

SENATE*Tuesday, October 24, 2000*

The Senate met at 1.30 p.m.

PRAYERS[MR. PRESIDENT *in the Chair*]**GET WELL WISHES**

Mr. President: Hon. Senators, first of all, may I take this opportunity to thank all Members of the Senate very sincerely for the care and concern which you showered and showed during my very recent illness. I am not yet 100 per cent, but I am on the mend, and the very comforting words you all sent on that beautiful card would have done quite a lot in helping me to recover much more quickly.

It is one of the instances where unfortunately I cannot reciprocate, so I say thank you very, very sincerely.

LEAVE OF ABSENCE

Mr. President: Hon. Senators, leave of absence has been granted from today's sitting to Sen. The Hon. Wade Mark.

SENATOR'S APPOINTMENT

Mr. President: Hon. Senators, I am told that there is a warrant of a temporary appointment on its way, I have not yet seen it, so with your permission, shall we revert to item No. 2, "Announcement by the President" and item No. 3, "Oath of Allegiance of a new Senator" later on in the proceedings?

*Agreed to.***PAPERS LAID**

1. Report of the Auditor General of the Republic of Trinidad and Tobago on the audit of the Accounts and Financial Statements of the assistance to the National Drug Abuse Demand Reduction Programme for the year ended December 31, 1999 as required by Project Document AD/TRI/96/910 between the Government of the Republic of Trinidad and Tobago and the United Nations International Drug Control Programme (UNDCP). [*The Minister of National Security (Sen. Brig. The Hon. Joseph Theodore)*]
2. The Value Added Tax (No. 2) Order, 2000. [*Sen. Brig. The Hon. J. Theodore*]

3. A Working Paper—The Ombudsman—Improving his effectiveness. [*Sen. Brig. The Hon. J. Theodore*]
4. Working Paper—A review of Extradition Legislation in Trinidad and Tobago. [*Sen. Brig. The Hon. J. Theodore*]
5. Proposals for the Reform of the Penal System of Trinidad and Tobago. [*Sen. Brig. The Hon. J. Theodore*]

ARRANGEMENT OF BUSINESS

The Minister of National Security (Sen. Brig. The Hon. Joseph Theodore): Mr. President, I beg to move that the Senate deal with “Government Business” instead of “Private Business.”

Agreed to.

CONSTITUTION (AMDT.) ACT

The Attorney General and Minister of Legal Affairs (Hon. Ramesh Lawrence Maharaj): Mr. President, I beg to move the following Motion standing in my name:

Whereas the Constitution (Amdt.) Act, Act No. 29 of 1999 *inter alia* amended the Constitution to provide for the establishment of Joint Select Committees to investigate and report to Parliament on the powers and functioning and criteria adopted by government ministries, municipal corporations, statutory authorities, service commissions and enterprises owned or controlled by or on behalf of the state or funded by the state to the extent of two-thirds of their annual income.

And whereas section 4 of the said Constitution (Amdt.) Act, 1999 provides for the Act to come into force when Standing Orders are made to give effect to section 66A.

Be it resolved that the draft of the proposed amendments to the Standing Orders of the Senate as listed in the Appendix be referred to the Standing Orders Committee for consideration.

Mr. President, all I would need to say is that the Standing Orders have to give effect to the Bill. Therefore, I beg to move that the matters be referred to the Standing Orders Committee for consideration and report to the Senate.

Mr. President: Hon. Senators, in accordance with Standing Order 82(3), this matter is now referred to the Standing Orders Committee.

RELATED BILLS

The Attorney General and Minister of Legal Affairs (Hon. Ramesh Lawrence Maharaj): Mr. President, a bill to amend the Constitution of the Republic of Trinidad and Tobago and a bill to amend the Integrity in Public Life Act, 2000 are interrelated and I therefore seek leave of the Senate to deal with them together.

Question put and agreed to.

CONSTITUTION (AMDT.) (NO. 2) BILL

Order for second reading read.

The Attorney General and Minister of Legal Affairs (Hon. Ramesh Lawrence Maharaj): Mr. President, Members of this honourable Chamber would recall that within the very recent past, new integrity laws were approved after many years of consultation and deliberation. The policy which finally was approved by both Houses of Parliament are contained in Acts Nos. 81, 82 and 83 of 2000 and they represent a combination and a sort of consensus arrived at by both Houses being the recommendations of the Joint Select Committee of Parliament and a Special Select Committee of the Senate.

Mr. President, throughout the very interesting debates on these important pieces of legislation, it became apparent that a number of matters which were aired and considered to be important at the time should perhaps be included, but in order to arrive at a consensus it was agreed that we should proceed in the way we proceeded on the last occasion.

I should mention that when the Bill went to the other place, there was the position adopted that certain of these matters need to be looked at again, and based on the fact of the time period involved, an undertaking was given by the Government for the Bills to go as they were with an undertaking that the amendments which the Opposition proposed would be put in the new legislation and dealt with by the House within 48 hours, which we did in the other place. Therefore, the measures which are contained in these two Bills, in fairness to the Opposition, are measures which they requested in the other place, and in an effort to arrive at consensus, and having regard to this important area, it was agreed by the Government to accede to the Opposition's request.

Mr. President, what this amended Bill seeks first to do is expand the category of persons who must fall within the ambit of the Integrity Commission. It would be recalled that the structure which was imposed under the new Act catered for

two categories of persons: those who were designated persons in public life who would be required to file declarations of their assets, interests and liabilities, and those who were designated persons exercising public functions who would be required to file such declarations with their service commissions if required to do so and who should only fall under the supervisory jurisdiction of the Integrity Commission being subject to the code of conduct legislated in Part IV of the Act.

Mr. President, based on what occurred in the other place, it was felt that the first category should be widened—that is the category of persons in public life—to include not only Senators, but also judges, magistrates, members of all statutory boards, state enterprises and other bodies in which the state has a controlling interest. The conjunct effect of clauses 4 and 9 of the amending Bill is to remove Senators from the category of persons exercising public functions and to include them together with judges, magistrates and members of all boards in the category of persons in public life.

One very important observation which was made was that under section 16 of the new Integrity in Public Life Act, the powers of the Integrity Commission were somewhat restricted, in that inquiries related to offences under the Act and the conduct of investigations under Part V could only have been initiated within five years of a person in public life demitting office. It was the thinking in the other place that the Integrity Commission should be enabled to conduct an inquiry on investigation relating to a person who has held public office at any time, even though that person has demitted office and has ceased to be a person within the meaning of the Act. This amendment is achieved by clauses 6 and 8 of the Bill and Senators would observe that there is an amendment in this regard which basically achieves the same objective.

Clause 7 of the Bill addresses the inequitable situation which I mentioned earlier. It is necessary in the interest of justice to amend section 31 of the Act which provided for either House of Parliament to take disciplinary action where a Member is reported by the Integrity Commission to have breached the provisions of the integrity law.

Mr. President, it was felt that because of the composition of Parliament and the political structures which we have inherited, such a provision could lead to a conflict of interest and possible unfairness to a particular Member of Parliament who has been elected by the people to represent their interest in Parliament. This is because of the fact that any government would have an in-built majority and it was felt that this could either be used, or perceived to be used, to an unfair advantage. To get around this, section 31 is to be amended to provide for the

Integrity Commission to report such breaches to the Director of Public Prosecutions instead of the relevant House of Parliament.

1.45 p.m.

Mr. President, clause 5 is not a new amendment but it is a mere correction to deal with an unfortunate duplication of subsection 12(2) which occurred during the amendments moved at the Committee Stage of the Integrity In Public Life Bill now Act No. 83. The list of amendments to the Bill also include two further changes, one is an amendment to clause 8, which would amend section 32 of the Act, to impose heavier penalties in respect of persons who knowingly or mischievously make false reports to the Commission in respect of corruption issues. I think Sen. Montano would remember this clause in which he introduced the amendment of knowingly or mischievously, and it was felt in the other place that the punishment should be greater.

Also, the list of amendments call for the reinsertion of Permanent Secretaries and Chief Technical Officers as persons in public life under Section 139 of the Constitution. The other amendments which one would see in the Integrity in Public Life (No. 2), Bill, are really consequential upon these major changes which I have sought to explain. The Constitution (Amdt.) (No. 2) Bill, in the amendment to section 138(2) is necessary in order to accommodate those new persons who, it is being proposed, should be included in the category of persons in public life. Section 138 of the Constitution prescribes those persons who are to be persons in public life and any widening of the category under the Integrity in Public Life Act can only take place if such changes are first reflected in the Constitution.

Section 138(2)(a) now gives a detailed list of all those persons who would fall under the Integrity Commission, and the list of amendments would cause to be reinserted the Permanent Secretaries and the Chief Technical Officers. It would be recalled that the rationale for deleting these two groups of people was that the Green Paper had suggested that such persons are really managers, who do not create policy or expend public funds. However, it has been pointed out that under the new regulations Permanent Secretaries do, in fact, have authority to approve contracts under certain sums of money and Chief Technical Officers perform very similar functions. Therefore, it was not right to have them deleted from the provisions of the Bill.

The Government has to come back with these measures before this honourable Chamber on the basis that the Opposition did give its support to the Bills which were approved in this place, on condition that the Government draft

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legislation to reflect the measures which they wanted to propose to amend those measures. These measures were introduced in the other place. They have had the unanimous support of the other place and it is now before this honourable Chamber for its consideration.

Mr. President, I beg to move.

Mr. President: Hon. Senators, before proposing the question for debate, with your permission, I would like to revert to item Nos. 2 and 3 on the Order Paper.

SENATOR'S APPOINTMENT

Mr. President: I have received the following correspondence 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: MR. VINCENT CABRERA

WHEREAS Senator Wade Mark is incapable of performing his functions as a Senator by reason of illness:

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

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 24th day of October, 2000.”

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

Question proposed.

CONSTITUTION (AMDT.) (NO. 2) BILL

Sen. Danny Montano: Mr. President, before I say anything about the Bills in front of us let me say, on behalf of myself, my party and Senators on this side and all Senators in this honourable Chamber, how very happy we are to see you out of the hospital and back in your Chair again. [*Desk thumping*]

With regard to the matters before us, as the Attorney General stated, these changes have already been prompted by the Opposition in the other place and, certainly, at this point we really have no difficulty with them at all. Therefore, without wasting the time of this honourable Chamber, I would just like to say that we absolutely support this. We are very happy, finally, to see this legislation come to fruition, and we hope that it passes in this place as quickly as possible, and it is assented to and proclaimed and actually become the force of law, Sir. I hope that all who are looking to become persons in public life, now and in the future, would look very seriously at their duties, not only to themselves and their families, but with regard to honesty and integrity towards the people of Trinidad and Tobago.

