SENATE

Tuesday, March 18, 2003

The Senate met at 1.30 p.m.

PRAYERS

[MADAM PRESIDENT *in the Chair*]

LEAVE OF ABSENCE

Madam President: Hon. Senators, I have granted leave of absence to the following Senators from the sitting of the Senate: Sen. The Hon. Howard Chin Lee for the period March 18—28 and Sen. The Hon. Conrad Enill from March 16—22.

SENATORS' APPOINTMENT

Madam President: Hon. Senators, I have received the following correspondence from his Excellency the President of Trinidad and Tobago.

"THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO

By His Excellency GEORGE MAXWELL RICHARDS, President and Commander-in-Chief of the Republic of Trinidad and Tobago.

s/G. Richards
President.

TO: MRS. JOAN HACKSHAW-MARSLIN

WHEREAS Senator Howard Chin Lee is incapable of performing his duties as a Senator by reason of his absence from Trinidad and Tobago:

NOW, THEREFORE, I, GEORGE MAXWELL RICHARDS, 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, JOAN HACKSHAW-MARSLIN, to be temporarily a member of the Senate with immediate effect and continuing during the absence from Trinidad and Tobago of the said Senator Howard Chin Lee.

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 18th day of March 2003.

THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO

By His Excellency GEORGE MAXWELL RICHARDS, President and Commander-in-Chief of the Republic of Trinidad and Tobago.

S/G. Richards
President.

TO: MRS. MAGNA WILLIAMS-SMITH

WHEREAS Senator Conrad Enill is incapable of performing his duties as a Senator by reason of his absence from Trinidad and Tobago:

NOW, THEREFORE, I, GEORGE MAXWELL RICHARDS, 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, MAGNA WILLIAMS-SMITH, to be temporarily a member of the Senate with immediate effect and continuing during the absence from Trinidad and Tobago of the said Senator Conrad Enill.

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 18th day of March, 2003."

OATH OF ALLEGIANCE

Senators Joan Hackshaw-Marslin and Magna Williams-Smith took and subscribed the Oath of Allegiance as required by law.

WRITTEN ANSWER TO QUESTION

The following question was asked by Sen. Wade Mark:

Water and Sewerage Authority
(Detailed Breakdown of Expenses)

1. Could the Hon. Minister of Public Utilities and the Environment provide a detailed breakdown of WASA's operating expenditure, revenue collection and net deficit, if any, on a monthly basis for the period January 2002 to the present time?

Madam President: Hon. Senators, I wish to draw to your attention that a written reply to question No. 1 was circulated to you in accordance with Standing Order 16(3).

Vide end of sitting for written answer.

GOVERNMENT’S EDUCATION POLICY

The Minister of Education (Sen. The Hon. Hazel Manning): Madam President, one month ago it was my good fortune to report to the nation on initiatives taken as we moved aggressively to implement the Government’s education policy, which comes out of “Vision 2020—People Our Priority”, which speaks of the optimum development and management of our human resources.

Today, specifically, I report to this Parliament on decisions taken to ensure that quality education is provided for all our children where the goal, as we have emphasized time and again, is to strengthen the nation's productivity and competitiveness.

Last Friday, we, in the Ministry of Education, hit the ground running with our critical stakeholders in education and the construction industry, as together we launched our school construction and rehabilitation programme. This initiative, which will span the period 2003/2006, will cost over $2 billion and this Government has already approved the sum of $378 million to begin implementation of this programme. In education, the Government is “ON THE MOVE!!!”

I want to re-emphasize that this Government has ranked education as the top national priority. Indeed, in The Strategic Plan 2002—2006, the Ministry of Education has set as its mission, to be a pacesetter in the holistic development of an individual through an education system that enables meaningful contributions within the global context. Supportive of this vision is the Ministry’s mission: To lead the modernization and renewal of the system of education in Trinidad and Tobago.

Madam President, our Ministry took swift action in the year 2002 and implemented the most successful vacation repair programme in the history of the Ministry of Education. This programme was launched on July 06, 2002 at the Carapichaima Senior Comprehensive School. Repairs, including replacement of furniture, were undertaken in 157 schools at a cost of approximately TT $41.3 million.

The breakdown of the 157 schools, by school type, in which repairs were undertaken is as follows:

Government Secondary Schools	42
Denominational Secondary Schools	04
Government Primary Schools	33
Denominational Primary Schools	78

The breakdown by denominational school boards shows that 11 denominational boards benefited as follows: Anjuman Sunnat-Ul-Jamatt Association of Trinidad and Tobago (ASJA), Roman Catholic, Miracle Ministries, Anglican, Arya Prantinidhi Sabha of Trinidad Inc. (APS), Trinidad Muslim League, Presbyterian, Seventh-Day Adventist, Moravian, Sanatan Dharma Maha Sabha of Trinidad and Tobago (SDMS), Tackveyatul Islamic Association (TIA).

The major achievements in that programme were:

- All the contractors were paid within three days from the date of submission of an invoice;
- All the consultants were paid within seven days from the date of submission of an invoice;
- Over 135 contractors were engaged on the projects;
- All final accounts were settled within the stipulated period of time;
- The school term September 2003 began without confusion and the key stakeholders confirmed their satisfaction;
- There were no major disputes on the projects. All variations were agreed to before implementation and there were few problems;
- The contractors performed very satisfactorily.

Congratulations, therefore, are in order to the following for a job well done:

- Nipdec;
- The Education Facilities Management Division of the Ministry of Education;
- Principals and teachers of the schools repaired;
- The denominational school boards;
- Contractors, consultants; and
- Students who are taking good care of the schools.

Another detail that is worthy of sharing is that during the year 2002 construction was completed on the following primary schools, which were also fully furnished:

- Nelson Street Boys RC;

- Iere Government;
- Couva South Government;
- Caratal Government;
- San Fernando Girls Government;
- Buccoo Government, Tobago;
- Castara Government, Tobago.

The Ministry of Education is ready and on the move. We will be providing a dramatically improved school environment—safe, secure schools in order to facilitate optimum learning. Our strategic partners involved in project managing this construction and rehabilitation programme include:

- NMTS—National Maintenance Training and Security Company;
- NIPDEC—National Insurance Property Development Company Limited;
- PETROTRIN—Petroleum Company of Trinidad and Tobago Limited;
- SEMPCU—Secondary Education Modernization Programme from the Ministry of Education;
- EPCU—The Education Programme Coordination Unit from the Ministry of Education;
- EFMU—Educational Facilities Management Unit.

These organizations will work in partnership with the Ministry's Educational Facilities Management Division, soon to be a newly structured and dynamic division to provide the project management required to ensure the successful completion of this construction programme.

Permit me now to provide details of the projects to be undertaken by these six agencies. Let us start with the National Maintenance, Training and Security Company Limited. (NMTS). At present MTS is strengthening its project management capabilities and would implement in 2003 the following:

(i) Security fencing and equipment for 33 secondary schools of which five are already under construction, namely:

Morvant/Laventille Secondary

Success/Laventille Composite

Chaguanas Senior Comprehensive

San Juan Senior Comprehensive

Malick Senior Comprehensive

The remaining 28 schools are scheduled to begin next month in each of the education districts. MTS would be contracting a minimum of 20 registered local contractors at a cost of approximately TT $28 million. These projects will be completed by July 2003.

(ii) MTS would also be constructing additional classroom blocks in overpopulated secondary schools. These schools are located in the following areas:

Manzanilla	Cunupia
Valencia	Coryal
Debe	Brazil
Tableland	Matura
Blanchisseuse	

The Government has committed $44.5 million this fiscal year, 2003, to the implementation of these projects. Design work is in progress and construction must be completed by August 2003.

(iii) MTS is scheduled to complete the construction of the El Socorro South Government Primary School in August 2003. This brings to 51 the total number of projects to be implemented by MTS during this fiscal year.

Let us now move on to the National Insurance Property Development Company. Nipdec has been managing projects for the Government of Trinidad and Tobago for over 25 years and the Ministry of Education has the confidence that Nipdec would be able to assist us in delivering our programme in partnership with other key stakeholders, as was recently demonstrated during our vacation repair programme of 2002.

The following are programmes to be undertaken by Nipdec. Firstly, they will project manage the construction of five new secondary schools which are to start this year. These schools are:

- Malabar Secondary School;

- Two Secondary Schools in Westmoorings;
- The Parvati Girls Secondary School;
- The Shiva Boys Secondary School (both located in Penal).

Approximately an estimated TT $130 million is required to complete these schools.

Secondly, Nipdec will also be responsible for the construction of 13 replacement primary schools. Designs are being completed and construction works for these schools will begin in May 2003.

Nipdec's third initiative would be the implementation of the technical upgrade of schools in every education district in Trinidad and Tobago.

The big revolution for us revolves around a very ambitious technical upgrade programme for the transformation and modernization of 100 secondary schools over the next three years. The laboratories of all these schools will be upgraded with the latest cutting edge in school technology. There will be computer laboratories in all secondary schools in the same way that there will be steel pans, physical education facilities, science laboratories and Internet access to libraries. The rehabilitation works accompanying this revolution will include the following:

- Improved security;
- Replacement maintenance and repairs to all sewer systems and treatment plants;
- Provision for physically-challenged students;
- Improved health safety at all schools;
- Additional laboratory facilities for science subjects;
- Improvement of all playgrounds and physical education facilities;
- Improved library facilities;
- Electrical rewiring and upgrading of lighting facilities;
- Improved cafeteria facilities to facilitate our nationwide School Feeding Programme.

The Government of Trinidad and Tobago and the Inter-American Development Bank are funding these projects.

In addition to this, Nipdec's fourth foray will be in expanding, renovating, upgrading and modernizing the Corinth and Valsayn Teachers' Training Colleges.

Development of the designs for these colleges would involve input from the users, TTUTA, students and other key stakeholders.

In summary, Nipdec will have the responsibility for managing approximately 114 projects for the Ministry of Education over the next four years at an estimated cost of approximately $1 billion. In order to facilitate timely execution of these projects the major activity in this regard for the remainder of this fiscal year would be designs.

We estimate that the average cost to improve each secondary school would be approximately TT $10 million and the total cost of this aspect of the programme would be approximately $1,000 million over a period of three years.

SEMPCU, the unit that is the catalyst for the Secondary Education and Modernization Programme, will project manage the technical upgrade for 20 secondary schools during this fiscal year.

The Educational Facilities Management Unit, working in collaboration with the denominational school boards will provide management services for the construction and commissioning of nine denominational secondary schools:

- Miracle Ministries;
- SWAHA High School;
- Holy Name Convent;
- ASJA Girls, Barrackpore;
- ASJA Boys, Charlieville;
- ASJA Girls, Charlieville;
- ASJA Girls, Tunapuna;
- Caroni SDMS Boys;
- Saraswatee Girls College.

These nine schools would be upgraded at a cost of approximately $100 million over the next two years. All the blocks required for the opening of the school term must be completed by August 2003.

Small contractors who are registered with the Ministry of Education are being invited to submit bids within the next two weeks to complete security enhancement to 51 primary schools. The main benefits of the strategy include:

- An efficient and responsive maintenance service for all schools;
- A one-stop shop for all maintenance tasks and enquiries;
- A planned programme of year-round maintenance plus an efficient and effective service for emergency repairs to ensure minimum disruption;
- School involvement in maintenance planning;
- Local maintenance contractors who are familiar with the schools.

In order to facilitate these massive projects the Ministry of Education would be developing a Strategic Facilities Plan. The Five-Year Facilities Plan would be a road map so that we may better provide the facilities and future school sites necessary to sustain high quality educational programmes at a reasonable cost. The plan would be able to address issues in three critical areas:

- Evalue cost;
- Address the significant upgrades to repair or replace items;
- Replace components that have exceeded their life cycle expectancy.

We would also be introducing this year a Computerized Maintenance Management System. All schools would have access to the Computerized Maintenance Management System directly by email or through the web site of the Ministry of Education.

We are not only attending to the needs of the students but we are determined that the staff within the ministry have improved and suitable accommodation. To this end the Government has approved that a state-of-the-art modern education building be constructed at the Government Office Complex, Richmond Street, Port of Spain for the Ministry of Education.

UdeCoTT is responsible for the development of this project. The entire Ministry of Education would be housed in one building with the exception of the regional education district offices.

In the interim, all the buildings at Alexandra Street will be renovated to provide improved standards of function and comfort for both the public servants and the general public. As part of this effort to ensure better service to the public, some sections of the ministry would be relocated to more spacious accommodation outside of the head office to facilitate renovation and upgrading of existing offices.

I am sure you will agree that the Ministry of Education is on the move and taking action to help our most vital resource. We are moving to make Trinidad and Tobago a stronger nation. There is no more important subject than public education because it brings dignity and hope. Education will break the cycle of poverty and strengthen the quality of life in our nation.

We are going to get it right and we have high expectations of our partners in this as the Ministry of Education and the Government of Trinidad and Tobago move to the next level.

Thank you, Madam President.

SUMMARY COURTS (AMDT.) BILL

Order for second reading read.

The Attorney General (Sen. The Hon. Glenda Morean): Madam President, I beg to move,

> That a Bill to amend the Summary Courts Act, Chap. 4:20, be now read a second time.

This Bill before the Senate today is what appears to be a simple amendment to the Summary Courts Act, but as experience has shown, no amendment is really that simple. This is one of about 60 pieces of legislation that I have had listed—not listed on the Order Paper as yet, but listed in my agenda for amendment. When I assumed office I sought to obtain from the legal people in the office a list of all those Acts that needed amending urgently, and I was given a list of about 60. So far, we have done about 10. This amendment was not on the list. We still have 30 on that list to be amended, to be brought to the Senate.

For one reason or another, we have bits of legislation which have been enacted but cannot be implemented because of defects in the legislation. One of them is the Equal Opportunity Act. I mention this particularly, because I have been getting a lot of letters from a certain person with respect to that Act.

Let me get on to the business of the day and that is the Summary Courts (Amdt.) Bill, 2003. Before I get into it, may I say that this is one amendment to this Bill; there are several other amendments to come. Another amendment that is on the Table is in relation to the power of the magistrates to order no more than three years' imprisonment. That has been causing a lot of distress to the State in terms of constitutional motions that have been brought and in terms of moneys that we have had to pay to persons who have been incarcerated for more than the period. But before bringing this amendment, some work has to be done by the

legal people to ensure that we come with all those that are urgently needed to the Summary Courts Act.

It might seem a simple thing, but I can tell you that the procedure that is normally adopted with actions, in particular actions brought against the Attorney General for damages—when the officer who is handling it sees that the matter cannot be contested, the file is brought to me for a final decision. It is very painful to sit and agree to pay damages to persons who have been openly flouting the law but who, because of some error on the part of the administration, have had their constitutional rights breached in some way. So we are hoping to close those gaps with subsequent amendments to the Summary Courts Act.

This Government accepts that access to justice is a fundamental and essential right in a democratic society and we are a democratic society. I can stand here and say that proudly, despite whatever we may hear from time to time. The Government accepts this right of access to justice. It is designed to ensure that every citizen stands and is treated equal before the law, whoever that citizen may be, whether the citizen is what we call, a criminal, that is, a person convicted of some criminal offence, that person still has rights.

In this country, the right of the individual to equality before the law and protection of the law, and the right to equality of treatment from a public authority are all constitutionally entrenched. If you look at section 4(b) and (d) of the Constitution you will see why I say that. In fact, these rights and freedoms are given special protection under section 5(1) of the Constitution, which provides that they are not to be easily abrogated or infringed by any law.

Furthermore, section 5(2)(h) of the Constitution provides that Parliament shall not deprive a person of the right to such procedural provisions as are necessary for the purpose of giving effect and protection to these rights and freedoms.

So, clearly, these rights and freedoms are not to be treated lightly and Parliament and the Executive are mandated to ensure that such rights and freedoms are enjoyed by all and that procedural mechanisms are put in place to ensure such enjoyment. That is the democratic entitlement of every citizen of Trinidad and Tobago and it is the constitutional duty of the Government.

Also, Trinidad and Tobago is a signatory to an International Convention on Civil and Political Rights which mandates state parties to ensure that every accused in every case has legal assistance where the interest of justice so requires.

Article 14 of the International Convention on Civil and Political Rights, paragraph five says:

> "Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law."

This is contained in our domestic legislation.

The Bill now before this honourable Senate is an example of Government's attempt to ensure that a person who is convicted of a criminal offence in the Magistrates' Court and who has given a notice of appeal in relation to that conviction, would be certain that his legal right of appeal to the Court of Appeal would not be frustrated by procedural or administrative hindrances.

In keeping with the policy and the spirit of section 5(2)(h) of our Constitution, it is the duty of every government to ensure that steps are taken to protect and give effect to persons' rights and freedoms. We all know very well the dicta contained in the case of the Attorney General of Trinidad and Tobago and Whiteman where, in delivering the judgment of the Privy Council, Lord Kingkell said section 5(2)(h) is properly to be regarded as intended to deal with other kinds of situations where some different constitutional rights might otherwise be at risk of not being given effect and protection.

This Bill serves a twofold purpose. Firstly, it is intended to ensure that this Government adheres strictly to its international obligations as well as its obligations under the laws of this country. Observance of the rule of law is paramount in all cases, no matter which citizen is involved. Secondly, and also importantly, this Bill is intended to reduce on the liability of the State to pay damages to persons who have been convicted of criminal offences, whose right to appeal against their conviction has been denied by the act or omission of the authorities.

This is a major problem, as you would see, presently. The default on the part of the authorities has given rise to constitutional motions being filed against the State. In fact, the problem that this Bill seeks to address is that the Court of Appeal has held that where a notice of appeal which is filed by a person convicted of a criminal offence by a magistrate does not reach the clerk of the court within seven days, the appeal is out of time and cannot be entertained. This is held in a judgment of the Court of Appeal of Trinidad and Tobago.

The stark reality is that a convicted prisoner is effectively denied his right of appeal and this means that even if he had good grounds of appeal, he must now serve the sentence imposed upon him through administrative default. A person convicted of an offence by a magistrate—and this is the law as it stands—has a right to appeal that conviction to the Court of Appeal. That is a person's legal

right. The State must ensure that procedural mechanisms are put in place to give effect to that right.

The ruling of the Privy Council in 1991 in the case of Whiteman to which I referred earlier, is quite clear on this point. Section 130 of the Summary Courts Act, Chap 4:20, provides that an appeal from the Magistrates' Court shall be commenced by the appellant giving to the clerk of the court notice of appeal which may be either verbal or in writing. "Verbal" there, I suppose, is used in the sense of oral, but by usage it appears that the two have become synonymous over the years. I still like to use the word, "oral", when we mean by word of mouth. But that is how it is contained in the Act.

So the appellant can give to the clerk of the court notice of appeal which may be either verbal or in writing, and if it is verbal, the clerk must immediately produce the notice into writing and it must be signed by the applicant or his legal advisor.

Section 130(2) then provides that in every case, the notice of appeal shall be given before the expiration of the seventh day after the day on which the magistrate made the order. This is where the problem comes in, because the notice of appeal must reach the clerk of the court within seven days. The practice has been that appellants who are in prison file written notices of appeal with the Director of Prisons. The word, "Director" is used here, but it should be "Commissioner" and amendments would be circulated to have the word, "Director" replaced by the word, "Commissioner", wherever that word appears in clause 2.

So the practice has been that the appellants who are in prison file their written notices of appeal with the Commissioner of Prisons for transmission to the clerk of the Magistrates' Court. It is then the duty of the prison authorities to ensure the notice of appeal is delivered to the clerk within the seven-day statutory period. By section 22(5) of the Interpretation Act, Chap 3:01, Saturdays, Sundays and public holidays are not counted in counting the seven days. So that you would really have at least nine calendar days. But the Court of Appeal has reasoned that notwithstanding the fault of the prison authorities to deliver the notices of appeal within the prescribed time limit, the appellant failed to comply with section 130 of the Summary Courts Act and dismissed appeals.

In other words, the Court of Appeal has held that this requirement is mandatory and not directory, in the sense that if you do not comply, since it is a substantive provision of the Act and it is not adjectival—it is not a rule; there is

no discretion in the Court of Appeal to extend that time, and if you are outside of that date, then your appeal would be dismissed.

So, Madam President, during 1999, two appeals which engaged the attention of the Court of Appeal were dismissed, notwithstanding that the appellants while in prison had signed their notices on the same day of their convictions for transmission to the court, but the notices were sent to the court by the prison authorities after the statutory period had expired. One of those cases was the case of *Kendall Welch v PC Jordan*. That is October, 1999. The court held that the relevant provision was mandatory and dismissed the appeal.

