SENATE

Tuesday, September 16, 2008

The Senate met at 10.00 a.m.

PRAYERS

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

SUSPENSION (OPENING OF LAW TERM)

The Minister of Energy and Energy Industries (Sen. The Hon. Conrad Enill): Mr. Vice-President, I beg to move that the sitting of the Senate be suspended until 1.30 p.m. due to the opening of the law term.

Question put and agreed to.

10.06 a.m.: *Sitting suspended.*

1.30 p.m.: *Sitting resumed.*

LEAVE OF ABSENCE

Mr. Vice-President: Hon. Senators, I have granted leave of absence to Sen. The Hon. Danny Montano and Sen. Michael Annisette, who are both out of the country, and to Sen. Dr. Jennifer Kernahan, who is ill.

SENATORS' APPOINTMENT

Mr. Vice-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. FOSTER CUMMINGS

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

NOW, THEREFORE, I, GEORGE MAXWELL RICHARDS, President as aforesaid, acting in accordance with the advice of the Prime Minister, in exercise of the power vested in me by section 44 of the Constitution of the Republic of Trinidad and Tobago, do hereby appoint you, FOSTER CUMMINGS, to be temporarily a member of the Senate, with effect from 16th September, 2008 and continuing during the absence from Trinidad and Tobago of Senator Danny Montano.

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 15th day of September, 2008."

"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: MISS LYNDIRA OUDIT

WHEREAS Senator Jennifer Jones-Kernahan is incapable of performing her duties as a Senator by reason of illness:

NOW, THEREFORE, I, GEORGE MAXWELL RICHARDS, President as aforesaid, acting in accordance with the advice of the Leader of the Opposition, in exercise of the power vested in me by section 44 of the Constitution of the Republic of Trinidad and Tobago, do hereby appoint you, LYNDIRA OUDIT, to be temporarily a member of the Senate, with immediate effect and continuing during the period of illness of Senator Jennifer Jones-Kernahan.

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 16th day of September, 2008."

"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: MS. ALTHEA ROCKE

WHEREAS Senator Michael Annisette 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, ALTHEA ROCKE, to be temporarily a member of the Senate, with immediate effect and continuing during the absence from Trinidad and Tobago of the said Senator Michael Annisette.

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 12th day of September, 2008."

OATH OF ALLEGIANCE

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

Mr. Foster Cummings, Miss Lyndira Oudit, Ms. Althea Rocke.

1.35 p.m.

JOINT SELECT COMMITTEES
(Appointment of)

Mr. Vice-President: Hon. Senators, I have received correspondence from the Hon. Barendra Sinanan, Speaker of the House:

"Dear Mr. President,

Appointment of Joint Select Committees—Re: 66A of the Constitution

Your letter of May 07, 2008 refers...

Please be informed that at a sitting held on Friday, July 11, 2008 the House of Representatives agreed to the following resolution:

Be it resolved that the House of Representatives appoint six (6) Members to serve with an equal number from the Senate to inquire into and report to Parliament on Municipal Corporations and Service Commissions with the exception of the Judicial and Legal Service Commissions on their administration, manner of exercise of their powers, methods of functioning and on any other criteria adopted by them in the exercise of their powers and functions:

And be it further resolved that the House of Representatives also appoint six (6) Members to serve with an equal number from the Senate to inquire into and report to Parliament on Government Ministries (Part I) and all Statutory Authorities/Enterprises falling under these Ministries and owned or controlled by or on behalf of the State or which received funding from the State of more than two-thirds of their total income in any one year:

And be it further resolved that the House of Representatives also appoint six (6) Members to serve with an equal number from the Senate to inquire and report to Parliament on Government Ministries (Part II) and all Statutory Authorities/Enterprises falling under these Ministries and owned or controlled by or on behalf of the State or which received funding from the State of more than two-thirds of their total income in any one year.

Yours sincerely

Honourable Barendra Sinanan

Speaker"

ORAL ANSWERS TO QUESTIONS

US Presidential Election (Policy Decision to Support)

94. Sen. Mohammed Faisal Rahman asked the hon. Minister of Foreign Affairs:

Would the Minister advise this Senate:

(i) whether a policy decision has been taken to support the Republican candidate in the forthcoming US Presidential Election?

(ii) if the answer to (i) above is in the negative, would the Minister explain the rationale for the Prime Minister's recent visit to the candidate's office?

The Minister of Foreign Affairs (Hon. Paula Gopee-Scoon): Thank you, Mr. Vice-President. No policy decision has been taken to support the Republican candidate in the forthcoming US Presidential Election since it is not the policy of the Republic of Trinidad and Tobago to get involved in the internal affairs of sovereign states.

To the second part of the question: The hon. Patrick Manning, Prime Minister of Trinidad and Tobago did not visit the candidate's office. While on a visit to the United States of America the Prime Minister took the opportunity to request meetings with both presumptive nominees for the US presidency. Advisors of the Mc Cain campaign responded to a request for a meeting and on Monday, June 23, 2008 the hon. Prime Minister received Messrs. Aaron Manuego and John Mc Cormack, campaign advisors to Sen. John Mc Cain.

The Prime Minister took the opportunity to outline Trinidad and Tobago's long-standing political and economic relationship with the United States of America and to explain Trinidad and Tobago's role within Caricom with respect to security and energy. Advisors for the Obama campaign were not available at that time. Thank you.

Submission of NIS Claims
(Job Injury)

95. Sen. Mohammed Faisal Rahman asked the hon. Minister of Finance:

> Could the Minister indicate whether it is Government’s intention to increase the present time limit for submitting NIS claims for on-the-job injury?

The Minister in the Ministry of Finance (Sen. The Hon. Mariano Browne): Mr. Vice-President, there are no plans at this time to increase the present time limit for submitting NIS claims for on-the-job injury. The National Insurance Board Regulation 7(1)(e) states:

> “Failure to submit a claim to injury benefit within 14 days from the date the insured was first rendered incapable of work as a result of the injury may result in loss of the benefit unless good cause is shown regarding the reason for late submission.”

Benefit regulation 7(4) states:

> “Claims submitted more than 12 months from the date the insured was first rendered incapable of work as a result of the injury shall not be entertained.”

The board has taken into account that based on the seriousness of the injury the insured may not be in a position to submit the application within the stipulated time frame, and therefore, has allowed for discretion to be exercised where the application is made within one year, once good cause is established. Good cause means some facts, which having regard to the circumstances including the claimant's state of health and the information which he received, and that which he might have obtained would probably have caused a reasonable person of his age and experience to act or fail to act as the claimant did.

In addition it should be noted that the injury benefit by its very nature exposes the fund:

1. to its most risks;
2. it is the highest paid benefit requiring the least qualifying conditions; and
3. the injury may be impacted upon by other intervening circumstances if not reported at the earliest possible time and may influence the outcome of other benefits associated with the injury, for example, disablement benefit.

Mr. Vice-President, the time limit of 14 days compares favourably with that which obtains in other jurisdictions, including Belize where it is four days; Jamaica where it is 10 days and Guyana where it is 14 days. Under section 46A(1) of the Occupational Safety and Health Act, if an accident does not cause death or critical injury the employer is required to report the accident to the chief inspector on the prescribed form within 14 days.

Where death occurs under section 46(1), the chief inspector must be notified immediately, either by telephone, fax, email or some other direct means and followed up by written notice within 48 hours of learning of the accident.

Given the above provisions of the Occupational Safety and Health Act, the initial 14-day period within which the claim for employment injury benefit must be made is reasonable, and as indicated earlier, there are no plans to extend the limit at this time. Thank you.

Senior Citizens Bus Passes

96. Sen. Mohammed Faisal Rahman asked the hon. Minister of Works and Transport:

> Would the Minister state whether Government plans to provide bus passes free of charge to senior citizens?

The Minister of Energy and Energy Industries (Sen. The Hon. Conrad Enill): Mr. Vice-President, since 2002 all individuals in Trinidad and Tobago over the age of 60 have been eligible for free travel on buses operated by the Public Transport Service Corporation (PTSC). The Ministry of Social Development processes requests from senior citizens, old age pensioners and recipients of public assistance, and submits bus passes to the PTSC for endorsement and subsequent issue to applicants.

Sangre Grande Fire Station

101. Sen. Cindy Devika Sharma asked the hon. Minister of National Security:

With respect to the construction of the new Sangre Grande Fire Station, could the Minister inform the Senate of:

(i) the overall cost of construction;
(ii) the expected dates of completion and official opening; and
(iii) the number of fire engines expected to be housed at the station?

The Minister of National Security (Sen. The Hon. Martin Joseph): Thank you very much, Mr. Vice-President. The cost of construction of the Sangre Grande Fire Station is $14,653,801. Final completion of the station is expected to be achieved by the end of this month, September 2008, and an official opening date will be given thereafter.

Although final completion has not yet been achieved, the station is already operational and houses one water tender with a 4,000 litre capacity. When fully completed the following fire appliances are expected to be added: one water tanker; one ambulance and one utility vehicle. Thank you.

Sen. Mark: Mr. Vice-President, may I ask the hon. Minister through you, when was the original date of this construction of the fire station in Sangre Grande, and also whether he can provide us with the original cost of the expenditure for the construction of this fire station in Sangre Grande, Sir?

Sen. The Hon. M. Joseph: Unfortunately, I did not walk with such information, but if the question is posed I would provide it or in the absence of that I will still provide my hon. colleague with that information.

Sen. Mark: Could the hon. Minister indicate whether there was any cost overrun involved in this particular project?

Mr. Vice-President: Those are additional questions and I am sure if you pose them in the right way the hon. Minister will answer them. [*Interruption*]

Destruction of Land
(Unauthorized Quarrying Activities)

103. Sen. Cindy Devika Sharma asked the hon. Minister of Energy and Energy Industries:

With respect to the destruction of land through unauthorized quarrying activities, could the Minister inform the Senate of:

(i) the existing plans, if any, for reclaiming these lands;

(ii) the acreage of land already reclaimed by the Ministry;

(iii) the estimated acreage of lands affected by unauthorized quarrying activities as at July 2008; and

(iv) the estimated acreage of lands approved by Government for authorized quarrying activities as at July, 2008?

The Minister of Energy and Energy Industries (Sen. The Hon. Conrad Enill): Mr. Vice-President, through you to Sen. Sharma, the answer to this question is not available as yet. The question requires some research to it that is not available, and therefore, will require, possibly another three weeks to have this answer prepared.

Question, by leave, deferred.

Caribbean Airlines
(Fuel Hedge Arrangement)

104. Sen. Wade Mark asked the hon. Minister of Finance:

Could the Minister inform the Senate of the details of the new fuel hedge arrangement for Caribbean Airlines?

The Minister in the Ministry of Finance (Sen. The Hon. Mariano Browne): Mr. Vice-President, the answer to this question is not available at this time; we expect to have the answer within two weeks.

Question by leave, deferred.

Urban Development Company of Trinidad and Tobago
(Port of Spain Waterfront Project)

105. Sen. Wade Mark asked the hon. Minister of Planning, Housing and the Environment:

With respect to the Urban Development Company of Trinidad and Tobago securing US $375 million funding on the US private placement market to finance the Port of Spain Waterfront Project, could the Minister advise this Senate:

(i) the number of investors involved;

(ii) the names of the companies/investors involved;

(iii) the terms of the loan, inclusive of interest rates, period of the loan, terms of repayment and currency of the loan; and

(iv) what security or guarantee was provided?

The Minister of Energy and Energy Industries (Sen. The Hon. Conrad Enill): Mr. Vice-President, I am advised that question Nos. 105, 106 and 107—Sen. Mark would go through them as well—are not now available, and three weeks are required, based on the research that is required for all of these questions, question Nos. 105, 106 and 107. So, with respect to question No. 105, a deferral is sought for three weeks.

Mr. Vice-President: Sen. Mark, would you like to go through one by one or—

Sen. Mark: Yes, of course, I would like to go through one by one.

Mr. Vice-President: Go ahead.

Sen. Mark: I am not giving up my rights. Ever!

Question, by leave, deferred.

UDeCOTT
(Loan Security)

106. Sen. Wade Mark asked the hon. Minister of Planning, Housing and the Environment:

With respect to the loan secured by UDeCott on the US Market for the Port of Spain Waterfront Project, could the Minister inform the Senate:

(i) why was the borrower UDeCott and not the Government of Trinidad and Tobago;

(ii) what is the net revenue of UDeCott from which repayment installments can be made; and

(iii) whether the loan was the subject of several or a single offer of financing and the conditions for accepting the offer?

The Minister of Energy and Energy Industries (Sen. The Hon. Conrad Enill): Ditto, Mr. Vice-President.

Question, by leave, deferred.

UDeCOTT
(Transaction of Loan)

107. Sen. Wade Mark asked the hon. Minister of Planning, Housing and the Environment:

With respect to the loan secured by UDeCott on the US Market for the Port of Spain Waterfront Project, could the Minister state:

(i) who were the agent(s) of the loan for both the borrower and lender(s); and

(ii) what was the commission and/or fees paid on the transaction to these agents?

The Minister of Energy and Energy Industries (Sen. The Hon. Conrad Enill): Likewise, ditto. Mr. Vice-President.

Question, by leave, deferred.

BAIL (AMDT.) BILL

Order for second reading read.

The Attorney General (Sen. The Hon. Bridgid Annisette-George): Mr. Vice-President, I beg to move,

That a Bill to amend the Bail Act, Chap. 4:60 be read a second time.

1.50 p.m.

Mr. Vice-President, I propose in presenting this Bill to first address the need for this type of legislation and then I will turn to the provisions of the Bill.

The prevalence of kidnapping and other serious offences in this country has subjected the citizens of Trinidad and Tobago to a state of fear. If this state of affairs is left unchecked, there would be encouraged the breeding of a category of crime for financial gains. This will have serious effect not only on the safety and psyche of our people, but could also adversely affect the financial system of our country.

The Government recognizes that the implementation of certain administrative and legislative measures is urgently required to further reform the criminal justice system; to treat with indiscipline, crime and justice and to improve the ability of the State to treat with the undesirable levels of criminal activity in Trinidad and Tobago. This Bill is one such legislative measure.

Mr. Vice-President, hon. Senators may recall that during the last few years, this Government introduced numerous amendments to certain pieces of substantive and procedural criminal legislation. These measures were necessary to further the fight against crime. The various procedural and substantive amendments sought to reduce delays in the criminal justice system, plug loopholes in the enforcement of areas of substantive law and convict the guilty. I shall briefly highlight some of those changes.

1. The Summary Courts Act, Chap. 4:20, was amended to provide for the admissibility of written statements by witnesses of matters that are not in dispute, and also to admit formal admissions as proof of a fact that is not in dispute in a summary trial;
2. The Criminal Procedure Act, Chap. 12:02, was amended to provide that where a fact is not in dispute between the parties in a High Court trial, then that fact can be formally admitted into evidence;
3. The Indictable Offences (Preliminary Enquiry) Act, Chap. 12:01, was amended to revise the "paper committal" system, that is to say, to provide a workable system for the committal of accused persons on the basis of written statements submitted by the prosecution to the sitting magistrate;
4. The Corporal Punishment (Offenders Over Eighteen) Act, Chap. 13:04, was amended to provide that a sentence of flogging can be carried out after the sentence is affirmed, therefore removing the six-month time limited and to allow for corporal punishment in cases of incest;
5. The Evidence Act, Chap. 7:02, was amended to provide for the use of sample evidence instead of bulk evidence, and to allow administrative and not scientific staff at the Trinidad and Tobago Forensic Science Centre to receive any matter or thing for examination or analysis; and to allow the State to admit into evidence, hearsay evidence in documentary form in criminal proceedings, including in a preliminary enquiry;
6. The Larceny Act, Chap. 11:12, was amended to extend the limitation period of certain offences under the Act, and to change the offence of receiving from an indictable to a summary offence;
7. The Bail Act was amended to provide a right of appeal to the Court of Appeal to the police or a convicted or an accused person when bail is granted or not granted, as the case may be; and
8. The Forgery Act, Chap. 11:13, was amended to make it a summary offence for a person to make, purchase or use a forged driving permit, learner's permit or a National Identification Card.

The last four amendments were effected by the Administration of Justice (Miscellaneous Provisions) Act, 2005, which is Act 19 of 2005. The central focus of these amendments was to expedite trials in the Magistrates' Court and in the High Court, and to implement radical change to key areas of the justice system. Often, criminals have been able to use the delays inherent in the administration of criminal justice to frustrate the administration of justice.

Mr. Vice-President, the Government is fully aware of its duty to ensure the safety and welfare of our citizens, and to ensure that the rule of law is applied to all equally; even those who seek to undermine and destabilize the criminal justice system. The system of criminal justice must also ensure to the extent that it can be provided for, that witnesses can give evidence without fear, and the laws must allow the systems involved in the criminal justice system, to function fairly and expeditiously so as to convict the guilty and to acquit the innocent. The criminal justice system must ensure that offenders are arrested, the guilty are punished and the innocent set free, potential perpetrators are deterred and also to rehabilitate those who can be rehabilitated. The Bill before us this afternoon seeks to further those goals.

Our legal system strikes a balance between, on the one hand, the principle that no one should be deprived of his liberty unless and until his guilt is proved and, on the other hand, the community interest that persons accused of criminal offences should not easily avoid trial. Furthermore, no one should be released who cannot be released on bail with comparative safety. Among the reasons for this traditional right to freedom before conviction, are to permit the unhampered preparation of a defence, and to prevent the infliction of punishment prior to conviction. Unless this right to bail before trial is preserved, the presumption of innocence, secured only after centuries of struggle would lose its meaning. But, constitutional rights, including rights to bail are not absolute rights. The rights of each person must be balanced with the rights and interests of the wider society.

Our Constitution guarantees the right of an accused to be granted bail. That right is also well established in international law, especially in the domain of Human Rights Conventions and Charters. Section 5(2)(f)(iii) of our Constitution states, among other things, and I quote:

"…Parliament may not—

deprive a person charged with a criminal offence of the right—

to reasonable bail without just cause."

But as I have said before, constitutional rights are not absolute. The very provision referred to above creating the right to bail, states that that right may be denied with just cause, that is, the court may deny a person charged for an offence of the right to bail, if the court considers that in all the circumstances of the case, it is reasonable to do so. For example, the offender may be a repeat offender, or may be likely to flee the jurisdiction. In fact, section 6 of the Bail Act enumerates a number of circumstances in which bail may be denied, such as a failure to surrender to custody, committing an offence while on bail, for the protection of the defendant and other provisions.

Secondly, the Constitution itself makes provision under section 13 for our entrenched rights which include the right to bail, to be infringed or abridged if the amended legislation is enacted with a specific majority vote. Hence the very Constitution which gives a fundamental right to bail also recognizes the need to allow for its restriction or abrogation, provided the constitutional procedures are followed.

Mr. Vice-President, prior to the enactment of the Bail Act, 1994, Chap. 4:16, the law relating to bail in criminal proceedings was to be found partly in the common law and partly in various statutes. There was no single piece of legislation dealing comprehensively with the subject. There was a dearth of statutory guidelines governing the exercise of judicial discretion for granting bail in such proceedings. While it was clear that the bail decision must ultimately be discretionary, the Bail Act was enacted so that the identification of relevant criteria in legislative form would provide assistance to judicial officers in making an informed and rational decision.

In the case of *Beharry and Jack and the Attorney General of Trinidad and Tobago*, which is High Court Action No. 13129 of 1987—this is unreported, it is a decision of Mr. Justice Hamel-Smith—the following observations were made by the honourable judge and I quote:

- The Constitution provides that a person is entitled to the right not to be deprived of reasonable bail without just cause.
- The Constitution did not attempt to interfere with the discretion vested in the Magistrate to grant or not grant bail.

This is at page 18 of the report of that case.

The Bail Act also provided a system to create uniformity in the applicability of the principles to be considered in the granting of bail. The Bail Act which sought to infringe or abridge the entrenched right to bail was enacted with the requisite special majority.

Mr. Vice-President, murder, treason, piracy and hijacking are the only offences for which there is no right to bail. These are the offences for which death is the penalty fixed by law, and such a penalty justifies the need to deny the accused the entitlement to apply for bail for those offences. The consequences of a remand in custody are substantial and it means the loss of liberty of the accused with all the negative consequences for the accused and his family. Nevertheless, this infringement is balanced against the benefit derived for the society from the removal of those persons from the general public. It also has a deterrent effect on those who may consider committing those specified crimes.

Mr. Vice-President, today, the serious and violent offences have reached such proportions that they necessitate the denial of bail in the limited circumstances set out in this Bill. Furthermore, the increasing levels of other violent offences cannot be ignored. The Government is fully cognizant of its duty to take whatever steps are necessary, even drastic steps—of course within the limits of the Constitution—to deal seriously with the issues at hand. Thus, as I mentioned earlier, numerous pieces of criminal legislation have been amended to further the fight against crime. Also, with the support of Senators on the other side and Senators of the Independent Bench, the Government was able to enact the Police Service Reform legislative package, a key instrument in the fight against crime.

I also wish to indicate that the Government will soon introduce numerous amendments to various pieces of criminal legislation, as we seek to continue the fight against crime. These will include amendments to the Evidence Act; the Criminal Procedure Act; the Indictable Offences (Preliminary Enquiry) Act; the Offences Against the Person Act; and as regard offences against the children, it will involve the repeal and enactment of a new Children Act.

Mr. President, it will be remiss of me if I did not make mention that this is the sixth time that this amending legislation is being considered by the Parliament. It was first considered in the year 2005, and that was Act No. 32 of 2005. In the year 2006, it was Act No. 30 of 2006; and three times during the year 2007 and that is by respectively Act Nos. 10, 15 and 25 of 2007. On the last occasion in 2007, the legislation was only to remain in force for one year.

2.05 p.m.

Before I turn to addressing the clauses of the Bill, I wish to indicate that this Bill seeks to amend the Bail Act directly, rather than the Bail Bill, and this is the amendment of 2005, Act No. 32 of 2005, as was done on the previous occasion by the Bail (Amdt.) Act 2006, which is Act No. 30 of 2006.

Hon. Senators may recall that the Bail (Amdt.) Act, 2006, merely extended the life of the Bail (Amdt.) Act, 2005, for one year, to 15 months. The Bail (Amdt.) Act, 2007, which is Act No. 10 of 2007 and the Bail (Amdt.) Act, No. 2 of 2007, which is Act No. 15 of 2007, provided for extensions of the mere period of three months, respectively. I would also like to note that the Bail (Amdt.) (No. 3) Act, 2007, which is Act No. 25 of 2007, also sought to amend the Bail Act directly, but this was limited to one year duration. The Bail (Amdt.) (No. 3) Act, 2007, came into force on September 20, 2007.

I will now deal specifically with the provisions as proposed in the Bill before this honourable Chamber. The Bail (Amdt.) Bill, 2008, is identical, except in two major aspects, to the Bail (Amdt.) (No. 3) Act, of 2007, which was assented to by the President, His Excellency, on September 20, 2007.

Mr. Vice-President, section 7 of the 2007 Act provides that the amending Act shall remain in force for a period of one year after the date of its commencement; hence the amending Act will cease to have effect on September 19, 2008. However, unlike the amending Act, there is no duration clause in this current Bill before this House. The Bill does not contain a sunset clause, and I believe that hon. Senators on the other side are prepared to consider enacting this, once and for all, as part of the parent Act. The intent is that once the Bill is enacted, it will become a permanent part of the parent Act. The other major difference is seen in clause 6, and I shall accordingly deal with it when I am speaking in the clause by clause part of my presentation.

In summary, this Bill seeks to amend the Bail Act to make the offences of kidnapping for ransom or knowingly negotiating to obtain a ransom under the Kidnapping Act, Chap. 11:26, non-bailable offences for a period of 60 days, but, thereafter, bail may be granted at the discretion of the High Court where no evidence is taken.

The Bill will also make certain violent offences non-bailable offences, such as the possession of a firearm or ammunition without licence, certificate or permit under the Firearms Act, Chap. 16:01, trafficking in dangerous drugs, being in possession of dangerous drugs for the purpose of trafficking, under the Dangerous Drugs Act, Chap. 11:25, kidnapping at common law, or assault occasioning actual bodily harm. In such cases, a person must be convicted on two prior occasions for any of those offences or a combination of those offences, arising from a single incident during 15 years prior to the current charge. The Bill, of course, is inconsistent with sections 4 and 5 of the Constitution and is, therefore, required to be passed by a special majority of three-fifths of the Members of each House.

Clauses 1, 2 and 3 of the Bill are self-explanatory, but before I proceed any further, it would be remiss of me if I were to ignore the constitutional issue to which clause 2 speaks; however, I propose to deal with that later in my presentation, because I believe that those of us who are not attorneys-at-law may not fully understand the issue, at this early stage, if the provisions of the Bill are not discussed. Certainly, one can only understand if the Bill is or is not constitutional, if one understands the provisions of the Bill which are in question.

Clause 4 of the Bill proposes to amend section 5 of the Bail Act by introducing two new subsections after subsection (3); these are subsections (4) and (5). These two subsections would provide that the court would not grant bail where a person is charged with a violent offence listed in Part II of the First Schedule and who has been convicted on two prior occasions for any of those listed violent offences. A person who has been twice convicted for a listed violent offence, on separate occasions, or a combination of any such offences arising from a single incident, would not be granted bail. However, these prior convictions must have occurred during the last 15 years. In other words, two prior convictions for a listed violent offence during the prior 15 years, would give the court the power to deny bail to a person charged with a violent offence under the Bail Bill.

The court is defined under section 3(1) of the Bail Act to include a judge, magistrate or a coroner. This is not a new provision; it has been part of our laws since 1994. However, the Government proposes to increase the number of violent offences in the parent Act. We on this side feel that in the present climate of crimes, such changes are reasonably justifiable.

I wish to draw the attention of hon. Senators to the continued inclusion of certain offences under Part III of the First Schedule, these are:

(1) assault occasioning actual bodily harm;

(2) possession of a firearm or ammunition without licence, certificate or permit;

(3) trafficking in a dangerous drug or being in possession of a dangerous drug for the purposes of trafficking;

(4) kidnapping;

(5) kidnapping for ransom; and

(6) knowingly negotiating to obtain a ransom.

The effect of continuing to include these offences under this Part, is to ensure that persons who seek to repeatedly commit any of these offences would be denied bail.

The criminal justice system must take a firm stand in dealing with repeat offenders, and this Bill seeks to send a strong message to potential offenders and potential repeat offenders.

Clause 5 of the Bill seeks to amend the Bail Act by inserting after section 5 a new section, that is, section 5A, to make the offences of kidnapping for ransom or knowingly negotiating to obtain a ransom under the Kidnapping Act non-bailable offences. These two offences are found under sections 3 and 5 of the Kidnapping Act. However, where the preliminary enquiry in relation to the charge has not commenced within 60 days of the date of the charge being read to the accused person, the person charged, that is, the accused, is entitled to apply to a judge in chambers for bail. Essentially, the proposed section 5A subsection (2) says that the person has been charged, brought before the court, and the charge is read to him, whether any evidence has been taken.

Once the charge has been read to the accused, the matter would have been started. In a preliminary enquiry a person is not required to plead to the charge. Furthermore and often, after the charge is read to the accused, the matter is adjourned without any evidence being taken. For the purpose of this Bill, once no evidence has been taken within 60 days of the charge being read to the accused, then he is entitled to apply to the High Court for bail. Hon. Members could see that the legislation is not intended to completely take away the right to bail. What it seeks to do is limit or restrict the enjoyment of that right to a specified period in specified circumstances. The question which some of us may ask is whether such a limitation or restriction is reasonably justifiable in a democratic society. I propose to address this issue when I address the constitutional issue, as I indicated before.

Clause 6 seeks to amend the First Schedule of the Act. The existing Part II would be repealed and a new Part II would be substituted. The offences listed in the new Part II are not the same offences set out in the amendment Act of 2000. The difference between the amending Acts and the Bail (Amdt.) Bill which is now before us is that some of the offences listed in Part III of the First Schedule have been modified to take into account certain proposals made in this honourable Chamber when this legislation was last debated. Those offences seen in section 6 of the 2007 amending Acts are now in clause 6 of the Bill. The following four changes are to be noted in the Bill: Firstly, it was proposed that the offence of

unlawful wounding be added to the list of violent offences under Part III of the First Schedule. This was not an offence in the amended Acts of 2007. This offence is provided under section 14 of the Offences Against the Person Act, Chap. 11:08. Paragraph B of clause 6(b) of the Bill has been accordingly amended to include this offence thereunder.

Secondly, paragraph (c) of clause 6(b) of the Bill does not contain the offence of armed robbery, which was in the amending Acts of 2007, because this offence is already covered by the offence of robbery with aggravation, which is being retained. I ask hon. Members to note that paragraph (c) of clause 6(b) of the Bill now includes the offence of robbery with violence, which is provided for under section 24(1)(b) of the Larceny Act, Chap. 11:12. The offence of robbery with violence was not included in the amending Acts of 2007.

Thirdly, the offence of assault occasioning grievous bodily harm, which was in the amending Acts of 2007, has now been changed to assault occasioning actual bodily harm, as seen in paragraph (d) of clause 6(b) of the Bill. This change is to reflect the proper offence under section 30 of the Offences Against the Person Act, Chap. 11:08.

Fourthly, the offence of possessing and use of firearms or ammunition with intent to injury, which was in the amending Acts of 2007, has been changed to possession and use of a firearm or ammunition with intent to endanger life, as seen in paragraph (e) of clause 6(b) of the Bill. This change is to reflect the proper offence under section 12(1) of the Firearms Act, Chap. 16:01. By clause 6 also a new Part III would be inserted in the First Schedule to provide a list of violent offences.

Mr. Vice-President, as I stated earlier, the Bill seeks to introduce new violent offences essentially to address firearms, drug trafficking and kidnapping offences. This is one of the main changes that the Bill seeks to effect to our bail legislation. I am also certain that all Members of this honourable Senate would agree that repeat offenders of such offences must be dealt with severely.

As indicated before, I will now address the issue of the constitutionality of the Bill.

2.20 p.m.

The Bill before this honourable Senate would be inconsistent with sections 4 and 5 of the Constitution and it must be passed by a special majority of three-fifths of the Members.

The supremacy of the Constitution is well acknowledged and any law which is inconsistent with it is void to the extent of its inconsistency. This is clearly stated under section 3 of our Constitution. Under section 4 of the Constitution, a person has the protected fundamental right to his life and liberty, and the right not to be deprived thereof except by due process of law.

Then under section 5(2)(f)(iii), Parliament except by special majority legislation, cannot deprive a person of the right "to reasonable bail without just cause." This Bill seeks to deprive a person charged with a specified criminal offence of his constitutional right to bail in certain circumstances.

Section 13(2) of the Constitution provides that an Act which is inconsistent with sections 4 and 5 of the Constitution must be passed with a special majority. In fact, section 13(1) of the Constitution provides:

> "13.(1) An Act to which this section applies may expressly declare that it shall have effect even though inconsistent with sections 4 and 5 and, if any such Act does so declare, it shall have effect accordingly unless the Act is shown not to be reasonably justifiable in a society that has a proper respect for the rights and freedoms of the individual.
>
> (2) An Act to which this section applies is one the Bill for which has been passed by both Houses of Parliament and at the final vote thereon in each House has been supported by the votes of not less than three-fifths of all the members of that House."

This Bill would be inconsistent with sections 4 and 5 of the Constitution and is therefore required by section 13(2) to be passed by a special majority vote. Accordingly, clause 2 of the Bill declares that it is inconsistent with sections 4 and 5 of the Constitution and that it requires a special majority vote of the Members of both Houses of Parliament, i.e. three-fifths.

Mr. Vice-President, clause 5 of the Bill seeks to deny bail to persons charged with an offence under sections 3 and 5 of the Kidnapping Act, 2003 pending the final determination of the charge laid against the accused.

To achieve this, clause 6 will amend the First Schedule of the Bail Act to provide that those offences will be non-bailable for a period of 60 days. In other words, a person charged with the offence of kidnapping for ransom, which is section 3, or knowingly negotiating to obtain a ransom, which is section 5 will not be granted bail for that specified period.

Clauses 4 and 5 infringe section 5(2)(f)(iii) of the Constitution which gives to a person charged with a criminal offence, the right not to be deprived of "reasonable bail without just cause." Additionally, the right of the individual to liberty, and the right not to be deprived thereof except by due process of law are enshrined in section 4(a) of the Constitution. Hence, Mr. Vice-President, the Bill must be passed with a special majority.

Mr. Vice-President, it is the duty of the Government to adopt and put in place the necessary measures to ensure the safety of the population as a whole. Therefore, the Government must be prepared to respond to the needs, hopes and aspirations of its people as the occasion may arise. The growing crime problem, of which the offence of kidnapping is a major part, is one such instance and, therefore, requires stringent measures to address it.

We on this side are of the view that legislation of this kind is not only necessary, but is under section 13(1) of our Constitution, also reasonably justifiable in a society that has proper respect for the rights and freedoms of the individual.

An Act may be passed with a special majority under section 13(2), but it might still be challenged as being unconstitutional because:

> "…the Act is shown not to be reasonably justifiable in a society that has a proper respect for the rights and freedoms of the individual."

That was taken from the case of *Morgan v. the Attorney General of Trinidad and Tobago* which is reported in (1988) LRC (Constitution) 468, Privy Council.

The question which the common law courts have grappled with is the meaning of the constitutional words, or such similar words and I quote:

> "…reasonably justifiable in a society that has proper respect for the rights and freedoms of the individual."

The corresponding words used in section 36(1) of the 1996 Constitution of South Africa are: "reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom."

In the case of *Morgan v the Attorney General of Trinidad and Tobago*, the Privy Council had to determine whether the Rent Restriction (Dwelling Houses) Act, 1981 was a reasonably justifiable declaration of the right to property. The Act sets a cap on rental increases in relation to residential tenancy.

In dismissing the appeal of the landlord, the Board of the Privy Council held that statutory rent restriction had long been a feature of many societies which protected individual rights and freedoms, although such legislation was a blunt instrument and not universally approved.

Lord Templeman, in delivering the judgment of the board said at page 470:

> "Rent restrictions are justified by the need to prevent a landlord exploiting a shortage of housing accommodation."

The board also held that:

> "Many societies which pay proper regard to the rights and freedoms of the individual conclude that it is reasonably justifiable to control housing rents without at the same time making any attempt to control other incomes or to control other prices. Landlords have no fundamental right to increases of rent which reflect inflation."

Finally, it was held that rent restriction legislation varies from country to country. Some laws were inflexible, others provided machinery for rent increases, hence it was impossible to draw a distinction between a rent restriction law which will be reasonably justifiable because it was flexible and the 1981 Rent Restriction (Dwelling Houses) Act which allowed increases only within narrow limits.

Morgan's case is also authority for the rule that in this jurisdiction, the burden of proving that an act is not reasonably justifiable is on the party challenging the constitutionality of the Act.

Mr. Vice-President, in the authority of *de Freitas v Permanent Secretary of the Ministry of Agriculture, Fisheries, Lands and Housing and Others,* which is reported in (1998), 53 West Indian Reports, page 130, Privy Council, and again this is a decision of the Privy Council, the appellant was a public officer who was suspended from office because he participated in political activities. Section 10(2)(a) of the Civil Service Act, 1984 (Antigua and Barbuda) provides that a public officer cannot publish or express any opinion on matters of national or international political controversy.

Section 6 of that Act also states that the tenure of a public officer is subject to both the Act and the Constitution.

Section 12(1) of the Constitution of Antigua and Barbuda provides a right of freedom of expression, and section 13(1) provides for the right of freedom of assembly and association, but section 12(4) of the Constitution of Antigua and

Barbuda allows for the imposition of restrictions on public officers that are reasonably required for the proper performance of their functions, except that the restrictions would be unconstitutional if they are "shown not to be reasonably justifiable in a democratic society."

The board stated at page 144 that the burden of proof was on the appellant to show that the restraint was not reasonably justifiable in a democratic society and he had succeeded in this case. This was in keeping with the decision in the Morgan case.

Lord Clyde, at page 143, relied on the learning of Chief Justice Gubbay in the case of *Nyambirai v National Social Society Authority* which is reported in (1996) 1 LRC page 64 where the learned Chief Justice at page 75 said that the quality of reasonableness in the expression "reasonably justifiable" in a democratic society depended on the question whether the provision which is under challenge, "arbitrarily or excessively invades the enjoyment of the guaranteed right according to the standards of a society that has a proper respect for the rights and freedoms of the individual."

Lord Clyde then noted that in determining whether a limitation is arbitrarily excessive, the learned Chief Justice said that the court would ask itself:

"whether: (i) the legislative objective is sufficiently important to justify limiting a fundamental right;

(ii) the measures designed to meet the legislative objective are rationally connected to it;

(iii) the means used to impair the right or freedom are no more than is necessary to accomplish the objective."