With those words I thank you, and we support this fully.

Mr. President: Any other contributions?

The Attorney General and Minister of Legal Affairs (Hon. Ramesh Lawrence Maharaj): Mr. President, merely in response to what Sen. Montano has said, as soon as the procedures here are complete, every effort will be made to get this Bill assented to as quickly as possible. I think hon. Senators would know that under the Constitution of Trinidad and Tobago if Parliament is dissolved before a bill is assented to and the bill is passed during the session, the bill lapses. So that at least we have until the 20-something of November, which is the maximum time for the Parliament to be dissolved. One does not know that that discretion is in the hands of the hon. Prime Minister, therefore, we should not take any chances and we should ensure that these matters are done as quickly as possible.

1.55 p.m.

Mr. President, I think I should put on record something that I discovered about a week ago for the Republic of Trinidad and Tobago. There is a global action committee against corruption, based in Geneva, which is being administered by

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the United Nations, looking at all the countries in the world which have taken steps to put machinery in place to deal with corruption and integrity in public life. I was very privileged to meet with that committee about a week ago in Vienna where I discovered that Trinidad and Tobago is ranked as one of the leading countries in the world which has taken steps corruption and the lack of integrity in public life.

As a matter of fact, the manual which the United Nations has put out, which is referred to as a toolkit, states that if a country wants to deal with corruption, it must deal with legislation, freedom of information, parliamentary committees, reform the integrity laws and set up anticorruption agencies—as we have set up in the Integrity Bill—in order to deal with corruption. It includes other matters like education, values and working with the churches and religious institutions.

So that, if I may say, in responding to Sen. Montano, I think this honourable Chamber should be very proud today that Trinidad and Tobago is one of the leading countries in the world putting the necessary legal infrastructure in place in order to deal with it. One knows that one also has to have the administrative machinery and the resources to deal with these matters, Mr. President.

Mr. 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.

Clauses 1 to 4 ordered to stand part of the Bill.

Preamble 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.

Question put, That the Bill be now read the third time.

The Senate voted: Ayes 29

AYES

Kuei Tung, Hon. B.

Theodore, Brig The Hon. J.

Baksh, Hon. S.

Phillips, Dr. The Hon. D.

Gangar, Hon. F.

John, Hon. C.

Gillette, Hon. L.

Tota-Maharaj, The Hon. V.

Baksh, N.

Hamel-Smith, P.

John, S.

Gray-Burke, Rev. B.

John, J. Ms.

John, W.

Cabrera, V.

Mohammed, N. Ms.

Montano, D.

Jagmohan, M.

Yuille-Williams, J. Mrs.

Job, E. Ms.

Shabazz, M.

Spence, Prof. J.

Mahabir-Wyatt, D. Mrs.

Teelucksingh, Rev. D.

Daly, M.

St. Cyr, Dr. E.

McKenzie, Dr. E.

Kenny, Prof. K.

Ramchand, Prof. K.

Bill accordingly read the third time and passed.

INTEGRITY IN PUBLIC LIFE (AMDT.) BILL

Order for second reading read.

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

That a Bill to amend the Integrity in Public Life Act, 2000 be now read a second time.

Mr. President, in light of the contribution that I have made, without restating what I have said, I wish to rely on what I have already said and I beg to move.

Question proposed.

Question put and agreed to.

Bill accordingly read a second time.

Bill committed to a committee of the whole Senate.

Senate in committee.

Clauses 1 to 11 ordered to stand part of the Bill.

Preamble 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.

Question put, That the Bill be now read the third time.

2.10 p.m.

The Senate voted: Ayes 29

AYES

Theodore, Brig. The Hon. J.

Kuei Tung, Hon. B.

Baksh, Hon. S.

Phillips Dr. The Hon. D.

Gangar, Hon. F.

John, Hon. C.

Gillette, Hon. L.

Tota-Maharaj, Hon. V.

Baksh, N.

Hamel-Smith, P.

John, S.

Gray-Burke, Rev. B.

John, J. Ms.

John, W.

Cabrera, V.

Mohammed, N. Ms.

Montano, D.

Jagmohan, M.

Shabazz, M.

Yuille-Williams, J. Mrs.

Job, E. Ms.

Spence, Prof. J.

Mahabir-Wyatt, D. Mrs.

Teelucksingh, Rev. D.

Daly, M.

St. Cyr, Dr. E.

McKenzie, Dr. E.

Kenny, Prof. J.

Ramchand, Prof. K.

Bill accordingly read the third time and passed.

OFFENCES AGAINST THE PERSON (AMDT.) (NO. 2) BILL

[Second Day]

Order read for resuming adjourned debate on question [October 19, 2000]:

That the Bill be now read a second time.

Question again proposed.

Sen. Prof. Spence: I had discussions with the Leader of Government Business yesterday and he told me that this Bill was not being taken today. We have just got amendments being laid on the table. I do not think, really, we are prepared to debate it now.

Mr. President: Hon. Senators, I am told that there is agreement that the Attorney General will explain the proposed amendments to the Senate, then there will be a 30-minute break so that all Senators can consider the proposed amendments and debate would resume thereafter.

The Attorney General and Minister of Legal Affairs (Hon. Ramesh Lawrence Maharaj): Mr. President, I must confess that I was not here on the last occasion, but I took the position that when certain matters were raised by Sen. Daly that he needed to consider them. I had the benefit of reading the *Hansard* and one of the points which was raised by Sen. Daly—which I think is a very plausible point—was in relation to the amendment to section 4 of the Offences Against the Person Act that if the amendment was done in its present form, it may be that you can have challenges on the basis that the death penalty has been abolished and is being re-enacted, and then you can have the arguments as to whether it would require a special majority or not.

Mr. President, I think I will be correct in saying—and I hope Sen. Daly does not mind—that Sen. Daly, in his capacity as an advocate, and Mr. Russell Martineau were the two lawyers who led the state's team in a lot of these death penalty matters, in which the state was successful in having it implemented in Trinidad and Tobago. During the period of time that they were involved in these matters, there was the situation in which the courts and the lawyers had a lot of opportunity to consider novel points which were made and the courts had to rule on some of these points. I think that Sen. Daly is well-equipped, in my respectful view, to have submitted—and I think he is on very good ground in submitting—that there should be a reconsideration in the way in which section 4 of the Act is to be amended.

Mr. President, as a matter of fact, while I was abroad, the comments were faxed to me and I had time to reflect on them. When I got back there was no difficulty at all for me to instruct the draftsman that it had to be done in such a way that section 4 of the Act, which deals with the death penalty, would remain as it is, but the amendments would, in effect, go around section 4. What we have done is amended the Bill to leave section 4 as it is under the Act.

Just for Senators to understand what is happening, section 4 of the Offences Against the Person Act Chap. 11:08 says that every person convicted of murder shall suffer death. So there is no amendment to that particular provision. It is saying that notwithstanding section 4, a person convicted of Murder 2 shall suffer death only in the circumstances referred to in section 4G, and a person convicted of Murder 3 shall not suffer death. In section 4G it says that if a person convicted of Murder 2 shall be sentenced to death before the conviction of that murder he has been convicted in Trinidad and Tobago of another murder whether or not done on a different occasion.

Mr. President, what we are doing, therefore, is leaving section 4 and we are saying that in respect of Murder 2 there will be circumstances in which the person can suffer the death penalty, but in respect of Murder 3, the person would not be able to suffer the death penalty.

What we have also done with the amendments was to specify that there would be a proclamation clause inserted which, in effect, would give time for the state authorities to prepare for this Bill, and if there are any points which have been raised and there is not sufficient time, there would be an opportunity to come back to Parliament in order to deal with it.

2.20 p.m.

May I say, Mr. President, that what we have done with this Bill is that the draftsmen and the Ministry have looked at what other countries have done and have tried to use what was done in other countries to formulate this Bill. In doing that, we also have to consider some of the law which has developed recently, and in some of the cases which have been aired recently, the question has been raised as to whether the death penalty itself is unconstitutional.

In the matter of Dole Chadee, in a petition before the judicial committee of the Privy Council, the question was even raised whether death by hanging was unconstitutional. Because the law was an existing law in Trinidad and Tobago, the Privy Council did not really have the jurisdiction to really investigate that, because it was an existing law, and under the Constitution, an existing law is preserved and the courts do not interfere with an existing law. The Privy Council said that in its judgment.

There were some other points raised, Mr. President, and if I may deal with them—one other point which was raised is the one dealing with the discretion of the Director of Public Prosecutions and that, perhaps, the discretion which is to be exercised can also be the subject of judicial review and constitutional motion.

Mr. President, I take that point. I had an opportunity talking with Mr. Daly before the proceedings started and I mentioned to him—and he recognizes this that under section 90 of the Constitution, the holder of the office of DPP has the absolute discretion in determining what charge to lay, what charge not to lay, whether one could institute a criminal proceeding, or not institute a criminal proceeding.

There is already a wide discretion under the Constitution given to the DPP. He can, even in criminal proceedings which are pending, decide to discontinue. He does not have to give an explanation to anyone. That is the fact of the matter. So, under this Bill for giving him the powers, or the Bill specifying that he would be the person to decide this, is really continuing the discretion given to him under the Constitution. In any case, wherever one has discretionary power, one can have review of discretionary power.

Mr. President, the other point raised was that the discretion for murder that is especially heinous, atrocious or cruel, manifesting exceptional depravity was said to be very wide. Yes, it is a very wide discretion and it was drafted that way in order to give him a discretion, depending on the circumstances of the murder, for him to prosecute as he sees fit. Under the Bill, he does not have the last say. In any event, the courts have the last say, and I think that was an important safeguard. It would be very difficult to specify in the piece of legislation, all of the specific cases in which there may be Murder 1, so there will have to be a parameter in which one would have to act.

Mr. President, those are the matters which have informed us in doing the amendment. I think that I would like to put on record, since this Bill deals with

some of the matters which we have had to deal with in Trinidad and Tobago about the death penalty—I think sometimes persons who have made contributions to the state are not really recognized.