Within recent times, following this strict interpretation of the law by the Court of Appeal, several appeals also suffered the same fate. In the case of *Ricky Bernard v PC Kennedy*, the appellant Bernard was convicted on March 02, 2001 for robbery and signed his notice of appeal on the same day, but it was not forwarded by the prison authorities until March 12, 2001 and did not reach the clerk of the court until March 20, 2001, that is, 18 days after it was signed.

In another case, Samsoondar Ramroop, the appellant, was convicted for housebreaking offences and signed his notice of appeal on July 13, 2001. Thirty-three days later, on August 15, 2001, the notice of appeal was forwarded by the prison authorities and reached the clerk on August 17. In yet another case, that of Julien Trim and Rufus Patrice, they were convicted of cultivating marijuana on May 31, 2001 and signed their notices of appeal on that same day, but the notices were not forwarded by the prison authorities until June 12 and reached the clerk on August 17.

So it is definitely an infringement of the appellant's right if he has complied with the law, by giving the necessary notice of appeal within the prescribed period for transmission to the court, but has been deprived of his statutory right of appeal because of dilatoriness on the part of a stranger to the appeal, namely, the prison authorities.

In fact, in the case of Ricky Bernard and PC Kennedy, Chief Justice de la Bastide, as he then was, in delivering the judgment of the court, said at page four:

> "If the period of seven days is too short and there needs to be some extension of it, in the case of an appellant in custody, then this is a matter for the legislature."

That is why we are here.

In addition to denial of an appellant's right, this situation has also resulted in the State being financially liable to appellants by order of the court. In the recent

case of Christopher Lezama, David Marryshaw and Simon Lezama, in a judgment of Mr. Justice Stollmeyer, the learned judge ordered the State to pay $5,000 to each appellant as damages, in addition to which, the State has to pay costs fit for advocate attorney. From my response last week you would know that those costs do amount to some considerable sum of money.

So this is one of the mischiefs that this amendment is intended to correct. In fact, in November last year, in response to a question, I indicated that I was working to correct the problem and that a bill would have been before this Parliament to address that difficulty. This is that Bill here today.

Senators may note that there is no provision in the Summary Courts Act for an extension of time to file notices of appeal. In Guyana there is provision for the extension of time to file an appeal from a summary conviction. In Trinidad and Tobago an extension of the time to file an appeal to the Court of Appeal from a conviction is only available in relation to a conviction by the High Court, and section 50(2) of the Supreme Court of Judicature Act states:

> "Except in the case of a conviction involving sentence of death, the time within which notice of appeal or notice of an application for leave to appeal may be given may be extended at any time by the Court of Appeal."

As I said before, we are committed to affording all our citizens access to the courts. The fact that their appeals may have no merit is beside the point. The merit or otherwise can only be determined by the Court of Appeal. It is not for us to determine whether the appeal has merit or no merit. In fact, in the case of Cedric Franklin, the former Chief Justice, Mr. de la Bastide, advised the appellant that because he had an arguable appeal in the opinion of the court, he should request the Attorney General to seek a pardon for him from the President. In that case the appeal was filed out of time but the Court of Appeal could not have extended the time, and in looking at the record of proceedings the Court of Appeal felt that he had a good appeal and this was the advice given to him.

So with all these matters in mind, the Government, by proposing the amendments, seeks to remedy the situation. This Bill—

Sen. Prof. Deosaran: I am very sorry to interrupt—of course, you would understand that—but given the serious implication of what so far appears to be negligence or carelessness on the part of the public officials concerned, apparently, could the Attorney General tell us if she is casting her eyes on that aspect, since the amendments, to me, do not necessarily create a foolproof situation? It would still require efficiency and some high regard for the stipulated

time period. I was wondering, with respect—and I am sorry to interrupt—are you thinking about the responsibility of the officers concerned to subscribe to the letter of the law as indicated in the Bill?

Sen. The Hon. G. Morean: We thought of it and that, to my mind, should be handled administratively by putting the rules in place to carry out the provisions of the amended sections that we would have.

The Summary Courts (Amdt.) Bill seeks to insert a new section 130A. The existing section 130A—that is in No. 13 of 1986, which amended the Summary Courts Act—provides for the time within which the magistrate must submit reasons for decision and the time within which the Clerk of the court is to send the copy of the statement, or the justice's reasons for his decision, to the appellant and the respondent. What we are doing here is inserting a new clause 130A and renumbering the present one, clause 130B.

The Bill provides that when a convicted prisoner serves his notice of appeal to the Commissioner of Prisons within seven days of his conviction, he shall be deemed to have complied with the law, that is, with section 130 of the Summary Courts Act. Section 130 is the one that sets out the procedure for giving your verbal or written notice of appeal.

The Bill provides that service on any prison officer would suffice. Similar provision is made with respect to any document that a prisoner is required to file, provided he does so within the prescribed time. In that way, it cannot be held that his notice of appeal was filed out of time.

The Bill further provides that the Commissioner must maintain a register in which he would enter the date and time a notice of appeal is given to him and that both the appellant and he must sign the register, so that there will be some evidence of the time at which the appellant gave his notice, whether it be oral or in writing. The Director must then ensure that the notice of appeal is forwarded to the clerk of the court within the prescribed seven days.

Finally, the Bill seeks to address any argument as to whether a prisoner had signed and filed a notice of appeal by providing that the register can be admitted in evidence as *prima facie* evidence of the facts in it.

Senators will note that while this is not open for debate because it has not yet been accepted, an amendment has been circulated to include a validation clause. As I said, this is a relatively minor amendment to the Act but it is one that could save the State from having to pay out thousands of dollars to convicted persons. In fact, the awards so far have been small.

In the case where Mr. Justice Stollmeyer ordered $5,000 to be paid to each person, one reason for that was that the appellant had pleaded guilty. He was appealing against the severity of the sentence and not against the sentence itself, that restricted the damages, otherwise the State would have had to pay quite a sum of money to the convicted person because of the administrative error.

In fact, as I said also in relation to these matters, the State in some cases may not—I think there were at least two files that came before me which had not yet reached the judge where liability had to be admitted. So to avoid this situation, it is necessary to have this amendment go through as quickly as possible.

I beg to move. [*Desk thumping*]

Question proposed.

2.30 p.m.

Sen. Robin Montano: Madam President, you will recall that on several occasions in this Senate, I have made the statement over and over again that we on this side intended to support all legislation that was for the benefit of Trinidad and Tobago; that we would seek to have amended all legislation that—while basically for the benefit of Trinidad and Tobago—was flawed, and that we would oppose all legislation which we felt was not for the benefit of Trinidad and Tobago. Regrettably, I must announce this afternoon, our position has changed. From now on—until such time as the Government enters into meaningful debate with us and with the national community, on the issue of Caroni (1975) Limited, until that time—we will not support any legislation big or small, for this country. We do so reluctantly, knowing full well that it is going to mean that certain relatively minor pieces of legislation—such as this one—will pass, because it requires only a simple majority. All legislation requiring a special majority will fail. If we are unable to persuade the Independent Senators to join with us, it will fail in another place.

The issue of Caroni (1975) Limited is too important, too vital and too critical. More than 300,000 people are going to be affected by it. There is no dialogue, there is only monologue. We understand, and we appreciate that it is going to mean that certain critical pieces of legislation will fail, if the Government forces it to a vote. We understand that. We are willing to take the consequences of it and we understand full well that in some cases, the legislation will be for the good of the country.

There is something else, Madam President, the Attorney General alluded to it when she said that this is a democracy. It is a democracy. Half of the country voted for us. We lost this election by 1,200 votes, and yet this Government has

behaved and, indeed, the Prime Minister has been reported as saying that we are irrelevant. Well, if that is the case, let us see how irrelevant we really are. It is not right and it is not happy.

Sen. Dumas: Madam President, on a point of order. With respect to Standing Order 35(1), if the Senator wants to make a statement he can, somewhere else.

Madam President: Hon. Senator, I think you are well aware that you are not speaking on the Bill. As the Senator has mentioned if there is a problem and you wish to make a statement you should do that under "statements". In the meantime could we come back to the Summary Courts Act, Chap. 4:20? I think you have made your point so far, so please come to the matter at hand.

Sen. R. Montano: I am very pleased to hear you say that if I wanted to make a statement I could. I understood that personal explanations were to be on non-contentious matters, therefore, I could not be given such an opportunity. If that is now your ruling, I would be delighted to take the opportunity and make a statement on the next occasion.

Madam President: Let me clarify that.

Sen. R. Montano: If I might continue—I am guided by you, and I am glad that you said that I have made my point—on this question of the Summary Courts Bill, there are a couple of things I wish to point out. My friend, Sen. Prof. Deosaran, has pointed it out in his question. It was something that I intended to raise. It had to do with the negligence of the prison authorities. After all it says:

> "The Director shall keep a register in which he shall enter the date and time of the receipt of any notice given to him..."

What if the director does not do that? No penalty? The poor prisoner has to suck socks, but the director has not done it and there is no penalty. There is no way that there can be a comeback, the director just has not done it. So what? We are a democracy—at least we are supposed to be—and prisoners do have rights. What happens? There is no question of dealing with the fact that a prisoner may just be thrown in jail and, as has happened before, is incarcerated, and let him just rot.

I have listened with interest, to the Attorney General talking about the amount of money that has to be paid out if this Bill is not passed. What about the life or lives that are being ruined by persons who may have a good appeal or by persons who have been wrongly convicted? It does happen. What about them? Do they just say: "We do not want to pay?" We, the people of Trinidad and Tobago, because it is "we". The State is us. I am the state, you are the state, everyone here

is the state. This State exists for our benefit. The wretched prisoner in jail is the state as well. Admittedly, he has offended against the rules of the State, otherwise known as laws. When one offends, there are certain penalties that one faces. What happens if one is tried and convicted, as does happen, and is sent down, but is in fact wrongly convicted? I can think of half a dozen examples of how one is wrongly convicted, but that is not relevant. What is relevant is one has been wrongly convicted, tries to file an appeal, and through spite or negligence—either one is bad enough—the prison authorities fail to register one's appeal and is now again out of time. That cannot be right.

If we are to tinker with legislation—as I have said before, and I say it again—we ought not to be tinkering, we should be coming, to use the latest buzz word, in a holistic manner and we should be saying: "Look here, here is where we want to go, this is what we want to do, these are the problems here, and we are going to deal with each and every problem. We are not going to deal with this problem today in the Summary Courts Act and then deal with this problem tomorrow, and we are going to tinker and tinker until all of a sudden, the Parliamentarians and the country as a whole really do not know what is going on. The lawyers would have a field day by putting all the legislation together. They would say: "Ah boy, you remember that this was passed on July 13, 2004, but this was passed March 17, 2003."

Why is it so difficult, bearing in mind also that the Attorney General has been in office since December 24, 2001, shortly after Christmas? What is so difficult about coming with the complete list of revisions of the Summary Courts Act? It cannot be right! What is so difficult about dealing with the State? If the State is wrong—I personally have always held the view that the State should be very careful when it is dealing with people: whether it is on the civil side or the criminal side because the State has a huge weight. A person who is accused of any crime has a serious mountain to climb because the weight of the State: all the organs of the State, will come down on the particular individual: the police—everything. The State has at its fingertips, tremendous resources. The individual, very often does not.

Dealing with the Summary Courts Act, we are dealing with individuals who, by and large, 98 if not 99 per cent of the time—are poor and dispossessed, who have relatively little access to any resources whatsoever to fight whatever it is they are accused of. It is not relevant, but the same applies with civil matters, when the State gets into a civil fight against citizens. Again, the State has resources that the citizen does not.

Why is it so difficult for the State, when it makes a mistake, to pay? Why should we, in this Senate, be lending our voices and votes to a clause that basically lets the State off the hook and gives the State more power? Surely, if the State has done something wrong, then it ought to pay. As far as I am concerned, pay heavily. A man's freedom has to be worth a lot, as far as I am concerned, far more than $5,000. I would have liked to have heard from the Attorney General, about the particular individual to whom she referred—whose appeal had been filed out of time and who the Court of Appeal held and had a good case—whether or not the office of the Attorney General ever dealt with it and obtained a pardon for him. It would be nice to know. It would be nice to know if the "fella" did get a pardon.

Why are we so intent? Madam President, I have seen it a thousand times before, people become imbibed with their own power—I am powerful so, who are you to talk to me—and all of a sudden, the people whom we have put there to serve forget—I have seen it happen with every single administration from 1956 to date—that we have put them to serve us. Then you see an arrogance that is at once unhappy as it is unfortunate and the view is: "No, let them pay, we are the State." Do you know what? You are not the State. You are the keepers of certain offices of the State. We, the people, are the State. High and low, rich and poor, middle class, we are the State.

Madam President, even without announcement this afternoon, and even though I believe that this Bill is better than nothing—and in that respect one could say: "Well crumbs from the table, take what you can get."—I am of the view that proud and democratic people ought to insist on things being done properly. It is not that I am against the basic idea or the basic intent in this Bill. I agree that the intention of the Bill is a correct one. I agree that the intention of the Bill, to allow these prisoners to get them out of the legal corner into which many of them unfortunately find themselves, is a noble objective. But with the greatest of respect, this Bill does not do it. If it were not for the announcement I made earlier, I must tell you honestly, I would have great difficulty, in any event, in supporting this Bill, not because I disapprove of the intent, but because the Bill does not necessarily achieve the objective. If the Government says: "It is better than nothing", perhaps it is. Why should we accept the crumbs? Why should we accept a certain inefficiency? Why should we do things in a half-hearted way? No, Madam President, either we do it right or we do not do it at all.

Madam President, I do hope that we are taken seriously because I can foresee serious deadlock coming. It is not in the interest of the country that there be this

deadlock, but we have been left with no other choice. Thank you very much. [*Desk thumping*]

Madam President: I just want to state Senator that in fact you were right and I was wrong: you cannot make a statement, statements are only made by Ministers. Under "Personal Explanations" you really cannot deal with a contentious matter. What you could do, as you know, you can bring a motion on the adjournment. There are other avenues you can use.

Sen. R. Montano: Thank you very much. I think I have said what needs to be said and I believe the message is clear. If it requires any further elucidation, I will be pleased to give it.

Sen. Dana Seetahal: Thank you, Madam President. May I say at the outset that I agree with the Attorney General that legislation is necessary to amend the Summary Courts Act to protect the rights of persons who have had, or who are going to have their rights denied them because of inaction by state authorities. I propose to focus my contribution, as it were, on three fronts. The first is why I believe the legislation is necessary, just to supplement what the Attorney General has said. My second focus is why I think the Bill as is, falls short. The third is a problem that Magistrates' Courts are experiencing in getting appeals heard.

I have written on this area already. There is an article in the *Trinidad Guardian* of December 01, 2002 "Frustrating Rights of Appeal". In case I touch upon it, may I say at the outset I have it here and it is something I may refer to. I would also refer to a chapter called "Summary Appeals" in a text *Criminal Practice and Procedure* which I wrote.

For the benefit of some of us who may not be as clear on the area, may I indicate that what we are dealing with are appeals from the Magistrates' Court. As the Attorney General has indicated in respect of trials in the High Court that are before a judge and jury, there is no problem in getting extensions of time if one's appeal is late or filed late. In contrast what has happened in respect of those 95 per cent of criminal defendants who have their matters heard in the Magistrates' Court, a large portion of those persons are denied of their rights of appeal as a result of the inaction, inefficiency, or whatever have you, of the state authorities. In this case, it is the prison authorities.

In November 2002, in one day, at least nine appeals filed by persons convicted in the Magistrates' Courts—that is our everyday courts where most people go—for offences ranging from robbery to trafficking marijuana, had their appeals dismissed. They were dismissed without being heard because, as has been

indicated, the Court of Appeal said: "Your appeals are out of time, they were sent down too late from the prisons." We have heard reference to the Summary Courts Act and we know by now that appeals must be filed with the Clerk of the Peace within seven days. What happens to people who have been sentenced to imprisonment? If one is sentenced to a term of more than three months, one is taken down to the prison. If one is sentenced to three months or less, automatically bail is fixed. The person is taken down, no matter if that person says to the magistrate: "I want to appeal." Even if you do not say it, you go down to the prison and file your appeal with the prison by filling the prescribed forms. If that notice does not reach the Clerk of the Peace within seven working days, that is the end of you, as it were.

Regardless of how good one's grounds of appeal are, that would be the end of it. It happened to many people, one of whom was referred to by the Attorney General. It happened to Mark Serrette recently in the Court of Appeal. The court said: "You have good grounds, but we cannot do anything." That has been the attitude of the Court of Appeal: they feel that they are bound by the strict terms of the statute. That is why we are here, presumably, to amend the law, to provide for a solution.

In 1999, when the Chief Justice first pronounced on the legislation, he said we cannot extend the time. Once the prisons authorities send down the appeal outside the seven days, that is the end of it. He made it clear that the failure of the authorities to transmit the notices would involve the State in liability for breach of constitutional rights. I do not think one should lightly deprive people of their rights to sue the State, which they have, under their due process. We are now seeing under the second amendment which the Attorney General has brought forward, there is this new provision.

The Chief Justice's warning in 1999 fell on deaf ears. Until October 2001, the prisons authorities were sending things late. They were saying: "Well we thought the law meant once it was given to us on time, seven days, that was okay." Some Senators here might think what is the big deal, these are criminals who have been already found guilty, what if they stay in jail, they would probably have lost their appeals anyway? There is a danger in that. The danger is that people are entitled to appeal. One is entitled to one's due process rights, whether or not we feel, I feel, or the court feels that one has a good ground of appeal. This Court of Appeal may not feel so, but the Privy Council may very well feel so. You might know that you have good grounds. Even if you do not, we have a system with three tiers of court and we should preserve that system. It is evident that we are dealing with a very serious situation.

I do not agree with my colleague, Sen. Montano, that one should not deal with situations as they arise, and wait for the holistic approach: that sounds good in principle and in theory, but you might be waiting forever and Rome is burning as we delay. I think it is important that we put in place legislation to deal with problems. It has been mentioned, and it is so, that we have no provision for extension of time. It is really ironic. If you were tried in the High Court for robbery or trafficking heroin and you did not appeal in time, you can go to the Court of Appeal and say: "Can I have an extension of time?" Provided it is not a frivolous application, you will get it. But, if you are convicted for possession of 10 grammes of marijuana and are sentenced for six months and you file your notice of appeal in prison, the form is filled out, and they send it down, as has happened, 28 days afterwards, the Court of Appeal has no discretion; in other words, the Court of Appeal cannot extend your time. This is the problem that we are dealing with.

I am referring to the text which I quoted earlier. In Guyana, Bahamas, Grenada and St. Lucia, there is provision of extension of time in respect of convictions in the magistrates' court in all these jurisdictions. Somehow we decided not to go that way, for reasons best known to our legislature, fifty or so years ago.

It has to be pointed out that since July last year it was argued before the Court of Appeal that, short of escaping the walls of prison, there is no way that these appellants—people who want to file appeals and who are in custody who are sentenced to one year, two years, or in some cases, eight months—how can they file their appeals themselves? It was pointed out: Listen can we not say if it is given to the prisons authorities, or if the prisons authorities get that notice within the time that should be enough? Look at the purpose of the law. Look at what is being achieved and what we hope to achieve. The Court of Appeal did not accede to the argument. That was an argument I put forward in a number of cases on the same point. They said: "No, we are bound by the literal and strict interpretation of the words of the statute. No matter how good the grounds you have supplied are, it does not matter; your client, in many cases, must pay the penalty. They will be deemed to have lost their chance of appeal." In truth, and clearly in terms of the widening of justice, no reasonable person should be objecting to the amendment of the law. No reasonable person can object to legislation to correct an injustice that is so flagrant.

My problem however—this is why I come to my second point—is that I think the Bill as is, is entrenching an inefficiency. In other words the Bill, as is, seems

to be saying, and it does say that the minute you file your thing with the prison, then that would be deemed to comply with the law. It is creating a sub-registry in the prison. This is something that is so fundamentally different from our present system, that I think we have to be very careful if we are going to create a parallel system of filing. In other words, if one has to file anything now to go before the Court of Appeal, one has the Hall of Justice, one has a place, officers and a system. But, as it is drafted—it is really the question of the way it is drafted. We are talking about an appellant who is not granted bail being deemed to comply with this section if he serves notice of appeal upon the director—in this case it is the Commissioner of Prisons because we know there is no director—within the prescribed period. One is deemed to comply with the section if one files a notice. Is there a registry there? It seems so because subsection (2) states that you should keep a register. The problem is we cannot have a parallel system dealing with the appeal process in the prisons. My solution is simply—I have a draft amendment which would be circulated—that we just make the court extend the time. Why should that be a difficulty?

