

*Leave of Absence**Tuesday, March 31, 2004***SENATE***Tuesday, March 31, 2004*

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 Sen. Prof. Kenneth Ramchand.

**SENATOR'S APPOINTMENT**

**Madam President:** Hon. Senators, I have received the following correspondence from His Excellency the President, Prof. George Maxwell Richards:

“THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO

By His Excellency Professor GEORGE MAXWELL RICHARDS, T.C., C.M.T., PhD, President and Commander-in-Chief of the Republic of Trinidad and Tobago.

/s/ G. Richards  
President.

TO: MR. WALTON FRANCIS JAMES

WHEREAS Senator Professor Kenneth Ramchand 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, in exercise of the power vested in me by section 40(2)(c) and section 44 of the Constitution of the Republic of Trinidad and Tobago, do hereby appoint you, WALTON FRANCIS JAMES, to be temporarily a member of the Senate, with immediate effect and continuing during the absence from Trinidad and Tobago of the said Senator Professor Kenneth Ramchand.

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 31<sup>st</sup> day of March, 2004.”

*Oath of Allegiance*

*Tuesday, March 31, 2004*

**OATH OF ALLEGIANCE**

*Sen. Walton Francis James took and subscribed the Oath of Allegiance as required by law.*

**PAPERS LAID**

1. Report of the Auditor General of the Republic of Trinidad and Tobago on the financial statements of the Chaguanas Borough Corporation for the period October 14, 1991 to December 31, 1991. [*The Minister in the Ministry of Finance (Sen. The Hon. Conrad Enill)*]
2. Report of the Auditor General of the Republic of Trinidad and Tobago on the financial statements of the Chaguanas Borough Corporation for the year ended December 31, 1992. [*Sen The Hon. C. Enill*]
3. Annual audited financial statements of the National Gas Company of Trinidad and Tobago Limited for the financial year ended December 31, 2002. [*Sen The Hon. C. Enill*]
4. Annual Audited financial statements of Petroleum Company of Trinidad and Tobago Limited for the financial year ended September 30, 2003. [*Sen. The Hon. C. Enill*]

**ORAL ANSWERS TO QUESTIONS**

**Point Lisas Industrial Development Company  
(Tenders)**

**39. Sen. Wade Mark** asked the hon. Minister of Trade and Industry:

Would the Minister inform this Senate of:

- A. (i) the number of bids received by Point Lisas Industrial Development Company (PLIPDECO) in respect of tenders for the supply of the harbour mobile crane;
- (ii) the names and addresses of the companies that submitted tenders; and
- (iii) the name and address of the successful tenderer?
- B. Whether the successful tenderer was recommended by the PLIPDECO management in their evaluation report on the bids?
- C. If the successful tenderer was not recommended by the PLIPDECO management in their evaluation report, could the Minister state on whose recommendation was the successful company selected?

**The Minister in the Ministry of Finance (Sen. The Hon. Christine Sahadeo):** Madam President, in response to question 39A(i), two bids were received in respect of the tenders for the supply of the harbour mobile crane in response to the corporation's tender request of October 15, 2002.

In response to A(ii), the names and addresses of the companies that submitted tenders were:

Fantuzzi Regianne SPA  
Via V Agostini  
27-42100 Reggio Emilia  
Italy; and

Gottwald Port Technology GmbH in Dusseldorf  
Pacific Handling Systems, Inc.  
8215 SW Tualatin- Sherwood Road, Suite 35  
Tualatin, Oregon 97062

In response to A(iii), the name and address of the successful tenderer:

Fantuzzi Regianne SPA  
Via V Agostini  
27-42100 Reggio Emilia  
Italy.

In response to B, the management evaluation team for the tender of October 15, 2002 did not recommend the successful bidder.

In response to C, the recommendation for the acquisition of the crane came from the board's tender committee to the board. As a result of the concerns raised about this tender process, Cabinet has directed the Minister of Finance to cause an independent investigation to be carried out into all aspects of the procurement of this harbour mobile crane.

The Minister in the Ministry of Finance, in the capacity of the majority shareholder, held discussions with the board, and the board has decided to appoint an independent auditor to carry out an investigation with respect to the procurement of the harbour mobile crane.

Thank you, Madam President.

**Sen. Mark:** Madam President, could the hon. Minister in the Ministry of Finance indicate to this Parliament, in the interest of transparency and accountability, whether she would share with this Parliament the objectivity of

such an enquiry by the board of PLIPDECO? Is she of the view that there would be genuine independence if the board appoints persons to investigate the board's decision to purchase such a crane, which we understand is very defective?

**Sen. The Hon. C. Sahadeo:** Madam President, as we indicated we had discussions with the board and it is extremely willing to undertake an independent investigation into the matter.

**Sen. Mark:** Madam President, could the Minister indicate whether the Cabinet of Trinidad and Tobago has agreed with the board of PLIPDECO being assigned the responsibility of hiring a firm of independent persons to conduct an enquiry into a transaction, which has left a bitter taste in the mouths of the citizenry of this country? Has the Cabinet agreed with the board to that effect, Madam President?

**Sen. The Hon. C. Sahadeo:** Madam President, that is a new question and if filed we would provide an appropriate response.

**Sen. Mark:** Madam President, if I may, a supplemental question, please. The Minister did indicate a short while ago that the Cabinet agreed, so how is it a new question. *[Interruption]* You just said that. I am just asking whether the Cabinet has given consideration to all the facts. How could Cabinet agree to allow the board to set up an independent enquiry into a matter that involves the board? The board approved, in the first instance, the purchase of a crane that cost US \$4 million, which is defective. I would like the hon. Minister to indicate to this Parliament how that could ensure transparency, accountability and objectivity.

**Sen. The Hon. C. Sahadeo:** Madam President, as I indicated, the board has already had discussions and, of course, with respect to the appointment of the independent auditor we would have some discussion, and final approval by the Minister.

**Sen. Seepersad-Bachan:** Madam President, a supplemental question, please. Could the Minister indicate whether or not a technical evaluation was done and, if so, was it done by the PLIPDECO management?

**Sen. The Hon. C. Sahadeo:** Madam President, as I indicated, there is going to be an independent investigation, so I believe until such time—*[Interruption]*

**Sen. R. Montano:** That is not the question.

**Madam President:** The question was different? Maybe you could repeat your question?

**Sen. Seepersad-Bachan:** Madam President, let me just clarify. From what the Minister just said it appears that PLIPDECO management did not recommend the successful tenderer. I am just trying to understand whether or not PLIPDECO management based its decision on the technical evaluation, or if it was the tenders committee of the board?

**Sen. The Hon. C. Sahadeo:** Madam President, I believe that is a new question and if filed we would present an appropriate answer. [*Interruption*] At this time I would not have the information to provide such an answer.

**Sen. Seepersad-Bachan:** That is not a new question.

**Sen. R. Montano:** No, no, no, that is not a new question.

**Madam President:** It is not a new question, really. It is a supplemental question but the Minister has said she does not have the information. Maybe we can ask her to bring the information?

**Sen. Seepersad-Bachan:** Madam President, if I may?

**Madam President:** Yes.

**Sen. Seepersad-Bachan:** Thank you, Madam President, and I would really appreciate if the Minister would share that information with us.

Secondly, Madam President, I would be interested in knowing, like Sen. Wade Mark, whether the tenders committee comprises members of the board of PLIPDECO. Obviously, there was a difference in opinion of views between the management and the board. I do not understand how the Minister is confident that such an independent investigation would take place with the board's involvement.

**Sen. Mark:** Madam President, could the hon. Minister indicate to this Senate, as far as she is aware, if the PLIPDECO board, through its tenders committee, did not recommend the Fantuzzi Company? Could the Minister explain to this Senate how Fantuzzi ended up enjoying that particular contract in supplying a crane that we understand is valued at over US \$4 million, which turned out to be a defective crane? Who took the decision; could you tell this honourable Senate?

**Madam President:** Senator, would you—

**Sen. The Hon. C. Sahadeo:** Well, Madam President, I am a bit confused by that question because I indicated to this honourable Senate that when that independent investigation is conducted, and as I indicated also with the approval of the Minister, we would certainly have more information which could be shared and any other questions we could answer appropriately.

**Sen. Mark:** Madam President, one final question. Through you, Madam President, what I find amazing is that a crane—and the Minister would admit—has been purchased. So, Madam President, all we are asking her is, who gave the order to purchase this crane?

**Sen. Dr. Saith:** Madam President, I think we are getting deeper and deeper into what is a relatively clear position of the Government. The question has been answered that management recommended one thing and the tenders committee did something else. We have said that we are ensuring that an independent investigation takes place. Now, this is the publicly traded company on the Stock Exchange and, therefore, the way to do it is to ask the board to come to the major shareholders; agree on the terms of reference; agree who would undertake this independently, and then commission it as a board because it is traded. When that report is received, I have no doubt that the information would be made available. The fact that the board is being asked to do it is that they have the responsibility for it but it does not mean that they are doing it. They will come back to the ministry; we will agree on the terms of reference; we will agree on the selection of firm (A) or (B) and then the board, as a matter of procedure, will then—

**Sen. R. Montano:** Madam President, a supplemental question, please? Is the Minister aware that she has not answered part C of the question? Could she please answer part C?

**Madam President:** Did you give an answer to part C, Minister?

**Sen. The Hon. C. Sahadeo:** Madam President, I will repeat. The recommendation for the acquisition of the crane came from the tenders committee of the board.

**Madam President:** All right, could we move on to question 44, please?

**Resolution of Fishing Agreement  
(Trinidad and Tobago/Barbados)**

**44. Sen. Wade Mark** asked the hon. Minister of Foreign Affairs:

Could the Minister inform this Senate of the steps that are being taken by the Government of the Republic of Trinidad and Tobago to conclude the long outstanding fishing agreement with the Government of Barbados?

**The Minister of Foreign Affairs (Sen. The Hon. Knowlson Gift):** Madam President, the fourth round of negotiations for the conclusion of a new fishing agreement between Trinidad and Tobago and Barbados took place in Bridgetown

Barbados during the period November 19 to 21, 2003. Subsequent to that meeting, the Government of Barbados proposed that the fifth round should take place in the second half of February 2004.

In keeping with the agreed system of rotation, the fifth round was to be hosted by the Government of Trinidad and Tobago. The Government of Trinidad and Tobago accordingly proposed February 26 and 27, 2004 for the continuation of the fishing negotiations.

Madam President, by Diplomatic Note, Ref. 18/1-2-2, dated February 16, 2004, the Government of Barbados informed the Government of Trinidad and Tobago that it referred the matter of the delimitation of the exclusive economic zone and continental shelf pertaining to Trinidad and Tobago and to Barbados, to compulsory binding settlement provided for in Article 286 and Annex 7 of the United Nations Convention on the Law of the Sea.

By Diplomatic Note, No. IR 2004-35, dated February 18, 2004, the Government of Barbados further informed the Government of Trinidad and Tobago that by virtue of initiation by Barbados of the Dispute Settlement Proceedings under the United Nations Convention on the Law of the Sea, and I quote:

“All prior negotiations on maritime boundary delimitation and fisheries are now deemed to have been suspended.”

it was the Government of Barbados that decided, unilaterally, to suspend the negotiations for a new fishing agreement between the two countries. It has indicated in unequivocal terms that it does not wish to continue negotiations with the Government of Trinidad and Tobago on the matter at this time. Madam President, since it takes two sides to negotiate, the Government of Trinidad and Tobago has no choice but to oblige.