People do not do these things for recognition, but I think I would like to put on record in this debate, the thanks of the Government and the people of Trinidad and Tobago to not only Sen. Martin Daly and Mr. Russell Martineau for their assistance to the state in the implementation of the death penalty, but to all of the lawyers who appeared in the state department and, to the important role played by the judicial arm of the state in dealing with matters in a very expeditious manner in having the death penalty implemented in Trinidad and Tobago.

Mr. President, I would also like to say that on many occasions, lawyers—two lawyers I am talking about—who acted beyond the call of duty and, in respect of travelling abroad and doing the matters abroad acted in a situation in which professional fees were not the important consideration. I would like to take this opportunity to put these matters on record and thank Sen. Daly for pointing out these matters to us. I think they were very important and in these matters sometimes, one should be very careful in trying to put all of the safeguards to ensure that if the points are taken, the state would be able to successfully respond to them.

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

Mr. President: Sitting suspended until 3 o'clock.

2.27 p.m.: *Sitting suspended.*

3.02 p.m.: *Sitting resumed.*

Sen. Danny Montano: Mr. President, I rise in support of the Bill and I would just like to state, for the record, that I am speaking as an attorney representing my party, not for myself, in supporting this legislation.

In looking at the legislation, it is quite clear. I mean, the simple object of what is being done here is that we are mitigating the use of the death penalty. That is what is taking place. In other words, we are reducing the circumstances in which the death penalty is going to be used. While I am in complete support of mitigating the use of the death penalty, we are retaining it in certain circumstances. I would simply like to raise the question: What exactly are we doing? Why do we have the death penalty?

Mr. President, you know, there are those who would say that the death penalty is a deterrent to capital offences, to murder, but the investigation and research that has been done into homicide has not been able to prove the correlation between using the death penalty as a deterrent and a reduction in homicide.

To the best of my knowledge, there was a study that was done for the United Nations in 1988 and it was updated in 1996, which read that:

"The research has failed to provide scientific proof that executions have a greater deterrent effect than life imprisonment and such proof is unlikely to be forthcoming."

In Canada, in 1975, the homicide rate per 100,000 population fell from a peak of 3.09 in 1975, the year before the abolition of the death penalty for murder, to 2.41 in 1980 after the abolition. Since then, it has remained relatively stable.

In 1993, 17 years after the abolition of the death penalty in Canada, the homicide rate was down 2.19 per 100,000. I support the legislation but it does beg the question and I think it is important that all of us, as legislators, make a clear statement to the population as to exactly why we are retaining the death penalty. I think that the onus falls on the Government to make that statement. It is their law. While we support it, I think it is important that a clear statement be made.

Mr. President, what exactly is punishment all about? Most of us, as we were growing up as children, were taught that punishment is used as a deterrent to teach us that there are consequences to action; if you did something that your parents or society disapproved of, there will be a penalty that you must pay and that acts as a deterrent.

The enforcing of a punishment, effectively, in both a child and a criminal who has been convicted and sentenced, hopefully—if you send a person to jail—is going to act to rehabilitate the child or the prisoner, as the case might be. In the case of the death penalty, of course, there is no question that someone sentenced to hang can be rehabilitated, therefore, what exactly is the objective of the punishment? If it is revenge, and society has the right to claim revenge for acts that it considers obnoxious or abominable, it has that right. I was taught when I was growing up, to believe that vengeance was not mine to seek out, Nevertheless, society certainly has that right. Society has the right to seek revenge, or, is it that society decides that the person is so abominable that he should simply be removed from the face of society?

In the words of John Stuart Mill, in 1868, speaking in the Parliament:

"...to blot him out from the fellowship of mankind and from the catalogue of the living..."

Is that the objective? Just to remove him? He is an unwanted human being, an unwanted soul. His presence is no longer desired by society. He must disappear from the planet. Is that what we are doing? If that is what the objective is, then I think we need to state what the objective is.

In terms of a deterrent, this is what John Stuart Mill said in 1868, and I question whether, as I said earlier, in fact, it is relevant at all. He said:

"But the efficacy of a punishment which acts principally through the imagination, is chiefly to be measured by the impression it makes on those who are still innocent;..."

Lovely language, but what he is saying is that the horror of the death penalty would act on the imagination of those who are still innocent as a deterrent to committing homicide. The research has shown that that does not really happen, that while there certainly is a horror in my mind and it certainly would deter me, I would hope that I would never find myself in that situation, but there are crimes of passion and it is clear that it is not a deterrent.

John Stuart Mill, speaking in the House of Commons in 1868, in favour of retaining the death penalty, went on to say:

"...the most that human laws can do to anyone in the matter of death is to hasten it;..."

I find that to be a statement which tends to trivialize the harshness of the death penalty although he is quite right, but the manner of the death, of course, is what is so awful and so difficult to contemplate, because hanging is not necessarily what people think it is. It looms in my mind very largely that if it is we intend to use the death penalty as a deterrent—if that is what the wishes of the people are—then should it not be that people should be hanged in public so that they can see just how awful it is? I only ask the question. I am not suggesting that and I think I would be misquoted if anybody were to say that I am suggesting that. Is that what we should be doing if that is what we are really trying to achieve?

Hanging is not as simple as people might think and, certainly, from the research that I have done, it is not immediate, by any stretch of the imagination. Most of the persons who die by hanging do not die immediately by severing the spinal cord. That is not what normally happens. What tends to happen is that the

veins on the side of the neck become blocked and the heart continues to pump blood into the brain until all the vessels in the brain burst and that virtually destroys the person at that point. That can take anywhere from 20 seconds to two minutes. It can take a while and it can be a rather gruesome thing to observe. It is why a hood is placed on the head of the person who is being hanged.

If that is what we are doing and the message we are trying to send is that it is a deterrent, and I say if, in fact, the argument is that it must be a deterrent, then perhaps we should really think about putting it on television. Hang them in Woodford Square. I certainly would not be one to recommend that, or to be a proponent of that. I certainly would never wish to see that, or have that happen, but it does beg the question.

However, Mr. President, again to quote from John Stuart Mill, he said:

“Is it, indeed, so dreadful a thing to die?...”

What comparison can there really be, in point of severity, between consigning a man to the short pang of a rapid death, and immuring him in a living tomb, there to linger out what may be a long life in the hardest and most monotonous toil,..."

Well said and certainly, when we hear of some of the most brutal murders that have taken place in our society over the last few years, one's instincts tend to scream at one that a person who violates a life, forfeits it for himself. That logic tends to scream at one. So, is it revenge? Is it an attempt to deter? Exactly what is it?

As I say, we on this side support this legislation but I think it is important that a clear statement be made as to why we are reducing the instances in which the death penalty will be used and why we are retaining it for others. What precisely is the logic that is being used here? There is a certain amount of intuitive feeling about it. I mean, we all feel, "Yes. We are satisfied with it." I think it is important that we, as legislators, state precisely why we are doing these things so that the population feels content that the law represents their true feelings in the matter. That is the point that I have been trying to make here.

That is the whole point, not that I oppose the legislation, not that I, by any stretch of the imagination, would want to see anybody hanged in Woodford Square or on television. I would think that would be a terrible thing to take place,

but I do think it is important that we state very clearly why it is we are reducing the instances in which somebody would forfeit his life.

Mr. President, I think I do not really wish to go any further with this. As the legislation stands, I am reasonably satisfied with it. With those few words, I thank you. [*Desk thumping*]

3.15 p.m.

Sen. Prof. Julian Kenny: Mr. President, I would like to make a few observations about the way in which we do the work of Parliament. We are dealing with a very, very serious matter. We are dealing with, let us face it, killing people. Here we are in a sixth session, when we were led to believe that we had agreement that this was not being discussed today—this was our understanding. Here we have a very, very serious matter—one of the most serious matters that one can discuss in Parliament—and we are dealing with it in this way.

The life of this Parliament is coming to an end. What is the pressing argument for bringing it forward at this time? Why not the next Parliament? I am not convinced that this is a matter of great urgency. I do not think that this is an environment or a time in which we ought to be discussing it. We have just amended the Constitution of this country, and my view has always been that we do not amend constitutions piecemeal. We should amend constitutions periodically—every 15, 20, 25 years or more, and we should use a mechanism for it: wide consultation with the public, with all the various institutions in society, and we report back to the Parliament on proposals for the Constitution that address issues like capital punishment, among others. I am frankly very disappointed and appalled that we should be discussing a matter as serious as this at this time.

Mr. President, I realize that there are seasons for everything, but my understanding of how a parliament works and how a nation works is that any legislation can be brought to a parliament, but the legislation can be brought by a government out of deep conviction. For example, the equal opportunity legislation was something which the present administration spoke about when they were in Opposition. This is right; you bring it because you have deep conviction. Other legislation may be brought because it is popular, that one might win votes with it.

For example, if the Minister of Finance, Planning and Development brought a bill to this Parliament abolishing income tax—I am not suggesting it, but any government has the power to do this—it might win an awful lot of votes, and the economy will go down the spout. My point is that a government can bring what it perceives that the people want as legislation, or a party may have a philosophy and the views may be crystallized in legislation which forms part of the agenda. In fact, a government, may bring a bill to a parliament parliament abolishing capital punishment; it is possible. I am a little concerned to interpret exactly what we are doing in the way in which we are doing it.

I was rather taken by Sen. Montano's introduction. He was an attorney for a political party. I look across at my colleagues on the other side and they are all honourable people who may have personal views. I recognize that people have to vote the party line, just as the Opposition is voting the party line, but, Mr. President, I belong to no party, I have long-standing views on the issue and I would like to ventilate a few. I am not bound by what anyone on this Bench thinks of the issue. I am bound by what, in my view, is a long and reasoned position on capital punishment.

It goes back, I think, to my first experience of capital punishment—not of seeing it done—but as a schoolboy riding to St. Mary's College and going down Frederick Street, when I saw people outside the jail. It always happened on a Tuesday morning. They were waiting, and then you saw the people outside bawling, weeping and wailing and so forth. When you are 11 or 12 years old, it is difficult to understand what is going on, because you are brought up in a certain way.

As I pointed out on other occasions in this Senate, I am a minority in this country, and I do not subscribe to many of the institutions of the country. I do not participate in much of the culture of the country. My views are largely determined internally from experience, reason and, more importantly, philosophy. For many years I have read moral philosophy, and I have arrived at certain conclusions that are my personal stand. I am not speaking for anyone. There may be people outside of this Chamber who may have views similar to mine, but I would like to go back to Sen. Montano's contribution.