The Attorney General referred to the words of former Chief Justice de la Bastide in the *Bernard* case where he acknowledged that the courts could not do anything outside the words of the statute. He said it was a matter for Parliament, and Parliament should extend the time. With respect, this Bill is not extending the time or giving the power to the court, it is saying if you give it to a prison officer, this means that it is deemed to comply with the law. I will give you an example of what should be. My respectful suggestion is something like this (instead of saying that anything should be deemed to be anything): "the Court of Appeal may extend the time for giving notice of appeal if it is satisfied that failure to comply with the time prescribed by section 130(2) was due to the delay of the Commissioner of Prisons in transmitting the notice of appeal to the clerk." I have the amendment circulating, but that is the point. To me, that is very simple, it captures the essence of what we want. It is in consonance with other jurisdictions that have provisions for extension of the time, and it leaves the power where it belongs: in the courts. We are not creating any sub-registry in the prison. We are not here to say: "Okay prison department, we know you are inefficient, we are going to entrench that inefficiency by saying when something is given to you there, it is deemed to be given to the courts so go ahead and delay. Even though the provision states:

"Thereafter the Director shall transmit to the Clerk…within seven days…"

there is no sanction for that. There is nothing to ensure that anything is transmitted. It is a simple matter. Leave the onus on the prisons authorities. Let

them know that it is still seven days, and they ought to get their business in order. When it comes to the court, we do not want the appellant to suffer by having the delinquency of state authorities, causing him to lose his rights. We then say to him —if he makes a proper application—"Okay, it is not your fault, you could not scale the walls of the prison, let us consider the position and we will give you an extension." It goes back to the court, and the court would take into account what the causes were. There will still be an oversight of the prisons. In this provision there is no oversight. The prisons are just told: "We deemed to have received the thing, do it within seven days, no sanction." Nobody knows what goes on there. That is really the main thrust of my concern for this Bill. That is just one, though.

There is the question on entrenching the inefficiency, creating a sub-registry and introducing a foreign concept into our appellant system. There is another problem with this section if we leave it as it is. It says:

"An appellant who is not granted bail…"

I have to acknowledge the contributions of some judicial officers—who shall remain nameless to this particular provision—who asked that I raise it. I had not even thought about it myself. What this means is a person who is granted bail, but cannot take it and remains in custody, he will not be protected. May I just read that for the benefit of Senators who may not understand what I am saying clearly because it is a clearly technical provision. The section that we are being asked to consider is saying in respect of ensuring the rights of appeal:

"An appellant who is not granted bail is deemed to comply with section 130 if he serves the notice of appeal upon the Commissioner of Prisons…"

The point is: "an appellant who is not granted bail" does not include one who was granted bail, but could not take it. In the criminal justice circles, when we say "granted bail", we mean where bail is fixed. I am a magistrate, I grant you bail in the sum of $50,000. You are granted bail, but you have nobody to take that bail, you are taken down to the prison, and file your notice. You are not covered. Normally, it is stated "An appellant who is not granted bail, or a person in custody." That is the way you would read it if you want to maintain this section.

Another point, this is a cosmetic point—[*Interruption*]

Sen. Dr. McKenzie: Madam President, may I ask a question? I am not following well. I thought one was granted bail only on a conviction? I may be wrong, if a person has been found guilty and the magistrate convicts him or her, the person is either fined or sent to prison—this is my layman's understanding—therefore, that is where one can appeal against one's sentence. However, if the

issue of bail comes up before one is tried—I do not know whether I have it right. Please clear that up.

Sen. D. Seetahal: There are two types of bail: bail when you are charged and bail pending appeal. If you are charged with obscene language, you "own" bail in the sum of $500; robbery, there is bail with a surety in the sum of $25,000; or murder, no bail. After you are convicted, then there is bail on appeal, which means, bail pending the hearing of the appeal. In that case you can get bail—if the penalty in Magistrates' Courts is less than three months, automatically bail is fixed—if it is greater than that, you have to apply to the magistrate or a judge in chambers.

Sen. Smith: As far as I know, in this situation, if one appeals—on conviction by the magistrate—directly in front of the magistrate, the magistrate can grant bail. It would mean that one has already appealed, even though the bail has not been stood. Should one go to the prison, one's appeal would have been registered by the magistrate.

In another situation, if one waits until he reaches the prison to appeal, that is where the seven days apply. Also if one appeals in front the magistrate and he says that one should apply to a judge in chambers for bail, I think there is where the person needs to be protected.

Sen. D. Seetahal: Well, it seems that we are all getting to understand how this bail works. Thank you very much, Sen. Smith.

The point I was making there is, a person who is not granted bail would include a person where no bail has been fixed, or a person where bail is fixed, but he has not been able to take the bail. As the provision stands, not being granted bail does not cover the second position. Granting bail does not mean taking bail. That was one of the weaknesses of the section. I am going through the weaknesses. Even though my suggestion is that we do away with this section, I still think we need to go through it to point out why we should do away with it and go with the simple amendment I suggested for extension of time.

There is another problem in that same 130A(1) which relates to the word "serves" the notice of appeal. We are talking about an appellant serving the notice of appeal. If one were to look at section 130(2), you see there is reference to:

"The notice of appeal shall be given in every case…"

There is that word "given". This is a very simple thing, you just say to the magistrate: "I give notice", or you fill out a form. "Serve" has a specific connotation. If one reads section 131, it states:

> "An appellant shall, either at the time of giving a notice of appeal, or at any time within ten days…serve a written notice of reasons…"

You serve things to the court. You serve documents, but you give notices of appeal. There is a different connotation. Even if you did not agree with me, we would still go back to the section which refers to "give". One should maintain the word "give". Further, people should agree with me, because section 130(1) differentiates between giving notices of appeal and serving reasons, which are the grounds. That is another problem, as I see it, with clause 130A.

Clause 130A(2) deals with the keeping of a register. As I indicated, I do not agree with the whole concept of it, because it creates a sub-registry, not to mention that this is already done in the normal administrative process by the prisons. I do not think we need to entrench it.

Clause 130A(3) which talks about the Commissioner of Prisons transmitting the notice within seven days, would be inoperable because there is no sanction.

Something that one of my colleagues—not currently on the Bench, but he was in the Judiciary—mentioned is subclause 4 which states:

> "This section shall apply wherever in this Act, an appellant in custody is required to serve a notice…"

Before I lose my audience and you are thinking that we are becoming very technical, what that is saying is: wherever there is any requirement—for a person who is convicted in the Magistrates' Court, and appeals—this section applies. In order words, you can leave whatever you have with the prison and you are deemed to have served it on the clerk.

The only other thing that you need to give, apart from the notice of appeal, would be your reasons. I do not think there is any necessity for this, because there are no problems with reasons. In fact there are cases such as *George v Darlington* which states that there is no fixed period for serving reasons. There is no mandatory limit to the time in which one can serve reasons. The only other document that an appellant needs to serve, apart from notice, is reasons. Therefore, you do not want to create a situation by giving people, under subclause 4, the power to leave everything in the prisons and say: "Well, it is done with the clerk." That is not proper. Do not think about anticipating a problem; there is no problem. There could never be a problem with that because there is always time. Magistrates' appeals come up next week: 24th and 25th; people would be serving

their reasons on the same day because they do not need to have details in writing. That is what Magistrates' Courts are like: you just serve the notice which says: "I am not guilty", and that is it.

There is another problem—I hate to be so nitpicky but I must say—subclause 4 states:

> "…an appellant in custody is required to serve a notice or other document upon the Clerk of the Court".

This section applies—I hate to be so critical, but there is no clerk of the court. There are court clerks and there is a Clerk of the Peace or two Clerks of the Peace. If one looks at the definition section, page 12 of the Summary Courts Act—for those who want to look at it—it is a useful process to read this Act. Remember, it affects all criminal matters. All criminal matters would start in the Magistrates' Court, so everything starts there, even if one goes to the High Court. Ninety-five per cent of all criminal matters are dealt with there. Page 12 states:

> "'Clerk' means Clerk of the Peace"

There is no statutory post of clerk of the courts, there is a court clerk. Further to that, in the appeal section, when we talk about "Clerk", we mean Clerk of the Peace. It is not necessary to even say "clerk of the courts", apart from which there is no clerk of the courts. It would have sufficed to say "clerk".

Subclause (6) speaks about a register, where the provision of a register can be used in evidence. Is it that we are going to bring down all the registers from prisons to say that this man lodged an appeal? This is not necessary, Senators. What happens with an appeal that is sent from the prisons is, on the back of the form there is a stamp which states "Commissioner of Prisons, appeal forwarded to the Clerk of the Peace". There are two records received from the person, that is the appellant, and forwarded. That is enough to say they received it on a particular date.

For those of you who may not be familiar with the thing, with respect to every single matter that comes before the Court of Appeal in respect of magisterial appeals, there is the document, there is a charge, and in it there is a stamp that the Court of Appeal looks at and says: "When did they receive it in the prison?" We all look to make sure they are in time and the date they received it is stated. It is stamped therefore there is no need for that provision. That provision will create administrative problems. We already have the stuff, it is sent down with the appeal to the court, which stamps when it was received. The prison would have stamped when it was sent out. This is unnecessary. That is really what I find, in essence, with respect to the shortcomings of this Bill: it is flawed. That is not just

my opinion; it is the opinion of many whom I have consulted with in the lower and higher Judiciary.

The next problem is that this Bill does not deal with the question of verbal notice. If you recollect, the Attorney General said, and she read section 130(1):

> "An appeal shall be commenced by the appellant giving to the Clerk notice of appeal, which may be verbal or in writing…"

What this means is, a person—you are the magistrate—stands before you, after he is sentenced for three years and says: "I appeal". According to the Act which states:

> "…shall be immediately reduced to writing by the Clerk…"

This never happens, because the Clerk of the Peace is in an office far from the Magistrates' Court. In Port of Spain there are approximately three Clerks of the Peace and nine courts. The Clerks of the Peace are located in offices downstairs. The same thing applies in Arima and Tunapuna. He cannot be there sitting and waiting for someone to appeal. He has many things to see about. A person gives oral notice of appeal, the magistrate records it, right now they all do. One such example is an oral notice of appeal, bail with a surety, fixed to the sum $100,000". The person goes about his business, he is taken down, and he thinks he has an appeal. He comes before the Court of Appeal and they say to him: "It was never reduced in writing by the Clerk of the Peace. The section says it shall immediately be reduced in writing. What happens is that the appeal is thrown out. There is a matter currently engaging the attention of the Court of Appeal in respect of this. In July 2002 one was thrown out. Every day, one out of every two oral notices, is thrown out, anytime there are magisterial appeals. In respect of the ones where they go to prison, nine or ten are thrown out per day. The legislation does not deal with the question of where people give verbal notice.

One might want to say that they give verbal notice and are taken down to prison. Would they not get it in writing and the legislation would cover that? Not necessarily. They might feel that they have given the verbal notice and do not have to do anything else. What about people who are not sent to prison and are sentenced and charged $750 or three months imprisonment? If that person says: "I appeal", and the magistrate said, "Verbal", and writes it down; the person would sign the form downstairs in the presence of a Justice of the Peace and leave. It is not always the Clerk of the Peace who would take it and say: "You have appealed, let me reduce it in writing." It is my suggestion that section 130(1) be amended to read—I have the amendment which I hope would be

circulated in time—"that is reduced to writing by the magistrate". We should delete "Clerk" and put "magistrate". At the end of the section, after the word "solicitor" we put "and transmitted to the Clerk". It is a very simple amendment. It seems to me, it can work very well.

If I may just consult the text without attempting to read anything. In 1963 in a case called *Stanley v Andrews*, then Chief Justice Wooding had the problem to deal with where a Clerk of the Peace had not reduced, in writing, a notice of appeal. The same thing happened here, where a prisoner was sentenced, he gave oral notice of appeal and the Clerk did not do it. When it came before the Chief Justice he said the verbal notice was invalid, it was not reduced in writing by the Clerk. He said:

> "…was vital that Clerks of Peace should promptly discharge their statutory duties…"

After an oral notice is given, the appeal should be forthwith reduced in writing.

> "'forthwith' means precisely what it says, forthwith;

That was 40 years ago. It was a very respected Chief Justice who said that, and the problem still exists. It is all well and good to say: "Let us try and work it out administratively in that way." Because of the designs of the Magistrates' Court—we would probably have new designs coming up within the next four years—we need to take this into account and realistically deal with the problem. That is why I am saying verbal notices of appeal should be reduced in writing by the magistrate. Who is the person who would hear that, the Clerk of the Peace?

I remember a judge telling me: "When the appellant is downstairs in custody, the jails are downstairs—take them down, literally means downstairs—what is the reason for the prisoner not asking the police to call a Clerk of the Peace to reduce it in writing?" I almost said: "Are you serious?" I had to put it in a polite way. I said: "Having regard to the other duties of the clerk and having regard to the fact that you are dealing with a man who was just convicted, a criminal, do you think the police will call a non-criminal, a Clerk of the Peace downstairs in the cells to take and reduce a notice of appeal in writing?" No, it does not happen and it is unreasonable to expect it to happen. I think I am preaching to the converted when I talk about oral notice, verbal notice and what the law should be.

The reason I press on is because I think sometimes, because there is an amendment before us, it is difficult to accept that maybe it could be improved and maybe the Government which is putting forward this Bill should not necessarily

go with its proposal as is. I have to try to be persuasive, Madam President, to hope that we will get some response in terms of having that change.

My final point—I do not want to cause people to fall asleep—is we are talking about improving the administration of justice. This is why we have this two clause Bill before us. We are talking about magisterial appeals and people being able to access the court. There is a serious situation not dealt with—and we may not need legislation to deal with it—where people appeal; they fall within the time, the prison gets the things done properly or the clerk reduces it in writing—and they are sentenced to three years, and wait for the appeal to be filed. This is not a serious criminal: this is a magistrates' court convicted person who is sentenced, for example, for possession of marijuana.

I know of one such person who was sentenced to three years, spent 32 months in custody waiting for his appeal to be filed. For those of you who may not know, three years imprisonment, which is 36 months, in reality is 24 months because there is almost automatic remission, unless one misbehaves; in accordance with rule 285 of the prison rules. He spent 32 months; at least eight months more than he would have spent waiting for his appeal to be fixed and it has not been fixed.

Sen. Morean: May I just have it clear, are you saying waiting for his appeal to be filed or listed?

Sen. D. Seetahal: To be fixed.

Sen. Morean: Fixed for hearing?

Sen. D. Seetahal: Yes. I am dealing with an ancillary problem, separate and apart from the appeal being filed. I have gone through that, but we are here, we have a person in custody waiting for his appeal to be given a date. What is amusing about that is that this problem is not new: it happened 1983/84 in a series of cases. Legislation was passed by a PNM administration. It was a very good idea, and the law was amended and section 130A was created. The Attorney General referred to that section which states:

"a magistrate shall supply reasons within 60 days"

In much the same way as we are saying "The Director shall transmit the notice to the Clerk within seven days." What we have here is an appeal. In order to have an appeal heard, notes of evidence are taken, then the magistrate would give reasons why she finds the person guilty, usually. Sometimes the prosecution appeals and they would give reasons why they dismissed the case. In the 1980s people were suffering waiting for reasons.

There was a case of a man who was in custody for approximately three years, then it was found that there were no reasons given. It was listed and the court found he was sentenced to five years' imprisonment. He spent 19 months waiting for the appeal, but the magistrate was wrong, he should have been sentenced to 18 months, therefore he would start serving the 18 months. That went to the Privy Council that said it was so improper. This type of thing is happening now.

Another such case is Tobagonian—it happens very often in Tobago. There are people who are sentenced. This person was sentenced to two years' imprisonment, 39 months passed and he was waiting for his appeal to be fixed. Meanwhile he tried to hang himself and he lost his voice, partially. Fortunately, some of us who do pro bono work, managed to get him bail. He is still waiting. Actually it is now fixed for March. We will see what happens. He has effectively more than served the sentence because two years would have been 16 months with remission. Then you know what happens? When that appeal is heard, as in the case of *Forbes v. Maharaj*, the Court of Appeal can say: "This appeal is no good, you must start serving your sentence now." That can happen. I am sure the Attorney General would know about these matters and I am sure some of you may have heard of them. In the Magistrates' Court where we are supposed to have summary dispensation of justice, matters that are trivial, we have this.

In another case, a person ES, who was sentenced to 12 months' imprisonment, was found to be a prohibited immigrant in 1998, up to December last year he was waiting for his appeal to be listed. How much time has he spent? He could not get bail because he was a prohibited immigrant.

There is so much anybody can do pro bono. If you try to short-circuit the system by calling the Commissioner of Prisons and say: "Could you tell me what is the position of this so I could write the court to get an appeal heard?" You are told: "We cannot give you that information over the phone, put it in writing." For what? I do not know. It happened to me just yesterday with respect to three persons. I write free letters, not that I need to say. Many people do it, but we do not get the cooperation of the state agencies. The state agencies are the ones, in one form or the other—whether it is the magistrate or the prisons, that are delinquent.

The problem is not necessarily of the magistrates' making. In the cases I have called, why those reasons were not forthcoming was because no notes of evidence were available. In order to give your reasons, presumably, you have to look at the notes. There are many matters and a magistrate would not remember. Why are notes of evidence not available? Because there is a shortage of clerks. There are

clerks taking notes very quickly day after day, then persons appeal. If one is a typist, it is difficult to interpret. Have you ever seen those notes? People are taking notes as you speak. Nobody could interpret those notes except the clerk, but the clerk has to be in court every day. That is the problem.

3.30 p.m.

Now, in this regard, let me just say that I think that legislation would not solve the problem. There is legislation where a magistrate is supposed to give reasons within 60 days and that is obeyed in its breach. There is no magistrate that I know of, who has given any reasons in 60 days, because the notes of evidence were not ready.

In speaking with some people in the Judiciary, it was suggested that one way of dealing with this matter—and I am commending this to the Executive, through you, Madam President—is to have the clerks record their notes, and then contract out the notes of evidence, until they could get permanently employed people to do it. There seems to be a problem with respect to hiring new people, and I could understand the problem with having "CAT" in all the courts. There is something like 30 Magistrates' Courts and there are fewer High Courts, but it seems that the Government does not have the money to do it in the High Courts. Of course, we have the money to put up new Magistrates' Court. I expect that it is very expensive to record the notes instantly. I do not know why, but I have been told that it would be a problem.

So the solution is, in cases where there is an appeal, the clerk should tape his notes and then contract it out. That is one suggestion. The second suggestion is, in respect of trials, which are indictable, heard summarily, there should be "CAT"—instant recording—and, as a result, magistrates will have the notes of evidence to give reasons. I do not know if I am exhausting my time.

Madam President: Actually, I was just about to stand to say that, in fact, your speaking time has expired.

Motion made, That the hon. Senator's speaking time be extended by 15 minutes. [*Sen. Dr. E. McKenzie*]

Question put and agreed to.

Sen. D. Seetahal: Madam President, thank you. Let me say at the outset that I will not need the entire 15 minutes. I think my point is made, in that we are looking at an efficient magistrates' court appeal system; talking about the trial system is another matter. Let us deal with what we are here about. We are talking

about appeals and appellants having their appeals heard in a timely fashion, and we are also talking about an amendment to extend the time, so that people will not be deprived of their rights. I hope that some administrative measures would be put in place.

Madam President, I was told on the last occasion that some of these suggestions were made, but because of some division between the particular persons who could have had them followed, the measures were not taken. I think that certain measures could be put in place to ensure that magistrates' reasons are given on time, so that people will not be denied of their rights, which is happening every day in this country.

My last point is in respect of the new clause 3. The Attorney General said that this clause is intended to reduce the liability of the State to individuals whose rights have been denied. In other words, these are people who have already lost their rights of appeal, and are now going to sue—and I hope for more than $5,000—because it is a serious matter to deny them of their rights.

Sen. Morean: Madam President, on a point of correction, that is not what that validation clause is for. That validation clause is really for those appeals that have been filed, and are now pending that may have been filed out of time. That is what that validation is for. This clause is not going to affect any rights that may have accrued as a result of the default of the authorities; this is merely a question of dealing with those appeals—that is the administrative matter—that may have been filed out of time and are waiting to be heard.

