing imposed both by magistrates and judges. For instance, she attracted the attention to the harsh inconsistency of two sentences inflicted by a magistrate in two separate cases for possession of marijuana. She also cited a case where a cloth retailer was fined for the illegal possession of a firearm, while another man who pleaded guilty to the same offence was jailed for 12 months.

Another instance cited by Miss Seetahal was where a fruit vendor stabbed a man in the course of an argument, was found guilty of manslaughter, and was sentenced to life, not to be released for 30 years, while the other person, the same Centeno referred to by Mr. Joseph in his article of November 23, 1997, was put on a bond of $25,000 to keep the peace for three years.

Mr. Vice-President, it is only right to say that on appeal by the state Centeno was given a term of imprisonment for three years, while that of the fruit vendor was reduced to 10 years on the ground that he had not no previous conviction. Miss Seetahal concluded her article in these words:

> "It seems to me that what the recent sentencing patterns display is a lack of consistency in sentencing by judges or for that matter magistrates. What is needed is some degree of certainty that if a person offends in a particular way he will be treated like others similarly circumstanced. Justice should not depend on the luck of the draw as in a lottery system."

Mr. Vice-President, the publicity in the newspapers in relation to disparity of sentencing was again given in a *Newsday* editorial dated November 1, 1997 in which a distinction was drawn between a man who broke into the house of the Minister of National Security and stole a number of household items and was sentenced to two years imprisonment, while another man, found guilty of cuffing a two-year old child who died from the blows was given a suspended sentence. This was Garfield Joseph who on the state's appeal was sentenced to three years' imprisonment.

Mr. Vice-President, not only in this jurisdiction has there been criticism in newspapers of the inconsistency of sentencing. In a letter written by a member of the public in the *Barbados Advocate* dated March 18, 2000 after drawing attention to a number of inconsistencies in sentencing, the writer laments as follows:

> "What must be more frightening is the seeming inconsistency in how the accused and not the guilty are treated. Note that some are granted bail while others are not. Some are given the maximum sentence of 15 years while another is given eight years. We even have one who was given two 7-year terms but these are to run currently. Where is the consistency? What message is to be derived from these sentences? One can argue that each case has its own extenuating circumstances.

> However, the accused, the accuser, the judiciary and the country at large must know of the problems that arise when it is left to the discretion of the judge to determine if these monsters or alleged monsters should be granted bail or given a light, heavy, or concurrent sentence. We need to be far more specific in what a judge can or cannot do in this and all the other criminal matters.

Mr. Vice-President, no administration should ignore the voice of the people in dealing with a matter as important and crucial to the life of the citizens of a country as the criminal activities of others. To turn one's eyes in the other direction would amount to ignoring the need for a system in the administration of justice in which the public must have confidence. As I stated earlier, the courts have a wide discretion in sentencing and it is expected that each case would depend on the particular circumstances.

In a book entitled *Sentences* by Amin's, the Second Edition, by Martin Wattick, it says:

> Sentencing disparity arises when cases which are similar in relevant respects are dealt with differently, or where cases which are different in relevant respects are dealt with similarly. Disparity is a form of injustice, since it means that the sentence which a person receives for committing a particular offence will often turn on the particular judge or bench of magistrates dealing with the case.

Mr. Vice-President, as I said before, there are in fact sentencing commissions in various territories. It cannot be said, therefore, that this is an invention of this Government or this Attorney General. For instance, in New South Wales in Australia there is a vibrant sentencing commission whose function among other things is to issue an annual report detailing the work of the commission for the previous year, and let me quote from their annual report of 1998—1999. That report states in precise terms what are the functions of such a commission in these words and I quote:

> "A major function of the Commission is assisting courts to achieve consistency in approach to the sentencing of offenders. The commission's objectives in this area are to reduce justified disparities in the sentences imposed by the courts; to improve sentencing efficiency generally, and to reduce the number of appeals against sentences."

Mr. Vice-President, this is precisely the objective of the Sentencing Commission Bill which is now proposed. If one were to look at clause 5 of the Bill one would see the various functions of the commission set out, and there is also the requirement of the commission to prepare a report to be laid in Parliament.

9.25 p.m.

Mr. Vice-President, I must confess that when this Bill was being drafted, there were several models which were put forward and the model which the Law Commission adopted and which we accepted, was a model in which it can be said that there can be people from outside the Judiciary and the courts looking at the whole sentencing process—the sentences, analyzing them and submitting reports to the Chief Justice and to various bodies—so that there can be influence without interfering with the administration of justice.

One would see that clause 5 states:

"(1) The Commission may, for the purposes of this Act—

(a) collect, analyse and disseminate sentencing data;

(b) develop sentencing guidelines and principles and ranges of sentencing for specific offences and categories of offences;

(c) periodically review sentencing guidelines and provide a framework for the setting of maximum penalties and ranges of sentencing developed pursuant to paragraph (b);

(d) make recommendations regarding the revision of maximum penalties, the nature of particular offences and the categorization of offences as to degree of seriousness;

(e) conduct research or inquiries into the administration of justice and report the results of its research, inquiries and investigations and make recommendations for change, reorganization and general improvement of the administration of justice;

(f) publish a bi-annual bulletin summarising leading sentencing decisions; and

(g) conduct public education programme to inform the public about sentencing and to promote public understanding of sentencing practices and procedures.

(2) The findings and recommendations of the Commission under this section shall be prepared in the form of a report which shall be laid in the Parliament by the Minister and submitted to the Chief Justice and Chief Magistrate.

(3) Nothing in this section limits any discretion that a court may have in determining a sentence."

Clause 6 of the Bill states:

"(1) In developing sentencing guidelines and in seeking to promote a consistent approach to the sentencing of offenders, the Commission shall give due consideration to all relevant factors in order to suggest that the sentence to be imposed on a person found guilty of an offence is proportionate to the seriousness of the offending behaviour.

(2) In seeking to achieve the purpose stated in subsection (1), the Commission shall give due consideration to the—

(a) harm caused by the commission of the offence;

(b) public concern generated by the offence;

(c) current incidence of the offence;

(d) the seriousness of the offending behaviour;

(e) the need to prevent crime and promote respect for the law by—

(i) providing for sentences that are intended to deter the offender or other persons from committing offences of the same or a similar character;

(ii) providing for sentences that facilitate the rehabilitation of offenders;

(iii) providing for sentences that allow a court to denounce the type of conduct in which the offender engaged; and

(iv) ensuring that an offender is only punished to the extent justified by—

(A) the nature and gravity of his offence;

(B) his culpability and degree of responsibility for his offence; and

(C) the presence of any aggravating or mitigating factor concerning the offender and of any relevant circumstances."

Clause 7 states:

"(1) The Commission shall consist of seven members appointed by the President from among persons or organisations interested in sentencing reform as the President thinks fit.

(2) The President shall appoint a Chairman from among those persons appointed…"

Clause 8 states:

"The appointment of members of the Commission as first constituted and every subsequent appointment to the Commission or change in membership shall be published in the *Gazette.*"

Clause 9 states:

"The appointment of the person as a member of the Commission shall, subject to this Act, be for a period not exceeding three years, but members are eligible for re-appointment."

Clause 10 states:

"No person is qualified to be appointed a member of the Commission who—

(a) is a member of—

(i) the Senate;

(ii) the House of Representatives;

(iii) a Municipal Corporation or Statutory Board; or

(iv) the Judiciary or Magistracy;

(b) is a legal officer employed by the State;

(c) is an undischarged bankrupt; or

(d) has been convicted of an offence involving dishonesty or fraud."

As I read that, it struck me that there may be persons in the Senate who are equipped to be members of this commission so it may be that this Bill may be discriminating against Senators, especially independent Senators. But looking at this, again, it may be that I am prepared to look at that because there may be people who can serve and who are in the Senate.

Under "Revocation of appointment", clause 12 states in part that:

"The President may, after consultation with the Chairman, revoke…"

Resignation and remuneration. The clause on "Location and meetings" deals with meetings and can invite any person to attend a meeting to give unsworn evidence and the staff of the Commission is provided for.

Independence of the Commission—under clause 19, it states:

> "The Commission is not subject to the directions or control of any person in the exercise of its functions."

Clause 17 states in part that:

> "The Minister may appoint an attorney at law of at least seven years standing to assist the Commission as counsel…"

Liability of proceedings—exemption in immunity from liability. Then, clause 21 states in part:

> "A statement or disclosure made, or a document or other thing produced…assisting the Commission…admissible in evidence against that person in civil or criminal proceedings."

The annual report has to be presented to Parliament.

Mr. Vice-President, it is interesting to note that in the United Kingdom, there is not a sentencing commission even though the idea has surfaced within recent times but, what has happened is that the Court of Appeal has taken the initiative of laying down broad guidelines for the benefit of the trial courts particularly in rape cases.

For example, in a case engaging the attention of the Court of Appeal, that court stated that rape is always a serious crime which calls for immediate custodial sentences and proceeded to set down several criteria. For instance, if rape is committed by an adult without any aggravating or mitigating facts, it was suggested that five years should be the starting point. Where the rape has been committed by two or more men acting together by men who had broken into the victim's home, or by a person who is in possession of responsibility toward the victim, the starting point should be eight years' imprisonment.

For a person who has carried out rape on a number of women, the sentence of 15 years or more may be appropriate. Where the behaviour is manifestly perverted or psychopathic tendencies are shown and he is likely, if at large, to remain a danger to women, a life sentence would not be inappropriate.

The Court of Appeal went on to say that the crime of rape should be treated as aggravated by any of the following features:

Violence;

Use of a weapon;

Where rape is repeated;

Where rape is carefully planned;

The defendant has previous convictions of rape, or other violent or sexual offences;

The victim has been subjected to further sexual indignities;

The victim is very old or very young;

The effect that such an offence would have upon the victim.

The Court of Appeal also stated that where any or more of these aggravated circumstances are present, sentencing should be substantially higher than those that are suggested.

Mr. Vice-President, I would like to add that in my opinion where the offence of rape has been committed on a pregnant woman or a child of tender years, that sentence should be substantial. What more horrible offence can be imagined? Regrettably, our courts—neither the Court of Appeal nor the High Courts—have seen it fit to prescribe any guidelines for sentencing and this has not been done over the years.

Therefore, a sentencing commission may assist in providing some guidelines which the Judiciary and the Magistracy may adopt. As we know, Parliament cannot compel them to adopt it and no law could compel the Judiciary or the Magistracy to adopt it. What has worked in other societies is that where the public, through these sentencing commissions, have expressed their views, have presented reports, it did influence the court in recognizing the public concern of consistency in sentencing and for sentencing to be effective, to protect the public interest.

I should say, Mr. Vice-President, that it used to be the law in Trinidad and Tobago that where the High Court passed a sentence, the state did not have any right of appeal, but what has happened since 1996, when we gave the Director of Public Prosecutions the right to appeal against a sentence, we have had several cases in which there were apparent injustices and the Court of Appeal did increase

the sentences, or gave orders which would have been more acceptable to the public. I think that has proven useful but I think I would be failing in my duty because of the criticisms which have been made about sentencing.

One can see that the public has been calling for gender sensitive training for the Judiciary and the Magistracy; sentencing guidelines to ensure appropriate judgements in the future; legislation to, in effect, ensure that appeal to sentences in criminal matters are heard quickly and that there should be some kind of orientation that the Judiciary and the Magistracy be sympathetic to the feelings of the victim.

I should say from the research which has been done for me, in Ireland, the Supreme Court sought to lay down certain guidelines to govern sentencing and the guidelines were the nature of the crime of rape as far as rape is concerned; its consequences; the appropriate sentence for the commission of the offence; the bodily harm to the victim; the psychological, psychiatric and emotional distress which would ensue; the distortion of the victim's approach to own sexuality; and the possibility of unwanted pregnancy.

In Australia, in a case in which the question of an unduly lenient sentence was imposed on a defendant in respect of which the prosecution had appealed, the court perceived that the appropriate role for the prosecution in such a case was to enable the courts to establish and maintain adequate standards of punishment for crime to enable idiosyncratic views of individual judges as to particular crimes to be corrected and, occasionally, to correct a sentence which is so disproportionate to the seriousness of the crime as to shock public conscience.

Mr. Vice-President, it is an effort to try to improve the sentencing aspect of the administration of justice that this Bill has been drafted. I think I should pay tribute to a lawyer, Mr. Desmond Allum, who years ago, in *The Lawyer*, wrote a very instructive article "Sentencing and the use of the Imprisonment System in Trinidad and Tobago". He did call for something to be set up in order to look at sentencing. He said there was a crying need to do it. I think in fairness to him, I would like to put on record what he said in about two paragraphs at the beginning of his article. I can ask the Clerk to photocopy this to circulate it to Senators because it is very interesting to read.