Thank you, Madam President.

**Sen. Mark:** Madam President, could the hon. Minister explain to this Senate the lineage between the fishing agreement and the delimitation as it relates to our economic zone and continental shelf? Madam President, we were of the view that the fishing agreement was something independent of the economic zone question. Could the hon. Minister explain to this Senate what is the link? And this trade embargo that has been imposed on our manufacturers and our citizens who are trading with Barbados, how is this impacting on our economy? I do not know if he could provide us with some broad generalization, Madam President.

**Sen. The Hon. K. Gift:** Madam President, there seems to be two questions at the same time. The second part of the question, obviously, seems to be a new question. I will oblige on the first part.

Sen. Mark is, indeed, correct when he says that the fishing negotiations and delimitation are really two separate issues and, indeed, they are. As a matter of fact, in all four rounds of negotiations that went ahead, both topics were addressed by both governments. In fact, you had a back-to-back negotiation in both the maritime delimitation and the fisheries, so that, indeed, they are two separate issues.

**Sen. Mark:** Madam President, just one—

**Madam President:** Is this a supplemental?

**Sen. Mark:** Yes, Madam President. The matter that has been referred by Barbados to this arbitration, could the hon. Minister indicate whether the Government of Trinidad and Tobago is prepared to put in a reserved position on this matter, seeing that we have been hauled before some arbitration committee that has not even been established by the Government of Barbados? Has the Government considered the possibility of submitting a reserved position on this matter?

**Sen. The Hon. K. Gift:** Madam President, the hon. Senator seems to be misinformed. The Government of Trinidad and Tobago does not intend to put in a reserved position on the matter. As a matter of fact, my colleague the Attorney General who might wish to expand somewhat on this topic is, in my opinion, more qualified to speak of this stage of the negotiations, or the presentation before the United Nations Convention on the Law of the Sea. [*Interruption*]

**Madam President:** Okay, go ahead, hon. Attorney General.

**Sen. Jeremie:** Can you repeat the question for me? I did not hear it?

**Sen. Mark:** We would like to know whether at this point the Government of Trinidad and Tobago is prepared to put a reserved position on this particular request of Barbados to haul us before this arbitration body? We were not part of this exercise. We are being hauled before some arbitration committee that has not been established. I want to know whether the Government is prepared to put in a reserved position to say that look, we are not compelled to be taken to any arbitration body by Barbados.

**Sen. Jeremie:** Madam President, the question is an excellent one. What the Government has done is to enter an appearance, which is conditional, so that it is



free to take the jurisdiction point at a later stage. But at this point in time all we are doing is setting up an arbitration panel, and because Trinidad and Tobago is a part of the United Nations Convention on the Law of the Sea (UNCLS) we are tied to the Mandatory Dispute Settlement Procedure under UNCLS.

**Sen. R. Montano:** Madam President, it has been widely reported in the Trinidad and Tobago press that the Barbados Government has retaliated against our manufacturing industry because of this dispute. Would the Minister of Foreign Affairs please confirm whether or not this is correct? If it is, has the Government of Trinidad and Tobago taken or does it intend to take steps to protect our manufactures, from what I gather, is the illegal and unlawful action of the Barbados Government?

[Pause]

**Madam President:** Are you going to answer?

**Sen. The Hon. K. Gift:** Madam President, in substance, I would prefer the Minister of Trade and Industry to answer that question.

**Madam President:** Could we move on to question 45, please, Sen. Mark?

**Uriah Butler/Churchill-Roosevelt Highways  
(New Interchange)**

**45. Sen. Wade Mark** asked the hon. Minister of Foreign Affairs:

Could the Minister inform this Senate of the following:

- (i) when would construction of the proposed new interchange at the intersection of the Uriah Butler and the Churchill-Roosevelt Highways commence?
- (ii) the estimated cost of the proposed interchange; and
- (iii) the estimated duration of the entire project?

**The Minister of Works and Transport (Hon. Franklyn Khan):** Madam President, I advise this honourable Senate that in response to (i), construction of the proposed interchange at the intersection of the Uriah Butler and Churchill-Roosevelt Highways is expected to commence during the fourth quarter of 2004.

With respect to (ii), the preliminary budget estimate is TT \$125 million.

With respect to (iii), the estimated duration of the project is 24 months.

**Sen. Mark:** Could the hon. Minister indicate whether this project is being put out for public tender? If it is, what time frame does he anticipate for this tendering process?

**Hon. F. Khan:** Just a little more detail, Madam President, we are using the Idiom Consult design. This project has a long and tortuous history, which had no tender in the first phase. The consultants, who are Canadian-based, are already in Trinidad fine-tuning the design, revalidating the estimate and preparing the contract documents. That should probably finish in about two months, after which, a project of this size, the normal procedure is that it would be tendered through the Central Tenders Board.

**Sen. Baksh:** I would like to ask the hon. Minister whether this design would take into consideration the movement for traffic travelling west to south.

**Hon. F. Khan:** Yes, Madam President. Obviously, west to south traffic would be signalized but because of the other components of the design, there would be significantly more green time, as it were, on the west to south signalization that we currently have.

#### **Payments to Robert Lindquist (Details of)**

**50. Sen. Sadiq Baksh** asked the hon. Attorney General:

Would the Attorney General provide this Senate with:

- (i) a detailed breakdown on a monthly basis of all payments made to Mr. Robert Lindquist or companies owned or affiliated to him from the date he was first engaged to December 31, 2003; and
- (ii) the name of the country and date of the incorporation of the company owned by Mr. Lindquist.

**The Attorney General (Sen. The Hon. John Jeremie):** Madam President, I am delighted to be able to answer this question this afternoon. It is general in nature and not linked to any particular transaction. The question is in two parts. The first part requires a detailed breakdown on a monthly basis of all payments made to Mr. Robert Lindquist or companies owned or affiliated to him from the date he was first engaged to December 31, 2003. The second part requires me to provide the name of the country and date of incorporation of the companies owned by Mr. Lindquist. I will deal with the first part first.

Mr. Lindquist was engaged over two periods in the last 16 years to do work on behalf of the Government of Trinidad and Tobago. It is not possible to give a month-by-month breakdown of his billings during the first period. This period began in 1988 when Mr. Lindquist was engaged by the then government of

Trinidad and Tobago to conduct investigations into allegations involving the late John O'Halloran.

**2.00 p.m.**

Those investigations ended in or about July 1990, and that was the first period of his engagement. During that period Mr. Lindquist was paid Canadian \$700,000 for the first set of investigations at the then exchange rate. During his second period of engagement, which started in September 2002, by the then government, Mr. Lindquist was employed to conduct forensic investigations into the Piarco Airport Development Project. This second period of investigation has continued until the present time with a greatly expanded mandate.

I have attached, and I propose to read the attachment, a detailed breakdown of all payments made to companies owned by/or affiliated to Mr. Lindquist during this second period of engagement from September 2002 to November 2003 when the last payment was processed. The breakdown has not been done on a monthly basis but according to the invoices submitted for services rendered within specific periods of time.

Between September 27 and October 31, he was paid TT equivalent, \$450,989.50. From November 01, to 15 he was paid TT \$393,825.70.

**Sen. Seetahal:** Madam President, the Attorney General had said and I think that must have been an error, September 2002 to November 2003. Then he is reading September 2000, so I believe it is 2000 so maybe—

**Sen. The Hon. J. Jeremie:** I am sorry. I am happy to clarify. It was September 2000 by the then government. From November 01 to November 15 he was paid \$393,825.70; November 16 to 23—\$332,255.70; November 24 to December 01—\$333,547.20.

In 2001 there were four payments. In January—and the accounting shifts now to US dollars—he was paid US \$9,497. Between February and July he was paid US \$1,300. It is interesting to note who was disbursing the funds at this time. I will say nothing further.

In August he was paid US \$5,216. Between September and December he was paid US \$3,987. That concludes 2001. He did very little work. I am at 2002.

**Sen. Seetahal:** The Attorney General had said it was interesting to note who was disbursing these funds but that was in 2001?

**Sen. The Hon. J. Jeremie:** Yes, it is.

**Sen. Seetahal:** That is the same UNC.

**Sen. The Hon. J. Jeremie:** I am not elaborating on it. I say the government.

In January 2002—and the spending goes up on the anticorruption effort—he was paid US \$78,966. All the figures which I propose to give from now on will be in US dollars. February 01 and February 15 he was paid US \$19,996; February 15 and February 28, US \$86,534. Between March 01 and March 15, US \$39,296; March 16 and March 31, US \$ 92,478; April 01 and April 15, US \$66,456; April 16 and April 30, US \$101,014. This is in 2002 as well but in respect of different projects. From May 01 to May 15 he was paid US \$29,132; May 01 to May 31, US \$17,359; May 16 to May 31, US \$101,419; June 01 to June 30, US \$26,168; June 01 to June 15, US \$16, 611.; June 16 to June 30, US \$24,739; and between October and November, US \$20,042. I will turn to 2003.

I had asked my friends whether they would prefer a schedule but they required me to read it. I have no difficulty with doing that.

In 2003, between December 02 and January 03 he was paid US \$44,388, in February, US \$56,460, also in February US \$11,842.

In March, US \$64,462. In March as well, US \$57,387; in April, US \$148,026; and between March and April 30 in respect of another project, US \$8,647; in April as well, in respect of yet another project, US \$73,809. Now in 2003 as well, Mr. Lindquist has been quite busy. In May, US \$82,033; in May as well, US \$50,579. I can provide totals at the end.

**Sen. Mark:** Of course, we would like that.

**Sen. The Hon. J. Jeremie:** In May, US \$103,194. In June, US \$64,154, in June as well, in respect, of a different project, of course, US \$93,111 and in June as well in respect of yet another project, US \$49,825. In July, he was paid US \$64,022. and US \$12, 044. In August there were two payments, one in respect of US \$51,136, another in respect of US \$86,048. In September there were two payments, US \$56,516. and US \$65,600. In October he was paid US \$137,653. and also in October US \$82,199. There was one payment in November 2003 which amounted to US \$53,690. That is the only one that I can take direct responsibility for but, of course, corruption is a serious business and the Government takes responsibility with respect to all of these payments.

Madam President, there is a second part to the question. I almost forgot the answer to that. I was required to name the country and the date of incorporation of the company owned by Mr. Lindquist. *[Interruption]* I saw company but there

are companies. There is Lindquist Forensic and Partners Inc., which was incorporated on June 22, 2000 in the United States of America and there is City Gate Global Intelligence and Security LLC, incorporated on December 19, 2001 in the United States of America. Thank you, Madam President.

**Sen. Mark:** The hon. Attorney General did indicate to us that he is prepared to give us a total. I do not know, for instance, if he would like to share it with us.

**Sen. The Hon. J. Jeremie:** I am happy to do that. The complete total as I have tabulated it over the two periods—*[Interruption]*

**Madam President:** Was that a radio or a speaker or something? Is it outside? I thought it was in here. Go ahead, Attorney General.