Sen. D. Seetahal: Well, my reading of this clause caused me to believe that it also affected those people, who had already lost their rights. What I am understanding from the Attorney General is that this new clause 3 is meant to only affect persons, who are at the time of the passing of this law, waiting for their appeals to be filed. It says:

> "Notwithstanding any law to the contrary, all acts and things done or purported to be done or omitted to be done by any person or authority under section 130 of the Summary Courts Act before the commencement of this Act are deemed to have been lawfully and validly done or omitted to be done and no action or other legal proceedings whether pending or not shall lie against the State or any person in respect of or in consequence of such acts or things."

It would seem to me that the provision, with respect, is very general and it does not restrict it to only the matters that would come about now. It says, "…before the commencement of this Act..." So, the Attorney General is talking

here about any omission—let us say by the prisons authorities and let us say, for example, this Bill is passed next week, before March 30—which was illegal, would it now be deemed to have lawfully been committed and an action shall lie in respect? That is what this Bill is saying. It is saying that any omission done by anybody before this Act comes into effect—all those times up to 1999—that would have given rise to legal benefit or legal proceedings, is not anywhere. So it seems to me that if the intention is otherwise, it should not be made so, because as it is, this is depriving people of existing due process rights—everyone including those persons I mentioned to you who had their appeals dismissed—the November 9th people—would be affected by it. That is what it seems to me.

Madam President, you know how it is in the courts. We might say something now, but unless they bring the *Hansard,* which they will hardly ever do and unless there is a problem, they would say, "That is very clear and what are you arguing about?" It says here "...before the commencement of this Act…no action or legal proceedings whether pending or not shall lie…" And that will deprive people of their rights to sue. If this is the intention of this Bill—which I think it should not be—but if it were, that clause would need a special majority. So it is my suggestion that we do not have that clause at all and that we just go with the extension of time for section 130 to protect those persons who are currently being denied their rights. Those are my comments, Madam President. I know I have been longer than I usually am, but this is an area that I have done some work on.

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

Sen. Arnim Smith: Madam President, I have a few comments to make. I am very concerned about the objective of this Bill. The Attorney General remarked on the pain that she goes through to sign compensation forms for prisoners, after their constitutional rights have been breached. The law in this country states that "one is innocent until proven guilty", and if one is convicted by a magistrate it does not necessarily mean that person is guilty, because the Magistrates' Court is not the final court, because there is the Court of Appeal and a Privy Council.

So when the Attorney General says that she is going through pain to sign compensation forms, one wonders if the objective of this Bill is to save the State from paying innocent people money—because they have not been proven guilty—or is it for justice to be served on these people who are being kept in prison because of an error by the prisons authorities.

I have warned this Senate, time and time again, about breeding criminals. When we come to this Senate to pass law to do people who are inside there

injustice, because they are helpless and they have filed their appeals on time; there is nothing they could do if the prisons authorities do not send their appeals down in time to the court, and then the court ruled that they did not meet the deadline, this is infringing on peoples' rights. For the Attorney General to speak about the pain to sign compensation forms, the Attorney General, in my mind, should be speaking about the pain and injustice that these people are going through when they should not be there. These people should be with their families; they should be working and making a contribution to the society. We are not sure that they are guilty.

I would like to find out—if the Attorney General could give me the information—how much time did the three parties who were given $5,000, stay in jail? They were not supposed to stay in jail and get just $5,000, because clearly spending one day in jail is just too much and it is not worth $5,000. It is torment and hell in there. People who come out from jail could tell you that there is hell. There are 10 and 15 prisoners in a cell and they are using one pail; the prisoners are bathing in seconds. Prisoners are taken out to bathe and as the water wet them they are sent back inside, and for the Attorney General to talk about the pain to sign compensation forms for these people—until the final Court of Appeal says that these people are guilty—who are innocent.

Where are we leading the society? What road are we going down? I want to warn that we should be careful in passing a Bill that only cares about compensation that the State pays and does not care about breeding criminals and keeping people in prison when they should not be there. We should be looking at laws to protect these people from staying any overtime there. The prisons authorities should be made to pay, in whatever way, when they are negligent in doing their work, in the interest of these people.

Madam President, every day there is a murder in this country; crime is getting out of hand; and the Government is still coming here with laws to breed more criminals. Someone may go to jail with a first offence and that person may be innocent; and the magistrate says that he is guilty. This person may have an appeal and his appeal cannot be heard because of the negligence of the prisons authorities and he may have to go down to Carrera. If that person is only making six months, they will send him down Carrera and he will be among hardened criminals who will "advantage" him. Prison officers will beat prisoners and break their hand and inside there, there is nobody to talk to. When that person comes out he will hate society, because he should not be in there, and the prisons authorities and the Court of Appeal are just holding on to the law.

Madam President, when that person comes out from there all he will be studying to do is to get even with the society, and when he "bounce" on anyone, killing that person will be no problem. We should be careful when passing laws in this Senate. The Government is only thinking about money and compensation. It is time the Government starts thinking about the people whom injustice is being inflicted upon in this country, and if the Government does not do that, we will not see a change in our young people in this society.

Thank you, Madam President. [*Desk thumping*]

Sen. Wade Mark: Madam President, welcome back. I join this debate on this very important matter of the Summary Courts (Amdt.) Bill, 2003 and to indicate from the very outset that it seems to us on this side that this matter involving prisoners—like with so many other matters—that this regime seems to be wallowing in symptoms, and not getting down to the root of the crisis.

I want to support my colleague, Sen. Arnim Smith, because I will show this afternoon that maybe, the Minister of Public Administration and Information, who seems to be sleeping on the job, has not done a single thing since he has been there, to initiate efficiencies in the public service of Trinidad and Tobago—when I talk about the public service, I refer to the prison service as part of the public service. The Minister is sleeping and all he is doing is slaughtering people, and his plan is to "lick up" Caroni (1975) Limited workers. That is the Minister's job, but he will have to account to the almighty at the gates. I do not know if the Minister will get through at all. The evil of this man shall live behind him after he goes.

Madam President, I want to indicate that it is incomprehensible for any Attorney General to bring legislation here to attempt to pacify; attempt to omit action that ought to be taken against the real architects of this problem. The Attorney General brings an amendment, which I will say a few words on later, which seems to be directed at prisoners, but nowhere did the Attorney General bring any amendments to deal with the real architects of this problem, which are the prisons authorities. The prisons authorities have been incompetent; they have denied citizens who are incarcerated their fundamental rights and freedoms, and there is no provision in this Bill to take care of these delinquents and they continue to function. In fact, prisoners are murdered in the prisons and no one is found guilty. It takes a long time before a report is, in fact, submitted to the authorities; the Minister of National Security and, maybe, the Attorney General.

Madam President, what we should be getting from the Attorney General this evening is the number of prisoners who over the last five or 10 years have

dutifully met their obligation under this Act, and they have lodged their notice of appeal with the prisons authorities, and because of negligence, maladministration and incompetence, those prisoners have not been able to have their matters sent to the Registrar of the Courts, so that their matters could be properly heard. The Attorney General admitted today that some of these notices of appeal are sent 33 days after, 18 days after and 25 days after. Who is going to be accountable? And the Attorney General comes here now to cover up and she wants us to take part in that cover up.

Prison officers are public officers, and if they are guilty of negligence; and if they are guilty of costing the State hundreds of thousands of dollars in compensation, which the prisoners deserve, because their rights have been infringed and violated, what is the Attorney General telling us in this Parliament? Is the Attorney General telling us that those prison officers should go scot-free while, for instance, prisoners have had to pay a heavy price? The Attorney General said that it pains when she has to sign for $5,000. I do not know if it pained her when she had to give Sen. Gift money for his land. The Attorney General came and backtracked because of public outcry.

Sen. Morean: Madam President, on a point of order. Standing Order 35(2), reference shall not be made to any matter on which a judicial decision is pending.

Madam President: Senator, please be advised.

Sen. W. Mark: I am guided. Madam President, I would simply say that the prisons authorities have failed, to some extent, in securing the rights of prisoners who are citizens of this Republic. They might have committed the worst crimes, but as the hon. Attorney General said, we are signatory to the covenant on civil and political rights and, therefore, prisoners are entitled to certain privileges until they are ultimately found guilty by the highest authority in the world, as the case may be. As you are aware, we go straight to the Privy Council, and there are a number of human rights organizations all over the world. It is a violation of the rights of a prisoner not to be granted that right after serving his appeal to the prisons authorities, because they sent it down 33 days later. When it reaches the High Court, under section 130(2) of the Act, the court strikes down that appeal, because it did not qualify within the time frame of seven days. So what happens to that prisoner?

And that is why—as the hon. Attorney General said—this has come to the Parliament, because any human being with dignity and honour would do that and if one’s rights are infringed, there is provision in our Constitution to file

appropriate appeals and that is what the prisoners have been doing. The prisoners are filing constitutional motions and they are winning because they are right. The Judges are right to grant them that kind of liberty for the State to compensate them accordingly. That is the purpose, the essence of this legislation today and, obviously, the Attorney General wishes to plug a loophole in the law.

We saw last week where the Attorney General tabled in this Senate—in less than 12 months the Attorney General has given away approximately $23 million to lawyers who she said are very expensive. So the lawyers are expensive; they could gain $500,000, $2 million or $3 million but the small prisoner whose rights were denied, it pains her heart to pay that $5,000. I wonder if the Attorney General has a heart? Madam President, this is the uncaring nature of this brutal regime that sits next to us. The Government talked about it cares for people, where is the care? They care about their pockets! That is what they care about, Madam President.

We have already served notice that we shall not be supporting this piece of legislation, and we shall be supporting none that comes before this Parliament, until this Government begins to show sensitivity to the needs and the aspirations of the people of Trinidad and Tobago. We shall not be puppets; we shall not be rubber stamps; and we shall show this country that 285,000 people voted for this Opposition, and the Government must respect us or it shall feel the weight of the Opposition at the appropriate time. [*Desk thumping*] If the Government feels that just six of us are here; we represent 285,000 citizens in this country, and the Government must respect that. The Government cannot just bring laws here and feel that we would just say, "Aye". That is not happening! We want the Government to take note of that.

Madam President, what is happening? This seems to be a stopgap measure to try to address a matter that certainly has been in existence for sometime now. The Government told the country that it wants to "save T & T", but we want to "save T & T" from the Government, because there is only corruption, nepotism, cronyism and discrimination that they are practising since they came into office. A prisoner has constitutional rights and they should not be violated either by the Attorney General or state officials, in this instance, the prisons authorities, and if they are wrong, the Attorney General should do something about it. There are people who are getting away with murder in this country, and the Attorney General is not doing anything about it, but instead she seems to want to murder prisoners!

Sen. D. Montano: Madam President, on a point of order. The hon. Senator has made several statements that have really slandered Senators on this side. He

started off by referring to the hon. Minister of Public Administration and Information as being evil; he has referred to all the Members of the Government as corrupt and, quite frankly, he has no evidence of that at all—

Sen. W. Mark: The Community Enhancement Protection and Environmental Programme (CEPEP).

Sen. D. Montano: —and it must be withdrawn.

Madam President: Hon. Senator, please avoid using offensive or insulting language to any other Senator of this Senate.

Sen. W Mark: Madam President, I would try to be guided. I see they are getting thin-skinned on that side now. My colleague and friend, Sen. D. Montano, when he was on this side, was quite brutal.

Madam President: Hon. Senator, please address the Chair and not individual Members or the gallery.

Sen. W. Mark: Madam President, sometimes when one stands in the army, one cannot stand in one place, and you will have to shift your body. And, at one time, I had intentions of joining the army, and it is a very important thing to do otherwise your legs could give way, and I do not want to collapse in your Parliament, so sometimes I have to just shift in order to make sure that I stay alive and stay up, so you will understand that Madam President, but at all points in time, I shall point to you, but sometimes I would have to shift. Will you excuse me? [*Laughter*]

Madam President, this is a glorious opportunity—I am sorry that the Minister of National Security is not here today—because what we are really talking about here, in essence, is prison reform. It is a question of prison reform. I want to bring to the Attorney General's attention that just as she is trying to plug loopholes in the area of compensation via constitutional motions, there is evidence to show that the very prisons authorities seem to be compromising and violating the rights of prison officers.

I have two cases before me now; prison officers versus the Attorney General. I am not a lawyer, but I would like to practise it at some appropriate time. Madam President, one of the matters is a Court of Appeal matter involving a chap called Deodath Rajkumar, and the other matter involves Dindial Paltoo. The court has awarded over $200,000 in one instance. Now, that is a matter the Attorney General should be concerned about as well, because the Government is paying out money, and the reason it is paying out money is because of the negligence and maladministration of the prisons authorities.

The prisons authorities failed to submit to the service commission a staff report of a prison officer for promotional purposes, and that is an obligation under the law. Every year a staff report is supposed to be submitted—60 days before the expiration of a public officer's anniversary date—and the prisons authorities has failed to do it, and no one has been punished; no penalty has been imposed; and the State continues to pay money because of negligence, maladministration and incompetence on the part of some elements in the prison service in this country. I think the Attorney General ought to pay attention to this matter because it is a very serious matter.

How long could we continue doling out moneys to persons in this country, because of incompetence, maladministration and negligence? How long! And the Government comes here today and tells us that it wants support from us. This is a glorious opportunity for us to deal with the whole issue of prison reform. We want to know what disciplinary action the Attorney General intends to take.

Sen. Yuille-Williams: I just want to let the hon. Senator know—and if he had listened to the after Cabinet press conference last week, he would have seen where the Minister of National Security presented to the public that the Government had passed a report to the Cabinet on prison reform and that would be circulated later. So the Senator should feel much more comfortable—and this was done for the Ministry of National Security, prisons authorities and all the other related groups. So that has been taken care of. I just wanted to alert the hon. Senator that we have gone that way already.

Sen. W. Mark: I am glad that my hon. friend did refer to that matter because I do have a newspaper clipping where the hon. Minister of National Security made reference to this issue. As the Senator raised the matter, maybe, the issue has to do with the shortage of staff; maybe the prison service is understaffed and it does not matter if the Government brings register or registry and so forth, there will be the same incompetency facing the prisons authorities.

Madam President, what I saw in the *Express* newspaper dated March 07 is headlined: "Chin Lee: 1,000 more prison officers needed". I think that is the point the Senator was making and apart from talking about the 1,000 new prison officers, the Minister also talked about a penal reform task force report, which he intends to implement under the auspices of the Ministry of National Security, but words are cheap; action is expensive. We want action and not old talk. That is what we want!

Madam President, maybe the Attorney General could tell us today, whether the problem that is faced by the prisons authorities has to do with the poor level of

staffing, and that is why the Minister has recommended the recruitment of 1,000 more prison officers. If the Government is going to put this amendment into effect, who is going to guard the guards? Who is going to ensure that? They did not do it in the past; nobody was punished and no sanction was imposed. What is there to tell you and me today, for instance, that with this amendment, there are going to be changes? It is a culture! We have to struggle against a culture of inefficiency and inefficacy or lack of inefficacy—if there is such a word—in terms of the system. There is a whole bureaucracy that Sen. Dr. Saith should be paying attention to rather than trying to slaughter workers of Caroni (1975) Limited. Madam President, there is a Motion on the Adjournment and I will deal with Minister Rahael when he comes here. The truth of the matter is, that it is a golden opportunity for us to deal with reform of the prison system.

Madam President, I understand, and as Sen. Arnim Smith has said "prison is hell". The rehabilitative element that is supposed to be part of that framework is largely absent. I have an article from the *Express* newspaper dated February 16, and it is headlined: "Four-year delay for justice is too long". It is a group of prisoners from Golden Grove Prison, Arouca and if I may read this particular letter to the editor it says:

> A vast majority of inmates have had their matters committed for trial at the next sitting of the Assizes for an undue period of a year to an unbelievable time span exceeding four years, which the majority are without bail and they are unable to raise bail. Numerous initiatives undertaken by us via letters to these incumbent authorities have proven, more or less, to be a task in futility. Even our families, in their untiring pursuit, seeking our interest at these departments are continuously given the trite implanted response, 'come back next month'. We hope by way of this letter, we would agitate or set the course for some form of redress by the appointed heads of these departments in keeping with the fundamental principle of justice. Justice delayed is justice denied.

Madam President, people are crying out for justice and the Attorney General told us today, when she started this debate, that her Government is committed to the access of justice; it is committed to the equality of the law; she talked about the civil and political covenant; and all the rights of prisoners. There are thousands of people, if not hundreds of people in the prison system who are frustrated and are denied fundamental rights. Do you know, as Sen. Smith said that sometimes a person is found guilty and that person is sent to jail for six months down at Carrera?

The Chief Justice was making the point recently—Sen. Dr. Lenny Saith, the Minister of Public Administration and Information, the architect of the relocation of the Parliament brought the note to Cabinet on February 27. I got a copy of that Cabinet Note and the relocation of the Parliament was confirmed on March 07. What Justice Sharma was saying is that access to justice is an important aspect of administration of justice, and if the Government takes the court and moves it to some far area, how would poor people gain access to the court?

I raise this point to let you know, Madam President, that when prisoners are put in Carrera, how are families going down there? They will have to pay some private boat owner to take them there and it costs money. Tobago does not have a juvenile prison for young people who run afoul of the law. These young people are brought to Trinidad and are put in the different industrial centres. The parents of those kids have to travel to Trinidad—although the fare was reduced to $200 it is a cost to the parents, and even if they have to take a boat ride, which is $50, it is a cost. The parents may have to overnight by someone or go to a hotel or some guest house just to see their children and there is no prison in Tobago. There might be a holding bay, but not a prison like the one on Frederick Street. So Tobago, south and central do not have any prison—I am not advocating prisons, but I am trying to make a link here, in terms of the relationship between family members and a prisoner.

Madam President, many prisoners go berserk after a while, because psychologically and emotionally, they cannot see their families. Their families give up on them, not because they want to give up on them, but because of the fact they do not have access. He or she may have been the main breadwinner in the family and that person has now been incarcerated so the young lady, or the wife, as the case might be, has to go out there and hustle to maintain her family. When a Tobagonian has to come to Trinidad to visit her son, daughter, nephew, niece or relative; and similarly someone from south Trinidad may have to go to Golden Grove or the Royal Gaol, may have to travel to Carrera, as the case might be, this is a golden opportunity for prison reform to ensure that we do not breed criminals, as my colleague said, because they will come back to haunt us.

There are young people today in our society, because of their value system which is almost non-existent, who will see Sen. Yuille-Williams and Sen. Dr. Saith and they will not have a second thought to chopping them up. What I am saying is that the Government is breeding criminals and that is the point that Sen. Arnim Smith was talking about. We are talking here about prisoners who have been denied their fundamental rights and when people are denied their fundamental rights, all kinds of things could take place.

I am not seeing anything; all I am seeing is people getting increased salary; the Government is giving money to LIAT at the expense of nationals of this country. That is what I am seeing taking place. The Government wants to close down Caroni (1975) Limited for all kinds of stupid reasons. That is what I am seeing taking place and only old talk and red herrings—talk to Sen. Dr. Lenny Saith, the relocation specialist. We on this side are saying that this is a matter, as I said, that will give the Government an opportunity to really speed up the reform effort of the prison service.

Madam President, I find this amendment quite offensive. It is inconsistent with section 4 of our Constitution and, therefore, anything that is inconsistent with the provisions of the Constitution requires a special majority. Unless this amendment is thrown out or drastically revised or redrafted, in its literal interpretation, what the Attorney General is trying to do is to validate a kind of action involving prisoners to prevent them from appealing and this says:

> "Notwithstanding any law to the contrary, all acts and things done or purported to be done or omitted to be done…"

What does the Attorney General mean by that? Section 130 has three parts and one of the crucial parts of this is:

> "The notice of appeal shall be given in every case before the expiration of the seventh day after the day on which the Court has made the order or given the refusal appealed against."

That is part of section 130 of the Summary Courts Act and the Attorney General is saying. "…all acts and things done or purported to be done or omitted to be done by any person or authority…" Madam President, who is this "any person" that the Attorney General is referring to? Is the Attorney General referring to the prisons authorities or the prisoners? Who is the "authority" the Attorney General is referring to? Is the Attorney General talking about her Department or the prisons authorities? What is the Attorney General talking about?

> "…before the commencement of this Act are deemed to have been unlawfully and validly done or omitted to be done and no action or other legal proceedings whether pending or not shall lie against the State or any person in respect of or in consequence of such acts or things."

Madam President, this is a draconian measure that the Attorney General has introduced here. It might appear to be simple, but it is very weighty in its constitutionality, in terms of the rights of people. Under section 4 of the

Constitution, prisoners have a right to life; they have a right to liberty; until they have been found guilty and convicted according to law. Also, in section 4(b) the prisoner has "the right of the individual to equality before the law and the protection of the law;". Prisoners are entitled to the equality of law and they are entitled to equal treatment and protection before the law, and this particular amendment does not appear to be in sync with section 4 of our Constitution.