> "Notwithstanding our independence, gained some 29 years ago, the criminal law of Trinidad and Tobago consists largely of a body of laws, both statute and common law, which derives from another society. No systematic attempt has been made to criticize and review our criminal law in a way which would

assist us to determine whether or not the laws which regulate our society are appropriate to our requirements.

This state of affairs has also left us with no identifiable philosophy of our own which might help to guide us in our approach to crime and punishment.

Reluctant to investigate ourselves, we continue to import legislation wholesale from overseas which may or may not be appropriate to our requirements. Very little of our legislation, not even in areas where it is concerned with the most intimate areas of our cultural and social life, is indigenous. For example, laws which regulate family life, marriage, divorce, real property and inheritance. If a nation is to develop healthily, its laws must be a reflection of its needs and not be a transplantation of laws growing out of the experience of foreign society."

He went on to deal with sentencing as one of the things.

Mr. Vice-President, what we are saying about sentencing is that it is very important for the lives of the people of Trinidad and Tobago for the courts and the interpretation of laws to reflect to a great extent what the people's aspirations for laws should be and, if it is that we do not examine sentencing and we just leave it as it is, then this is an area of the law which would cause the law to be in disrepute.

I think what the Bill is doing as a starting point is setting up this commission so this can be looked at publicly. The reports can be made available for everyone to see so that the Judiciary, the Magistracy, the prosecuting department and all the areas involved in the administration of justice can decide how they can play their part in improving the system.

I beg to move.

Question proposed.

9.40 p.m.

Sen. Danny Montano: Mr. Vice-President, it is late. We have had a difficult afternoon. For some of us it was somewhat distasteful and unpleasant. This one is not going to be too difficult, and it should not be unpleasant.

The first thing we should say is that we on this side are certainly not opposed to this legislation. I think that it is, basically, a good thing. The more we can do to facilitate the administration of justice, we should all work towards that.

When I read this—I am certainly no lawyer, I certainly do not understand the necessary details and the machinations of the legal system. I certainly wondered as to why, in fact, we are passing law to set up an organization that, whatever it does, does not have the force of law.

Clause 5(3) states:

: "Nothing in this section limits any discretion that the court may have in determining a sentence."

If that is the case—I do not have a problem with it—why are we setting it up as a legal institution as it is? Why is it that a body has not been set up and people hired? I just do not understand why—*[Interruption]* Are you going to answer it now? I just have a bunch of questions. The Attorney General and Minister of Legal Affairs is going to answer all of them when he is winding up.

The second issue is that I would like to know what the estimated cost is going to be to administer this commission. After all, you are going to have seven members. I do not know if the members are going to be full-time or part-time. I would like to understand whether they would be full-time or part-time and be given an estimate of what their salaries are likely to be, how their salaries are going to be arrived at, and what the total cost of administering those salaries, plus the rent and the cost of all the other staff is likely to be, and whether, in fact, that cost has been entered into the budgetary figures for the next fiscal year. It may not be a number that is particularly material in the context of the $15.5 billion budget. I would at least like to know that somebody is thinking about the future, rather than just doing something without thinking of the financial consequences that go along with it.

Mr. Vice-President, with those words, I really do not have a problem with the legislation. I cannot think of anything that I would necessarily want to change, but some of it strikes me as being a little odd.

When you look at clause 6(2)(e)(iii) where it says:

"the Commission shall give due consideration to the—

(iii) providing for sentences that allow a court to denounce the type of conduct in which the offender engaged;…".

I find that an odd thing. I did not realize that courts were in the habit of denouncing conduct. I stand to be corrected. I was not aware that was part of their function.

With those few words, Mr. Vice-President, I thank you. *[Interruption]*

Sen. Diana Mahabir-Wyatt: Mr. Vice-President, the Attorney General in his presentation of this Bill said, the voice of the people had to be listened to. It is, perhaps, somewhat childish of me—being one of those voices that has been very loud in complaining about the inconsistency in sentencing—to complain about this Bill anyway. However, I am only complaining because it has taken so long to come. We have been asking for this for a long time.

The Attorney General has outlined the reasons why it was necessary to set up the Sentencing Commission. One of the things which he left out—I do not want to go back to what he said—was the trauma that the victims of crimes experience when the sentences are very light towards the perpetrators. It is quite a serious trauma, particularly, as the Attorney General pointed out that many of the guidelines which have been set up by other sentencing commissions in other countries have to do with domestic violence, sexual abuse, particularly child sexual abuse, and the speed with which these cases are heard. The, sometimes, very desultory sentencing has been a matter of serious concern to the public, but a matter of serious trauma in many cases, to the victims.

I am delighted that, finally, we are getting our Sentencing Commission. I know that it only has moral and suasive authority that, in no way, has got any kind of coercive authority when it comes to sentencing. There have been such gross inconsistencies in sentencing, particularly in sexual offence cases. While our new Sexual Offences Act does set out the penalties in quite a different way than the old one did and, perhaps, in itself gives some guidelines in these cases, there are other things which it does not take into consideration.

I think the Attorney General mentioned in the case of one of the sentencing commissions in the United Kingdom that some of the extra things they take into consideration include pregnancy of the victim and the age of the child. One of the things which was not mentioned, which I hope will come under consideration, is the possibility of AIDS. Nowadays, when a woman is raped, it is not just the physical and emotional trauma that she undergoes, it is also the possibility that her life may be ended because of AIDS. It is something which we, for a long time, wanted to have taken into consideration.

I would just, very briefly, like to say thank you very much for bringing this Bill, it is about time. It is consistent with the other legislation that was passed in 1996, which gave the Government the right of appeal against too lenient sentences. I think this one also lessens that jockeying that lawyers undergo, to see whether they can get their case heard before a lenient judge or "hanging" judge. It will increase the confidence of the public in the integrity and objectivity of the judiciary, simply because when the guidelines are made public, and people know what they are, that moral suasion, I think, will have some effect, I am hoping, on the consistency of sentencing.

Thank you, Mr. Vice-President.

The Attorney General and Minister of Legal Affairs (Hon. Ramesh Lawrence Maharaj): Mr. Vice-President, I think Sen. Mahabir-Wyatt answered the first question that Sen. Montano asked: Why it is that it does not have the power—if I could use that expression. We could not set up a commission which would usurp the functions of the Judiciary or the Magistracy, by taking away their discretion in sentencing. We had to set up a commission which would have persons who are considered to be knowledgeable in the field, to analyze it, make recommendations public and send a copy to the Chief Justice and the Chief Magistrate.

Sen. Montano: Why do we need a commission to do that?

Hon. R. L. Maharaj: The way the state sector operates is that you could not do it otherwise, because there must be an institution, and there must be machinery. They are not going to be full-time people. They must be able to call in people, and take information from them. There might be experts in a field who would be able to make informed decisions. They would have to retain consultants from time to time.

As to the cost, I must confess, the way this administration has functioned is that it did not go through all the bureaucracy that one had to go through for the passage of Bills. When we got there, we had to go through a long passage before we could get a Bill: it was this report and that report. What we decided to do, was to make policy decisions. If the policy was for the benefit of the people, we found ways and means of finding the money in order to do it. That is how we have been doing things, otherwise we would not have been able to get some of these things done.

9.50 p.m.

As a matter of fact, the average time for a bill to become law, even though you had a project which was very, very good, would have been two and a half years,

and with the number of reports and things that you had to get, it sometimes got you discouraged before you actually end up doing it. So I really cannot give the hon. Senator the cost. All I can say is that the Government felt that it was very deserving in the public interest and funds have to be found in order to deal with that.

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

Question put and agreed to.

Bill accordingly read a second time.

Bill committed to a committee of the whole Senate.

Senate in committee.

Mr. Chairman: We are looking at the Bill clause by clause. There are 22 clauses. In the interest of time maybe we could take in multiples of four. We would take it in two parts.

Clauses 1 to 9 ordered to stand part of the Bill.

Clause 10.

Question proposed, That clause 10 stand part of the Bill.

Mr. Maharaj: Mr. Chairman, I am reconsidering clause 10, and I really do not see any reason why Members of Parliament should be prevented from serving on the commission. It is really a part time commission. [*Crosstalk*]

Mr. Chairman: Any more discussion? [*Crosstalk*]

Sen. Mahabir-Wyatt: I know that there are certain reasons why Members of Parliament are not allowed to serve on state boards and what not, because we may be making laws which might affect them, but in this case, Parliament does not—let me just ask the question, is there anything in the function of a Member of Parliament which would be regarded as a conflict of interest with that of a member of a sentencing commission?

Mr. Maharaj: The perception may be wrong.

Sen. Mahabir-Wyatt: Then I think we should leave it as it is.

Question put and agreed to.

Clause 10 ordered to stand part of the Bill.

Clauses 11 to 22 ordered to stand part of the Bill.

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

Senate resumed.

Bill reported, without amendment, read the third time and passed.

PETROLEUM (AMDT.) REGULATIONS

[Second Day]

Order read for resuming adjourned debate on question [September 19, 2000]:

That the Bill be now read a second time.

Question again proposed.

The Minister of Energy and Energy Industries (Sen. The Hon. Finbar Gangar): Mr. Vice-President, at the last sitting of the Senate I had completed my contribution on this particular Bill and circulated the draft regulations for the benefit of hon. Senators.

I beg to move.

Question proposed.

Mr. Vice-President: Any contributions? Has everyone got in their possession the circulated regulations by the Minister?

The Minister of Energy and Energy Industries (Sen. The Hon. Finbar Gangar): Mr. Vice-President, I do not intend to take up too much parliamentary time at this stage of the evening's proceedings. It is a relatively simple one-line Bill. There is a typographical error, which I would correct at the committee stage.

Mr. President, I beg to move, that the Bill be read a second time.

Question put and agreed to.

Bill accordingly read a second time.

Bill committed to a committee of the whole Senate.

Senate in committee.

Clause 1 ordered to stand part of the Bill.

Clause 2.

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

Sen. Gangar: Mr. Chairman, the original Bill had an error in it. It states in its original form in clause 2:

> "The Petroleum Act is amended in section 29(a) by inserting a new paragraph as follows…for regulating the conditions to be observed by contractors and agents of licences."

The word "licences" there is an error, it should be "licensees", so I would like to make that correction. [*Crosstalk*]

Mr. Chairman: The new printed version that I have here has "licensees". Does everyone have "licensees" on their draft of clause two?

Sen. John: Mr. Chairman, the spelling is correct.

Mr. Chairman: Sen. Prof. Ramchand, is the spelling correct? [*Laughter*]

Clause 2 ordered to stand part of the Bill.

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

Senate resumed.

Bill reported, without amendment, read the third time and passed.

SOCIALLY DISPLACED PERSONS BILL

Order for second reading read.

The Parliamentary Secretary in the Ministry of Social and Community Development (Sen. Nizam Baksh): Mr. Vice-President, I beg to move.

That a Bill to provide for the assessment, care and rehabilitation of socially displaced persons and for related matters, be now read a second time.

I wish to thank you and the Members of the Senate for the opportunity to present to this honourable Senate the Socially Displaced Persons Bill, 1999.

We are all aware that the problem of vagrancy has been allowed to escalate over the years with no comprehensive plan to address this social ill. The growth of the socially displaced population is, in part, a manifestation of the breakdown of many of the traditional systems and values of our society.

Notwithstanding these factors, over the past five years our ministry has attempted to put systems in place to address the issue. Traditionally many non-governmental organizations, community and church-based organizations have assisted with the provision of meals to and rehabilitation and care of this group of citizens. Our Ministry has fully supported these organizations by granting subventions and undertaking institutional strengthening exercises. Additionally, the Ministry has attempted to implement other programmes that assist this special group of clients.

The relief centres are one such programme. At these centres clients are provided with hot meals, clothing, self-development projects, enterprise development, and job location services. Over any three-month period the relief

centres in the Port of Spain area serve over 60,000 meals. As a result, the staff of these centres touch many lives and they are always happy to tell of the success stories of persons they have helped.

One such situation was that of a young woman who was diagnosed HIV positive, asthmatic, was homeless, using drugs and prostituting. Due to her interaction with the staff at the relief centre and the assistance she received, she came off drugs, stopped prostituting, started taking better care of herself and is attending to her medical needs. She now has her own living accommodation and a steady source of income.

Mr. Vice-President, I am aware that many people do not see much value in the persons whom they see on the street. However, our Ministry feels that each person should be treated with respect, and these citizens should, therefore, be given a chance to return to their highest level of functioning. There are many other examples like the above-mentioned one. However, neither time nor circumstances permit me to expand further.

The enactment of this Bill will ensure that all the persons who have found themselves in these unfortunate circumstances will have the opportunity to access shelter and rehabilitation within a multidisciplinary framework that seeks to address those issues which are causing dysfunctions in them.