Sen. Montano talked about the technology of death by hanging. If you go back in history, capital punishment was for a vast number of offences. It has been whittled down and whittled down: it used to be public, then it went private.

Originally, the most extreme form of capital punishment, which took place not that long ago, was to be hanged by the neck—it is all written in the law books—and cut down while still alive, then to be drawn. It means to open your abdomen and let your guts spill out while you are still alive, and to remove your genitalia and burn them on a brazier over fire in front of you, and then for your body to be cut in four parts and carried to different places. This is what it means to be hanged, drawn and quartered. It was meant to be a deterrent, but it was never a deterrent because treason continued, and treason continues today.

My point is that we are dealing with a relic of the past, a technology that is barbaric, in my view, and I am appalled. When I look at other countries, they recognize the barbarity of this thing. We still retain one part of it that Sen. Montano very accurately described, but other countries have faced up to the issues, and have tried other methods. Recently, for example, when two young thugs murdered four young women in France, there was a big cry, “Bring back the guillotine!” It does not solve anything at all, but this happens. Whenever there is a brutal murder in Britain you hear the crowds saying, “Let us bring back hanging, capital punishment.” The point I am making here is that countries all over the world have recognized this vengeance that Sen. Montano talked about. I always assumed that the words “vengeance is mine saith the Lord” had some meaning, and we are a very, very religious country.

I personally cannot take vengeance on anyone—but we will come to that. Regarding the technology of death, the Americans now do it by lethal injection, and it is supposed to be humane and so forth, but if you see the pictures of lethal injection executions the persons are strapped down to what they call a gurney. It is rather ironic that if you turn the gurney vertically, it becomes a cross. The people do not actually do the killing, the machines do it, and for the introduction of the muscle relaxant there are two levers, so you who are doing the killing do not really know that you are responsible. In other words, they recognize that it is offensive to kill another human being, so you protect the killers—I mean the people whose job it is to execute.

They have tried all sorts of technologies of killing. The Chinese use a bullet in the back of the head. The French used a guillotine. The English hang. The Scots used to hang in public; they also used a guillotine. There are cultures in which the family is allowed to do the execution; you see pictures of it in Afghanistan. I am not suggesting any of these things, I am just pointing out that in the human condition, the past guides us to the future, and the future is the abolition of capital punishment, in my view.

It has happened through Europe, North America; it is happening in many parts of the world. It has happened in South Africa. It is happening in Russia, and this is the mainstream of human development in terms of how we deal with capital punishment. These then are the world trends.

Now, Mr. President, it is, in my view, a moral issue. I have no problem in deciding that it is wrong. I do not need to use Mosaic Law or the New Testament. I do not need to use any scriptural writing of any holy book or anything. I need only to go into the moral law in philosophy, which deals with ideal social behaviour, where pure reason can tell a society what is right or what is wrong. Rendered down to its basic meaning, I propose universal law, which is law that I could will to the entire world, but the catch is that I am willing it to myself, and this is the moral issue.

Mr. President, I cannot under any circumstances see myself pulling a lever on a trap door and executing someone. I imagine that if I were ever called to jury duty, which is unlikely now, that I am totally and publicly opposed to capital punishment, and I would be disallowed. It is a personal view and there are many members of the society who, I am sure, share my view, to a certain extent.

I have discussed this with other people, and I have even made an admission to a colleague, who is an extremely able person, and who is also prepared to support capital punishment. I was even prepared to say, “for all the horrible things you can reserve it”. I am prepared to go along with that, with a long-term view of the abolition.

3.30 p.m.

If I could find a more humane way of doing this thing. As a biologist I know the implications of what Sen. Montano was saying. If the Government had come to us earlier and said we want to reform the whole thing, we want to have different degrees of murder to cut down on a number of persons we are attempting to hang and if they said we are going to introduce with that, a different method or technology of killing people, although I find capital punishment repulsive as a Member of Parliament, I would be bound in a certain sense to support legislation of this kind. Personally, I am totally opposed to it.

The problem of this being brought in this way—when we were told we were not discussing it today and it is being discussed, and debated—at a time when there is so much uncertainty. There is the political season. We are debating it when there is a perception outside that many Members of the Government, and possibly Members of the Opposition and Members of the Independent Bench may

be opposed to capital punishment and we are debating it at this time. Why the rush? Why are we forcing it? Why do we not deal with it as a broad comprehensive issue? I can understand why it may be necessary, but to tell me that it is the law of the land does not tell me anything because we constantly change laws. We constantly bring new laws to Parliament that come from deep conviction from the Government's side—and I do not mean this particular Government, all the governments in the past.

My major point is that I am disappointed and appalled at the way in which we are dealing with such a serious issue. My very final comment is that I am told by Sen. Mahabir-Wyatt that it has never happened in this country and I propose, as has happened in other countries, that the Leader of Government Business and the Leader of the Opposition release the whip and have a free vote on this legislation, that is, let our consciences speak for us.

Thank you, Mr. President.

Sen. Prof. Kenneth Ramchand: Mr. President, I am not happy to take part in this debate in the circumstances in which we are doing it, but I have to take the opportunity to have my say.

Mr. President, I think the best interpretation of the legislation before us is that it is an attempt to yield ground to those who want to abolish the death penalty, and it wants to yield that ground by reducing the number of people who may be executed. To that extent, I support the legislation. I think that even 100 per cent of abolitionists would be happy to see that the number of people eligible to be executed for killing somebody else is being reduced. I am not very sure, I have not been able to work it out. I do not know if the present legislation does, in fact, effect such a reduction, or whether judges always had it in their power to determine that a certain class of murder is 2 or 3 and, therefore, not sentenced as capital punishment. I am not sure whether existing legislation would have allowed all those murders now called 2 and 3 to be murders for which you need not be sentenced to hang. I hope the Attorney General would be able to explain to us that yes, in fact, the present legislation does reduce the number or it even removes it from the judges' discretion and tells him that he has to consider these 2 and 3. It is not simply a matter of your discretion.

Although I am uncertain of the number of those eligible to be executed and by how much it is being reduced, I still feel that is an intention that I would like to support. It is an indication that the state is human after all, and it has a very human reluctance to take human life. The whole question about whether one ought to take human life I think is one that this society has not really debated or

discussed openly. I know that in the first flush of somebody doing something to a dear one you say, "I will kill that person if I get a chance", but a few minutes later, after that emotional outburst, you stop and think what it means to kill somebody.

Mr. President, I do not think I can kill somebody. I cannot kill my worst enemy. I just do not know how I could bring myself to do it, and I do not know how I would feel after I have done it. Let us say that I killed a person in a rush of emotion, I would be haunted for the rest of my life by the scene in which I have killed that person and the contemplation of what I have deprived that person of by my killing him.

So in my less thinking days, I was very glad to think that the state would take this burden away from me, that the state is an impersonal agency which takes away from me the necessity for revenge or personal vendetta, and the state, by having these long complicated arrangements of collecting evidence and holding a trial would give people who suffer as a result of a murder and who are involved in the fate of the victim of the murder, a time to reflect on the whole thing. I have a feeling—in fact, it has happened in my family—that by the time the person who committed the murder against my relative came to trial, I no longer wished to see that person killed. I know something has to be done about him, and so one of the justifications of the state taking over the punishment of people who commit murder is that it sets up an impersonal apparatus which prevents individuals from exacting personal revenge and from indulging in that kind of activity oneself.

The state carries out the trial and execution, but why do we want to execute the person who has taken a life? I think the reasons are obvious enough. I, for one, would like it to be certain that somebody who has killed does not get another opportunity to do so. I would like to make sure that someone who has a reputation for having killed is not walking around like Mano Benjamin terrifying people that he might kill them. A person who has killed and is walking around can strike fear in the hearts of other citizens and intimidate other citizens. So, I want to make sure that the state does something to the person who has killed that will prevent him from doing it again and not put him in a place where he can strike fear or cause intimidation.

If the state, being made up of human beings has even the slightest value for human life, or the slightest recognition that there is a thing called conscience, and that we are not beasts in the jungle, the state would know that even the person who kills somebody else does this by some kind of aberration and I would feel that one of our responsibilities to people who have killed, ideally, would be to see

if we can cure him or her from falling into that psychological frame of mind where he can take a life or even think it is right to take a life. I wish, in our dealing with people who have killed, we had some provision whereby we could see whether we could work upon them in that way and I wish too, that we would be able to educate that person about the value of human life and his own life which he has now jeopardized by killing somebody else.

Mr. President, 3 and 4 are to cure him from getting into that psychological frame or to teach him to value human life are certainly not accomplished by any institution in our society and this certainly cannot be accomplished by our prisons as they are presently constituted. Therefore, we are left with 1 and 2 as the main reason why the state executes. The state executes to make sure he does not do it again and to protect other people from being terrorized or intimidated by this person. Is that a justification? Is there some other way? I think these are the kinds of questions that the society needs to consider. If the society had a free and open debate, and if the Parliament, which is the law-making body—which is supposed to give a lead to people, not only in legalistic thinking, but in right thinking—would engage in such a debate, this may very well have an influence on what people think and get people in the society at large to say hang them. You know if a poll was conducted last week the majority of us would say yes, hang them. I do not think that it is an excuse or justification for any Government to say that we are hanging people because the masses say hang them. You want to carry out the will of the people, that is the function of Government, but it is also part of the responsibility of Government to help the people to think about what is their will and the implications of their will and if anything, Government may very well wish to influence people.

We do it with our children. Sometimes you tell a child, “I know you want this and you want that, but please accept this is what we should do. Let me try to persuade you that we are doing it, but I have to tell you, whether you like it or not, we are doing it”. There is an amount of leadership, a certain amount of guidance, and as I said, I do not think we should say a poll has been conducted and the majority of people in Trinidad and Tobago are in support of the death penalty, therefore, we as a Government have to retain it. Yes, in the laws of Trinidad and Tobago we have the death penalty and until that law is changed we have to carry it out. Incidentally, Mr. President, I do not think that any international organization has a right to come to this country to try to undermine the laws of Trinidad and Tobago to say our laws are illegal. That is impertinence. It is our

duty as citizens, if we do not like a law, to try to work to change that law. If an international body feels we have a bad law, they can set up camp here and try to influence our citizens to work towards changing the law, but they cannot go broadcasting that Trinidad and Tobago is a barbarous country because it has the death penalty. They cannot go about condemning us because of what is in our law books. They can try to influence us to change our law; they are allowed to do that.