**Sen. The Hon. J. Jeremie:** The complete total over the 16 years and the two separate periods of engagement amount to between US \$3.3 and \$3.5 million. Two periods, 16 years, two companies in the last period. Three administrations.

**Sen. R. Montano:** Madam President, would the Attorney General please state whether or not to date, beginning from 1988 to present, as a result of any of Mr. Lindquist's investigations there has been a successful prosecution?

**Sen. The Hon. J. Jeremie:** I am happy to answer that question as well. Mr. Lindquist has an impeccable record when it comes to producing results. Between late 1988 and July of 1990 he was paid, as I said, US \$700,000 but he recovered for the people of Trinidad and Tobago in excess of US \$7 million. *[Desk thumping]*

**Sen. Montano:** From whom?

**Sen. The Hon. J. Jeremie:** From corrupt persons. He is investigating corruption by the government and he has an impeccable record. In respect of his second period of engagement, charges have been laid against certain persons and his work is continuing, and I have every reason to believe that there shall be a successful result. *[Desk thumping]*

Madam President, I should like to thank Sen. Sadiq Baksh for asking this question and for allowing me to answer him this afternoon. *[Desk thumping]*

**Sen. Montano:** I did not quite understand this answer to the question that I asked, which was: Have there been any successful prosecutions? I heard the Attorney General say that there had been a recovery of \$7 million. Would the Attorney General please state from whom, and was that as a result of a successful prosecution? Who was prosecuted and how was it successful? When did this prosecution take place?

**Madam President:** Sen. Montano, that is really a new question. Unless the Attorney General has the information now I cannot see that as a supplemental.

**Sen. Montano:** Madam President, the point is this. I asked whether or not there had been a successful prosecution. Instead of getting that answer I got a different answer which was that US \$7 million had been recovered. I would like to go back to my original question, and I would also like to ask because I was in the Senate in June 1990 and to the best of my memory there was no prosecution. If there was, I would like to know. If there was not, where did this US \$7 million come from?

**Madam President:** Do you have the information, hon. Attorney General?

**Sen. The Hon. J. Jeremie:** I have some of the information. The US \$7 million which was recovered, and widely reported in the newspaper at the time, as a result of a tracing action brought on the civil side. I am not aware as to precisely what proceedings, if any, took place with respect to the criminal side. The point is that there was a successful conclusion for the people of Trinidad and Tobago.

**EXTRADITION (COMMONWEALTH AND FOREIGN  
TERRITORIES) (AMDT.) BILL**

[Second Day]

*Order read for resuming adjourned debate on question [March 23, 2004]:*

That the Bill be now read a second time.

*Question again proposed.*

**Sen. Robin Montano:** Madam President, I read this Bill very carefully and quite frankly, I had no problems with any of the clauses in it save one, and that was clause 7 of the Bill. Rather than read the technical language of clause 7, I would like to read the Explanatory Note, which explains it to Members and to the general public. And the particular part that I am concentrating on—let me read the whole of the Explanatory Note.

“Clause 7 would amend section 8 of the Act to prevent an accused person’s return to a declared Commonwealth territory or declared foreign territory if it is determined that the request for his return is based on his sex, gender or sexual preference.”

I happen to agree with that. I do not think that a person should be deported because of his sex, gender or sexual preference. But the clause goes on:

“The section would also be amended to provide that persons accused or convicted of an offence against the life or person of a Head of Government or of a Minister of Government or of certain offences such as murder, manslaughter and kidnapping, would not be able to object to their extradition on the ground that the offence is of a political character.”

Madam President, frankly red lights went off because I remember reading in the newspapers about a year ago how the leader of the Opposition in Zimbabwe had been accused of plotting a conspiracy to murder the dictator, Robert Mugabe. From all accounts that I have read, it seems clear that there is a great deal of politics in that particular accusation.

We all know that there are thugs and dictators around the world. There have been in the past and there would continue to be in the future. For example, we have Fidel Castro right here in the Caribbean. Because I wanted to look up the law, I went first of all to the Fourth Edition of Halsbury’s *Laws of England*, Vol. 18 at paragraph 292. I will read a bit of the paragraph.

“The magistrates’ court is prohibited from making an order for the return of the fugitive if the offence specified in the warrant is of a political character, a military offence which is not also an offence under the general criminal law, or an offence relating to taxes, duties or exchange control;...”

And it goes on:

“An offence may be of a political character either because the wrongdoer had some direct ulterior motive of a political kind when he committed the offence, or because the requesting state is anxious to obtain possession of the wrongdoer’s person in order to punish him for his politics.”

We are a democracy in Trinidad and Tobago or at least we purport to be one, and it is an anathema to any freedom loving person, any democratic loving person to consider that somebody might be prosecuted for his or her political beliefs. And as I will demonstrate with your leave, I am going to refer to two cases although the law reports are replete with many more, but these two cases make the point.

The point basically is that at least since 1870 persons accused of political crimes are basically not extradited. That has always been the thing and I would be quoting a case where the law lords say that today’s Garibaldi is to tomorrow’s hero, and one has only got to understand it. My own personal view of this side, my colleagues and I, is that we should not allow this particular clause to go into

*Extradition (Amdt.) (No.2) Bill*  
[SEN. R. MONTANO]

*Tuesday, March 31, 2004*

this legislation and we should fight this particular clause, and if the Government does not take this out then we will be voting against the Bill in its entirety. It is either this clause is deleted at the committee stage in which case the Bill will pass or, alternatively, we will be forced to vote against the Bill.

The first case that I would like to refer to is the case reported in 1973, *All England Law Reports*, and I am reading from a judgment of Lord Diplock beginning at page 208. Lord Diplock is discussing the whole question of extradition for a political offence and the discussion is very useful for us. He says the Extradition Act of 1870 did two things. This is important for us to understand why we are today debating this as far as I am concerned, this particular clause, because we have to understand that our laws go back, and this particular section of the Extradition Act of 1870 will be part of our law unless and until it is amended. He says:

“First, it provided machinery for giving effect in the law of the United Kingdom to any extradition treaties into which the government might thereafter enter with other sovereign states. Secondly, it restricted the discretion of the government as to the terms of extradition treaties entered into with foreign states...”

In other words, governments could not just enter into an extradition treaty willy nilly. It had to do so within the confines of the law. He comes now to say:

“The restriction which governs the instant appeal...”

This case as I said is *Cheng v Governor of Pentonville*;

“The restriction which governs the instant appeal is that contained in s3 (I) of the Act:”

And he quotes:

“A fugitive criminal shall not be surrendered if the offence in respect of which his surrender is demanded is one of a political character, or if he prove to the satisfaction of the police magistrate or the court before whom he is brought on habeas corpus, or to the Secretary of State, that the requisition for his surrender has in fact been made with a view to try or punish him for an offence of a political character.”

A little further down the page he says:

“My Lords, the noun that is qualified by the adjectival phrase ‘of a political character’ is ‘offence’. One must, therefore, consider what are the



juristic elements in an offence, particularly one which is an extradition crime, to which the epithet 'political' can apply. I would accept that it applies to the mental element: the state of mind of the accused when he did the act which constitutes the physical element in the offence with which he is charged. I would accept, too, that the relevant state of mind is not restricted to the intent necessary to constitute the offence with which he is charged; for, in the case of none of the extradition crimes, can this properly be described as being political. The relevant mental element must involve some less immediate object which the accused sought to achieve by doing the physical act. It is unnecessary for the purposes of the present appeal, and would, in my view, be unwise, to attempt to define how remote that object might be. If the accused had robbed a bank in order to obtain funds to support a political party, the object would, in my view, clearly be too remote to constitute a political offence. But if the accused had killed a dictator in the hope of changing the government of the country, his object would be sufficiently immediate to justify the epithet 'political.'"

Madam President, I would like you to remember this because I am going to refer to it later. And Lord Diplock goes on:

"For politics are about government. 'Political' as descriptive of an object to be achieved must, in my view, be confined to the object of overthrowing or changing the government of a state or inducing it to change its policy or escaping from its territory the better so to do. No doubt any act done with any of these objects would be a 'political act', whether or not it was done within the territory of the government against whom it was aimed. But the question is not simply whether it is political qua 'act' but whether it is political qua 'offence'.

Criminal jurisdiction is territorial. A crime is an offence against the state within whose territory the prohibited act has been committed."

### **2.30 p.m.**

He goes on a little down the page:

"...I would hold that prima facie an act committed in a foreign state was not 'an offence of a political character' unless the only purpose sought to be achieved by the offender in committing it were to change the government of the state in which it was committed, or to induce it to change its policy, or to enable him to escape from the jurisdiction of a government of whose political policies the offender disapproved but despaired of altering so long as he was

there. I would not hold that an act constituted ‘an *offence* of a political character’ in the ordinary meaning of that phrase appearing in a statute dealing with the trial and punishment of crimes committed in a foreign state if the only ‘political’ purpose which the offender sought to achieve by it was not directed against the government or governmental policies of that state within whose territory the offence is committed and which is the only other party to the trial and punishment of the offence.”

He goes on again—I am skipping out some parts:

“The purpose of the restriction, as it seems to me, was two-fold. First, to avoid involving the United Kingdom in the internal political conflicts of foreign states. Today’s Garibaldi may well form tomorrow’s government.”

I agree with the first, but I also want to put the second.

“...the humanitarian purpose of preventing the offender being surrendered to a jurisdiction in which there was a risk that his trial or punishment might be unfairly influenced by political considerations. As indicated by the inclusion of the second part of the restriction it was suspicion of the motives of requisitioning states in seeking the surrender of fugitive criminals who were political opponents of the government of that state which underlay both the requirements of s2(1) of the Act. Such suspicion was understandable in 1870...”

I think Lord Diplock made his point. I go on to read from the same 1973 case—the judgment of Lord Simon of Glaisdale. Perhaps, I should tell you, Madam President and Senators, what happened in this case—the case of Cheng v Governor of Pentonville. Cheng was Taiwanese opposed to the government of Cheng Kai-Shek. The Vice-President of Taiwan had gone to the United States and there Cheng had attempted to assassinate the Vice President. Cheng had fled to Europe and in going through the United Kingdom, he was arrested and the US government asked for his extradition. The question arose as to whether or not his offence was of a political nature.

In this particular case, Cheng was in fact extradited to the United States because it was held that in this case, the action was not of a sufficiently political character to afford him the protection of the law. I am trying to enunciate the principles here because the principles, both in the judgment of Lord Diplock and in the judgment of Lord Simon, are very clearly set out. For example, Lord Simon says at page 212 of the judgment, referring to section 3(1) of the Extradition Act, 1870:

“It is significant that the phrase ‘offence...of a political character’, which recurs almost obsessively through the Act, is not defined. ‘Fugitive criminal’ is defined by s26 to mean ‘any person accused or convicted of an extradition crime committed within the jurisdiction of any foreign state who is in or is suspected of being in some part of Her Majesty’s dominions’. Parliament therefore contemplated the escape of a person who, like the appellant, had been actually convicted of an extradition crime; though providing that he should not be extradited if the offence in respect of which his surrender is demanded was one of a political character. ‘Extradition crime’ is defined as ‘a crime which, if committed in England or within English jurisdiction, would be one of the crimes described in the first schedule’ to the Act. Schedule I sets out the list of extradition crimes. They include attempt to murder, and other serious crimes. They do not include such crimes as treason, sedition or *lèse majesté*; this indicates that offence...of a political character’ does not mean merely the type of political offence which is necessarily committed against the state seeking extradition, since such offences are in any event unscheduled crimes.”