It is not the first time the Attorney General has brought flawed legislation; it is not the last time that she will bring flawed legislation. The Attorney General seems to have a history of incompetency in bringing legislation to this Parliament, and if there is not a vigilant Opposition and, of course, my independent colleagues and friends, do you know what is going to happen? Many laws will be passed and we will not be doing our duty and we have our duty to perform.

As far as I am concerned, I believe that for instance, this regime called "the PNM" is not taking its time to deal with very critical issues and we will not allow them to tamper with the people's rights, whether they are prisoners or citizens. We are not going to allow the Government to tamper with the rights of people. I understand that there are a lot of prisoners who may not be citizens of this country but they are also entitled to rights. This is an issue that we really have a difficulty with.

Madam President, we are living in very dangerous times, a war could be taking place anytime now—we do not know—and, therefore, whatever laws the Government brings here to gain our support, they must do it in a manner in which meaningful consultation must take place before. We do not want decisions and then consultation, Sen. Dr. Saith. We want meaningful consultation and genuine social dialogue before decisions are taken. The Government should not come and tell the country that it took a decision and then come to consult us.

Madam President, an important Bill like this should have been sent to a committee. I think Sen. Dr. Saith and his Prime Minister are anticipating a huge Chamber, and I suspect we are going to have committees where we will be on a full-time basis, I think that is the purpose and, therefore, we will not have to debate these matters in advance, we will have to go in our committee rooms and debate these particular bills.

We want to make it very clear on our side that the Government could consult us on that idea, and we will then communicate our feelings to the Government, but we must first consult with our constituents and the people who have put us here, and if they tell us that it is a good idea, then we will come back and talk to the Government, but the Government cannot impose its will on people. That is

wrong! It is wrong for anyone to impose his will on the people of our nation, whether they are prisoners or union people at Caroni (1975) Limited. The Government cannot impose its will unilaterally on the people.

In winding down, let me just indicate that for instance, we have to recognize and appreciate that a government—and this is a very important matter. We are part of this government and there is something call Parliament. It is made up of the President—and I want to congratulate him on his assumption of office. The Government is made up of the President; it is made up of the Parliament; and it is made up of the Executive; so all of us have a role to play in this exercise. And governance, in this context, in terms of the modern usage of it, requires us to have real meaningful consultation and participation in whatever decision the Government may take as an Executive, because bad decisions could be taken.

In a conflictual situation the Government will have to take the views of the Opposition or it will have to take the views of its enemies on board, because they help you and, in this instance, we are giving the Government sound advice on this matter of penal reform. We are telling the Attorney General to withdraw this Bill and go back to the drafters; get it properly organized and bring back a solid Bill to the Parliament, and then we will have an opportunity to debate it again or we could refer it to a special select committee. This Bill is dangerously flawed, and it is designed—if we are passing this Bill in its present form—to take away the rights of people and deny citizens, who are prisoners, their rights in Trinidad and Tobago and we will not be party to any such arrangement. We serve notice on the Government today to let them know that in no uncertain terms, until they come to grips with the reality that there is an Opposition that has the power, force and people support that is popular, if the Government continues to tamper and treat us lightly, local government election is around the corner, and the people will have a chance to judge this criminal regime that is evil, wicked and vulgar and at the appropriate time, the people will take a decision to put the PNM where it rightfully belongs, in the dustbin of history.

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

Sen. Brother Noble S.A. Khan: Madam President, I think that what is before us here again, as in some of the legislation that had been brought to us in the past—just a couple of sheets—does, indeed, raise some very fundamental questions. In my mind here, today, is the question of justice and the delivery of justice. Perhaps, too, I could draw on some of my own personal experience, even as some have obviously done before I started speaking.

With respect to the question, we have heard much said about the summary courts, about 95 per cent of the cases are tried in our country—brought as part of the judicial processes. I would like to think about 95 per cent of that 95 belong to part of our population that could fall possibly into the background of what I am going to say now.

I remember a few years ago, I was part of a group that was looking at some of the mechanics of bringing justice and fair play to our people. At that time, it was pretty high on the agenda in our country and we were speaking in terms of the Ombudsman. At that time there was just one ombudsman in the Caribbean area and that was in Jamaica; I think, his name was Mr. Jimmy Lloyd, a great Caribbean person. We were young people and we were looking at this question and the thing that stuck out in my mind at that time was the areas, in relation to the systems that obtained and where justice could have been brought about and one of them was the Judiciary. Two matters that stood out in my mind, as delivering a service to a new emerging people of which justice was so important—and if one were to carry the concept of justice outside of the rule of governance of states, we would think that justice is possibly the greatest of the virtues upon which any civilization could rest.

If we were to look at all the great traditions in our land, we would find that justice is the "shining star". What was felt among the young people at that time was that the judicial service or the system that obtained was too expensive. That was one of the major points. The second point was that when one looked at the decisions of the judicial system, they were always pro establishment.

Now, taking that against our background, we would think—I know pro establishment is pretty wide, and possibly the whole concept of judicial rectification in our land or as a system where fairness could be played, could be up for question now, but I am recalling what took place a few years ago, and to relate that back to the "95 of the 95". We could possibly see a relationship why in our country—and possibly in the Caribbean and, perhaps, in the Third World—it is always looked at with an element of suspicion and also when it is delivered and also the mechanisms of the State that form part of the judicial system in bringing equity, fairness and a good society.

I visited the prison many years ago. I used to work in the Audit Department and it was part of our work to visit these institutions, and it was indeed an experience. Of course, the office that we were in was supposed to be one of the best; it was just close to the commissioner's office—clean, neat and so forth and everything was looking good, and close by we were told there were high-powered

cells and taking off lights—soon people would be going through that process. I remember one day I entered passing the gates—there was a big courtyard, well kept with a bit of grass sparkling and then a big blank wall—I heard "Nobel". I was attracted and when I looked up there were just some little holes against the wall. Of course, I never knew who was the person. It was a young voice. Perhaps, when the person came out—I do not know if the person ever came out—we never established that contact where I could have identified that it was that person.

Now, not too long ago, I was in a new building overlooking that same prison on Frederick Street and I looked at it—some of us may have read the story of Frederick Street and so forth—and the thing that struck me was that it was some where in the century before that this prison was built. The person whom I was with, was one of top management of a company, and was talking about the problem they had in putting up this building, and how it will be overlooking the prison and matters like that. But here was this structure made of stones—that is all I was seeing, some stones and rusty galvanize on top—and it was totally out of place with what is emerging in Port of Spain now—new buildings shooting up around. These are some of the things that struck me within recent times and, I guess, as I continue, the experiences that we will share.

It is said that in all the prisons—not statistically—but when you meet young people who have been inside prison they will say, "Brother Noble, when you see a fellow in prison 25 years old, he is an old man" and that is to explain the point of who is inside the prisons.

Madam President: Hon. Senators, we will take the tea break now and we will return at 5.00 p.m.

4.30 p.m.: *Sitting suspended.*

5.00 p.m.: *Sitting resumed.*

Sen. Dr. Eastlyn McKenzie: Madam President, I would be very brief, but I would like to say that from reading the amendments and the Summary Courts Act and from listening to the contributions of previous speakers, I have learnt a lot. I tried to summarize the problem and came up with three main points: The first one was the problem of filing these appeals on time by the prison authorities and I thought that what could be looked at would be the question of staffing and whether the prison authorities are aware of how important their duty is to file on time. Therefore, I think there should be some sort of public meeting with the prison authorities from the Commissioner of Prisons right down, and also with the union representing prison officers so that there could be some measure of public

education as to the importance of these officers doing their duty and filing these appeals on time, lodging them within the deadline period.

The second problem I discerned from the contributions made by hon. Senators was the one of the judges having no power to accept a late application and, therefore, I think this is where we need an amendment to ensure that the judges would have the authority or the discretion to hear an appeal even if the application was filed late.

The third problem I discerned was where magistrates, having heard an oral application of appeal, were not converting this oral request into a written one, therefore, there was no filing. I think these are the three areas that we need to focus our attention on, and I think if we have those matters being done, the problems would be solved and we would have justice for our prisoners who would have filed notices of appeal to have them heard.

To summarize, with respect to filing on time; let us see what could be done with the prison association, the union representing them, education for the prison officers, through the Commissioner of Prisons, letting them know—whether it is negligence; inefficiency or being overwhelmed with work—the hardships they are causing. The next one is the question of giving judges discretion to listen to appeals even though the filing deadline would have been passed.

Thirdly, to ensure that magistrates have the staff or the wherewithal to convert oral applications of appeal to written applications of appeal so that they could be filed.

[*Sen. Bro. Noble Khan rose*]

Madam President: I am sorry Senator, I am afraid you have missed your turn.

Sen. Dr. Jennifer Kernahan: Thank you, Madam President. First of all, before I get in to the Summary Courts (Amdt.) Bill, I would like to congratulate my colleague, Sen. Seetahal, on her contribution. As a layman, I was very impressed with her contribution and the way she explained, to this honourable Senate the very blatant and glaring clause in this Bill. In listening to Sen. Seetahal, as I suppose to many of us in this honourable Senate, I was wondering what is happening in the Attorney General's Department. Why is flawed legislation coming week after week to this honourable Senate? Ultimately, what is happening to the Attorney General herself? Why is she not seeing that this legislation is flawed? And why is she allowing such incompetence to come to this honourable Senate? [*Interruption*]

Sen. Morean: Madam President, on a point of order. The hon. Senator is saying that the legislation is flawed; she has not heard me in reply yet, so that she cannot make that conclusion. What she may say is that she disagrees with certain things but she cannot draw those conclusions and make those imputations that the legislation is flawed, because I have to reply. It may not be flawed at all, because my response may show quite clearly that it is not. The fact is that it was flawed, that is why it is here now.

Madam President: Hon. Senator, you may not agree with what is in the legislation, but you cannot draw the conclusion that it is flawed until the debate is completed.

Sen. Dr. J. Kernahan: Thank you, Madam President. I would like to say that we, on this side, are in total concurrence with Sen. Seetahal and her estimation of the stature of this legislation. Although the debate is not finished, I totally understand the points raised here today by Sen. Seetahal and I support them.

This Bill is another glaring example of the insensitivity of the PNM Government with respect to the real plight of the poorest and most dispossessed people in our society. We would appreciate here today that the people who are most affected by the inconsistencies and the problems—and this Bill seeks to correct the problems of the people who have least access to legal advice—those are the people who need to have this administration get its act together and approach the problem in a holistic manner so that we would not be, sometimes, plugging some holes and leaving others defenceless in the face of the bureaucracy and the incompetency especially in the prison system.

In piloting this Bill the Attorney General made it clear that it pains her heart that the State has to pay compensation when there are people wrongfully detained because of the incompetency of the prison system and the prison authorities. It struck me that these are the same people who the administration has no problem with, in going at election time, politicking and electioneering inside the prison system, making sure that people who are within the prison system are able to come out and vote. Therefore, it shows, again, how cynical they are about the real problems of poor people. They use them in their little election games as pawns when they need them and at the same time—[*Interruption*]

Sen. Yuille-Williams: Madam President, the hon. Senator is making statements that are not relevant and which she cannot prove at all. She could get some leeway but not that way.

Madam President: Hon. Senators, too often I have to stand here on points of orders of irrelevancy, repetition, et cetera. Please stick to the matter at hand. There is no need to bring all those irrelevant statements that are particularly offensive or are imputing what is not right.

Sen. Dr. J. Kernahan: Thank you, Madam President. As I said before, and I will repeat. Our people deserve better; the poorest and most dispossessed of our people deserve the regard of the Attorney General in this administration with respect to their human and legal rights; and they deserve not to be treated as pawns and to be used conveniently when it is in the interest of the regime, and cast aside when it is not. [*Interruption*]

Sen. Morean: Madam President, on a point of order. The hon. Senator is just repeating what she said and on which you have just ruled.

Madam President: Hon. Senator, please go on to another point. You are repeating yourself, and too what others have said. So please.

Sen. Dr. J. Kernahan: Madam President, as I was saying before, the people of this country depend on this Government to give us some sort of leadership with respect to the whole issue of the context in which these errors, omissions and problems which the poorest people in our society face. When we look at this Bill the major source of conflict is with respect to the role of the prison authorities in ensuring that appeals by prisoners who are under their care and authority, reach the court clerks on time, in order to ensure that appeals are going to be entertained by the Appeal Court.

Madam President, in fact, at this time, I would like to support my colleague, Sen. Mark, and we should look at this problem in the context of the whole question of the concept of people in the society who have run afoul of the law. We also have to have a concept that people who have run afoul of the law are people who yet are subject to all the rights and privileges of this society. They have their human rights and their constitutional rights. Therefore, the whole concept of prison reform has to come in to this issue to deal—because the culture of this country is such that—as Sen. Mark was saying—once you run afoul of the law, you are presumed to be in the prison system; you are presumed to be guilty; you are presumed to have no rights that they care to observe, and you are treated with total disrespect.

This is something that has come to the attention of this honourable Senate today, in several letters to the editors and in Sen. Seetahal's contribution. I would also like to quote the cries of people in this country with respect to the prison

system and the conditions under which prisoners exist in the prison system. This is an article in the *TnT Mirror* of Sunday March 16, headlined, "Confession of a prisons officer on crime; We manufacture criminals in jail." This is an article written by an ex-prison officer who, apparently, has left this country. He elaborated certain conditions under which prisoners exist, and the whole rights of prisoners in this country. This matter of ignoring the appeals documented by prisoners and getting into the Appeal Court in time is part of the whole concept of the culture with which prisoners are dealt within this country.

This letter goes on to say:

"The EDITOR:

Please allow me to publish this letter in your newspaper, I write with the help of my daughter.

I cannot bear to keep what I know to myself any longer.

In recent times, my family and I have succeeded…"[*Interruption*]

Sen. Morean: Madam President, on a point of order. The hon. Senator is repeating, Standing Order 35(1), irrelevance. While it is true that, in passing, the hon. Senator may mention something about prison reform, going in detail into the debate on prison reform and reading the whole article, which I suppose we all read, is totally irrelevant.

Sen. Mark: Madam President, I think they are trying to frustrate the young lady. They are only interrupting the hon. Senator. They must interrupt me! I would deal with them.

Madam President: I am going to give the hon. Senator a few minutes to make her point. Hon. Senator, make your point but please move on.

Sen. Dr. J. Kernahan: Madam President, I do not know why it is that I am unable to make my contribution in peace. I am making the point that prisoners' constitutional rights have to be addressed in the context of the culture in this country—in the way that prisoners are viewed. Not because you are accused of a crime you are totally emasculated at that point; you are totally bereft of your human rights and your constitutional rights. Even prison officers have seen it fit to write to the newspapers and make the point that the prison system is inhumane, and the way that prison officers deal with prisoners in this country is a whole system of de-humanization and infringement of the constitutional rights of prisoners. Therefore, this is very relevant, Madam President. I do not know why I am being totally distracted from trying to make this point. [*Interruption*]

Sen. Mark: They want to go to a function. Well, go home and let us debate!

Sen. Dr. J. Kernahan: Madam President, I would like to read to this honourable Senate part of what the ex-prison officer has said, which is very relevant to this debate. I quote:

> "We take people's children off the street, starve them, beat them, cut them off from their families…"

This is exactly the point that Sen. Mark was making when he made his contribution, which deals with the whole question of the isolation of the prisoner from his support system—and this is not a problem that only exists in this country. I was looking at CNN and this is an international problem. International prison rights groups have drawn the attention of the international system to this problem. For example, when you take a prisoner and isolate him from his family, you are infringing on his basic human rights. This is what this ex-prison officer is saying here. That is why you can get away with so much infringement of prisoners' rights. That is why prisoners can be found dead in jail and so on, because they are isolated from their families. There is no feedback; there is no connection; they cannot get messages out; and they cannot complain. Therefore, this is a very important part of the whole question of prison reform, and the way we look at prisoners and treat them.

Madam President, there are also denials of the basic human rights of prisoners; the length of time they stay unlawfully in jail because of the prison system; when you isolate prisoners from their family; when you starve them; when you beat them; when you put 12 persons in a cell where there should be four. These are the issues that the Government of the day should be addressing.

Also, I find it very insulting to parliamentarians when hon. Senators can get up in this honourable Senate and ask parliamentarians if they had seen the television with respect to whatever measures the Government is going to be instituting in this country. We, as parliamentarians, do not have to look at the television to find out what is going on in our country. Reports have to be brought here and debated here in this Parliament, and that is how we are going to know what is happening in this country. This is where we are going to reply—on behalf of 285,000 people in this country—to whatever measures the Government has in place. So, please, do not disrespect us by asking: If we watch TV? I do not watch TV because I do not have one. So bring your reports here and let us debate them. [*Laughter*] I go by my friends to watch CNN to make sure and keep up with the international trends. [*Laughter*]

The quote continues:

> "(10-minute visit, once a month), make them live in sub-human conditions, sleep on the floor, and then, as if that is not bad enough, we…them and make fun of them."

This is the reality of the prison system. Therefore, it is no wonder that when there is this reality; where people's rights, as human beings, are totally disrespected in prison, you do not have prison officers caring to send in appeals, because you are not seen as a human being! Why are they going to send in appeals on your behalf? You are not seen as that; once you are accused of crimes you are seen as a sub-human. This is the sort of thing that we have to deal with in a very real way. The Attorney General should be dealing with these issues and stop trying to harass the legitimate representative of the people of Trinidad and Tobago.

Madam President, whenever I come here, it is to speak the truth as I see it, and as I have lived it. I have also been a victim of this PNM Government with respect to the prisons. I know, first-hand, what it is to be in the prisons of this country. I have interfaced with other women who have been victims of this prison system. I would like to say that our prison system is colonial, backward and antiquated. I am hearing noises about the UNC government not having done anything about developing the rights of prisoners and the rights of young people with respect to the prison system.

I am looking at the "*Law and You*" produced in 1995, and I would like to bring some statistics to this honourable Senate that the UNC Government has been the most prolific in bringing legislation to this Parliament over the last three administrations, in order to ensure that the rights of our people are respected; and the rights of our people are legislated in this country. In 1986—1991, the then administration brought 163 Acts to Parliament; between 1991—1995, 121 Acts were brought to Parliament; and between 1995 and 2000, under the watch of the UNC, 246 Acts were brought to Parliament, in order to ensure that justice is served in this country. All the cries and the needs of our people were addressed in all these Acts that were brought to Parliament. I would just name a few.

With respect to the specific Acts that were brought to this Parliament, such as the criminal justice system, affecting young people—because this administration has a history of using them, criminalizing them and losing them in the prison system—under the watch of the UNC, from 1995, a number of pieces of legislation were brought to this honourable Senate in order to cover the system. They are: the Summary Offences Act; the Corporal Punishment (Offenders Not

Over 16) Act; the Young Offenders Detention Act; the Defence Force Act; the Age and Majority Act and the Family Law Act. We can go on and on. So do not come here and mislead this honourable Senate and say that the UNC government did nothing while we were in office. A number of Acts were brought to this Parliament, among the 286 Acts that were brought, in order to ensure justice for our young people and to give them rights that they deserve. [*Interruption*]

Sen. Mark: Give them independence! [*Interruption*]

Sen. Dr. J. Kernahan: Madam President, as CEPEP is mentioned—I am not surprised it is mentioned. Sen. Seetahal made the point very forcefully, that you do not want another parallel registry system to be set up in prisons as opposed to what is happening in the courts. It seems to me that the PNM administration has a penchant for establishing parallel organizations in order to cover certain issues that need to be dealt with in a certain definitive way. You do not create parallel institutions to deal with problems. You go to the root of the problem and deal with it. That is why we are saying that prison reform, in a very serious way, is going to the root of the problem. I totally agree with Sen. Seetahal that you do not create parallel institutions such as what is proposed in clause 2 of this Bill in order to deal with the question of not allowing our young people to go to the Appeal Court.

Sen. Mark: That is why they want to increase water rates now.

Madam President: Sen. Mark, you had your chance to speak. Your voice is now loud enough to disturb the person who is speaking. Please turn your chair this way? I like to look at you. [*Laughter*]

Sen. Dr. J. Kernahan: Madam President, the essentials of what we need to get here today is to get over to the PNM administration, on behalf of the people of Trinidad and Tobago, on behalf of all those young people with whom I interface every day, who come to me with all these horror stories about how their rights are abrogated in prison; about the prison conditions and so on. The essential point that we would like them to understand today, on behalf of all our people, is that they have to deal with the whole concept of the prison system. They must come with a code of conduct for the prison officers. As Sen. Mark has said, the Minister of Public Administration and Information has to deal with that whole question of how prison officers see their role and function in this society; how they see their role and function in the rehabilitation of people in the prison system. [*Interruption*]

Sen. D. Montano: Madam President, on a point of order. All afternoon we have had all kinds of debates on prison reform. I think we have heard enough

about it at this point. We need to talk about the Bill; and I would be grateful if you would ask this hon. Senator and any others to, please, speak about the Bill at hand?