The essential provisions of the Socially Displaced Persons Bill are as follows: clauses 4, 5 and 6 provide for the establishment of a social displacement unit. The unit will have responsibility for the care, relocation and rehabilitation of socially displaced persons. Furthermore, the clauses outline the functions of the unit and the composition of its staff.

Mr. Vice-President, I am pleased to report that the unit began operation in August 1999. Since that time its activities have been aimed at fulfilling the duties laid out in the Government's policy document for social displacement.

Clause 7 provides for the establishment of a social displacement fund. The intent is that this fund would be responsible for receiving contributions from corporate and other citizens for the funding of projects relating to social displacement.

Clause 8 provides for the establishment of a social displacement board and outlines the composition of the board.

10.05 p.m.

Mr. Vice-President, I am pleased to report that this multi-disciplinary board has been functional since September 1998.

Clause 13 gives the Minister the power to establish assessment centres. Over the past eight years, there was only one assessment centre in the country, this is located in Port of Spain at the Riverside Car Park.

We recognize that this is a social ill that occurs mainly in cities and towns, therefore, in October, 1999, a second assessment centre was started in San Fernando. The proposals for a third centre is currently being considered in the Chaguanas area while the unit is undertaking feasibility studies for a fourth in the Arima district. We hope that within the next two years, there will be a system of centres that provide for the shelter and rehabilitation of our socially displaced citizens.

Clause 14 provides that a socially displaced person may voluntarily seek admission to an assessment centre. At this time, this is the only way to facilitate the movement of clients who are not mentally ill off the streets. The field officers attached to the existing assessment centres currently undertake this process.

A recent report from the Society of St. Vincent De Paul indicates that from its inception in 1990 to August 2000, the centre helped over 2,000 persons. The current count of persons on the street in Port of Spain is approximately 150. In 1996, this was a little over 700. This is a significant reduction from where this figure stood at this same time last year when it was estimated at over 200.

The San Fernando centre has, to date, assisted over 150 persons and the number of persons on the streets of San Fernando is estimated at 85. The unit has also tried to assist in this area by establishing a programme at the Living Waters Community, Duncan Street facility in December 1999. To date, the efforts have resulted in the movement of 70 persons off the street.

Clauses 15 to 18 provide for the investigation and involuntary removal of a socially displaced person. The process outlined seeks to ensure the following:

(a) That the field officer establishes that the person is socially displaced.

(b) That a report is submitted and reviewed by the unit following which an application is made to the court for the person's removal to an assessment centre.

(c) An order of the court which is to be deemed a summons shall be served to the person requiring their appearance in court.

(d) On the appearance in court, he or she would be required to show cause why they should not be admitted to a centre.

(e) Where the court is satisfied that the person is socially displaced, the court shall make an order requiring his/her admission to an assessment centre.

Mr. Vice-President, in the drafting of this legislation, we have gone to great lengths with this process to provide humanitarian treatment to everyone. Additionally, we try to ensure that each person served a summons, will have the opportunity of due process before the court. This portion of the legislation is critical to the number of persons on the street.

Clauses 19 and 20 provide for the creation of care centres where persons can receive housing and other services and outlines the licensing procedure for the operation. It further provides for penalties for those persons who do not comply with these requirements. As you are aware, there are too many organizations and homes that operate in our country without proper standards. This portion of the Bill seeks to address that issue.

Clause 21 makes provision for the compulsory assessment of each client within 14 days of admission. Thereafter, a rehabilitation path should be determined depending on the individual needs of the client. In drafting the legislation, we sought not only to reduce the number of persons on the street, but also to attempt to assist them to return to a level of functioning that would be beneficial to the society as a whole. We have already begun to meet this commitment to the clients.

In 1999, our ministry undertook a programme of rehabilitation for socially displaced substance abusers. During the course of this programme approximately 71 clients were assessed and entered drug rehabilitation for three months. Of this group, 47 individuals now hold jobs and are either reunited with their families, or living independently.

We built on this success and in April 2000, the unit undertook the second phase of this project, 45 clients were assessed and entered rehabilitation for a period of six months, 30 of these clients continued to be a part of the project. In another area of rehabilitation, the unit in April of this year implemented an independent live-in programme which sought to empower clients to return to

living independently. Twenty-five clients who were residents at the Port of Spain Assessment Centre were selected to participate. The programme ended in July and today 10 clients have moved on with their lives and are no longer resident at the centre. It was very rewarding to the staff of the unit when one participant, who recently collected the key to his apartment came back to the office to thank them, and I quote: "for giving me back my life."

Mr. Vice-President, other systems have been put in place to address the rehabilitation needs of the clients. Among these is the expansion of the treatment facility at Caura from 16 beds to 45 beds. This will be complemented by the coming on stream of the Piparo Rehabilitation Centre which would begin operation later this year. There now exists the Audrey Mollineau Halfway House where mentally ill, homeless women reside after being discharged from mental hospitals and undertake self-development to learn to function with some degree of independence. Additionally, the unit continues to work on other programmes including independent living, adult literacy, skills development and job acquisition which will benefit the clients.

Clauses 22 to 32 outline the conditions under which clients will stay at the centres and the consequences for breaking major rules, that their individual cases would be reviewed on a timely basis, that clients will be allowed to seek treatment at various institutions whether medical or otherwise, dependent on their needs and that proper discharge planning would be undertaken.

Clause 33 gives the Minister the power to make regulations to give effect to the provisions of the Act. This allows the Minister to give full weight to this piece of legislation. One of the critical areas of need is that of standards of care. Again, in many of our institutions, there are no standards for operation or treatment of the clients. The social displacement unit has already begun to address this area and has prepared a draft document to address the standards of care at the institutions for which it is expected to have responsibility.

Mr. Vice-President, I cannot sufficiently impress upon this House the urgent need for this legislation. The content seeks to provide a multi-disciplinary approach to dealing with this grave problem. It is only by implementing this legislation that we can hope to significantly reduce the number of citizens whose lives have spiraled out of control and who have resorted to living on the streets. It is my hope that the hon. Senators would support the proposed legislation.

Mr. Vice-President, I beg to move.

Question proposed.

Sen. Muhummad Shabazz: Mr. Vice-President, when the hon. Senator spoke, really and truly, he spoke about vagrants. What we thought this Bill would have done is define what is a socially displaced person. Is it that the Bill is really to deal with the vagrant situation in Trinidad or in Port of Spain?

Before we go there, let me explain something. That hon. Senator spoke about a board being in place since 1990. Indeed, that is correct, it came out somewhere in 1995/1996. There was a two-day conference at Holiday Inn and the problem of homeless persons was discussed. The question of socially displaced persons was not only supposed to be the vagrants but insane people, people with aids, tuberculosis, drug addicts, old people, homeless people. Even at this point, the deportees were supposed to be people considered as socially displaced.

They have brought it down to a vagrant situation and the sad thing is they choose to discuss an important Bill like this—which affects so many lives especially the underprivileged whom they seem not to care about—at this time in the night in a way that there may be no debate or no real discussion on it. *[Desk thumping]* That is why we are still here tonight. There seems to be no other reason, and this Bill which is important should have been discussed under a different kind of setting and environment. So be it. We are already here and we need to go along with it.

This board was selected at that time, it is running and it was put in place to deal with this situation. This Bill brought here is a Bill produced by the Government. Do you see this list here? It is a list of recommendations that came from the board that has been in place since 1998 and not one of these recommendations has been put into this Bill. That is how this Government operates. There is a board but it does not care what the board says, you know. They are doing what they have to do and probably this is brought here for political expediency.

I will show you what I mean. The board recommended in their comments on the Bill that clause 3—and there were a number of them and not one was put into this Bill—in the definition of care centre, the reference to this section should be changed from 3(1) to 13(1). The definition of manager should include manager of a care centre as well as an—

Mr. Vice-President: May I inquire what document you are reading from?

Sen. M. Shabazz: This is *Comments of the Social Displacement People Board.* It was a Socially Displaced Bill, 1999 and was drafted on November 22, 1999. That is from the board they have in place, that is where the draft came from.

It was said that the manager should include manager of a care centre as well as an assessment centre. Note that "a" should be changed to "and" in the current definition. There were a number of recommendations and not one was put into this and these people were chosen to work for the last two years.

Sen. S. John: These amendments you are talking about are to this Bill made in 1999?

Sen. M. Shabazz: This board that they had chosen made recommendations that should have been in this Bill that were ignored, so the board was just there doing what it had to do, with no attention being paid to it.

10.20 p.m.

Not only that, you heard the hon. Minister spoke about who got the keys and who did not get the keys. There might have been some success story from the Board. I do not know if the success story was in this time here. But we know that the Board was set up sometime in the 1990s by a previous administration, and I believe that it was the NAR administration.

The intent of going to the centre was that people would go there and after serving some time they would be removed from the centre. Mr. Vice-President, that is not happening, you know, and I think the Minister knows full well. I do not if he has ever visited that place. If he has ever been to the top floor, which is called Westmoorings, and see the conditions under which the people are living. I do not know if he has ever been there. I would really like him to tell me if, as a person in charge, he really visited that place.

Some people have businesses on the streets and nobody is moving off. People were supposed to be moved of and given homes or placed in different homes or apartments. That has not happened. The people are just there and a number of things are going on there. People are living there now for over three and four years and are not moving on. So the centre has become a place where the same : people who you want to help such as the drug addicts; everybody are just inside there and nothing is really happening with them. So the place has become cramped and crowded.

There are elderly people who are being taken advantage of. There is a lady inside there. She keeps making the report. She was a radio announcer. Her name is Sheila Valentine. She is over 60 years old. She fell into hard times and she is

upstairs in the centre. At times you are being harassed and people cannot even leave their belongings or anything in that displacement centre. It was a good cause but nothing has happened with it, and they have done absolutely nothing with it.

I do not understand why they come here and tell us about the vagrants, you know. Because we know what is the position with the vagrant situation. I am very sorry that one of the Ministers who was here is not here at this point in time. Mr. Vice-President, when a previous administration chose to move the vagrants off the street, that was the Minister who spoke about vagrants' rights, you know, and was taking people to court, not to move the vagrants, and showing the vagrants how to operate. Today, there is a Vagrant Association in town with a president; a secretary and a treasurer. I am telling you that they have rights you know. Today, they come to lock up the vagrants. It is a similar situation we saw.

Again, it was the same person who defended people who were on death row and take them through all the channels; the Privy Council and so on. And it is the same person today who is trying to make sure that they get hang and there is no question and no more talk about human rights. There was a vagrant rights lobby some years ago and everybody here knew it. And today you cannot go and remove anybody of the streets of Port of Spain. That centre is really a voluntary centre. Who can you move off the streets in Port of Spain? When you go to move a vagrant off the streets in Port of Spain he has more rights than you. As a matter of fact, the only way you could move a man off the streets in Port of Spain is if he lick down somebody or burst somebody face.

I saw where it happened with Rambo. Rambo get cool in town now. One night, coming from "Tambran" Square by Chee Mooke's Bakery, I saw Rambo hit a man and cracked his skull. You feel you could move him. Rambo has more human rights than everybody else, and now these are the same people who are coming to us to tell us to lock up vagrants.

This Bill is couched in certain kinds of language. To start with, they have to explain to me who is the socially displaced persons? Could a fellow be at home—like what we may call a piper; stealing all his family things. Or, could a man be living in a house not taking care of himself; not bathing and living among people, could he not be somebody who is socially displaced? Is a socially displaced person only the homeless?

What about people who have AIDS and they are suffering and cannot get room in the hospitals and are living in back rooms and locked away in houses and nobody are really taking care of them? Are they not socially displaced person? What is your real definition of a socially displaced person? Is a socially displaced person the vagrants in Port of Spain who you have given human rights who

nobody can move them off the streets? And your only solution now is to run and lock them up?

Here in the Explanatory Note it says:

> "The Bill facilitates the discharge of socially displaced persons from care centres into the care of relatives or friends who can give a serious undertaking that they would be willing and able to give support to these persons."

That is very vague. So there might be a man in the centre and a friend come and say that he could give a serious undertaking. How would you determine what, indeed, is a serious undertaking? How will you arrive at that? And who is the friend whose hand you are going to let him into? You would let him into a friend's hand whose could take a serious undertaking. That is vague. It continues.

> "The Bill is aimed primarily at providing a legislative framework to deal with persons who are socially displaced. Additionally, it focuses on relocation, assessment, treatment and rehabilitation of socially displaced persons and to some extent moves away from the concept of penal sanctions."

This is what this Bill is about really when me go further:

> "The ultimate aim of the proposed legislation is to provide, where possible, for the eventual re-integration of these persons into the mainstream of society."