The board accepted and adopted this threefold analysis of the relevant criteria and concluded that section 10(2)(a) of the Act was invalid.

In the other case of *Park-Ross and Another v Director of Office for Serious Economic Offences* in the Supreme Court of the Cape of Good Hope, serious allegations of fraud and irregularities in the award of an offshore oil drilling rig contract were made against the applicants and the respondent decided to hold an enquiry under the Investigation of Serious Economic Offences Act, 1991, pursuant to his powers under section 6 of the 1991 Act.

The respondent authorized raids on the second applicant's premises and homes of some of its employees and seized documents. The first applicant was summoned for questioning at the enquiry but challenged the constitutionality of certain sections of the 1991 Act before the Supreme Court.

The respondent opposed the application on the basis that the 1991 Act was not in conflict with the 1993 Constitution but even if it appeared to be so in light of the increase of white-collar crime, the right to silence and the right to privacy could be limited as being reasonable, justifiable and necessary under section 33(1) of that Constitution.

The Supreme Court of Cape of Good Hope held among other things, that section 6 of the 1991 Act which give the director certain powers was a violation of the right to privacy embodied in section 13 of that Constitution.

The Court, following the test set out in the Nyambirai case, also held that the criteria for section 6 to qualify as a reasonable limit that could be justified under section 33(1) of the Constitution were that it was rationally connected to a sufficiently important objective, that it impaired a right no more than was necessary to accomplish the objective, and that it did not have a disproportionately severe effect on those affected by it.

It was acceptable in order to preserve law and order, to investigate and combat crime and to protect society and the rights of its members that searches might have to occur even if the right of privacy was thereby affected by it. The Court also held that in light of the increase of white-collar crime and fraud and the need for swift and proper investigations, the objective of the Act was sufficiently important to justify limiting constitutional rights.

2.35 p.m.

In the case of Reference re section 65 of the Constitution (2008), 1 LRC, page 508, the Court of Appeal of Malawi had to decide whether a member of the assembly who was elected under a party's ticket and resigns from that party and later joins another party that is or is not represented in the National Assembly, crosses the floor.

Section 40 of the Constitution provides a right to political freedom and section 65 prohibits crossing the floor. The court held, among other things, that the rights in section 40 were derogable and could be limited, provided any such limitation, in accordance with section 44(2), was prescribed by law, was reasonable, recognized by international human rights standards and necessary in an open and democratic society.

The court held that the limitation was prescribed by law and was reasonable because the abolition of section 65 would promote a lack of accountability and integrity of members of the National Assembly by allowing a person to be elected as a member of one political party and then join another political party.

The court also held that the limitation was also necessary in an open and democratic society and was recognized by international human rights standards. The court noted that several countries with similar historical backgrounds and legal systems to Malawi have anti-defection clauses in their Constitutions.

Clearly, therefore, legislation may also pass the constitutional test of being reasonably justifiable if it is in accordance with international human rights standards. Similar legislation to this Bill before us exists in the United States, such as in the states of California and New York.

The Government feels sure on the authorities discussed before, that this legislation would pass the test of being legislation which is reasonable, justifiable and necessary under section 13(1) of our Constitution. The Government must adopt measures to promote the rule of law, equity and justice to all citizens and, therefore, encourage public confidence in and the adherence to the rule of law.

The Bail (Amdt.) Bill, 2008 is one such measure. I wish to remind hon. Members that this Bill is not the only measure that this Government is seeking to put in place to address the crime problem. Other measures, such as the breathalyzer and the DNA legislation have been enacted to assist the police in the fight against crime. Recently the Evidence (Amdt.) Act, 2007, which allows the State to admit into evidence hearsay evidence in documentary form in criminal proceedings, including in a preliminary enquiry, was enacted.

Public confidence in the system of criminal justice is being eroded daily but the reality is, however, that the system has been in need of reform for a long time. Those who abuse fundamental rights and freedoms and abuse technicalities have shifted the balance between the rights of the individual and the rights of society at large. Therefore, new legislative and administrative measures are needed to recalibrate the balance of the rights. Also, legislative measures are necessary in order to strengthen the confidence of the public in the justice system in general, and particularly at this time.

The Bill before this honourable Chamber seeks to strengthen our criminal justice system and I call on all Senators to support this Bill in the interest of our beloved country. While the Bail (Amdt.) (No. 3) Act, 2007, would cease to have effect on September 19, 2008, it is important that similar legislation should be enacted to take effect immediately after September 19, 2008. If this Bill is not enacted into law before September 19, 2008, many hard core criminal figures in this country would be free to once more continue their criminal activities. More

particularly, the Bill is a very important measure in the fight against kidnapping and other serious and violent offences. I therefore call on all Senators to support the Bail (Amdt.) Bill, 2008.

Mr. Vice-President, I beg to move. [*Desk thumping*]

Question proposed.

Sen. Wade Mark: Mr. Vice-President, the measure before us today is draconian, dangerous and repressive. It is undemocratic, uncivilized and barbaric in both form and content. I would like to remind you that dictators do not snatch away people's rights in one fell swoop; it is taken away by degrees. I also want to say from the outset that the UNC Alliance is committed to addressing, solving and overcoming the crime epidemic currently sweeping our nation, hence the reason we entered into discussions with the Government in November 2005 to find common grounds to confront a common enemy, which is crime. Therefore, we are firmly opposed to kidnapping for ransom and all forms, types and kinds of serious crimes.

We will demonstrate in our contribution the necessity for a higher special majority and not the three-fifths that the hon. Attorney General is seeking to tell us this Bill requires. I will demonstrate that this Bill alters the structure of the Constitution. The measures proposed in this Bill will not only breach sections 4 and 5 of the Constitution, but will effectively alter section 54(6) of the Constitution which requires a different level of popular support.

If this criminal piece of legislation is passed in its current form, it will make a mockery of the country's Constitution where safeguards are entrenched to ensure the integrity of the legal process. We will show that this Executive, the Cabinet, and its dangerous action via this piece of legislation, is seeking to use this Senate as part of its excursion into judicial madness. We will demonstrate how this particular piece of legislation undermines, handcuffs and imprisons the judicial system and the Judiciary in this country and removes its independence as is guaranteed under the doctrine of the separation of powers. We maintain that the Judiciary in our country must be independent from political pressure, either by the Parliament, as is being attempted here, or by the Executive, in the exercise of its judicial function. Do not use the Legislature to get at the Judiciary. Do not do that.

An important function of our Constitution is to provide protection against governmental misbehaviour as we saw at Woodford Square last Friday. Therefore, we are going to be introducing several amendments to this legislation,

including the reintroduction of the sunset clause that they have now eliminated. Sections 4 and 5 of the Constitution give very fundamental and enshrined rights to an accused person charged with a criminal offence. Section 4 states:

> "(a) the right of the individual to life, liberty…and the right not to be deprived thereof except by due process of law;"

As such, no government, including this minority Government, should ever be allowed to snatch or take away the citizens' liberty with no access to the High Court for 60 days. Is this reasonably justifiable in a society that cares about its citizens and fundamental rights? Is it justifiable to make this legislation which is going to categorize some 27 or 25 serious offences as virtually permanent and not temporary?

Section 5(e) of the Constitution says that no citizen should be deprived—the Constitution should not deprive a person of the right to a fair hearing. We know that the Judiciary is clogged up. They would not appoint more judges, more magistrates; they would not build more courthouses, and you want to put a man in jail for 60 days and just start the evidence, introduce some statement and he is in jail for the next 25 years? That is criminal behaviour on the part of this Government and we will not support it!

The provisions contained in this Bill are extremely dangerous and as far as we are concerned on this side, it does not require a mere three-fifths. This legislation requires two-thirds and we would demonstrate that, since it violates fundamental rights of the citizens. Further, it does not contain a sunset provision. When we entered into discussions with this Government in 2005, we particularly advanced that any legislation must be governed by four fundamental principles: One, the protection against the abuse of power, which we witnessed last Friday; the protection of civil liberties; no funding that would promote criminal activities and the process, that is the political process, must be freed from criminal influence. These were the principles that we agreed upon with the Government in 2005. Now they feel they have 26 seats in the Lower House so they have no use—but we are not concerned about numbers; we are concerned about principles. That is what we are concerned about.

This hon. Attorney General who read from a script and could not move away from that script, otherwise she would have been completely lost—[*Interruption*] As far as we are concerned—[*Interruption*] No, this is in handwriting, man; "nobody ain't type nothing for me." Anyway, let me continue. This Attorney General—"she feel ah give she a little space to get out, you know"—not at all. [*Laughter*] This Attorney General has not convinced this Parliament to date why

this measure is expedient and why it is necessary. We have not been convinced. I want to advise the Attorney General and her Minister of National Security that before you can bring measures to this Parliament to put people in jail forever, you must first catch them. I want you to catch the criminals before you bring this legislation to Parliament. You must first catch the criminals and then bring this legislation.

2.50 p.m.

The Preamble is very clear that this Bill, as far as the Government is concerned, is necessary and expedient. Where is the evidence for it? Where are the facts to justify this draconian and dangerous piece of legislation? This is legislation that is seeking to alter the Constitution and hijack the rights of the citizens. You do not tamper and tinker with the fundamental rights and freedoms of the people just so. No attorney general must be allowed to do so. No government must be allowed to do so. Justify the basis for this draconian measure. Tell us the actual, clear, present and/or imminent danger and why you want to impose this on the society. [*Interruption*] I live here like you and you cannot bring criminal, dangerous and draconian legislation and tell us that because something is happening here we must give up our rights. To whom? To you? We must never do that.

This is a government that cannot be trusted. You broke the law last Friday by marching against the Summary Offences Act. I did not say so. The President of the Law Association said so. The Prime Minister should be charged for a criminal offence for leading an illegal march. Lawless Government! You are coming here to take away the citizens' rights and my rights? No, no, no. Not here; maybe in some other country. Malawi, you call it. Maybe in Malawi; not in Trinidad and Tobago.

We have fundamental—I advise the Government to catch the criminals firstly. We gave this Government a whole battery of legislation, a slew of legislation. We agreed and gave up the fundamental rights of the people. We gave them the Bail (Amdt.) Act; the police service reform package; the breathalyzer and DNA Acts. We gave the Government these Acts conscious of the fact that they violated the rights of the citizens of this country.

In terms of the Bail Act, we said you need a sunset clause. Hear what has happened to date. It has brought a Bill to deny people bail, not on a temporary basis but on a permanent basis. Who is this Government to do that? You cannot deny people their rights. No matter how dangerous the situation is, you have to ensure that the liberty of the people is never compromised.

There are four categories of crime that people are denied bail such as murder, treason, hijacking and piracy. You now want to add 27 more? This is madness! How can we sit here and allow this Government to snatch the rights of the citizens of this country, just so? That cannot happen. Whilst they are trying to snatch our rights, their incompetence and inability with all the legislation that we have given to them, violating the rights of the people, murder right now is over 377.

We have figures for the crime of kidnapping for ransom for the period 2002—2007. In 2002, there were 31 cases of kidnapping for ransom. How many were detected? Fifteen. In 2003, there were 50. How many were detected? Twelve. In 2004, there were 28. How many were detected? Eight. In 2005, there were 58. How many were detected? Fifteen. In 2006, there were 17 and they detected 8. In 2007, according to our figures, there were 14 and they detected two.

When one is considering measures as are being contemplated in this Bill, I remind the Government that the detection is critical and your detection rate is very abominable. One cannot justify taking away citizens' rights without being able to detect criminal activities; apprehend the criminals and charge them. Therefore, the deficiencies in the criminal justice system within the time frame for trials could make this entire measure null, void and an abuse of process on the grounds of unfairness, delay and unfair trial.

You know that it is taking people six and eight years to get a trial in this country because of the backlog and deficiencies in the system, and you come with a measure to take a man out of his family's world, if in 60 days you start evidence, he would be in jail permanently? You come here to get passage on a permanent basis to put innocent people away? Today, many people are in jail and they are innocent. [*Interruption*] "Yeah. You say what you want, man."

It is clear to me that if you make an analysis of the crime statistics, this Government is a total failure. It is coming here on public relations gimmickry and pappy showing the population that it is doing something and wants permanent legislation. To do what?

Between 2002—2007, there were 1,810 murders in this country. Do you know how many this Government detected? Five hundred and three. You come with a Bail (Amdt.) Bill to deny people their rights and you cannot hold the criminals! For wounding and shooting, there were 4,185. Do you know how many they detected? One thousand, six hundred and ninety-three. For rape, incest and sexual offences, there were 4,271; they detected 2,999. For serious indecency, there were 495; they detected 353. For kidnapping, there were 1,300;

they detected 645. The conviction rate was about 2 per cent. For burglary and break-ins, there were 29,409 between 2002—2007; they detected 4,257. There were 28,502 reports of robbery and they detected 4,694.

You come here to put away people for robbery for life and you cannot hold the robbers. What are you doing? Whom are you trying to fool? You cannot hold the robbers but you come to tell Parliament that we must give you power to put people in jail innocently. No man. You must hold the criminals firstly before you can get this kind of power that you are trying to get. It is not only power. They abuse their power. We saw what they did to the Chief Justice of this country.

There were 2,052 fraud offences and they detected 1,900. For larceny including motor cars, there were 23,614 and they detected 2,407. For larceny including dwelling houses, there were 2,503; they detected 397. For narcotics offences, there were 3,230 and they got 3,228. According to my statistics that is a good one. For other serious crimes, there were 5,302; they detected 3,600. For the period 2002—2007, the total number of serious crimes was 106,683; this Government detected only 26,694. How can you come here and seek to justify and get us to support this drastic and draconian measure? No, no.

I want to deal with the issue of the doctrine of the separation of powers. Why is this Government seeking to impose its will on the Judiciary? There is a separation of judicial power from the Executive and/or legislative. As far as we are concerned, this Government is seeking to undermine the fundamental rights of the people. Every citizen has a right to justice and the access of justice in this country. We are not prepared to allow a government to have on a permanent basis on the statute books of this country this kind of draconian measure. This measure, if passed in its present form would seek to interfere with the Judiciary of this country and its power. This Executive arm of the State is attempting through this measure to interfere and undermine the Judiciary in this country. This is what we are concerned about. It is also a denial of the citizens to a fair trial and hearing.

Every citizen is entitled to a fair trial. If you are going to bring measures for a speedy trial as the Government is seeking to bring in order to have people within a 60-day period, if there is no evidence go to a judge in chamber, but to start your case, that is the end of you. Is that reasonably justifiable in a society or country that has respect for the rule of law?

We are of the view that this Government and the Attorney General must convince this Senate. I have looked at the Jamaican case involving the *Independent Jamaican Council for Human Rights Limited & Others v the*

Attorney General of Jamaica, Privy Council Appeal No. 41 of 2004. There are certain provisions in that judgment that are relevant to us here in Trinidad and Tobago. Let us go to section 54(6) of the Constitution and read together what it says. It states:

> "…references to the alteration of any of the provisions of this Constitution or the Trinidad and Tobago Independence Act, 1962, include references to repealing it, with or without re-enactment thereof of the making of different provisions in place thereof or the making of provision for any particular case or class of case inconsistent therewith, to modifying it and to suspending its operation for any period."

Once you are dealing with this matter you are altering the Constitution and its structure. We are advancing that the Government of this country by the measure it has proposed in this Bail (Amdt.) Bill is altering the structure of the Constitution and creating a new class of case that is inconsistent therein. That is why we are asking the Attorney General to look at section 54(6). When you look at this provision it is an alteration to the Constitution and therefore, does not require a mere three-fifths, but two-thirds majority vote in this honourable Chamber. We are advising the Government that if they want to go through this properly, they must deal with the proper procedure involved in this particular measure. I think that I heard the Attorney General speak to the issue of procedure. I hope that she is understanding and following those procedures properly.

In this particular case involving the Attorney General and the human rights organization of Jamaica, I ask my colleagues if they can put their hands on that case, to refer to paragraphs 9, 10, 19 and 21.

3.05 p.m.

That was the case that saw the Privy Council ruling against the Jamaican government as it relates to their movement to the CCJ. That was a serious case because they did not go about it properly and procedurally in accordance with the Constitution. We are seeing this evening that this Government is seeking surreptitiously to alter our Constitution where there are entrenched provisions and are saying it is only inconsistent with sections 4 and 5 of the Constitution. We beg to differ.

We believe that the Attorney General is trying something on this Parliament, but she will not get through. This Bill requires a two-thirds majority support. Any time it is trying to abridge the fundamental rights of the people of this

country, that is dangerous and no matter how it tries to deal with it, the Government must be able to justify what it is doing. Whatever obligation it might have, it must recognize that its first obligation is to uphold the Constitution and the fundamental rights and freedoms of the citizens of this nation and must not be done for expediency.

As the hon. Attorney General said, from 2005 to the present time, they had to come back here six times because this is the check and balance that allows us to chain them and to cage them because they are like wild animals running out there. Accountability, therefore, demands that they come every three months, six months or a year and give us an up-to-date evaluation of this measure which infringes the rights of the citizens of this country.

The Government just wants a blank cheque to do whatever it wants when it wants. We are not going to support it in its current form and we caution the Government. It has not been able to convince us that this draconian legislation must now be passed with this three-fifths majority on a permanent basis.

Mr. Vice-President, I remind you and this honourable Senate that the courts of this country represent the guardian of our human rights and fundamental freedoms. When the State breaches our fundamental rights and freedoms, we go to the courts for rescue and we cannot abdicate the function and responsibility of the courts to the Executive, which is trying to use the Legislature to conspire against the independence of the Judiciary. We cannot allow that.

We should never be party to any attempt to subvert the independence of the Judiciary in this country and this is what this measure is about. This Cabinet is seeking to get us to undermine the judicial function under the Constitution and they have provided us with no justification for this drastic measure.

Why is it necessary? Why is it expedient? Why is it reasonably justifiable? I ask the Attorney General: Where is the clear, present and imminent danger to justify this draconian measure?

I think that the PNM and the Attorney General should fix the Judiciary first. Give them more judges, more magistrates, build more courthouses, reduce the caseload and provide them with the resources to do their job. Do not take away the discretionary powers of a judge or a magistrate to grant bail, which is what the Bill is about. The Government is trying to subvert the independence of the Judiciary and we will not support it.

If the Government is claiming that in the Magistrates' Courts bail is granted willy-nilly and if at the level of the High Court bail is granted willy-nilly, we have

an amendment for them. We are proposing an amendment to clause 5 of the Bill. In this clause, our amendment, which will be circulated shortly, is that we substitute clause 5 for the following:

> 5A(1) Bail shall only be granted by the High Court to comprise not less than three judges.

We are saying that if the Government is concerned about the looseness in the granting of bail, let us have three judges sitting to deal with this matter and get rid of clause 5. It could be two or three. We are also proposing, in an effort to keep proper checks and balances on this rampant Government that is going about the place as if God created Trinidad and Tobago for it, an amendment to section 7, which reads:

> This Act shall continue in force for a period of six months from the date of its commencement.

You must come back to this Parliament in six months to justify what you have been doing with the measure that we will support later if you agree to the amendments we propose. We are not interested in the removal of any sunset clause. We are saying that it should remain and that is why we have advanced this particular amendment.

We are very clear. We think that legally it is wrong for the Government to have provisions as we have seen here in clause 5. We are saying that politically the Government is hoodwinking the population when it cannot even catch the criminals. The Government must first catch the criminals before it takes action of the nature it is proposing. We are not in favour of these measures in the way the Government has advanced them. It is clear to us that the Government is not serious about dealing with the situation we face.

Mr. Vice-President, if you go to clause 4 of the Bill, what is this Government telling this honourable Senate? It is telling this Senate to impose on the courts of Trinidad and Tobago, on a permanent basis, a court that is supposed to have discretionary powers—Mr. Vice-President, this is not temporary; this is not a sunset arrangement, but the Attorney General is saying that she wants this Bill to be passed as a permanent measure and under clause 4(4), she reinforces what she is saying by saying:

> "A Court shall not grant bail to a person who is charged with an offence listed in Part III of the First Schedule and has been convicted—
>
> (a) on two occasions…
>
> (b) of any combination of offences arising out of a single transaction,..."

Is that not draconian? What is she trying to do, Mr. Vice-President? They cannot solve crime and therefore they are using the hammer. This is not supposed to be punitive; it is supposed to be developmental. We are supposed to be rehabilitating people. What is the role of the prison authorities in this scenario? They cannot deal with crime so they say to put the people away. So out of the various areas that I have mentioned, 106,000 crimes, they have only been able to solve 26,000 and they are coming here to tell us if they catch an individual dealing with a combination of offences arising out of a single transaction listed in that part—let me just call the part: shooting or wounding with intent to do grievous bodily harm.

We are not saying we are supporting this, we are saying that if that is done; if a man or woman does this crime, take the person to court and let the court deal with them. In the meantime, there is something called prevention. The Government must take measures to prevent crime. Crime is not only about punishment. Addressing crime in our nation must not only be seen as a punitive measure, you must prevent crime in the first instance by setting up the infrastructure and the social environment to ensure that our children are in school; to ensure that our citizens are given permanent well-paid, productive and well-rewarding jobs. That is what you have to deal with. We need to ensure quality education for our children.

They go on to talk about robbery with aggravation, robbery with violence, which they have added without consultation with us; assault occasioning actual bodily harm. All these things were in the original Bail Act, but the difference is that the judges had discretion. The Government is adding to section 5 of the Bail Act new sections to make it a permanent feature. If they do this once and they have a combination of one single transaction, they will put away that person for life.

So even if the person goes to the High Court, the judge's hands are tied behind his back. He has no discretion. So what do you want to do? You want to overthrow the Judiciary in this country? The judges and magistrates must have that independence so that if a citizen feels he has been set up by the police, he must be able to go to a judge in chamber and tell him that he has been set up. You are telling us if the person commits the crime twice within a 15-year period, he is locked away for life? Is that your way of dealing with crime in the country?

Mr. Vice President, how can we support this measure? How can any civilized mind support such a drastic, draconian, dangerous and oppressive measure? I am surprised at the Attorney General, who is supposed to be the guardian of our

Constitution, bringing repressive and dangerous legislation to undermine and subvert the fundamental rights and freedoms of citizens of this country.

I am ashamed of this Attorney General. She should resign for bringing this drastic and unconstitutional measure to this Parliament today.

3.20 p.m.

Mr. Vice-President, we are arguing that the only reason this Government has brought this measure here today is because its intention is to undermine the independence of the Judiciary. That is why the Government of this country is now talking about a ministry of justice, so that they can roster judges' jobs and tell the judges which case to sit on. If there is any case that is against the Government, they would put a judge that they feel is more favourable. We are not in support of a ministry of justice in this country. I want to tell the Prime Minister this in advance, because he needs our support for the Constitution to change. I want him to change his mind immediately about the ministry of justice. We are not supporting that. Under no circumstances we are going to do that. That is what they are about to do. They are trying to undermine the Judiciary.

The tried it by getting rid of Sat Sharma first. They tried to humiliate this man. They went to his home with police to bring him down to the court and the police cell on a Friday night. A Chief Justice being so shamelessly aggressed by this Government, handcuffed because they did not like how he handed down certain judgments against them.

This Attorney General comes here with this Bill today, without any justification. You are trying to take away the power of the court. We will not be party to any conspiracy by the Executive to undermine and subvert the independence of the Judiciary. We will not be party to it.

I want to tell you, Mr. Vice-President, that the granting of bail is not a legislative or executive function but a judicial function and power. How can you take away the judicial function and power of our judges to grant bail, when it is inherent in our Constitution? You want to establish a dictatorship. You want total political control. You want to get at what you call your so-called enemies. That is what you are doing. Mr. Vice-President, my view is very clear, leave the Judiciary alone. Leave the Judiciary alone, PNM and Mr. Manning. They have the exclusive right to grant bail and it must remain there. Let it remain there. We will not stand idly by and allow this Government to bring legislation to this Parliament, in order to reduce the power of the judges. We will not do so. If you across there want to be accessory to that crime, you all can be accessory to the crime of this Bill.

Not because citizens are under pressure—We are all under pressure because this Government is funnelling hard-earned taxpayers dollars to gangsters and promoting criminality in the country. Like something called moral hazard, they create their problems and are now trying to find solutions. What is the solution, to bring draconian legislation in order to undermine the fundamental rights and freedoms of the people and take away the fundamental independence of the Judiciary, our judges and our magistrates? I have views about many judges and magistrates, but I do not think it is fair for the Executive to use the Parliament to imprison the judges of this country and tell them that they have no right to set bail. No, no, no.

This is why, when we first introduced the arrangement with the Government, in terms of the agreement, we introduced a sunset clause, because we did not want this thing to be permanent because we understand the dangers of it. [*Interruption*] Do you think you are in the departure lounge?

If you continue—[*Interruption*]

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

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

Question put and agreed to.

Sen. W. Mark: Thank you very much, Mr. Vice-President. It is clear to us the hidden secret agenda; the evil intention of this Government. It is clear. We are unmasking the beast, in terms of the beast's true intention. Their intention is to undermine, subvert and overthrow the independence of the Judiciary in this country. That is what you are after and you want us to be party to that. We will never be party to that. We will never be party of an Executive to overthrow the Judiciary in this country and lock their hands behind their backs. No, no, we will never be party to that. Not because, as I keep saying, people are unhappy you have to introduce draconian measures. Even if you introduce draconian measures such as a state of emergency, it cannot last forever. It would last three months, six months or maybe a year. After that, you would lift the state of emergency. They want a permanent state of emergency here to have the permanent power to tell—

Imagine the Cabinet, with people like Jerry Narace—a man in Port of Spain told me recently that they have rechristened that man. Do you know what his name is now? It is Jerry “Lionel” Narace.

Hon. Senator: You are imputing—

Sen. W. Mark: Okay, I withdraw it now. He is not "Lionel". How can we put power like that into the hands of these people who "lick" up the Chief Justice? We could never trust you. You got an opposition leader set up. Up to this time he cannot be in Parliament. You want us to support you? No, no, no, we would go on a campaign through this country to expose you and tell the country, the middle class and the business people what your true intentions are.

They are seeking to remove the entrenched safeguards in our Constitution that would say avoid this Government from trampling on the rights of the people. That is what they want to do. Who or what is this safeguard? It is the Judiciary. The guardian of our human rights and fundamental freedoms is the Judiciary, and you want to handcuff the Judiciary. You want to determine who "geh" bail and who "eh geh" bail. You want to determine who will be in jail and for how long. How can we support that?

If, for instance, the Government believe that they have some challenges in the area of granting bail, all they have to do, if they want, is to establish a special bail court so that the magistrates and the judges could have a special court to grant bail, but do not come here and take up the rights of the judges to grant bail. Do not do that. This is why we have said that this measure is altering section 54(6) of the Constitution, because that is not our approach to life. Under our Constitution, every man is entitled to bail. Every single citizen who is charged with a criminal offence, outside of murder, piracy, hijacking and treason, is entitled to bail. You have now created 27 new categories of offences and you are telling the judge: You cannot grant this man bail. No, no, no. That is totally unacceptable. This is why we have given them a way out, because we know you are cornered. "If yuh want, bring three judges, have them as a panel and leh dem deal with dat." We are saying to you, through you, Mr. Vice-President, that they must also deal with the matter of the sunset clause as well. We are not in favour of having our Constitution restructured in the way that it is being proposed.

When we held our discussions with the then ruling party on Friday, November 18, the Government was in high praise of the Opposition. They said that cooperation was the spirit that we needed to move forward with. As soon as they divided the Opposition, they went and supported one side and denied the other. Anything to deny the people's fundamental rights, they would engage in. We now have a united Opposition and, therefore, this minority Government—[*Interruption*]

No, you brought thugs and hoodlums; several of them. I was molested as a parliamentarian coming here. I am entitled to come to this Parliament without being molested by people. You had people set up to hurl abuses at our Members

of Parliament. That is what you did. [*Interruption*] Some elements, not all of them, as far as this Government is concerned. That is why you cannot allow this Government to have this kind of draconian power. Look at the mob rule they engaged in last Friday. Look at their behaviour. The Prime Minister is the lead anarchist in this country; lawless, breaking the laws of this country. They want us to support? We must give them more power. We must give this "wajang" Government more power to do what; to take innocent lives? People are being murdered in this country and they are being told that it is collateral damage. You want power so that you can fly all over the Caribbean in a private jet and when there are floods in Trinidad and Tobago, it is a stationary cloud.

It is clear to us. We were very clear when we met with the Government in 2005. We told the Government—I want to read this. The Opposition made it very clear to the Government then that it does not believe that legislation can solve the spiralling crime wave and the increase in lawlessness which we have been experiencing, particularly over the last four years. What is of even greater importance is the question of management including workable systems of administration, new and transparent processes and the provision of proper support services. In this regard, we emphasize the need to look at non-legislative measures that would reduce the economic incentives in crime-related activities. That was our view then and it is our view now.

You cannot use the legal instrument as the only weapon to deal with the crime scourge in our country. We have to find other means and ways of providing economic and social incentives to get people away from a life of crime. As far as this Government is concerned, the only solution is draconian legislation. The only way out is dangerous legislation. The only way out is to hijack, subvert and undermine the independent Judiciary. The only way out, as far as this Government is concerned, is to take our rights and our freedoms away. That is what they are about. You cannot solve a problem? Bring draconian legislation. You want to get rid of the Judiciary? Use the Parliament in order to undermine them. You want us to be part of that? How can we be part of it?

3.35 p.m.

I call on the Attorney General to either withdraw this measure or entertain drastic alterations of it. We have proposed several amendments which I shall circulate shortly, and we are hoping that good sense will prevail and they do not take this Senate for granted. Just because you have 26 seats in the other place does not mean that you can go there and pass legislation, because you do not need our support. We have a Senate here with men and women who would stand up for

the rights of the people in this country. This Attorney General was very disappointing this afternoon. I am disappointed in her. All I heard about her in the past is now turning on its head. I do not believe what I heard about her. [*Interruption*] Well, it is mutual.

Mr. Vice-President, it is clear to us on the Opposition Benches that this Government is seeking, not only to breach sections 4 and 5 of the Constitution, but it is also breaching section 54(6) as it seeks to alter the Constitution. In altering the Constitution, we are of the view that a two-thirds majority is required.

We shall not be party to any attempt by this Government to undermine, subvert and overthrow the independent Judiciary in our country. Traditionally, the Judiciary has the power to grant bail. We believe that should be maintained. I do not want the hon. Prime Minister, Mr. Patrick Manning to influence any police or to tell the policeman if to grant Sen. Wade Mark bail. I want to go to an independent tribunal where you have independent-minded people to hear my case. I do not want any politician to determine whether I would have bail or not. We know how the society operates. It is a small society, and the PNM has a lot of influences in different nooks and crannies of this nation. They put the poor Commissioner of Police in a very awkward position in Woodford Square on Friday. Even though he might mean well, after Friday's debacle, people have question marks over his head.

We are saying to leave the Judiciary alone. As far as we are concerned on this side, this Government should not be pursuing a measure which at this time cannot be justified as necessary, expedient or in the strict interest of our nation. The Attorney General has not convinced us of this matter. She wants no duration for this legislation, and she wants a permanence of this piece of legislation.

Under the current circumstances, we have submitted our views. We would like the Attorney General to reconsider her position. We are going to circulate our amendments in a short while, and we would hope before the night is over, because it is a long debate, that the Attorney General would understand the importance of this.

I want to warn the Attorney General that if this Bill is passed in its present form, do not wait for the Privy Council to strike it down as illegal, null and void and unconstitutional. Take the necessary measures now, because we are fighting a common battle and we have a common enemy. The common enemy is the

criminal element and, therefore, whatever we are doing, we must do it in such a way that we do not give the criminals a loophole in order to go free. That is why we have suggested what we have suggested.

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

Sen. Dana Seetahal SC: Mr. Vice-President, thank you very much. May I say at the outset that my view is that the Bill does not breach the separation of powers doctrine as Sen. Mark has more or less indicated, and I am going to tell you why. [*Desk thumping*]

The initial legislation that is the Bail Act, now Chap. 4:60, had two provisions which are relevant to this Bill that we are passing today. The first provision was in section 5(1) of the original Bill where it is provided that there should be no bail at all for murder, piracy, treason or hijacking and any offence for which the death penalty is provided. There being no other offence for which the death penalty is provided, one would imagine that when that provision was inserted, it was envisaged that perhaps in the future there might be additional offences for which the death penalty is provided for which no bail would be granted.

Now, I make that point to show that the legislation is flowing and you could, possibly in the future, include such an offence, and that would not breach the separation of powers doctrine. In other words, when this provision was inserted and it said that no judge, no magistrate or no one can grant bail to a person charged with murder, which is the only offence that is relevant in today's world really—we did not have a treason for 18 years or a hijacking or piracy for as long as I could recall.

Presently, with respect to murder, if one were to carry the argument to its natural conclusion where no judge can grant any person that is charged with murder bail, it would mean that the original Bail Act breached the separation of powers doctrine by denying a judge that power. I do not think that argument has ever been raised or if it was raised it has obviously not gone anywhere, because the original Bail Act is still law.

So, there was that provision and there was a second provision which is relevant today, which said that a court should not grant bail to a person charged with a Part II offence if that person had convictions for three offences and they were in the last 10 years. That was in the original Act. If you had convictions for three offences over 10 years, and the offences listed included an amalgamation of what is now called the Part II and Part III offences—all kinds of violent offences and

ordinary offences like larceny—if you did have these convictions then the onus was on you to show to the court why you should be granted bail. So, you started off with no entitlement and then you had to show that you should be granted bail because, in other words, not only were your rights denied, but you were a person who could be trusted not to commit an offence whilst on bail and so on.

Now, the proposal by the Government is nothing new as we all know. It has come up before at least five or six times. It is the same, in essence, except that it is now provided that there should be no sunset clause. So if it is—I refer to what my friend Sen. Mark said—that this legislation is draconian, dangerous, uncivilized and barbaric and all of that, then it was that way when the Opposition supported it three years ago. [*Desk thumping*] Just because it was for three months and six months at different points in time does not mean that the nature of the law would have changed.

So, was it okay then to have this barbaric and draconian legislation for three months and for six months and merely because it was for a short while, it was okay? I have a problem with that, because if it is barbaric, it was barbaric all the time and it should not have been passed, which supports my view why I supported it. I do not believe that it is any of those things. It is definitely harsh legislation, but I believe that at this time it is considered to be necessary in Trinidad and Tobago. [*Desk thumping*]

Having said that, I do believe that there are some points that have to be looked at again at some point, because we do not want to continue adding offences for which you would have no bail at all. That is the caveat that I would come to.

The proposed law which was the proposed law the last five or six times it came to the Parliament—in addition to what I have just said that persons charged with murder, hijacking, et cetera, should have no bail at all which is the law as it exists—is to change that Part II and instead of having violent offences in that Part II, what you would have is not so violent offences like simple possession of an imitation firearm, larceny of a motor vehicle, arson and receiving stolen goods which are more or less what you would think of as non-violent offences, although to me arson could be considered violent. In any case, the proposed law is that if you have in the last 15 years, according to this proposal, convictions on two occasions for these offences that are in the new Part III—sorry, Part III would be the violent offences, but for Part II, if you had convictions in the last 10 years for three offences out of those, then you would not be granted bail. That is what one of the proposals is according to what I have here.

There is also a proposal that a person charged with a violent offence and who has two convictions in the last 15 years—that is new. It is new because it has been now reduced to two convictions and the time span has increased. Mr. Vice-President, in the past, if you had two convictions in 10 years, but you had one in the eleventh year, then you would still be entitled to bail, and yes in the past you had a discretion. The proposal now is that there would be no discretion in the courts to grant you bail if you had two convictions for the violent offences in 15 years. [*Interruption*] This is true. This has been the law for the last three years.

The pre-2005 legislation was amended in almost the exact way that we are now proposing to amend it. So, when my colleague asked unofficially whether now there is no discretion, this law was changed in 2005, repeated in 2006, 2007 to present. This law is essentially nothing new and the only difference being that now it is intended to be permanent.

So, in 2006 when it came to us, we had this new part that if you were convicted of two offences—manslaughter, shooting, robbery and so on—in the past 15 years then you would not be granted bail. That is the law as it exists; no bail at all.

This present draft that we have, the difference is that we are now going to make it, according to the Government's proposal, permanent and there are certain minor changes, but there is one problem that it does not address and that problem is—it was raised about three debates ago by me—that if you have convictions for a Part II and a Part III offence, one conviction each, what is the situation? What should a court do? In other words, Part II offences are the non-violent offences.