He goes on to give an important internal linguistic guide to interpretation. Forgive me for reading all of this, but it is most important. He goes on, at page 213:

“Did Parliament in 1870 envisage the situation that, say, an attempt on the life of a ruling figure of state A might be made in the territory of state B? It seems highly likely. In the third quarter of the last century various movements liable to use violent methods to overturn established authority were notoriously operating internationally—from Mazzini’s republican nationalists to the anarchists. There had been a number of recent attempts to assassinate heads of state...

Parliament left it to the courts to apply the statutory words to forensic situations as they arose...”

My argument this afternoon is that there is no need to amend this law as the Government is seeking to do because the law already exists. Parliament has left it to the court and there is a vast body of case law on the subject. It means that we would continue to recognize, if my argument this afternoon is accepted by this honourable Senate, that dictatorships do exist. I go back:

“Parliament left it to the courts to apply the statutory words to forensic situations as they arose, in the expectation that they would be so applied in their ordinary, natural and literal sense, without addition or omission.”

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I am going to skip quite a lot, but I recommend to hon. Senators the whole of Lord Simon's judgment. I turn to page 215:

“A foreigner who commits an extradition crime abroad does not infringe the English criminal code. Nevertheless, the 1870 Act conferred on the Crown the right to implement by order in council treaties stipulating that persons who had committed crimes abroad and taken refuge here might be handed over to the state where the crime was committed, in return for that state reciprocally engaging to hand over to Her Majesty's government persons who had committed crimes in this country and taken refuge in the territory of that other power. The general purpose of the Act is therefore not difficult to discern: it was to enable states to co-operate in the suppression of crime.”

Nobody is arguing about that.

He goes on:

“Perpetrators of extradition crimes were nevertheless not to be extradited if their offence was of a political character. Why should Parliament have made such an exception? The explanation was given by my noble and learned friend, Lord Reid, in *Schtraks v Government of Israel*:

‘In reading the Act of 1870 one is entitled to look through mid-Victorian spectacles. Many people then regarded insurgents against continental governments as heroes intolerably provoked by tyranny, who ought to have asylum here, although they might have destroyed life and property in the course of their struggles. But, although such views may have given rise to s. 3(1) of the Act of 1870, I do not think that its scope can be limited to such cases. We cannot inquire whether a fugitive criminal was engaged in a good or a bad cause. A fugitive member of a gang who committed an offence in the course of an unsuccessful putsch is as much within the Act as the follower of Garibaldi; but not every person who commits an offence in the course of a political struggle is entitled to protection. If a person takes advantage of his position as an insurgent to murder a man against whom he has a grudge, I would not think that that could be called a political offence. So it appears to me that the motive and purpose of the accused in committing the offence must be relevant, and may be decisive. It is one thing to commit an offence for the purpose of promoting a political cause, and quite a different thing to commit the same offence for an ordinary criminal purpose.’”

Lord Simon goes on:

“The insight of my noble and learned friend is fully borne out by an examination of the preceding history. Even Lord Castlereagh, no friend of subversives, denounced in 1816...”

See how far back we are going—

“the practice of political refugees (Wheaton’s International Law, where it is also stated to be ‘an almost universal rule that no State will surrender political refugees’). Garibaldi and Kossuth, criminals in the eyes of the absolute governments of Europe, had been subjects of wild enthusiasm on the visits to London; and it is inconceivable that this country would have handed the former over to King Bomba on the ground that he had been responsible for the death, not of a Neapolitan, but of an Austrian, soldier or official in the Kingdom of two Sicilies.”

I believe, Madam President, that you get the point without my going into more. I thank you for your indulgence in allowing me to read from these two judgments extensively. They show the importance of the democratic thinking that has been almost universally accepted.

Again, you have only got to look at what is going on. I have here, from the Internet, an editorial from the *New York Times* dated March 26, 2004. It is headlined “Mr. Castro’s Prisoners”. Again, it makes the point about clause 7.

“Adolfo Fernández Saínz, 56, is a translator, journalist and democracy advocate in Cuba. His current address is a cell in Holguín prison, nearly 500 miles from his family, which is permitted a two-hour visit every three months. Mr. Fernández Saínz shares his cell with 47 common prisoners, one of whom beat him into unconsciousness in December.

Mr. Fernández Saínz, who is serving a 15-year sentence, is one of 75 journalists, economists, librarians, human rights workers and doctors arrested in Cuba last March and later convicted. That crackdown jailed most of the nation’s dissidents, whose supposed crimes include writing for Web sites based abroad, setting up independent libraries that offer books by the likes of Vaclav Havel and the Rev. Dr. Martin Luther King Jr., and collecting signatures, in accordance with the Cuban Constitution, to petition for a referendum on fundamental reforms.

Cuba is not content to deprive these men—and one woman, the prominent economist Martha Beatriz Roque—of their liberty for what will be, in some cases, the rest of their lives. They are being held in hellish conditions, in

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many cases as far from their families as Cuba allows. They are in rat- and insect-infected cells, get starvation rations and are forced to share space with violent criminals or to suffer in solitary confinement. Their average sentence is 19 years. Some of the prisoners' wives have been warned that they will lose their children if they continue to protest their husbands' detentions.

Sadly, foreign criticism of the Cuban government's repression has been muted. Last year at the United Nations Human Rights Commission, which meets annually in March and April, the members voted 31-to-15 against a resolution criticizing the crackdown. Instead, the commission approved a mild statement calling for a human rights monitor to visit the island; Cuba has simply not let her in.

The near appeasement of Fidel Castro is in large part due to the outside world's fury at Washington these days, which the Communist regime masterfully exploits. The U.N. Human Rights Commission in Geneva is again considering whether to condemn the Castro regime. The continued imprisonment of Cuba's brave independent thinkers is a totalitarian crackdown by a brutal dictatorship. President Bush's unpopularity aside, the international community must recognize this truth."

I remember well when this crackdown in Cuba took place. It took place when President Bush ordered the American troops into Iraq. The whole world was focusing on Iraq when Castro locked all these people up. Of course, it would have made headlines at another time, but it did not make headlines then. Nobody is saying boo. Castro is a thug and a dictator. He ought to be condemned by everybody. There is no way anybody can sit here and defend this. Fact! You cannot defend him; not without compromising your integrity, Madam President.

I would go further, Madam President. If Fidel Castro wants to sue me, let me say publicly here and now: No problem, Fidel. I will not for anything I am saying here plead parliamentary immunity. Come in the courts of Trinidad and Tobago and face my lawyers' cross-examination! Come! I would love to cross-examine you. [*Interruption*] Yes, Madam President, of course. Of course, but I wanted to make that clear. What I am saying here I am quite prepared to say outside. And take it as I have said it outside.

The point is that we in this Senate must always be on the lookout not to allow ourselves to be seduced by people like Idi Amin, Robert Mugabe, Mombasa, Fidel Castro and others. Do you know what is going on nearby in Venezuela? They are going through the tubes now. Businessmen who signed—

**Sen. Dr. Saith:** Madam President, I rise on a point of order. I have no problem with the hon. Senator going on a public platform. It is a convention within the Senate that we do not—where it is a friendly government with whom we have a relation—abuse the head of state. I think that that convention should be followed. That does not prevent the hon. Senator dealing outside with Mr. Castro and others. I think that the convention has to be observed.

**Sen. R. Montano:** Very well, Madam President. I was not aware of the convention. I apologize to the Senate and move on.

My point is a single one, and that is, that it has been an international humanitarian principle that persons accused of political crimes of whatever nature ought not to be extradited. There is sufficient case law on record, which will allow it, if such a person wanted to avail himself of the defence of a political crime. There is sufficient case law on record dating back to 1870 to date. This would allow the courts of the Republic of Trinidad and Tobago to make an informed decision as to whether or not what a particular person was saying was right.

In other words, I am being persecuted and prosecuted only because of my political beliefs and if I go back home, I am going to be killed, locked up or tortured. There is sufficient case law so that we do not need to give undemocratic governments this particular weapon. We simply do not need to do it.

My argument this afternoon, hon. Senators, is that putting this particular clause in is basically handing any person who wants to come to Trinidad and Tobago and who is fleeing political persecution—and it does exist—to be got at, and we must not allow that.

I have no quarrel with the rest of the Bill. I understand what the Bill is about. I understand the necessity to modernize the law. I understand everything. But the democrat in me rises up; the liberal in me rises up and I say to Trinidad and Tobago and all those who listen: We must not allow ourselves ever to be used as a tool by any dictator.

Remember one of the tenets of democracy is that it is better for ten guilty men to go free than for one innocent man to hang. We do not know who might come here tomorrow, fleeing a brutal and terrible dictator. That dictator may come and say: “Hello, guess what? The Senate of Trinidad and Tobago said, ‘Yes, let us extradite him.’” And the person has no defence because his crime was political. “Well, come baby doll, you are going down.”

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It cannot be right, Madam President. If the Government undertakes to remove this section of clause 7 from the Bill, then I would urge the Senate to vote for the Bill because I understand all the arguments—everything the Minister has said. Maybe there is a point in the other clauses that I have not seen, but this one I felt was so important. It was so glaring and the issue is and has to be: Are we prepared to hand over somebody to a government that says that my offence is really political in nature? “They are accusing me of murder, conspiring to murder and so forth, but the fact is that I am an innocent man?” There is no way in a thousand years that I would go to—let us make up a country—say Lower Slobovia because I do not believe that such a country exists; and there is no way that I would get a fair trial. The brutal dictator there, Robert Fidel—let us make up a name—will torture and kill me.

If we pass this Bill with the part of clause 7 that I am objecting to, he will have no defence at all. It will be, “Come! Out! Lower Slobovia!” And the next thing we hear is that the person has been hung, drawn and quartered and maybe years later we find out that he really was innocent. You cannot trust dictators. I urge the Government to think again. We are not against the Government in this matter. We are not against making good law, but this law is dangerous law and this law will assist dictatorships.

For the record, I intend this afternoon, if this Bill goes and the Government refuses to withdraw it, I intend to call for a division because I believe that hon. Senators should let their names go down in history as to whether or not they are going to allow this tool of dictators to go on to the statute books.

Thank you very much.

**Sen. Dana Seetahal:** Madam President, in 1985 the present Act, soon to be the parent Act, was passed to replace the 1881 Fugitive Offenders Act, which dealt with extradition among Commonwealth countries; and also with the intention of replacing the 1870 Extradition Act, which dealt with foreign territories.

Insofar as extradition in relation to Commonwealth offences was concerned, that was effected shortly after 1985 because an Order was passed which listed all of the Commonwealth territories. However, it was only in 1996 that the first Foreign Territory Order was passed and so the United States fell under the purview of this Act and subsequently the Netherlands.