Is that happening? How are the people going to be re-integrated into society? Is not the duty of the people who have them there, the Government to find jobs; to find homes; to help that happen for them? Are they going to be re-integrated just like that? What is your programme? What have you been doing to help with that re-integration process? These are the things we would like the Minister to come here and tell us, Mr. Vice-President. It goes on:

> "The clause seeks to provide that a socially displaced person may voluntarily seek admission to an assessment centre."

Who is this socially displaced person that would voluntarily seek? And if their whole idea about socially displaced person is a vagrant, which vagrant is going to voluntarily seek assistance in a care centre? So you must have been talking on a broader level than just a vagrant. And Mr. Vice-President, the hon. Minister only addressed the vagrants. His whole topic; his whole contribution was addressed specifically to vagrants. It says:

"Clause 14 provides that a socially displaced person may voluntarily seek admission to an assessment centre."

Clause 15 provides for a field officer to investigate the case of a socially displaced person who is not willing to be admitted to a centre."

Let me just go there a bit. The field officer determines upon investigation that a person is a socially displaced person who refuses to move voluntarily. The field officer shall submit a report of the investigation. A socially displaced person—well, if he did not voluntarily seek, a field officer would determine? Who is that field officer? How would he determine who is a socially displaced person if a socially displaced person is not defined according to this Bill? This Bill cannot make sense if there is no definition of who is a socially displaced person.

Mr. Vice-President, I do not want to bring it down to the ridiculous, but in my home I feel when my family, who had been accustomed to seeing Olympics on the television, was not seeing it, we were socially displaced for a while. That may sound like it is a joke, but I feel we were socially displaced for a while. *[Interruption]* Oh, God, the objector.

Sen. Cabrera: Mr. Vice-President, on a point of clarification, I would like to refer the Senator to Part I(3) interpretation where socially displaced person is, in fact, defined.

10.30 p.m.

Sen. M. Shabazz: Mr. Vice-President, he would do that when he gets up to talk, you know. When he gets up, he could say I am wrong and read it out but I see no definition for what is a socially displaced person. [*Interruption*] I see none. My Bill does not have it, then. [*Interruption*] I "doh" want to hear you, "boy". [*Interruption*] Yeah, he could say what he wants.

Socially displaced means—hear what it means, "eh".

"any idle person habitually found in a public place whether or not he is begging and who by reason of illness or otherwise is unable to maintain himself, has no means of subsistence or place of residence, is unable to give a satisfactory account of himself and causes or is likely to cause annoyance to persons frequenting that public place, or otherwise to create a nuisance."

That definition is not good at all. "Dat" is no definition and "dah is why" the Minister "coulda" only talk about vagrants. That is why the Minister, the hon. Senator, could only have spoken about vagrants.

Well hear this now, and this is what I am coming to in the Bill, you know, where "all yuh go lock up people jus' so" because that is what is going to happen:

"'socially displaced person' means—

any idle person habitually found in a public place…"

So the inspector will determine who is an idle person habitually found in a public place. "So all dem fellas who liming in town socially displaced? All dem fellas who does lime on de block socially displaced and yuh doh have no place" to put them. "All de homeless people socially displaced?" A man could be homeless and not be socially displaced. If they are saying that he is a vagrant—because I know people who do not have places to live but carry on a serious and positive life. If they are going to define it like that, this definition is not good at all. That is why the hon. Senator who got up and presented the Bill could only have limited it to vagrants.

Mr. Vice-President, let me go on again, please, before I was rudely displaced by the hon. Member there.

> "A field officer shall not remove a socially displaced person unless that officer is accompanied by a police officer."

So they give him the rights, but not only that. There is a man who is socially displaced, who may be what is called—his head may not be good, now he is "an urgent admission, a voluntary admission or a medically recommended person". Then the Bill says a house shall not be used unless a certificate has been issued, and it also talks about a certificate being renewed.

Then they say:

> "The Unit shall, within fourteen days from the date of admission, conduct a further assessment of that person to determine whether he should be discharged from the assessment centre or should be admitted to—
>
> (a) a mental institution;
>
> (b) a medical…"

So they are going to hold somebody, take them off the street, take them to this unit to—now, it is the same rights they are taking away from people because we do not know, since they are not sure how they are going to determine, especially if it is just an—there are many people who may "get pull in" who are not socially displaced. Many people who may be pulled in and assessed in a certain way and that could be so far and wide that it may be people who they want to pull in and

just pull them in for some reason under this socially displaced thing. We need to be careful with that.

> "Where the Director is satisfied that adequate care and support will be provided for a socially displaced person by a relative or friend, the Director may discharge of a socially displaced person who, in the opinion of the Director is willing and able to provide care and support for the socially displaced…"

Mr. President, that is not positive enough, you know. The way they are going to release socially displaced people, they do not have, in a serious way, how it is to be done and they are not sure that when they release this person to a friend what the position is. In this same Bill it says that if that person walks away from the home of the friend they still do not have a way to deal with it.

> "Where for any reason the care and support of the relative or friend of the socially displaced person ceases, the relative or friend shall inform the Director in writing within 48 hours of the cessation of such care and support."

So they would send a man, who may be mentally not good, to a friend and the friend leaves, he walks away from that home, and they give the friend 48 hours to report. They do not know what may have happened within that 48 hours. I think a lot more thought should go into this.

> "A person residing in a care centre who attends work outside the care centre shall be deemed, while engaged in such employment, to be a resident of the care centre."
>
> "Any person who—
>
> (a) without permission of the manager, leaves a care centre to which he has been admitted in accordance with this Act; or
>
> (b) having obtained permission from the manager, leaves a care centre for a limited time or for a specified purpose and fails to return at the expiration of that time or when that purpose has been accomplished;
>
> and returns to the street life commits an offence and is liable on conviction to imprisonment for a term not exceeding 3 months."

So they send a man to the care centre, he is not so well, because they know he is socially displaced, they know he has problems, they release him to a friend or he walks away from the care centre, and he could now go to prison. This is what they are recommending, you know. He could now go to prison and I think that is unfair

to the socially displaced. You need to—he needs—they, who did not want him to even be given care because he has rights, are now locking him up because he "under pressure" and might have walked away from a centre.

We know that is the problem with many of these people—the elderly, the aged. Some of those aged people going to the centre or being taken to the centre may have some other sickness that causes their mind to stray and wander and they walk away from the centre and now they are sending somebody to lock up this man and put him in prison for three months and they are talking about being humane and human rights and "all kina ting". You see, the problem with this Government, Mr. Vice-President, is that they speak at all times two kinds of languages, you know. They speak like they care and when we really look at them they do not care. They talking a talk and "not walking that walk", this Government, and this is a plain example of that situation.

Mr. Vice-President, there is a certain clause where the court now could determine that they could lock up a man "jus' so", you know, and carry him to the centre. Before I go there, you see this clause 19:

> "The Minister may subject to this Act issue a certificate approving the use of any house or home as a care centre authorising the person named in the certificate to admit a socially displaced person for care and treatment as—
>
> (a) an urgent admission;
>
> (b) a voluntary admission; or
>
> (c) a medically recommended person."

Although we know that the person must satisfy certain criteria, we really feel that the idea of the Minister making a house a care centre—you know, it reminds me. This may not be like that but in the situation when we brought the Bill about the prison and the Minister could make any house a prison, we need to be really careful and to be looking at the powers that we give to the people on that side, Mr. Vice-President. We need to look at that very, very carefully.

Mr. Vice-President, you see, the whole point is that there are so many people, as I have explained. There are over 900 people in St. Ann's and there are about 300 people in the car park. There are people mandated to reduce the population of that St. Ann's facility to 900. That has not happened up to this day. How are they really going to clean up the city? The whole thing, though, is that the board has done so much work to help or to come up with ideas as to how to deal with this

socially displaced thing and to date this Government has not listened to them. We need to ask the Government to look at them.

Clause 18 provides for the involuntary removal of a socially displaced person and seeks to ensure the preservation of his dignity. Let me just go into clause 18 a little bit, Mr. Vice-President.

> "Where the Court makes an order under subsection 16, the Unit shall arrange for a field officer to remove the socially displaced person named in the order in a humane manner…"

Whatever a humane manner is—they have to send a police officer with this man and they are asking that the person be removed in a humane manner. I do not understand. Well, we know what humane means but I think that we are not so clear when it comes to the Bill. In addition to which, not only are they removing him in a humane manner but "in such a way that his dignity is preserved". If you create a Bill that will lock up people, all of this is "mamaguy" talk, you know.

If they want to get the vagrants off the street who they deem to be very violent—because we know the position with the vagrant situation in town. If they want to do something, they already have taken away their rights after they fought for them, find a way and really tell us how they are going to do it and do not "mamaguy" us with this "humane" and "dignity" and "all dis kina ting". Who are they going to send to pick up these people? What kind of training have they been giving people to do this work? Do they know why there are a lot of vagrants in town? Do they know why people are lying in the street dying from AIDS? It is because there are not enough people trained to pick them up and to move them. People still scorn them.

When we see some of these vagrants in town nobody really wants to hold them and you "doh" have people trained to do that. What kind of training are they giving people to do that? This is the "mamaguy" thing that we know we "doh" like with "all yuh", you know. "Yuh does talk a ting and doh really think out the situation. Yuh just talk it from a book level and yuh doh know practically what is happening in town. I doh even know when last the Minister walk through town".

Hon. Senator: Which one?

Sen. M. Shabazz: Well, the Ministers on that side. Maybe I should say Ministers—very few. That hon. Minister might have been walking through town but "ah lot ah dem not walking through town" and seeing the actual situation. "Ah

lot ah dem" administering for the vagrants and for the care centres and not seeing what is happening in the care centres. This is why the same Minister who is in charge of socially displaced people, when the blind people went on strike in San Fernando, he did not even know what was going on. "Yuh not looking; yuh not going to see what is happening".

There was a big basketball tournament the other day with the handicapped people and a number of them. None of them probably knew about it or even saw what was happening to understand, and these people are asking for help, you know. They are socially displaced in the sense that they cannot even get jobs and for four or five years they have been talking care and they have not even been—how many of them even know where the centre for these handicapped people are? "Yuh doh know". They came in here "under a book ting" and make it—[*Interruption*] The hon. Minister might know, but "plenty ah dem doh know" what is happening. They come in here and the politics is just "ah book ting" and "dey saying" they care about people and they really are not reaching and touching anybody's lives.

"Dey talking" about socially displaced. How many people "dey helping"? "Yuh know, yuh living in ah set ah ivory towers at this time, eh, and yuh go'n come down and ha' to see de people and care again, yuh know. All yuh coming down to care again. I sure ah dat", Mr. Vice-President.

Hon. Senator: "We goin' home" at 1.30.

Sen. M. Shabazz: "I feeling to talk because I feel if I here now I want to find ah way to use up all my talking time. Leh we go". [*Laughter*] [*Interruption*] "Da is wha' all yuh want? Leh we go. We going. Even when ah run out ah points I go find points to talk about [*Laughter*] because dey is wha' is all about now. If you all using and all yuh only threatening people to go to 1.00 o'clock, we eh 'fraid dat". "We going" till 1.00 o'clock on this side. We have other speakers to put in and "we going dong de line". "Everybody here talking".

Mr. Vice-President: Sen. Shabazz, I am just letting you know, you have 15 more minutes.

Sen. M. Shabazz: Oh, you mean "fuh mih" first period? I have 15 after that? So half an hour, right?

Sen. Yuille-Williams: Take all.

Sen. M. Shabazz: Yes, Mr. Vice-President, find "ah" way to clean up our city at all costs.

What we would like to know on this side too, since there is a board in place and they are bringing this legislation to put a board in place because the board they have has not been really legalized by Parliament, so they come here, what are they going to do with that board that has been working? I feel a little scared, because now that I have shown them this document that the board presented, people might get fired from the board, you know, because "dah is how dey operate". They might really place a new board, put friends and put family, "how dey dus do it", on this new board and because I show "dat" paper that I got in my mailbox—because, you know, [*Laughter*] everybody getting things in their mailbox now, Mr. Vice-President. That is the new trend—somebody may suffer as a result of this.

Go back to the board. Take some of the recommendations that they have made because I know they are trying to rush through this Bill today as they have been rushing through Bills. Because we are in an election season, [*Desk thumping*] "yuh" want all the Bills to pass because one of their strong points, Mr. Vice-President, is how many Bills they passed. That is what they are going out with, how many Bills. They did two things, build bridges and pass Bills, nothing else [*Desk thumping*] and "dey now starting" to pave some roads. So what they may do—as a matter of fact, "dey nearly pave" somebody when they paved the savannah but [*Laughter*] "dat not" even important.

What we need to say, now that they are going that way, is take this socially displaced situation and deal with it much more effectively. Let this be a serious thing, Mr. Vice-President. If they are going to help people—because now they are reaching to the poor, you know. Now for the first time in the history of this UNC regime they are reaching to the real poor, the socially displaced, the vagrants.