Currently, if you have three convictions for these Part II offences over 10 years you would not be granted bail. Supposing you were to have two convictions for two Part II offences and one conviction for a Part III offence, what is the situation? The situation is that you would be granted bail even though a person who has three offences for a Part II offence which are lesser offences would not be granted bail. If you have two convictions for the minor offences and one conviction for the serious offence there is nothing in this Bill that covers that. As I said before, I raised this matter and I was told that this would be addressed.

Other matters have been addressed such as the renaming of the offences in their proper way, because armed robbery and robbery with aggravation is the same thing; robbery with violence is just a different form of robbery. There is no big difference. I think there was reference to it by Sen. Mark. It carries the same penalty as robbery with aggravation.

3.50 p.m.

Most robberies with aggravation are in fact robberies with violence as well; you could charge it either way, but the only difference might be if you have a robbery with aggravation with no weapon, but two persons committing it. Generally, when you commit a robbery of person there is some violence, so you could charge it either way. That is the one concern I have in relation to the changes that were effected.

What I would like to have seen, now that the proposal from the Government is to make this permanent, is to have at least a report on how this legislation worked in the last three years. Was it used by magistrates? Was it used by judges? Did it impact significantly on kidnapping for ransom, which was what was touted by the media—if no one else at any rate—as being aimed at and I believe by politicians at some level? Did it have that impact?

From my experience, I am of the view that for kidnappings for ransom it had an impact. Persons might ask how many people who were charged with kidnapping for ransom subsequent to the passage of this legislation, were refused bail, and you might be told they could be counted on one hand. How many people would be charged for that offence and how many people were refused bail without the Act being invoked? In other words, they would not have been granted bail anyway for other reasons, and the Act may not have been used.

I have seen from persons before the court and from what people are charged with regularly, that offence, the numbers have seriously gone down. So, I am of the view that the enforced restriction of some persons, keeping them in custody would have had an impact, because during that same time that this legislation came into effect, there were a number of persons who were already before the courts and were in custody for other offences. They might have had a murder, which came from a kidnapping, so it would have been murder that would be recorded and not kidnapping for ransom.

The fact is, I do think that the legislation in combination with the Kidnapping for Ransom Act, which is the 2003 Act, where the minimum penalty was set at 25 years imprisonment, which I personally opposed, but that is the law as passed.

There is another issue—and I think this would have allayed the fears of Sen. Mark for sure—if there had been consultation with the Judiciary on this legislation, as there should be, in my view of these pieces of legislation, there should be consultation with not only the Director of Public Prosecutions but the Judiciary, because the powers of court to grant bail—that means both the lower

Judiciary, the magistrate and the higher Judiciary—will be affected. I think there has been ample opportunity for consultation. If there has been, perhaps we should know about it.

This morning I was fortunate enough to be in the company of some of my colleagues here, Mr. Vice-President, including you, to hear the Chief Justice give his annual, well—it is his first, anyway, this Chief Justice—the annual opening of the law term presentation. He was talking of the independence of the Judiciary; how far they have come; what they intend to do in terms of maintaining that; the issues of constitutional reform and so on.

I think that the Judiciary is very conscious of its independence and I think that if in fact, in the last three years this legislation has been in effect—repeatedly for three months, then three months, it is the same legislation but it came back—and there had been some concern on the part of the Judiciary, I think that it would have been raised by now. All that I heard raised, to me particularly and I have been in the criminal courts, is the combination of offences where you have Part II and Part III offences. What is the magistrate to do if a person has convictions? That is what was raised.

Another thing that was raised very recently is: Is the Parliament listening to the Magistracy in terms of custodial arrangements for children? No homes, no spaces in any homes. Right now, as we speak, the juvenile court magistrates are sending children to the adult prison, because St. Jude's is filled to capacity. It was filled 20 years ago when I was a magistrate, so you could figure out how long I have been in the business, but I was very young as a magistrate. [*Laughter*] The point is, it was overfilled then and I have not seen anything. A magistrate in the juvenile court asked me last week about this. So that is the kind of concerns that they have.

Sen. Joseph: Mr. Vice-President, I thank the hon. Senator for giving way. Just to inform her that the Government is well on its way as it relates to identifying a particular facility to accommodate—well, in this instance we are focusing on female persons for whom there is no proper place to be facilitated. We are well on the way as it relates to identifying suitable accommodation for those individuals.

Sen. D. Seetahal SC: Thank you very much, through you, Mr. Vice-President, to the Minister, but identifying is a long way from actually moving in, and that is what I am more concerned with. What is a female prisoner? If you could call a 15-year-old a female prisoner, who was charged with some offence and had no parents visible. That was the occasion that caused the court to ask me whether anyone was listening.

There was another concern, Mr. Vice-President. If we pass this legislation, it means that any person who has a conviction for two offences in the list of violent offences will not ever be entitled to bail. That is the consideration, you know. I am not so concerned with the 60 days kidnapping limit, I am concerned with all of those persons out there who have convictions. Let us get an example, someone robbed someone with a firearm 10 years ago, and he is convicted and he does his eight years or seven years; it is his first conviction. So, he would be convicted of possession of a firearm with intent to endanger life, possibly, or simple possession, and possession of ammunition, if there is one bullet in it, and he would be convicted of robbery with aggravation; that is one transaction.

He comes out; he has lived a life; he is reformed; he goes to the treatment; he does his whatever and then someone makes a report that he has assaulted him. You know what assault could be, Mr. Vice-President? If I slap you and you fall and you have an injury, that is assault occasioned and actual bodily harm. If you are charged with that offence, you come before the court, you could never be granted bail at all. You need to have a hearing; the matter is adjourned; it goes on; it could go on if there is a preliminary enquiry, whatever. Or if you are charged with any of these offences here and attempt to wound someone—it could be a friend, I mean people could say you ought to stay out of trouble, that should teach you, but oftentimes when people have been in prison, people tend to taunt them because they know that they have been prisoners, and it is very difficult for you to stay out of trouble, as we know.

So, my concern is, that in such a case, out of one transaction gives rise to two offences, even though it is one act, then you would never, ever be able to get bail under this legislation. My view is, that at some point in time—I appreciate that the current law expires on September 19—this is revisited, because I do not feel comfortable with persons charged with offences, not ever being entitled to bail, because of one incident within the last 15 years, because it could fall within these Part III offences.

I think there was some reference to the breathalyzer and things that the Government is doing. Oh yes, that is what I am going to bring up now. I have heard the Minister say that something is in the offing and I know the Attorney General might say that there is an intention at some point in time to amend this law, but I have concerns with the speed or lack of speed with which these pieces of legislation are moving. I mean, there must be very good reasons within each ministry, but I do not accept them.

The breathalyzer law, there was a lot we heard about it; where is it today? Sometimes it is better to go with what you have and come back and improve it, rather than you strive for perfection, which you will never get and then we keep waiting and Rome burns. What about the Special Anti-Crime Unit of Trinidad and Tobago (SAUTT)—through you, Mr. Vice-President—Minister of National Security? This session is going to finish and we will not have SAUTT. I am talking about the legislation that will give life or at least legitimacy to that organization and enable the administration of criminal justice, through enforcement by the police, to be properly carried out.

I have said that I believe that it is not a breach of the separation of powers doctrine, and there is a point that I need to make in relation to that. The authorities, the cases that I have seen, which talk about breaches of the separation of powers doctrine, is when the Parliament takes powers that are the powers of the Judiciary and gives them to a body.

For example, you say to the President or a Minister, you are the one to decide when a prisoner should be released. So, there is a trial and you say, I sentence you to be detained at the will of the President or the will of the Minister. And it has been held that that is a breach of the separation of powers doctrine, because it means that the President or the Minister is getting involved in sentencing and that is wrong and that has been held to be wrong.

What we are talking about here is not giving powers to other persons. What we are talking about here is similar to mandatory minimum sentence. For example, that 25 years in the Kidnapping for Ransom Act—which, in my personal view, is still wrong in principle, but not wrong in law—can that be said to be a breach of the separation of powers doctrine? The separation of powers concept is not to limit the Parliament from passing laws; that is the Parliament's business. The Parliament is saying that is the minimum sentence we want and that you, the Judiciary, should administer it.

It is the same way when you say no bail at all for murder. It is the same way when you say that there is a mandatory maximum. If you say the maximum sentence for robbery is 15 years, suppose a judge wants to give 20 years, he cannot. Is that not a limit on the judge’s powers, but is it a breach of the separation of powers? One cannot say that every limit to the Judiciary is a breach of their powers, and I do not think that the Judiciary will see the limit of an individual's right to bail has anything to do with their powers.

What we are dealing with here is the right of an individual to bail, setting limits to it, not all of which, as I said I agree in its entirety, but those limits are for the benefit of the country and the citizens ultimately and to fight crime and all of the usual reasons that we have given, but it is not meant to harness the Judiciary. The aim here is really to deal with persons who are accused of crime and who we are talking about accused of serious crimes and have records. The aim is not to say, I want to constrain the Judiciary, I do not want to give them powers and I want to take away their powers.

That is where I come to one big point that I want to make. If it is that we were to institute the system, as suggested by my colleague, Sen. Mark, of having three judges determine whether someone should get bail, that would be an imposition on the Judiciary, and no judge in Trinidad and Tobago worth his salt, will tolerate having to sit on a panel with any other judge to determine a simple matter like bail, because bail is an interlocutory matter.

4.05 p.m.

You have a trial for murder presided over by one judge which is established in our whole system of law, and throughout all of our legislation you will see a court, a court, a court; which says a judge sitting in a High Court can do this, can deal with confiscation orders, can deal with so many things, and you are saying for bail which is pretrial, which is not even sentencing him—a judge sentences people to death. A judge decides whether he should give you two years or 15 years for something; or in manslaughter, whether you should get life or a bond. That is the variation. But you are telling me as a judge—assuming I were—that I must sit with two other judges to deal with an interlocutory and interim matter, and if that legislation is passed it would be a breach of the separation of powers doctrine.

So, I definitely do not agree with it. I do not see how, wherever that proposal originated from, the person who made that proposal had not considered how it would impact on the Judiciary in its entirety. I dare say, the Judiciary would think that that is a direct interference with its independence. Not the Judiciary as a body, but the independence of each judge to make up his own mind in a general context. I do not know that judges as a whole feel that if the Parliament says there should be no bail—bail being an interim matter—for murder that they think that that is directly an attack on them. But if you say to decide whether you should get bail for kidnapping, I want three of you to decide, that would be a problem.

So that would be the extent of my contribution. In summary, I also want to make it clear that what we have here is not new; it has been the law for the last three years, but as was made clear, there was a sunset clause for each piece of

legislation, but I do want to say that I think that consideration should be given to deal with the situation of the combination of offences—Parts II and III—and more importantly, to, some time in the future, review the legislation whether we think we really want to refuse persons, deny them bail entirely in some circumstances as we think is necessary now.

Thank you.

Sen. Mohammed Faisal Rahman: Thank you, Sir. Well, I had anticipated that the Government side would have wanted to add some more, but, anyhow there seems to have been some support for the Government position by Sen. Seetahal SC.

Sen. Annisette-George: Position in the interest of Trinidad and Tobago.

Hon. Senator: She is knowledgeable.

Sen. M. F. Rahman: Absolutely, I have no question about her knowledgeability on these things. But you see, out of the mouths of babes come words of wisdom and I am a babe in this environment. I may say something here that may change the perspective a bit.

Mr. Vice-President, one of the very last points which Sen. Seetahal SC, with whom I usually agree, and for whose views I have the greatest esteem, generally I usually say this, sometimes she leaves before I have a chance to speak after her contribution, but I would say this, she has just made a very startling observation upon which I must comment. She had mentioned that there was some sort of anomaly between judges who sit as a sole judge to determine the fate of a man's life as against what may sound to be an absurdity, expecting more than one judge to sit in, what she calls, I believe the legal term is an interlocutory matter.

I want to say, Sir—and this is to preserve the dignity and the rights of the judges; I think this is the point she was making—that as a layman, as a citizen and as a member of the community, I regard the right of the individual citizen to be the fundamental human right upon which all the other rights are developed. If we had perfect citizens we would not have the need for judges. But it is because we have imperfect citizens and it is because of the fact that we have to preserve the rights of those citizens that we must be very sure that citizens' rights are not violated.

We have a global situation today, where, suddenly, because of the prevalence of terrorism—and I think that we may be looking at crime as our local terrorism. If this is the case, this has become so because of dereliction on the part of the

Government. But because of terrorism we have had the emergence of the Patriot Act in the United States of America, where the rights of the citizens have become subservient to the rights of the society at large. Now, I could understand where you preserve the rights of the society at large over and above the right of the individual citizen for the right of the majority outweighs the good of the minority. I can understand that.

But when you are thinking about preserving the right of the judge, the dignity of the judge and the status of the judge as against the fundamental right of the one million-plus citizens of the country, thinking that you are preserving the dignity and status of the judge by not requiring him to look at an interlocutory matter that impinges upon the fundamental right of a citizen, I believe that there is a little skewed vision here.

We do not want "T&T" to be called "Guantanamo T&T", because this is where this is heading. Now, as Sen. Mark correctly said—and I am not suggesting there is a dictatorship yet. There is a galloping dictatorship, but there is not full-fledged dictatorship yet, because notwithstanding the disregard for law last Friday and notwithstanding the trivializing of this very serious matter by the Government Benches, because we have very eminent people who have already written and expressed their views on this matter, and I can quote Mr. Martin Daly SC who has expressed very serious concerns about what took place in the square last Friday, the illegality of it and the very poor example set by the Prime Minister.

But now, coming to the matter, if we start off by eroding tiny rights bit by bit—termites do not come and devour your house overnight you know. Termites come and go into little corners and start to eat away at your cupboards, at your pillars and at different parts of your house. All of a sudden one day a strong wind blows and your house falls apart because it has become eroded over a period of time by these little nibblings, these tiny nibblings.

You see, the Government has brought a piece of legislation here which, on the face of it, and driven as we are by the upsurge in crime, which again I must lay fundamentally at the door of the Government. They have created a problem; they have developed a monster; they have fed the monster; they have given the monster all sorts of financial incentives and dignities like "community leaders", and now they are reaping the whirlwind and in order to control the situation they are going to chip away at fundamental human rights.

Now, Mr. Vice-President, this is not a simple matter of only chipping away at fundamental human rights you know. When I think about it, I did some work on this matter before coming today, but hearing Sen. Wade Mark, the wheels started turning in my head and I started to understand some of the implications of this matter.

About a year or so ago, I believe that we had to have forgiveness for a number of prisoners. Am I correct? Did we not have a whole batch of prisoners who were given freedom because of the overcrowding in the prisons and the serious situation that was facing the country?

Sen. Seetahal SC: No.

[*Sen. Prof. Deosaran nods in approval*]

Sen. M. F. Rahman: Yes, Sen. Prof. Deosaran is nodding in approval. Unless I am dreaming this but we had a situation—

Sen. Prof. Deosaran: But not for those reasons.

Sen. M. F. Rahman: Well, okay, not for those reasons. [*Laughter*] You may want to help me here, because that was not the given reason. We have a shortage of prison officers; we have a shortage of police officers; we have a shortage of magistrates; we have a shortage of judges; we have a shortage of prisons and we are going into a situation with a whole list of offences, some of them previously thought to be very minor and petty. We are going to be ending up crowding prisons that we do not have, burdening our prison officers that we do not have and getting police officers that are not there. Good Lord, this is a concept, that is a recipe for absolute disaster. Absolute disaster!

The Government has not thought this thing through. It is almost as if you say look, there is a cockroach running there, whap, you hit it with a sledgehammer and it is the boat you are in, and wreck the boat; you are going to get swamped. There is so much wrong with this concept that it starts to blow your mind away.

Now, with the Patriot Act in the picture, there is a situation where we figure, okay, so human rights are being violated in the United States, so why not "we"? It "ain't" so easy as that. The implications are vast. Western civilization has come a long way from the days when the first *habeas corpus* concept was introduced.

> "History of *habeas corpus* in England.
>
> Blackstone cites the first recorded usage of *habeas corpus*"—a little legal term here—"ad subjiciendum in…"—

I cannot pronounce that too well, my apologies.

> "1305"—700 years ago—"during the reign of King Edward I. However, other writs were issued with the same effect as early as the reign of Henry II in the 12th century."

Mr. Vice-President, we are in the 21st Century, nine centuries ago and we are—

Sen. Lezama: Mr. Vice-President, on a point of order, please?

Sen. M. F. Rahman: Point of order. It better be a point of order.

Sen. Lezama: Yes, Sir. According to Standing Order 35(1):

> "Subject to the provisions of these Standing Orders, debate upon any motion…shall be relevant to such motion, Bill or amendment, and a Senator shall confine his observations to the subject..."

I am wondering if there is a ventriloquist somewhere outside, because it is a repetition of what I just heard an hour ago and the repetition of what was said in the other place in July. Thank you.

Mr. Vice-President: Well, section 35(1) is relevance and Sen. Rahman, it has been 10 minutes now and you have not said anything about this Bail (Amdt.) Bill before us, so get to the Bail (Amdt.) Bill and let us move on.

Sen. M. F. Rahman: Mr. Vice-President, no bail denies *habeas corpus*. This Bail Bill seeks to deny the right of *habeas corpus*. Am I missing something here? [*Crosstalk*] Am I missing something here? *Habeas Corpus*—are you familiar with *habeas corpus*? [*Interruption*] Pardon?

Hon. Senator: Tell us. [*Inaudible*]

Sen. M. F. Rahman: Yes, I think she has to help me. You are right.

Hon. Senator: She has an LLB.

Sen. M. F. Rahman: Yes, I think she has an LLB. Yes, you are right. She is just trying to tangle me up and derail me; [*Laughter*] a little strategy there, "eh". [*Laughter*] Because I get a little confused when I am being totally relevant and I am being told that I am not. Once before somebody said a matter was decided already, it never was and I wrote the Chair and I never had a reply. We are being tripped up here by bogus means and I want to protest that, Mr. Vice-President. Because, if we are on this issue and they cannot connect the dots and understand the point that is being made I am very surprised, because I started off dealing with the aspects of the contribution of Sen. Seetahal SC. If she was irrelevant then I am. [*Crosstalk*]

Mr. Vice-President: Senator, please continue with your—

Sen. M. F. Rahman: Yes, yes, I am trying to get back on track. I was so totally derailed. [*Laughter*]

For the benefit of the ordinary people here like myself, *habeas*—What did I say? [*Interruption*]

Hon. Senator: *Habeas corpus*.

Sen. M. F. Rahman: Okay. Well, what I am reading here, it says*:*

> "*Habeas corpus*"—which means—"[We command] that you have the body is the name of a legal action, or writ, through which a person can seek relief from unlawful detention of himself or another person. The writ of *habeas corpus*"—I am reading—"has historically been an important instrument for the safeguarding of individual freedom against arbitrary state action."

4.20 p.m.

This Bail (Amdt.) Bill is a proposal by the State to impose arbitrary action on a permanent basis. This is the connection. I hope that I am making it clear. The matter of the individual right is a matter that is 900 years old and we are in the 21st Century. It is since the time of Henry II in the 12th Century. What this Bill is proposing is to take 900 years of human rights safeguards and say, wash it away. Why? Because the Government has been derelict in its control of crime. You have allowed a monster out of the Pandora's Box and now you are seeking to—maybe Sen. Mark was right, ulterior agendas and designs are in the minds of the Government. The whole thing is that what we have here is a violation that is being sought to be imposed upon the nation. Let me tell you some of the things that are going to happen if this ever succeeds. We have murderers being held for trial without bail and they are getting desperate.

Sen. Seetahal SC: They are not murderers. They are persons charged for—[*Inaudible*]

Sen. M. F. Rahman: I stand corrected. They are people accused of murder, which is one of the crimes that habitually and historically are not entitled for bail. We have murder accused in jail awaiting trial and what do they do? They are desperate men so they arrange a contract within the walls of the prison to take out the witnesses. Mr. Vice-President, do you know what we are doing here? We are opening up a whole new vista of murder incorporated, because people who are going to be deprived of their freedom for the rest of their lives, under this sort of law, are not going to take it so. They are going to try to get out one way or the other. There are going to be more jail breaks and more violence in the prisons with your shortage of prison officers. You are looking at a compounding of a problem.

I believe that originally what had been intended was to curb kidnapping. There are some crimes that are very serious and the country at large would like to have safeguards against these things. But to repeat the point, the individual's right is important because there is a very serious matter here, where in countries that have degenerated to autocratic, despotic rule, and the rule of law has become a little shady, you have people being arrested on trumped-up charges and being thrown into prison. Now, we have a situation here where we have mobs assaulting and impeding parliamentarians coming to Parliament, and that was done in the open.

It would be very nice if the Opposition could disappear. It would be very nice if the voices of the "Sun" could be silenced and the time may come when somebody wants to have his own way to be able to fly wherever he wants, to be able to dine however he wants and to be able to enjoy all the things that he wants in the style of some of the other despots in the world, and he may consider it expedient to have it. The big thing on Friday was not organized by the Prime Minister; it was not organized by anybody on that side. It was not even organized by the party. It was a spontaneous thing that some people get it in their heads and say, "Leh me go and have a cultural event," and he just decided to say, "Let us go down in the square." I heard him.

Mr. Vice-President, I am tying it in.

Mr. Vice-President: Senator, tie it in very quickly because you are straying a lot. So, tie it in very quickly to the Bail (Amdt.) Bill.

Sen. M. F. Rahman: This Bail (Amdt.) Bill is opening the way for an authority to trump-up charges to be able to incarcerate people without the hope of bail. If you had listened to Sen. Mark, it would be a very good idea to have a bail court and I would say have a jury so that this jury will decide whether the person should be released back into the society by, a jury of his peers. So you do not have the situation where people are being incarcerated at the fear of one judge, or worse again, right now bail is being withheld because it cannot even reach the judge. On this basis, even a judge cannot get a chance to preside on and investigate the matter, in which time—we know that prisoners have died in custody. A prisoner could go into jail and after 24 hours be found dead in his cell. Many questions could be—a single individual life. The whole idea of Amnesty International and all these people who oppose the death penalty, it is better to let 100 prisoners free than to take one innocent life.

Now, I do not entirely agree with that complete concept there because I think the greater good of the community has to be looked at, but I am aware that prisoners die in custody, and here you are making it easy for people to be put into prison without bail. If a man could survive the 60 days, well then he was not very important, but the chances are that this instrument is a recipe for compounded violation and travesty against the human rights of individuals of the society, and therefore, upon the nation as a whole.

Mr. Vice-President, you might notice that I am having some difficulty keeping my voice normal, because, you know, I cannot avail of the normal refreshment at this time of the year with the religion I follow. I may have to cut short, but it adds to my aggravation when I am being tripped up in a style as if I am not relevant.

I find this Bail (Amdt.) Bill to be inconsistent with the proclaimed Vision 2020 of the Government. Vision 2020 incorporates a concept of a society of free men about their own business and being able to walk the streets unafraid, and being able to pursue their professions and careers with dignity, pleasure and freedom. But what you have here is an instrument that is designed for repression and it does not coincide with any concept of a 2020 vision. Apart from the question of the shortage of prisons and prison officers, Mr. Vice-President, do you know something? The Commissioner of Police has just accomplished an amazing feat. He has actually succeeded in reducing crime by a simple expedient. How he did it? They did not hire new police, but it shows that is what you need to do. He called back those on leave and with 500 more police officers on the job, they had a marked reduction in crime. We cannot ensure that it will last because those "fellas" have to go back on leave, but the fact of the matter is that the police is understaffed. [*Crosstalk*] [*Interruption*]

Mr. Vice-President, I am trying—Oh good, Lord, you really want me to go back and forth connecting and stitching it up? No, you have to intervene and tell them to keep quiet.

Mr. Vice-President: Sen. Rahman, it is 4.30 p.m. now, you said that you were going to wind up.

Sen. M. F. Rahman: No, no, I did not realize that I am going to get a rest. I would go and wash my mouth and come back. I want to talk.

Mr. Vice-President: It is now 4.30 p.m., we would take the tea break and resume at 5.00 p.m.

4.30 p.m.: *Sitting suspended.*

5.00 p.m.: *Sitting resumed.*

Sen. M. F. Rahman: Mr. Vice-President, how much time do I have left?

Mr. Vice-President: You have 22 minutes of your regular time.

Sen. M. F. Rahman: I was on the point that by the simple expedient of recalling police officers who were on leave back to active service, the Commissioner of Police has succeeded in reducing the number of people who would be requiring bail. He has succeeded in reducing the number of people who would end up in prison. He has succeeded in reducing the workload of the magistrates. He has succeeded in reducing the workload of the judges. The only people who have worked a little harder have been the police.

Imagine, one simple expedient has proven to be so successful that it has reduced the problems that this Bail (Amdt.) Bill is seeking to address in the most draconian of ways. This tells us that this is a desperate measure which the Government is trying to impose upon us, thinking that it is necessary. Our suspicions have to start to get activated again, because we had community leaders being empowered with contracts and a burgeoning of crime to bring about this. One has to wonder whether there was an orchestration of circumstance to accomplish a nefarious objective.

This is a matter that we must look at because we have had a sunset clause on five or six previous occasions for the purpose of proving the efficacy of the measure, and to make sure that a draconian measure was not imposed upon the people. Here we have, without any explanation and justification, an amendment that seeks to say, "Well look, let us make it permanent and get on with it." I really think that this is a cowardly way out for the Government. That is one of the terms I would like to attach to this, this is a cowardly piece of legislation to swat a fly with a sledgehammer.

Now, we have a horrendous fly, no question about it; the crime situation is bad, but as I pointed out before, the compounding and domino effect of these measures where we have—and I want to say this, that when the UNC supported this measure in 2005, with all of these specified offences and so on, it was on a trial basis, but after the first or perhaps the second occasion, support was withdrawn because there seemed to be a lack of interest in coming to grips with the problems that are facing the society. If the problem that is facing the society is crime, deal with crime. But you do not permit crime to compound itself and then deal with the effects of crime. This is what we are doing.

We are trying to deal with the consequences of the crime that we have neglected and the measures that are required to be taken to deal with crime—Commissioner Philbert has seized about 500 or 600 firearms, when before we could not seize more than two and three. When I read the figures this morning or yesterday, it was startling and to think that we were thinking that he was not a good choice. When you consider it, if he has blazed a path for himself or his successor to follow, right on, let us empower the man and have these measures which are really unnecessary, thrown out the window.

Mr. Vice-President, I was making the point that for 900 years of civilized development we are going—and one of our Ministers is very, and rightfully so, very proud of her Christian heritage and she has said so in this Chamber. The whole concept of freedom that the individual enjoys is from the Judeo-Christian heritage. I cannot see how Christian-minded persons could set about to incarcerate persons at the drop of a pin. Certainly, including the sort of measures we have here, this is simply going to make all our problems increase exponentially; we are not really solving problems. We are not even paving over the cracks, we are adding fuel to the fire; we are doing something here that is extremely, extremely bad.

5.05 p.m.

The Attorney General made a very interesting point when she said that the rights of the individual, and I may be paraphrasing here, must be balanced against the right of society. The individuals are the building blocks, the segments, the microcosms of society. Just as the family is the nuclear society, the individual is even more than nuclear; he is the single building block. If we do not recognize individual rights, the societal rights are going to be destroyed along the way. I think I have made this point, because this is extremely, extremely important.

If we regress—good Lord, Vision 2020 and we are going back to the 12th Century? We have a lot of concern for the judges' rights. Do you know that Henry the 2nd in the 12th Century and, later, King Edward in 1305, instituted the habeas corpus law and principle to counteract the judgment of the judges they had appointed, judges who incarcerated people unjustly. The king would say, "Come, bring them before me and let me hear what has caused you to deprive them of their rights." The king of any country is the guy who runs the country at the very top. We do not have a kingship here, and we have a titular President, but the Prime Minister is the actual ruler of this country. I am sure you are glad to hear me say that, but we have to face what that means.

We cannot have him reversing 900 years of enlightened kingship by removing individual rights with this amendment that is seeking to make permanent that which, we on this side could only see as a temporary trial measure to assess what we really want to accomplish down the line. We want a 2020 society where men are walking free; you could go downtown and not expect a knife in your belly, a bullet whizzing past your head or landing up in your brain. This is what is happening with this society today.

Sen. Annisette-George: Do you belong to Islam?

Sen. M. F. Rahman: Pardon? I am not hearing you.

Sen. Dr. Saith: [*Inaudible*]

Sen. M. F. Rahman: Do you want me to disregard the goodly Attorney General? When the AG speaks, I listen. [*Laughter*]

Mr. Vice-President, the society we have today is not what we want in 2020. For 2020 we want a society where men are opening doors for ladies and people are saying, "No you, Sir, before me," in a civilized society. Good Lord, this is worse than slave days. In the days of slavery, the slaves could, at least, walk around with a piece of iron on his foot and roam in the bush, which brings me to an interesting thing. If you want to control persons who you think are real criminals, enlightened societies now have electronic bracelets that you could put on their ankles or wrists and track them to make sure that they are not up to mischief.

You do not have to lock up a man, increase your prison staff, increase your prisons, and have his family, not only deprived of his company, but also of his support. One of the very interesting things here is this; do you know that crime is a vocation in the minds of a lot of people. There are criminal persons who would be criminal whether they have money or they do not have money, but there are many, many persons—and I am sure Sen. Prof. Deosaran would support something of this thinking—who are driven to crime out of the circumstance in which they have been placed. As a result of being driven to crime, you have persons who are virtual breadwinners in the family that have ended up being removed from those families for offences—

I would want to go through the list of offences here, because there are some things that jump out at me that do not seem to be right there at all. We are heading for Vision 2020 with half the population in jail without bail. I do not know if you are trying to clean up the society in that way. [*Interruption*] It is

going to reach that. Exponential growth of crime—I do not know where it is going to reach; except, of course, if the Commissioner keeps his position and the Government agrees to increase the police service and have a proper protecting and serving police service for the benefit of the people.

If we went in that direction, we are going to put this behind our backs and say, "Well, we have enough of that." As Sen. Mark said, rehabilitation—good Lord, people are trying to train monkeys to do things now, you mean we cannot train human beings to do things as well? Mr. Vice-President, do you know that they are now designing zoos without cages? But we are trying to cage up man, and we are trying to incarcerate men for a list of offences in this Bail (Amdt.) Bill that staggers the mind. Let me go through these little points very quickly.

This is very, very interesting. There are persons who set themselves standards and challenges to increase their efficiency and competence. By making this Bill into a reality, the Government is easing up itself from taking the measures that would reduce crime, because this is the easy way out; you are copping out. "Jail him, we are not going to worry with him anymore, and let us get on with our affairs." The reality is that if we have the challenge of dealing with the criminals within the society, the Government is going to be forced to find ways to reform the criminals and have a society where there is a disincentive to crime, where there is enough available for the citizens to find themselves in gainful employment, to be able to live lives of dignity and, in some cases, to produce the athletes that could produce silver and gold at the next Olympics.

Good Lord, we have a beautiful society in Trinidad and Tobago; the Jamaicans are no better than we are, and they get gold. We have a situation here where we do not need this Bill. We need a proper society to be groomed; we need to nurture and groom a proper society where people feel that they have a stake in society and are prepared to work towards it.

But when you have a stadium costing—good Lord, you cannot even bring it to fruition to get the young people to participate in competitive sports. We need to get to the point where we could make positive inputs into the athletes of this country, so we could inspire people to take part in the running fields and track fields, rather that being in a chain gang breaking rocks and cutting people's trees. Mr. Vice-President, the concept of this Bail (Amdt.) Bill is flawed; it is taking the easier way out that would result in the worst sort of development, with the society degenerating into the worst sort of society.

If we think over the matter, you are going to need so many more prisons, so many more prison officers and so many other measures; not to mention psychologists and psychiatrists to deal with the madness that is going to be floating all over the country. These are very, very important aspects. I am looking forward to the contribution of Sen. Prof. Deosaran after some of us have spoken. I saw him nodding along the way, and I think that some of the points that I might have pulled out, might have activated some of his own thinking. [*Laughter*]

One of the points that the Attorney General made was that constitutional rights were not absolute. I have a little different perspective. Rights are not enshrined because of the Constitution; the Constitution recognizes certain human rights that are inalienable and recites them for our benefit. Do you understand the difference here? It is not because something is in the Constitution that it becomes good; it is because it is good that the Constitution incorporates it. Human rights, human lives and human privileges are fundamental to the human dignity and the human being. Adam was created to inherit the earth, not to inherit the cell. We were put here to enjoy the dignity of human kindness and humanity. We were not put here to be made into social slaves and to be put to do hard labour. We can avoid it if we can reduce the incidence of crime by developing the society in the way we ought to, and in the way that this country could well afford to.

What is the point of a Heritage and Stabilisation Fund looking to cater for future generations, when we are allowing the present generation to fall into decay, criminality and self-abuse, because of our neglect of their rights and privileges?

You have concerns about giving bail, and we would like it to be done with two judges or the bail court or something. Put constraints upon the accused when he is out on bail. We have a parole system when you are in jail. Good Lord, imagine that? We have prisoners being given parole, and persons who have not been proven guilty as yet are being denied their freedom. Do you understand the oxymoron thinking there?

Sen. Prof. Deosaran: I am afraid to nod. [*Laughter*]

Sen. M. F. Rahman: Okay, do not nod; I will assume that you are nodding. He is very wise. [*Laughter*]

We have prisoners who are given parole, murderers and all sorts of persons who are given parole, and here we are denying freedom to persons who have not been proven guilty as yet. That is a serious anomaly; we have to get around that. We could give bail with constraints: You report to the police station every three days; you have a bracelet on your hand, we know where you are; we keep your

passport; you have to find yourself a job, go and join CEPEP or URP; we are going to give you a job; make yourself useful. So you obviate the necessity for this monstrous travesty that is being sought to be imposed upon the people today.

As Sen. Mark said, he wanted to know that if he was being falsely accused he had the right to go to somebody who could say, "Listen, this man could not have been involved in that; give him bail and let us have the hearing; he is a man that people could vouch for." As it is now, anybody could be picked up. We know about trumped-up charges; we know about persons getting killed in the prisons; we know all sorts of things.

Until the last election in Zimbabwe, you did not have this scary world thing between the Opposition and the Government murdering, killing and doing all sorts of things. We could come to that; we had it in Grenada; we have had some things very close in Guyana, and we have had our 1970 and 1990 in Trinidad and Tobago. It is not farfetched to imagine our nice, pious, holy Christian Prime Minister today could be succeeded by a very dangerous individual who is prepared to violate all human rights. Give him this instrument, and he would make use of it.

It is not only the "fella" who is there doing it right now that we have to be concerned with, we have to be concerned about who is going to succeed him in the chair of authority, to be able to use these devices. Even with the pious, holy Christian Prime Minister, Chief Justice, Opposition Leader and other persons being put to the stress that they are being put in the society, how could we sleep in peace, looking at legislation like this without a sunset clause?

I am supporting everything that Sen. Mark said, saying it in a different way, but the reality is that this Bill imposed upon the nation, without constraint and restrictions, is a total disaster for the future.

5.20 p.m.

Not only the Opposition and the Independents will suffer as a result of this you know. If the UNC comes into office 50 years from now, your generation will be in trouble because we will throw you all in jail, so you have to be careful and pay attention to what we are saying. This is not a safe thing to unleash on the population.

Let us get back to some points before I go to the various clauses. One of the things that jumps out at me is by taking away the right of the individual to bail, even in front of a judge brings into question, how does the Government view the

judgment and the perspicacity of the judges even at this time because it is excluding—maybe it is not an infringement of the separation of powers. And maybe Sen. Mark's point may have some question marks, but there is an additional part.

What does it say? We do not really trust you "fellas", we do not want you all to get into this picture at all, let us deal with it. And you have a situation where you are free to not proceed with hearings before 60 days and you are going to make these things in a way where at no point in time people are going to be able to get out of jail, and you are throwing away 900 years of Judeo-Christian tradition?

I want to appeal to the better judgment on the Government's side. Is this what you really want to do? Is this really where you want to go? [*Interruption*] One last observation—if we want to reform the society and if we expect the common man to observe the law, the top man must observe the law scrupulously, and his supporters must not trivialize anything where it appears as though—

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

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

Question put and agreed to.

Mr. Vice-President: Senator, you may continue and please note that when I rise, you should sit.

Sen. M. F. Rahman: Are you going to reprimand me?

Mr. Vice-President: Whether I reprimand you or not, both of us cannot be on our feet at the same time.

Sen. M. F. Rahman: We ought not to be.

Mr. Vice-President: Yes, we ought not to be.