3.45 p.m.

Mr. President, I am saying that the Government itself has to obey the law. We have hanging on our law books but the Government cannot say that if we conducted a poll the majority would say, "hang them" and, therefore, we are abiding by that. The Government has a responsibility to help the population to think. When they want votes they go out and try to influence people to think. So, on a matter like this, I think that the lead ought to be given by the Parliament. This is where a free debate should take place.

I support the suggestion of Sen. Prof. Kenny. My suggestion really is that they should scrap this one and when a new government comes we should have a proper, well-prepared debate on the whole issue of capital punishment. Whatever we decide here is not going to settle the matter. If anything, it is going to make people take up positions which would become hardened and when we are ready for a real debate too many would have committed themselves one way or another. We honestly need a free, open and lengthy debate involving the citizens of this country on the whole question of capital punishment.

I suppose I had better declare that I am a 99.5 per cent abolitionist. When I look at the categories of murder set out here, I am interested in (f), which says:

“(f) murder that is especially heinous, atrocious or cruel, manifesting exceptional depravity.”

What (f) is saying is that there are certain kinds of murders; and the kind of murder would show itself in the gruesomeness, the cruelty and the atrocity. There are certain kinds of murders that imply that the person doing that murder seems to have gone beyond the pale; that that person has lost his or her humanity; that that person is a lost case; that that person is a danger to society and to himself; that that person is unreformable, and there is nothing we can do with him. I do not know if there are people who would say that we do not have a right to make such a judgment, but I think there are instances where many of us would say this

person has lost his humanity. I have a problem with persons like that. I wish we could find a way to deal with persons like that. I am a 99.5 per cent abolitionist, because I leave room for that small number of people who look as if they have lost their humanity and the best method of dealing with them at the moment seems to be executing them. I am not committed to that as the only solution, but I recognize that those are people who constitute a serious problem for the state and for other citizens.

I should really not bother to go into the details any more because my position is, I cannot really support this legislation for the reasons that are implicit in what I have said. I want to look at (a), (b), (c), (d) and (e). Under (4)(B), it says:

“(1) Subject to subsection (2), murder committed in the following circumstances is Murder 1.”

The great difference between (a), (b), (c), (d), (e) and (f) is that (f) has to do with the gruesomeness of the crime, with the atrocity, with the lack of humanity of the person doing it, *et cetera*. But if we look at (a)...

- “(i) a member of the security forces...
- (ii) a prison officer...
- (iii) a judicial officer...”

all of them carrying out their official duties. I am sure that officers carrying out their judicial duties should not be interfered with or murdered, and a medical practitioner carrying out his duties should not be murdered. A professor of English carrying out his duties should not be murdered. Why is it that there is a priority that if you kill a policeman you would get hang, but if you kill a professor of English you do not “get hang”? I cannot follow the logic of that. Similarly, a witness or a juror. I find this is highly discriminatory.

Let us go to (c).

“any murder committed by a person in the course or furtherance of an arrestable offence involving violence;”

I take that to mean if a man is in your house stealing and you come up and catch him and you try to apprehend him and he shoots you he has to be hanged for that. That is a panic crime. He might figure that I would shoot him first because I have a gun. He has been caught. I might want to dispute whether that is Murder 1. What I am arguing is that I find (a), (b), (c), (d) and (e) are quite flimsy. Of

course, when a terrorist hijacks an aeroplane, I really believe that terrorists should be put in the same category as the people in (f).

- (d) “murder committed by means of a destructive device, bomb, or explosive...”

and so forth. I take it that this refers to terrorists, and I feel terrorists, by definition, are like the people in (f), and contract killers. I wonder who is worse? When you go to (e) where contract killers can be charged with Murder 1 or have to be charged with Murder 1, I have to ask: Who is worse? The contract killer himself, or the man who puts out the contract. Is a contract killing or a contractor to a killing committing the same kind of heinous or atrocious crime that requires us to do what John Stuart Mill says, that is one time when the philosopher talks nonsense to obliterate them out of human existence. It is absurd.

Mr. President, I have some unhappiness about how category 1 has been arrived at, and while I feel that terrorists and the people in (f) are a serious problem who have to be dealt with, I cannot see the justification of (a), (b) and (c), as against medical practitioners or professors of English or any other human being. A life is a life; a life has been taken. I serve a function in society in the same way that a policeman or a member of the armed forces serves a function in society.

While I am on these details I feel I have to look at Murder 3, and the way I see people driving their motor cars in this country. A motor car is a gun; a motor car is worse than a gun and why are those people who are wielding motor cars and killing people they being put in category three? That is atrocious murder. I have my doubts about some of the other categories. In fact, I think that the categorization has not been thought out carefully enough and with any kind of moral or ethical feeling behind it.

It is not directed at the outrage we feel at certain kinds of murders and the difficulties we have with relating to certain kinds of—we have to call them—human beings in society. So, again, this is yet more evidence that this legislation needs more time and has to be more carefully thought out.

3.55 p.m.

So, Mr. President, I would just like to return to the suggestion Sen. Prof. Kenny was making, and my own suggestion, that the Government is not justified

in saying that, “The majority of the people support the capital punishment, therefore, we have to keep capital punishment on the law books”. A responsible government has to lead. [*Desk thumping*] A responsible government has to educate people, encourage people to think, and to allow people to find out what they really feel and think. This question of capital punishment is one case where the lead has to be taken by the legislators of the country.

So, I would really like to see a free and open debate in Parliament over an extended period where Senators have time to express their views without having to say, “Well, the party wants us to do this”, or, “The pressure group that backed me up wants me to do this”. It should be a free, conscience contribution and this debate should be publicized and broadcast live on national television and on radio and the people of the country should have an opportunity to express their thoughts and feelings about it. So, Mr. President, with that suggestion I close and I thank you. [*Desk thumping*]

Sen. Rev. Daniel Teelucksingh: Mr. President, because of the specific provision in clause 4 that says:

“A person who is convicted of capital murder shall suffer death.”

I cannot support the Bill. I want to associate with Sen. Prof. Kenny joining, let us say, the minority who are abolitionists in this country, and we are not ashamed of saying that. I really believe the time has come—it is long overdue—for us to remove the death penalty from our law books. [*Desk thumping*] I believe that and I am not supporting the Bill today. Many thought that with the hanging of the Chadee gang, and, of course, previous executions over the years, a message would possibly have been sent to those who are inclined to commit this heinous crime of taking someone’s life. Yet, Mr. President, the hangings and previous executions by the state have not been a deterrent from committing murders in Trinidad and Tobago. Brutal murders persist and violence against the human person remains with us.

Sen. Prof. Ramchand raised a very important point, the one about, “Those who have committed such a crime, what do we do with them?” I know he is very much concerned and we are concerned. There are serial killers. Do we want them to go back into society? I believe that a murderer has forfeited his right to be a member of the community, and, therefore, I think the alternative to the death penalty should be life imprisonment. I personally believe that serial killers and those who have committed heinous crimes have forfeited their right to be a

member of the community and a part of the society and they should be removed, but not by hanging.

I have a concern with the Bill before us, Mr. President, which provides for categorization of murder. I know this might be essential for the justice system in Trinidad and Tobago. This classification of murder will assist the courts. I am sure that it will certainly assist those who serve in the jury system. The question I want to ask is, now that there is categorization of murder, will persons who are inclined to commit this crime of murder select their category? People sit and plan murders. Could one select one's category in order that they will not suffer death? It is very, very possible. I think there is some danger in that too. I have a problem with the categorization of murder. I know, as I was saying, it is going to be useful to the courts. Maybe it might be helpful for those who are criminally inclined.

Mr. President, with respect to our country's stance on capital punishment, I know the international community has been looking at us. I agree with Sen. Prof. Ramchand when he made reference to a matter here. I find it very difficult indeed to appreciate the constant pressures put on Trinidad and Tobago by certain international agencies like, maybe, Amnesty International, as though we are the most brutal state in the Americas. I know there is much to be done concerning the state of our prisons. We have been certainly depriving prisoners of certain fundamental rights because of conditions in prison and certainly because of a retention of the death penalty. That cluster of hangings, I am certain, is terrifying. I have my own reservation about those hangings.

As I said—I will repeat it—I do not support the death penalty; but tell me something. There are those who give the impression that we as a nation are really guilty of human rights violations here and I do not know how we can correct that. I do not think it is fair that a nation like ours should be judged like this in the international scene, the international theatre. The question I want to ask, Mr. President, is: Can we differentiate between state violations of human rights and such violations of human rights at the domestic level? Everyone seems to be focussing on the violation of human rights at state level, governmental level, maybe even parliamentary level. What about the domestic level?

Mr. President, the maintenance of the noble virtues of human rights must now be the concern of all peoples. Amnesty International must come here and spend a year with us and not sit and look at certain actions taken by Government. We live here and we know that the question of human rights violations is a question not for a government or for a parliament only, but for all the citizens of Trinidad and

Tobago. Too often we discuss human rights violations, maybe as Amnesty International is doing, only as they relate to governmental policy, but violence and brutal crimes at all levels in this community is where we need to look and really test this nation's appreciation of human privileges and rights. Violation of human rights at the local level must always be our greatest concern.

There is much to be done, Mr. President, at the domestic level for education in human rights issues and the preservation of such rights, and this must pervade all levels in the society. This respect for human life is something that should be unshakably entrenched in this very small neighbourhood that is ours, Trinidad and Tobago. State violence, judged by its position on capital punishment, that is the Government's or the state's position on capital punishment, in my most respectful view, is symptomatic of the first cause.

The first cause is not Government. The first cause is violence at the community level, and we need to go back to the first cause. If the state is guilty of murder in its execution of criminals, then let us not forget that our more serious problem is the place where it all began, and that is at the level where men and women live and create an environment that is nasty and brutish. This is our real problem. I really wish to move away from the state as a proponent of violence in this matter of the death penalty and to focus on the need for us as parents, teachers, priests, legislators, and all of us, to find new means and ways to create a more just and humane society.

Mr. President, this is the second consecutive sitting of this Senate where appeal was made to the moral law. The last day we met, a Government Minister referred to it. Today, Sen. Prof. Kenny repeated it—appeal to the moral law. I, too, will add—and that is a very comfortable position—that it is good for those who belong to religions and those who have nothing to do with religions. The moral law appeals to humanity. The fella who said it and who introduced and popularized that term said, “There are two things that convince me that there is a God, the starry heavens above and the moral law within. This tells me there is a God there. There has to be one”.