10.45 p.m.

So, do not "mamaguy" them. The Government "mamaguy" unwed mothers; school children; and trade unions. I could show this Senate how the Government did it by giving them talk. Do not go to the poor; the vagrants; and the downtrodden, who Christ asked them to help, and all the good arbiters who asked the Government to reach out and touch in a serious way. Do not go and "mamaguy" them. This matter is looking like a "mamaguy" thing for them. The Government is talking in one way saying it wants to help their humanity and dignity, and it is talking in a "next" way to lock them up. They are talking two ways all the time and this Bill is a very good example of how the Government is talking in two ways—forked tongues; mamaguy.

It is sad and I am seeing it in some of their faces and I know that they know that they really should be doing something serious about "socially displaced. The Government must do something serious because the "socially displaced" is a serious matter. There are people out there whose minds are gone and who really

need help. As a matter of fact, when one drives by Tamarind Square—and I believe some of them may know where Tamarind Square is, but apparently they look away whenever they pass there. "Is a sad case". *[Laughter]*

Mr. Vice-President, the St. Vincent de Paul hostel that is running the home there and taking care of a lot of people in town. I think the budget for socially displaced persons was $100,000 this year to help the people there, while pensioners are getting more money. What is the Government's budget for this year to help socially displaced persons? But the Government is bringing a Bill to the Senate. That is no real money. Take some out of that $415 million we talk about today for the socially displaced. But the Government cannot touch that. The Government should find some money somewhere to do more for socially displaced.

Mr. Vice-President, when you pass by Tamarind Square and Columbus Square and see what is happening with these people, the Government must do more. It is necessary. The Government should scale down one of its macro projects and try to deal with these people in a better way. The money that the Government is using to double up on these projects, they should scale them down and give the people who are getting next to zero, something. I am making this appeal seriously. This is a serious matter because it is people's minds and lives that the Government is playing with.

Mr. Vice-President, who are the socially displaced? Look at the school children that are going to school in Tobago and there is only one maxi and about eight or 10 of ten have to miss school every day; they are socially displaced. The schools in Tobago that have no furniture and the children are standing up to look at the blackboard, they could be considered socially displaced. We could widen this matter and sound like we are ridiculous. There are so many things about social displacement that the Government needs to tighten on its definition. *Sen. Cabrera on his feet.* If the Senator has a point of order. At this time of the night if I sit down I might drop asleep, Mr. President, I cannot give way here. I want to be on my feet.

Sen. Cabrera: Sen. Shabazz would you regard people who cannot pay their bills as socially displaced?

Sen. M. Shabazz: Mr. Vice-President, could the Senator do that? He is mashing up the Senate. *[Laughter]* Some people really cannot pay their bills because the vagrants cannot pay their Bills and they are socially displaced. *[Interruption]* Well, I do not know. You are going to bring the talk to a kind of bacchanal talk. Get up and ask the question. He did not take anybody money. He was not doing any project that the Government had to call him off from doing and then get $36 million for not doing what he should have done. If the "boss" did get that $36 million he would have taken care of his house—lend him a raise.

Mr. Vice President, do you know why the Senator asks that question? He did not learn what was the best policy but I will not tell him.

Sen. Job: Honesty.

Sen. M. Shabazz: The Senator did not learn the best policy because—let me not go there because the Senator is in a group that does not know the best policy. They are very few of them but I will not go there. Mr. Vice-President, really and truly, I want to tell the Senator that some people who cannot pay their bills are socially displaced. As a matter of fact, the people who have reached the stage of vagrancy are socially displaced and it is people like you who could help them pay their Bills should really do that.

Mr. Vice-President, when last did the Government feed the poor? I went out on a "feeding the poor exercise" just a few months ago—I am not saying this to be boastful—as the car stopped there were people rushing around the car for food. It is not an easy matter. Do you know when they are going to feed the poor? When their spiritual mother tells them to feed the poor. Senator you should talk to them because you know about it. The Government is not feeding the poor again. They are not seeing about the socially displaced persons in any personal way, because every thing the Government does now is for political mileage and also to get back into power. It cannot be so. The Government should have a heart and this is the Bill that tells them so. This is the Bill to take care of the socially displaced in our country.

I am saying that since the NAR set that place up at Riverside Plaza and the PNM had a term after, in this four years, the Government should have touched on that matter and do much more with it than it is now. This is, indeed, a time of big money in the country. Since the NAR set up that centre, oil prices have never reached the price that it has reached and in the centre of the town there is a car park still housing people under pressure in Port of Spain and the Government is not doing anything about it. The Government is not even looking to paint over the building and make it look nice, but they are bringing a Bill as if they care about the socially displaced people. They should take a walk over there and try to move these people out.

Mr. Vice-President, what are the housing areas the Government put in place? There were different institutions that would go down there and pick up the socially displaced persons like the old, young, strong, the vagrants, pipers and everybody living in one place. Try and pull them out. Pull out the old people, at least, from in there who are suffering and have to tie up their belongings in a bag and hide it from the fellow who is piping and coming to thief it in the night. You do not know that is happening! Well, I know that is happening. I visit the centre

from time to time and you do not know that! The Senator would like me to finish now because they cannot take that kind of talk. This is a serious matter. The Senator does not know that is happening.

Mr. Vice-President, I would like to invite the whole Government team to take a walk and I will walk with them inside the centre. I want to ask the hon. Minister who presented the Bill to let us walk over there and watch how people are really living. With this kind of money that the Government is getting it is a sad indictment on them. Mr. Vice-President, it is sad. We are looking at oil prices at $16.00 a barrel and oil is approximately $20.00 plus a and there is a car park—a big tower in town —with people living next to nothing.

Mr. Vice-President, I could pass and show you where there are people right now who are taking cocaine right there—all downstairs on the steps. The AIDS are living with the old people that really served this country and cannot get a place. The Government should walk across and see what is happening—wake up Sen. John for me so that she could hear what I am saying. *[Laughter]* It is a serious matter. Hon. Senator it is serious and I need to speak to you too hon. Senator. It is sad. It is a serious thing. *[Laughter]* There is a place called Shamrock Court in San Fernando. I do not know if anybody here knows where is it. That is where they have other disabled people. They should walk and see the place and try to reach out to the people.

Mr. Vice-President, although this may sound like a joke, I just want to talk about the handicapped people down on Wrightson Road who have been fighting for years for a proper building. We need somebody in the Government with a heart to really reach out to these people. Sen. Theodore helped them with buses through the Coast Guard the other day. They did a big thing here. There is no way these people are getting help. There are a lot of people inside there who were interviewed to try to help them get a job because they want to work and do things. Not because they are on a wheelchair—and there is nobody there with a heart and so much millions passing around. The Government had a big budget dealing with millions and like they are not studying this part. They are only studying to do things like pave the road and “nicen up” somewhere and make things look good and they are not studying the people. The road will not vote for them. No matter how the Government fixes the road in St. Joseph it is the people who walking on the road who has to vote for them.

10.55 p.m.

The Government is only thinking about doing things such as paving the roads and making things look good, but it is not thinking about the people. I want the

Government Senators to know that the roads would not vote for them. It does not matter if the Government fixes the roads in St. Joseph; it is the people who are walking on the roads who have to vote. If the Government does not touch the people—*[Interruption]*

Mr. Vice-President: The speaking time of the Senator has expired.

Motion made, That the hon. Senator's speaking time be extended by 15 minutes. [*Sen. D. Montano*]

Question put and agreed to.

Sen. M. Shabazz: Mr. Vice-President, I could really understand the reluctance of the hon. Leader on this side, at this point in time. He is reluctant because he feels that I should not be putting that kind of pressure on the Government. He is watching their faces and knows that—Thanks for the time, Mr. Vice-President.

We have been told that we would go until 1 o'clock in the morning, I was trying to do that—[*Interruption*]I have to have a heart and not be like these—

Mr. Vice-President: Just as a matter of information, as was announced at the start of the session, we also have the Equal Opportunities Bill to deal with.

Sen. M. Shabazz: "We good tuh go." Mr. Vice-President, what I did not tell the honourable Senators on that side is that really I sleep more during the day. As I told the hon. Minister, I am usually now going into a chat room on my computer; I am now waking up to go into a chat room. I could chat from now until 2.30 in the morning. "I good tuh go. Doh frighten for me."

Mr. Vice-President, the Government needs to train people if they are serious about helping people in the centres. The Government needs to find programmes that will train people to get jobs. The Government should help persons to get involved in small businesses. There is also the need for good psychologists who would talk to the people. Proper programmes need to be set up for these socially displaced persons. The Government needs to find job situations.

We do not want the Government to tell us about a lady who went into one of these centres, she is a success story, she came out and got a house, and she has a key. The Government needs to help people get keys. With the type of money that the Government is playing with, it needs to help people get keys. The Government needs to find a housing programme for the country, but mainly for the vagrants in this country.

The Government's housing record is not good at all. Its road record was not good, it has now started to step up, but that is not good enough. The Government

has built many bad roads before they brought a road paver. The Government's housing record is not good. The Government did not build any houses in this country: it completed what the PNM started. When we look at Almond Drive and the John John Towers, many of these houses are empty. It would be best if the vagrants, or the persons who are socially displaced, are moved into one of these apartments. Instead of selling those apartments, two or maybe three of them should be placed there, so they could try to build back their lives. That is the dignity that we want to see. We do not want the dignity to be a talk dignity: that you helped them to maintain their dignity. How could you help people to maintain their dignity if you are not helping them?

Again, I want to make the point, that that is where the Government has to start. We want to see the Government taking care of the people. The Black Stalin sang a calypso about that. The calypso stated, if a man worked hard for this country, and he was unfortunate and did not get the type of success that he wants, and ended up as, what you would call, a failure and this country cannot help him, then, something has to be wrong.

People talk about young vagrants on the streets. One of the saddest things to see is an old man or woman 60 or 70 years old who does not have a place to live. Although I drive a car, sometimes I walk through Port of Spain and see them. I walk through Port of Spain a lot. Sometimes I would see old people who do not have $2 to go home. They would say: "Ras, give me a passage?" Sometimes they may want something to eat. They may ask you all, but they come to us as Rastafarians, because they feel that we would give them easier. It is sad and touching.

Some of the Senators on the Government Benches might sleep through it. Some of the Senators do not want to hear: their heads are hurting *et cetera*. This is serious business. This is a debate that should take the whole day. I wish every Senator on this side—I would like to hear the hon. Reverend on a topic like this. I hope, tonight, he is not closing off. I hope the hon. Reverend could inject something into this. We have two Reverends here. I hope, tonight, we could hear something from both of them about the socially displaced persons. I do not want the Government to take this one as though it is nothing. This is really when the Government is going to get to go to heaven: when they deal with these people. They may help the rich, they are helping the rich, but when one helps the poor, one gets more blessings. That regime is a regime of helping the rich. It is the poor that it has to help, because those are the people that it has to touch. We are asking the Government to reach out and touch them.

I would like to hand it over to one of the Reverends, at this point in time, to tell the Government how to touch and help those who are called the socially

displaced persons. I want one of the Reverends to take it from here, and let the Government know what must be done. The Government needs that kind of discourse. I am looking for that support from one of the Reverends. Maybe both of them can speak.

God has kept us here for a serious reason. That is the lesson that this Government needs: how to help the poor, rather than how to help the rich and themselves.

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

Sen. Laila Sultan-Khan Valere: Mr. Vice-President, I am not a Reverend, but I am a psychologist, and I do agree with the Senator: this is a very important Bill. I want to begin by commending the Government for putting such serious thought into such an important issue. I have to commend them on this. A lot of serious thought went into this. The Government has spent a lot of time on this.

I looked at this Bill thoroughly. I did some work on this Bill on my own. I got some up-to-date information from the Centre for Socially Displaced Persons, and some of the care centres in Trinidad, to see exactly what is taking place and what needs to be done.

I am not saying that the situation is a perfect one as it is right now. There is a lot of room for improvement. There has been some improvement. The number of socially displaced persons—I am saying vagrants—has decreased in the last year or two. This is reflected in the up-to-date report we have now. I would agree that there is a lot of room for improvement, but this Bill, certainly, is an effort to make some improvement.

Having said that, I have some concerns about the Bill. I just wanted to bring it to your attention. I looked at the way the Government has set up its assessment units, the care centres, the board and everything. It is well thought out. I am a bit concerned about how well this can be implemented.

We know that most of the socially displaced people have some degree of mental illness, and somewhere there is a social imbalance, otherwise they would not be socially displaced. There is some degree of mental illness in all of them, greater or lesser. Some of them are very ill with HIV and things like that, and some of them are aged. We have to look at what is causing this problem. I am concerned that we are assessing them, yes, and we have to place them in the right

unit. We have four different areas where they could be placed. This is on page 14. They are:

(i) a mental institution;

(ii) a medical institution;

(iii) a detoxification or drug rehabilitation centre; and

(iv) a care centre.