Sen. M. F. Rahman: You note I am sitting while I speak because I fear to stand. [*Laughter*]

Thank you. You may go to the draft and the specified offences. The first one, Part II(a) strikes me as a little peculiar. You are seeking to refuse bail to somebody who has been in "possession of imitation firearm in pursuance of any criminal offence". It seems to me, the fact that he took an imitation firearm

means he never meant to kill anybody, he never meant any real harm. He was trying to make a little bread and picked up something looking like a firearm. [*Interruption*] You know you are criminalizing the use of a toy gun.

Good Lord, you can tell me if the "fella" gets a heart attack and dies because of the toy gun, you are going to charge him with manslaughter, but for heaven's sake, to have as the first (a) of Part II, "possession of imitation firearm in pursuance of any criminal offence", I find that is ridiculous. If you say "any criminal offence" then you know the whole Bail Bill covers everything, but you want to deny a "fella" bail because at the spur of the moment he picks up a toy gun. He cannot harm anybody with the toy gun. I ask you to take that out please. That is ridiculous.

If you are going to pass this Bill with amendments, put in attempted arson as well because the person who attempts the arson and is caught, he is as culpable as if he had succeeded in the arson. So I think we need attempted arson to go in there.

"(e) receiving stolen goods;"

Dollar Rescue and these people buy used goods. Do you know you cannot establish ownership of chattel in terms of old stuff? So somebody comes with an old refrigerator, he needs money for something, sells it to Dollar Rescue and it happens that the "fellas" stole the refrigerator.

You have to say here: "knowingly receiving stolen goods". You cannot simply say: "receiving stolen goods", because if Dollar Rescue pays the "fella" a reasonable price thinking it is his own, how are you going to lock up the Managing Director of Dollar Rescue? It does not make sense. You need to have here: "knowingly receiving stolen goods". I put it to you that that should be amended.

I think somewhere along the line that housebreaking was in one of the sections, but it had been removed. Burglary and housebreaking was in one of the sections but it was removed. But do you know that people can get killed in the attempt of burglary and housebreaking? I believe if you want to specify serious offences, and you want to insert burglary and housebreaking as part of your offences, and you left out in the preamble part, "any attempts to commit any offence in Parts I, II and III, some way or the other, that has to go in because it was left out.

When you go to Part III, the first one is manslaughter. Now manslaughter can occur by accident; vehicular accidents and circumstances entirely out of control of the driver and other circumstances of manslaughter. Not manslaughter when you

go and beat up a "fella" and he dies and you did not expect him to die. That is a serious matter, but manslaughter has to be a very specific offence to deny a man bail, because I have had friends who have been involved in vehicular accidents where death resulted. One was a drug addict crossing the road in the middle of the night and got killed, another was a little child who ran across the road and got knocked down.

Fortunately, this non-bail thing was not in effect. But I know that there are circumstances where parents in this country tragically kill their children by reversing the vehicle while the child is in the yard, or a gun going off. All sorts of things happen. I want to suggest strongly that manslaughter—I do not know how you are going to say premeditated manslaughter. I do not know if there is such a thing, but I cannot see manslaughter as a non-bailable offence in this category where you want to lock up somebody forever. That is like saying manslaughter automatically means life imprisonment. Is that what you are saying? That you want to upgrade manslaughter to life imprisonment? As a matter of fact, when you think of it, all of these offences are suddenly carrying a life imprisonment penalty.

Mr. Vice-President, now thinking about it, all these offences have automatically been upgraded to life imprisonment. Do you really want that on a permanent basis? You better make this thing temporary, put a sunset clause and make sure that you come back and tell us how you succeed because this is dangerous business. You are upgrading classes of minor offences to life imprisonment.

I wonder if this is sinking into the brains of—you all are looking so sedate and relaxed as if what I just said was not the bombshell that it was. You have "(c) robbery, robbery with aggravation, robbery with violence". How about a "fella" who comes with a gun and you quietly hand over your wallet and he goes about his business, no violence?

They advise you when a "fella" comes to rob you to give him what he wants. I think that is one of the standards; to cooperate and give them what they want. Keep them happy, they will leave, and you do not lose your life. You have to look at that again. I do not know what to suggest, but I think if there is no violence and the "fella" holds the gun and you do not want to give him, and he says: "man you are too stupid" and he goes. But he has made an attempt, so you have to be careful.

You need to go over some of these offences. It looks as though the easy way out is the way all these rules and laws are framed. It seems as though "fellas" sit

here and over dinner decide to put this here and put this there in the drafting of the Bill. This does not seem to have been done with any contemplation of social or even legal consequences.

"(d) assault occasioning actual bodily harm;"

"Well, the fella beat yuh to a pulp." But he only hit you in your stomach—you have to intend to do actual bodily harm. If he assaults you, intending to do bodily harm and somebody stops him in time, he has to answer to some charge. So that is something you have to consider.

"(e) possession and use of firearms or ammunition with intent to endanger life;" or to injure.

Somewhere along the line where you say possession of firearms at all is one of the similar offences. But here you have the "fella" with the possession of the firearm must intend to endanger life. There is a dichotomy between that and the next clause.

"(f) possession of a firearm or ammunition without licence, certificate or permit;"

I could think of a situation where a good man could disarm an armed man and take possession of his gun, but he does not have any licence for a gun or ammunition. He can say, look boy, you have a licence, hold this. What will you do? You have to look at these things. These are developing into ludicrous situations where you have not thought out the consequences of what you have written.

You could put possession of a firearm or ammunition without licence without reasonable explanation. In other words, as a responsible citizen if you find a gun in a taxi will you leave it there for the next passenger to use it? You take it up and go to the police. The police will then ask, how you got this and it is jail for you? You know what? I will leave the gun there because that is what I am going to face if I see the gun there and take it to the police. So you have to ask yourself if this is a reasonable clause to have in your list of specified offences.

We now come to Part III (j) and (k).

"(j) sexual intercourse with female under fourteen;

(k) sexual intercourse with female between fourteen and sixteen;"

There seems to be a shade of meaning or intent that escapes me. I do not understand why you have those two. Why not say under sixteen and finish with

[SEN. RAHMAN]

the story? Is there a classification for under 14 and between 14 and 16? I know there is the question of statutory rape for persons under 16 years right now, but where does the 14 come in? I do not understand.

And we have a situation in this country where there is law that permits certain segments of the society to give permission for their under age children to marry with parental consent. So if you say "sexual intercourse with female under fourteen" or "…with female between fourteen and sixteen" all the cultural practices of youthful marriage are suddenly endangered because on the one hand you give consent and on the other hand, you are culpable of an offence under this law. So which will it be?

You have to specify the exceptions to these particular charges: save and except in marriage with parental consent or something to that effect but you have to clear up the matter of "fourteen" and "between fourteen and sixteen."

As a Muslim, as a religious person I am sure all the Christians also share this view: buggery is something that we do not tolerate at all, it is simply forbidden. But here you have in a developing society, consensual homosexuality. I do not know if you have the people who look after gay rights and these things, but you have a situation where you have included buggery which is a blanket offence that criminalizes instantly and I do not have a religious background, but I have a social problem because we are lawmakers for an entire society, we are not lawmakers for Christians or Muslims or Hindus but for a complete society and if you are going to put in that buggery is a non-bailable offence, it does not specify the circumstances of this transgression. I think it is a dangerous thing to have it as a complete offence by itself.

5.35 p.m.

Besides which, it is a very funny thing, from all that I have heard, buggery is one of the most highly-practised things in the prisons. So you are taking a fellow and giving him a non-bailable offence and putting him in the prison for him to practise what? It is ridiculous.

Kidnapping, restraining somebody in their own house and holding them prisoner in their own house is a matter that you have to look at because kidnapping actually means taking you from one place and taking you to another. May I suggest that if you are going to put things at all, infanticide should be included among them.

Thank you very much. With the break that we had, I found my voice and I have been able to vent my views and I hope I have made sufficient contribution as to convince the young lady who was objecting in the first place, that I had something to say.

Thank you very much.

Sen. Prof. Ramesh Deosaran: Mr. Vice-President, you will forgive me if I say that this is the type of Bill which requires a rather exhaustive analysis, if only because it does attack the Constitution though, as put forward, with some justification. But if you are asking for a three-fifths majority and it is argued by the Opposition it may be a two-thirds majority, it signals to us—to the country—that there is something very important in this Bill that is either being changed or is being introduced that should cause some concern, if not objection.

It was interesting, in fact, I think disturbing, in a sense, to hear that a Bill like this, or some similarity to it, has been brought before the Senate six times since 2005. That tells you that there is an expediency on one hand and, secondly, we have not been able to get it right, at least as far as the Government is concerned, and the Government is now seeking to get it right, at least in their view, in a permanent manner. And that can cut both ways. If there is a disturbance as to the provision and you are going to make it permanent, it really means the disturbance is being aggravated. If, on the other hand, the Bill is justifiable, it means that permanence should be the logical outcome.

So let us see. We have moved from being disturbed about kidnapping, apart from the fact that you already have murder, treason and piracy for capital offences; we have moved from making kidnapping an offence without bail, and with alarming rapidity we now have 46 offences coming under the no-bail provisions as stipulated in this Bill. As I said—and let me reaffirm—the Government has put forward some justification. How did I arrive at 46? Well, you already have the ones that we referred to, that is, murder, treason, piracy or hijacking—that is three; you have five in Part I of the instant Bill and have in Part III, 19; that is from (a) to (s). But you have (t), which tells you an attempt to any one of the above 19 is also categorized, as far as I understand it, as an offence. So you multiply the 19 by two; you add the three and you add the five.

So if I should merely describe the facts as I see them without making a judgment as yet, I would say that from kidnapping, which was quite a disturbing event for obvious reasons, what we have here now is a shopping list and to make that jump from 2005, you really need some convincing. I therefore speak as a

citizen of this country, seeing section 4 and section 5 in the Constitution becoming under siege; section 4 about the right to liberty, security and if deprived, it must be through due process. I will not object that this Bill does contain due process. Section 5 tells us, quite explicitly, and as a citizen—I am emphasizing the word, citizen, which would preclude my Senatorial appointment for this particular reason, because this Bill has very embracing consequences, not only for us, for our family, friends, everybody. And I do not have to go through the history of habeas corpus and what happened in the 13th Century to show how this bail question has evolved into a very fundamental right.

So this is really a long list of offences and Parliament is now asked, in spite of section 5, to support the request from the Government side, a government which is obviously worried about crime and is seeking all ways to reduce public fear and, quite rightly, seeking the support of the Senate. But section 5 states quite clearly that Parliament may not refuse reasonable bail. You could put it the other way, by implication. If bail is refused it must be just cause. But the word "Parliament" is important. It means Parliament must tread very carefully. It says in section 5(2):

"…Parliament may not—

(f) deprive a person charged with a criminal offence of the right…

(iii) to reasonable bail without just cause;"

That is what really this debate is about. Are we convinced that it is just cause to have this list of 46 offences? Because the Bill attacks two important realms of the State: the Constitution, which is permissible under sections 13 and 54, if there is due cause, but it really also attacks not the Judiciary as an institution, but it attacks the process of judicial decision-making. Therefore, it implicitly encroaches upon, what you call procedural justice; not the institution, in terms of the categories of separation of powers, but it does encroach on the relationship between bail as described under section 5 and inferentially under section 4, and the role of judges in an independent, sovereign democracy.

I am making these points after some consideration because I know the Government is anxious to move forward in dealing with these criminals who show no mercy on their victims, who commit repeated offences, brazenly, violently, without regard to human life. If you read some of the stories describing the circumstances under which these—I would call them beasts—attack families, taxi drivers; stab them in their back; lock their neck; stab them on their head; behead them and throw them in the cane fields, and so on, it is very upsetting.

But the way to deal with that and to reduce public fear of crime is to have an efficient administration of justice, starting from police investigation to reasonable conviction rate.

That is the premise. That is what the law and the Constitution allows us to do. Therefore, to come at the tail end and tackle bail as a partial remedy, or even as an arguable remedy is, to me, what you might say, jumping the gun. It is like shooting first and asking questions after, in this context.

I might very well support the Bill because I understand the urgency of the matter. I see Sen. Rahman nodding. [*Laughter*] I need to describe the steps that we are taking. We need to do that in good conscience. I know the Bill has been examined by the Legislative Committee of Cabinet. Cabinet has given its approval. It has gone through certain stages of deliberation so I will not ask everybody to vote according to their conscience. Maybe we should have a conscience vote on this particular matter, where your voices will not be heard and your vote will not be seen, but your conscience will do what you think is right.

Before I proceed with my own points, the Attorney General did make some very fine points in arguing about the Bill being able to reduce a state of fear across the country and she even cited some rulings in the court which allow this movement. But, you know, I am always puzzled, but there is nothing we can do about it, including myself, as to how in terms of judicial decision-making the High Court judge gives an opinion without any empirical evidence. He just thinks; it is his view; he gives a judgment which is a view. There are no statistics as to how many times somebody on bail went and committed another crime; how many times somebody who was let out by a magistrate on bail and then the High Court reversed that decision; or how many times a magistrate or a High Court judge allowed bail on robbery or other of the offences here, and the persons went and committed a crime. There are no such statistics.

But coming back to the point about judicial decision-making which everybody here should be aware of, we have to understand how the law works. The law—strict legalism—operates as a law unto itself, that is, you make one law to protect another law that has some defect without examining why the first law was bad. It was somebody’s opinion in the Privy Council, whether it is the death penalty or some other law.

We must sit back and examine that phenomenon. It happened, and I am relating this to the ruling that the distinguished Attorney General brought forward. Even the Privy Council had to reverse its judgment within a few months and I am sure if there was a court higher than the Privy Council, you would get another opinion different from the Privy Council.

So we have to understand what judicial decision-making means. It does not mean truth in any absolute sense; it mean somebody examines a situation—if he or she is allowed to—and comes up with a view, a judgment; it goes to the High Court; it goes to the Appeal Court and it turns and twists and then we say, "Well, the Privy Council said so and so", or "The High Court said so and so". But that may not be right.

5.50 p.m.

What is the remedy? The remedy I have always asked for in the Senate is some empirical evidence; some basis in which the role of opinions will be reduced and facts, relatively speaking will stare us in the face, so that people can be convinced to do what is right.

This morning there was the opening of the law term and in the context of judicial decision-making, it is pertinent to this Bail legislation. The Chief Justice put it in one sentence. Among other things he said that the Government does not always have it right. Let me repeat. He said that the Government does not always have it right. What I am trying to say is not an offence on the Government or to attack Sen. Mark's remarks. It is to let us awake to what we are doing and getting into and the extent to which we are travelling on a road of no return.

It is 46 offences. This is no joke given the history of habeas corpus bail legislation and what sections 4 and 5 say. This is rapid rail you are on to. Rapid rail in jail. I would like us to be careful. I know that the Attorney General is a very reflective person having years of practice and I know the Attorney. I will move an amendment as a compromise. I will not want to throw out the baby with the bath water. I will try a compromise which may or may not be acceptable.

What the Attorney General omitted to do and my good friend Sen. Seetahal SC did not also do—no nexus has been created empirically and not just by anecdote, story telling, feelings and opinions. No nexus was established between these offences and the need for this legislation. This is where I will support Sen. Seetahal SC. It is not the Attorney General's fault. I do not know who is responsible. After 2005, there should be some hard evidence beyond anecdotes, feelings and fleeting references which will make the discussion not only one of law and what the Privy Council said or did not say, but also jurisprudence. We need a debate on the jurisprudential aspects of this legislation. It should be wider than the law and we should take a critical look at how the law operates or is not sufficient to deal with this.

You do not need a mere extension of the offences, but a rethinking of the question of bail, as a deterrent and a methodology for incarceration, since the conditions in the prisons are so horrible. Very horrible! It is something which the Government knows. Even the remand yard is just like a prison with this crowdedness. More unfortunately, you have had deaths in the prison for which reports have been promised months now and the Commissioner of Prisons has not delivered to build public confidence in the administration of justice.

When you bring this legislation and it is seen to be repugnant, it is not necessarily because the legislation is bad, but because of the mistrust and low confidence that the public has in such matters of administration. That is why I speak as a citizen looking at the long-term consequences. Once you make this rupture, you cannot close it back. Forty-six offences!

I have said on a previous occasion that this Constitution belongs to the people. It does not belong to Parliament, although Parliament has trusteeship for it and it should be discharged honourably as I have tried to indicate. The Constitution does not belong to lawyers only. That is why the public should understand what the Constitution says, especially in terms of freedoms and responsibilities. That is why I have always advocated a course in civics. I have told the ministry so quite recently. Introduce a course in civics for a number of reasons into which I will not go.

I am glad that Sen. Mark is here. The point I want to make following Sen. Mark is that whenever a government through its majority takes away any right or reduces the rights in section 4 or 5 of the Constitution, the Government will tell us the reason for it. It is a bargain that we strike. Whenever you remove anything from section 4, which is public interest oriented—it is the basis of our civilization and sections 4, 5 and other attendant regulations and laws. This is the basis of our democracy. That is why you talk about two-thirds, three-fifths and three-quarters.

Any time a government reduces or takes away a right in one way or the other, it must give back something to the public. It is either it makes the public feel safer; demonstrates that the detection rate has gone up or establishes that it has served as a visible deterrent. You must give back something to the public because you have taken away a very cherished principle, as enunciated in sections 4 and 5. That is why I say that the Attorney General has not established a nexus, the empirical basis as to what you have given us since 2005 with this increased list.

When Mr. Robinson was prime minister he made two important statements. One was that many of these laws are quibbling, chipping away and taking a very legalistic approach without examining the wider consequences. It is like trying to

let an angel dance on the head of a needle. He made that point when he was prime minister because they were arguing about certain legislation. He realized that the quibbling was to detract from the substantive issues in a long-term way.

The second statement he made is pertinent to this legislation because these steps that we are taking will affect our democratic way of life. The question I ask is: Is it justifiable.? If I vote for the Bill I want people to know my reason. He said streams flow into rivers and then rivers flow into the sea, meaning that these little triplets you see here, step by step, they will increase. They have increased as I indicated just now, to 46. Nobody has given the distinguished hon. Attorney General some evidence to bring to us so that even the families of the Government's side would be comforted to know that the Government has a reasonable and plausible basis for moving forward into the Constitution.

I will not go so far as to say that this is a stab in the heart of the Constitution. There is no need for such dramatics. It causes a disturbing ripple in my mind. I cannot resist the responsibility to comment upon it as I am trying to do.

Before I come to my points I want to pay due respect to the previous speakers who have enlightened my understanding. Sen. Mark said that it is an attack on the Judiciary. I made a distinction. It is more on judicial decision-making which is more procedural rather than institutional. Apart from what the Chief Justice said, that the Government does not always get it right, I have a feeling that the Government is seeking to do the right thing, but there is too much haste and aggression towards the Constitution. If we can be persuaded through empirical evidence—as I will demonstrate the question we should ask to get that evidence in a short while—I have no doubt that even Sen. Mark, in spite of his parliamentary belligerence would have said yeah. I understand that they already said yeah some years ago.

He made an interesting point. In the dialogue between the Government and the Opposition, he said that they gave them four conditions for legislation especially of this kind. He omitted one; they should make it five, legislation and policy making. As far as possible, legislation should always be brought forward with an appropriate database. This is an occasion or opportunity to do so. We have not done so. He was able quite dutifully by telling us about the murders and the detection rate. This makes us think about an important distinction between the Government as the Executive and public administration.

Over the years, it has been my view that ministers take much licks for what they should not take because of inefficient and ineffective public administration in their ministries of not delivering and carrying out instructions expeditiously and effectively.

I know of many such instances. I have always asked ministers to tighten up on these workers, whether they are directors or head of units, so that when they come with legislation they will persuade.

Sen. Mark was able to show as one example that out of about 1,800 murders in a certain period that he quoted, only 503 were detected. We have not reached conviction as yet. About 28 per cent is detected. We know the rate of conviction. It is less than 10 per cent for such serious offences. The Minister of National Security had given the assurance that he will do it. I wish with respect to remind him. Let the police statistics be published regularly for the public benefit. That should not be a hide and seek game. It should not be part of a secret arrangement. Let the police statistics be published publicly on a quarterly arrangement. The public has a right to know because they are the victims of crime.

I therefore repeat that I do not agree with Sen. Mark to have three judges sitting for bail. If he thinks about it, it is a bit overwhelming for management.

Sen. Seetahal SC made several points. In the interest of time I will refer to one. She asked, which judge will be comfortable with having to sit with other judges? I am making the point about judges' comfort. This legislation is not for the comfort of lawyers. This legislation is not necessarily for the personal comfort of judges. This is for the country and its citizens and to help build public confidence in the Judiciary.

6.05 p.m.

Mr. Vice-President, I do not need to belabour the point about the Constitution. We have said so several times and other speakers have referred to it—and I think that the hon. Attorney General is quite correct—bail, like any other freedom in a democratic society, is not an absolute principle. It cannot be because of lawlessness, criminal attacks on civil society, insurrections and so on. You need protection and that is what Chap. 4:60, the Bail Act, says. Section 6(2) says:

"(a) Where the court is satisfied that there are substantial grounds for believing that the defendant if released on bail would"—this is within the discretion of the court to deny bail:

"(i) fail to surrender to custody;

(ii) commit an offence while out on bail; or

(iii) interfere"—that is a key one and I have a feeling that this third one is what helps to drive the Government into this type of legislation—"with witnesses or otherwise obstruct the course of justice…"

the court has the discretion to deny bail. I agree with all three, but that is not what this legislation is doing. It takes away that discretion.

I think Sen. Rahman made an interesting point. He left at the wrong time. When you examine things like robbery and manslaughter, there are a number of extenuating circumstances that can mitigate against the sentence. I speak as a citizen; I make no higher claim than that. Anybody who knows about trial, cross-examination, evidence and reasonable doubt, when you look at all the circumstances, jury members, many of them, really do not understand what is reasonable doubt, especially when lawyers twist their arms and turn their minds here and there.

It is a very precarious condition in some of these offences where the evidence itself may not speak forcefully and convincingly; there are grey areas. He was able to point out, not all—I am not convinced of the one with the toy gun because you can rob a bank with a toy gun. It is the consequence, not the possession of the gun. There are other circumstances that need broader treatment than the Bill arbitrarily seeks to improve on the question of no bail. For those reasons I am compelled to take it seriously.

I say this with some reluctance, but I want to satisfy Senators that my concern is really genuine. It is largely due to the failure of policing and other elements in the administration of justice and national security that has led to this Bill. If there were effective policing and prosecution as a deterrent, there would not be a need for this type of Bill. Those inefficiencies and defects have put the Government in the embarrassing position to have to bring such pieces of legislation. By bringing this legislation, it is really overkill. You are taking away too much and giving us too little in the exchange. I find these 46 offences too lengthy. It really needs an examination.

In fact, I am surprised that in this civil society we have heard nothing from the Law Association about the legislation. We have heard nothing from the Chamber of Industry and Commerce on whether they agree and whether they have proposals to make to help the position. I have heard nothing from the churches, the IRO and the labour movement. Where are the voices of civil society

contributing to a piece of legislation which is not purely legalistic and which has serious social consequences and serious civil consequences? Where is the Trinidad and Tobago Unified Teachers Association? Where are the doctors? Doctors are very concerned for their safety and what they call, to quote them, "state oppression". If they are so concerned about state oppression, where are their voices where leading to an arrest or surrounding an arrest is to be locked up without bail? The doctors should contribute.

Would we not want to know how many times some if not all these offences were committed in the last three years? Would the public not want to know so that we can all applaud the Attorney General and the Government for being justified in bringing forth the legislation? How many such persons have been charged for such crime in each of the last three years? Of those charged, how many have been granted bail or refused bail in the Magistrates' Court? Of those refused bail in the Magistrates' Court, how many on appeal have had such bail subsequently granted in the High Court thereby strengthening the justification for the evidence?

Further, of those granted bail in the Magistrates' Court, how many have had this decision reversed in the High Court? Of those granted bail in the Magistrates' Court or High Court—this is the crux of the issue; this is a national security issue because it gives the police more work—how many have subsequently been charged for one or more crimes, particularly these offences?

We have no such data, Senator, which is quite appropriate to the Bill. We are shooting in the dark and would just pass the Bill because we are vex. We are angry about crime. We are fearful about crime so we will pass a piece of legislation like this. That is not the way you deal with legislation. That is for another kind of society. I am not saying we should not pass the legislation; I am saying the legislation should have proper clothes on. That is an empirical basis, so that we can all reason regardless of our political partisanship.

What types of crime have they been charged for while out on bail and of those charged for each of these crimes while out on bail, how many have been convicted? To help judicial sentencing—I understand there is a judicial institute for continuing education—if the judges have this kind of data, their decision making would be more efficient and their discretion more respected. Of this convicted lot, what type of sentence did they receive?

Those are the questions we should ask and that is the kind of data we should get. In fact, in the Bail Act itself several sections tell of the need for such data; a need that has not been satisfied by the Judiciary; a need that could have been helped by police data collection.

Let me read one:

> The judge would like to know how many offences someone committed while out on bail.

That is section 6, but the judges do not have that data. They were asked for it and they did not give it to the Attorney General's office. Section 6 goes on to require data where a person is charged with an offence alleged to have been committed while he was released on bail—There is no data on that, yet the judge is asked to give a decision without knowing how many times this has happened.

The question which I have just recited to you, over three years now, has been repeated on the Order Paper to get the Judiciary to tell us the data so that not only the Executive, but Parliament could be helped to make a reasonable decision rather than moving with rage and political partisanship.

The Judiciary wrote back and told the Executive that it cannot give this kind of information; they do not have the resources. The questions were asked three years ago and they should have known to get prepared to answer such questions because it is pertinent for their decision-making and a reasonable application of their discretion.

The Judiciary is also to hold itself responsible through the lack of evidence for its decision-making and it cannot function mainly on the basis of opinion. If the Chief Justice says that the Government does not always have it right, I will say that the judges also do not always have it right and that is why you need a debate on such issues, plucking at each other's reasonableness but based more importantly on evidence for which some of us have been asking.

The judge must also consider, in exercising his discretion, the seriousness of the offence and how many times it has been committed while the person was out on bail. There is no such evidence before the judge, far worse the Parliament, for us to make a decision.

How many times under the previous granting of bail has the person violated such bail? That is one of the questions I asked until the Executive told me that the Judiciary said they do not have the resources even though they have been advertising for so many posts—data analyst, computer specialist. It is an unwelcome response.

There are several provisions in the Bail Act itself without my having to ask the question. The Bail Act asked for certain record keeping to be done and maintained and it is not done. It tells you if the court is varying any condition of

bail that it should be part of the record. Yet they tell the Attorney General that they have no records. So they are executing "mumbo jumbo" justice then on a daily basis by their personal feelings about policing, politics and their reference to galloping dictatorship? All those personal feelings should not necessarily enter a judgment unless you have evidence. With the lack of evidence, you have what is called the dicta—you know when you give a judgment, you give a little "ramjaying", a little description of things? That is all right, but it is far better, more helpful, if the judges give their decision based on the data as far as possible.

We have too many opinions. Let us examine how judgments are made by which we have to live. The Privy Council disagrees with an opinion in the High Court because it has another opinion, but there is no empirical evidence before either of them. That is why even the Privy Council has to reverse itself. Can you imagine that? Yet we look upon them with such sanctimoniousness, except to say that we should all be more humble in the roles we play. The way to treat that humility and still participate is to gather the evidence as much as possible so that we can speak with some confidence.

6.20 p.m.

Mr. Vice-President: We have a procedural motion at this time.

PROCEDURAL MOTION

The Minister of Energy and Energy Industries (Sen. The Hon. Conrad Enill): Mr. Vice-President, in accordance with Standing Order 9(8), I beg to move that the Senate continues to sit until the completion of the Bail (Amdt.) Bill and, time permitting, the Regional Health Authorities (Conduct) Regulations.

Question put and agreed to.

BAIL (AMDT.) BILL

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

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

Question put and agreed to.

Sen. Prof. R. Deosaran: Thank you, Mr. Vice-President. My point is that the country must assist the Government in the execution of its executive duties, but there is a way to do it. I have just indicated one way, by having the analysis and the data to support Government's policy, but I am afraid.

Over the last few years, that includes the university, there seems to be the death of critical enquiry in this country even from the social sciences at the university. There is a limpness and wimpishness over the need for critical data and robust analysis without any kind of political partisanship to assist the Government. I want to know if a lot of these academics in this country are asleep, have they gone to sleep and for what reason. I am one of them who came from that fraternity, that is why I am making the point to my colleagues. Wake up and give things to help and assist. It seems as if we do not have only a mass ignorance, but we are cultivating ignorance in this country by some lethargic intellectualism. We need more critical enquiry; much more, even when it might offend this or that side.

Several times I have criticized Sen. Mark, but I hope he has the fortitude to understand that I mean no malice, just as I am speaking today about the Government's move. I think, in fact, Mr. Vice-President, Parliament has to take a note of something in the appointment of judges. We should ask them about their views on abortion, the death penalty, discrimination and also vent their views on homosexuality because those are without data and analysis.

I have a feeling too much personal biases step into their judgment. When I listen to the language and summaries, apart from ruling on the law, what they say attend in their judgments. It seems that we have to know where their views are; not their political views. They can vote for anybody. They can say that they support the PNM and they can say that the Prime Minister is doing a good job with the economy. They can say all those things but, at the same time, we must know where they are coming from.

If the Attorney General succeeds in passing the legislation, I would like her and the Government—I have a great respect for her and it really, Sen. Mark, hurts me to say some of the things I am saying about the legislation this evening. I know, like you, she is broadminded enough to know that I mean well and if called upon to assist in Parliament, I would certainly do so. I am looking forward to the establishment of the joint select committees, so that we can assist the Government in its executive function.

I would like the Government to seriously consider, and we would all support you with anything in this regard, strengthening the Office of the Director of Public Prosecutions, so that we can have a higher rate of conviction, with evidence persuasively presented in court. Get more legally-trained persons to accompany the police in prosecutions. The Office of DPP is severely understaffed. Sometimes I wonder how Mr. Henderson is surviving without grumbling. I know the Government is attending to this. I ask them to hasten.

I want the Government to seriously consider, vested interest aside—As I keep saying this Constitution is not made for the lawyers alone. The courts are not made for the lawyers alone. Due process is not made for the lawyers alone. Do away with the preliminary enquiry.

I wish the Chief Justice made reference to that, because it is creating havoc and backlog. [*Interruption*]

Sen. Annisette-George SC: He did.

Sen. Prof. R. Deosaran: He did? I congratulate the Chief Justice for making reference to that. That has been a long necessity. You have a trial for over three or four years, going to court everyday; a waste of public money, time and judicial time. Since he has made a remark on it, I stop.

Of course, I want to say something good about the Acting Commissioner of Police. It was a good choice. The Government did well with that one. I see the Minister of National Security, for the first time, nodding yes to me. I see him nodding, but he is right. Mr. Philbert is doing a fine job. He has started off on the right foot. We see things. We see the police doing things in the right places. I hope that enhances itself and the efficiency improves. We all support the Acting Commissioner of Police because something good is happening, just as it seems to be happening in local government. I ask the Minister of Local Government, again, do not forget the street signs, because that too is a crime prevention device.

As I come to the end, I want to move an amendment. I have an amendment to move, which the Clerk should have prepared for me so that I can read it. It needs to be put on the record. I am trying to make a compromise. You may not agree with it but, it reflects the spirit in which I approach this debate. I could have put it the other way, but I am saying—

Before I move the amendment, people are asking the Government to spend more money on crime and security. A lot of people are saying to spend more money and put more money for crime in the budget. The money will not necessarily solve the problem of crime. I think what you need, perhaps it started already, is more performance, more accountability and the maximized utilization of existing resources. Accountability is what Commissioner Philbert has started to do. More money and more laws will not necessarily help us. We have a lot going for us already, let us have the management capacity to utilize those effectively and have people accountable, both for what they are doing well and for what they are not doing well. Money will not solve crime in this country, necessarily, but certainly we have seen sufficient. So, let us start doing business the right way. On the next occasion the Chief Justice would say: More often than not, the Government does it the right way.

My amendment is:

"New clause 7 Insert after clause 6 the following new clause:

'The provisions in sections 4 and 5 of this Act shall cease to be in force five years after its enactment.'"

I therefore move the amendment. I do not know if we need a seconder.

Thank you, Mr. Vice-President.

The Minister of National Security (Sen. The Hon. Martin Joseph): Thank you very much, Mr. Vice-President. Let me assure you and the honourable Senate that I did not stand to second it. I do not know if you need a seconder, but that is not what I am doing.

I am pleased to participate in this debate on the Bail (Amdt.) Bill. I deliberately requested that I come after Sen. Prof. Deosaran, because it is always so good to listen to the Professor. I think this is the fifth time that Sen. Prof. Deosaran would have made contributions towards this Bill and it is the same number of times that I am also participating in the debate on this Bill. I anticipated that Sen. Prof. Deosaran in his normal style, which is a correct style, would have asked for evidence. He would say: "Where is the information as it relates to the Bill, so that we can get some kind of assurance?"

Let me start my contribution by addressing the concerns, as they relate to some of the specific information that I have, anticipating that it would have been required. I asked for the information because there is a view that the Government—Sen. Mark made the point—is doing badly with respect to solving crime and that our detection rate—our detection, the Government's rate. I, as Minister of National Security, am not aware that I have available to me, measures to treat with detection and solving crime. I thought that was the responsibility of the commissioner.

Let me be clear when I say this, because in another place I heard somebody say that the Minster is blaming the commissioner. It is not about blaming. It is about where responsibilities lie. There is a clear distinction, with respect to national security, on the role of a Minister, in terms of policy, et cetera, and the fact of being responsible for implementation. Because there is an expectation that you do not want political interference in crime management and crime control. We have this strange anomaly, if I could refer to it as that, where the Minister is expected to account and answer for everything that the police do and at the same time he has to have an arm's length relationship, with respect to the operations of

the police. I am called here from time to time to answer how many police are in a particular police station, how many vehicles are there and all kinds of other things. It is something—[*Interruption*] I know that the Commissioner of Police cannot come to Parliament. All I can do is answer the questions. Yet, at the same time, I am interrogated towards my performance.

If you listen to Sen. Mark's contribution today—because he kept talking about our crime detection rate, our detection rate, since we cannot improve our detection rate we have come here to ask for these increased measures, as they relate to this Bill and it is not the correct way to go. He also talked about the question of overall crime. This Government has always made it clear that, with respect to crime and crime information, we have been upfront and always honest.

For example, in 2007, we saw a marginal improvement in homicides; a 4 per cent reduction. We indicated that. Right now, we have been seeing for the three quarters, almost 64 per cent increase in homicides. We are not afraid. This is what the chart looks like. Sen. Prof. Deosaran spoke about the question of information. This is what it looks like.

In 1995, when they were—[*Interruption*]

Sen. Dr. Charles: You cannot hold exhibits.

Sen. The Hon. M. Joseph: I cannot hold up exhibits?

Mr. Vice-President: Go ahead.

Sen. The Hon. M. Joseph: I am referring to it. If you look you would see that from 1999, there is an upward trend with respect to homicides. I am not here to play politics, but in 1999, there is the question of who was in government at the time and what decisions were taken at that particular point in time, as it related to treating with the criminal landscape at that time. Chances are that where we are today, the situation would not be like that.

Not only that, in 1999, at the time this party was in opposition under the leadership of the political leader and now Prime Minister, we approached the government at the time to enter into bipartisan talks to treat with crime as it related to that. Eight years later, we are now implementing measures that should have been put there. If they were put there, I am sure the situation that we are now experiencing, we would not have been experiencing it.

6.35 p.m.

I am saying this within the context of what Sen. Prof. Ramesh Deosaran said. He said that perhaps these draconian measures that we are putting in place now are as a result of the failure of some other things. He may just be right. It may be the failure of other things like effective policing and management and so forth.

Let me just say something else in maintaining the situation with respect to the statistics. With respect to the probable cause, I showed the first chart which indicated what was happening with respect to homicides. This is just reflecting homicides, because that is the barometer of police performance. We have not made that. That is a reality. I am sure Sen. Prof. Ramesh Deosaran will confirm that is how police performance is measured worldwide.

With respect to the probable cause, 210 murders were as a result of gang-related offences. After gang-related offences, the other offence is robberies and that is 44. I am saying gang-related offences to underscore the challenge that law enforcement is now facing as it relates to the criminal situation. Mr. Vice-President, the most difficult crime to detect is gang-related murders because of the nature of the murders.

The third piece of information has to do with weapons used and there were 303 guns. Now, the reason I am saying that is when we talk about reducing guns from entering the country—we do not manufacture guns. Guns are manufactured outside of Trinidad and Tobago. So, the key is to reduce the inflow of drugs and guns, because most of the gang-related homicides and violence that are taking place are related to drugs. The measures that the Government is putting in place to reduce the inflow of drugs and guns are measures designed to keep down the unnecessary violence that is occurring.