The Act is well-intentioned and is to update the process of extradition and to eliminate a lot of the old extended processes that needed to be followed to have an extradition. What is extradition? It is a process through which another country



asks this country, Trinidad and Tobago, to return a person who has either been convicted of an offence in that country or has been charged with an offence and there is a like offence for that kind of conduct in Trinidad and Tobago. The reverse is also true—where we ask another country to return an offender who is charged with or convicted of an offence here. It does not matter that the offender we are asking for might be the person who is a citizen of the other country and vice versa. It does not matter, for instance, if the United States asks us to return John Mobota, who might be a citizen of Trinidad and Tobago and who has committed an offence or who has been charged with an offence in the United States. That is part of international exchange—the part of co-operation we want to see in fighting crime everywhere.

Having said that, I need to say that this amendment Bill is seeking, not just to clarify, but also to make the process simpler. Before, for some reason, the Extradition Act, 1985 had a list of offences which were extraditable. In the last 20 years or so there have been so many new offences; many of them because of technology—computer offences and many things that have not been included. So we have to have an Order to include them and there have been problems with that.

What is now being proposed is that we get rid of the schedule altogether. Once the offence is one for which the penalty is death or at least 12 months imprisonment, then it is an extraditable offence. It does not matter whether it is murder, manslaughter or larceny—it is extraditable. Once the other conditions are satisfied. No right-thinking person in Trinidad and Tobago, the United States, England or anywhere quarrels with that. I think therefore that the proposal to repeal sections 6 and 7 of the Act should be agreed to by everyone. I think, from what I heard Sen. R. Montano say, that the Opposition is in agreement with that.

The next point in this Bill is that there is provision in clause 7 to amend section 8. Section 8 of the Act deals with the whole issue of offences of a political character and we heard Sen. R. Montano on this. In effect, it is saying that a person shall not be returned even though there might be these arrangements or treaties and the Act. A person shall not be returned, or he can access the court for judicial review or habeas corpus, if the offence in respect of which he has been charged or convicted is of a political character or if the request or the return is made on account—and we have it in the old Act—of his race, his religion, nationality or political opinion. Then there is a third section dealing with the question of political opinions.

What is sought is to amend that section dealing with the request for his return made on account of his race, religion and so on to extend a further protection. I do

not think anybody can disagree with that. If the request is—we are now saying—made on account of his, not only race, not only religion, but also his sex, gender and sexual preference, then we should not allow it. In other words, if, say somewhere in the Far East, it is an offence for someone just to admit that he is homosexual and we are asking that that person be returned, then there is no way on that basis alone, it can be done. The only problem I have with this is that I see the words “sex” and “gender” and I do not know what is the difference. In life there might be a difference, but for the purposes of this Act I think we mean “gender” and not “sex”.

The second point—and this is where I think Sen. R. Montano has many concerns, which I share—is on the question of political character. As it stands under the Act, a person should not be returned if the offence is one that is of a political character.

**3.00 p.m.**

The existing Act, at section 8(7) states:

“The reference in this section to an offence of a political character does not include—

- (a) an offence against the life or person of a Head of State, or of his spouse,...

or an Act declared, by international convention to have the force of law, something that we cannot have any quarrels with. When international convention says it is not of a political character, then that is okay. The problem here is, what is being sought is that a person charged with murder, manslaughter, sexual assaults, inflicting grievous bodily harm, kidnapping, abduction, hostage taking and using explosives—all serious offences—cannot successfully claim that it is political and should not be extradited. In other words, right now, in respect of any offence, if someone from the United States says: “We want”—I was going to call the name a Muslim leader—“Imam “X”, because in our law, it is an offence because we have our new patriots Acts and persons should not do these things. It amounts to treason or it encourages hostage taking.” The Trinidadian says: “That is of a political character because I made a speech and said that I think the United States is wrong in putting people on a list.” He cannot do that again if this Bill is passed. In other words, whatever the serious offence you are charged with, you cannot argue. You are now stopped, if this Bill is passed as is, from arguing that these are of a political character, even if they are. Even if you have evidence that

they are, if this law is passed, you are prevented from doing so. I really do not think that that could have been the intention. I think maybe it was enthusiasm that encouraged the Government to seek to include that. Unless there is something that I have not read somewhere in the Act, with rational thinking, they may seek not to have that clause. This is my view. I will pass on from that. If there is some explanation, then I guess we can talk about it further.

The third point is relating to something I support. There is now a new clause 7, which says that if a person is discharged of extradition proceedings, the Attorney General is not prevented from coming back again. I entirely agree with that. Clause 6 states:

“For greater certainty, the discharge of a person under this Act does not preclude further proceedings...”

If it is that from some technicality—there are lots of technicalities. I remember in 1993, there was the Lolita Saroop case. For some reason the warrant was signed by the Minister of Foreign Affairs, when it should have been signed by the President, under that Act. Although there was evidence that she had 24 shampoo bottles filled with liquid cocaine, she was, on that basis, sought to be prosecuted in St. Croix, the order was discharged. Thankfully, we got a second warrant immediately issued and she was arrested. This new section 7 that sought to be included would take care of that. It states:

“For greater certainty...”

Under the law, I think we can do it already. I think that is a good idea that the words “for greater certainty” be included. If you have been discharged from something minor, then there is nothing to prevent the State from coming back. The whole thing is to ensure that people who are charged and convicted of an offence should not go back to their home and seek to avoid the penalty. They should not hide out in the country of their birth or citizenship.

There is another matter. When I looked at the Attorney General’s proposed amendments, which I have just gotten, I see included something I wanted to raise. I think there should be included in this Bill, as in the original parent Act, that the Act would apply to extraditable offences committed before, as well as after, the commencement of this Act. There should be no objection to that. It is not that we are saying that a penalty or anything of that nature is imposed for past conduct. We are merely saying that if someone committed an offence in 2002, and maybe for some technical reason, under the old Act, he would not have been extradited because it might not have been an extraditable offence, if, for example, we have a

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new offence created in the Computer Misuse Act, if this Act is passed it takes care of all offences. There should be no problem with extraditing him simply because the offence was committed in 2002. The request we are dealing with is 2004, under the new Act. There is no question of any double jeopardy or unlawful retrospectivity, because the Government would be showing that it is definitely proposing to make this Act affect those past transactions, so it should be acceptable.

Those are my thoughts and contribution to this Bill. I merely want to endorse the other provisions, particularly the provision dealing with evidence and documents. Those provisions are valid and beneficial provisions because they update the whole Act in relation to evidence and the extradition procedure.

Thank you very much.

**Sen. Wade Mark:** Madam President, I rise to make a small contribution, limited if I can, to this very important Bill that is before this honourable Senate: the Extradition (Commonwealth and Foreign Territories) (Amdt.) (No. 2) Bill, 2003.

The Explanatory Note states that the Bill seeks to amend the Extradition (Commonwealth and Foreign Territories) Act, 1985 (Act No. 36 of 1985). The amendments are aimed at modernizing and simplifying the Act against new forms of criminal activity and to cater for increasing international obligations, while preserving the fundamental rights of the alleged fugitives.

In his contribution last week, the Minister of Foreign Affairs, based on the *Hansard*, indicated that one of the objectives of this measure was to allow the Government to honour, in a very efficient manner, its international obligations. This particular Bill that is now before us, is seeking, as the Explanatory Note says, to modernize and simplify ways and means of dealing with the new forms of criminal activity and, in the process, cater for increasing international obligations. If we are dealing with the extradition of citizens from our country to other jurisdictions as well as vice versa, it is important and almost obligatory on our part to find out and determine whether this Act, when it becomes law, with the necessary resources, is going to be allocated to ensure that the institutions that are required to execute and implement this law are in place and are working.

What it boils down to, essentially, the question of extradition is the whole issue of the administration of justice in a country. The reality is clear; the administration of justice in Trinidad and Tobago, in many respects, is in shambles. You will find that the institutions that are required to achieve what the Minister would like us to achieve—and based on the Act itself—are more or less

neglected. I do not understand how the Minister of Foreign Affairs would expect this Act to be properly effected and implemented, if the state of the administration of justice in this country is in the current mess that it is in. I will go on to tell you what I mean.

Madam President, if you have to extradite anyone from Trinidad and Tobago to another country—we are seeing two matters: one is currently before the court and the other we saw in the newspapers only this morning—a number of institutions are involved in this particular process. We begin with the Police Service. The police would have to apprehend the individual who is being sought by another jurisdiction. That person, once apprehended by the police, has to be taken to the Magistrates' Court, as we are at, at the moment. The Office of the Director of Public Prosecutions is also involved, as well as the central authority, which is located in the office of the Attorney General of the country. Of course, the prisons authorities are all involved in extraditions, not to mention the High Court and the Court of Appeal.

**Sen. Jeremie:** On a point of clarification. The Director of Public Prosecutions is no longer involved in extradition matters; it is the central authority.

**Sen. W. Mark:** I know that we have passed that Act. I have my own views about that, but that is another matter. I understand that you are now the individual. I am not dealing with you per se. I am dealing with the office. As my colleague said, you may have persons who might have intentions that may not be all that honourable in the future. When that happens, there is an abuse of process taking place. I will deal with that later. I was also referring to the Prisons Authorities. They also have a very important role to play in this matter. Someone who is being sought by the Americans has now been incarcerated without bail. That matter now involves the prison authorities. The prison authorities have a big role to play in this matter. Of course, the High Court and the Court of Appeal also come into this process. Extradition is not a simple matter; it is a very complex matter.

When we look at the state of the administration of justice in the country, we would say to you and this honourable Senate, it leaves a lot to be desired. How can we execute our international obligations if, at the home front, our institutions are not working and the resources that are required to allow our institutions to function are not being provided by the administration that currently holds office in the country?

We were just given some revealing statistics. One individual is virtually raping this country. This is roughly based on what the Attorney General said a short while ago.

**Sen. Jeremie:** On a point of order. I did not use the word “rape”. The man provides a valuable service. He is not selling oranges. He has two separate companies, with a number of individuals tracking complicated, financial transactions, virtually throughout the world.

**Madam President:** Sen. Mark, just be careful.

**Sen. W. Mark:** Madam President, when I say “raping”, I do not mean it in that strict sense. What is happening in this country is that one individual has been given \$21 million—[*Interruption*] figuratively, rape. The Magistrates’ Courts in the country are in a state of disrepair. Where are the priorities? If we want to deal with the administration of justice and execute our international obligations, according to this Bill that is now before this honourable Senate, then it is incumbent upon the administration and the Attorney General in this instance, to ensure that all these institutions are provided with the relevant and necessary resources to function. I am not talking about it alone.

When I spoke about the Office of the Director of Public Prosecutions, my colleague rose quickly to his feet to tell me that he is no longer involved in this matter, I was not referring simply to the holder of that office, I was referring to a situation involving the persons in that office. The prosecutors are being underpaid and overworked. They protested under the last Attorney General. I will bring to your attention very shortly the scandal that is taking place in London involving that lady. She is embarrassing the Government in London as well. I have evidence of that, which I will bring to the attention of the country very shortly.