I am wondering about the availability of all these institutions. Do we have all of them set up to deal with these socially displaced persons?

11.05 p.m.

I agree that you need to put them in these areas, and you need to separate them. Some of them definitely should not be in a care centre, they would have to be in a mental institution. Some of them who have AIDS would have to be in a medical institution, but do you have places for them. I heard you mention some of the places that are being made available. I trust that you will ensure that you have these places available, because you have to implement this Bill. This is a good Bill if it is implemented well.

Another area I am concerned about, again with implementation, is on page 15, clause 25(3):

"A person who contravenes sub section (2)..."

That is the person who is in their care.

"commits an offence and is liable on summary conviction to a fine of one thousand dollars."

That is the family who is looking after them. I cannot understand why you would fine the family if the person leaves. You had an amendment where you said that the family—I am concerned about that—should report to the assessment centre within 48 hours. You changed it to "as soon as possible" but then if somebody leaves and the family does not report it, why would you charge them a fine of $1,000? That does not make sense to me. Especially if somebody is mentally ill and they leave, why would you fine the family?

Again, in clause 29 any person who comes into a care centre and leaves without permission and returns to street life—that is one of the socially displaced persons:

"commits an offence and is liable on conviction to imprisonment for a term not exceeding 3 months."

What is the purpose of that? Why would you put them in prison when you, yourself, said that they should be either in a mental institution, a medical institution, a detoxification or care centre?

Sen. Yuille-Williams: A care centre is a prison.

Sen. L. Sultan-Khan Valere: A care centre is a prison? Oh! It is a joke, okay. I was not under the impression that a care centre was a prison.

I would like to see that be deleted or changed in some way. It does not make any sense that if they leave, for whatever reason—remember most of them are mentally ill, they are imbalanced, so they may be leaving the care centre because they forget where to go back to, or for some other reason, they may not like someone in there, so I cannot see the point. If these people need the help, they really do not need to be imprisoned for any reason. I hope you will make a change in that.

Besides that, Mr. Vice-President, I feel that this is really a good attempt at dealing with a very difficult situation, and I want to commend you for it, and I certainly hope that you will be able to implement it and it would not be just paper, but thank you for making the effort.

Thank you.

Sen. Diana Mahabir-Wyatt: Mr. Vice-President, I wish I could agree that this is a good Bill, because I do not think it is. I think that it has been drafted, perhaps, with not as much care and attention as it should have been. The intention of the Bill is very good, and I commend the Government on that.

The fact is, the Social Displacement Unit and the Board are already in place, and this is really almost an “after-the-fact” kind of thing, which is just being put into place to legitimize it, but there are some changes that I think they are going to have to look at.

One of the things I would like to comment on is that Sen. Shabazz talked about vagrants a lot and he did not use the term "socially displaced persons" he referred to “vagrants”. I recently was talking to one of the people from the assessment centre who referred to himself, with a great deal of pride, as a “socially displaced person”. He no longer was carrying the pejorative assessment of, "I am a beggar" or “I am a vagrant, " I think that by defining people as

“socially displaced persons” rather than “vagrants”, this Bill has done something which is good.

However, there are a couple of things that are missing, and a couple of the concepts which I think are totally misplaced. I would like to, however, before I make a contribution on this, commend the St. Vincent De Paul Society for the work that they have done in helping socially displaced persons. Their role in what has happened, in the improvements we have seen, lately has not really been commented on, and I think it should be.

To make specific statements—because it is late at night, and I would like to see some of the problems here corrected—on page 6 under Part I, the definition of manager should read:

> "Manager means a person having the management or control of an assessment centre or a care centre."

The care centres referred to further on in the Bill refer to “any person admitted to a care centre shall be the responsibility of the manager of the centre”, but it does not include "manager" under the definitions so that should be changed.

Under the definition of “socially displaced persons”—now, there is a distinction between socially displaced adults and socially displaced children. Children who are homeless are “street children” and need to be taken care of under different legislation. In fact, next week we have legislation coming to deal with children. I think here what we are talking about is socially displaced adults, so I believe that we may have to amend this to read:

> “Socially displaced person means any idle adult habitually found in a public place.”

You will notice that it says:

> “…and who by reason of illness or otherwise is unable to maintain himself…”

So this does cover the AIDS victims that Sen. Shabazz spoke about and those who are otherwise ill. I am wondering whether or not we should not between the words “himself” and “has” put the word “or” so it would read:

> “…or has no means of subsistence or place of residence, is unable to give a satisfactory account of himself…”

If, because of illness, they are unable to maintain themselves, they are socially displaced persons. They may have a shelter of some sort in which they live, but they are still socially displaced because they need the help of one of the

institutions which are listed further on in clause 21(2). I think we should amend that to put the word "or" between the words "himself" and "has".

I notice in the amendments that have come up from the House—to put Sen. Shabazz's mind at rest—there is a definition of "field officer" in some detail, and under the definition of "socially displaced person" they have included the word "or damage", "is likely to cause annoyance or damage to persons frequenting that public place". It is not enough that somebody be annoying, but they also have to be actually dangerous.

Concerning the responsibilities of the socially displaced unit, there is nothing wrong with this, it is just that it does not indicate that the unit should report to the board or should be acting under the directions of the board, which is the normal relationship that exists between a board and a unit. This unit just has to advise and make recommendations to the board, but there is no indication that the unit is responsible or accountable to the board. I think that that is another amendment which has to go in there, and I am going to suggest that that amendment be made.

Under clause 7 I have comments to make here about the social displacement fund. You will notice that under these five subclauses in clause 7 there is no indication about Government contribution to the Social Displacement Fund. It states:

> "The fund is established for the purpose of obtaining contributions from corporate and other citizens."

Absolutely nothing about Government contributions, nothing about international agencies, where many of the non-governmental organizations get funding for this kind of thing. I would also suggest that a subclause be added there, that money voted by Parliament, from time to time, and that contributions from regional and international agencies be added as well, because there are regional agencies that also assist.

Under Part III when it comes to the Social Displacement Board, the only indication—well, first of all, under subsection (i) is included on the board a representative of the Businessmen's Association, but it is normal practice in social agencies in Trinidad and Tobago where you have a representative of the Business Association, you also have a representative of NATUC or the trade union movement. That has been left out and I would like to suggest that that go in.

Insofar as this section as a whole is concerned, it is pretty sketchy, and under section 12 the responsibilities of the board are simply for the overall policy and direction of the unit. This is the nearest that it gets to establishing any kind of control over the work of the unit. In terms of government legislation setting up a

social unit, this is, perhaps, the skimpiest section I have ever seen on functions, powers and duties of the board. It is highly unusual and I think that it needs some serious work.

Under Part IV when we come to the assessment and care centres I do accept the concerns that have been mentioned by Members about the role of Government in relation to putting people into centres, and being careful about their human and civil rights. But clause 16 does ensure that where people do not voluntarily wish to go into a centre, that this be done through a court procedure. This is consistent with human rights, as outlined by the United Nations. However, what concerns me here is that there is no indication that the socially displaced people would be getting assistance or representation from Legal Aid in presenting their side of the story.

Most of these people are reasonably inarticulate and unable to plead much of a case for themselves. I think that in the regulations, if we are going to get regulations, there should be included a provision for Legal Aid assistance, in presenting their cases before the court, to be given to the people who are referred to in the report.

One of the other points which concerns me deeply is in clause 19, which is talking about the establishment of care centres. I do not have the documents in front of me, of course, but I do not recall anything in the budget for this year that was put aside for the establishment of care centres. Clause 19 states:

> "(1) The Minister may subject to this Act issue a certificate approving the use of any house or home as a care centre authorising the person named in the certificate to admit a socially displaced person for care and treatment…"

I am assuming that this is a kind of a short cut to saying that we do not actually have care centres, so what we are saying is that people in the community may offer to take in people who need to be looked after, and we would make that a care centre.

There is no budget for this; there is no indication here if this is going to work in a system similar to a foster care system. Are these people going to be paid? Is there going to be a government stipend for each person who is taken care of? You cannot just leave it like this. It does not indicate the responsibilities of the care centres, the homes that are being transferred, or the manager's responsibilities. I am not going to start drafting at 11.30 at night.

I would also recommend—and reflecting the concerns by other people under clause 29—that this be amended to read:

"A person who without the permission of a manager, leaves a care centre to which he has been admitted in accordance with clause 16 of the Bill…"

In other words, when the court has placed somebody in a care centre, that is the only time when someone who leaves that care centre should be considered to have committed an offence, and be subject to a fine and imprisonment. It is totally unfair and wrong if somebody has voluntarily committed themselves under clause 14, sought admission in a care centre or an assessment centre, once they have been placed, because this is a voluntary free movement of a free person looking for help. If they subsequently decide that they do not like the care centre they have been sent to, that they are being unfairly treated or their human rights are being trampled on, and they volunteer to leave, to say that this person is going to be liable on conviction, to imprisonment for a term not exceeding one month, as the amendment has it, is to my mind wrong and is a violation of human rights. I certainly would not support the Bill in this form if it is going to go through in that way. I think that has got to be amended. The regulations that have been listed here under section 33 do not cover the points that I have raised and if some of them are going to be included on the regulations that should be reflected in section 33.

11.20 p.m.

So while I commend the Government for bringing the Socially Displaced Persons Bill to us, as far as I am concerned it is not a very well drafted Bill; it has some serious flaws and it needs some serious amendments. I support the idea of the Bill, but certainly I do not support it in the form that we have before us.

Thank you very much.

Sen. Joan Yuille-Williams: Mr. Vice President, I heard somebody said, "Oh God", but I would not be long and I am glad I am coming after Sen. Mahabir-Wyatt, because I would have hated to think that I had to make some of those comments, although I agree fully with all that she had said. I am glad somebody else did it. I will tell you why.

When I heard the hon. Senator introduce this Bill, I was a little disturbed. I wondered how many of us in the Parliament were able to identify with what he was saying. I think Sen. Valere hinted to it. How many identified with, not only the Bill, but the assessment centres, the care centres, the field officers? We live in Trinidad and Tobago, you know. We live in this country. How many of you really know these things? Let us not fool ourselves.

That is why I am glad she made the comments on the Bill itself, because they had to be made. My whole Bill is marked up. I had all these comments to make, but I am glad I did not have to make them myself, because I would have been doing it under duress. I would have been making these comments knowing fully well that a lot of what I am saying here does not exist or will not exist. That is what hurts. Because, you see, coming from the Ministry—and I am sorry it is Sen.

Baksh who had to be here tonight—we know about foster care. Three years now I am hearing about foster care system. Every budget we hear, they are setting up foster care. How many of you know any places with foster care? I think there is probably one home with two children, and we are talking about on a national basis. It worries me. Every year it is the same thing and we are getting nowhere. We are having all these bits and pieces of legislation; cannot implement them; they are looking good on the books.

The Senator spoke about the relief centres. I wish he did not just talk about those centres, because this started since the last administration. There were three of them when we left. There are still three. Do you remember the soup kitchen? You had the food and you had another module where you were taking care of the person; giving them some kind of trade; helping them to find themselves; building their self-esteem; putting them on their feet to go back into the world. That module is no longer there. It is a case of just serving people food.

So to come here today and talk about those relief centres, really upset me because we have gone nowhere with them. Just when we left, the Revival Time Assembly in San Fernando had applied to be a relief centre. They struggled. Up to today they have their old building on King's Wharf, a large building. They begged for a relief. It is still empty and no assistance is forthcoming. So the programme never moved. And to come here and talk about the relief centre being a place for socially displaced persons, just upsets me. That is why at this hour of the night I really feel hurt.

This piece of legislation we have before us—and I agree with Sen. Mahabir-Wyatt—is a badly put together piece of legislation. I would have gone along, even if it is a bad piece of legislation, if I could believe what is being said in here. But I cannot believe it. Your heard the assessment or care centres—Riverside Plaza, St. Vincent de Paul is struggling to work on that. The Government cannot boast about Riverside Plaza. When we came here today—Sen. Montano would remember—one of the inmates of Riverside Plaza was sitting there and he asked a few of us to visit them at lunch time. That place is St. Vincent de Paul. Do not take any credit for it.

I would like the Government to tell me what they have done to help these people. Do not take credit for that. An non-governmental organization (NGO) is doing that, and really working hard. Those people try to raise funds to carry that place. Where is the money for it? Then you talk about the one in San Fernando, Court Shamrock; that is where it is. That one was started by Hazel Rogers-Dick when she first became a mayor. Her mother gave her this whole idea patterned after some place she saw in England. So she thought she would open this centre. We always give them jokes about it. And they struggled. Even after she left they

carried it on. Mayor Ferriera and others put together—they used Court Shamrock, because she said, " at least let us do one of the things I said I wanted to do."