People are saying that the Government is ill-advised; the Government is spending moneys on OPVs and fast patrol boats and all kinds of things, but in the absence of putting those assets in place to reduce the inflow of drugs and guns, we are going to be spinning top in mud. That is the first set of information. It is not a question of hiding it.

There is one other matter which is the detection rate. [*Chart in hand*] Look at the detection rate! Do you see where it is going? Everything else is going north and the detection rate is going south. This is with respect to homicides and not the overall detection rate as far as crimes are concerned.

In 1996 there was 56 per cent reduction in the detection rate and in 2007 it is down to 20 per cent. Again, this is as a result of the nature of the homicides. As the nature of the homicides—as gang and drug-related offences increase, the detection rate starts to reduce. This is not only unique to us alone. So, the question about witnesses, witness intimidation and witness elimination and so forth, all of these things have entered into the fray that brings about the reduction in detection. Law enforcement has to find new ways now of treating with the challenge. I am saying this because it is important—the question of training, development, DNA, forensic and crime scene management—are issues that law enforcement must now become familiar with. Through no fault of theirs, they have not been able to keep steps with the developments that have been taking place in law enforcement.

What has the Government been doing? The Government has been investing in improving the law enforcement capacity. That is what we have been doing. We are putting moneys into law enforcement to improve their capacity so that they would be able to treat with crimes, not just now but in the future, because law enforcement must be adaptable. They must see what is happening in the environment; they must recognize where the new crimes are going like cyber crimes and so forth, and as a result be able to adjust as quickly as possible.

When we talk about building law enforcement, that is what we are doing. Even the question of interfacing between law enforcement and the citizens has to take on a new dimension, because historically the relationship between law enforcement and the citizens would have been "them against us", but now it is a partnership, whether you call it community policing and so on.

The Government has approached that by introducing and encouraging the police to adapt the model station initiatives, the so-called policing for people. That is a change. In order for change to happen, since change is not going to happen overnight, we started it on a model basis with five police station districts; West End, Arouca, Morvant, Chaguanas and Gasparillo. They have been having little challenges, because it requires a whole new different approach to policing. It is easy to just talk, blame and defend, but the question of changing culture—how we have been accustomed to discharging policing—is not something that is going to happen overnight, but the police have embraced it. They have asked the Government to expand it, so we are expanding it to five additional police station districts, the intention being to have a model station in the nine policing divisions so that they could start seeing an improvement on how policing is taking place.

Let me just come to the immediate information that my colleague, Sen. Prof. Ramesh Deosaran asked for. The information provided to me by the police—I started by making the point that the Ministry does not keep statistics, but we request statistics from the police organization. I can say with a certain degree of pride that as part of the transformation of the police service, the question of data is critical to modern policing.

In the past, you had modus operandi that would have normally provided historical formation. As part of the transformation process, we now have the Crime and Problem Analysis Unit where you now have real time data being provided to law enforcement so that they would be in a position to treat with policing.

With respect to the offences in Part II, during the period September 01, 2007 to August 31, 2008, the number of persons arrested with respect to the specified offences in Part II were some 385. [*Interruption*] The information I have is the number of persons arrested; the number of persons granted bail; and the number of persons who were denied bail. That is the information that has been made available to me.

With respect to trafficking in narcotics or possession of narcotics for the purpose of trafficking, 17 persons were denied bail; possession of imitation of firearms in pursuance of any criminal offence, one person was denied bail—sorry I should say one person was arrested and that person was denied bail; larceny of a motor vehicle, 10 persons were arrested and one person was denied bail. That is the information I have with respect to Part II.

With respect to Part III, possession and the use of firearms or ammunition with intent to injury, 215 persons were arrested, 199 persons were granted bail and 16 persons were denied bail; with respect to rape, 44 persons were arrested, 38 persons were granted bail and seven persons were denied bail; grievous sexual assault, 29 persons were arrested, 17 persons were granted bail and 12 persons were denied bail; sexual intercourse with a male under sixteen, nobody was denied bail; sexual intercourse with an adopted minor, 16 persons were arrested, 15 persons were granted bail and one person was denied bail; shooting or wounding with intent to do grievous bodily harm, 69 persons were arrested, 65 persons were granted bail and four persons were denied bail.

Sen. Dr. Charles: I thank the hon. Minister for giving way. I was wondering whether he had any information as to whether those persons who were denied bail were denied bail as a result of the provisions of this Act or for other reasons. There are so many other reasons for which you can deny bail.

Sen. The Hon. M. Joseph: Well, I sought the information on the basis of being able to participate in this debate, so that they knew it would have been with respect to not granting bail as it relates to the provisions of the Act. I have to assume that. If my information is otherwise, I could not necessarily do it here, but at some other point in time I would so do.

With respect to robbery, robbery with aggravation, armed robbery, 230 persons were arrested, 207 persons were granted bail and 23 persons were denied bail.

Finally, in the area of kidnappings and kidnapping for ransom—with respect to kidnappings, 80 persons were arrested—remember, I am talking about the period September 01, 2007 to August 31, 2008. Now, the information here is slightly different. I have 80 persons arrested for kidnapping, and I now have seven convictions, zero was granted bail and 73 persons were denied bail. With respect to kidnapping for ransom, 16 persons were arrested, nine persons were convicted, one person was granted bail and 6 persons were denied bail. The Commissioner of Police was clear to point out not to be fooled by these figures since they may seem to be small.

Mr. Vice-President, I have also been advised by the police that this amendment to the Bail Act will also continue to be extremely effective in curbing the illegal activities of the career criminals who are involved, in not just one illegal activity but several.

As often happened, these persons may be involved in kidnapping, robberies, firearm offences, extortion, drug trafficking—simultaneously. This Bill ensures that when such persons are denied bail due to their involvement in one of these activities, what in effect happens, is that their other operations are hampered as well.

To look solely at the statistics to determine the maximum effectiveness that we have had with the previous amendments to the Bail Act is to see just a part of the whole picture. We cannot look at the criminal in isolation of the series of crimes in which they may be involved. There are criminals who are engaged in 20 or more illegal activities. When such persons are denied bail, there is a lessening of the other illegal activities as well. This, of course, results in a marked improvement in security and protection of the law-abiding people of Trinidad and Tobago. The current environment mandates preventative and control approaches which rely heavily on appropriate and effective legislation.

Mr. Vice-President, I cannot argue any issue of law, et cetera. While we recognize that this may seem to be draconian, I am guided by what other jurisdictions have been forced to do in order to deal in a sustained way with some of these criminal activities that continue to plague our nation. It has to be a combination of legislation and it also has to be a combination of effective policing.

What the police organization is saying is to give them the means through which they would be able to not just improve the service, in terms of how it is they are doing business, but given the environment in which it is that they are operating, we need these kinds of mechanisms now. I hear what Sen. Prof. Ramesh Deosaran said and we are clear that effective and efficient policing are indispensable in the success of dealing with crime, but it is going to take the police organization sometime in order for it to be at the level which we want.

6.50 p.m.

This Government has been extremely clear in terms of our vision for Trinidad and Tobago. We are very clear that the vision for Trinidad and Tobago is developed society status on or before 2020—which is just 12 years from now—where the question about the quality of life and standard of living of our citizens is one that is comparable to what obtains in a developed society. When we look at developed societies in terms of security and safety and we see what obtains now, we recognize that we are long ways from it; there is a big gap, we recognize that.

We also recognize that in order to narrow that gap we must put measures in place to improve law enforcement capabilities. This is the reason I have said, Mr. Vice-President and hon. Senators, that the question about the improvement of the police organization is indispensible for that. You would not believe as Minister of National Security, I would like to have seen much more improvement. When I say that, they say I should be removed because I underestimate the nature of the challenge. We would love to see a greater performance of the police, but just saying that is not going to bring it about. We have to put measures in place; we have to make sure that the police organization is provided with the means necessary, so that they can improve the means of providing us with a higher level of security and safety.

I want to appeal to Members on the other side, especially Members of the Independent Benches, on the basis of the legislation that is before us, to support it, so that at the end of the day we can provide our citizens with an improved level of security and safety in keeping with what is expected in developed countries.

I thank you very much, Mr. Vice-President.

Sen. Cindy Devika Sharma: Thank you, Mr. Vice-President. I am pleased to join this debate on this Bill which seeks to amend the Bail Act, Chap. 4:60. While listening to the debate and being aware that from since 2005 we have had this particular amendment coming up again and again for enactment and passage in the legislation, it reminds me of the saying "desperate times calls for desperate measures". I suspect that, at least for our citizens, those in authority and those who wish to see the society return to that level of normalcy, there is this feeling existing in people that the past had less crime, less stress, less offensive and criminal behaviour taking place in Trinidad and Tobago, as we know it today. Hence the need for legislation such as this, which seeks to impose some very harsh penalties on those persons who are seeking to undermine the interest, security and safety of members of Trinidad and Tobago and those who visit our shores.

I think the feelings of fear and oppression that people might be feeling because of crime and everything else, people might very well welcome having measures such as this on board. In times of crisis, sometimes we have to enact policies that we feel, at least in our opinion, might seek to deter that thing, or that action, or that entity that is harming us.

I wish to refer to Sen. Prof. Deosaran's contribution, because he harped on an important point, which was the need for empirical data in guiding policy formation. It reminds me of what sometimes happens in school or any institution, such as a school for example. People there have a feeling or an opinion, we have a problem in school, there is a lot of violence, children are fighting, I feel that if we separate the boys and girls into separate classrooms that might be something that will help us in managing the school better and probably might reduce the violence, et cetera, in school.

When we enact the policy, sometimes we do not feel the need to bring forward a proper argument where we rely on empirical evidence perhaps. We might more rely on anecdotal evidence to argue our case, for example, I heard about this case in one school where this particular policy worked or in my experience from what I have observed, the boys schools versus the girls schools,

there seems to be a difference in the way that they are able to manage themselves. Maybe this policy might be the right policy to use at this point in time, but in effect, when we do that we do not really think about what we are doing. We might have all the best intentions of course, but we have not really—as Sen. Prof. Deosaran was saying—put forward an argument in the traditional sense where we relied on not only anecdotal information but really that empirical evidence.

I wish to suggest that the Minister of National Security, in coming here, was prepared to provide such evidence. My own concern, at least for me, it probably just escaped me, I just want to see that direct link drawn between the statistics quoted and the amendments that have been passed from since 2005, and for me that is not an easy thing to do. That is not exactly the easiest thing to do, because it means that you have to create—say that there is a direct correlation between the statistics that he got and what happened with that Bill—the enactment of that policy, and that is not easy to prove either.

All you might be able to prove with the statistics is that well, we were able to have X number of persons be denied bail, but to say that afterwards that is directly linked to a decrease in criminal activity in that particular area, might be a little more challenging to establish without proper research. And by proper research you want to have people going out into the field, collecting data, analyzing the data and, as Sen. Prof. Deosaran noted, there is this lack of analysis and critical thinking about data, though we are surrounded by it all the time.

To really sit and analyze what is going on and present a very clear case for why it is we need certain policies in place is a time consuming process—maybe because of our busy schedules and because we want so very much to do what is right or what we feel is right—we end up rushing through with great haste and enacting policies that might very well come back to bite us—well I would not say anything about that part—later on. It may not be this Government, it might be another government, another group of persons who will suffer the consequences of these actions.

Therefore, in having this particular amendment being passed, I have no problem with it being used in these desperate times. My only concern is, do we expect these desperate times to continue indefinitely. I hope that because you are trying your best to improve the situation that you do not think that this is going to be the case. That in fact, you feel that these measures of denying some of the

basic fundamental rights to certain individuals in society, which is what denying a person bail might very well prove to do, because as far as I am aware you are guilty until proven innocent. I am sorry, innocent until proven guilty, sorry. Well of course, you realize I am not a lawyer so I do not really have the lingo as the lawyers in here might have, so pardon that mistake.

I would like to say that because of that, it is important that we have a more hopeful attitude about what is going to happen rather than suggest that everything is doom and gloom, and we are going to be beset by crime forever and ever, amen. I would like to suggest that you do not feel that way and do not take this hopeless approach where you want to throw your arms up in the air and say well, hear what, these criminals are going to be—[*Interruption*] I am suggesting that having a Bill where you want to say that these—as Sen. Prof. Deosaran was saying, almost 46 offences that the Government, which has been installed from since 2000, you are trying to tell me that you want to have these 46 offences coming on stream and being made after today, a permanent part of a bigger legislation that deals with bail. I would suggest that that is a bit of a cop-out because you want to impose penalties when in fact, that should be seen in this case, as a more temporary measure, whether it be four years, five years. If you set a benchmark that in five years we are going to have X number of cases of kidnappings or X number of cases of homicides and how many of them would be solved within that period. I am certain those are benchmarks that the Minister of National Security along with all his advisors and the police service, are all working furiously towards.

I think that it is best if we take a more guarded approach with this particular issue and I am going to suggest that Sen. Prof. Deosaran's date of five years might be something that gives everyone time within which to provide good reports, good analysis and hopefully within five years we could see perhaps that this particular amended legislation would have achieved its aim. I do not think that is too much to ask of the Government. I do not think it is too much to ask at all because of the inherent seriousness with which this Bill is seeking to resolve a particularly desperate situation that we currently have in Trinidad and Tobago.

I am also going on to suggest that even if we enact this legislation as has been already recognized by our Minister of National Security, unless our police service is able to detect the crime, to solve it and to have some system of accountability in place, via district wise or perhaps within a police post, unless we are able to have

that police arm of our security services acting to uphold the law, we will find that legislation such as this might very well be a waste of time. We will just have everything looking really pretty on paper, the cover will be looking gorgeous, but when you open it, just a rotten set of pages you have in there.

I would like to find out if the Government believes that we are really concerned about crime, when we pass this legislation we are going to allay the fears and that feeling of insecurity held by citizens of Trinidad and Tobago, will that happen with the passage of this Bill? We need to be careful in the sense that in considering how certain criminal actions or activities take place, I wish to suggest that people who are going on to commit a crime might very well do so and they will not be deterred sometimes by the penalties, case in point, the United States, where they have a death penalty in several states, yet there is a high level of crime and certain types of criminal activities.

So, people might not feel so secure with the legislation, they might feel more secure if the legislation is working hand-in-hand with everything else—not only the police, but all those social services—and to see that something is really being done because despite all the money being spent, there is this general feeling by people of insecurity. They do not even want to park their vehicle at the malls. I have seen people at Trincity Mall, they park their car, the alarm is on, they will put on the club, open the bonnet, take out whatever distributor cap or whatever it is; they will go there, come out ever so often to check on it, so there is this feeling of insecurity. You cannot even go in and watch a movie for two hours comfortably, because you are worried, whether you are going to find your car outside when you come back out.

7.05 p.m.

These are the things I feel that people need to work towards. This legislation for me does not really seek to resolve that situation, it is really seeking to punish those individuals in a very harsh way, or people we suspect—remember, we are not sure these people are kidnappers yet or we are not sure if they are criminals yet, we have found them and they are under suspicion as far as I am concerned. They have not been charged with anything yet, but they will be put away without any bail.

Legislation such as this will be made more effective if we live in a society, in an environment where people feel safe enough to go to the police authority with information on criminal activities. We have had unfortunate instances where persons who were witnesses in high profile cases were gunned down the day

before or they were shot at, their lives are being threatened and all of sudden it is a common thing to read in the newspaper about a case where the witnesses did not give evidence or valid evidence could not be found. I feel that this is something that would be more helpful itself than something like no bail or bail denied to persons in a very blanket way as this amendment is suggesting to do, at least in a very permanent way. If it is a short-term remedy for, of course, the situation that we are in, I really have no problem with it, but we should not seek to have it limited in that respect.

Two points and persons had already mentioned it: The denial of bail to persons would suggest that our prison facilities are up-to-date to handle any probable increase, perhaps, that we might have. I suspect that we have an overcrowded system currently and if we want to have persons denied bail for some of the offences listed, maybe we might need to think very carefully about prison reform and ensuring that our facilities are up to standard.

Finally, the backlog and deficiencies of the court system—I might not be a lawyer, but I have been hearing from quite a number of people; I have been listening to the debates going on, and there clearly does seem to be a tremendous backlog and deficiencies in the judicial system and what is being done to deal with this? Unless that is cleared up, really and truly, this particular Bill might not be as effective as you might want it to be. I think that is it.

Thank you, Mr. Vice-President.

Sen. Subhas Ramkhelawan: Thank you, Mr. Vice-President, for giving me this opportunity to speak on the Bail (Amdt.) Bill. As I do so I must say that I find myself in somewhat of a quandary, because like most things, this matter of bail is not black or white, but various shades of grey.

On the one hand we need to think carefully and consider the rights of the individual and weigh that carefully in balance with the protection and the greater good of the society. It reminds me of someone going to the health centre and you know that scale that is there and you have to keep moving it to the right or the left just to get the right balance to ensure that this is the correct weight of the person. In the society, in this Parliament and in this Senate, we have to strive to get that right, equitable and just balance in terms of the legislation that we enact, which is in essence the rules that would govern all citizens, including ourselves.

I want to compliment my learned colleague, Sen. Prof. Deosaran for his cogent, elegant and eloquent dissertation on this matter, but in particular, for his derivative Mathematics, where, when I counted something less than 20 he

arrived at 46. I am grateful to him for being able to explain to me how wide ranging this question of the amendment of this Bail (Amdt.) Bill is, because when I first came across this matter of the Bail (Amdt.) Bill, in my own simple mind, I thought it was really a matter of whether we would vote for the extension of kidnap for ransom—no bail. But I find that the berth has been widened, so much so, that it is difficult to really identify this as a Bill that ought to have been coming forward in three-month intervals for the past couple of years.

It is a much wider issue that I am called to really think about and ponder on finding this right balance between the rights of the individual, the protection and the greater good of society overall. It is the widening of the net that gives me this cause for concern.

The first cause for concern has already been raised. If we were to allow these 46 offences—if indeed that is the number—and we were to institute rules, which is what we are doing or which we are being asked to do, and persons are not allowed bail if they have been convicted, and the conviction could be for a single action for which there were two charges. Because what the draft legislation is saying, is that you are convicted on two counts, but it might very well be on one single action—and I stand to be corrected.

If somebody made a mistake 15 years ago, 14 years, 365 in a leap year or 364 in a non-leap year, brought forward now—and I cannot say that is so because I do not want to believe or I do not want to even think or envision a scenario, where there may be incompetent policemen or there may be corrupt policemen who know all of the criminals, as they claim they do, all of the reasons these criminals have taken action. The only trouble is that we just cannot seem to lay the charges properly and we cannot seem to achieve convictions.

But if indeed that scenario were one that were proven to be true, that is, that we may have one of two policemen that are not of impeccable character, and they wanted to take advantage of a citizen who may have committed a wrong before and who is trying to go the straight and narrow path, just one action, 15 years later this person finds his life turned over and is put into jail and cannot get bail, not for kidnapping only, but for larceny and for a wide range of issues, that concerns me.

Now, I have to balance that—the protection of the society—with the concerns I hear from citizens about the fear that they have to drive from point "A" to point "B" late at night; about the fear that they have to be at home when they hear a knock outside; about the fear that they have when they hear their dogs barking outside, and these are all legitimate concerns and real life concerns that occur with

us day-to-day and night-to-night. When we start to tip the scales, will this piece of legislation, somewhere in the future, become the nightmare, become the draconian piece of legislation, where many persons can be incarcerated, charged and not convicted; and I worry.

I worry about the streams flowing into the sea as Sen. Prof. Deosaran puts it. I worry that in order to paper over inefficiency in enforcement and compliance that we are trying to actually change the rules rather than to strengthen the executive, and so it reminds me something of a football game. You have the governing body there to make rules, you have the referee and you have the playing side. Of course, you have a stronger playing side and you have a weaker playing side.

The real concern that I have, is on the one hand you are hearing my hon. colleagues in this Senate saying, well, we should have three referees now instead of one. You know what is going to happen. There are three referees and you are going to have a majority opinion, a minority opinion or you are going to have three separate opinions. To me it is rather more elegant that we get the right balance of the rules. Our role here is to ensure that we put the right rules in place so that the game can go on smoothly and let the referee interpret. If he is misinterpreting and the rule was not clear, we adjust the rule and we fine tune the rule so that the rule would be clear and he would be clear in his interpretation.

So, I do not support my learned colleague, Sen. Mark, on the question of the number of judges that would rule on the question of bail. But that does not dissipate my very great concern as to the widening berth of non-bailable offences.

I would like to appeal to the hon. Attorney General to relook at the number of offences that are here, because if the hon. Attorney General does that, it would make it rather easy for some of us, myself in particular, to support, if it were narrowed, of course, kidnapping and if someone was convicted twice for the offence of kidnapping.

7.20 p.m.

On the balance of the scales, I would certainly feel very comfortable supporting something like that. But when you tell me larceny of a motor car, that is a thing. While somebody may be hurt losing that thing, they have not lost a finger, a life and a loved one. I find it very difficult to stand and support a Bill that seeks to widen, and widen by so much, and permanently, and I will come to that; I find it very difficult as an ordinary citizen to support something like this.

I want to touch on the question of permanence. The whole question of moving from a system which I believe was negotiated with a three month or six month renewal was because you could not find a common ground, and therefore, you came to a position where you said, "Well, let us defer finding that common ground until some later point in time." What I am concerned about is that when we widen the berth and we make it permanent, then when abuses or if abuses come to the fore, how will we self correct these abuses? Since we are really in a sense experimenting with this wider berth, I would have a concern. My concern would be to allow the passing of this piece of legislation in perpetuity, or until a change of Government.

I would rather see a period which would be more extended than three or six months, something like 18 months or even two years, where the Executive will have to come back to this Parliament and say, yes, the experiment worked or that the experiment failed and having failed, we relook and reset our position. I believe that when governing bodies actually implement new rules they do it on an experimental basis, whether it is cricket; whether it is that the umpire is now allowed to refer to the third umpire to find out whether the catch was really taken or whether it was dropped; or whether it is the offside rule that was instituted sometime ago by the governing football body and after experimentation, was made permanent.

It is too critical. It could be too onerous an imposition on our citizenry to widen that berth so far, so wide, and to drop all of this on our citizenry at the same time. And so, I will appeal again to the hon. Attorney General to consider a time limitation, let us see an experimental time limitation, such that we can work out the bugs and get it right. Our big part of working out the bugs and getting it right is in enforcement of laws, not just the making of laws, but the enforcement of laws. If we pass this on a permanent basis and there is weakness in enforcement, as there has been as far as the security of the person is concerned and we do not need to take a poll, as my honourable colleague, Sen. Prof. Deosaran has suggested, we do not need any more statistics to know that the people of this country are dissatisfied with the quality of security of the person.

I could take a poll in this honourable Senate, and I am sure if everyone is true to himself or herself, we would have to admit that it is a concern of the highest order amongst our citizens. That is why I find myself in this quandary. It is not only about the balance of the rights of the citizen, but the protection of the society and the greater good of the society. But in a sense, it is a massive leap of faith that we must have, whereas this faith has not been fully justified over the past two

or three years or even more. It is asking us in this Senate, and it is asking the citizenry to take a massive leap of faith when that faith has not been justified, at least in this area.

I would like to summarize and to conclude by suggesting, one, to my honourable colleague, Sen. Mark, that he consider adjusting this question of three judges and going back to one. I would also like him to consider probably not six months, but maybe 18 months or two years as the period and let us see if we could find in this honourable Senate, a common ground upon which we can go forward, and go forward quickly and confidently, and we can all say to the citizens of this country, yes, we think that this is workable and if it is not, we would come back here in 18 months or in two years' time and we would relook just to ensure that there is no blatant abuse and that it does not result in the overcrowding of our prisons because people are going to have to stand or sit next to the highway.

There is not going to be sufficient place for them because the way construction projects are done here, if you were to start another prison, first of all we may have a cost overrun and then we may have time delays. Where are we going to house these persons? Certainly, it is not my intention to offend the Executive; it is simply a statement when one looks at the statistics in terms of overruns, we are going to be out of depth and we are going to be trying to make rules to paper over the question of effective enforcement.

I believe that these are the two points that I would like to make. First, the question of judges and, second, the question of time and maybe one minor point. Rather than 15 years, we go back to possibly five or 10 years, the reason being, that if you are looking for repeat offenders—sometimes you would not classify a repeat offender as somebody who committed a crime 15 years ago—it would be somebody that you are talking about, maybe three or four years. I would not classify a repeat offender, somebody who made a mistake, if indeed it was a mistake, or committed a crime 15 years ago that he or she has not committed a crime and has not offended again for the past 15 years; I would consider that time frame far too expansive.

So with few thoughts, I appeal to those on both sides, let us find a reasonable compromise position, not for us in the Senate, but for the citizens of this country. Let us do what is right; let us do what is equitable; let us do the thing that makes the most sense at this point in time.

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

Sen. Lyndira Oudit: A very pleasant good evening to every honourable and respected Member in the Senate. Mr. Vice-President, as my colleague, Sen. Mark stated, crime must not only be looked at in terms of punishment, but also in terms of prevention and we must ask, what is the end result of this Bill? Is it reduced crime; better policing; safer communities, or are we opening a can of worms that once released, will simply find their way into the cracks and crevices of our civil and just society?

Where is this Bail (Amdt.) Bill in any reference or direction to what the hon. Senator referred to as white-collar crime? Everything in this Bail (Amdt.) Bill refers to violent or street crimes. Nothing is dealt with as it relates to corporate or official crimes. Is it that the detection rate of this type of crime is so minute that attention has not even been afforded for prosecution, conviction or any matter such as bail? Too often public opinion indicates that kidnapping and murder are mere segments of what comes under the umbrella of corporate crimes. This goes not only against citizens, but also the economy and the Treasury.

Mr. Vice-President, this Bill is not only dangerous legislation since it breaches sections 4 and 5 of the Constitution of the Republic of Trinidad and Tobago, but it seriously seeks to undermine the power of the Judiciary as clearly defined by our democratically determined, separation of powers of the arms of Government. Like other Members of Government, we too are very deeply concerned about the unhealthy crime situation currently plaguing our country, but our sense of reasoning and fair play must never be destroyed or compromised, by dispensing with fundamental rights and privileges of all citizens.

In 2005, when this measure was first agreed upon by the Government and the Opposition, there was the insertion of a sunset clause. What exactly was this sunset clause? It was simply a measure specifically designed to allow the Parliament to objectively assess and evaluate the workings of this particular Bail Act, in accordance with the original substantive tenets and principles. The Opposition then was acutely conscious that the mounting criminal activities required urgent and drastic measures. In the national interest, contrary to some wild allegations of non-cooperation that is normally alluded to, the Opposition agreed to include kidnapping for ransom as a non-bailable offence in November 2005, and this is duly recorded in the official statements of both the Prime Minister then, and the Leader of the Opposition, made in Parliament during that time.

At that time there were only four categories of offences: murder, treason, piracy and hijacking. By agreeing to include kidnapping for ransom, the

Opposition sought to bring relief to a truly traumatized society. By removing this critical sunset clause, what is then the true purpose of this Bail (Amdt.) Bill?

7.35 p.m.

The Government is proposing to include over 46 additional offences to be made non-bailable as outlined in Part II and Part III of this Bill. My question is: Why are we allowing the Executive and Legislative arms of Government to take over the responsibility of the judges and, by extension, the Judiciary, in determining specific duties and carrying out specific responsibilities, as it pertains to matters before the courts?

The Attorney General suggested in her presentation today that rights were not absolute. The opposite is that rights are relative. The question of relativity is relative to whom? The relative nature of rights, as proposed by this Bill, is consistent with bias. Who is then allowed to determine the extent of the right or even to determine if an infringement of such right took place; the police, the judges or the Executive or Legislative arms of the Government?

Take, for example, clause 6, Part II section (c) of the First Schedule:

"perverting or defeating the course of public justice;"

Would then a protest march by civil groups in society be included as part of non-bailable offences? Or Part III, items (b) and (d):

"(b) shooting or wounding with intent to do grievous bodily harm, unlawful wounding;

(d) assault occasioning actual bodily harm;"

Would a person defending himself or his family or his business against a criminal now fall into that category? In reference to clause 4, it says:

"of any combination of offences arising out of a single transaction..."

So in defending himself, he not only takes a gun, but he also causes bodily harm; those are two things in the single transaction. Is this person to be charged with an offence that is now non-bailable?

Let us not forget fundamental tenets of our Constitution. We must severely guard against any law that seeks to deny basic rights to any citizen or, more importantly, to be corruptly used against any citizen as a form of persecution or harassment. This Bail (Amdt.) Bill is proposing to encompass over 40 new

offences. Would the resource of the State now be made available to the police service, the courts, the prisons and related institutions, to deal with additional burdens that will swell the existing systems? Let us tread carefully, as we take this country through this century.

Furthermore, we are but temporary guardians of this legacy; this land does not belong to us. Lest we forget, this guardianship is temporary, and this too shall pass. The future generations would be highly critical of any attempts to eliminate or destroy fundamental freedoms of the present population. The sins of these fathers will fall on the children. Let us not cause burden and regret in passing this Bill, not only to this generation, but for those to come.

There must be no compromise to fundamental rights and freedoms. I thank you.

Mr. Vice-President: I would just like to congratulate Sen. Oudit on her maiden speech.

Sen. Annette Nicholson-Alfred: Mr. Vice-President, our beautiful country of Trinidad and Tobago is being tarnished because of the high crime rate and the criminal activities. I think the upsurge needs to be plugged and to be plugged almost immediately.

I am happy that, at least, I can offer a small contribution towards the Bail (Amdt.) Bill of 2008. Our country is in total disarray. There is a kind of madness raging through our land; horrendous deeds are perpetuated against innocent citizens without reason, and human life seems to have no value. We live in fear, I might say mainly because of crime. When a man goes into someone's house, stabs her, leaves her to die, possibly, and the bail you give such a person is just $75,000, you tell yourself that is the price you put on that individual. I strenuously support the amendment.

Mr. Vice-President, the Act we are now called to amend is not in sync with the present age, when everyday two or three persons are found dead; somebody goes missing and her car is found in a mechanic shop being repainted; someone is held up as he goes to the bank or a man is shot five to seven times as he speaks to somebody else's girlfriend. It is time for action, and serious action.

Crime is as rampant as it is, because, I believe, successive governments, especially in times of plenty, did not pay particular attention to developing ways and means of reducing the crime surge. Many of our lawyers found the loophole by which criminals could evade conviction; they too should hold themselves responsible for their contribution to the growth of crime in this country.

For many years we have had a sleeping police service. We have had a police service which was said to be corrupt; evidence disappeared into thin air and the criminals were made to walk free.

The Acting Commissioner of Police, in commenting on the recent retreat in Tobago, as was stated in last Wednesday's *Guardian*, seemed to think that the retreat was quite successful. He has not detailed the success of it to us. He has promised us great benefits from a new crime plan. The country will be happy to see crime reduction and the general safety of the public come in quick time.

Mr. Vice-President, how do we as a people involve the population in crime reduction awareness? The perpetrators of crime are all around us; can we not see what is happening? I ask the Government to organize ongoing sessions in the hot seats of most criminal activities; we know how very well they can mobilize. I urge that the Government use the same steam by which they brought nationals together at Woodford Square on Friday, September 12, to bring them together in zones and hotbed areas, and make crime reduction the main focus. We must be able to deal with what is happening around us. So much money is being spent on social welfare and community development, but we do not seem to be dealing with the matters that matter most.

I have been wondering whether mechanisms have been put in place to upgrade data collection, so that tracing could be easily done. Many an offender is released from police custody, because tracing takes a very long time. These are the same persons, many times, who get the opportunity to go back into the community, into the society, and commit further crimes.

What is the role of education in all of this? How relevant is our education system to what is happening nowadays, to deal with youngsters who are not able to cope with the work given at schools? A number of our students drop out, and they are the persons who form the base of the gangs. It is easy to get them into the gangs; how do we deal with a programme or syllabuses that would take care of those who are less quick, those who might not be able to do Spanish and French, but might do other things? What have we put in place to help them?

We see also a number of youths, children who are parentless, maybe because parents have run off on them, they could not cope, maybe financially, or some people might think that they need to go to America and send the barrels down and leave the children unattended. What is our Ministry of Social Development doing to assist children or youths who fall into this area?

We believe that a lot of the crime comes from drugs, but I am not feeling the temperature being applied on the persons who bring the drugs in. The little man on the street could buy $10, $20 and $30 worth of drugs; they cannot spend millions on drugs. I hope that we can feel the presence of an attempt to reduce the drug intake into our country.

This is the time for the tightening of loose ends of the law. With these amendments, it is hoped that Trinidad and Tobago will begin to see brighter days. I put a plug here for my side of paradise, where it is felt, Mr. Minister of National Security, and it has been said to me, that the police stations are in a state of disrepair and that we do not have enough policemen to do duty on our island. I hope that you will look into that.

We in Tobago have started to feel the heat; we have to wet our beds because the fire is coming up. I trust that if the Bill is passed, a lot of what has been said by the more knowledgeable persons would be taken into consideration, so that we could together rebuild our country that is sliding, to me, quickly down the road.

I support the Bill, Mr. Vice-President.

Sen. Dr. Carson Charles: Mr. Vice-President, Sen. Nicholson-Alfred put it well; she spoke from the heart. I think most of us would share her feeling on the matter; this hurt, this pain that we feel on behalf of all our citizens in this country about what is taking place today with respect to crime and criminality. We also share this agony with our fellow man.

It is true that in this time very few persons feel safe, even going about their ordinary, everyday, mundane activities of walking the streets, of going in the backyard, of opening their doors to go into their galleries or porches, of going into their cars in the morning. Everyone feels this pervasive fear that stalks the land of Trinidad and Tobago.

7.50 p.m.

I wonder if I am taking it for granted or the research suggests that it is correct. Sen. Seetahal SC says it is correct, that in fact, this Bill differs from the existing law only in respect of the sunset clause. What that means is that this is the law today and it has been the law now for three years.

And if this has been the law for three years, I do not think, Sen. Alfred, that the passage of this Bill today could really be looked on as something that would really give us so much hope and confidence that our future will be better, because

this has been the law for three years. This has been the law. That is what Sen. Seetahal SC says and this is what we have confirmed. It is indeed so, this has been the law; the only change is the sunset clause.

You have been operating under this law, you have had these powers and these restrictions have been in effect for three years now. We know what we would like to bring to an end actually, but constitutionally the people elected your Government for five years and, therefore, we cannot bring it to an end until it is over. If it is one thing we need to bring to an end is the reign of the Government, but five years is a short time. That too will pass.

Mr. Vice-President, the point I am making is that this is the law and it has been for three years now, and even the statistics provided by the Minister of National Security will not help. First of all, the statistics themselves show that things are only getting worse. I am sorry to say that although he was allowed to hold things up in the air and all things we were told that we cannot do— [*Interruption*] We do not operate by the rules of the other place, we have our rulings here, so that is irrelevant. The point is that he—

Mr. Vice-President: Sen. Dr. Charles, are you questioning my judgment?

Sen. Dr. C. Charles: I did not know that you made a judgment.

Mr. Vice-President: Well, I allowed the Minister because he was referring to statistics on the chart; he was not bandying it about using it as a prop, okay?

Sen. Dr. C. Charles: I did not think I questioned your judgment. I said he was allowed to do it; I did not say you should not have allowed him, Sir. I said even though he was allowed to do it, I did not think it helped his case and I was quite happy to see it because the charts all trended in the wrong direction. Murders are up, detection is down, if I were him I would not show the chart myself, but I admire his honesty. That, I must say is something he has going for him as a Minister. He has been straightforward enough to tell us that under his watch, things are bad and are in fact becoming worse every day, and that is my point.

My point is if you have had this provision in effect for three years and things are getting worse, I am not expressing a view yet on whether you should continue with it or not, I am making the point that there is no reason for us to put our hopes in this, because for three years it has not given us any comfort, for three years things have not improved. There is no evidence that this has helped us in any way.

And there is no evidence that without it things would have been worse because he did not address that matter at all. That is all I am saying for now. I am saying that we are all concerned about crime and about bringing it down so that we will live in a more civilized place.

It is very difficult to tell your children that they should look forward to a great future here. People have difficulty convincing small children that life is going to be fantastic and it is a good thing to grow up in this country and look forward to a career and live here because they are observant. They see what is happening every day, they read the newspapers, or at least they look at television and see the stories and they know what is happening around them and little children are traumatized.

The bigger children are scared of what will happen around them every day and teenagers and adults are afraid for the future. That is the current condition of our society today. So we are all concerned of doing whatever we can to reverse the trends that the good Minister was so kind to share with us from his chart.