Madam President: Hon. Senator, please, we are not talking about prison reform. I have to agree with that. Although there might be something about prison officers to be brought up in the discussion, we are not talking about prison reform. We are going way beyond the scope of the Bill we have in front of us. Please come back to what we have here. Anybody else speaking on this Bill, I would ask you to do the same.

Sen. Dr. J. Kernahan: Thank you, Madam President. In order to solve the problems with respect to the rights of prisoners in jail, the rights of persons to appeal and to ensure that their appeals are heard by the Appeal Court, we have to deal with the re-education and redirection of the colonial prison system. We have to deal with the re-education and the redirection of the prison officers who are in charge of our prisoners. There has to be some structure in place to make them understand that these are people with their rights intact. Therefore, there must be a whole system of checks and balances within the system that would allow this process to take place.

As it is, it has been clearly articulated in the different media and so on, the expressions of some of the people affected. Right now that is not happening because there is a lack of consciousness; a lack of education of the people who run the system; the people who are there to ensure that system functions; there is a lack of education; there is a lack of commitment; there is a lack of understanding of the thin line between respecting the human rights of the prisoner and whatever punitive measures that may have been imposed on that prisoner by society.

As was articulated earlier by other speakers on this Bill, if you are going to deal with this measure in this manner and you are not going to deal with the whole question of compliance by the prison authorities with respect to what is required of them by law, you are going to be spinning top in mud. So if you are saying that you are going to bring this Bill and we are going to pass it as is, and you are not going to put punitive measures in place with respect to the obligations of the prison authorities with respect to the rights of prisoners, then we are not going to go very far in this country. This is what we are insisting.

We are not going to support this Bill in this form because the rights of prisoners are not guaranteed by this method. The rights of prisoners would only be guaranteed in the context of clear guidelines enunciated by the relevant

authorities with respect to the functioning of prison officers. Punitive actions must be put in place if these guidelines are not followed. I think this point was well made by all the previous speakers and this is what we are getting at. We are saying that you are not going to put a plaster on the sore; you are not going to let the prison authorities off the hook; you are not going to bring Bills to this Parliament that are going to get around the problem of the re-education and redirection of the prison authorities and the prison system in this country which is affecting the lives of thousands of people in this country.

We are not talking about persons who actually broke the law; we are talking about persons who are perceived to have broken the law; we are talking about you and me; we are talking about walking down the road and somebody pointing you out as somebody who may have committed a crime, and you fall afoul of the law right there. You are innocent; but you have to face the same system and the same conditions that everybody else faces. As a people, when we are complacent about the conditions under which people exist; when we are complacent about the way the prison is run; when we are complacent about the concept with which the society approaches the prison system; we are complacent about our own freedom; we are complacent about our own democracy; and we are complacent about the future of this country. This is what we are about this afternoon, Madam President.

Over the carnival season we have felt very unsafe. We have felt that we needed more protection from the military authorities and so on. The jails would have been filled over the carnival season with people who were taken off the streets—for whatever reason—and sent to the prisons, because of pre-emptive and precautionary measures; people would have been taken off the streets and sent to the prisons. It is my information that many young people have been beaten by the military authorities during this period.

When lawlessness is encouraged by the highest level of this society, we have to be careful about the military. We have to be careful about the prison system—because anyone of us could fall into that system at any time. We have to be careful about what we call for in this society when we call for protection. When we call for more militarization of the society we have to be careful that we are not calling for our own doom.

Madam President, I regard this Bill as totally inadequate to deal with the problems of our society. [*Desk thumping*] There are many people out there who need the protection of the law and who need a competent Attorney General's Department to protect them and their rights. At present, they do not have that. We are totally exposed to whatever injustices and infringements that other people may

care to perpetrate upon us. Madam President, this is our position and we would not support this Bill in its present form. Thank you. [*Desk thumping*]

The Attorney General (Sen. The Hon. Glenda Morean): Madam President, enough is enough. Good Lord! It would appear that some of the Senators present did not hear what I said. I started off by saying that the Bill serves a two-fold purpose. One, it was intended to ensure that this Government adheres strictly to its international obligations and I cited the Convention on Civil and Political Rights which obligates the State parties to ensure that every accused in every case has legal assistance and that everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.

I further said that observance of the rule of law is paramount in all cases no matter which citizen is involved. I went on to enumerate a number of cases, examples of where the appeals of certain persons had not been heard because of omission on the part of the authorities. I do not want to be repetitive, but let me take, first of all, Sen. Smith's contribution. I think he misunderstood again or did not hear what I had said. I mentioned two cases where a certain sum was ordered to be paid. My pain was not over the sum that was ordered to be paid; my pain was over the default on the part of the authorities—I made that quite clear, and I would make it even clearer. From the time I became Attorney General I said that I put an officer to work only on these matters.

One of the reasons for so doing, was the fact that on a daily basis, files come before me where I have to sign consent orders to agree to pay persons for omissions on the part of the authorities, on the part of police officers, on the part of magistrates and so on. This is what I made clear that the pain was over. These are actions that were started long before we got into power. So that action has been taken to correct that. In fact, the officer is working with the Ministry of National Security to ensure that a proper manual is developed to educate police officers as to how they should act in relation to the citizens whom they have to apprehend or to deal with in the course of their duties.

Sen. Smith wanted to hear about the cases that I cited; I would give him the facts. The facts are that there were applicants who appeared in the First Magistrates' Court, Chaguanas on July 16, 1997, jointly charged with assaulting Rajbar Seegolam on the previous day, and thereby occasioning him, actual bodily harm contrary to section 30 of the Offences Against the Person Act, Chap. 11:08. The prosecution having recommended summary trial, to which the applicants consented—all pleaded guilty, and there was no plea in mitigation on their behalf and they were sentenced to 12 months imprisonment with hard labour. They did

not appeal against their sentence, they appealed against the 12 months that they got. The Court of Appeal looked at it, and while it is true that their appeals were filed out of time, they did not even find merit in their appeals; but that is beside the point. The fact is, these are the facts.

Now, the question as to whether we are taking action against the authorities for having failed in their duty, that is not our purpose here today. That would be dealt with at another time. In any event, when any public servant is guilty of any dereliction or has defaulted, there are means available for bringing that person to book in disciplinary proceedings. In terms of the person who has suffered as a result, the recourse, as we have seen, is action to be brought, not that this is the ideal position. In fact, this is why we are seeking to correct that mischief, because we do not want people to have to go through the task of having to file an action for breach of their constitutional rights and then claim damages. This is all this Bill is intended to correct. That is what it is for.

In relation to the points made by Ms. Seetahal—[*Interruption*]

Sen. Mark: Attorney General, it is not Ms. Seetahal but Sen. Seetahal.

Sen. The Hon. G. Morean: Thank you. Madam President, I am glad Sen. Mark knows that that is the proper way to refer to Senators in this honourable Senate. [*Laughter*] I am happy for that correction. As to the question of whether we are creating a parallel registry; this is not so. You are not creating a registry; what you are simply doing is having a mechanism by which the notice of appeal would get to the court. So there is no registry; there is a form of administrative procedure to establish that, in fact, the persons did give their notice of appeal when they said they gave it. If anything untoward were to happen subsequently, there would be evidence that within the seven-day period the notice of appeal was given by the appellant. This applies because of the fact that the person is in custody, so that he cannot go outside and lodge the appeal himself. That is one point made by Sen. Seetahal.

With respect to the question of giving the court a discretion; that is something we looked at. However, short of repealing and amending the whole thing and going through a whole different procedure this seemed to have been the better way of dealing with it, because the fact is that section 130A(1) and (2) sets up a procedure. Now, if we leave it open and we give the appellant the option of filing that appeal at any time, what is going to happen to the subsequent provisions that are to be put in place? If you say that you give the court a discretion to extend the seven-day period, if the appeal is not filed within that seven days then you would leave it open. But there are magistrates having to do certain things. [*Interruption*]

Sen. Seetahal: Madam President, may I please interrupt on a point of clarification. I have never said that we should give the Court of Appeal the power to just extend the time in toto. I said that the Court of Appeal should be given the power to extend the time for giving the notice, if the court is satisfied that the failure to comply with the time prescribed by section 130(2) was due to the delay of the Commissioner of Prisons in transmitting to the clerk a notice. Currently, there is an amendment circulating with that; and that is actually giving back to the court, the power which it should have. I think you misunderstood, Madam Attorney General.

Sen. The Hon. G. Morean: Madam President, I did not misunderstand the hon. Senator. I understand her to say that she is giving the court a discretion to extend the time in certain circumstances, where the court would have to make a determination as to whether there was negligence on somebody's part or not. That is the point that you made. I am saying that leaving that opening can cause people to run afoul of the subsequent sections because—after the notice of appeal has been given in accordance with the section, the magistrate has 60 days of the giving of such notice to draw up and sign a statement of the reasons. When a person knows that there is an opening, he may very well take advantage of that opening and not file his notice in time. So you keep your time frames there. You keep your seven days but you make sure that the appellant does not lose his right if the authority does not comply with the provisions of the Act. That is what this section has sought to do. We do not want to leave it open-ended.

With respect to the question of the notice of appeal being oral when they were used as verbal where section 130(1) says;

> "An appeal shall be commenced by the appellant, giving to the Clerk notice of the appeal, which may be verbal or in writing, and if verbal shall be immediately reduced to writing by the Clerk and signed by the appellant,…"

The normal case is that prisoners may give their oral notice of appeal at the time of sentence before a magistrate. In practice, many prisoners give their verbal notice of appeal immediately upon sentence by the magistrate and it is then recorded in the court's notes taken by the note-taker and, in addition, by the sitting magistrate in the magistrate's own notebook. I am sure you would be familiar with that procedure.

On the question of when the prisoner is taken down there is a procedure also in place, because many of these could be done administratively, when we say the substantive provision is there; but when there is a substantive provision you are to

put things in place to ensure that the provisions are adhered to. It is not every detail that can be legislated for substantively. There must be rules and there are rules. If the rules are not laid down by the court there are procedures to be followed in relation to the oral and the written notice of appeal. [*Interruption*]

Sen. Seetahal: Madam President, I rise to clarify a matter please. With respect to section 131 to which the hon. Attorney General referred, and on the question of verbal notice, I made it very clear that exactly what the Attorney General said happened, happened; that the notice is given to the magistrate, but the problem is that it is never recorded by the clerk. It is this problem that I am saying, that if we are addressing the legislation, that is the whole half of the problem that is not being dealt with. I pointed out cases that are before the court and have been before the court, where appeals have been dismissed, because of failure by the clerk to record it. This is the point.

Sen. The Hon. G. Morean: Madam President, I answer that by the way because this is not what we are not dealing with here; we are not amending section 130 at all, we are simply dealing with the area where the time for appealing—the seven days—expires and the notice is filed out of time.

You would recall, at the outset, I said that there are other sections that need to be amended and that subsequent amendments would be coming. Rather than bringing amendments—and I mentioned one in particular, the power of the magistrate to order more than three years at a time—they are bringing the amendments to order more than three years at a time. So that this is something that can be dealt with at a subsequent amendment and it is not the subject of this bit of legislation.

Madam President, with all the talk about reform, the prison reform is not the subject of this evening's debate, all we are dealing with is one little aspect as I have indicated. However, in passing, I would simply mention that this Government is fully aware of the need for penal reform and that is actively being pursued by the Government. In fact, the drafters are already at work dealing with the necessary legislation, coming on the heels of the report that has been given by the committee.

Madam President, the amendments that are suggested, which have not yet been adopted, would be dealt with at committee stage. In those circumstances, 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.

Clause 1 ordered to stand part of the Bill.

Clause 2.

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

Madam Chairman: We have amendments coming from the Attorney General and Sen. Seetahal. Would we take the ones from the Attorney General?

Sen. Morean: Yes. Madam Chairman, I beg to move that clause 2 be amended as follows:

Clause	Extent of Amendment
2	Delete section 130A(1) to (6) and replace it with the following:
	130A (1) The Court of Appeal may extend the time for giving notice of appeal if it is satisfied that failure to comply with the time prescribed in subsection 130(2) was due to the delay of the Commissioner of Prisons in transmitting to the Clerk a Notice of Appeal received from a person in custody.

Madam Chairman: Do hon. Senators have these amendments in front of them? Any comments?

Sen. Seetahal: Madam Chairman, are these the amendments to clause 2—that is, deleting the word "director" and putting in the word "Commissioner" in substitution. Those are the amendments?

Madam Chairman: We are dealing with the Attorney General's amendments.

Sen. Seetahal: Yes, I know, I am just saying that there are no more.

Madam Chairman: Are there any other comments on that? All right, if no other comment on that then let us move to the amendments circulated. Sen. Dr. McKenzie, I am sorry, I am not seeing you at the corner there.

Sen. Dr. McKenzie: Madam Chairman, I was wondering in that same subclause (3) of clause 2, where you are putting the words "upon compliance with subsection (2)", are we still going to keep the clerk of the court? I heard it

mentioned earlier of there not being a clerk of the court, but a Clerk of the Peace or a court clerk.

Sen. Morean: In fact, we can take the word "Clerk" alone and omit "of the Court" because it is defined in the Summary Courts Act.

Sen. Prof. Ramchand: What year amendment is that?

Sen. Morean: 13:86—

Sen. Prof. Ramchand: So we now have two things about "Clerk". Sometimes it would be Clerk of the Peace and clerk of the court.

Sen. Morean: I would read section 130A(1)(2):

> "The appellant and the respondent shall be entitled upon application to the Clerk—"

No, no, we want the definition of "clerk;" and "clerk" there is used in the sense of subsection (2), inserting immediately after the word "Clerk" the words "and the Clerk of Appeals".

Sen. Seetahal: Madam Attorney General, are we talking about "Clerk of the Appeals"? Because Clerk of the Appeals is not—?

Sen. Morean: No, the word "clerk" is the term used in the substantive Summary Courts Act and that is the term we have used to continue.

Madam Chairman: So it is just "clerk" alone?

Sen. Morean: Section 130 reads: "An appeal shall be commenced by the appellant giving to the Clerk..."

Madam Chairman: Is that good enough? The word "Clerk" means "Clerk of the Peace".

Sen. Prof. Ramchand: Yes, that is what I am seeing here; Clerk means 'Clerk of the Peace.'"

Sen. Morean: That is why they have used "Clerk" because it has probably been defined earlier. I do not have it here.

Madam Chairman: So we are deleting the words "of the Court" and just leaving "Clerk".

Sen. Morean: Just to be complete, in the Interpretation, section (2), "'Clerk' means "'Clerk of the Peace'."

Sen. Prof. Ramchand: Madam Chairman, Sen. Seetahal was saying that there is a problem with that, because the "Clerk of the Peace" is not in the court, he is somewhere else.

Sen. Morean: Normally, when you go to the office and you give your notice, and you go to the Clerk of the Peace office—

Sen. Seetahal: The problem I was talking about is in relation to the verbal notice—that was a different point, but I was saying that he is not in the court and with respect to section 130, my recommendation was, and still is, to change to the "magistrate" and that is the magistrates' suggestion themselves, but the Attorney General has not found favour with that. In any event, we would come to that just now.

Madam Chairman: So are we finished with the amendments of the Attorney General?

Sen. Morean: We have not finished.

Madam Chairman: Any more comments on the Attorney General's amendments to clause 2?

Sen. Seetahal: This is my preface to the question. If the Attorney General is proposing to go on with a proposed 130A, is she not thinking about clarifying the problem with the word "serves" which we have raised? I would have thought now is the time—is she not thinking now about clarifying the phrase "an appellant who is not granted bail" since that would exclude persons who have—"an appellant or a person in custody" I would have thought? Those are issues that I raised but I have not heard any response.

Sen. Morean: For clarity, "an appellant who is not granted bail or is in custody"; that should be included.

6.00 p.m.

Madam Chairman: Is there anything else on that amendment?

Sen. Seetahal: In the legislation, the word "serves" has a special meaning and it gives—

Sen. Morean: No, no, that is also there. Wherever the word "serves" occurs, put the word "gives" to be consistent.

Sen. Prof. Ramchand: He has to give it "to".

Madam Chairman: Gives the notice of appeal to the Commissioner of Prisons, and the other one is to the Clerk. We just got that clear.

Sen. Morean: Madam Chairman, I beg to move that clause 2(b) be amended as follows:

In subsection (3), delete the word "Thereafter" and substitute the words "Upon compliance with subsection (2)".

Sen. King: Madam Chairman, I had also proposed an amendment to clause 2(b). Although I did not speak on the Bill, I am willing to discuss it now, and Miss Dolly told me I must wait until we get to committee stage. I did not understand because we had this one circulated, which we were also to discuss at committee stage. So could that be clarified for me, please.

Madam Chairman: Let us finish with the Attorney General's amendments first before we go on to any other.

Sen. Morean: I have circulated a redraft of the validation clause. We are withdrawing this amendment. The object of this validation really is to ensure if there are pending appeals prior to this amendment having been made and they were out of time, so rather than have them dismissed as has been happening, we would deem that what should have been done was done correctly. That is the purpose of the validation.

Madam Chairman: Is this a new clause?

Sen. Morean: No, it is substituting for the validation.

Madam Chairman: The validation is the new clause 3. We would come to that after; we are dealing with clause 2.

Sen. Morean: Okay.

Madam Chairman: We would go to the amendments to clause 2(b) circulated by Sen. Seetahal.

Sen. Seetahal: May I say in that amendment, Madam Chairman, my suggestion is that we delete that entire section proposed from section 130A to the word "therein". It reads as follows:

Delete section 130A(1) to (6) and replace it with the following:

130A(1) The Court of Appeal may extend the time for giving notice of appeal if it is satisfied that failure to comply with the time prescribed in subsection 130(2) was due to the delay of the Commissioner of Prisons in transmitting to the Clerk a Notice of Appeal received from a person in custody.

(2) In this section "Commission of Prisons" includes any Prison Officer.

For the reasons that I gave, we are going back to giving power to the Court of Appeal, which is consistent with the normal power of the Court of Appeal in other jurisdictions and in respect of the High Court matter, has to extend the time.

What I am saying is that the Court of Appeal may extend the time for giving notice if it is satisfied that failure to comply with the time prescribed in subsection 130(2), which means failure to comply with the seven days was due to the delay of the Commissioner of Prisons in transmitting to the Clerk a notice of appeal received from a person in custody. That is what I am saying, so this means that the Court of Appeal—it is the same thing we accomplish in a very simple way without having to go through this.

The purpose of the legislation is a good one but it is always better to have a simpler procedure, and this is extending the time for that reason. You may ask, why do this when we are already getting that by the section the Attorney General has submitted? I am saying it is simpler and it does not remove this power from the courts.

The courts have it but they are now going to say we would extend the time because of that particular situation. It is not that the person would think I can go beyond the seven days. It is just that we are saying the seven days have gone because the Commissioner of Prisons has transmitted it too late and the court will still have a supervisory role in respect of that. So if the Commissioner of Prisons is not doing it properly, they could say he is breaching the law, but if it is as we have it here, there is nothing to put any onus on the Commissioner of Prisons and we are removing it from the courts. I think, without any question of loss of faith, it would be a good idea to do it in this way.

Sen. Morean: The difficulty here is that this is a whole new policy, it is not just an amendment that was agreed on. This is policy that would require further consultation; not just with the Judiciary but also other persons involved. So we can look at this when we are doing the overall amendment, but to deal with this in this way, no it would not be appropriate at this time at all.

Sen. Seetahal: Madam Attorney General, with respect, the courts have said themselves—the Chief Justice, and you quoted it—that the court should be given the power to extend the time. This whole thing to me is more of a shift in policy than what I am proposing, that when certain things reach the Commissioner of Prisons, they will now be deemed to be complying with the Act. That is a bigger change in the law—I do not know if Senators understand what I am saying—than what operates and what we are doing here is merely going with the suggestion made by the Chief Justice himself. He said perhaps Parliament should grant the

courts power to extend the time and the courts have said over and over again they want that power. They think they should have it because there is an injustice. So I really cannot agree that it is a big shift in policy, Attorney General. I think it is a simpler provision; it is consonant with what operates in respect of criminal appeals from the High Court right now.