That is how they started it there. The Minister came down very hurriedly to be part of the opening ceremony. I know exactly who is running that; I have seen that place. That place is run by one Mr. Brathwaithe from the National Insurance Board. He works there now as the manager. They are struggling to get that place. I do not see any Government involved in that centre. I do not see any money going there. I know they are out there asking people. I have seen people go to that centre. Let me tell you what happens there. He tries. You go there; there are a lot of drug addicts. It is a mixture of people, all types; vagrants, whatever it is, they try to keep them there.

They go into that centre. If they are drug addicts, he sends them away to get some help; they come back; they spend three months; after that time one does not know what to do with them, so one actually opens the doors and let them leave so that others could come in. One tries to give them small jobs; pay them some money while they are there, but after a time one has to send them away because one cannot keep them living there forever.

So you cannot come here tonight at this hour and boast about these places at all. They do not exist. We have to compliment the non-governmental organizations in this country for doing this work. And to hear the Government taking those same areas and boasting, I could not believe.

When this Bill came here, in my ignorance I thought they were going to tell us about their plans that they would be setting up. I did not know they were going to be riding on the backs of those organizations. They do not even fund them. Quite rightly, there is nothing in the budget for these places. That is why, as Sen. Mahabir-Wyatt said, when you look at the purpose, you are establishing a social displacement fund—do you know why you are establishing the fund? The fund is established for the purpose of obtaining contributions from corporate and other citizens. You should be ashamed of that.

You come, as a government, and telling me the fund is to be established to get the private sector and other persons to do it? So what are we doing as a government? Where is the taxpayer's money going? They just push this before you; it looks good, but people are not understanding. When Sen. Valere saw it, she really said it looked good. Anybody seeing this outside of Trinidad and Tobago will say this is what Trinidad and Tobago has. But nothing here works

and it will not work. All these care centres, like the foster care, it will not happen. It is not going to be happening at all.

The same thing with the Division of Aging. Do you remember when we did that programme here—I cannot remember what it is—and they said there would be a Division of Aging? I asked the Minister where was the Division of Aging. He did not answer me, and he came back the second day and still could not answer me. Now we hear that the young people who are going to be on GAPP are going to be the Division of Aging. There is no Division of Aging. The Bill has a Division of Aging, but up to now they have not set one up. It is the same thing that is coming out of that Ministry all the time, that we are being fooled that things are happening and they are not happening.

That is why I sit here tonight and really regret it. I saw some field officers. Who are the field officers? Tell me how many there are out there. I would like somebody to tell me how many socially displaced persons there are. What is this going to do? You must have had funding for this, why you brought this at this time. Why have us here at 11.30 p.m. going through a Bill for which you have no money to put into and you are expecting the private sector to do it? They are doing it already. The NGOs are doing their work already. They are trying and they are working very hard. You have a board with nothing at all to do. And you are not going any further. You are not even looking at the things.

Sen. Shabazz asked them to visit the unit, but they are not doing that. If the Senator had visited these places he would never feel proud to stand here and boast. There is nothing to boast about. Who is the assessment officer? Who is trained? They said they wanted an assessment on the board. What training would that person have? On that board where you have a doctor, nurse, social workers and you want to have an assessment officer, what skills would this person have? Because to assess some of these people you just do not want one person; you need to have other persons who can assess these people, because there are all types.

I think what you needed to do here tonight was to compliment the non-governmental organizations for the work they have done. In terms of the Bill, it cannot work as it is. I am still wondering if we agree to the Bill, where do we go after tonight? What will happen? With these three small units which were put up by the NGOs, what are we going to do with the thousands of people we have in Trinidad and Tobago? How are we getting them inside there? Are you going out there to collect these people? Which field officer is going to look anywhere for these people? Who could take them there? I agree with Sen. Valere. You are going to carry these people to prison and carry them to court if they walk away. Your own people walk out of your house and you cannot control them but you are telling me you are putting them in an institution, or you would put them in a care centre which will not exist. There is nobody out there who is going to open his or her home for care centres. So do not fool yourselves.

I do not know how the Bills get here, but I remember when I was a part of the last administration we had to take these Bills to a committee—I cannot remember the name of the committee—before they get into Cabinet. That committee would scrutinize that. The technical officers will be there as well. If this used to go through that same process, they would not bring this here. We cannot pass this. It is unfair to ask us to sit here tonight and pass this. It is not real. Do not say things that are not true.

All these nice things that they are talking about, "urgent admission" and "voluntary admission", "medically recommended persons", what is that all about?

Hon. Senator: It is urgent.

Sen. J. Yuille-Williams: Oh, it is urgent. Go down the road. All of that is foolishness. All these different institutions, a mental institution, a medical institution, detoxification and drug centre and a care centre, all these places they are putting. When the Senator said people were sent to prison, that is why I told her prison must be a care centre also. Because where else would you take somebody who walked away from a so-called care centre? You send them to prison. The person is sick and walks away from the care centre and you are going to send them to prison.

Mr. Vice-President, I think that we really need to be serious this evening, and I urge the Government not to waste time. Just pull this back. Do not even put it to the vote. Let us be honest. We are saying we care about people. This does not show that we care. This does no credit to any government. Even if you put this there as one of the Bills that you passed, it would just give us a whole lot of problems. If this is something for the hustings, take it off. Because if you take this to a platform, then you would understand what I mean. There is so much in it that you could criticize through the entire Bill.

We do not even know what are the functions of the board. They are not spelt out. Normally you spell out the functions of a board. Nobody knows for what the board is responsible. At this time, minutes to 12, we could go no longer. *[Interruption]* Let us be serious about it. We care about the socially displaced; we want to do something for them; let us be serious and do it. I went through this very carefully and I was glad Sen. Mahabir-Wyatt spoke, because I would hate that we would sit here and pretend we are going into the committee stage. We do not want any committee stage. It really needs to go back. I have seen them take

pieces of legislation back. Look at the legislation; make it realistic and see what they could put in place.

In fact, all those places where people are housed, there is no kind of halfway house or anything for anybody to go to after you leave these so-called centres. We have nowhere else to put them. So we need to put all that in place before they could bring this. That is why I said if you go to prison it is a care centre, because there is nowhere else for them to be placed.

11.35 p.m.

Sen. Rev. Daniel Teelucksingh: Mr. Vice-President, I can assure you that I am not going to put anybody to sleep. *[Laughter]* For me, the spirit is willing but the mind is tired. I certainly express my displeasure and disappointment that we have allowed this Bill to be subject to a diluted study at the worse hour for any parliamentary debate. *[Desk thumping]*

The Socially Displaced Persons Bill deserves better attention. Maybe, my only Private Member's Motion I might say in his place, the first, not the last. The Vagrancy Motion—and I enjoyed it very much—was when I came in this honourable Senate and got exposed to life in Port of Spain a little more than I previously had. I was really touched by seeing those people whom I called "broken humanity" sleeping under the shops and stores in Port of Spain and they are still there. And I said it, you know, and I will say it again. A Bill like this is very dear to me. I feel very disturbed that Governments—over the years, maybe, for the last 25 years—have found money to do everything and anything.

The other day I was reading about how much land we took and gave to some strangers to build an electricity plant, InnCogen, I mean. We have never been able to really settle down and find lands and also source money. We have found loans everywhere in the world but never was able to have this as a priority programme. Get the loan and construct the necessary centres for the socially displaced. I feel very disappointed. I remember one effort by a Government to take them and relocate them on Nelson Island and somebody left the key in Port of Spain. It was a real joke.

I really feel that the Government is playing the fool with this Bill. *[Interruption]* It is unparliamentary. You should go in the Lower House the last day. I would strongly advise the Government not to get into the stage of the committee. Do not rush through this Bill for God's sake. Give us some time, at least, at Committee Stage, to do some work on those clauses and if necessary, try to make the Bill more presentable. I really feel we are not doing justice to all those who spend a lot of time; all the non-governmental agencies unit that have

been responsible for taking care of the socially displaced, they have a stake in this. They are the people who have been the movers and the shakers, as far as this aspect of social care is concerned. I would strongly advise the Government that we defer that concluding stage of this very significant piece of legislation. If even we find time to continue the debate but at Committee Stage I think we need some more time to look at those clauses.

I do not believe we could do those changes tonight. But basically I know all Governments tried so I would not want to merely compliment this Government. The last Government tried, and all of us tried. And then you know the big question is: I always asked myself: How come those vagrants land up on our streets under stones, Frederick Street, Charlotte Street and Henry Street and also on High Street in San Fernando and in Princes Town you will find them. What happened they did not come from a home? They do not have families? We pay a lot of social workers, have these social workers been trying to locate the families of these people who could assist in rehabilitation? Have we been doing this? We need to do this. I would strongly urge, most respectfully, suggest to the Leader of Government Business that he thinks about deferring the Committee Stage, if even you want to debate this whole night. This Bill is very precious and dear to people like myself.

I still would like to say a word of congratulations for all they have been doing. It is not easy to deal with the poor and the broken of humanity. But they are very much a part of our society. This Bill is an indication that we care and we love them.

Thank you very much.

Sen. Prof. Kenneth Ramchand: Mr. Vice-President, I will not take very long but just out of wickedness, if everybody could talk I could talk too. I think that the intention of this legislation is good and I agree with Senator Teelucksingh and Sen. Valere that the Government is interested in the problem and that the Government ought to be commended for trying to deal with the problem. But I think that the hour at which we are debating this Bill does not allow people to think clearly or to express themselves forcefully. I am worried that if I talk too long, my fellow Senators would fall asleep. If I get too critical and suggest many changes, the Committee Stage would take too long. So I feel that what I have to say is being curtailed by the lateness of the hour. I think that there are a number of weaknesses in the Bill, and I would like to just mention a few of them and to lend my support to the opinion expressed by Sen. Teelucksingh that the Committee Stage should not be taken tonight.

Mr. President, this is not a joke but you know that the category "socially displaced person" includes many more persons than the ones contemplated by the Bill. We have narrowed down what we mean by socially displaced persons to the ones contemplated by the Bill. Our problem of socially displaced persons is much larger than this Bill would imply.

I am unhappy with the limited definition. And I am not sure that the word "idle" should be attached to socially displaced persons since that would mean any idle person habitually found in a public place. Does it mean unemployed? Or, does "idle" mean not having something to do? We have to find a word that would not have a pejorative connotation. If you say, "they are idlers" you are already passing judgment upon them, and I think that we should not, in the definition of socially displaced persons, give emphasis to a word like "idle" which puts us against them, as it were, from the beginning.

To get down to the finer details, there is the question of funding. I understand that the Government does fund many of the places that take care of socially displaced persons. And that the Government has opened one or two new ones. This Bill would seem to call for the opening up of new ones, but there is nothing in the Bill to indicate that. So I am granting, hypothetically, that the Government may be responsible for funding the centres themselves. But I do not think that the provision here, that the unit should raise funds from corporate sponsors, I do not think this is a very satisfactory way to start. I think the Government really has to allocate money for the establishment of the social displacement unit and the Board, and give them a budget to operate from. They may raise funds themselves but they really have to have starting money.

Next, I feel that this unit is going to be over administered. There is a unit that is going to do the work and there is a Board which is going to run their lives. And if you are doing something on a shoe string, I think the administrative arrangement is much too elaborate for what is going on here. Incidentally, unless my addition is wrong, clause 82 says:

> "That the Board shall consist of a Chairman and ten other Members."

But when I count from "a" to "m" I am getting 13.

11.45 p.m.

I am not getting 11 but 13. So do they mean 13 or 10 or 11, or what have you? I hope the Minister would look at that and clear that up. But I am worried about what the board would really do. Would the board be a kind of brake on the

activities of the unit? Should the unit, which is doing the work, not be given the autonomy to get on with its work without having to report to the board and being told what to do by the board? At least something has to be done to allow the unit to get on with the work.

Like other speakers, I am very unhappy about the procedure for putting somebody involuntarily into care. I do not know, unless a person is very sick and is lying there and says, "Ah doh want to go, ah doh want to go, ah doh want to go", I do not feel that one should violate the person's right to say, "I do not want to be put in any care. If the person is physically capable of walking around and standing and taking minimal care of himself, I do not feel we have a right to force him into an institution, and certainly, after he is forced there, if he runs away we cannot jail him. Quite apart from the justice of the thing, what is the point of jailing him?

The Government says that after he has served his sentence he may be returned to the institution. So what is going to happen to him in the two or three months while he is languishing in the institution? What, are they giving him a cooling off period, a chance to see how much worse life could be, a chance to lie down in the jail and say, "Oh God, ah wish ah could go back in de care"? To me that is the only purpose that putting him in jail could serve, to make him see how terrible the prison is and how going back in the institution is slightly better. So I think there is a possible violation of rights there, Mr. Vice-President, and I am not happy about it and that is why I wish we had more time to think about the issues.