Mr. Vice-President, the question then is, in what way the passage of this Bill today will serve to reverse those trends? It seems to me that is really the only issue before us; in what way will it serve to reverse those trends and, therefore, bring some comfort to people and to the citizens who are, I am sure paying attention to what we are seeking to do this evening, knowing that we are interfering with the rights, the freedoms, provisions of our Constitution which assure that there is a certain level of stability here and some protection from abuse by authority.

This Bill seeks to deny—as is the current law—bail for certain offences and if it were part of a package that the Government presented saying well these are the things we are doing and we would see some evidence that it is working, we can say all right, there is a reason why you must have this because you have a programme and it is going to address crime, you are going to bring it down, and part of this programme is this piece of legislation.

The only purpose this can serve is as part of a programme to bring down crime. This cannot possibly be considered as law you really want to keep in perpetuity. Anyone who thinks that you ought to have this kind of legislation in perpetuity is an enemy of our Constitution, he/she must be. Anyone who thinks you must always have this—now I have not accused the Government of wanting to always have it—but the current Bill does not provide any sunset clause which

means that you reserve completely the right to review it at your discretion. That is what you have done, and, of course, we have no reason to believe that you will exercise this discretion at the right time in the right way, so we have to be concerned about that.

I am making the point step by step, and I am saying that the point at this stage is that if this were part of a package of measures to be implemented to bring down crime and return some level of stability, some comfort to the people of Trinidad and Tobago, then one could be justified by saying we will support this as part of that package of measures even though we know it is not the kind of law we want to see in a country like ours.

I am sure on that we all agree, that we do not want to see this kind of law in our country. I will be very shocked if Members of the Government actually think they would like this kind of law. I will be quite surprised actually, in spite of whatever I may say about your political organization. I do not believe that you are a fascist organization, in spite of political rhetoric from time to time. Sometimes your leader might be misled. In fact, he may even have intentions not in keeping with the spirit of your political party from what I know it to be. But anyone who says they want to have this in perpetuity is an enemy of our Constitution. I am sure you do not want to have this.

I think you did pretty well back in 2005 to negotiate with the Opposition at the time this Bill which gave such restrictions in the matter of bail, and the price was that you had to return to the Parliament in a fairly short time to demonstrate that you need it again, you had to account and you came back and got an extension and so forth, and you came back again and you did not get through, but you had the support of other Members of the Opposition at the time and the first chance you got—forgive me for sounding cynical—to do it on your own without requiring the Opposition support because of the three-fifths majority, you counted your numbers and the goodly former Minister, Dr. Rowley returned in time and demonstrated to some of us what we were saying. And as soon as you were sure that you had 26 votes, enough to pass with a three-fifths majority, you passed this Bill without the sunset clause so that you would not have to depend on the Opposition and account to Parliament, and demonstrate reasons why you should continue to have this kind of law. That is what you did. [*Interruption*]

One half is demolished and the whole is growing again and you do not want to go into that. You see what happened in Tobago? All kinds of new things are going to come onto the horizon just now. I should thank the Minister of Local

Government for giving us enough time to put everything in place so that your demise could be seen long in advance of the five-year time limit. I digress, Mr. Vice-President.

I am making the point that this is what I believe the Government did and that is the reason for removing the sunset clause because you do not want to beg the Opposition for any support again and you are not sure of how long you will have the 26 votes for. You have it right now, Dr. Rowley is still with you, 27 you will have to dream about, and you are hoping if you can get the support in the Senate today, then you will get away scot free and you will not come back here with this.

I do not see any evidence of the Government coming back in any situation to give back rights to people that it has taken. I do not see you doing it. I do not think you have ever done it, and I am not saying only the PNM does that, it is a habit of governments that once people's rights are infringed, they hardly return. That very seldom happens, it requires some sort of ground movement among the people for you to get back rights that were lost. It just does not happen.

Rulers do not give back to people rights and freedoms that they have taken away. So it is not likely to happen that you are going to return sometime on your own free will and say this has worked well enough and I do not think we need it anymore and, therefore, let us repeal it. That is not going to happen. The only way you are going to consider coming here, the only way this will have a chance of ever being repealed is if it has a sunset clause. That is a fact. Without a sunset clause—[*Interruption*] Well, of course, when the Government changes, but even with a change of Government, as I said, let us be honest.

The reality is that the governments seldom pay attention to that, that would not be a priority of governments. We are talking about the interest of the people here, not just being partisan. Governments of all kinds seldom will return to give people back power or rights and freedom they have taken from them. They always reserve the right to say I know what is best for us and if the law is on my side, that is good, because I am going to exercise it in your best interest. That is what you are going to get from governments generally.

So if we really want to act in the interest of the people, we would not take away their fundamental rights and freedoms in perpetuity, we will impose a time limit of whatever kind so at that time at least, there is the possibility and there is the necessity for coming back to Parliament and at that time we say listen, these things are of the past now, we do not have high crime in the country anymore. Kidnapping is no longer taking place, violent crimes are down, murders are down

and we are back to some kind of civil existence. People do not feel afraid anymore therefore, there is no need for this to be continued, or that many of the offences listed here can now be removed. The only way that will happen is if you put a sunset clause, and I hope I can convince some Senators—I know the nature of Government comes with built-in rigidity that makes it difficult for people to act on their own, they have to act as a Government and, therefore, you have to decide whether as a Government you consider the matter to be worth your while.

8.05 p.m.

This question about having to do it by Friday, I just want to address that for a moment, because I want to understand what is the difficulty if we have to amend this and it has to go back to the other place and then be amended there, and even though you might have a long debate, and so on, you will succeed; you have a majority there, so you have no trouble; so you may be a few days late; the existing law will lapse and you will be a few days late, why do you think that in those few days suddenly all the people who are inside, would be thrown out in the streets? Why would you think so?

I saw some comment from the Attorney General about hardcore criminals in jail awaiting bail for kidnapping as though they are going to all come out on the streets next day because this existing law lapses. They have to go to a judge in chambers to apply for their bail, do they not? Is the judge going to automatically give them all bail, knowing that this has been passed in the Senate? I do not believe we should have such a low opinion of our judges; I do not believe we should consider our judges that way at all, that they automatically, within a matter of two or three days, will send them all back on the streets. Then something is seriously wrong. I do not share that cynicism regarding our Judiciary at all, so I do not see the mischief; I do not see the danger. I do not see why, if there are two or three days because it has to go back to the other place and then you have two or three days during which you have a hiatus because the existing law comes to an end—there is nothing in law that says that you automatically will get bail because this existing law comes to an end; nothing says that. The old law will stand and you will have to go and apply for bail and you may or may not get it. In fact, there is no reason to assume that you will get it if the Judiciary is aware and commenting as it does, and taking note as it does, on life in Trinidad and Tobago.

This brings me to another point, which is that in the first place the law that was passed was a statement that there was some difficulty in communication between the Executive and the Judiciary. In the first place, it was a statement of that kind. I could never understand why it was so important to legislate against bail. It had to

be that because it was felt that there was no other way of communicating to the Judiciary the seriousness of the situation regarding people who are repeat offenders or who are involved in kidnapping for ransom. [*Interruption*]

Sen. Mark: But you had secret meetings with the Chief Justice. What are you talking about, separation of powers?

Sen. Dr. C. Charles: I have not said anything about separation of powers in my contribution. [*Interruption*] I do not see how, if people live in a society and they are aware of the circumstances of the society, that you have to go and sit in a meeting to convince them as to whether you should get bail today or tomorrow. I am not making that point; I am saying there obviously was some difficulty in communication.

I am not suggesting how you should go about it. Do you think state craft is a kind of sledgehammer thing? Maybe the Prime Minister has a sledgehammer approach, trying to establish Caribbean political union by flying around dropping in on people unannounced and imposing himself upon them all over the Caribbean; a sledgehammer approach to diplomacy. Maybe that is how you go about it, like the "wajang" behaviour. I could not help that at all. That was amazing. Is that the kind of example set—"Wajang" behaviour of the highest kind? It was the original "wajang" behaviour in the square on Friday.

Sen. Narace: That was subtle diplomacy.

Sen. Dr. C. Charles: "Wajang" behaviour on Friday! You have people debating in a Parliament—I have to worry now if we have any important matters here that you are going to mobilize people outside in the streets to support the case. This is so contrary to the whole principle of what Parliament is, which is that people speak on behalf of the people of this country so they do not have to come themselves and stand outside there. That is the whole point of Parliament.

Sen. Mark: Mob rule.

Sen. Dr. C. Charles: "Wajang" behaviour, that is what I call it.

I am saying that I hope this is not a sign of the way in which the Government does its business, that you think you have to use a sledgehammer for everything. There is something called diplomacy and there is something called state craft, and so on. There are ways in which you communicate desires and you get a response, and so on, and you see whether you have cooperation without having to tell somebody; call the Chief Justice and threaten him—without having to do those

kinds of things; to call him and threaten him, that if he does not resign, "I will lay charges against you", or "get charges laid against you". There are ways of doing things and maybe that is part of your problem.

You know, I am usually more gentle on the Government than I should be, but I have to be a little harsh on the Government this evening because this is a case in which I do not accept this approach which, because you happen to have this three-fifths majority you come with this without a sunset clause. It was bad enough if you said, "Listen, I want a five-year sunset clause." That will go past your term and you would not have to worry about it after that time. It would not be your problem after that time, so you could have said five years.

Sen. Dr. Saith: It would not be yours either.

Sen. Dr. C. Charles: Well, I am just one person in this entire thing. It is much bigger than me, hon. Minister. I am just carrying out a particular role here. The political organization I come from and which I am associated with now is not involved in that conduct.

Sen. Narace: That is true.

Sen. Dr. C. Charles: The next thing the Senator will want to get up and say is that I am irrelevant. I am not going to be tempted. [*Interruption*] That is not relevant to this particular debate, Senator. [*Laughter*] But surely you heard of the UNC Alliance; surely you know of that organization.

I am making the point, as I said, I am serious about this. I am disappointed that you would do this. It has nothing to do with us in the Opposition, really; it really has to do with the society that we say we want and we are supposed to take the interest of the society into our hearts and we should not seek to, as members of the society, as people who believe and love our country, pass this kind of legislation.

It should hurt our hearts every time we have to do this. Every time we have to pass into law some provision that in some way erodes the fundamental rights of citizens of this country, it should hurt us to have to do it and we should do it only because we have to do it for the greater good. Therefore, we should not rush to do it because you have a special majority and put into perpetuity a piece of legislation that you know you would not come back to change or to repeal. You should not do that, and that is what bothers me. I do not like that.

In respect of the matter of crime itself, as I said, what is really going to help with crime? We have a problem. I am sorry to tell you, it is a fact that it is your Government that has visited on this country these twin demons of inflation and

crime. [*Desk thumping*] It is the actions of your Government that have visited that on us. That is the reality. Members here may not have all participated in the previous madness, but do not continue it into this new term. The statistics speak for themselves regarding when crime was considered to be—at what point did crime begin to be a really serious issue in the country; at what time did we really get afraid as people in this country.

Look at it; look over the years and you will see it is during the watch of your Government—this particular incarnation of your Government; it was during your time. And it is particular actions of your Government and your Prime Minister, in particular, that brought this.

Sen. Browne: Sadiq Baksh.

Sen. Dr. C. Charles: Not Sadiq, no; look at the figures and you will see. It is your going into bed with the criminals; it is your empowering the criminals!

Sen. Mark: That is it!

Sen. Dr. C. Charles: Yes, that is what it is, empowering the criminals. That is what caused it.

Sen. Browne: We are reaping the results of what you did.

Sen. Dr. C. Charles: That is what caused it! You would never hear me blame the Minister of National Security because I know he did not cause crime. No action of his caused crime. It is sad to say that not too many actions of his have been able to solve crime, but he did not cause crime. You have tipped the balance, understand it. You can make as much noise as you want because you do not want to hear this, but you have tipped the balance that the Attorney General spoke about: "Technicalities cause a shift in the balance in favour of criminals."

It is not in the courts it happened; it is not lawyers who went in the courts and there were these technicalities that shifted the balance. No! This has been so for a very long time. That balance was like that for a long time. It is a long time now that it has been difficult to win cases in court—many years—and during those years we had that problem, but we did not have this raging criminal way that we have now.

So that is not where the balance was tipped; the balance was tipped by politicians who just love to get into bed with criminals. It is an international habit of politicians and you have it really bad. You are not the only ones; you just have it worse than most. You have the disease worse than most politicians. It is the

Jamaican story; it is all around us, of politicians in bed with criminals, because criminals are good mobilizers. That is a reality. Many of them mobilize communities and when you get in bed with them and your resources begin to flow in their direction, then small gangs become bigger gangs. This is the reality. I happen to know a lot of people who got themselves involved in gang life and I know when they were small-time crooks and criminals that you could have "boofed" up and so on; the police could have dealt with them, and overnight they became so big and so powerful that right now it is just fear. They terrorize their own neighbourhoods now.

The same small fellows that we knew of for all these years in their small-time gangs, suddenly they became big, powerful dons. That happened under your watch! This is a reality; it is a fact! If you want to solve crime, reverse what you started. It is a difficult thing to do, I know, but you have to do it; you have to reverse it. Do not think this will solve your problem at all. It will not. For three years it has done nothing to the problem. But if you have to have it because the problem would be worse without it, then I say okay.

In the same way that you got Opposition support years ago, you can get Opposition support again, but where is your sunset clause? If we gave you support years ago, who said you could not get support again on a similar basis, knowing that because we have the society's interest at heart, we were prepared then to say, "although it is bad law; although it is taking away people's rights, if it is for a little time and it is something we must do; it hurts us to do it, but we will do it in the interest of the country, so we give you support to do it." Why could you not simply come and say, "I want to get support again and I want a longer period of time this time; maybe three months; six months is not good enough; I want more time, because I have some things I have to do"?

Sen. Dr. Saith: Is Dookeran who gave us support, not "all yuh".

Sen. Dr. C. Charles: No, no. Dookeran gave you support long after the original Bill. [*Interruption*] Yes, because you had not fulfilled certain other promises that you had made at the time. [*Interruption*] Well, I do not want to comment on the goodly gentleman, but I am just saying that there were certain things that you had promised to do. Not only had you promised to bring down crime, you had also promised to pass integrity legislation, and so on, and you did not fulfil your obligations at all, so you had to rely on someone else to support you.

But that is history; I am not getting into that. I am saying that the way to do it would have been, in my view, to say that you need to have the law again and the same way that you got support once before, you would like to get support again in a bipartisan way, because look at what we are doing here and, therefore, you are prepared to have some give and take. If it is that you do not think three months and six months you have to come back to Parliament and debate over and over; maybe it is a waste of time coming so often, but there is a period of time that is more reasonable, from your point of view, one could look at that. One could still look at that and say: "All right, yes, there is a reasonable time period for doing what we must all acknowledge is something that we prefer not to do. We all should prefer not to do this, but we all may agree that we have to do it. Therefore, in that sense, we all should be able to say we will only do it for a limited period of time." I think that is the way one should have approached this matter.

I want you to pay attention to the fact that as hard as it is to swallow, that statistics state it; it is there to be seen, that you must at least take responsibility for what happened during your watch and during your watch you had this fantastic rise in crime and you cannot turn your back on it and say it is somebody else's fault. You cannot. You must look and see among yourselves, as a government or as a party: "What have I done? What is it that I did within my own organization that I should not have done or I should undo that played a role in this escalation?" How can you have an escalation like this and take no responsibility for it and behave as though it is somebody else's fault? How can you do that?

The country is hurting; it is bleeding and you are there taking no responsibility, playing politics and blaming somebody else. That cannot work! It is not going to cause you a loss of office or a removal from office. I am sure you have enough fanatics to stand by your side during the time that you require them to, so you do not have a problem with that. But at least you would have perhaps a chance of solving some problem if you could acknowledge the role you play in creating the problem and you could seriously address not just fighting crime; it is not fighting crime.

8.20 p.m.

It is not fighting crime. You can fight crime when criminality is so rampant? I have a friend, a courageous lady and I do not know if I will ever see her again in life because she saw someone murdered in her yard. She was courageous enough to say, "I knew that young man when he was growing up as a boy and running around my yard. I cannot see him killed and not give evidence." Most people will say that they did not see anything and they do not know. She gave evidence

as a result of which she had to go into witness protection and finally, out of the country somewhere else far away. That is what happens to those few persons. She is alive. She gave evidence and had to leave the country.

There are a few like that who will do this for someone who is not a blood relative. That is the reality in the country in which we live. [*Interruption*] It is not the reality of the world. It is the same thing again. It is not the world. It is like blaming someone else all the time. There are countries around us that have not seen this escalation in crime that we have seen. You cannot say that it is the world. Check the United States and see if the statistics suggest that crime has increased tenfold in any US city over the past 10 years that you know. Show me one. Which country around us has had a tenfold increase in murders and gang operations that we have had in the past 10 years?.

Sen. Browne: The UK.

Sen. Dr. C. Charles: The UK has had a tenfold increase in murders? Where you get those stats from? [*Crosstalk*] You show me those stats that in the UK you have a tenfold increase in murders in the past 10 years. The world, the world; everything is the world. That is why we cannot solve it. It is the continued refusal to acknowledge your role in creating the problem and that the problem is localized. Even though there is violence in the world, do not let that be used as something to hide under. If you do not want to acknowledge it in our presence, that is okay. That is politics. I have made my point.

You should consider that this Senator said that you have played a role and I can tell you what it is. I have enough personal knowledge of individuals involved in the system because of my life in politics to tell you specifics. If you want to know specifics, I could tell you. Look at it and you would see what role you played, then you would have a chance of being able to bring down criminality and tackle gangs in a serious way.

I wish the Commissioner of Police well. The circumstances of a man coming to office are not sufficient to put any kind of damper or blind on his prospects for excelling. I do wish him the best. I have to applaud anyone who is making an effort, while at the same time I may wish to condemn the manner in which the Government went about dealing with the appointment of the commissioner. Nonetheless, one must still wish the commissioner all success because we are affected by his success or failure in our everyday lives. At least we must be happy if a man is making an effort.

If the resources for the police are increased we know that it will make a difference. We know that the Government is not moving as though it is a matter of urgency or emergency. Maybe the Minister of National Security is doing that. I do not know. With the Government as a whole we do not see evidence of this urgent action like you apply when dealing with some of the pet projects of the Government or the Prime Minister. We do not see the sudden increase in resources and attention that will bring this down in tackling the hot spots, not from the policing end, but from the end of what is causing it. We do not see any attempt to broker peace. I do not know if anybody is doing it, but I do not see it. Many of the gangs require that.

Sen. Joseph: When we do it you accuse us of going to bed with criminals.

Sen. Dr. C. Charles: They require engagement to broker peace. I did not say that the Prime Minister has to go and broker peace. I said that I did not see any evidence of brokering peace. When the Prime Minister goes and meets with gang leaders and brokers peace, he is empowering them, of course. As far as the country is concerned, he recognizes them and he is empowering them. Do you not know that is what politics is about? Who you meet and speak to is important.

If you cannot find apparatus or people in the entire Government to broker peace, I am sorry for you. Whether they are politicians or other officials, I do not see the evidence. Do not be so defensive. If you have evidence of people attempting to broker peace, by all means say so. I am saying that I do not see the evidence of it. That is important. Rather than be defensive, if you are doing it, fine, you can share it with us. If you are not doing it, give consideration to it.

The Prime Minister should not be afraid because he got involved once. It was a bad scene and nobody else should do it? In the entire apparatus of Government, nobody can do it? In the entire political apparatus of the PNM, nobody can do it? It is your home ground. It is your political ground.

Sen. Prof. Deosaran: Will you give way? Will you mind telling us what you mean by brokering peace? Perhaps, you can activate the point made.

Sen. Dr. C. Charles: Among gangs there is a culture that is anti negotiation and anti compromise. People are not sophisticated in the gangs around the country. They are not sophisticated as far as organized crime is concerned. It is crass and brutal. The most minor infringement results in death and death results in more death. It is all right to say, “Let them kill each other,” which I suppose some people may say cynically. I think that the entire country is now completely wrapped up in all that so you cannot say that anymore.

Brokering might be a case simply of people who are also community operators of which the government apparatus and the political party in power have sufficient numbers, to speak to gang leaders to seek to put out wars in which they are engaged currently. The wars will not come to an end because they have no idea of how to bring them to an end as wars are brought to an end all over the world. It is done by negotiation, brokering and people who have an interest in establishing peace.

In Zimbabwe, you could have brokering of a deal between Mugabe and Tsvangirai. How can we broker peace between gangs? There is nobody who can do that in our country, when, in the world on a larger scale you can see the importance of it? Even though you might be dealing with persons you do not want to deal with, there is somebody who can talk in the interest of the wider society or nation in those cases to bring about a cessation of hostilities. This is what the country needs today, not a judgment call. It needs a cessation of hostilities and not a Prime Minister meeting with them because it is different when the Prime Minister or Ministers meet. That is a point of empowering them.

The Minister cannot meet with them. He cannot compromise himself that way. I do not have to read and spell. There are countless others who can do it. The guys who tried to do it on their own were part of the same story and eventually got into trouble. There are guys who tried to do it and got killed because they were from the community. I know two guys in Caledonia who lost their lives within a year of each other, neither of whom was involved in gangs, but they were talking to "fellas" to see if they could mend ways. If the man in the middle who is trying to bring about peace is from the community, what do you think will happen to him?

The communities are crying out for some kind of engagement beyond the question of who is getting the contract. When they get a contract they fight over it and kill over it. They cry out for some kind of engagement that will bring about peace. It is not something that has never been done bcfore, even by the PNM. If you cannot go back in your history and find out when it was done before, I am sorry for you. You have to do it now. It is necessary to do it now, otherwise this would be a waste of time. We would be fighting an uphill battle like the last few years. Every action you take will have no discernible result because the problem is too big. With war raging, the law is never sufficient. With any people who are at war, is the law ever sufficient? You cannot apply the law when people are at war. You have to bring a cessation of hostilities or peace and then you could apply the law.

I did not intend to go on so much on this. I engaged the Government in the matter and they engaged me. I do not want to go further. I want to make a fundamental point. We should be saddened by having to pass this. I hope that every Senator is saddened by having to pass this. At least for that reason if for no other, we should insist that it should not be passed in perpetuity.

Thank you.

8.30 p.m.: *Sitting suspended.*

9.00 p.m.: *Sitting resumed.*

Sen. Helen Drayton: Mr. Vice-President, I rise first to comment on points that were raised and in so doing, I assure this honourable Senate that I take the Constitution very seriously indeed. I do believe that it is the people's Constitution and certainly, should not be tampered with without just cause. I also believe that there is just cause for this Bail (Amdt.) Bill and that the time has come for a democratic Constitution that not only preserves the rights that we treasure now, but also one which is consistent with the realities of today and the very threatening future.

As I said, I have great respect for the Constitution, but the rights enshrined have been seriously eroded by criminals. Sometimes I get the distinct impression that the only persons with rights are in fact the criminals. They have taken away the citizens' right to go to church to practise their religion; freedom of movement; their liberty and security. That is why in some countries that are bastions of democracy it is three strikes and you are out. It does not matter whether the last strike was stealing a tin of milk or a motor vehicle.

They recognize the realities of today; the sophistication of criminals and constitutions which were framed 40 or 46 years ago were framed in a time that certainly, was totally different from today. That is why I believe that since it is the only Constitution that we have, it is necessary at times that amendments be made to preserve the very rights for citizens that are enshrined in the Constitution. As I see it, this Bail (Amdt.) Bill preserves my rights over the rights of the criminals or people who intend to commit criminal acts.

9.05 p.m.

Before I go to the Bill itself, I wish to comment on a few points that were raised. Sen. Ramkhelawan made reference to an example to demonstrate the fact that in tampering with the Constitution without, I would suppose, having a sunset

clause or without periods of review there would be opportunity, if there were corrupt law officers, to victimize individuals if those individuals during a period of 15 years were not rehabilitated.

The reality of the situation is that can happen right now. You do not need a Bail Bill for that to happen. He made reference to the period of 15 years; 15 years certainly is not too long if you are dealing with two previous convictions of rape, child abuse and incest.

I do not know how Senators would feel if they have a person living next door who is a paedophile, a rapist, convicted on two previous occasions and you get home and he is in the room; your child is in the room. Your daughter is at risk. Where do you want him? You want him put away; you do not want him back there. It is the same with domestic violence. I believe, given the time we are living in, it is absolutely necessary.

The list of criminal activities in the schedule does not apply to section 5, it applies to section 4, which makes specific reference to persons charged and convicted on two previous occasions. I do not think that the drafters took the situation lightly.

With respect to some comments made by Sen. Dr. Charles, I submit that, based on the statistics we have heard, if in three years 17 persons who were charged with kidnapping were denied bail, then that was potential lives saved. That was less trauma on the lives of many citizens. So whether it was five or 17 denied bail, it was justified. You are dealing with lives.

To say that in three years nothing much happened on the justification for the renewal of this Bill, I submit there is something called opportunity. If by the existence of this Bill it deterred criminals and would-be criminals, then it is justified. It is not just a matter of statistics. Laws are also meant to deter criminals. To make a statement that there is no evidence, the Minister of National Security did put forward statistics, so that if even there were only a few cases were denied bail, then it is justified on those grounds because the potential was there for harm to citizens.

Again, I heard the Senator and another speak about what sort of society we want our children to grow up in and Sen. Prof. Deosaran, I think, asked that question as well. I think I not only speak for myself, but also for many citizens, if in our society there is greater understanding of the principles of good governance.

Under a democratic Constitution, governance does not only refer to government, it refers also to government and opposition, so that when you speak of brokering, the only brokering the people would like to see is not with

criminals; it is not with gang leaders; they would like to see a cessation of silly adversarial politics that exists with respect to security of citizens. I think that is what governance is all about. So the citizens of Trinidad and Tobago would like to see a governance structure where the opposition is a solution to the situation and not just an opposer.

Sen. Mark: We are not that?

Sen. H. Drayton: One of the beautiful things about being an Independent Senator is that you do not have to take sides. When we speak about our future and what citizens would like, they would like to see our leaders behave in such a way that our future could be better assured with respect to our security.

Mr. Vice-President, I support this Bail (Amdt.) Bill. Thank you.

Sen. Gail Merhair: Mr. Vice-President, I rise to lend my support to the Bail (Amdt.) Bill, 2008. I have heard a lot about constitutional rights here today. Although I, like the hon. Senator on my right, value the rights of citizens and believe that their rights need to be protected at all costs, it is also our constitutional right, from what I have read, to make choices and if those choices that we make have certain consequences and they happen to be wrong, then I believe that you must be punished for it.

With that in mind, I would like to follow up on what Sen. Dr. Carson Charles said. He said that he is saddened because we have to pass the legislation, but I am also saddened to see what our society, Trinidad and Tobago, has become. It is not the Trinidad and Tobago that I grew up in and I am certain that it is not the Trinidad and Tobago that all of us knew and loved and want to continue to live in. I have had lots of friends and family who have had to migrate because of the crime situation. It has been sad for them and their families and they have been traumatized.

I want to underscore that the rights of citizens must be protected at all times. We, however, need to have a steady and measured approach to fighting crime. I know that is a difficult situation because we are yielded to emotionalism, but I will try my best not to make that same error.

We must come up with concrete and positive results from our actions and I have heard that the Minister of National Security provided some statistics and that there were a number of people denied bail since 2005. What impact has this had on the criminal situation? That meant that certain people were off the streets.

Murders rose to 386 in 2005 and up to September 06 it was 348, so we are expecting that by the end of the year it will reach close to 400. Kidnappings moved from 58 in 2005 to 155 in 2007.

Sen. Manning: There are less.

Sen. G. Merhair: The reason I support the intent of the Bill is that, according to the statistics, there is a high level of repeat offenders. The majority of murders committed are in fact gang related. There is a legal precedent for this approach and I think that the population demands firm action on the part of the legislator when it comes to dealing with crime.

We have heard a lot about repeat offenders. In New South Wales and in Australia, there has been a Bureau of Crime Statistics and Research and it asserted to people who commit seemingly minor offences and a large amount of crime. In Trinidad and Tobago we have the same problem. We have a high degree of repeat offenders and we need some sort of ability and flexibility and understanding that while in prison they do not continue to gain access to cellphones and to have control of gangs from inside prison because that, seemingly, is what is happening.

There is, from my knowledge, a Repeat Offenders Unit established in Trinidad and Tobago. I do not know if the Attorney General or the Minister of National Security has information on the success rate it has had so far so that she could give it in her winding up.

In terms of prison rehabilitation, this is a difficult area and we know that Government has a certain number of rehabilitation programmes. We know there are groups such as Vision on Mission led by Wayne Chance, but we need the Government to provide new measures for tackling the drug withdrawal syndrome, to educate people to give them more self-respect, which allow these people, when they come out of prison, even if they committed a crime in the first instance, not to go into an area where they will continue to commit crime and end up in prison again.

This Bill we are debating is part of a larger package of police reform legislation passed in recent times. It is my understanding that there were several Bills passed in recent times which include the Summary Courts Act, the Criminal Procedure Act, the Indictable Offences Act, the Corporal Punishment Act, the Evidence Act, the Larceny Act and the Forgery Act. We also need, in the long term, to strengthen these pieces of legislation to come in line with what we are going to do.

If I am to take a closer look at the Bill, we need to look at solutions to reduce crime. We have to look at the Bill as a tool to help us defeat the criminal network. We cannot look at it as the be-all and end-all of fighting crime. We also need to reduce the ability of the criminal element to wreak havoc on our society, on our communities. The entire justice system needs to be strengthened and trials expedited as quickly as possible and time not wasted. After all, if the legislation is to work, justice needs to be swift.

This legislation is similar to the three strikes policy against repeat offenders of serious crime. If I have read the Bill properly, it is after. I get the impression that many Senators feel that from the time—if I am wrong correct me—it is not that when you do one of these offences you are denied bail; it is after you have been convicted two times.

Sen. Annisette-George: Thank you. There are different scenarios. Under the parent Act, if it is murder, treason, piracy, hijacking and now under the amendment, kidnapping for ransom, for which there is no bail. Under the amended Act, there are specified offences. If there are three convictions within a ten-year period, then you do not get bail.

9.20 p.m.

With respect to the violent ones, there are two offences that you are convicted for; it is not just a charge. You are convicted and then it would be on the third charge that you would be denied bail and it must be within a 15-year period.

Sen. G. Merhair: Thank you very much. In my opinion, if you have decided as an individual to do certain crimes three times and be convicted, then you have a problem and we have a problem in society. We either need to put things in place to avoid these individuals from continuing on their path of crime, or push these criminals back into their place and let them feel the full brunt of the law. We also need to be very mindful of the police, in terms of reinforcement. The legal system and the judicial system need to show these individuals as well that they have to be punished if that is the case.

As I continue, the United States Supreme Court, under Lockheed and Andrade upheld the aspects of three strikes law in the United States and they rejected the argument that this amounts to cruelty and unusual punishment. In our context, it relates to granting bail and some may apply the same argument. I wish to put on record that we are a society under siege and drastic action is required to get a handle on this situation.

What is next? In my opinion, I think that the legislation is appropriate and relevant in our circumstances, but the policy must include rehabilitation, which would necessitate a disconnect between the alleged criminal and the gang.

Secondly, I think the witness protection programme needs to be strengthened. There are some members of the public who do not have strength in this witness protection system.

Our prisoners are in prison for a reason. They are supposed to be denied certain rights and privileges. I cannot understand how they have access to weapons, drugs and cellphones. Any legislation should be accompanied. These things should not happen.

We also need to guard against corruption and any arbitrary arrests that are made by police officers. We must also increase our detection rate and have a clear appreciation. By supporting this piece of legislation, we run the risk of having overcrowded prisons. Having overcrowded prisons means that we could very well, once you incarcerate somebody for six months, continue to breed new criminals. We have to guard against putting things in place that could encourage further criminal activities.

Lastly, while I support the legislation, I have also pointed out some areas in which the criminal justice system needs to be strengthened. In my research for my contribution today I came across this quote by Aristotle, which I would like to share with this honourable Senate:

> "If liberty and equality, as is thought by some are chiefly to be found in democracy, they will be best attained when all persons alike share in the government to the utmost."

Mr. Vice-President, I thank you.

Sen. Dr. Adesh Nanan: Thank you, Mr. Vice-President. I rise to make a contribution on the Bail (Amdt.) Bill. I do so because of the state of affairs in the country today. When someone gets shot, we do not ask if it is a UNC member, PNM member, or any other party member. We are dealing with a situation, with respect to the rampant crime wave today.

I want Senators to remember that it was the Opposition, in discussion with the Government, that agreed to the measures that are in place today. If you recall the history of this event—and I am glad the hon. Attorney General had to make some clarifications in this particular situation, with respect to the various provisions—

under the parent legislation, as the Attorney General pointed out, the Schedule is broken down into Parts I and II. Part I deals with murder, treason, piracy or hijacking.

We heard from the Minister of National Security. We know that the murder rate is increasing. Under the parent Act, in Part I of the Schedule, murder is a non-bailable offence. We see quite clearly that this particular piece of legislation had no effect on the murder rate. We have also seen the addition with respect to kidnapping and kidnapping for ransom. Those are now non-bailable offences.

If you look at the situation when the Opposition gave support to the measure, you would see that it was in the context of discussion with respect to the crime situation at that time in 2005. You would also note very carefully when the piece of legislation came back to the House for renewal, that there were no statistics provided. In fact, the debate was almost similar to what is taking place today, with respect to the particular measure to be agreed upon. To say that the Opposition is mainly in this particular Senate or the other place, for opposition only, is totally unsatisfactory. It is totally unsatisfactory, because the Government and Opposition had discussions and came about with this amendment to the Bail Act because of the crime situation. We are here today to point out certain parts of this legislation and the benefits to the citizens.

When I speak in this Senate, I speak to the national community. I speak to people who are suffering in various parts of our country. We are in a steel curtain. Our country has been blacklisted in many international arenas. We are almost in a state of anarchy, with respect to the crime wave. The Minister of National Security said that crime would go down in two to three years and he has brought graphical representation to show what is happening, with respect to the interventions being made by the Government. This is not having any effect, in terms of controlling crime in our country. It is totally unsatisfactory.

I want the Minister to know that under section 85 of the Constitution, it is stated:

> "(1) Where any Minister has been assigned responsibility for any department of government, he shall exercise general direction and control over that department;"

For a Minister to come into this particular place and say that it is the police and the Commissioner of Police who have to deal with crime and pass the buck—we have been seeing that from time to time with this present administration.

We have been seeing it when the 16 schools which could not be opened for this particular term, the Minister of Education blamed the contractors. Here we have the Minister of National Security saying that it is not his responsibility. In fact, he went so far to say that the Ministry does not keep statistics. Where are the Cabinet Notes being kept in that Ministry? Those Cabinet Notes must have statistics when the Minister has to present the note to Cabinet. That Minister is totally out of touch with reality. That Minister is only dealing in certain areas with programmes that have no benefit to the society.

The Minister of National Security talks about resources. Again, bells are ringing about OPVs, helicopters and gunships. We heard about a 360º radar and also about protection for our coastlines. This is all "ol' talk". We want to see results.

I thought, when the Minister came with his graphical presentation and statistics, the Minister would have given us some assurance that things are working and that we would see some results, in terms of crime going down. We are seeing murders on the rise. The murders are no longer with respect to gang warfare. It is escalating in almost every community. In fact, what is happening now is that the criminal element is going to the rural communities and they are now taking refuge in those various communities. It is spreading.

We heard the Minister of National Security say on another occasion that he knows the gangs. Why is the Minister of National Security not dealing with that issue? We are very concerned when drugs dens are appearing in communities and also behind police stations and nothing is being done. This is a whole sham that we are seeing by the Government. All the resources that they are piling; it is a big charade. They must deal with the situation in our communities. All the plans from the international consultants and the various polls that are being done are not reflecting the condition as it is in our society today. We are virtually trapped in our homes. We are at the mercy of criminals.

There is also the situation where you are at the mercy of criminals and cannot have a firearm. According to this particular measure, you can be charged for shooting or wounding someone who goes into your yard if you have a firearm user's licence. We have to be extremely careful, in terms of how we go out of our doors.

Our economy is going to be severely impacted upon by this crime wave if it is not so already. People do not go out anymore, in terms of restaurants and that kind of fellowship. It is because of the PNM administration. They have a clamp on the society and they continue to do so.

We have to break these shackles. The only way to do that is for the people to stand up and vote out the PNM. That is the only way. They have had their chance; previous and present administrations. They are absolute failures in almost every area; in every area. Even in the economy, they are failing.

That will be revealed in the budget debate. It would be revealed how the Ministers have failed. We continue to accept failure in this country. We should never be accepting failure. We are a country rich in natural resources. We have heard of our oil and gas possibilities for the future and we have the resources. We should never stand by and be prisoners in our own country.