Sen. Morean: There is a whole compendium in the Summary Courts Act for dealing with appeals and one follows on the other. The magistrates have their seven days, so that they are fixing the arrangement. After that seven days within a certain time, you serve your notice; ten days you give your reasons; after that, the magistrate has 60 days to give his or her reasons, and within a certain time frame you exchange within the parties and they get their copies. So if I am changing this, I have to go through the whole procedure set out and make all the consequential changes.

Sen. Seetahal: Madam Attorney General, there are no consequential changes, or can be any, to the Court of Appeal having the power to merely extend the time for filing of an appeal where the prison authorities delay. There is nothing consequential because in any case the 60 days are not observed and I am also saying that reasons, the 10 days are not held to be fixed. The courts have said so already. All I am pointing out is that there is no substantial change in any procedural matter.

Sen. Morean: Then leave it as it is.

Sen. Seetahal: I am saying this will not affect any substantial change but if you want to leave it as it is and if that is the attitude, well, what can I say?

Sen. Morean: You see, we go through a procedure with the legislation; there is a committee that is set up to go through the legislation. We deal with the policy of the legislation and if there is going to be a change it has to go back through that procedure, so if what you are saying is not really changing the price of coffee, then rather than not deal with it now and have to go back on that procedure, we go with what is there because it is not offensive and it is serving the purpose. Even if you say it is a longer way, certainly, but it is meeting the mischief that we are seeking to correct; namely that an appellant does not lose his right to appeal because of default on the part of the administration.

Sen. Seetahal: May I say my last point? I never said that—

Sen. Morean: Let me just finish. From what you have said and what I am saying, these are two valid options and we have selected this option and the problem in changing it now involves further administrative work. As I say, it is serving the purpose, it is not wrong and it is not offensive.

Sen. Prof. Ramchand: Madam Attorney General, just for my education, Sen. Seetahal was pointing out that if you took her proposed 130A(1) there would be no need for any consequent legislation, nothing else would have to be amended anywhere to accommodate this. Are you saying that is not true?

Sen. Morean: I am not certain of that because I would now have to study it in this light. I would have to look at the question in relation to costs and see how this affects that because this court has the power to grant costs so this is the problem.

Sen. Prof. Ramchand: Some reports come back for amendment.

Sen. Morean: We are looking at the whole thing and I am saying these are points that would be borne in mind to see whether we can refile the legislation to an even simpler mode. I could have brought another amendment which is an urgent one; namely the amendment relating to the magistrates' powers, but I felt that we were coming with too many little pieces. So we are looking at all the areas that need to be amended and I would take this into consideration, but to meet the immediate situation, we have this amendment and it is acceptable.

Sen. Seetahal: In respect of the question of costs, because the Attorney General has brought that up on consequential change, the Criminal Court of Appeal in criminal magisterial appeals would not order cost for these things, it is a part of a normal hearing of appeal and you go through the process. This is not the Civil Court. There is a provision there for when an entire appeal is heard, so there is not a question of extension. That is one.

Secondly, I think if we are passing legislation we ought as a legislature here to seek to pass what is best. To say that you do not know it is going to affect policy, you do not know what changes—it would seem to me it would follow that the stakeholders would have been consulted in respect of this legislation. I do not know if that is so, because if I can see legislation with a Director of Prisons, when there is no Director and there is a Commissioner, simple things like that, and a Clerk of the Courts, beg the question whether anybody was consulted.

I am not denying it, there may have been, but certainly none of the magistrates that I spoke to were consulted, no judge that I spoke to was consulted and I am pointing out here, if that is the reason that we need to go back to consultation, then I think it is weak because I do not think we had much consultation before.

I am also suggesting that we are here to make a change for the betterment of these people. To say we would go with what we have and come back, when—to me, it is very simple to effect what is being suggested. Here it is we give the court the power to extend the time in a given situation, and here it is for oral notices the

Attorney General says the problem is that we are not looking at section 130. I beg to correct her. We are looking at section 130 and matters connected to it. So if I am suggesting the amendment in the next section which is 130(1), to tell us to come back next year, next three years—and people right now are having their appeals dismissed. Today as we speak, there is a matter before the Court of Appeal because the Clerk of Peace did not take down oral notice.

So it is not right, that is what I am saying and that is my last word on it. I am sure the Government has the majority and as usual, this is what is going to happen. I would have hoped otherwise, but—

Sen. Prof. Ramchand: Madam Chairman, we have had an instance recently of unnecessary amendment to a bill not being taken because it would be too much of a bother to have to go back to the House of Representatives. And we have had an instance of a sensible request to revisit a clause voted on and voted against because we had already moved on to another clause, and I feel we should really be very flexible in what we are trying to do. If an amendment seems to be more convenient, sensible, and more intelligible to ordinary people—because I find I can understand Sen. Seetahal's amendment—so I think ordinary people would understand that, but this other one, 130(1), (2) and (3) I am very confused about it and the wisdom tells me that register is going to disappear, or people could tear out the page, so I would want a receipt in my hand that I made the appeal.

Sen. R. Montano: Madam President, Sen. Seetahal said what I was going to say about the question of costs, but I had two points. One was the question of costs, which has already been dealt with and the second one, with the greatest of respect, is how does Sen. Seetahal's amendment change the policy? Surely the policy is just what we have been saying here this afternoon ad nauseam, that is to say, basically we want to help these people.

As Sen. Prof. Ramchand has said and I made the point in my contribution, the register would disappear. The Court of Appeal does have the power, the judges know what goes on and if a prisoner can show that he had done it within the time limited, and the Court of Appeal has legal authority, let the Court of Appeal deal with it. I do not see a problem with Sen. Seetahal's amendment. In fact, I think it is an improvement and unless the Attorney General can convince me otherwise, I do not see how Sen. Seetahal's amendment is in conflict with the policy.

There is only one thing I would like to point out in clause 2(2) in Sen. Seetahal's amendment which is clearly a typographical error. Instead of "Commission of Prisons" it should be "Commissioner of Prisons".

Sen. Morean: In response to Sen. Prof. Ramchand with respect to what he said in relation to how we deal with it, in the incident to which he referred he said rather than go back. That was not the reason. The reason was that we were using the same word meaning two different things in a particular section where we were using the word "election" to mean local government election and "election" to mean the appointment of aldermen consequent to those elections having taken place because aldermen are elected by councillors. So that was not our reason.

Madam Chairman: Senators, we have to now move the adjournment of the Senate. The committee stage will continue after.

Senate resumed.

PROCEDURAL MOTION

The Minister of Public Administration and Information (Sen. The Hon. Dr. Lenny Saith): Madam President, I beg to move that this Senate continue in session until the conclusion of the debate on this Bill.

Question put and agreed to.

SUMMARY COURTS (AMDT.) BILL

Committee resumed.

Sen. Prof. Deosaran: Madam Chairman, I think depending on how one looks at it, each side has its value. With the Attorney General's amendment, it seems to me that a procedure has been worked out here which we would now have—and that worries me—a measure of specific accountability into the system. Relatively speaking, it is law, but the value seems to be apparent and it responds to my concern. I may be wrong, but until somebody persuades me otherwise, what we need in this area of public administration is accountability and increased efficiency, both of which are now, to me, prescribed subsection by subsection.

The Attorney General has promised that she would look seriously into the question of treating with people who breach these procedures. So all in all, I am relatively satisfied. On the other hand, Sen. Seetahal's amendment offers us something that is very valuable in drafting laws, that is, parsimony. What we hear is that it does not spell out the procedures and the steps for accountability that were missing in the parent legislation. Added to that, the second line in the amendment proposed by Sen. Seetahal, and perhaps if she could convince me otherwise or explain I would be happy to lend support. It says in the second line of the amendment: "…if it is satisfied that failure to comply…"

To me, that is too vague considering the imperatives of the situation and the history of this particular sin of omission as it were with the consequences and it also perhaps implicitly, lets the Commissioner of Prisons off the hook because it merely says with due respect—if there is a delay. So, what is absent here is what has enriched the original set of amendments by the Attorney General which I am up to this point prepared to support.

Sen. Dr. Saith: Madam Chairman, I want to ask a similar question. If we are saying that we adopt this where the Court of Appeal says it has the right to extend by the appellant proving that he has made his application at the time, and we do not have the book with the signature, how would he prove it?

Therefore, it would seem to me that even if we went this way, we would have to do all we are doing here for setting up a system. So this perhaps is a combination of setting up a system, and having set up the system, say we now leave it to the Court of Appeal to deal with it as against what we are saying here; that we set up a system to try to keep it within the law as it stands now.

Perhaps Sen. Seetahal could explain how is the person going to prove that there has been a failure to comply and it is not his fault?

Sen. Seetahal: In the last nine matters per month that have come before the Court of Appeal in the last two or three years, where there has been a failure by the prison authorities to send down the matter, how we know there has been a failure is that the matter is a document, there is a notice of appeal form, this is given to the prisoner at the prison which he fills out and then there is a prison officer who signs it and it is stamped received on so, so date. The date that he is taken out of prison will usually be the date that he would have signed that which would be received on January 01, and then there would be something on the back of that saying; forwarded by the Commissioner of Prisons to the clerk, and then there is a stamp the date he forwards it. That should take about two or three days but usually it has been about two weeks and then there is a stamp; Clerk of the Peace received by and that is all part of the normal process in terms of everything that happens in the Magistrates' Courts which is elsewhere in the practice of the Magistrates' Court, and you do not have to have that in the legislation. In any case, it is in the Summary Courts rules.

The second point that Sen. Prof. Deosaran asked was if the court is satisfied that failure to comply with so and so—this is really a normal way of phrasing things, meaning that the court has a discretion, but once it is shown that this is the reason, the court will exercise it in favour of the accused. I am sure the drafting

people know that. You are saying once that is the reason, the court would extend the time. You have that similar kind of section in respect of appeals from the High Court, so there is no way that the court is going to be looking for a reason not to extend. In fact, they were trying in the last 200 applications to find a way.

Sen. Prof. Deosaran: Are you saying there is sufficient legislation at the moment?

Sen. Seetahal: Yes, that is what I am saying and I had mentioned it, but maybe I did not make it as clear that there is sufficient procedure and established process in place to ensure that it is known to the Court of Appeal when this matter was received by the Clerk of the Peace, or when it was received in the prison, if we are dealing with people in prison. It is a form called notice of the appeal and it is all done like that.

Sen. Morean: I am saying we have made it even clearer in the amendment that we have set the procedure there. So you do not have to go to a discretion for a trial say within an application to be made, because if you are giving the court a discretion and the court has to be satisfied with the failure to comply, it means that the court has to enquire into that so you are introducing something. So the Parliament is setting out the procedure.

Sen. Prof. Deosaran: That step you mentioned about the application of judicial discretion, could that not lead to a further stage of litigation?

Sen. Morean: It could very well because all decisions are subject to judicial review. It could lead to some further appeal.

Sen. Seetahal: And you would not get leave to appeal on an extension of time.

Sen. Morean: You can seek special leave.

Sen. Seetahal: Not on an extension of time, Attorney General, on criminal matters with respect to—

Sen. Morean: No, no. Assuming the Court of Appeal is dealing with it, this could lead to more questions, but we are setting it out without any need for an additional discretion to be exercised.

Sen. Seetahal: What I am saying is I do not see that we should entrench the system recognizing it is bad, because we would not put any onus on the prison to change. That is my simple point. We will put no onus, we are entrenching something that is wrong by saying if you do it you are deeming it to be so. The

courts are the ones who should have this power, Madam Chairman, not the prison. Let the courts be the ones, that is how it should be.

Sen. Yuille-Williams: Sen. Seetahal, I am not a lawyer, but did I hear you say sometime earlier that the Chief Justice had asked that Parliament make some ruling?

Sen. Seetahal: To extend the time.

Sen. Yuille-Williams: And he asked that Parliament do it?

Sen. Seetahal: Exactly.

Sen. Yuille-Williams: That is what I am saying, Parliament.

Sen. Seetahal: He asked that Parliament make legislation to extend the time, which is what I am suggesting, not to give the prison authorities further powers.

Sen. Dr. McKenzie: Madam Chairman, we seem to have one objective in both amendments and that is if the time limit has not been met. Sen. Seetahal is saying let the Court of Appeal have a discretion and the other amendment is saying the appellant will have his matter heard and so on. What is wrong with strengthening one with the other? In other words you are saying clause 2(a) so and so, and you are strengthening it with (b). I do not know if it is right or wrong, I am just going with my own common sense.

Sen. Prof. Ramchand: You are not suggesting a new procedure; you are just saying that the courts now have the discretion to grant the extension.

Sen. Dr. McKenzie: So you are saying the court cannot say no and the appellants cannot say they are being denied. So you fuse them. In other words you are saying: appellant, have no fear.

Sen. Morean: There is no question as to a discretion, we have set out a procedure and if it is not complied with up to a point, it does not affect your right. We have set out a procedure and this is what you want to have. You do not want to leave it open-ended because what you will be doing is having the same thing that you have, but having the discretion in the court that when you get there, the time could be extended.

Sen. Prof. Ramchand: It now branches off to other countries cited by the Senator.

Sen. Morean: As I said before, the question is policy. Then I would have to look at the whole legislation to see if it was set out in the way we have because

there may be some sections that may be inconsistent with that procedure and this is why I said I just cannot agree to that.

Law always looks simple, we say this is so, but when you get down to working the legislation you are going to see some section, which it is contradicting later on. We have looked at this procedure, we have gone through the section and worked out a procedure that meets the justice of the case.

We are now going into a sort of unknown area here and we are saying give the court the discretion, but I am saying I do not want to do it like that because we may be infringing some further procedure that has been set out. This question of appeal in the Magistrates' Court has been set out substantively in the Act, it is not just the rules where you set out how you should go about appealing where there would be flexibility, and this is what the Court of Appeal found. It did not have flexibility; because of the substantive nature of the provisions they were mandatory.

Sen. Dr. Saith: Madam President, may I ask one more question? Are you saying that the amendments that have been set out, the procedure is in such a way that no court can say to a prisoner that his appeal would not be heard because he has not met the deadline?

Sen. Morean: That is correct.

Sen. Smith: That is provided the prison registry could be found as evidence.

Sen. Seetahal: Right now we have a lot of police books disappearing, and it is going to come to the court anyway to determine the matter. I really feel we should revisit this provision. If the Attorney General says she does not know, and she cannot say if this proposal I have made will contravene other sections, I can say that I know it will not, without being immodest. I have studied the thing, this is my area, I know the thing, but if it is so and there are concerns about what is being proposed—and I have serious concerns,because no other jurisdiction has that kind of provision in this way that I know of. If it does, it may have happened in the last three months or so, but up to when I did the matter, it is either an extension or something else but not what we have here. No other Commonwealth jurisdiction that is. So I think we should really revisit it. That is all I can say.

Madam Chairman: Are you through Senator?

Question put.

The Committee divided: Ayes 11, Noes 18

AYES

Mark, W.

Baksh, S.

Kernahan, Dr. J.

Montano, R.

Seepersad-Bachan, Mrs. C.

Smith, A.

McKenzie, Dr. E.

Ramchand, Prof. K.

Seetahal, Miss D.

Anmolsingh-Mahabir, Mrs. P.

Khan, Brother N.

NOES

Saith, Dr. L.

Yuille-Williams, Mrs. J.

Morean, Mrs. G.

Joseph, M.

Montano, D.

Gift, K.

Manning, Mrs. H.

Dumas, R.

Abdul-Hamid, M.

Kangaloo, Mrs. C.

Titus, R.

Ramroop, S.

Persad, Pundit M.

Hackshaw-Marslin, Mrs. J.

Williams-Smith, Mrs. M.

Deosaran, Prof. R.

King, Mrs. M.

Quamina, Dr. D.

Question, on amendment, [*Sen. D. Seetahal*] *negatived.*

Sen. Dr. Saith: Madam Chairman, before we move on, can I give the Senator the assurance that we will continue to look at the suggestions she has made?

Madam Chairman: Sen. Seetahal, you have been given the assurance that they will continue to look at your amendments and the legislation.

There is an amendment again to clause 2 by Sen. King which you have before you which says that a subsection should be inserted.

Sen. Mark: We do not have it.

Madam Chairman: It was circulated.

Sen. King: Madam Chairman, I do agree that it is time we started to alert the public service of our intentions in this country and our expectations for good governing, and I believe good governance is the ultimate aim of this Government as it was also stated by the last government and I think that implies fair play, and good governance also implies accountability.

I do not believe that negligence or mischief, as the Attorney General stated in her opening remarks, of any public officer should be tolerated or encouraged in any way and, therefore, I propose the following amendment:

> "Where the Commissioner or any delegated prison officer has not filed a properly effected Notice of Appeal within the prescribed time of seven days he or she should be brought before the disciplinary committee of the prisons authority."

Sen. Morean: I agree with Sen. King that there must be some sort of disciplinary provision. However, my difficulty is in including it in this Summary Courts (Amdt.) Bill. I do not think we can do that because we would then be making this a summary offence. There are provisions within the Prison Service Act for disciplinary proceedings against any officer who has acted improperly in any way, so that would be taken care of there. But it would certainly not be correct to include that in the Summary Courts Act.

Sen. King: So it would not be considered that they have broken this law?

Sen. Morean: It would have to be a clear offence and you would have to identify a clear criminal offence.

Sen. King: Which would be, had they not filed it properly, would that not be breaking the law?

Sen. Morean: I am being told it would be a disciplinary offence under the Prison Service Regulations, so what we really need is enforcement by the authorities of the Regulations as they exist and maybe this is something we can deal with as part of the prison reform because that is also under consideration. This is something we should look at in strengthening the regulations for infractions by the prison officers in terms of their duties and obligations.

Sen. King: So you are suggesting that this is the wrong place, it should be under the prison reform?

Sen. Morean: Yes, but I totally agree with the principle.

Sen. King: Thank you. Madam Chairman, in the light of the explanation given, I will withdraw my amendment.

Sen. Morean: Thank you very much, Senator.

Amendment withdrawn.

Sen. Morean: Madam Chairman, I beg to move that clause 2 be amended as follows:

(a) delete the word "Director" wherever it occurs and substitute the word "Commissioner"

130A. (1) An appellant who is not granted bail or is in custody is deemed to comply with section 130 if he gives the notice of appeal to the Commissioner of Prisons; and

(b) in subsection (3), delete the word "Thereafter" and substitute the words "Upon compliance with subsection (2)". After the word "Clerk" remove the words "of the Court"

(c) in subsection (4) This section shall apply wherever in this Act, an appellant in custody is required to give a notice or other document to the Clerk.

Question put and agreed to.

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

New Clause 3.

Sen. Morean: Madam Chairman, I propose a new clause 3 which reads as follows:

3. Notwithstanding any law to the contrary, all acts and things done or purported to be done or omitted to be done by any person or authority under section 130 of the Summary Courts Act before the commencement of this Act are deemed to have been lawfully and validly done or omitted to be done and no action or other legal proceedings whether pending or not shall lie against the State or any person in respect of or in consequence of such acts or things.

New clause 3 read the first time.

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

Sen. King: We have not read the new clause yet.

Sen. Morean: Let me explain it. It is simply saying that if there are any pending appeals that have been lodged out of time, the appellant will have his day in court. They will be deemed to have been valid as if they have been filed in accordance with the said section 130. It is only that being validated. In other words, it is the right of the appellant we are maintaining.

Sen. Dr. McKenzie: Madam Chairman, Sen. Seetahal also had a new clause 3 in her amendments.

Sen. Prof. Ramchand: She had suggested an amendment to section 130(1) of the Act which says:

> "An appeal shall be commenced by the appellant giving to the Clerk notice of the appeal, which may be verbal or in writing, and if verbal shall be immediately reduced to writing by the Clerk and signed by the appellant, or by his counsel or solicitor…"

Madam Chairman: Which one are you reading?

Sen. Prof. Ramchand: Section 130(1) in the original legislation. Sen. Seetahal proposes the following:

> Section 130 is amended in line 4 by deleting the word "Clerk" and substituting the word "magistrate" and inserting after the last words in that subsection, "and thereafter the Notice shall be transmitted to the Clerk".

So the onus is now put on the magistrate to translate the oral into the written and she wants to add the words at the end "and thereafter the Notice shall be transmitted to the Clerk".

Sen. Morean: Can I give an undertaking that this will be one of the sections we would deal with in the overhaul of the Summary Courts Act, because again this is—

Sen. Prof. Ramchand: I am sure Sen. Seetahal would say: Why do you want to delay it? It is simple.