**Madam President:** Come on, Sen. Mark.

**Sen. W. Mark:** I would bring the evidence to your attention very shortly.

**Madam President:** Let us get back to the debate.

**Sen. W. Mark:** We might have to extradite her back here.

**Madam President:** Sen. Mark!

**Sen. W. Mark:** Madam President, in terms of the Office of the Director of Public Prosecutions, it is these people who would have to go to the Magistrates’ Courts to argue on behalf of the State. They would also have to go to the High Court if the matter is appealed. They would have to go to the Court of Appeal if the matter is appealed at that level.

**Sen. Jeremie:** Not in respect of extradition matters. Those matters are handled, as I have said, by the central authority. The general point as to the level

of remuneration is well made. The SRC, as we speak, is contemplating increases in emoluments for those officers.

**Sen. W. Mark:** I am very happy to hear that. That does not take away from my point. There is a matter before the Magistrates' Court now. A man has been incarcerated and it is being argued. If he loses that matter, are you telling me that a citizen of this country, whether he attempted something negatively, would not have the right to go from the Magistrates' Court to the High Court to appeal extradition? He can! He can go to the Court of Appeal as well. The central authority which the Attorney General is speaking about, may have to be reviewed later on. I feel that the Attorney General has too much power. *[Interruption]* We would have to review it.

May I come back to the point of the Office of the Director of Public Prosecutions? I am arguing that prosecutors are needed to argue in defence of the State. The Attorney General has signed an extradition warrant, but he does not go before the Magistrates' Court to argue. Do you know who does that? It is the members, workers and lawyers who are employed as prosecutors, at the Office of the DPP.

**Sen. Seetahal:** Could I just clarify that please? It used to be that there was a representative from the DPP's department. What I think the Attorney General has been saying is that it is no longer so. It is now the Attorney General's office, through the central authority. They have lawyers there. It is not the DPP.

**Sen. W. Mark:** May I ask the question? Maybe I am living on Mars. I read in the newspapers that a gentleman has been arrested because the United States wants this individual. The person was incarcerated without bail and is now before a Magistrates' Court where the case is being heard. Who is defending the State in this instance? It cannot be the Attorney General himself. It has to be somebody from the Attorney General's office who is defending.

**Sen. Seetahal:** Let me just clarify that. What happens in an extradition proceeding is that it is not that anybody is being tried. What we have is an extradition hearing, which is not a criminal proceeding in the meaning of "criminal proceeding" under the Constitution, where the Director of Public Prosecutions has control. The criminal proceeding would be in the United States or England. Here you have a special hearing to commit him for extradition. It is not within the purview of the DPP's office.

**Sen. W. Mark:** There is a special hearing. *[Interruption]* Allow me "nah". Madam President, if there is a special hearing, as my colleague is saying, who is appearing on behalf of the State in this special hearing? That is all I am asking.

**Madam President:** Could somebody answer that for us?

**Sen. W. Mark:** Who is appearing on behalf of the State?

**Sen. Jeremie:** I mentioned several times, it is the central authority in the Office of the Attorney General. I will say more. The reason is that the extradition hearing is not as, Sen. Seetahal points out, a criminal proceeding per se. It is a matter between states. The American Government has made a request of the Trinidad and Tobago Government and the request is made from the Attorney General of the United States to the Attorney General of the Republic of Trinidad and Tobago. I have a central authority which, I believe, was set up under your administration. That central authority, if it feels it necessary, can retain the services of any lawyer to assist.

With respect to the bail point, bail is always within the discretion—in these matters as well—of the magistrate, the judge or the Court of Appeal, in appropriate circumstances. If you have a difficulty with respect to bail, then you have a difficulty with respect to the Judiciary.

**Sen. W. Mark:** Madam President, I have no problem with bail. I was just developing a point and bail came in as an aspect.

**Madam President:** You got an explanation.

**Sen. W. Mark:** He has given me an explanation, but I will still proceed, in terms of my concerns. I am still arguing that a number of institutions are involved. Are you telling me that the prisons are not involved? I say yes. Are the police involved? I say yes. The Magistrates' Court is involved? I say yes, special hearing. I would submit to the point that the Office of the Director of Public Prosecutions is no longer central, but we now have the central authority led by the Attorney General.

The reality I am advancing here is that we need to ensure that all our institutions are provided with the relevant resources. How can we execute our international obligations in a speedy manner, when our courts are dilapidated and leave a lot to be desired? Do you recall sometime ago there was a big strike among lawyers in South Trinidad because of the state of the Magistracy in that part of the country? I am saying to the Government and the Attorney General that we have to focus on that matter very seriously.

When we come to the police service, how many police officers are being trained in extradition proceedings? In other words, they have to arrest people.



One of the things I would like to emphasize is the need for the Government—if this process is to be executed expeditiously as he said—to ensure that there are trained personnel at all levels in the society.

I believe one of the things we have to do very quickly—I am glad the Minister mentioned it in his presentation. I looked at his notes. The Minister said that there is no existing extradition treaty between Venezuela and the Republic of Trinidad and Tobago. Discussions are now taking place to establish one. That is what I understand from what he said in the *Hansard*. I think we need an extradition treaty with Venezuela quickly. Our citizens are being murdered in the Gulf; two have died so far.

Apart from reading something in the newspapers, the Minister of National Security and Rehabilitation has assumed a certain silence. At least when we had the previous Minister he used to be visible dealing with roadblocks. He took rides in helicopters. At least he was visible. He made statements here and there. Even though nothing was taking place under his watch, he gave the appearance that something was taking place. I have to compliment him for that. The new Minister of National Security and Rehabilitation is a silencer. He says nothing on anything of national importance affecting people of this country. Would you believe our Constitution gives us the right to liberty and life, and ordinary people are seeking to eke out a living because this Government has refused to provide meaningful and productive employment for them? They are on the high seas fishing. They are looking for fish to fry. Pirates, who these fishermen are saying are from Venezuela—I do not know. Madam President, I am just reporting to you what the fishermen are saying. They are being held up at gunpoint on the high seas, within our territorial waters. They are being murdered openly and the Minister of National Security and Rehabilitation has not said a single word in defence of these innocent citizens that have perished.

**Sen. Jeremie:** Relevance, Madam President.

**Sen. W. Mark:** Relevance? Let me tell you how relevant I am. Madam President, may I continue?

**Madam President:** I think Sen. Mark, you need to tie up where you are going. We are trying to get the gist of where you are going. I would not rule you irrelevant, but I think you need to tie up.

**Sen. W. Mark:** Madam President, the point I was trying to link is, here it is we are dealing with the Extradition (Commonwealth and Foreign Territories) (Amdt.) (No. 2) Bill and the hon. Minister, in his presentation, it is in the

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*Hansard*, mentioned that there is no extradition treaty between Venezuela and the Republic of Trinidad and Tobago. I am making reference to that statement that was made by the hon. Minister. I am not going all over the place. I am responding to a statement that the hon. Minister of Foreign Affairs made in his presentation. In response to that statement, I am calling for the speeding up of this treaty, because we have criminals to extradite from Venezuela to answer for murder in this country. That is what I am arguing. We need to bring these criminals to justice because innocent citizens are losing their lives on the high seas.

**3.30 p.m.**

Madam President, I want to ask the Minister of National Security and Rehabilitation, what efforts and measures are being taken to protect our citizens, who are eking out a legitimate living in this land. That is why I am raising the point. I am sorry that my colleague, on the other side, could not see the relevance. They do not care about the persons who died. That is clear to me! They do not care about them! *[Interruption]* Well, that is what I want to assume. I feel very passionate about this matter. When people died in those circumstances, I believe that the Government of Trinidad and Tobago should speak out; the Minister of Foreign Affairs should speak out and the Minister of National Security and Rehabilitation should speak out.

Madam President, one cannot tell me that in the absence of an extradition treaty between Venezuela and Trinidad and Tobago, citizens could be picked off like “dongs” or oranges by pirates in the Gulf! Two weeks ago, I asked a question about piracy on the high seas. My colleague, the Minister of National Security and Rehabilitation, responded to that question, and two weeks later, two citizens were murdered on the high seas! The Coast Guard needs to be equipped—there should be more boats for the Coast Guard. *[Desk thumping]* I want to indicate to the Minister that whatever he hopes to achieve with this Bill, he must give the necessary resources to the institutions in order for them to do the job, otherwise this Bill would just be on paper.

Madam President, I want to refer to clause 7(c)(9) of the Bill. I think we ought to be consistent with respect to policy. In clause 7(c)(9), the Attorney General is given the power and I quote:

“The Attorney General may, by Order subject to a negative resolution of Parliament, amend the list of offences referred to in subsection (7).”

I think that is too much power for the Attorney General. I am not dealing with the hon. Attorney General, John Jeremie, as a person—he is not a politician; he is

just coming and going as the PNM is coming and going—but we want to deal with the office because we know that we are all transient and everything is temporary; nothing is permanent.

**Sen. Seetahal:** May I just ask Sen. Mark for a minute indulgence? Madam President, through you, Sen. Mark was talking about clause 7 of the Bill where, “The Attorney General may, by Order subject to a negative resolution of Parliament, amend the list...”. I think that the list that we are talking about is the list of political offences. If it is the Opposition’s contention that there should be no list of political offences, I do not think that the whole matter would go.

**Sen. W. Mark:** Sen. Seetahal, I understand the point that you are making. I want to agree with my colleague and friend, but we have to agree to disagree on some measures, but that is what democracy is about. When one looks at clause 7 in the Explanatory Note it says:

“Clause 7 would amend section 8 of the Act to prevent an accused person’s return to a declared Commonwealth territory or declared foreign territory if it is determined that the request for his return is based on his sex, gender or sexual preference. The section would also be amended to provide that persons accused or convicted of an offence against the life or person of a Head of Government or of a Minister of Government or of certain offences such as murder, manslaughter and kidnapping, would not be able to object to their extradition on the ground that the offence is of a political character.”

Now, why would we want to extradite a citizen of this country without giving that person an opportunity to object to his extradition? Why do we want to do such a thing? I really believe that the hon. Minister of Foreign Affairs should tell the country why he is going down that route.

In this day of anti-terrorism and global terrorism, we have seen where BWIA pilots have been incarcerated—almost held against their will, because they were on a no-fly list. I have heard of a very important individual of our country who works at the National Petroleum Marketing Company who was stripped at the United States of America airport. That individual was told to take down his pants—I would not call his name. It was a total embarrassment to him.

In terms of terrorism, everyone seems to be a suspect. How could we put this kind of licence into legislation where another foreign country could suspect a citizen? In this particular clause the Government is saying that no one would be able to object. If, for instance, you are determined to be “X”, we are being told that you would be extradited automatically. And as the Minister indicated,

sometimes there would be a special hearing, but it does not mean that you would not be going. I would really like the hon. Minister of Foreign Affairs to tell us in a detailed way what is the meaning and the implication of this clause. So, if someone were charged for murder, manslaughter or kidnapping that person would not be able to object to his extradition on the ground that the offence was of a political character.