If you take a poll, in terms of the status of Trinidad and Tobago in the Caribbean and the Commonwealth, you would see because of the crime situation, that it is the number one priority on everybody's lips. Crime is out of control. I thought the Government would utilize this particular debate. I thought the Attorney General would have brought the figures, but it was left for the Minister of National Security as an aside, to bring those statistics this evening. The Attorney General had the opportunity to tell the country that we are dealing with the crime situation, we are trying to bring security to the nation and should assure the public; build some confidence, in terms of security plans. Nothing has transpired in this debate. What we are hearing is a matter of permanence.

I support my colleague, Sen. Mark, with respect to having that kind of sunset clause in the legislation. It was there before and it should be there again, because we cannot trust the Government. We do not know what plans they are hatching with this particular piece of legislation being brought before the Senate.

As was mentioned by Sen. Dr. Charles, with respect to your permanence, we do not know if anyone of them would defect. [*Interruption*] He gave the numbers. I am extrapolating with what he said. If that happens, then they would not have that kind of majority for a three-fifths majority. I want you to know that Sen. Mark could have been right with respect to the seven-eights requirement because—[*Interruption*] Two-thirds, sorry.

The two-thirds majority could have been necessary, but since everyone voted for the legislation at that particular time, probably it was not a two-thirds majority, and it still cannot be a two-thirds majority. That is why I support Sen. Mark with the particular provision that was put forward here today.

9.35 p.m.

I also want to deal with some aspects of this particular piece of legislation. If one looks at what has happened in terms of a chronology of events, one would see that Part II of the Schedule that was originally in the parent Act has been broken

down into a Part II and a Part III. Now, the Part III is the part which deals with the repeat offenders and Part II takes you back to the parent Act with respect to if a person is convicted on three occasions, but in that particular Part II, you have the recourse where if you can show a judge that there is sufficient cause, then you may be able to get bail, and that has been removed.

Mr. Vice-President, those offences would have been in the Part II in the parent Act and they are now in Part III which is in an amendment, and that new Schedule of Part III comes under clause 4, and that clause 4 points out that you would not be granted bail if you are charged with an offence and you are convicted on two occasions arising out of separate transactions. So, you do not have that recourse as you had in Part II where you had the possibility of getting bail.

Mr. Vice-President, we also heard in this debate, in terms of sections 4 and 5 of the Constitution, the trampling to some extent on the Constitution and the infringement of rights. The Government has a history of infringement of rights and we saw this with the Regional Health Authorities regulations where that dictatorial piece of legislation was brought before the Senate.

I want to go on to another area that was raised by the Minister of National Security in this debate and that is the statistics he referred to. We have seen from 2002 to present, in terms of events that have taken place like murders and robberies—we heard from Sen. Mark of the percentages and the numbers, and these are reported cases, but what about the unreported cases? Because of the lack of public confidence in the Government and the police service, many citizens are not reporting cases. So, those percentages could be much more in terms of the situation in our country. We need to take that into consideration when we are looking at this particular measure and how it affects the criminals in our country.

If one looks at other countries in terms of the projection, one would see in New York for example, the measures that were put in place and how crime has been going down. So, there are examples in other countries that can be used. When I spoke of international consultants, one wonders why can we not—in fact, from time to time, we hear about training programmes and the hon. Minister going to visit other countries to see their programmes and so forth which can be utilized here, but nothing has happened in terms of adopting some of these programmes. That is why I made reference to this particular charade. Nobody would accept that the Government that has confessed that it cares so much about the citizenry and is doing so much for the citizenry in the fight against crime is seeing any concrete result to hold on to.

If you look at the other areas, our citizens are not only being held as prisoners in terms of crime, but there has also been major flooding in this country.

Sen. George: Mr. Vice-President, Standing Order 35(1).

Sen. Mark: Please go and sleep.

Mr. Vice-President: Senator, could you repeat what you just said?

Sen. George: Standing Order 35(1). I believe that the hon. Senator was irrelevant.

Mr. Vice-President: Sen. Dr. Nanan, just get to the point, because you are being a little irrelevant.

Sen. Mark: Mr. Vice-President, do you believe that fellow? Oh, waste of time.

Sen. Dr. A. Nanan: The point I am making with respect to flooding is that the Government has a tendency to blame everybody else but itself. The point was made here with respect to the particular situation with flooding. The point is that we are dealing with security issues and the Government said that they are not responsible—[*Interruption*]

Sen. Mark: Forget Lionel.

Sen. Dr. A. Nanan: I am responding to a point made by the Minister of National Security.

Sen. Mark: Forget Lionel. You have no credibility.

Sen. Dr. A. Nanan: Mr. Vice-President, if Sen. Narace aggravates me, I am going to bring a substantive Motion against him for misleading the Parliament, and I do not want to do that.

Sen. Mark: That is not a threat; that is a promise.

Sen. Dr. A. Nanan: That is a promise. [*Laughter*] Mr. Vice-President, I am dealing with security issues, and I am also bringing in certain areas because they are of concern to the citizens. I am sure the people who have been flooded out are left to the mercy of criminals. In fact, some of them do not have any homes anymore, and the Government does not have a care in the world with respect to these particular people. I am not going to deal with the health sector this evening. I would probably leave that for another debate. I could go into the health sector and make it relevant to this particular Bill, but I would not do that.

Sen. Mark: A disaster zone.

Sen. Dr. A. Nanan: I will not go there. [*Interruption*] Before I close, I want to make some quick analysis. [*Interruption*] I just want to go to some important points with respect to violent offences and that is in Part III of the Schedule which deals with manslaughter, shooting or wounding with intent to do grievous bodily harm, unlawful wounding, robbery with aggravation and robbery with violence. In the original legislation it was robbery, robbery with aggravation and armed robbery.

There is also possession and use of a firearm or ammunition with the intent to endanger life; possession of a firearm without a licence and trafficking in a dangerous drug. I want to go there because that is important. We have seen, in terms of many drug busts— the people who are involved, we have not seen them. We are only seeing people in the lower level being brought to justice, but we are not dealing with the higher levels. I think the Government needs to address that particular area.

In fact, the Minister of National Security said that guns are not manufactured here, and they are being imported into the country, and because of the trafficking in narcotics our crime situation is out of control. He said that the resources that are being utilized are to deal with this particular issue—the OPVs and the gunships and so forth. We are dealing here with trafficking in a dangerous drug or being in possession of a dangerous drug for the purposes of trafficking.

Not very often you hear of a drug bust. We heard of someone being caught with a few kilogrammes of cocaine trying to board a flight to the United Kingdom or New York and we have to ask several questions. I know that in a particular situation, you must have a sting operation, but is this another smokescreen? Is it that one day we would do a search at the airport, and based on a tip-off we are going to find a certain amount of cocaine and that would allay the fears of the population? Yes, we are dealing with trafficking in drugs and every day you have that transmission of drugs through our various ports, and we have to ask questions. Is the Government really serious about narcotic trafficking or is it just that here is a transshipment hub and they are very happy about that?

The other issue that I want to deal with is the issue of kidnapping and kidnapping for ransom and knowingly negotiating to obtain a ransom. I recall that when we were debating this particular Bill a point was made with respect to the custom of sometimes the girl going away with the boy for a day or two days, and that you have to be careful in terms of kidnapping. These are some of the safeguards that were put forward by the Government at the time. We have to be very careful and we have seen this in terms of our culture. [*Interruption*] I am dealing

with the Schedule. Somebody said that I was irrelevant so I am dealing with the Schedule. I would not go to the Part II, because the only difference really is that larceny of a motor vehicle—[*Laughte*r]

Mr. Vice-President, in closing, I want to emphasize the sunset clause. What we are proposing is a six-month period. However, I am sure my colleague would be willing, in a spirit of compromise and cooperation to revisit that proposal if we can find consensus among our colleagues, the Government and the Independent Bench. I thank you. [*Desk thumping*]

9.50 p.m.

The Attorney General (Sen. The Hon. Bridgid Annisette-George): Thank you, Mr. Vice-President. I want to say that from all the contributions, from all sides, that I heard this afternoon into the tonight, it is quite clear that the issue of crime and the prevalence of violent crime in Trinidad and Tobago is undisputed, and I would have thought that having regard to that admission, that all the Senators would have joined in this rescue mission of Trinidad and Tobago.

Now, I would try to deal, in this winding up, with some of the issues and concerns raised by the hon. Senators who have contributed. There has been talk that this amending Bill seeks to interfere with the doctrine of the separation of powers, and Sen. Mark sought to support that claim by saying that this amending Bill has taken away from the Judiciary, its power to grant bail. The very Constitution of the Republic of Trinidad and Tobago, which enshrines the right to bail, recognizes that that right can be abridged or abrogated where there is just cause.

In fact, section 5(2)(f)(iii) says that there is the right to reasonable bail and that the right to reasonable bail can be removed where there is just cause. Now, the prevalence of crime and violent crime in Trinidad and Tobago, in our respectful view, supports that there is just cause for there to be an abridgment to the right of bail. As far as the issue of interference with the doctrine of separation of powers, in my initial presentation, I would have referred to the authority of *Beharry and Jack and the Attorney General of Trinidad and Tobago*, which is High Court Action No. 3129 of 1987.

It is an unreported case and this is a decision of Justice Hamel-Smith, and in dealing with the constitutional provision with respect to the right for bail and the refusal of reasonable bail with just cause, this is what the hon. Justice Hamel-Smith as he then was, said:

> "The Constitution provides that a person is entitled to the right not to be deprived of reasonable bail without just cause. The Constitution did not attempt to interfere with the discretion vested in the magistrate to grant or not grant bail."

I think this quotation debunks any statement or any sort of proposal that what we are seeking to do here is an interference with the doctrine of separation of powers.

Sen. Mark also sought to suggest that the Bill is unconstitutional, undemocratic and barbaric. I want to say that drastic actions require strong measures. I am reminded that just this afternoon, on my way here, I learnt of the death of a young man who, for the last 23 years I would pass almost on a daily basis on my way home. While he was no friend of mine, we would certainly exchange some sort of acknowledgement of each other when I passed him on my way home.

Last Tuesday I believe, the national population would have seen on television the body of a young man lying outside of his car in Belmont. His car was shot at, caught on fire, and he got out of the car, but he was already engulfed in the flames, and we saw the body being burnt on the street. It took about two or three days before a positive identification was made. It is only this afternoon on my way here that I learnt that that body was the young man I would pass almost everyday for the past 23 years.

When I thought of the scenario of his death, I wondered if we would not consider that as barbaric, and therefore, to talk about the action that we are taking here as barbaric in the light of some of the crimes that have unfolded before our eyes—I think last week in the newspapers we saw two young school girls on their way home, dressed in their school uniform, and I am no good judge of distance but it was all there in the picture, that there was a body lying just a short distance from them. Young school girls, they did not look like secondary school children. When we look at this, I think that it is time that Trinidad and Tobago support strong actions for the level of criminal activity that we are witnessing. [*Desk thumping*]

Therefore, the question is asked whether this measure is justifiable in our society that has regards for democratic rights. I would again refer to my earlier presentation, when I sought to suggest that this amending Bill is reasonably justifiable in our society.

I want to remind that section 109 of our Constitution makes the Privy Council our final court of appeal, and we are bound by the decisions of the Privy Council. In fact, the hon. Sen. Wade Mark, knows that only too well. The Privy Council's

decision in *Morgan and the Attorney General of Trinidad and Tobago* sets the criteria for deciding what is reasonably justifiable in a democratic society. The three-prong criteria is as follows: Whether one, the legislative objective is sufficiently important to justify limiting a fundamental right; two, the measures designed to meet the legislative objective are rationally connected to it; and three, the means used to impair the right or freedom are no more than is necessary to accomplish the objective.

I want to suggest that when one applies the three criteria to the crime and the types of crime that we see that are happening on a daily basis in Trinidad and Tobago, this amending Bill is reasonably justifiable. Now, I think that it is important at this stage that we go back and look a bit, at what the parent Act did in 2005. The parent Act, which is Act No. 18 of 1994, section 5, sets out the general principles for eligibility for bail and that has been enshrined in the common law and judicial precedence ever since: that a person charged with an offence is entitled to bail except for certain offences. They were set out in Part I of the First Schedule of the Act. They were the offences of murder, treason, piracy or hijacking. The Act in section 5(2) then set out certain offences, where a court will not grant bail and one, it had to be those listed offences in Part II of the First Schedule; secondly, a person had to be convicted, not charged on three occasions of one of those offences listed in Part II of the schedule; and thirdly, that these offences must have taken place within 10 years prior to which would have been the fourth occasion that they were charged.

So, there must have been three convictions, then you would have been charged on a fourth occasion for some offence listed in Part II for you to be denied the right to bail. The offences as set out there—Sen. Prof. Deosaran was correct in that there are, in my recollection, 13 offences.

What the 2005 amendment Bill did was to create a third category of offences and this third category was violent offences, which really included many of the offences that were originally contained in Part II of the Bail Act, the parent Act. So, the effect of it was to reduce the number of offences in Part II to five and then create a Part III with some of the offences that were originally in Part II and a few more offences.

The offences that were put in Part II, which would have been the specified offences, which means that you would have been convicted on three occasions within 10 years, and therefore, on the fourth occasion that you were charged, you would have been denied bail. These offences were possession of imitation firearm in pursuance of any criminal offence. While Sen. Rahman made some to-

do about it being an imitation firearm, I think the emphasis has to be placed in that it was a possession of an imitation firearm in the pursuance of a criminal offence.

Sen. Rahman: [*Inaudible*] The essence of it is the criminal aspect.

Sen. The Hon. B. Annisette-George: Well, the point about it is too, that if someone came to rob a person and they pointed a weapon at them, I am not sure, having regard to the type of toy weapons that we see, that when the perpetrator pointed the weapon at the victim, he would have had either the presence of mind or the expertise to know, according to you, that was a toy gun. [*Interruption*]

10.05 p.m.

It does not matter. It means that in addition to the offence there is an assault; there is an element of there being some menace, and that is why it is considered a specified offence of some sort of gravity.

Also under those specified offences were larceny of a motor car; perverting or defeating the course of public justice, arson and receiving stolen goods.

Part III which created the violent offences, and what the amendment of 2005 and continuing, sought to do, was to say, as far as these violent offences that were now in Part III that: The accused must have been convicted on two prior occasions, or if not two prior occasions, on one occasion but of two offences coming out of the same action of these violent offences contained in Part III.

Also, what it did is, widened the period prior to which the offences would have taken place before this which would have been the third charge. So, in this case with the violent offences it would have been 15 years prior.

Sen. Seetahal SC is correct in that that has been the law since the year 2005. The change that this amending Bill seeks to effect is that there is no longer a sunset clause, and this is to be a permanent part of the law, it becomes now a permanent part of the parent Act. The argument has been made that the Government should really be looking to introduce other measures to contain crime rather than becoming complacent and relying on these measures that have been considered draconian, and that the Government should come back, if there is a sunset clause and justify the extension of the provisions of this amending Bill.

I want to say, that from the contribution of the hon. Minister of National Security and also from my own presentation, I think it is quite clear that the Government is considering a number of legislative measures as far as strengthening the police service. This is just one of those measures. Therefore, if the provisions of this amending Bill work with respect to assisting in reducing

crime in being a deterrent, then the need to rely on it would be affected inversely with the measures and successes in the reduction on crime. Therefore, if the measures do not work, it will mean that we are justified in relying on the retention of the provisions that this amending Bill seeks to enact.

In any event, there is always the power to repeal legislation and one would expect that any government, would from time to time, look at its criminal justice system. It is in fact the intention of this Government to continually review the criminal justice system and to take such measures as it deems necessary, having regard to the developments in crime. That could be improvements or deterioration. Our—I think—collective hope would be improvements in the level of criminal activity in Trinidad and Tobago that we would start to see some waning.

Sen. Prof. Deosaran: Madam Minister, could I please, just one minute? Thank you very much. Would you consider then, if you are thinking about a review, which, I think is justifiable, would you go to say within the next three years you might give some attention to a review of this legislation?

Sen. The Hon. B. Annisette-George: Mr. Vice-President, through you, what I would wish to say is this, while I cannot commit myself to three years, because I cannot stand here and reasonably say what will happen in three years, the commitment is that the criminal justice system will be continuously under review. That is why in my initial presentation I was able to point to certain measures that the Government expects to bring, very shortly, into Parliament, to deal with other loopholes and lacunae in the law that we have seen developing, and that we need to bring some legislative amendments. So that I would want to say to you that the commitment that I can give here is that the Bail Bill and the Bail Act would be reviewed from time to time having regard to the developments in the criminal activity in Trinidad and Tobago.

I would like to also deal with the issue raised by Sen. Mark with respect to the majority required for the passage of this amending Bill. Sen. Mark sought to suggest that what would be required, and I think that was also supported by the hon. Sen. Dr. Nanan, that the majority required is not three-fifths, but a two-thirds majority, and reliance was sought on section 54 of the Constitution.

I would like to say that section 13 of the Constitution deals with the abridgment or abrogation of rights and section 13 really calls for a three-fifths majority. Section 54 speaks of an alteration of the Constitution. The amending Bill does not take away the right to bail. It restricts the right in certain scenarios,

but the general principle of the eligibility to bail as set out in section 5 of the parent Act remains, and therefore this is not at all an alteration of the Constitution, but it is just an abridgement to the right to bail, and therefore, falls within section 13 of the Constitution and requires no more than a three-fifths majority vote and not a two-thirds.

Also, I would just like to quickly speak and give some level of comfort to Sen. Prof. Deosaran with respect to—he had spoken to other measures—one which involved doing away with the preliminary enquiries, and I would like to also give him the undertaking, that having regard to the commitment to be reviewing the criminal justice system and in improving measures, that the consideration for removing the process of preliminary enquiry is being actively considered and a policy position with respect to that is expected to be taken very shortly.

The hon. Senator also spoke of strengthening the office of the Director of Public Prosecutions, and also through you, Mr. Vice-President, I would also like to assure the hon. Senator, that certain policy positions are also being looked at with respect to strengthening the Office of the Director of Public Prosecutions, not just in the question of numbers, but also in the establishment of certain dedicated units to deal with certain types of specific and sophisticated crime. So that hopefully, that should shortly be adopted as a policy and then it would be a question of recruitment. That is also being actively considered.

I want to also specifically make comment with respect to the contribution made by Sen. Mehair, when she spoke about the three strikes law in California and say that there is international precedent for measures similar to what we are seeking to adopt here.

In California, as the hon. Senator spoke of, there is the three strikes law, and she referred to the case of *Lockheed and Andrade*, where, in fact, the US Supreme Court has ruled that the three strikes law in California is constitutional, and also ruled that the law was not unreasonable or disproportionate. In fact, as far as certain repeat offenders, that Supreme Court also held that it is not unreasonable for persons to be locked up—and these are repeat offenders—for long periods for relatively minor offences where they were repeat offenders.

In that case that the hon. Senator referred to—this was a repeat offender of serious crimes, but the last crime was in fact the theft of three golf balls. When the constitutionality of that law was challenged, the court upheld that it was reasonable in light of the activity of repeat offenders. So, we are not alone with respect to legislation of this kind.

I want to invite hon. Senators to support this amending Bill. This amendment has taken place on six occasions in the last three years. I think that having regard to the level of criminal activity, it is justified, that in the fight against crime, a number of measures need to be undertaken, and this is one such measure that is necessary and reasonably justifiable in Trinidad and Tobago today. We could only talk about today. If it is, that in times to come, legislation of this kind is no longer necessary, it will be open to the Government of the day to have the legislation repealed.

In the circumstances, I ask for hon. Senators to support this Bill, and I beg to move.

Question put and agreed to.

Bill accordingly read a second time.

Bill committed to a committee of the whole Senate.

Senate in committee.

10.20 p.m.

Mr. Chairman: There are six clauses and a preamble in this Bill.

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

Clause 5.

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

Sen. Mark: Mr. Chairman, I have submitted for the consideration of the Attorney General an amendment to clause 5, but I am prepared in the spirit of cooperation and compromise, if there is consensus amongst us as it relates to the new clause 7, although I have a period of six months for the sunset clause, I am prepared to reconsider this period.

Mr. Chairman: We have not reached clause 7 as yet.

Sen. Mark: Well, you see that is what I am saying, that it is hinged. I do not want us to necessarily go through that exercise in clause 5 and then go to the new clause. If I can get from the Attorney General her position on this particular amendment to the sunset clause, I have proposed a six-month period, but again, I am prepared to revisit that six months and if we want to go to 18 months, I am prepared to look at it. So, I want to ask the Attorney General if she would be interested in reviewing this particular matter.

Sen. Seetahal SC: Before the Attorney General replies, could I say something, please. I understand from Sen. Mark that the Opposition Bench is prepared to support clause 5 if in fact there is a sunset clause. My view is and this is what I had said earlier on, that I have some reservations about the situation where persons who for 15 or 14 years could have been very law-abiding, and then for one occasion, one incident could give rise to two offences and you are making this a permanent part of the law.

Now, it is all well and good to say we can review the law as the Attorney General had said and I have no doubt that she means it, but have we ever had any law reviewed downwards, so to speak which you could recall? I do not know, whenever we review it is always to make it harsher. We do not have any kind of thinking or culture, where we go and review something that we see it is harsh there and say, "Aye, you know, things have improved now; the crime is down that we should now say that people should get more bail." It is always less bail. I see nothing in principle wrong with having an extended period.

If it is that the Government's position is that they can review this legislation after three years, to me three years is a very good time because at that time there would be enough time for the measures that the Minister speaks of to come to the fore; by that time we would have some figure as to the effect of this law, we will know. And I really do think that three years—I know that my colleague had mentioned five years, but I think five is a little too long and I do think one year or one and a half years is too short. I really think three years would be a fitting time for this legislation and I think it is desirable. I think if there is any suggestion of constitutionality and taking out people's bail, if it is the court's right to grant bail and all of that; if it is that there is a sunset clause, that would militate against those suggestions. So, I think that as a slightly extended compromise, it is better to have those three years.

Yes, I see Sen. Dr. Saith shaking his head, but the thing is though, really and truly this legislation is going on the books permanently. The kinds of offences that we have had would have been traditionally the offences that you would not get bail for. So what we are talking about here is that people coming before the courts never to get bail at all if they have had one incident in the 15 years. Never, and you do not know how long that will take. Yes, it says one occasion and two offences, so you can have two charges on one occasion and that happens often; one robbery gives rise to about four charges. So I am saying I think it is harsh and perhaps a three-year period would be a good thing to look at. If everyone supports the law it would be a good thing for all of us.

Sen. Prof. Deosaran: Mr. Chairman, I do feel obliged to make a contribution. I listened to the Attorney General very well and I understand the position that the Government prefers. It does have a strong public interest component in the Government's position with respect to both deterrence and also staving off the criminals from repeating the acts of criminality. But I believe that at the same time given the new circumstances, for example, one, that this is going to be permanent; secondly, it is a 15-year period that you are counting which is quite an extensive period to have someone adjudicated for a repeated offence; and thirdly, there is a long list of offences and as I have indicated, some of these offences are multiplied when you take into consideration the feature of "attempt to".

There is something else, though, that the Government would be well advised to consider. I think pressure must be put on other agencies to do their work more effectively, like policing, prosecution and so on, and if you make this permanent, it sort of puts those other agencies in a more relaxed position and as the Attorney General said, I think quite skilfully, that if all other things fail, you have this to rely on. I think that thinking should be reverse, that the other things should succeed and then you resort to this extensive piece of legislation. But having it as it is now before us, I think by having a sunset clause—I had initially proposed five years, but I would agree with my distinguished colleague, a three-year period is quite reasonable in all these circumstances.

Once you put that three-year period, I am quite sure the Minister of National Security, the Attorney General and the Cabinet would then put pressure on the other agencies to make sure that when the three-year period comes up, there is something to deliver to convince the public that yes, we have conducted an experiment as Sen. Ramkhelawan said, and we have succeeded. If we have not succeeded as a government, well then those other agencies will have to answer to the Government in the appropriate channels. So for all these reasons, I want to support the compromise for a sunset clause, with due respect to the Government and especially to the Attorney General, that a three-year period be put in or five years. I said five years because out of respect for the Government's position, I did not want to appear as if we are politically haranguing the Government, but I think I had suggested five years to give it much wind and opportunity.

Sen. Annisette-George: Mr. Chairman, might I just ask for my clarification? Is Sen. Mark withdrawing the proposed amendment of clause 5? Because in any event that amendment cannot stand. I believe we are at clause 5.

Sen. Mark: Yes. I am suggesting, Attorney General, that the two are related. I am prepared to withdraw clause 5, if the Government is prepared to insert into

the legislation a new clause 7, sunset arrangements. That is what I am trying to get from the Attorney General, whether the Government would be prepared and so on.

Mr. Chairman: You are saying you would withdraw?

Sen. Mark: No, I cannot withdraw until I get a commitment from the Attorney General. I am asking a question.

Sen. Annisette-George: Mr. Chairman, my view is that the sort of position that Sen. Mark is trying to adopt, is not sustainable at all. Clause 5 has no relationship to clause 7. We are at clause 5 and I want to know if he is withdrawing the amendment to clause 5.

Mr. Chairman: The Attorney General is not going to answer. We are dealing with clause 5, either you are proposing this amendment or—

Sen. Mark: Mr. Chairman, if you have some patience, I know the time is late—

Mr. Chairman: Yes, it is late and—

Sen. Mark: Mr. Chairman, please, I just want to explain my position to the Attorney General. Attorney General, if we proceed with clause 5 and you agree to clause 5, then I would drop clause 7.

Sen. Annisette-George: "Oh".

Sen. Mark: You understand the point I am making. So that is why I am trying to get from you whether you would be in support of clause 5. If you are not in support of clause 5, but you are willing to insert a new clause 7, I would then withdraw clause 5. That is the point I am making, Mr. Chairman. So, I just wanted to explain to the Attorney General what my thinking was.

Sen. Annisette-George: Mr. Chairman, I am not prepared to consider the amendment to clause 5.

Mr. Chairman: The question is that clause 5 be amended as follows:

Sen. Mark: Mr. Chairman, could you repeat what you just said. Attorney General, did you say that, for instance, if I withdraw clause 5 you will consider inserting clause 7 or a new clause 7? Is that what Sen. Dr. Saith said?

Sen. Dr. Saith: You said if you withdraw it, we would consider clause 7. Right now there is no clause 7.

Mr. Chairman: So, you are withdrawing clause 5.

Sen. Mark: Okay. With the undertaking given by Sen. Dr. Saith, yes.

Question put and agreed to.

Clause 5 ordered to stand part of the Bill.

Clause 6.

Question proposed, That clause 6 stand part of the Bill.

Sen. Prof. Deosaran: I want to understand from the Attorney General and the Government side, where will the sunset clause be inserted?

Sen. Dr. Saith: [*Inaudible*] There is a new clause 7.

Question put and agreed to.

Clause 6 ordered to stand part of the Bill.

10.35 p.m.

New clause 7.

Mr. Chairman: We have two amendments with a new clause 7. [*Interruption*] We have one from Sen. Prof. Deosaran, a new clause 7.

Sen. Prof. Deosaran: Mr. Chairman, I propose a new clause 7 which reads as follows:

> "The provisions of sections 4 and 5 of this Act shall cease to be in force five years after its enactment."

Without repeating myself, I have stated the reasons for this amendment. [C*rosstalk*]

New clause 7 read the first time.

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

Sen. Dr. Saith: The way you have worded it, you are only putting five years on two clauses. It should really be five years on the whole Bill, so we have to change that.

Sen. Annisette-George: This whole Bill will have to be affected by the sunset clause.

Sen. Mark: You want to go with my amendment?

Sen. Annisette-George: No, we will go with the five years. [*Laughter*]

Sen. Mark: It says:

"This Act"—which is all the provisions—"shall continue in force for a period of six months from the date of commencement."

That is very clear. [*Laughter*] We did not say five years.

Sen. Seetahal SC: This Government, this session, ends in three years; five years is too long.

Sen. Ramkhelawan: May I propose just a slight adjustment, just a middle of the road between what Sen. Prof. Deosaran has put on the table and what Sen. Mark has put on the table. I would like to suggest that the time frame be three years, and it would be a middle of the road provision. I think if you go five years, you go into another legislative term, another government.

Sen. Dr. Saith: Let another government take the decision whether they want to come back or not come back.

Sen. Ramkhelawan: Three years is more middle of the road. Three years will give you time, breathing space.

Sen. Dr. Saith: We are doing legislation to deal with a crime problem. The Government has said that this is our view on how we should deal with it. You have said that you do not want that; you want it reviewed. The best time to review it is when a new government comes, whoever it is.

Sen. Rahman: That also does not prevent it from being reviewed before.

Sen. Dr. Saith: At least, if this particular Government feels that it is necessary to continue, they will continue until a new government comes. If you put five years, you have done that.

Sen. Seetahal SC: Four years. We are in 2008, four years is 2012, before the next Olympics. [*Crosstalk*] [*Laughter*]

Sen. Dr. Saith: It cannot be just after.

Sen. Annisette-George: Five years.

Sen. Dr. Saith: The Government is saying to you that in our view it should be permanent, because we believe that it has to be there. We also believe that we have come here six times already; it does not make sense. If you believe that it should automatically be reviewed, then leave it to the next government, whether it is a UNC government or another PNM government or a COP government. Let the next review of this come when the next government comes. I am not talking about party, the next government; I am saying when the next government comes into power.

Sen. Drayton: Mr. Chairman, quite frankly, as I indicated in my contribution, I believe that there are certain offences where 15 years is certainly not a long period of time; I spoke of rape and incest and child abuse. I, quite frankly, believe that the only relationship with sunset is that they just should not see the sun set again. [*Laughter*] So if there should be any compromise at all, then five years. I really support five years.

Sen. Prof. Deosaran: Just one final point. My position remains, after considering the Government's position, because I think we have to have some regard for the Government's position, which is strong, as far as I could understand. The other reason I proposed five years, apart from the fact that we are coming from a permanent situation to five years, is, to me, quite a compromise on the Government side. I appreciate the willingness to compromise.

It is a little more than that. If the insistence is, as we have heard from the Opposition and Independent Benches, and the hon. Attorney General quite rightly acknowledged the request, that you need some data, you need a sufficient period to collect that data; you would not get changes right away. Any analyst would tell you that you need a sufficiently broad period to collect that kind of data and to more facilitate the kind of data the Minister of National Security produced. Five years, to me, for that other reason, is quite a reasonable one. I think it is best that we take what we could get right now, rather than have it prolonged in debate.

Sen. Dr. Saith: The wording would read:

"This Act shall continue in force for a period of five years from the date of commencement."

Sen. Prof. Deosaran: Fair enough.

Sen. Annisette-George: Just so that hon. Members would understand, it would mean that this Bill will have to go back to the House, and there is going to be a lapse.

Sen. Seetahal SC: A lacuna.

Sen. Annisette-George: This amendment, the current law, is going to be spent on the 19th, which is Friday, so that there is going to be a period where— [*Interruption*] Even if it is so, even if the House deals with it on Friday, the Bill has to be assented to. So there is going to be a lapse, even if it is just for a couple of days.

Sen. Seetahal SC: If I may say, Madam Attorney General, it would not be of any significance. I know from practising in the criminal court that if somebody is charged with kidnapping today or tomorrow, he is not going to get bail for the

next month anyway, whether you have this or not, because it is a serious offence, and then you always have tracing. Kidnapping is a very serious offence, that takes a little time to trace, so even if persons knew that it ended, which some of them might, it is not gong to be—and remember that the magistrates would have the discretion, in any event. Even if for a week this law does not exist, it is not going to upset the apple cart.

Sen. Annisette-George: It is just really a question for hon. Members to appreciate what we are doing.

Sen. Ramkhelawan: Chairman, if I may, at the end of the day, what is most equitable should take precedence against administrative issues. We need to take it along those lines.

Sen. Rahman: If I may say, Mr. Chairman, I applaud the Government's concession in this matter, regardless of the lacuna to which the Attorney General alluded, because the bottom line is this, this is not really a regulation to deal with criminality; it is a regulation that affects civil rights and basic human rights, this is where we should be focusing our attention, because we do not want to compromise that.

Besides which, I have in my mind to say one other thing. Time limits are very, very important in view of the Privy Council, because they have made a law sometime back that if you have not heard a man's case in five years, even for murder, some degree of relief comes to him. So I do not think that we could disregard that aspect of human rights in this matter at all. I welcome the Government's concession.

Question put and agreed to.

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

Question put and agreed to.

New clause 7 added to the Bill.

Preamble approved.

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

Senate resumed.

Bill reported, with amendment.

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

The Senate divided: Ayes 23 Noes 6

AYES

Enill, Hon. C.

Saith, Hon. Dr. L.

Annisette-George, Hon. B.

Browne, Hon. M.

Joseph, Hon. M.

Manning, Hon. H.

Piggott, Hon. A.

Narace, Hon. J.

Dick-Forde, Hon. Dr. E.

Gronlund-Nunez, Hon. T.

George, W.

Rogers, L.

Lezama, Miss L.

Melville, Miss J.

Cummings, F.

Deosaran, Prof. R.

Seetahal SC, Miss D.

Ali, B.

Ramkhelawan, S.

Baptiste-Mc Knight, Mrs. C.

Nicholson-Alfred, Mrs. A.

Drayton, Mrs. H.

Merhair, Miss G.

NOES

Mark, W.

Nanan, Dr. A.

Charles, Dr. C.

Sharma, Miss C.

Rahman, M. F.

Oudit, Miss D.

Question agreed to.

Bill accordingly read the third time and passed.

REGIONAL HEALTH AUTHORITIES (CONDUCT) REGULATIONS (ANNULMENT OF)

[Second Day]

Order read for resuming adjourned debate on question [September 09, 2008]:

Be it resolved that the Senate annul the Regional Health Authorities (Conduct) Regulations, 2008. [*Sen. W. Mark*]

Question again proposed.

10.50 p.m.

Mr. Vice-President: Those who spoke were Sen. Wade Mark, Sen. The Hon. Jerry Narace, Sen. Prof. Ramesh Deosaran, Sen. Dr. Jennifer Kernahan, Sen. Michael Annisette and Sen. Rahman spoke for 16 minutes.

Sen. Rahman.

Sen. M. F. Rahman: Thank you, Mr. Vice-President. I am reinvigorated, I am being restored.

Mr. Vice-President, on the last occasion I was at the point where I was making the observation that nobody really likes to be found lacking, and that in the normal course of administration and functioning of governments and organizations, those who are in authority who are looking after affairs do not like to be shown up in any way as being deficient or lacking in the discharge of their duties. And this is one of the reasons I believe the Government has seen it fit to bring this set of regulations to control the conduct of the employees so that it is not shown up to be deficient in its functioning.

It is a bit of a sad thing if that is really the case, because the Government conceptualized the RHA in the north, and this, and that, and the other, with the object in mind of decentralizing the health system and services for better functioning. And I brought to the attention of the Senate, the internationally known problems that the Walter Reed Army Hospital faced in the United States of America because of the inability of the administration of the hospital to come to grips with the deficiencies within their own system.

We have had a situation where the Government so tries to cover its tracks that in this recent period of the dengue incidents—they do not like to hear the word "outbreak", and they do not want to hear the word "epidemic" at all. We have had the representatives of the Government going on television and denying that there was any sort of outbreak, denying the deaths of people as being attributable to dengue, and having to reverse their position within a few hours and really appearing to be very foolish.

One of the problems is that the Government, in trying to cover its own image really exposes itself to ridicule. I have seen the Minister of Health, good gentleman that he is, trying very hard to convince everybody that we do not even have an outbreak, far more an epidemic.

Before coming here, I went on the Internet—you know Google, where you put in anything you want and it comes up with all sorts of information. The definition of an epidemic in the medical dictionary, definition of popular medical terms easily defined and—[*Interruption*]

We are talking about the whole set of regulations as being designed to cover up for the Government. Does that seem relevant to you? We are talking about how the Government has brought a whole set of conduct regulations to prevent people from speaking the truth about the malaises within the health services. We have a situation where the Government in the—

Sen. Dr. Saith: On a point of order. Could you quote the particular regulation which is telling people not to speak the truth?

Sen. M. F. Rahman: This is the regulation we are dealing with, hon. Senator.

Sen. Dr. Saith: Quote the regulation which says "do not speak the truth."

Sen. M. F. Rahman: If you tell them do not talk at all; it includes the truth and the lies. All right, I will get it for you. You want the words "do not speak the truth" Is that what I said?

Hon. Senators: Yes.

Sen. M. F. Rahman: It prevents you from speaking at all about whatever is happening—

Sen. Dr. Saith: Quote the one saying—

Sen. M. F. Rahman: You want me to quote it? All right, I have to go through. Do you want me to find the particular one right now?