I find it difficult to imagine how, if one is forcing a person into an institution against his will, he can be moved in a humane manner and in such a way that his dignity is preserved. If I tell you, "I do not want to go", you then get a court order to force me to go and you come to move me, I "do not" see how you can move me in a humane way if I "do not" want to go and I "do not" see how my dignity will be preserved. So:

> "Where the court makes an order—the Unit shall arrange for a field officer to remove the socially displaced person…"

First of all, one man "cannot" move me. If I "do not" want to go, one fella "cannot" move me.

> "…the Unit shall arrange for a field officer to remove the socially displaced person named in the order in a humane manner…"

If I was moving him and he "does not" want to go, I would not be moving him in a humane manner. "I would be telling him, 'If you do not keep quiet and come I will cuff you down' or, 'I will beat you'", or something like that. It is only—I would not myself do that, "eh"; I am only hypothesizing.

Sen. W. John: Mr. Vice-President, I have been inhaling for over an hour now the scent from the cesspit coming through the ventilation system and I feel I cannot really take it any more. It is getting unbearable. [*Desk thumping*]

Sen. Prof. K. Ramchand: So, Mr. Vice-President, putting the person into the institution against his will is a very dodgy thing to start with and then when he runs away, they collect him and put him in jail. That seems to me to be adding insult to injury. It does not make sense, as I said, after he is in jail and has served his sentence to put him back into care. I am worried about the dignity of the person, the forcible removal.

There is another thing I am worried about here, Mr. Vice-President, in principle. The thing calls itself "Arrest without a warrant":

> "Any person who is reasonably suspected of having committed an offence under section 29…and who refuses or fails to accompany a police officer to, or to appear before, a Magistrate's Court when required to do so for the purposes of this Act may be arrested without a warrant."

Again, I feel that we are dealing with people who may be drug addicts, people who may have sexual diseases, people who may be in other ways debilitated, people who have broken wills, people who are not healthy, people who are mentally not well, and sometimes physically not well, and they are being treated as idlers or people who can be arrested without a warrant or people who can be shoveled off the pavement and taken to a centre.

So, Mr. Vice-President, I think that this is an important Bill and it deserves longer, calmer and cooler discussion. I would support Sen. Rev. Teelucksingh in saying that we either abort the discussion now or, if we continue the debate to the

end, make sure that we do not go into the committee stage. Thank you. [*Desk thumping*]

The Parliamentary Secretary in the Ministry of Social and Community Development (Sen. The Hon. Nizam Baksh): [*Desk thumping*] Mr. Vice-President, let me firstly congratulate the speakers, my colleagues here, this evening. I know we are late into the night. You know, those of us who are accustomed to working shift and so forth know that this is termed the "dead man's shift". It would appear that a number of people are complaining of the stench we have here.

ADJOURNMENT

The Minister of Public Administration (Sen. The Hon. Wade Mark): Mr. Vice-President, in light of the complaints that we are receiving, I would not like any one of us to be responsible for any ill health that could arise, so what I would like to do, Mr. Vice-President, at this time is to move for the adjournment of this Senate. What I would like to suggest to my colleagues is that Sen. Nizam Baksh would continue to wind up the debate on this matter at the next sitting. Of course, the first thing that we said we are going to complete is the Proceeds of Crime Bill, so we will deal with that and then we will go on to the Socially Displaced Persons Bill.

There are some other matters about which we would like to alert Senators; that is Motion No. 1, Motion No. 2, Motion No. 4 and Motion No. 5. They may not be taken in this order but those are the Motions with which we want to deal at the next sitting, as well as the amendments to the Proceeds of Crime Bill; conclude on that particular matter that we are dealing with today, taking into account all the rich contributions that have been made towards addressing this Bill and making it very wholesome and relevant; and of course we want to deal with the Equal Opportunity Bill. So all these matters are on the agenda but we will start at 1.30 and hopefully we would not have this problem at 12.00 the next day.

Mr. Vice-President, I therefore beg to move that the Senate do now adjourn to Thursday, September 28, 2000 at 1.30 p.m.

Question put and agreed to.

Senate adjourned accordingly.

Adjourned at 11.55 p.m.

WRITTEN ANSWER TO QUESTION

Pursuant to his reply to question 18, earlier in the proceedings, the Minister of Housing and Settlements (Hon. John Humphrey) caused to be circulated to Members of the Senate the following:

Payment by State
(Privately Owned Land in Tobago)

18. Sen. Dr. Eastlyn Mc Kenzie asked the hon. Minister of Housing and Settlements:

A. Could the hon. Minister state whether all privately owned lands acquired, used or entered upon in Tobago by the State for development projects have been paid for?

B. If the answer is in the negative, will the Minister state in detail:

(i) those parcels of lands not paid for;

(ii) their acreage, location and boundaries, date used or acquired, owner/s and purpose for which the lands were acquired/used;

(iii) the reasons for the delay in effecting payment?

The Minister of Housing and Settlements (Hon. John Humphrey): Tables A and B are as under:

T A B L E A

LANDS ACQUIRED BY THE STATE IN TOBAGO

PURPOSE AND LOCATION	AREA	NAME OF OWNER OR CLAIMANT	PRESENT STATUS	DATE LAND FORMALLY ACQUIRED
1. Land for the Claude Noel Highway (Calder Hall)	415.0 m^2	M. Des Vignes	Vouchers prepared. However, no funds allocated by the Ministry of Finance.	

T A B L E A

LANDS ACQUIRED BY THE STATE IN TOBAGO

PURPOSE AND LOCATION	AREA	NAME OF OWNER OR CLAIMANT	PRESENT STATUS	DATE LAND FORMALLY ACQUIRED
2. Land for the Claude Noel Highway (Calder Hall)	415.0 m^2	M. Des Vignes	Vouchers prepared. However, no funds allocated by the Ministry of Finance.	1/8/80
3. Land for the extension of the Crown Point Runway	134.1 m^2	J. N. Scipio	Awaiting advice of Chief State Solicitor. The claimant was written on 28/1/99 and asked to contact Chief State Solicitor to assist with additional information required.	7/3/96
4. Land for the extension of the Crown Point Runway	1597.8 m^2	Gaston Lovell	Awaiting Valuation Report of Commissioner of Valuations.	7/3/96
5. Land for Improvement to Plymouth Road, Tobago (Darrell Spring Road)	0.0169 ha	Jonathan Andrews	Awaiting legal advice from the Chief State Solicitor as to entitlement of claimant to payment.	3/4/91
6. Land for Crown Point Aerodrome Development (Store Bay Local Road)	0.322 ha	Knowlson Gift	An advance payment of $590,000.00 has been made. The balance to be recommended by the Commissioner of Valuations to effect full payment after settlement of negotiations.	27/5/93

T A B L E B

LANDS WHERE COMMISSIONER HAS TAKEN POSSESSION WITHOUT WAITING FOR FORMAL VESTING

PURPOSE AND LOCATION	AREA	NAME OF OWNER OR CLAIMANT	PRESENT STATUS	DATE LAND FORMALLY ACQUIRED
1. Land at Milford road for Lambeau Bridge	2,787 m^2	P. Inniss and Others	Lands yet to be surveyed.	17/8//83
2. Land at Milford road, Tobago for the outfall line for the Scarborough Waste Water Treatment Plant	492 m^2		Lands yet to be surveyed.	13/05/93
3. Land for the Leeward and Rival Tobago Water Supply			Lands yet be surveyed.	16/07/93
4. Land at End Trace, Parlatuvier, Tobago for Road Development			Lands yet to be surveyed**.**	16/04/74
5. Land at Milford Bay for Fuel Station, Information Centre and a Marine	6501.2 m^2	(1) Aubrey Yeates (2) Coral Sands Ltd.	Survey completed. Matter presently awaiting a Section 5 Valuation from Commissioner of Valuations before submission for formal vesting of the land in the State.	07/09/90
6. Land at Mc Nabb Orphan Road, Tobago for Road Development			Lands to be surveyed. No funds allocated to the Divisions to pay for surveys.	31/07/75

PURPOSE AND LOCATION	AREA	NAME OF OWNER OR CLAIMANT	PRESENT STATUS	DATE LAND FORMALLY ACQUIRED
7. Land for the diversion of the Northside Road, Tobago			Tobago House of Assembly was required to provide a copy of the Cadastral Map showing the proposed roadway on 9/9/87. No respone has so far been received. A Section 3 Notice for this Project has not been published.	17/06/85
8. Land at Bloody Bay, Parlatuvier for Road Development		Fitz John	Survey to be done—no funds allocated to the Division to pay for surveys.	Section 4 published on 17/08/72
9. Land at Bloody Bay, Parlatuvier for Road Development		Alfred Smart	-do-	Section 4 published on 17/10/72
10. Land at Bloody Bay, Parlatuvier for Road Development		James T. Charles	-do-	Section 4 published on 17/10/72
11. Land for Connector Road between Milford Road and the Claude Noel Highway		Gladys Mc Kenzie	-do-	October 1980
12. Land at Hermitage Crown Trace, Tobago		Veronica Nicholson	-do-	Section 4 published on 17/10/72
13. Land along the Auchenskeoch/Buccoo Road, Tobago		Beverly George	Lands yet to be surveyed.	Section 4 published on 11/06/80

PURPOSE AND LOCATION	AREA	NAME OF OWNER OR CLAIMANT	PRESENT STATUS	DATE LAND FORMALLY ACQUIRED
14. Land at Bloody Bay, Roxborough for Road Development		Randolph Hazel	Section 3 to be published.	By memorandum dated 21/12/90 T.H.A advised that the road was constructed in 1960.
15. Land at Plymuth Road, Bad Hill Area, Tobago			Survey Order No. 160/2000 issues to Mr. Horace Archille to conduct survey.	This I inormation is not available on file.
16. Land at speyside, Tobago for Village Expansion and Micro Enterprises		Egbert Lau	Received Cabinet decision on 22/8/2000 to acquire by Private Treaty.	Minute 1501 dated 9/8/00 refers.
17. Land for widening/upgrading of Store Bay Local Road/Store Bay Feeder Road			Tobago House of Assembly was requested to identify funding for acquisition survey. No response received to date. Survey yet to be conducted	File not located.
18. Land at Bacolet Estate, Tobago for Multifaceted Sport Facility	17.1859	Mt. Pleasnat Credit Union	Negotiation for compensation in progress. Survey plan sent to Surveyor on 17/5/2000 for corrections.	Section 4 published on 27/08/99

PURPOSE AND LOCATION	AREA	NAME OF OWNER OR CLAIMANT	PRESENT STATUS	DATE LAND FORMALLY ACQUIRED
19. Land at Belmont Road, Mason Hall, Tobago for Road Development			Survey Order 134A and 134 of 1999 issued to conduct acquisition survey. Survey incomplete to date.	September 1999
20. Land at Northside Road, Tobago for Bridge B1/5		Elinore King	Survey Order No. 48 of 2000 issued. Survey incomplete.	March 1996
21. Land at Newlands, Tobago for Road	4350 m^2	Carlyle Dick and Henry Hercules	Survey Order No. 143/99 issued.	February 1998
22. Land belonging to Tateco Credit Union encroached by Cargo Warehouse Facilities (Airports Authority)	10.4 m^2	Tateco Credit Union	Awaiting Section 5 Valuation.	Ministry of Works and Transport indicated encroachment on 08/02/95.
23. Land for extension of Crown Point Aerodrome Development	15.5 ha	R. Sanowar and others	Survey Order No. 501/1999 issued.	Section 4 published on 05/05/95
24. Land at Yorke Orphan Road, Tobago		Adam Yorke	Survey yet to be done.	14/03/95
25. Land at Belmar Trace, Tobago for Road Improvement			Survey yet to be done.	Section 4 published on 17/01/96

PURPOSE AND LOCATION	AREA	NAME OF OWNER OR CLAIMANT	PRESENT STATUS	DATE LAND FORMALLY ACQUIRED
26. Land at Kilgwyn Estate, Tobago for Crown Point Airport Expansion	4.2854 ha	J. V. Outridge and others (14 claimants)	Survey Plan completed and approved. Awaiting Valuation Report from Commissioner of Valuations before submission for formal vesting under Section 5.	Section 4 published on 23/11/90
27. Land for the Northside Connector Road, Tobago Improvement to Shirvan Grafton Road, Tobago		Edwin Peters	A survey for the area yet to be conducted.	1983
28. Land at Mason Hall for Composite School		Theodora Amelia Grant	Section 5 Notice being processed.	Section 4 published on 02/11/90. Permission granted to Ministry of Education by Adolphine Estate Limited to enter land on 12/07/2000.