As we speak about the moral law, we need to live and to teach the principles of this moral law, beginning from the cradle, of course, to awaken in the human person a conscience that cares for and respects human life. I have always heard about the debate on capital punishment, how we need it. Some people say we need a referendum in this country. I think that would be wasting time. We need to begin to teach people at every level how sacred life is. The violence is not at the

level of Cabinet, it is not at the level of the Parliament; it is right down from underneath where our people do not respect life. That is the source. This is where the murders begin. It does not start at the top. It started there. A murder was created first before the hangings and we have to deal with that, look at the causes and find answers to this very serious problem.

I think that should be the focus of a national debate, “What is responsible for the spate of murders in this country?” Why is it that in a small community of barely over a million people we just kill willy-nilly, that we have a proliferation of guns and that people just take life like that? Has the moral law flown away from us? We need to awaken that because it is still there, maybe it is dormant. Well that moral law is there within every one of us.

4.10 p.m.

Mr. President, just to repeat, I do not think I can support this Bill but there are very serious issues at every level in this society that we need to address.

Mr. President, I thank you very much.

Sen. Muhammad Shabazz: Mr. President, I want to first start off by saying, again—probably repeating what has been said—this Bill seems to be too much of an important Bill to be brought to this Senate in the manner in which it was brought. I want to go back to the last sitting when we were here. It was said that this Bill was taken back because there was something in the Bill that said probably, if this Bill was passed we would have been removing capital punishment as a whole. The Bill was taken back and maybe it was corrected. The point is, for a Bill as important as this, which will create such widespread discussion, personally—and I would like to speak for all of us on this side—we think that this Bill should not be brought to this Senate in this manner. We think that this Bill should be sent back and there should be wider discussion. Now, not only that, even if we are going to support the Bill—as we have said on this side—it is important to look at that.

Mr. President, the question of whether there should be capital punishment or whether it should be abolished has always and will always continue to be a discussion in all societies. There will always be people, even on this side, I am certain, who are for capital punishment. There are some people on this side who want capital punishment abolished. But as it has been said, we have got to take a group position or a party position. Our position has been, and still is, the law is

the law and it must be carried out. If we are going to bring a new law, you must give us sufficient time to think about it.

There are new amendments and a number of other things here and we cannot—I find it difficult in 30 minutes—come up in a serious way with something about this Bill. I find it very, very difficult. I think it is something that we should continue to look at so that when we pass it, we know that we will be passing a piece of legislation that is important and that could affect a number of people's lives in Trinidad and Tobago.

Mr. President, there will always be a number of different views. We on this side understand what capital punishment is all about. I would like to say on this side that if a man kills my daughter, maybe I may want him to be killed. But if my daughter or son is the killer of somebody else's daughter—even though the higher ideal is to want him to be killed if I am for capital punishment—or if I am not for it and somebody kills my daughter, I will want that person to be free. But if somebody kills my daughter, I may want that other person's son to be killed for killing my daughter. If it is my son, I may want him to be free. If it is my brother, I may want him to be free. If it is my cousin who did the killing, I may want him to be free. We understand that. We may be for capital punishment but when it is somebody close to us—whether it is killing, rape or whatever it is—our position could differ. We cannot deal with this Bill solely on emotions. We must deal with this Bill from the point of view that we are sure that what we are doing is correct and how it will affect our society.

Mr. President, people talk and say, okay, maybe there are strong arguments why it should not be abolished. We have seen—and it has been brought out on this side—the fact that you keep carrying on capital punishment does not say that crime would stop in the country. There are countries where capital punishment has not been carried out and the crime rate has dropped. So that in truth and in fact, really and truly, I am not here saying whether killing or not killing is correct. Whether it is repulsive, my thing is, there must be something that is more repulsive than that and I would like to deal with that strictly in the context of Trinidad and Tobago.

When we pass laws—it may be the Senate or the other place—we also have to look at the people who bring the laws to our Parliament. I really would not like to be a person who is for killing, who is for hanging and has to bring a Bill here that says not to hang people. I will prefer somebody else to present the Bill. I do not want to be a person who is not for hanging and wants to bring a Bill that says to

hang or *vice versa*. My position must be clear in order to present to the wider community that what I stand for is what I present and that I believe in it. I think that bringing this Bill here, to me, there is something repulsive inside of that.

I heard the hon. Attorney General just talking about how, in truth and in fact, we have a great human rights record in Trinidad and Tobago and I agree with him. That great human rights record has been a result of work done over the years in this country to ensure that it has been maintained. What people find repulsive or frightening now is that after saying there is a great human rights position in Trinidad and Tobago, the Government may be removing conventions that may—not in this time—but will affect us in some time to come. These are the things that we have to look at.

Mr. President, we talk about human rights. We talk about whether you want hanging or you do not want hanging but we have to look at our prison systems. How many people have visited death row? I have seen death row and when one looks at death row and what is happening in the whole penal system, one would feel that there must be some changes. The Government is talking about changing people's lives. What about the man who committed murder but was not convicted for murder but it was brought down to manslaughter and you say send him up for 15 years? What conditions have been prepared for him? Even if you are going to

kill, how are we going to deal with this as a nation? It is something that must be discussed.

Mr. President, it is difficult for me to stand in a position where, in 10 years I do not want to hang one person, and in one year I may hang 10 persons. It is a wrong signal to send out to the wider society. This is all I am saying, to me, that is repulsive. We must be consistent with what our views are and where we are at and what we are standing for. There must be disagreement; there must be agreement. So I do not know what is the position.

As a matter of fact, Trinidad and Tobago is a multicultural, multiracial, multi-ethnic and multi-religious society. So, I am certain that if it is one place where there are different views, it is in Trinidad and Tobago. Maybe, if you are a Christian, whatever your view is, you may say, okay, this religion says "Thou shall not kill" and there may be an argument. Another religion may say not only "Thou shall not kill" but also it may be for forgiveness and that may be that religion's view. One may have a different view and maybe another religion, like the Muslims, may say, okay, it is a crime and one must pay for it.

I do not know what is the position the Attorney General took but I believe, I have read to some extent the *Gita* and maybe the position of Arjoon, where he was told to kill and he said no that he was not going to do it. He was told that if he wiped off these men he would still get—because they were going to die anyway and maybe that is the position. Maybe the Attorney General is taking a position like that, which may be a correct position, but the point is there are going to be different views. We must be consistent in how we present the views as a nation.

Mr. President, this Bill needs to be looked at carefully. I am seeing things like “mercy killing” appearing in the Bill. I am seeing all kinds of different things appearing in the Bill. On page 5 it says:

“‘mercy killing’ means an act or acts otherwise amounting to murder done with respect to a patient in extremis in such circumstances as demonstrate the absence of culpable malice aforethought.”

With respect to mercy killings, these are matters we need to sit and talk about even if we agree as a society. There is no need for the Government to bring matters like this and only pass them before the Senate because it is going to dissolve on the 27th, or because the Government has an election to call, or because the Government wants to say it passed more Bills than anybody else, or the Government is going to have an election on the fifth or whatever it might be. These things are too serious to be brought before the Senate like this.

Hon. Senator: The fourth.

Mr. M. Shabazz: I heard somebody saying it is the fourth. Whether it is the fourth or fifth, it is important that the Government looks at these matters differently. I heard somebody asking why this Bill is being passed. There are a number of reasons given. I may have one and my own may be incorrect. I feel some people who defended human rights and people from being killed and their position is changed, I feel they are looking to change their position quickly, and I may be wrong. This is a Bill that may be passed with loopholes in it so that when Members go back into private society after the election, they could say they are going to get killers off again. They could change and be the friends of murderers. I do not know if this is a loophole Bill, but before we pass it, we must look at it carefully.

4.20 p.m.

Mr. President, this is a serious thing happening in our society. We on this side may say somebody over there committed murder. They may say no because an

election is coming up, and next thing we know, the person runs out of the country and that might be what has happened. We do not know. Because we are looking at the loopholes and at the presenter of the Bill, this is what we are finding repulsive. Why is this Bill being brought so quickly? Why? Is it that they want to give somebody who they know might be a murderer a chance? They want to bring him under a clause thing and say it was a mercy killing.

Mr. President, this is indeed serious business. I would like the Attorney General to understand that I am not dealing with him from a political angle, because I do not want to hear about the PNM killed a man and all that sort of thing. That is what may come up. If it has happened in this country once, to happen 10 times in a week is really a serious thing. The whole press was focused on us. This is a country that was looked at in a serious way when 10 people were executed in a week.

Mr. President, having said this, we have had a great human rights record and we have a number of other things we need to look at. I am saying, let us, at this point, be much more serious in the passage of this Bill.

Thank you very much, Mr. President.

[MR. VICE-PRESIDENT *in the Chair*]

Sen. Dr. Eastlyn McKenzie: Mr. Vice-President, I just want to ask a question of the Attorney General. How does this law differ in intent from the existing law?

That is all I want to know. As far as I am concerned, Mr. Vice-President, in my humble interpretation of what happens now, there is a discretion as to whether a person is charged for a heinous murder, and the charge is reduced to manslaughter, whether the DPP can look at the circumstances and say, "Do not even go to court", and all of this. I really do not understand why we are changing what we have now.

Thank you, Mr. Vice-President.

The Attorney General and Minister of Legal Affairs (Hon. Ramesh Lawrence Maharaj): Mr. Vice-President, this Bill has a very long history. As a matter of fact, during the last election campaign, one of the things that the people of Trinidad and Tobago were very concerned about was the non-implementation of the death penalty. Parties during the election campaign had to answer to the people about what they intended to do with the law of murder. The position the governing party took was that it would implement the death penalty and it would take steps to categorize the law of murder.

When the new Government took office, it published for public comment, the Offences Against The Person (Amdt.) Bill. The Bill was published in the newspapers and there was wide consultation in Port of Spain, San Fernando and Tobago and there were comments from members of the public. The general consensus of the views was that the death penalty should be retained as a punishment in Trinidad and Tobago. It supported the commission of inquiry which was appointed by the NAR administration into the death penalty and that the Government should retain the death penalty.

Some of the views were that the existing law of murder dealt with the category of murder. Others were of the view that there was an injustice done in that what happened was that if there was a killing done in provocation, the person was charged for murder but later on, he spent two or three years in prison and would then be convicted for manslaughter.