Madam President, you know what happens in countries? I believe that it is a very dangerous trend that we would be setting if we proceed along those lines. A citizen ought to be tried and convicted in this country. Of course, if someone commits grave acts like drug trafficking or peddling drugs and that is an international arrangement, what is being said here is that if the other jurisdiction is of the view that this matter was of a political nature—let us say, for instance, they want Sen. Sadiq Baksh—because we know of an instance where Sen. Baksh's home was invaded and missiles and cocaine were planted in his water tank and up to this day, not a single person has been arrested. Suppose the plot that was executed—we understand in a political headquarters in Port of Spain—and Sen. Sadiq Baksh was charged for treason, he would have been in jail today because there would have been no bail for him and, in addition, Sen. Baksh is a Muslim. So, this is a political matter that has happened and they want him to come across to be tried because his name is down.

Madam President, this is a very dangerous clause because our citizens could be flown out from this country to another jurisdiction, because of the power of that jurisdiction. The power says that I want "X", because "X" is charged for a certain offence and "X" is somehow associated with some activity abroad—sometimes these matters are invented. We saw where mistakes could be made; we saw where people were held against their will; we saw where religious people who were going to a religious exercise in the United States of America were sent back home. They were held against their will! I believe that the Minister of Foreign Affairs needs to pay attention to this particular clause because this clause could be a bit dangerous.

There is another clause that I would like to look at. You see, the Office of Director of Public Prosecutions is under a lot of stress, both in terms of the workers, lawyers and remuneration. The Attorney General said that something is on the way, and we are hoping that very shortly those lawyers would be compensated and rewarded for their duties and the hard work that they have been doing for the Office of the Director of Public Prosecutions and the country as a whole.

Today, I would like to call on the Attorney General—seeing that he has a working relationship with the Office of the Director of Public Prosecutions and he has so much power, as the central authority—to nudge the Director of Public Prosecutions (DPP). In this particular instance, I want to refer to the Commissioner of Police where he has submitted a report—

**Sen. Jeremie:** Madam President, just for clarification, it is not possible, constitutionally, for me to nudge the DPP. He makes his own determination with respect to prosecutions. All that I could do is to compliment him on a job well done when he makes his own independent judgment. [*Desk thumping*]

**Sen. W. Mark:** Well, if the Attorney General cannot nudge him, I would make a public appeal to him. I think the time has come for the DPP to come clean on an issue that is engaging the national community for some time now. We would like the DPP to issue a public statement on the matter involving the Bajan fishermen who were caught fishing illegally in our waters. When these fishermen appeared before the courts, the prosecutor told the courts that he had instructions not to proceed with the matter. We are asking the DPP that since the Commissioner of Police has tendered his report to him, the Senate of Trinidad and Tobago would like to know the outcome of those proceedings. What is the content of that report? It is about two months now that this matter has been going on. So, I call on the DPP to issue a public statement on this matter and to clear the air once and for all. A Minister whose name has been bandied about has since denied the matter. It is not fair to that Minister because his name has been called repeatedly as the one who directed a discontinuation of the proceedings. I think the DPP owes the country and the Parliament a quick response with respect to this matter, and let us clear this matter once and for all. [*Desk thumping*] I want to make that appeal, since the Attorney General cannot nudge or even talk, but just compliment the DPP. He is a great Attorney General and I wish him well.

Madam President, if one goes to clause 8(b)(8) of the Bill, it reads:

“Where the Attorney General withdraws an authority to proceed after proceedings under section 12 have begun, the Magistrate shall discharge the person and set aside any order made with respect to the remand of the person in custody or on bail.”

Now, I would imagine that it comes back to the central authority. We could have a contamination of the process, but we know that there is a law which established the central authority. I am just raising this matter for your consideration. Section 90(3) of the Constitution says:

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“The Director of Public Prosecutions shall have power in any case in which he considers it proper to do so—

- (c) to discontinue at any stage before judgment is delivered any such criminal proceedings instituted or undertaken by himself or any other person or authority.”

Is the DPP the only one under our Constitution who has the power to discontinue at any stage before judgment is delivered any such criminal proceedings instituted or undertaken by himself or any other person or authority? Would that include the central authority?

**Sen. Jeremie:** The central authority does not institute criminal proceedings. The DPP has sole authority with respect to bringing criminal proceedings and terminating criminal proceedings. The question does not even arise.

**Sen. W. Mark:** I am just dealing with a principle here. I am asking the question whether the Attorney General of this country, who is a politician—well, he is not a politician and he said that publicly. He is a non-politician, but he is always acting in a political capacity. Madam President, that is a contradiction. The hon. Attorney General is given the power to withdraw an authority to proceed after proceedings under section 12 have begun. I am saying that the Attorney General has that power. What I found strange about this matter—and as I said, we know that it is a law that has been passed, but on principle, it is a kind of power that on reflection, I would have preferred not to give that power to the Attorney General. You see, it is not about my hon. friend, Sen. John Jeremie; he would come and he would go, but there would be another person in that office and that is the danger.

**Sen. Jeremie:** I am just clarifying for the tenth time that extradition proceedings are not criminal proceedings. That is the beginning and the end of the point. So, the power of the DPP in relation to criminal proceedings is not at all impaired in relation to extradition matters. Where the proposed Bill refers to proceedings, it refers to extradition proceedings. That is all.

**Madam President:** Hon. Members the speaking time of the hon. Senator has expired.

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

*Question put and agreed to.*

**Sen. W. Mark:** Well, in a democracy you must have disagreement. That is very healthy. So, I am not surprised that one of my colleagues on the Government Benches wants me to continue. The Minister of Foreign Affairs, Sen. The Hon. Knowlson Gift, made mention in his presentation of the need for us to tackle crime aggressively. He did mention that in any country, if crime was out of hand, not only would there be political and economic instability, but the quality of life itself would be in question and I agree with him.

Today, in Trinidad and Tobago, even though we are dealing with extradition proceedings, we have to recognize that it is connected to the whole issue of justice. We need to address the question of modernized criminal activity. I think that the Minister was very conscious of that fact, and I believe that the Government of Trinidad and Tobago has to take more aggressive measures. The Government should forget about the Police Service Reforms Bills. I think those Bills should be removed from the Order Paper. The Government could take its own measures to ensure that the question of stability, harmony and peace in this society is addressed. The Government could do so—as it seeks to meet its obligations under this particular measure—by ensuring that the police are provided with the equipment and the necessary resources that are so badly needed to protect our citizens.

Madam President, do you know that about 59 persons have already perished in this country? In this country, every 30 to 34 hours, someone is being murdered in this land. I believe that when the hon. Minister of Foreign Affairs spoke of the modernized criminal activity that is taking place—not only in Trinidad and Tobago, but also in many other jurisdictions—this calls for a new approach. The Minister says that the Government is attacking this matter aggressively. The Minister did not give us any information in his presentation as to how the Government is attacking the question of crime aggressively in this land. If we do not tackle this question of crime aggressively, then the Government would be hard-pressed to deal with this particular measure that is before us.

I would like to call on the Government to look at clause 7 very carefully. Whilst we do not have any objection to some of the areas in the Bill, we would like the hon. Minister to tell us—in no uncertain terms—what are the implications in clause 7. We have our views about this clause 7, and maybe we are wrong, but the Minister could correct us. If we are not corrected on clause 7, we would have difficulties in supporting this particular clause in the Bill and, by extension, the entire Bill. So, we would like the Minister to give us some proper explanation with respect to this particular clause, otherwise we would have difficulties in dealing with this matter.

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Madam President, I would like to thank you for allowing me to make my contribution on this matter. I know that the hon. Minister of Foreign Affairs has provided us with some details as to the purpose of the Bill, and we have sought some clarification in some areas. I hope that the Minister would be able to provide us with the areas of clarification that we need, if we are to support this measure. I am sure that the Minister would be able to provide us with the appropriate explanation and clarification to ensure that innocent citizens, who might be convicted on matters in this country, are not taken out of this land.

Madam President, we are going into a new realm where people could be extradited on political grounds. This is a sovereign state. We are not puppets on appendage of any other state. We must try, convict, sentence and, if necessary, execute citizens who have committed crimes in our Republic. I think it is highly dangerous for a government of another jurisdiction to dictate to this country, through legislation, to have citizens of this country extradited to their jurisdiction for a political trial.

**4.00 p.m.**

I think that is a very dangerous precedent we are establishing here and we are not a united nation. We have not reached the point of a united world with one world government, we still have sovereign nation states and, despite the abuse of power, we must be in a position to stand our ground. Caricom, in spite of whatever limitations and weaknesses it may have is trying to stand its ground on many issues which I would not go into right now.

I call on the Minister of Foreign Affairs to remove clause 7 if, in his opinion, he cannot provide us with a convincing explanation at this time. He can put it in abeyance and let the Bill pass without it and, maybe, at a later date we can deal with it, but for the moment, I am not convinced that this particular clause has been properly thought out and we need to have clarification on this matter before we commit ourselves. The worst crime we can commit against our citizens is to pass legislation without properly thinking it through, and this is one measure we need to think through carefully before it is passed.

Madam President, I thank you, and I look forward to an explanation and clarification from the Minister of Foreign Affairs, Sen. The Hon. Knowlson Gift.

**Sen. Parvatee Anmolsingh-Mahabir:** Madam President, given the present crime situation in the country, I wish to congratulate the Government for introducing this legislation at this time, and to make a few comments on some of the new provisions.



Every day we see and hear in the media, news of the discovery of drugs, arms and ammunition within our country; both on land and on the sea. It appears that most of these are coming from outside our territory. Within this region, the Republic of Trinidad and Tobago can be considered a strategic and relatively large and developed country, which makes us an attractive location for the criminal element; therefore, we must take steps to limit these activities.

Trinidad and Tobago must not become a place where criminals are free to either hide away, or have a base from which they can conduct their illegal activities affecting this, and other countries. When they are discovered here, there must be a swift and efficient procedure for their extradition.

The provision at clause 5 of this Bill automatically makes an offence an extraditable one once it carries a certain minimum penalty in the territories concerned. This is a step in the right direction. Why should we be tied to a list of extraditable offences? If an offence should be on the list, but for some reason is not, then the fugitive cannot be extradited. The criminals would be laughing at us.

Today, many new forms of criminal activity are taking place especially with regard to fraudulent electronic transaction. Therefore, we need to clog the old "list" loophole. A new offence might be created, there might be a delay in coming to Parliament to add it to the list and because of this, an offender can get off. This is unsatisfactory; therefore, automatic offences are preferable.

Also, the same clause 5 will now include offences to which we are obliged under an international convention to establish jurisdiction over, and which we have also established as offences locally. This is indeed a commendable extension and quite in keeping with the spirit of cooperation amongst countries which are at the heart of the whole concept of extradition.

However, I would hope that the other contracting states also ensure that these extraditable offences are within their jurisdiction so as to enable this country to extradite someone who is in their country and has been accused of one of the convention offences.

Further, Madam President, it could be of tremendous benefit to this country if, in addition to returning the person, we can have an arrangement whereby any moneys or property which the person might have brought or sent over to the country—in connection with the offence, of course—could be repatriated as well. It would be a travesty of justice if the person is returned here, receives little or no punishment, and is soon able to enjoy the spoils of his crime. I do hope that this type of situation extended to all extraditable offences could be addressed.

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I note also that the Bill seeks to speed up the extradition process. At clauses 10, 11 and 12 provision is made for the earlier return of the fugitive and early hearing of matters in the High Court and the Court of Appeal. The less delay there is in processing of matters, the less likelihood there should be that the fugitive's rights were denied. These are really useful provisions.