Sen. Morean: As we say, with legislation, nothing is ever simple. We need to deal with the concurrent and consecutive powers of magistrates and that is something we have to deal with urgently. So I will give the undertaking that I would look at the section, deal with it and have it as part of the next amendment.

Sen. Prof. Ramchand: And come up with a way to make sure that the oral is expeditiously translated into written.

Sen. Morean: Correct. In fact, we may find a new formula.

Sen. Prof. Ramchand: The intention is for oral to be transmitted into written right away. I do not think we have sold out the thing. So we have an assurance?

Sen. Morean: Yes. Let me just say that I started off my presentation by saying there were lots of other aspects of the Summary Courts Act to be amended, but because of the urgent nature of this particular amendment, we came with it.

Question put and agreed to.

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

Question put and agreed to.

New clause 3 added to the Bill.

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

Senate resumed.

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

ADJOURNMENT

The Minister of Public Administration and Information (Sen. The Hon. Dr. Lenny Saith): Madam President, I beg to move that the Senate do now adjourn to Tuesday, March 25, 2003 at 1.30 p.m.

I believe it is Private Members' day and we will continue the debate on Sen. Prof. Ramchand's motion.

Madam President: Hon. Senators, there is a matter to be raised on the Motion for the Adjournment of the Senate.

Caroni (1975) Limited (Voluntary Separation of Employment Plan)

Sen. Wade Mark: Madam President, it is now public knowledge that the evil and insensitive PNM regime has taken a unilateral decision to close Caroni (1975) Limited and destroy in the process large sections of the population who directly and/or indirectly depend on this industry, particularly those persons living in the south and central belts of Trinidad.

On Wednesday, February 12, 2003 Cabinet agreed on an enhanced Voluntary Separation of Employment Plan for daily and monthly-paid employees of Caroni (1975) Limited. Those letters had been issued to the workers on Monday, February 17, 2003. The 45 days' notice for the acceptance or non-acceptance of the package is April 03, 2003. The effective date of departure for daily-paid workers would be July 10, 2003 and for monthly rated employees August 02, 2003.

The unilateral, non-consultative, dictatorial regime has decreed that sugar production be limited to 75,000—80,000 tonnes per year and that the quantum be processed at one factory, Ste. Madeleine. The Brechin Castle Sugar Factory is to be closed. How easily men tend to forget.

It was the same Patrick Manning, at that time Leader of the Opposition, political leader of the party, of the PNM, who at the 37th Annual Convention of the People's National Movement at the Chaguaramas Convention Centre on Sunday, November 14, 1999 said, and I quote from page 11:

> "The present government is now proposing to get rid of Caroni (1975) Limited altogether. The proposal is to sell the most profitable assets of the company of the rum distillery and the lands on which cane and rice are cultivated, and the cane and rice division all by December 31, 1999.
>
> Let me remind you that some 60,000 citizens depend on the sugar industry for their survival. The social implications of the demise of this industry are too tremendous to contemplate."

In other words, the industry, the loss is too tremendous to contemplate. He went on to say:

> "The PNM opposes this approach. The People's National Movement wishes to advocate a new approach."

And he went on to talk about technology-driven industry.

> "Two brand new and automated factories would be constructed at Usine Ste. Madeleine and Brechin Castle."

And he said that Caroni (1975) Limited would no longer be dependent on the Treasury, and went on to talk about preferential access and so on and that it would be on its own feet.

Madam President, that was the hypocrisy of the then PNM Opposition Leader who is now the Prime Minister who seems to be singing a different tune, and that is not surprising to us. What a hypocritical and total disappointment to this nation!

It is the first time in independent Trinidad and Tobago that the State has chosen not to negotiate with the recognized majority union on an important issue such as retrenchment. It prefers an illegal course; that is to communicate through the newspapers, hold public meetings, as my good colleague and friend did at the Rudranath Capildeo Learning Resource Centre, and I hear another one is to be held tomorrow at Preysal. Pundit Maniedeo Persad will know about that but I understand we will be there to greet you as well.

On an important issue like that there are radio talk shows instead of sitting and negotiating directly with the workers' representative. [*Interruption*] You are not doing it and that is bad. This is not only unacceptable but it is alien to good industrial principles and practices. It is highly dangerous and holds disastrous consequences for industrial stability and peace in this nation.

No government has the power or authority to unilaterally impose its will on a trade union and its members and, by extension, an entire community without proper social dialogue and meaningful negotiations. To do otherwise is courting trouble and laying the basis for social unrest and industrial instability in the economy and the country. Every rational citizen recognizes the imperative of restructuring and the transformation of Caroni (1975) Limited.

7.00 p.m.

Caroni (1975) Limited, as you well know, is not just an industry but a virtual way of life. It is a culture. It is not just a financial problem, as Dr. Rowley is making it out to be, but a human problem. It has to be handled carefully, sensibly and delicately. A man not familiar, as my good friend, the hon. John Rahael, with

an industry like Caroni (1975) Limited, is wreaking havoc. He has already done it and is doing it again.

Land-grabbing has started in Caroni. Their friends and families have already targeted lands for housing, commercial and other development. We would say more about that on the hustings. The restructuring plan for the company has not been made available to the Parliament, to the country, to the unions or the workers. Where is the so-called comprehensive restructuring plan for Caroni (1975) Limited? Let the Minister produce that plan and table it in the Parliament. We want to know where the plan is! Or is it really a political plan to destroy the union and—what I understand, Sen. Dr. Lenny Saith told some workers when they met with him—to weaken and destroy the base of the United National Congress? How puerile!

Sen. Dr. Saith: Madam President, I am glad that I have the opportunity to deal with a statement that Sen. Mark has been making outside of this Senate. I deny that I have ever said any such thing to any worker in this country.

Sen. W. Mark: We will bring the proof. We have the workers who were there. Then he would deny it again.

If it is a genuine plan, why has the Government not made it available to the union and the workers? Is it a case of racial discrimination on the part of the PNM and Dr. Lenny Saith? Why has the Prime Minister refused to meet with the All Trinidad Sugar and General Workers Union? Yet he has time to meet with criminals whom he has described as community leaders. He has time to meet with Yasin Abu Bakr in secret meetings. The same man who committed murder and mayhem in 1990, the Prime Minister is hugging him up. Today he refuses to meet with the sugar workers and the union. He said the reason for not meeting was that he would add more kerosene to the fire. How pitiful!

Has the Government assessed and analyzed the sweeping implications of its high-handed, brutal and criminal action against the people of South and Central Trinidad? What about the 300,000 persons who depend on Caroni (1975) Limited, either directly or indirectly? What about the children of these workers? What about the business community, especially the small and medium-sized businesses? What about the reduced level of economic activity that is bound to result when this industry is shut down and destroyed?

This Government is literally playing with fire. People are becoming impatient with the level of the Government's blatant and naked policy of discrimination, victimization, racism and a system of downright segregation. Citizens in South

and Central Trinidad, as well as in other parts of the nation, are feeling like second-class citizens in the country of their birth. We need to bring the temperature down. Bring it down! We need to cool the tempo. The place is getting hotter and hotter like a "choolhaa". The Government is planning, as we speak, to allocate $500 million to the Community-Based Environmental Protection and Enhancement Programme. What is CEPEP bringing back to this country?

Sen. Dumas: Madam President, I never thought—

Madam President: Is it a point of order?

Sen. Dumas: Yes, Madam President.

Madam President: Go ahead.

Sen. Dumas: I never thought I would see the day, but is Sen. Mark actually reading a speech, Madam President?

Sen. W. Mark: This is a short contribution and I have limited time. That is why I am reading.

Madam President, $500 million to CEPEP which is not bringing anything to this country. WASA accumulated—and the Minister must tell us—over $10 billion in debt. Are they going to close down WASA? Let us hear from the Minister of Public Utilities and the Environment.

The Government announced today that it is going to give TT $36 million of our money to LIAT to bail them out—a bankrupt company. Do you know what? Non-nationals are being favoured against our own people. They are spending hundreds of millions of dollars, and retrenchment for nationals? There is job security for hundreds of workers involved in LIAT; hundreds of millions of dollars for the social sector; over $150 million for the Unemployment Relief Programme!

It is time that this PNM regime stops the "gambage" and begins the social dialogue. Flashes such as relocation of the Parliament; the national gas pipelines up the islands; political unification, these are red herrings and they must be seen for what they really are—mirages, the rantings of a mad man. Let us seriously and urgently get down to the task of treating and meeting on a genuine and meaningful basis with the various stakeholders in the industry. We have a chance to collectively rise to the challenge together. If the PNM Government fails to grasp this last opportunity to work out a formula with the Opposition and various stakeholders in the industry so that we can transform this company—

Madam President: Hon. Senator, you have one minute.

Sen. W. Mark:—I am afraid, just as the world would have seen, if the US administration decides to invade and occupy Iraq, so, too, Trinidad and Tobago would never be the same if and when this evil and uncaring Government decides to close down Caroni (1975) Limited.

We want to say this evening, in view of the PNM's intransigence on Caroni (1975) Limited, we serve notice that the UNC will embark, as we have started, on a policy and strategy of non-cooperation inside and outside of Parliament. We would not be supporting any legislation that is brought to this Senate, whether requiring a simple majority or a special majority. There will be no cooperation from the UNC on any bills which are brought to Parliament until the PNM decides to talk on Caroni (1975) Limited.

We say, restructuring, yes; destruction, no! We say reverse your decision or there would be no cooperation and we think a word to the wise is enough on this matter.

Thank you very much. [*Desk thumping*]

The Minister of Agriculture, Land and Marine Resources (Hon. John Rahael): [*Desk thumping*] Madam President, I really thought that we are here to discuss Caroni (1975) Limited and not all the various other issues like WASA, CEPEP and all the other things that were referred to by Sen. Wade Mark. Nevertheless, I intend to go straight into what the Government's plans are with respect to the restructuring of Caroni (1975) Limited.

We have published in all the daily newspapers; we indicated over the radio, television and newsprint, exactly what is required to restructure Caroni (1975) Limited. We all agreed that there needs to be a restructuring of Caroni (1975) Limited. Since 1978 there has been report after report. We had the Spence Report; the Rampersad Report; the Dookeran Report, the Tripartite Agreement, and yet there was no implementation and nothing was done. What we are doing now is not different from what is in all those reports.

We talked about restructuring. What did we do? We commissioned the Divestment Secretariat to do a study and to make a report. It has been said that the Government did not consult with the unions and I want to put that to rest. In fact, it was on Friday, June 28, 2002, nine months ago, that we held a meeting—the hon. Kenneth Valley and myself, together with the All Trinidad Sugar and General Workers Trade Union—and at that meeting we outlined to the union exactly what was Government’s plan with respect to the restructuring of Caroni (1975) Limited. The minutes are available. It was signed by the President of the union that the minutes are accurate.

So just to indicate to you, Madam President, and hon. Senators, the Government, in June 2002, made available that report to the union. In addition to that, we also offered the union to fund a consultancy if it so desired. If the union felt that it needed to have a consultant, the Government of Trinidad and Tobago would make available to the union $100,000 to go towards the payment of a consultant.

We asked the union at the time to submit to us any proposals or any suggestions it may have with respect to what was being proposed. At that time we spoke about the Voluntary Separation of Employment Plan (VSEP) which would be offered to all the employees of Caroni (1975) Limited. We spoke about industrial park, housing parks and agricultural estates. In addition to that we have met with all the unions that represent Caroni (1975) Limited, from June 2002 to January 2003, when the inter-ministerial committee under the Hon. Dr. Lenny Saith, met with all the unions again. So we have had many meetings. I have met with the same All Trinidad Sugar and General Workers Union and the Employers Consultative Association (ECA) together. So to say that there was no consultation is being very dishonest.

Furthermore, what are we doing? We are creating entrepreneurs in Central Trinidad. We are moving the workers from being cane cutters to becoming farmers. By becoming farmers they are going to be given the opportunity to lease lands and get involved in agricultural products, not only in the cultivation of cane, but also food products, citrus, rice, beef and all the other areas that Caroni (1975) Limited would provide. So that these workers would have the first option to lease a parcel of land and become farmers in their own right. The Ministry of Agriculture, Land and Marine Resources is going to provide the support together with the National Agricultural Marketing and Development Corporation (NAMDEVCO), which is the marketing arm of the Ministry, to give advice to those who take up the offer of the VSEP and lease a parcel of land to get involved in agriculture.

When we put this plan in place, we took very careful consideration with respect to the human element of the proposal. Not only did we give them the basic allowance that the union had negotiated with the company, we increased that by an average of 30 per cent—a cash enhancement of over 30 per cent—above what they were entitled to. In some cases it went as high as 50 per cent, depending on the age, because we felt that someone between 45—55 years old, it would be very difficult for them to learn a new skill. That is why we are providing them with the opportunity to stay in farming, part of it will be cane farming. What is

required is more than what is presently available from the private cane farmers. So that shortfall, again, those who would be disengaged from Caroni (1975) Limited, would be given the opportunity to become cane farmers. In addition to all of that, all agricultural land would remain in agriculture.

What about the younger ones, those who may not wish to remain in agriculture, those who are 30 years and under? We said: "We would provide you with the opportunity to be trained so you can have a skill." Because Caroni (1975) Limited lands are going to be utilized in a very productive way. With regard to industrial estates, already we have applications for entrepreneurs—not any thousand-room hotel and golf course which were being planned when they were going to shut down Caroni (1975) Limited.

They were going to shut down Caroni (1975) Limited. We are saying we are not shutting down Caroni (1975) Limited; we are restructuring it to make people independent and less dependent on the State or on any union. So by offering these training programmes a person would be able to learn a skill. We have the programmes already identified. They can learn a skill with respect to building construction technology programmes, steel-bending or basic construction, electrical installation to become an electrician; gypsum installation, because we expect a boom in the construction industry. We are training them so they would become marketable in order to get a job.

In addition to all of that, I want to advise my good friend, Sen. Mark, whose Motion today spoke about the question of Central and South Trinidad in respect of the "sweeping implication", implying that the businesses in Central Trinidad would now go into a depression. Actually, it is contrary to that, because the business organizations: the California Business Association, the Chaguanas Chamber of Commerce, the Couva/Point. Lisas Chamber of Commerce, the Penal/Debe Chamber of Commerce, South Trinidad Chamber of Industry and Commerce, I have met with all of them and I have explained the plans that we have and they are very excited.

As a matter of fact, they are running out there to invest. So I want to advise my good colleagues and Sen. Mark, that if they have any savings, maybe they should invest now in Central Trinidad—[*Interruption*]. The people of Central Trinidad and those who are going to accept the VSEP, I want to assure you that they are very resilient people who would be able to use those funds to invest and earn more.

That is the opportunity we are providing for the workers. Instead of keeping them as cane cutters and bundlers, we are now giving them the opportunity to

own their own businesses. That is what we are doing. [*Desk thumping*] He keeps talking about CEPEP; that is what we are doing in CEPEP as well. It is the same thing we are doing here. We are providing opportunities.

Sen. Mark: Please, John, talk about something else.

Hon. J. Rahael: They spoke about the convention speech that the present Prime Minister, the hon. Patrick Manning, made in 1999. We are in 2003. The situation is completely different. We know that in Europe the Cotonou Agreement now states that by the year 2006 the guaranteed quota on the guaranteed price for sugar will no longer be available. That is no dream. Look at what has happened to the banana industry. We are planning and preparing for the future. [*Interruption*]

Madam President: Sen. Smith, please. Continue, hon. Minister.

Hon. J. Rahael: That is what we are doing. We have a vision; we have foresight. That is why we are saying that we are restructuring the industry now. We are going to be producing 75,000 tonnes of sugar. So we are not closing down the factory, but making it more efficient.

For six or seven years they had a committee looking into purchasing sugar by quality. They never implemented it. We are moving towards purchasing cane by quality and not by weight. That is something that was agreed upon in 1993. For seven years they had this committee, costing the taxpayers of Trinidad and Tobago millions of dollars and nothing has been implemented. That is what they have been doing.

The plan is one factory to grind cane; one factory to refine. We are purchasing cane from farmers. What is going to happen is that when you take 3,300 acres of citrus and sub-divide that into 12-acre parcels of land so that people can get involved in farming and in the development of citrus, do you know how many farmers that is going to be? Three hundred farmers! When you take 6,000 acres and divide it into five-acre plots for vegetables and food crops, do you know what that is going to give you? Twelve hundred farmers! That is what we are going to do.

So there is going to be a boom in Central Trinidad. Food production would be on the increase. During their time what happened to agriculture? It was on the decline. In one year we were able to arrest the decline. Now we are going to put things in place to increase the production of agriculture. That is what we are about.

So when they come here and remove all these things and say we are closing down Caroni (1975) Limited and sending home 10,000 workers, nothing is further

from the truth. We are making people independent. It is not only in Trinidad and Tobago. All over the world there is restructuring. In Cuba, which is synonymous with the word "sugar" do you know what is happening there? Read the *Express Business* of January 08, 2003 which stated that half of the country's 154 sugar factories this year will be closed and the first expected of 200,000 cane cutters will be retrenched.

Sen. Mark: No, they are not retrenching, John—

Hon. J. Rahael: Yes. They say, too, they are going to retrain sugar workers for jobs in forestry, food and vegetables.

Sen. Mark: They will be re-deployed.

Hon. J. Rahael: Yes, to retrain sugar workers for jobs in forestry, food and vegetable production and food processing. Read it. In 1999 we were not talking about Free Trade Area of the Americas. Now we are going to have the FTAA. The entire market is going to open up, so we have to move with the times; we have to be able to see the future and move accordingly. [*Crosstalk*]

Sen. Dr. Saith: Madam President, as leader of this Senate, can I appeal to you that we have some decorum in the way we conduct our business? This is not a fish market. [*Interruption*] Please allow speakers to make their contribution. You made yours.

Sen. Mark: We are very emotional about this issue.

Madam President: Minister, you have two minutes.

Hon. J. Rahael: Madam President, that is the problem. He spoke for 15 minutes but not even addressing the issues. They are not prepared to address the issues because there is nothing they could say about them. It is the same thing with the unions. They are not prepared to have the workers exposed so that they would understand what is being offered to them so they would benefit from it. They take every opportunity they get to disrupt a speaker talking about the issues, because all I am addressing here are the issues. I have not spoken about anything else.

I am confident that the workers of Caroni (1975) Limited would understand what we are doing and would grasp the opportunity to become independent.

Thank you, Madam President. [*Desk thumping*]

Question put and agreed to.

Senate adjourned accordingly.

Adjourned at 7.22 p.m.

WRITTEN ANSWER TO QUESTION

The following question was asked by Sen. Wade Mark:

Water and Sewerage Authority
(Detailed Breakdown of Expenses)

1. Could the hon. Minister of Public Utilities and the Environment provide a detailed breakdown of WASA's operating expenditure, revenue collection and net deficit, if any, on a monthly basis for the period January 2002 to the present time?

The following reply was circulated to Senators:

The Water and Sewerage Authority has advised that its operating expenditure, revenue collection and net deficit on a monthly basis for the period January 2002 to December 31, 2002 were as follows:

	JAN. 2002	FEB. 2002 $	MAR. 2002 $	APR. 2002 $	MAY 2002 $	JUN. 2002 $	JUL. 2002 $	AUG. 2002 $	SEPT. 2002 $	OCT. 2002 $	NOV. 2002 $	DEC. 2002 $	TOTAL $
REV.	30,083,768	30,921,493	33,595,647	36,129,771	28,943,785	33,564,475	35,299,866	33,751,682	39,889,646	34,081,756	32,351,141	32,637,774	401,625,639

.	JAN. 2002	FEB. 2002 $	MAR. 2002 $	APR. 2002 $	MAY 2002 $	JUN. 2002 $	JUL. 2002 $	AUG. 2002 $	SEPT. 2002 $	OCT. 2002 $	NOV. 2002 $	DEC. 2002 $	TOTAL $
EXP.	47,327,786	45,606,203	50,054,076	60,544,147	56,763,170	93,432,296	71,399,521	77,562,664	89,026,982	81,707,327	81,759,615	76,462,828	831,846,615

The net deficit for the period were as follows:

JAN. 2002	FEB. 2002 $	MAR. 2002 $	APR. 2002 $	MAY 2002 $	JUN. 2002 $	JUL. 2002 $	AUG. 2002 $	SEPT. 2002 $	OCT. 2002 $	NOV. 2002 $	DEC. 2002 $	TOTAL $
(17,244,018)	(14,684,710)	(16,468,429)	(24,414,378)	(27,819,385)	(59,867,821)	(36,089,655)	(43,810,982)	(49,137,336)	(47,626,671)	(49,408,474)	(43,826,054)	(430,397,913)