There were many technical issues raised about the Bill, and what then happened was that the Government indicated that it would look at the Bill again and would see whether it would be able to amend the Bill. What has happened, Mr. Vice-President, is that the Government had to deal with two situations. One situation was that a section of the population was saying, "Forget it. For the people who are arrested for murder and later on the court finds manslaughter, let the court deal with it. Let them remain in custody, but leave the law as it is".

On the other hand, there was a situation where grave injustice was being done, because a man may kill in self-defence and there was excessive force and the DPP would not take it upon himself, quite rightly, to say he was going to charge for manslaughter; or a lady may be killed because of domestic violence and the DPP may not take it upon himself, and say that is a matter for the jury to decide.

Mr. Vice-President, under the law of murder, when the matter goes, the magistrate does not find guilt or innocence. He just finds whether there is a *prima facie* case. When the matters go before the judge and jury, the judge will have to direct the jury that on the law of provocation, it would be a question of fact for the jury to find if it was manslaughter or not.

What this law does really —and I think Sen. McKenzie, I must say that during the time I have been here, I have been very impressed with her having a good grasp of legal principles, although she is a layperson—is that if one looks at clause 4D(i) it says:

“Murder 2, subject to this section, is the category of the offence of murder as may be determined under section 4F that is reduced to manslaughter, or that is required to be punished as manslaughter under a written law, and includes gross negligence, mercy killing, recklessness as to participation in the offence of murder, the use of excessive force outside the contemplation of section 4...”

There is a category of Murder 2 in which, if it is found that this would not be murder, it gives a discretion. In other words, it puts into law that one should not charge a person for murder where the evidence is that it would be Murder 2.

Then, under Murder 3, it is “involuntary homicide”, and it describes where it is “provocation, negligence and causing death by reckless driving”. What has happened in several of the pieces of legislation, including Jamaica, in which one had to categorize murder, one had to find a category in which one would say that this is a category.

If one looks at clause 4(e) it will deal with the categories of Murder 1. Then there is a sort of omnibus clause at (f) for a murder that is “especially heinous, atrocious or cruel, manifesting of exceptional depravity;”

The policy in the Bill, Mr. Vice-President, is not to take away the death penalty. The policy in the Bill is that the death penalty is retained, but the policy in the Bill is that in respect of killings which are not Murder 1, the persons would not have to be arrested and kept in custody, because murder is an unbailable offence. If the person is charged for matters which are not Murder 1, then obviously, the person would not be in custody.

In fairness to the policy also, it is a Bill which will, to a great extent, reduce the number of cases for which the person who is charged for the killing—to have the torture hanging over his or her head—would have the death penalty over him.

Mr. Vice-President, if it is to be a vote of conscience, I think all of us in this Parliament will vote for this Bill, because it is a Bill which is going to alleviate the suffering of a lot of people. It is a step in a direction to alleviate some of the problems which people face. What one is going to do here is have category one murders in which people who are charged for that kind of killing will know that they can suffer the death penalty, and the courts would have the ultimate power to determine. Even if a person is charged for Murder 1, the court can, in effect, substitute Murder 2; so, there is the safeguard.

Mr. Vice-President, I do not think Sen. Shabazz said anything, and I do not think I need to respond to that. [*Desk thumping*] On what Sen. Montano mentioned about the law and the death penalty, I think a state which decides to retain the death penalty retains the death penalty because it is the law of the land. It is also a signal to those who want to kill that if they kill, they will get the punishment. That is the argument for the state.

There are some states which have decided not to have the death penalty, and states are comprised of elected representatives. When people elect people in office, they elect people in order to discharge responsibilities to them. If an elected government decides at any time that it wants to abolish the death penalty, it would have to decide that it is doing so, but face the consequences of the electorate.

I also believe that human rights are not on one side. They are on both sides. They are obviously the human and fundamental rights of a population which elects a government on the basis that the Government is going to retain the death penalty; that the Government does not decide to abolish the death penalty unless it goes back to the population and says that is what it is going to do. Otherwise, the Government would be defrauding the electorate and doing otherwise.

Mr. Vice-President, I would invite the Opposition, if it believes that the death penalty should be abolished in Trinidad and Tobago, it could be part of their policy and this is the appropriate time. They can go to the electorate and say, if elected into office they will take steps to abolish the death penalty, but it is an issue which is an election issue, because people have a stake in this.

When there is a killing, a heinous killing, when there is a brutal killing, when a man could say, "Go to the house and kill everybody. If you see children, kill them", the society has to decide whether one would want a person like that, if convicted, to be kept in prison or to face the death penalty. The society has a right to determine that.

Mr. Vice-President, in one of the biggest democracies in the world, the United States of America, in the public debates with Vice-President Gore and the presidential candidate, Mr. George Bush, the death penalty is a live issue. People want to know what they are going to do.

This Government went to the electorate and did not say we are going to abolish the death penalty; we are going to implement it, notwithstanding all the difficulties the Privy Council has put in our way. Notwithstanding all the

obstacles we have to cross, we are going to implement it and keep it, but we are going to listen to what other people have said about it too, and introduce laws to categorize murder. That is what we are doing here.

I do apologize to all Members who believe they did not have sufficient time, if there was a misunderstanding, but the policy in the Bill, that is the policy. What I will do, I have put a proclamation clause, which is to say that the Bill will not come into effect unless it is proclaimed. It will be assented to, but there will be a date of proclamation. There are a lot of technical points which have been raised and I am giving an undertaking to the Senate that the Ministry of the Attorney General and Legal Affairs would look at the technical aspects of it, and the holder of the office of Attorney General and Minister of Legal Affairs should come back to the Senate, when the review has been done, to indicate to the Senate what consideration it has given to the Bill and report to the Senate in respect of the technical aspect.

Sen. Prof. Ramchand: Mr. Vice-President, I was just wondering while the Attorney General was on his point of coming back to the Senate, whether in view of the fact that there are many instances where persons have been executed and years later, evidence turns up that those persons had not done the crime, can he say whether when he comes back to the Senate, he will have some thoughts about whether it is worth specifically introducing a criterion of the absolute quality of the evidence for category Murder 1?

4.35 p.m.

Hon. R. L. Maharaj: Mr. Vice-President, I am very sorry that Sen. Prof. Ramchand has listened to a lot of stuff in Trinidad and Tobago, which really is not supported by evidence. I do not know of any case in Trinidad and Tobago in which it has been shown that anyone who has been convicted was innocent and I would invite—I hear the Opposition talking about it—the Opposition or anyone to go to the population and say that this man who was convicted on this evidence is innocent. I am glad the hon. Senator raised that.

I told the United Nations Committee on Human Rights that Trinidad and Tobago has the most safeguards for any person convicted of murder or of a crime as far as the court process is concerned. It has more safeguards than the United States of America, the United Kingdom, Canada and Geneva in Switzerland, wherever it is.

In Trinidad and Tobago, after the matter reaches the Magistrates' Court, for a murder case, it goes to the High Court—judge and jury, a unanimous verdict. After judge and jury, a unanimous verdict, it goes to the Court of Appeal. Well, at the Court of Appeal, there are three judges. After that, it can go to the Judicial Committee of the Privy Council and there are at least three judges in respect of a criminal appeal and sometimes there are five. In most capital cases, there are five.

After that, an accused person can file a constitutional motion. Some of them file it even before a trial and you can go from the High Court to the Court of Appeal and the Privy Council. After that, you can file another constitutional motion—High Court, Court of Appeal and Privy Council. You can also file a judicial review—and they have done it. After you are finished with the Privy Council, you can go back to the Privy Council and say you have new evidence. Under the existing law, we have enough machinery that if there is any additional evidence, if there is any belief that anybody is innocent, it can be tried.

Sen. Prof. Ramchand: Thank you, Attorney General and Mr. Vice-President. I take the assurance of the hon. Attorney General that there is absolutely no possibility of anybody in Trinidad and Tobago being wrongly convicted of murder.

Hon. R. L. Maharaj: No. I think Sen. Prof. Ramchand is not being fair. That is not what I said. No justice system is infallible, but what I am saying is that there are enough safeguards that if anybody believes that the evidence is such that he or she was innocent, or the family believed they were innocent, even in Trinidad and Tobago, you could have taken steps to get a posthumous pardon. There have been no instances of that in Trinidad and Tobago but in the United States there have been. Notwithstanding what failings our system has, there have been no instances of that. In the United Kingdom, there have been but, what I am saying is that in Trinidad and Tobago, there are more avenues available.

As a matter of fact, Mr. Vice-President, one of the things that are printed in the newspaper—I am not blaming the press—and which the international organizations say about Trinidad and Tobago is that Trinidad and Tobago does not provide legal aid for persons convicted of murder. Trinidad and Tobago not only provides legal aid for persons charged and convicted for murder in Trinidad and Tobago, but at the Judicial Committee of the Privy Council, what I do know, since I have become Attorney General, is that the state provides legal aid for accused persons and gives them Queen's Counsel to appear for them before the Judicial Committee of the Privy Council and pays large fees. As I told a press conference in the United Kingdom on Friday, we can produce if the lawyers

query, the fees which they got from the Government of Trinidad and Tobago. When they say they do not get fees to appear for condemned persons in Trinidad and Tobago, it is not correct.

I think we have to understand that countries of the world are entitled to say they want a particular punishment. The people are entitled to say that, but the people of Trinidad and Tobago are entitled to say that they do not want your punishment or your legal culture transplanted to Trinidad and Tobago, and what Trinidad and Tobago and the Caribbean countries are fighting is a situation in which a group of countries which are very powerful, are saying that we must abolish the death penalty.

As a matter of fact, under the International Covenant on Civil and Political Rights, each country has to prepare a human rights report. Trinidad and Tobago did not prepare a human rights report for 13 years. Under this Government, we prepared that report. Under the Covenant, the country has to appear and defend that report before that committee. We went with that report which was laid in this Parliament and the only two issues which dominated the whole day's proceeding in which I had to answer and I took the trouble to give them all the explanation, were corporal punishment and the death penalty. It is because the majority of members of the committee believe that the death penalty should be abolished and corporal punishment in prisons should be abolished. I was very adamant and told them that the position is that the Government and the people of Trinidad and Tobago support the death penalty and, with the greatest respect to them, they cannot get us to change it.

Secondly, for corporal punishment, we have taken one step forward to abolish corporal punishment for persons under the age of 18 years but until the people decide in Trinidad and Tobago, through the Parliament, to abolish corporal punishment—as a matter of fact, that is not a human rights issue because in the International Covenant on Civil and Political Rights, there is no prohibition against corporal punishment.