I see at clauses 8, 9, and 14 that elaborate provision is made for the submission of documents in support of the request for extradition, and the Explanatory Note states that these are in fact simpler requirements than those which obtain at present. Until recent times, we had not heard of many requests for extradition from this country. Since we now seem to have an increased number of requests to process provisions that can speed up, the processing must be welcomed. This is provided that we obtain all the information required and that it is accurate and liable.

As a layperson, I view as complicated the legal wrangling over admission of documents to be tendered into evidence. We must ensure that we do not sacrifice the quality of justice we dispense on the altar of expediency; otherwise the guilty could escape punishment through some technicality.

In conclusion, I think our protective and security services are at present stretched to their limit in attending to crime within this country. To come with additional criminal activity without having the supporting legal infrastructure in place will make the situation totally unmanageable.

I believe that the amendment suggested by this legislation under consideration will go a long way to assist the authorities in ridding our country of external, criminal elements in a timely and efficient manner. Consequently, I have no hesitation in supporting this Bill, subject to the amendments, especially clause 7 as suggested by my colleagues.

Thank you.

**The Minister of Foreign Affairs (Sen. the Hon. Knowlson Gift):** Madam President, I have taken note of the multiple observations made by our colleagues on the other side and I am quite appreciative of the suggestion made by Sen. R. Montano regarding reference to other friendly governments with which Trinidad and Tobago deals within the Caribbean. I note the—*[Inaudible]* he has agreed to make regarding those references, but I am wondering whether he might go a step further—because I know he is a reasonable and rationale man—to have the record expunged as far as the usage—

**Sen. Dr. McKenzie:** Madam President, may I ask the hon. Minister to speak more loudly? I cannot hear what he is saying.

**Sen. The Hon. K. Gift:** Thank you, Madam President. I hear the Senator. As you know, we live in a very thriving democracy so the question of the references to dictatorship and tyrants and so on, would not naturally apply to Trinidad and Tobago—certainly not under this present administration—so I would proceed to the other areas of comments that I need to make.

Sen. Seetahal made some observations regarding some ambiguity, if not repetition, in the section dealing with sex and gender. I believe there is something superfluous there in referring to sex, gender, as well as sexual preference. So the substitution or deletion of one of those two words is a reasonable one.

Her comments on the applicability and timing of this new Bill insofar as retroactive characteristic is concerned is also very relevant. In other words, the proposal is to take into account crime committed during the period of the application of the Bill, and I do take her observation on that.

Sen. Mark asked if this Bill is passed whether the Trinidad and Tobago Government has the resources to make it work. He referred specifically to resources that would be needed at the institutional level: the police, prison, magistrates, the High Court, et cetera. I wish I could give some more specifics but, I can say that insofar as the provision of resources is concerned, I have every reason to believe that once this Bill is passed, and, in an attempt to make the law more efficacious, that all the necessary resources would be provided.

In fact, I have just returned from a meeting held in Suriname and one of the initiatives which the Government took to the leadership of the delegation attending, was to approach the European Union for specific increases of funding to meet the requirements of Trinidad and Tobago's security aspirations. So that is something that is very current on the discussion agenda.

Even further to that, there is also a planned meeting in London in May at the invitation of the Foreign Secretary to further the discussions on the provision of security requirements, finance wise, to meet the new demands of Trinidad and Tobago and beyond. So this is to reassure the other side that indeed it is priority on our agenda.

Sen. Mark also referred to the question of the non-existence of an extradition treaty between Trinidad and Tobago and Venezuela. He is correct in that assertion and, as we know, there is a very active bilateral agenda between both

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countries and the question of an extradition treaty is very high on the priority list. Notwithstanding that we do have instances where when extradition was required from Venezuela, such extradition did take place to the benefit of the Trinidad and Tobago legal and judicial system.

**Sen. Mark:** Sen. Gift, on a point of clarification, what steps—if any, have been taken, that you are aware of—to apprehend those pirates from Venezuela who have committed acts of murder against our citizens on the high sea? I would like the Minister of Foreign Affairs, or the Minister of National Security and Rehabilitation to tell us.

**Sen. The Hon. K. Gift:** Madam President, this is a question which might more fittingly be replied to by the Minister of National Security and Rehabilitation, but I do say however, that as far as foreign affairs implications are concerned, that the Ministry of Foreign Affairs is actually investigating the matter in association with the Ministry of National Security and Rehabilitation.

Madam President, I beg to move that the Bill be now read a second time.

*Question put and agreed to.*

*Bill accordingly read a second time.*

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

*Senate in committee.*

*Clauses 1 to 6 ordered to stand part of the Bill.*

*Clause 7.*

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

**Sen. R. Montano:** Madam Chairman, Sen. Seetahal has some amendments to clause 7 which says:

Delete the word “sex” in subsection (a) and in section 7(b)(ii) and 7(b)(iii) and subsection 7(c).

My amendments are the same so I would like to withdraw mine and deal with hers. Assuming the Senate agrees with her amendments, then we would have to delete in subsection (7) the words “as follows” and Roman Numeral (i). My amendments are now minor and it is just an English exercise.

Apart from my minor amendments, I support Sen. Seetahal’s amendments. If her amendments are accepted, then my amendments will flow from hers.

**Madam Chairman:** So are you withdrawing your amendments?

**Sen. R. Montano:** Except for the words “as follows” and delete Roman Numeral (i).

**Madam Chairman:** I understand what you are saying.

**Sen. Seetahal:** If my amendments are accepted, then the Attorney General would have to withdraw his amendments.

**Sen. Jeremie:** Yes.

**Madam Chairman:** We have not reached there yet.

**Sen. Seetahal:** I will propose my amendments having regard to our previous discussion, that clause 7 be amended as follows:

In subsection (a) delete the word “sex”. In subsection (b) delete the word “as follows” and Roman Numeral (i). Delete everything else which would be 7(b)(ii), 7(b)(iii) and clause (c).

Clause (c) would have only had relevance if we had clause 7(b)(iii).

**Sen. R. Montano:** Madam Chairman, just for the record can you read what the amendments are?

**Madam Chairman:** I will. Once it is clarified, I will read it. Clause 7 is amended as follows:

- A. In paragraph (a) delete the words “sex”,
- B. Delete paragraph (b) and substitute the following new paragraph:  
     “(b) in subsection (7) (a), by inserting after the words “state,” the words  
     “Head of Government or Minister of Government;””
- C. Delete paragraph (c).

*Question put and agreed to.*

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

*Clauses 8 to 13 ordered to stand part of the Bill.*

**4.30 p.m.**

*Clause 14.*

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

**Sen. Gift:** Madam Chairman, I beg to move that clause 14 be amended as follows:

- A. In the proposed section 19, delete the words “19A, 19B and 19C” and substitute the words “19A and 19B”.
- B. In the proposed section 19A, delete subsections (3) to (7) and substitute the following:

“(3) A document purporting to have been signed by a judicial, prosecuting or penal authority, or other officer administering a Government Department, of the declared Commonwealth or foreign territory shall be admitted without proof of the signature or official character of the person appearing to have signed it.

(4) A translation of a document into English shall be admitted into evidence only where it is certified by a judicial, prosecuting or penal authority, or other officer administering a Government Department, of the declared Commonwealth or foreign territory and purports to be an accurate translation of the original document.’

(5) A record of the case or supplementary evidence shall not be admitted unless—

(a) in the case of a person who is accused of an extraditable offence, a judicial or prosecuting authority of the declared Commonwealth or foreign territory certifies that the evidence summarized or contained in the record of the case or in the supplementary evidence is in a form that would be admissible at the trial; and

(i) was gathered according to the law of that territory;  
or

(ii) is sufficient under the law of that territory to justify prosecution; or

(b) in the case of a person who is alleged to be unlawfully at large after conviction of an extraditable offence, a judicial, prosecuting or penal authority of the declared Commonwealth or foreign territory certifies that the documents in the record of the case or in the supplementary evidence are accurate; and”

**Sen. Seetahal:** For completeness subsections (3) to (7) are no longer necessary? Is it that they are too complicated? I want to know why. I did not hear the reason.

**Sen. Jeremie:** The rationale is that we think that it is already provided for in clause 8(a) in the proposed subsection (2)(b), where reference is made to a certificate of particulars. You have a duplication of provisions.

Section 19(a)(3)(b) refers to the provision of a document describing the conduct when the person was convicted. That is already provided for in clause 8(a), in the proposed subsection (2)(d), where reference is made to particulars of the facts upon which he was convicted. Section 19(a)(4) refers to the provision of documents with respect to the identification of the person sought for extradition. In clause 8(a), there is already a proposed subsection (2)(c) for particulars of the person whose return is requested.

We just thought that we would tidy it up.

*Question put and agreed to.*

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

*Clause 15.*

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

**Sen. Seetahal:** May I raise a question here, please. Clause 15 deletes the First Schedule which follows from the repealing of section 7. There is maybe one typographical issue. Throughout the Bill you have reference to Second Schedule. I have itemized the places. If there is no First Schedule we have to rename the Second Schedule, Schedule. I do not know if you can have a general clause saying wherever in the Act the words "Second Schedule" are stated replace that with "Schedule".

I have the places; at sections 9(3); 10(1); 11(2); 12(4); 14(6); 15(6) and 16(1). I thought I would itemize them, just to assist.

**Sen. Jeremie:** Madam Chairman, I am advised by my technocrat that we might not have identified every section which requires a change. In the circumstances his proposal is that we go with the amendment as is and await a consolidation, which I understand is imminent.

**Sen. Seetahal:** Madam Chairman, remember the Act is purely statutory and all the procedures are based on it. Suppose someone should choose to raise this issue in court. The court could say that is the golden rule and we would go with common sense. I thought you may want to consider it.

*Extradition (Amdt.) (No.2) Bill*

*Tuesday, March 31, 2004*

*Question put and agreed to.*

*Clause 15 ordered to stand part of the Bill.*

*New clause 16.*

**Sen. Gift:** Madam Chairman, I propose a new clause 16 which reads as follows:

“Application                    16.                    This Act applies to extraditable offences committed before as well as after the commencement of this Act.”

*New clause 16 read the first time.*

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

*Question put and agreed to.*

**Sen. R. Montano:** Madam Chairman, because clause 16 makes the Act retroactive, will this require a constitutional majority?

**Sen. Jeremie:** No. It does not make the criminal act retroactive. It is procedural.

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

*Question put and agreed to.*

*New clause 16 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, April 06, 2004 at 1.30 p.m.

We would take the Mutual Assistance In Criminal Matters (Amdt.) Bill as the first item. Time permitting we would do the Agricultural Census Order and then the Trinidad and Tobago Postal Corporation (Amdt.) (No. 1) Bill.

**Sen. Seetahal:** Madam President, could the Leader of Government Business indicate to us whether we would sit on the day after Easter Monday? I want to know in advance.



*Adjournment*

*Tuesday, March 31, 2004*

**Sen. The Hon. Dr. L. Saith:** Madam President, that is why I said time permitting we would pass all three and then we would not have to sit.

*Question put and agreed to.*

*Senate adjourned accordingly.*

*Adjourned at 4.50 p.m.*