Mr. Vice-President, I do not think any government could have acted in a more honourable way on this issue as this Government has acted. Here it is, we told the people that this is what we were going to do. We are going to retain the death penalty. We are going to implement it. We are going to take steps in order to categorize murder. We published a Bill. We had extensive discussion. I have also taken the position and I agree there are certain technical areas which probably ought to be looked at again. That is why I am taking the position that we have put in a proclamation clause; I am making an undertaking for the Ministry to look at it

and for the holder of the Office of Attorney General to come back to this Senate and report on the review which the Ministry will do in respect of the technical points which have been raised, and which I would also endorse on a file and leave it at the Ministry.

Sen. Marshall: Thank you, hon. Attorney General. Very often, the argument is made that retention of the death penalty has not caused murders to cease. Could you tell me whether there is any statistic that shows whether retention of the death penalty has caused murders to increase?

Hon. R. L. Maharaj: Mr. Vice-President, I could state that I have looked at the statistics myself. After the execution of Glen Ashby, although it was an execution which was regarded as being not in accordance with law, the fact of the matter is, the statistics showed that after the execution of Glen Ashby, murders in Trinidad and Tobago reduced. After the execution of Dole Chadee and the other nine persons, the killings in Trinidad and Tobago were reduced. I do not have the statistics with me but I can say that as a fact.

As a matter of fact, in the United Kingdom, the population is calling for the reintroduction of the death penalty. In Canada, the population is calling for the reintroduction of the death penalty and in countries of Europe, the populations are calling for the reintroduction of the death penalty. You would have seen that in certain states of the United States of America—as a matter of fact, the US Attorney General, Janet Reno, told me that she takes the reports of the United Nations Committee on Human Rights and goes ahead and does what the laws of the United States say to do.

What has happened is that I do not hear any human rights body requesting a meeting with President Clinton, saying he must see it, or requesting a meeting with US Attorney General, Janet Reno, saying it must see her. But in small countries, there are some of these persons employed as Secretaries General of international organizations who believe they can treat the contempt of the people of Trinidad and Tobago by saying that you must go along with what we decide in Europe to be the law.

As a matter of fact, I want to say and I am very sorry if I sound this way this afternoon but it is something that I feel very—and I do not think anybody knows about the pros and cons of the death penalty as I have experienced in my private life.

Just as a judge would have views on the death penalty but he has to do his duty—and this has nothing to do with personal views, this has to do with official

duty—when we became Members of Parliament, we took an oath to uphold the Constitution and the laws of Trinidad and Tobago and when we take that oath, we take it in order to fulfil a duty to the state. When the state takes a position in respect of the death penalty, that position ought to be respected by other countries.

What is happening is that there are certain countries which believe that Trinidad and Tobago can be dictated to, because it is small and it only has 1.4 million people, but we have shown the world that the people of Trinidad and Tobago are strong and you can be as big as you are, you are not going to tell us what laws we are going to pass in Trinidad and Tobago. We are going to stand up to you. [*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: We have in front of us a Bill with five clauses and two circulated amendments, both by the Attorney General. Does everybody have both? Is there anybody without the circulated amendments? There is one headed up "Supplemental List of Amendments".

I have just been corrected. In fact, there is a third one that was circulated at the previous sitting. This is an amendment to new clause 4A.

Mr. Maharaj: Mr. Chairman, the old one had to do with the implementation of the Hague Convention on Civil Aspects of International Child Abduction and Minister Ganga Singh, I understand, mentioned in his contribution that we would substitute the words "under the age of 16 years".

Mr. Chairman: Okay. We have three circulated amendments. We will go through clause by clause. Just for clarification, there is a recital that precedes the actual Bill, although it does not indicate it is a preamble, we will treat it as a preamble and we will adopt it or consider it at the end of consideration of the Bill.

4.50 p.m.

Clause 1.

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

Mr. Maharaj: Mr. Chairman, I beg to move that clause 1 be amended as follows:

“Renumber clause 1 as clause 1(1) and insert after clause 1(1) as renumbered the following new subclause:

‘(2) This Act shall come into operation on such date as the President may appoint by Proclamation.’”

Mr. Chairman: Are there any discussions on clause 1?

Question put and agreed to.

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

Clause 2.

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

Mr. Maharaj: Mr. Chairman, I beg to move that clause 2 be amended as follows:

“Clause 2(2) Delete the words ‘may not be convicted of capital murder unless his act or acts amounts to or constitute murder 1’ and substitute the words ‘shall suffer death if he is convicted of murder 1’”.

Mr. Chairman, what we are trying to do in clause 2 is use the words of section 4 as far as possible. [*Interruption*] You would remember that there is another clause that one could suffer death for murder 2 in particular circumstances.

Sen. Daly: I really do not want to prolong this agony. I was going to say this when we came to the Preamble; we are trying to avoid making it look as though we are altering the law. Conceptually, I was suggesting that we are granting a relief. I will save it for the Preamble. If we are going to do it this way, it might be better to go back to the formula but—

Mr. Maharaj: I am deleting the Preamble. I instructed them not to put in the word “only” because I think the word “only” may not—in light of the fact that under clause 2—[*Interruption*]

Sen. Daly: I understand, but it is just a feel.

Mr. Chairman: Are there any other comments on the amendments to clause 2(2)?

Question put and agreed to.

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

Clause 3.

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

Mr. Maharaj: Mr. Chairman, I should point out that there are also amendments to clause 3 in the supplemental draft.

Mr. Chairman: Everyone should have the amendments for clause 3 in terms of the circulated draft and the supplemental amendments. The supplemental amendments could be considered somewhat misleading; in that the references on the extreme left are the amended clauses. The last two amendments in the supplemental list are in fact amendments to clause 3.

Sen. Daly: I still have a problem with the lettering; are we on clause 3?

Mr. Chairman: Yes we are.

Sen. Daly: We have a problem with the references to—I am not sure I do not know.

Mr. Maharaj: Sen. Daly, I am told by the draftsman that the circulated amendments would take care of it, because it is deleting the words 4A, 4B, 4C, 4E, and 4F, and substituting the words 4D, 4E, 4G, 4H, 4I and 4J respectively; so it is a renumbering.

Mr. Chairman, I beg to move that clause 3 be amended as follows:

“A. Delete the marginal notes and the first four lines and substitute the following:

“Section 4D, 4E, 4F, 4G, 4I and 4J inserted	3. The act is amended by inserting after Section 4C the following new sections:’
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B. Delete the words 4A, 4B, 4C 4D, 4E and 4F wherever they occur and substitute the words ‘4D, 4E, 4G, 4H. 4I

C. Insert after proposed section 4E as amended, the following new proposed section:

Non- applicability of section 4	4F. Notwithstanding section 4— (a) a person convicted of murder 2 shall suffer death only in the circumstances referred to in section 4G; (b) a person convicted of murder 3 shall not suffer death.’
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In section 4D delete the word 'includes' and substitute the words 'consists of'

In section 4E(2) delete the words 'capital murder' and substitute the words 'murder 1''

Mr. Chairman: Has everyone had the opportunity to assimilate the amendments to clause 3? We have a renumbering right through it. We now have 4D, 4E, 4G, 4H, 4I and 4J.

Question put and agreed to.

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

Clauses 4 and 5 ordered to stand part of the Bill.

5.00 p.m.

New clause 4A.

Mr. Maharaj: Mr. Chairman, I propose a new clause 4A which reads as follows:

<p>“Section 54 amended</p>	<p>4A.The Act is amended in section 54 by—</p> <p>(a) deleting the words ‘under the age of ten’ and substituting the words ‘under the age of sixteen’; and</p> <p>(b) deleting all the words commencing with the words ‘but no person who claims to be the father.’”</p>
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New clause 4A read the first time.

Question proposed, That the new clause be read a second time.

Question put and agreed to.

Question proposed, That the new clause be added to the Bill.

Mr. Chairman: That was circulated on the previous occasion when the age was being altered.

Mr. Maharaj: Mr. Chairman, if I may just explain to Senators. Trinidad and Tobago became party to the Hague Convention on the civil aspects of

international child abduction. The Convention seeks to afford protection to children who are under the age of 16 years and who have been habitually resident in a contracting state. The Convention requires that state to set up a central authority. The central authority was set up, but this amendment seeks to give effect to the Convention.

Under section 54 it states:

"Any person who unlawfully, either by force or fraud, leads or takes away, or decoys or entices away or detains, any child under the age of ten years, with intent to deprive any parent or guardian, or other person having the lawful care or charge of the child..."

The Act provides further protection to girls and women up to the age of 18 years, but that is in specific circumstances. Boys over the age of 10 years, however, are afforded no further protection under the Act, in that regard. So to bring this Act in line with the Convention it became necessary to amend it to raise the age of protection from 10 years to 16 years, thereby affording protection to both boys and girls up to the age of 16 years.

Sen. Mahabir-Wyatt: Mr. Chairman, just to comment on that. We absolutely desperately need to have that equality for boys and girls in terms of the children's legislation.

Question put and agreed to

New clause 4A added to the Bill.

Preamble.

Question proposed, That the Preamble stand part of the Bill.

Mr. Maharaj: Mr. Chairman, I would ask that the words be deleted:

"WHEREAS it is expedient to make better provision for the conviction and sentence for Murder." It is not necessary. [*Crosstalk*]

Mr. Chairman: What about the words:

"Enacted by the Parliament of Trinidad and Tobago as follows"? [*Crosstalk*]

We have a suggestion that the first two lines, which I indicated would be considered the Preamble, be deleted.

Question put and agreed to.

Preamble deleted.

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

Senate resumed.

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

ADJOURNMENT

The Minister of National Security (Sen. Brig. The Hon. Joseph Theodore): Mr. Vice-President, I beg to move that the Senate do now adjourn to Tuesday, October 31, 2000 at 1.30 p.m. [*Crosstalk*]

Sen. Mohammed: Mr. Vice-President, we would simply like to know what Bills we will be dealing with on that day. [*Laughter*]

Sen. Brig. The Hon. J. Theodore: Mr. Vice-President, Tuesday of next week is scheduled as Private Members' Day. If the hon. Senator is interested, if Private Members' Day for some reason concludes early, we can go on with a bill dealing with the private security agencies.

I thank you.

Question put and agreed to.

Senate adjourned accordingly.

Adjourned at 5.05 p.m.