Hon. Senators: Yes.

Sen. M. F. Rahman: All right, just give me a minute.

"7(1) An employee shall not—

(a) Make public or communicate to the press or to an individual, or make copies of…"

This is the RHA regulations you know. So if he finds out that the wrong medication has been prescribed for somebody and—

Sen. Annisette-George: Read the whole regulation.

Sen. M. F. Rahman: "…shall not make public or communicate…"

How do you do it?

Hon. Senator: Read the whole thing.

Sen. M. F. Rahman: We will come to that.

"An employee shall not allow himself to be interviewed on questions of public policy, or on matters affecting the authority without…unless it is required in the performance of his official duty, where approval is granted by the Chief Executive Officer or duly authorized—"

This is muzzling the employee. [*Interruption*] I could face a consequence you know, but we are talking about a public consequence. [*Interruption*]

No, no, let me direct my remarks to the Chair. Mr. Vice-President, I will go through this entire regulation clause by clause and—

Sen. Narace: Mr. Vice-President, on a point of order. The Senator said that the regulation sought to prevent people from speaking the truth and he was asked to quote the regulation that said that. He has not been able to do that. So I would like him to either withdraw it, or point it out in the regulation.

Sen. M. F. Rahman: Mr. Vice-President, would you like me to reverse the order of my contribution and go through clause by clause, and then come back

and deal with the red herrings that are being brought here? I will go through it clause by clause, and I will come upon the various ones. Would you like me to do it that way, Mr. Vice-President?

Mr. Vice-President: Sen. Rahman, I think you made an accusation and that is the point which the Minister was making, that you said the regulations prevented the people from speaking the truth.

Sen. M. F. Rahman: May I reply, Sir? Mr. Vice-President, I maintain that, and when I am going through clause by clause, it will become vivid in the minds. I will not ask for directions, I will go through it clause by clause, and then I will come back and deal with the issues concerning the Government's attempts to cover up all the time.

Sen. Narace: Mr. Vice-President, on a point of order. He must withdraw it.

Sen. M. F. Rahman: What is this? You are ruling?

Sen. Narace: With respect to Standing Order 34(b). I got up to elucidate on a matter. I am saying that he has made a statement that is inaccurate, and I am asking that he either give us the regulation that says that, or he withdraws that statement.

Sen. M. F. Rahman: Mr. Vice-President, my colleague has pointed out to me clause 9(1):

> "An employee shall not respond to questions of public policy in a manner that could reasonably be construed as criticism…"

He cannot criticize; whether he is criticizing constructively or destructively, truthfully or untruthfully, he cannot criticize.

> "and which may call into question his ability to impartially implement, administer or advise on government policy."

Mr. Vice-President, this is as clear as day, and I am sure there are more within this regulation to which I can point. How can I withdraw what I have said when clause 9(1) says "an employee shall not respond to questions of public policy in a manner that could reasonably be construed as criticism." The employee of the RHA cannot say a word of criticism concerning the RHA operation.

Sen. Dr. Nanan: On that particular point of order 34(b), it was only if the Senator was willing to give way.

Mr. Vice-President: Senator, he did give way.

Sen. Dr. Nanan: He said it is a point of order and he sat.

Mr. Vice-President: Well, he gave way; once he sits he gives way.

Sen. M. F. Rahman: Mr. Vice-President, may I continue, Sir?

Mr. Vice-President: Yes, please do.

Sen. M. F. Rahman: Thank you very much, Sir. I will go back to my former contribution.

The truth is that according to the definition of an epidemic, we have repeated epidemics in Trinidad and Tobago. The Government believes that to admit this will affect the tourism and investment industries and the investment climate. The reality is that our RHAs need to be truthful because at the end of the day, if there are people coming to Trinidad and Tobago, and the truth is not told to them because of these regulations, you can be endangering visitors to the country and doing greater harm.

Dengue and other diseases are endemic in several tropical countries; we do not have to be ashamed of it. And when we cover it up, when we prevent the employees from speaking the truth, when we deny that there are deaths from dengue, what we are doing is endangering our own people and the visitors to this country because the Government says there is no outbreak, there is no epidemic, and no deaths from dengue.

Mr. Vice-President, when the regulations prevent the employees from blowing the whistle, the danger to the community and the decay of the institution will continue on a multiplied basis. It is very important for the Government to understand.

Sen. George: On a point of clarification—

Sen. M. F. Rahman: No, I am not giving way, Sir. If it is on a matter of clarification, I am not giving way. I am not giving way, Sir. Please sit, we cannot both be standing at the same time, the Vice-President said this. I do not know why you are standing.

Mr. Vice-President, we have a health system that is seeking to cover through these regulations its flaws and faults to the detriment of the country, its people and to those who are coming to this country.

I will tell you some of the problems that are current in the health services which are run by these RHAs. I mentioned some before; we have a shortage of registrars and consultants, there is very poor recruitment in the health services,

there are foreign doctors coming in without accreditation, without the level of expertise that our doctors from the University of the West Indies have and causing a mess in the service. There are hundreds of nurses coming to Trinidad who cannot speak English. Go to Ward 31 and try to speak to the nurses there, you will find everybody you talk to is from Cuba, cannot understand and they are in charge of patients.

11.05 p.m.

How can an employee be told: "Do not mention this; do not say a thing about that; you cannot talk about this; you cannot talk about that", and covering up? It is almost as if the Government is deliberately running down the health services. I know there is one area of the health future that is being looked after, carefully. The UTT is being given every facility to develop its medical portfolio and faculty, but in the interim the graduates of the UWI who are running the RHAs are having a very difficult time. Do you know that interns have to act as house officers right now because of a shortage? There is a lot of frustration in the service; there is a tremendous amount of frustration—

Sen. Narace: Mr. Vice-President, on a point of order; Standing Order 35(5). The Senator is imputing improper motives to the Government. He is making allegations that nurses cannot speak English; he is making allegations of all sorts and he did not clear up the issue on whether the regulations spoke to the people being prohibited from speaking the truth, and he is irrelevant on top of everything.

Sen. Mark: No, no, no. You are wrong on that.

Mr. Vice-President: I will just caution the Senator that he is bordering on irrelevance. We are dealing with the Regional Health Authorities Regulations. We are not debating the health care system in the country or dengue and whatnot; we are debating the regulations, so please stick to the regulations. It is late and we are all a bit tired, so stick to the regulations.

Sen. Narace: And he should not repeat himself. I have the *Hansard* here.

Sen. M. F. Rahman: Mr. Vice-President, these regulations that we are being asked to approve are serving the purpose of stifling the can of worms that is the health services today. Right now, if these regulations are passed and employees are forced to keep quiet—and you know something, according to the medical board, doctors in the first place cannot go and run off to the press and give any statements. They are covered in that area already. What they want to do is to

prevent the junior employees who see all the injustices that are going on, from saying a word. You are bringing a law to protect yourself. This is the net effect of these regulations. They are bringing in regulations to protect the RHAs and the Government from being exposed in the areas in which they are deficient, in which they are covering up, in which they are causing serious danger to the people.

This is not a discussion about who to send to the Olympics, you know, this is a discussion about life and death with the RHA and how the RHA regulations we have here impact upon the health service as a result of the imposition of the RHA regulations. If these RHA (Conduct) regulations are permitted to continue as they are without being overhauled, what is going to happen is that all the evils of the health service are going to fester.

It is extremely important to understand the nexus between the regulations and the curtain that the regulations put up in front of the health services. Imagine when we are hearing from the Ministry of Health as to how many deaths there were, they said that only—I think it was CAREC alone could do the test. But PAHO and CAREC both approve the kits that the private institutions use and yet, as a matter of policy, to cover up the number of incidents of dengue here, they discredit all the private institutions; the very private institutions that the Government goes to, to test in other circumstances.

These regulations seek to protect the Government because they do not want the employees to talk about it and they do not want me to talk about it here. They do not want anybody to talk about it. The whole idea is to batten it down shut. It is almost as if they are looking for trouble down the line. I do not know what miracle you expect. We are talking about accreditation. We just went through a whole thing about registration and accreditation and here you are, bringing in doctors with all sorts of substandard qualifications and there is no test and—this is very dangerous—there is no qualifying examination.

You cannot go to America and practise medicine, you know. You have to take an exam from them to make sure that you conform to their standards. But we receive doctors from all over the world here—I am not talking about the western developed world—from countries that are less developed than we are and accept them as full-fledged doctors here who cannot do simple examinations, who virtually have to come, after having been fully qualified, come and almost serve an apprenticeship here and learn the language and then be able to try to treat the people.

It does not give me any joy to say this. I will tell you, it is a good thing that the last night we were here I was stopped, because I did not have these facts at my disposal. When I started to look into the matter, I said we really have to understand what these regulations are doing. Let me cut to the chase and go through the regulations.

Hon. Senator: Please do.

Sen. M. F. Rahman: Yes, Sir. You see, I have to say this so often. What is before us comes in a circumstance and a context of the society. It is like the Bail (Amdt.) Bill.

Hon. Members: You cannot mention that. It is finished.

Sen. M. F. Rahman: I am making a reference.

Hon. Senator: No, no. [*Interruption*]

Sen. M. F. Rahman: It is like so many of the other bills you bring here, you cannot look at the circumstance; just look at the spelling and dot the i's and see if the t's are properly crossed. No, no. I do not think that our responsibility is in that area.

Anyway, I want to advise the Government that there are people who place the welfare of the nation ahead of themselves and you will find employees blowing the whistle on you and facing the consequences. Now, let us go down the line. Item 4 states:

"An employee shall –

(a) not be absent from duty without leave…"

Good.

"(b) when leaving the country inform the Chief Executive Officer in writing;"

My question here is this: Are you speaking here about specialists? Because there is a short supply of specialists, so you are speaking about everybody.

Sen. Narace: Same code of conduct; same thing, no difference.

Sen. M. F. Rahman: You had better be sure because right now you have a shortage of specialists and they are not even there to report. You have a severe shortage. So right now the RHAs are suffering very badly.

"(c) in cases of emergency, report his intention to leave the country to his supervisor or any other senior officer who shall report forthwith, in writing, to the Chief Executive Officer."

That sounds reasonable and it is the norm, whatever work you are doing. In the present circumstance—I do not know how they are managing to keep the services together at all. Item 5(1) states:

"An employee shall not -

(a) engage in any activity which would in any way tend to impair his usefulness as an employee;"

I do not know whether they mean to say that the employee cannot be on drugs, because if that is what you mean, you should have it very clearly spelt out. But you see, feting in the night; going to a Carnival fete and waking up too late, a lot of these things can impair his usefulness and efficiency as an employee.

"(b) engage in any occupation or undertaking which is in conflict with the interest of the Authority or is inconsistent with his position as an employee."

The question is: What is in the interest of the authority or what is in the interest of the public who is being served by the authority? Item 6(1) states:

"An employee shall not call a public meeting to consider any action of the Authority or actively participate in the proceedings of a meeting called for such a purpose or procure signatures to any public petition regarding the actions of the Authority."

If you want an example, it is regulation 6(1). An employee has to stay silent about every abuse and every shortcoming of the RHA. [*Interruption*] I just read it.

"An employee shall not call a public meeting to consider any action of the Authority or actively participate in the proceedings of a meeting called for such a purpose or procure signatures to any public petition regarding the actions of the Authority."

Who wants to read that; read it again.

Sen. Narace: That is standard.

Sen. M. F. Rahman: It may be standard in the public—

Sen. Narace: It was passed by your government in 1999.

Sen. M. F. Rahman: It was wrong then; it is wrong now. Let me say this, that this is not appropriate for the health services.

Hon. Senator: Why?

Sen. Narace: Do you want me to repeat this? He just said do not repeat myself. It is not acceptable for the public service because lives are at risk and if the authority—[*Interruption*]

Sen. Mark: "Doh worry with dem fellas." Address the Vice-President.

Sen. M. F. Rahman: I think that is the best thing. [*Crosstalk*]

The *Washington Post* broke the story on the Walter Reed Hospital by talking to employees. Here we have Item No. 8:

> "An employee shall not allow himself to be interviewed on questions of public policy or on matters affecting the Authority unless it is required in the performance of his official duties or where approval is granted by the Chief Executive Officer or other duly authorized officer."

If you expect the CEO or other duly authorized officer to tell an employee, "You could go and talk the truth about this shambles in the health authority", you are sadly wrong, because, clearly, the uproar on that side is as a result of the embarrassment to the Government. If these regulations are applied to people outside the health service, you can have it, but it cannot be applied to people in the health service because lives are at stake and you cannot endanger lives. [*Interruption*] I am very glad for your approval, Sir.

Sen. Narace: It was passed by your government with Sen. Mark voting for it at the forefront; the head of the Senate. Sen. Mark was the Leader of Government Business in the Senate. He passed it!

Sen. M. F. Rahman: I will tell you a very interesting thing. Item 11(1) states:

> "An employee shall not receive a payment for the preparation or delivery of a lecture, talk or broadcast which is done in pursuance of his duties."

Madam Attorney General, this 11(1) is covered by the Intellectual Property Act. No employee of any organization, even if he does the research himself and develops information on a paper, can take that and make money out of it. So you have something here that is totally irrelevant and redundant—not irrelevant; totally redundant.

Sen. Narace: That is what you all passed.

Sen. M. F. Rahman: So anything you pick up you "go" bring inside here? Forget it. I am not supposed to be paying attention to you. [*Laughter*]

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

Motion made, That the hon. Senator's speaking time be extended by five minutes. [*Sen. W. Mark*] [*Crosstalk*]

Question put and agreed to.

11.20 p.m.

Sen. M. F. Rahman: You will hear speed talking now. [*Laughter*] I will not be long. Regulation 13 states:

> "An employee against whom bankruptcy proceedings has been taken, who has become insolvent, or who has been declared bankrupt, shall report the matter to the Board within seven days of the date on which he has notice of this fact."

If ever there was a stupid piece of regulation to be brought in is this, it is this one. Let me tell you that you cannot ask someone to incriminate himself. The law says that if you want him to speak about himself he has to be given immunity from prosecution.

Sen. Gronlund-Nunez: Mr. Vice-President, on a point of order. Standing Order 35(5), I do not want him to impute improper motives. I am protecting Sen. Mark tonight.

Sen. M. F. Rahman: I will take back that one minute that she took from me there.

On the matter of misconduct, regulation 19(1) states:

> "An employee may be found guilty of misconduct where he— (a) wilfully refuses or omits to perform his duty;"

That is if it is without justification. There are some times when a man cannot do anymore; he did a 24-hour shift and he cannot work; he would drop down. When you have a short staff situation that would happen. You do not want to replace the staff. Please look after the health authority. You are capable of it, but you have to stop being in denial. Do not take offence when people are criticizing you. We are criticizing you for the benefit of the nation. "Yuh go hear more about this privately." [*Desk thumping*] In the spirit of the Senate, although I have more to say, let me savour this moment. The Government is actually cheering me on.

Thank you.

Sen. Wade Mark: Mr. Vice-President, I know that the hour is a bit late. Having regard to the fact that the Minister of Health has indicated that he will invoke the necessary Standing Order so he can speak after my contribution, first of all, I express my gratitude to both speakers because we had only two speakers. We had to address all kinds of matters over the last two weeks. Sen. Rahman and Sen. the hon. Jerry Narace spoke earlier.

This is a very important set of regulations that we are addressing and have been addressing over the last few days. I believe that the Minister and the Government by extension have now recognized that these regulations represent the thin edge of the wedge, as they relate to how the Government is proceeding in implementing measures that are highly undemocratic and could result in the undermining of the rights and freedoms of the citizens, as they relate to freedom of speech, assembly and association, expression, as well as the press.

I wish to draw to your attention and that of the honourable Senate that when this matter was debated in the other place, the hon. Prime Minister gave an undertaking to have these regulations reviewed and the Attorney General report to the honourable Senate, as to the points of view that were expressed on that occasion, concerning the constitutionality of several provisions in the regulations. To date we have not heard from the Attorney General. I do not know if she received a text message which I understand was sent by the hon. Prime Minister on this particular matter. The fact is that the Government did give an undertaking to have these regulations reviewed. This was supposed to be done by Monday last week. Monday has come and Monday has gone; another Monday came and another Monday has gone and we are still awaiting a report from the hon. Attorney General.

This is a problem that we are dealing with. It is the whole question of trust, confidence and credibility. It is as if an undertaking is worthless. We cannot trust the words of the Government. They are meaningless. This is on the record of *Hansard*. We must make it very clear that in looking at these regulations and responding to the hon. Minister, the impression must never be given that we are not in support of an organized and disciplined workforce. We would like to see all workplaces throughout Trinidad and Tobago with a certain level of discipline, but more importantly, good industrial relations practice. That, to my mind is very crucial if you want to promote productivity and harmony in the workplace. We on this side are committed to workers' rights. We are not prepared to compromise or undermine those rights and freedoms that workers have been able to enjoy over the years.

The hon. Minister of Health is on record as saying and there is no gainsaying the fact that in 1996, we introduced a code of conduct, but it was not tabled in Parliament as these regulations. The code of conduct that was introduced by me in another incarnation are not the same regulations. [*Crosstalk*] You keep saying that they are the same regulations. I want to tell you that insofar as those regulations were concerned or the code of conduct, I remind the hon. Minister of Health that those regulations that govern the code of conduct were agreed to by all the stakeholders in the industry in the government operation.

The code of conduct was affected through certain mechanisms within the public service. There is a fundamental distinction between the code of conduct which was effected by the Public Service Commission, through the various heads of departments and Permanent Secretaries throughout the public service, be it the teachers, firefighters and civil servants. They were sent across the board. Any worker who was disciplined under those regulations and wanted to protest or challenge or was not happy, there were stages and phases established in the pubic service for them to grieve.

They could have gone to the Permanent Secretary; the Public Service Commission which is an independent body or the Public Service Appeal Board to grieve. If they still were not satisfied they could have gone to the courts of Trinidad and Tobago. Do not compare your regulations which are highly undemocratic to that of the code of conduct which was introduced in 1996 and fell under the purview of the Public Service Commission.

It is important to tell the hon. Minister that it is chalk and cheese we are dealing with here. I also want to indicate to the hon. Minister when he said in his statement that he had been in constant contact with the President of the Medical Practitioners Association of Trinidad and Tobago and there are some things he does not agree with and some things he has a concern with, the fact of the matter is that this Government recognize that we transferred the employees and so on.

My information is that this hon. Minister needs to tell the truth. He has an infinite capacity to mislead and misinform—

Sen. Narace: Mr. Vice-President, on a point of order, Standing Order No. 35(5). He is imputing improper motives.

Sen. W. Mark: How am I imputing improper motives?

Mr. Vice-President: No, no, no. He must tell the truth, that is impugning improper motives.

Sen. W. Mark: How come?

Mr. Vice-President: Because you are saying that he is not speaking the truth.

Sen. W. Mark: I did not say so. You are saying so.

Mr. Vice-President: No, no, no. I am not saying so. Senator, please withdraw that statement.

Sen. W. Mark: How could I withdraw a statement that I did not say? I did not say what you said.

Sen. Narace: I am demanding an apology.

Sen. W. Mark: Mr. Vice-President, I did not say what you said. You said something that I did not say.

Mr. Vice-President: What did you say?

Sen. W. Mark: Well, if you sit I will stand. [*Laughter*] All I said to him is that he must tell the truth. I do not understand how that could be implying improper motives.

Sen. Narace: He said, "He has a tendency not to tell the truth." [*Crosstalk*]

Mr. Vice-President: Sen. Mark, I think that you should withdraw that statement.

Sen. W. Mark: Withdraw what, Sir? A tendency?

Mr. Vice-President: Listen. That he has a tendency not to tell the truth.

Sen. W. Mark: I never said that. Mr. Vice-President, I never said that.

Mr. Vice-President: Withdraw whatever statement you made.

Sen. W. Mark: I withdraw whatever statement I made. [*Laughter*]

Mr. Vice-President: Thank you.

Sen. W. Mark: What statement did I make? Mr. Vice-President, you amuse me. I must tell you. May I continue?

I find the hon. Minister of Health has become very thin on the skin. He barges his way into everything. You are like dengue. You are like the mosquito. You are not a mosquito, you know. I say you are like dengue.

11.35 p.m.

Mr. Vice-President, I want to tell the hon. Minister that I have a press release and I do not know if he has received it. I think it is important that I share with him and this honourable Senate the press release dated Monday, September 15, 2008. It says:

> "These regulations have been thrust upon the Doctors without the consultation of their trade union, the Medical Professionals Association of Trinidad and Tobago. Promises of inclusion of MPATT in a possible review (without a timeline), do not conform to accepted good industrial relations practices. Why should an Act be passed"—I think they are referring to the regulations, Sir—"if there is an admission by the Prime Minister, and the Minister of Health, that it needs review? If this promise of review is sincere then MPATT calls on the Minister of Health and the Prime Minister to suspend these regulations with immediate effect and to move immediately into review with all the stakeholders."

The press release goes on to say:

> "It is disrespectful and contemptuous that MPATT, the only trade union that speaks for Doctors in the RHAs, was entirely ignored in the drafting and passage of these regulations."

Mr. Vice-President, tell me how I should describe this Minister? I want to quote because I do not want you to accuse me of telling him something I did not say. I want you to interpret it for me and the country:

> "I have been in constant contact with the President of MPATT and there are some things he does not agree with and some things that he has a concern with."

The President of MPATT and executive of MPATT is putting out a press release stating that it is disrespectful and contemptuous that MPATT, the only trade union that speaks for doctors in the RHAs was entirely ignored in the drafting and passage of these regulations." You get up here now and tell us in this Parliament whether MPATT was involved in the drafting and passage of your regulations.

Sen. Narace: Thank you for giving way. There are two things I need to correct. The Prime Minister said that out of an abundance of caution, questioning the constitutionality of the regulations, that through the weekend the Attorney General would review it. That is the review he spoke about.

It has been reviewed and we have an opinion that says it is constitutional because it treats with the matter where the Minister would have the final decision, which was being advanced by the Member for Siparia. The truth is that you still have recourse to a court of law if you are not satisfied with this process.

In terms of the President of MPATT, only today I had a conversation with him both on national television and privately and I can say that I have spoken to him five times on these matters. I do agree that he said that there are some areas with

which he had a concern, and I alluded to that in my statement. I said previously, and when I get up to make my contribution I will say it again, that we gave a commitment that as a Government that is serious about modernizing not only the health sector, but also the public sector, we are committed to reviewing all regulations.

These regulations that you passed in 1996 were part of the public sector reform that started under a PNM government in the early 1990s when—[*Interruption*] Let me finish. I am on my feet. You gave way.

Sen. W. Mark: I gave way; I am taking back my way. [*Laughter*] He will talk forever. I gave way and I take it back.

Mr. Vice-President, this Minister of Health goes all over the world and up to now he has not landed. He has not touched the soil of reality. I asked a specific question. Was MPATT involved in the drafting and passage of these regulations? Tell me in one word.

Sen. Narace: Mr. Vice-President, as I said, the genesis of these regulations is really the PNM government of 1991. [*Interruption*] Let me finish.

Mr. Vice President: The Minister is answering the question.

Sen. W. Mark: [*Inaudible*]

Mr. Vice-President: Three of us cannot be on our feet.

Sen. W. Mark: Answer specifically or I am not giving way.

Mr. Vice-President: Please be brief with your answer.

Sen. Narace: There was a process. Obviously during the drafting of these regulations I was not Minister of Health. When I became Minister of Health, I started a collaborative process and I started speaking with all the stakeholders. I can say that I have spoken to the President of MPATT on five occasions, including the members of the executive. I will admit that when they asked me, I told them that my Legal Director did tell me that the regulations 40 days had passed. I committed to a review even then.

We spoke on several occasions and this morning I cleared with him; it was five occasions. I do not know what took place because I was not at the Ministry of Health, but since I became Minister of Health I sought to speak with them. I do admit that we ought to be collaborating more because that is the intention of this Government—to be a collaborative government and to encourage dialogue.

Sen. W. Mark: I do not think I will be giving you any time again, so sit there until you are ready to talk. Mr. Vice-President, there will be no interruption again and I would not allow you to stand again.

> "Speaking to the President of MPATT via telephone"—that is the hon. Minister—"(after passage in the House; on the morning of the debate in the Senate) and not requesting a recommendation, is certainly not consultation."

MPATT is saying you have not genuinely consulted with them.

> "Much ado has been made by the Minister of Health about the importance of the objective of these regulations so as to protect the confidentiality of patients. The press, public (and Minister) are hereby informed there are well established ethical rules going back centuries that require confidentiality from Doctors. Those of the certain age will remember that the same does not hold true for Parliamentarians, since medical records have been read into *Hansard* previously.
>
> These regulations instead impose unsatisfactory working conditions in an already understaffed, exhausted and demoralized public health workforce."

And they went on, Mr. Vice-President, to pose pertinent questions that they believe that the public and this Parliament ought to consider.

- "Will these regulations have the effect of increasing bed capacity in our hospitals?
- Will they improve staffing at any of our health care institutions?
- Will they cause an improvement in the supply chain so that repeated shortages are a thing of the past?
- Will they improve the level of maintenance of equipment?
- Will they ensure the continuous presence of vital drugs?
- Will they mandate adequate operating time?
- Are they to allow the Minister of Health and his advisors to misinform the public of Trinidad and Tobago (e.g. Dengue 'outbreak') without correction?"

These are questions they have posed and it is part of their press release.

You have a Minister who is new to the process. He was running his insurance company long before he came into the government service. Now that he has arrived here, as he indicated to us, maybe work had already been started by his predecessor. But one of the things he must do as an incoming Minister is to get into contact with all the stakeholders. If he is going to table regulations as he did in July this year, it must have occurred to him that he needed to call in all the stakeholders: the Medical Council, the Nursing Council, MPATT; not just the PSA.

Of course it is a recognized majority union for the nurses and some doctors and other health care workers, but there are other stakeholders in the health care sector and I am surprised that a person who always speaks about dialogue, negotiation and discussion would just sidestep and bypass critical organizations that make up the health care system in our country.

I hope that the hon. Minister would do the decent and correct thing, that is, after this debate, after the Motion has been put to the vote, he would take the regulations back to the drawing board and within a relatively short period of time, in consultation with the relevant stakeholders, come up with a set of new regulations that are acceptable to the stakeholders in the industry.

Mr. Vice-President, I want to indicate that the key objection we have to this particular set of regulations centres around the politicization of the RHAs. When you are dealing with disciplinary matters, which is what these regulations are about, it sets out a system of discipline and steps to be taken by the RHAs in disciplining workers guilty of misconduct. Justice must not only be done, but must be seen to be done and when you have a political RHA board and a CEO who is politically appointed by the same board, and this CEO is committed to the board and the Minister, the Minister and the CEO are then responsible for determining and implementing the whole disciplinary procedure.

That, to my mind, leaves a lot to be desired and that is where the system is highly undemocratic. It can be very biased leading to victimization, favouritism and nepotism. That is why we have brought these regulations with a view to having this Senate look at them to have them rescinded in the interest of justice and of the workers.

I remind the hon. Minister that in the public service the workers are shielded. They are given some form of defence against politicians whether it is you, Mr. Minister, or me. We must always have a system in existence where the workers would feel that they are being fairly dealt with and treated. This is the problem we are faced with.

11.50 p.m.

I want to bring this to the attention of the hon. Minister that in the United Kingdom, there is something called an Appointments Commission. This commission is part of the National Health Service in Britain. They have these same kinds of RHAs but have a different name for them. The Appointments Commission is a commission that is independent of the Minister. They are appointed and their biographies and CVs are placed on the web. Anyone who wants to see who comprise the board can tune in and click and they would see the names of those officials on the Appointments Commission. This commission does the following:

- Appoints over 500 public sector personnel. In fact, they appointed close to 4,000 chairs and non-executives on the NHS Board;
- Manages the recruitment, selection and appointment of chairs and non-executive directors;
- Provides long term induction training;
- Acts as the guardian of the appraisal process; setting minimum standards and providing guidance and advice; and
- Promotes good governance through advice, guidance and policy development.

I want to give an advice to the hon. Minister. I believe that you recognize that there have been some deficiencies in those regulations. I believe that the Minister must do the honourable thing. The Minister must withdraw those regulations and set up a team comprising all the stakeholders, along with members of the Office of the CPO and his RHAs, to get going new regulations for the RHAs. I believe, if this is done rapidly, it would go a long way in redressing the grievances that we are addressing today.

I do not believe that the hon. Minister is really serious about denying workers in the RHAs, as defined in the regulations, the right to speak out about ills occurring in the health care system. I do not believe that the hon. Minister would be serious about effecting such a regulation.

I have noted that every time a doctor appears on the television screen somebody calls the Minister and in no time he badgers his way on the television station and says: “I am Jerry Narace. I am Jerry Lionel Narace. I am Jerry Narace, the hon. Minister of Health and I want to get on this programme.” He

badgers his way. Sen. Hazel Manning, I think the hon. Minister of Health needs a crash course in protocol. He does not understand diplomacy, statesmanship and statecraft. He is crude and ugly, in terms of his approach. It is doing a lot of harm to the Government. His behaviour is doing a lot of harm to the Government. How can a Minister—I do not know how true it is but he must tell us. I understand that he badgered his way into CCN and had to be escorted out by security personnel. I was informed. I understand that his attitude—[*Interruption*]

Sen. Narace: On a point of order. He is making an inaccurate statement. It is not true and on this occasion, I would like him to apologize.

Sen. W. Mark: If you say it is not true, tell us the truth.

Sen. Narace: I am saying that the statement he made is untrue and therefore I am asking, because I am going to bring you before the Privileges Committee.

Sen. W. Mark: I did not say it was true. I am asking him to clarify the air, which he has done and I am so grateful to you for clarifying the air for us. Thank you very much. [*Interruption*] Apology for asking a question? It looks like the disease is rubbing off on you too.

It is our view that these regulations, in its current form, will lead to anarchy and will not provide for the particular kinds of outcomes that the hon. Minister is seeking to achieve. Therefore, politicians should stay away from these institutions in the way that he is involved in the current set of regulations. I want to remind him and I am urging that these regulations be rescinded and/or annulled and new regulations be formulated.

There was a doctor called Dr. Anand Chattergoon, who had a case against the Ministry of Health. The Public Service Commission brought disciplinary charges against him and he was suspended from his job. Why? He was speaking to the media and having press conferences all over the country. He was on television and radio. He had interviews in the newspapers. They challenged him and he took them to court. He won and was granted enormous damages in court. The court ruled that the Public Service Commission violated Dr. Anand Chattergoon's entrenched constitutional rights as they relate to freedom of expression and thought. I want to advise this Minister that any doctor who is willing to come forward, we are prepared to offer free legal services and we will take this Minister and these regulations to the court for judicial review. We are just searching for two or three of them who are willing to come forward, because this will be struck down by the courts if he does not take the necessary steps to withdraw them and reformulate these regulations.

We are here this late evening, 11.58 p.m. not because I wanted to bring these regulations for annulment, I brought them in the interest of the 12,000 health care workers in the country.

I have almost a revulsion to injustices whenever I see them taking place where a government is seeking to invoke provisions that will stymie, stifle, compromise, undermine and subvert the fundamental rights and freedoms of the citizenry of our country. In this instance, it is the health care sector workers. It is time for us to intervene and this is what I am doing today and that is what I did a couple of days ago, conscious of the fact that we are in a minority position. We are not here all the time, but the records are here. One hundred years for now, the records will be here to show that we stood up for the RHA workers against the oppressive administration that sought to impose regulations that were inconsistent with their constitutional rights as enshrined under sections 4 and 5 of the Constitution.

It is not a pleasure for me to come here and raise these matters. I would have liked the hon. Minister to settle this matter in another manner, quickly. I hope it would be the last time I would be rising to deal with an annulment of regulations. I hope this would be the last time. I want to urge this Government. We are the watchdogs of the citizenry. We in the Opposition have to ensure that people's rights are not trampled upon. We are very, very keen on what is taking place in this country and in the Government. Whenever we see injustices, we are going to raise those matters and we would seek rectification and some resolution in the interest of the working people of our country.

I beg to move.

The Minister of Health (Sen. The Hon. Jerry Narace): Thank you, Mr. Vice-President. I rise under section 33(2). I want to open this debate by saying— [*Interruption*]

Hon. Senators: Close.

Sen. The Hon. J. Narace:—close the debate, but open my contribution by saying that you could never be sure of what they say on the other side. "One man say: Tell de supporters to come in town. The next day de fella say: Tell de police to lock dem up. The next day ah fella say: Tell dem doh worry to come in town. In de other place, one man tell meh ah handsome. Ah come in this place, another man tell meh ah ugly." We would never know what to take them at. They have no two people that would agree on any position.

Mr. Vice-President, I know it is late and it is not my intention to keep you back much longer. I know that you too, in your wisdom, will recognize the importance of these regulations and, therefore, I would try to be as brief as I can.

The Regional Health Authorities (Conduct) Regulations are made pursuant to section 35 of the Regional Health Authorities Act and constitute a comprehensive regulatory framework for employee and staff-related matters. These regulations were designed and proposed with the sole purpose of safeguarding the rights of employees. In the absence of these regulations, employees can be dismissed without any formal process to determine their culpability and, therefore, we are confident that these regulations would reduce, if not eliminate, the level of employee victimization wherever they exist.

He spoke about a number of issues. The first one I want to correct is the misrepresentation by Sen. Mark of the hon. Prime Minister. The hon. Prime Minister said in the other place, since they claimed the regulations were unconstitutional, that he asked the Attorney General to work through the weekend to ensure that they were in fact constitutional. Over the weekend, the work was done and we were satisfied. I would not read all of it.

> "It cannot be the case that every Act of Parliament which impinges in any way upon the rights protected in sections 4 and 5 of the Constitution is for that reason alone unconstitutional. Legislation frequently affects rights such as freedom of thought and expression and the enjoyment of property. These are both qualified rights which may be limited, either by general legislation or in the particular case, provided that the limitation pursues a legitimate aim and is proportionate to it. It is for the Parliament, in the first instance to strike the balance between individual rights and the general interest."

This can be found in the Privy Council's decision of *Suratt v The Attorney General of Trinidad and Tobago* where Baroness Hale made that statement.

Firstly, the hon. Prime Minister and the Attorney General kept to their promise, worked through the weekend and ensured that the regulations were in fact constitutional. The hon. Prime Minister also said that in seeking to modernize and reform the public service and indeed all other organizations, they were committed to ensuring that we review regulations on an ongoing basis.

12.05 a.m.

In those circumstances, I am willing to commit here that we are going to continue to review the regulations; we are going to continue to collaborate; and we are going to continue to ensure that our regulations reflect, not just that which

is required to provide the human resource infrastructure for the good delivery of health services, but also to provide the environment where employees can benefit and feel safe and secure.

I think a critical issue that was raised is where the Minister's decision shall be final. The intention of this regulation is for the ministry and, therefore, this is one that we are going to look at, but it is the ministry which has to make those decisions.

In terms of collaboration, the PSA signed off on these regulations. At the time when these regulations were being drafted and at the time when they were contemplated, the majority of the employees were members of the PSA. Of course, they were then going across to the RHAs. A promise that was made to the employees was that we would bring regulations that were no less onerous or no more onerous than the regulations which obtained—the very regulations that were passed by the UNC government of which Sen. Mark was a part. In terms of the Minister's decision shall be final, we have treated with that matter.

With respect to the review process, to quote Sen. Prof. Ramesh Deosaran, he said that these regulations are pregnant with processes. These regulations speak to a very lengthy process that gives all kinds of rights. I know that it is late, so I would not go through all of them and we know what they are. I just want to put on the record that there are a number of processes that are now laid and you can keep appealing every step of the way including a review board. If after the entire process you are not satisfied, you could then go to a court of law where in that court of law you would be able to seek redress.

The proposed system is far more meaningful than the existing one where the CEO or the board can remove an employee through a non-structured process that lacks both transparency and accountability. Not only is the proposed regulatory framework consistent with good industrial relations practices, but it is also similar to the current system for the public service. There is nothing different in these regulations and the regulations under the current code of conduct.

Mr. Vice-President, I am going to make a few quick examples. Regulation 3 and regulation 135—I am not going to say what they are—speak to conduct and they are the same.

Regulation 3(b) and regulation 134 are almost the same and they speak to the discharging of duties and so forth; regulation 3(c) and regulation 135(2) speak to being courteous and polite and so forth—I can go through all the regulations; regulations 4 and 136 are the same; regulation 4(b), 4(c) and regulation 136(2) are the same; and regulation 12 and regulation 141 are the same.

[SEN. THE HON. J. NARACE]

Mr. Vice-President, I am really shocked that people can come to this Senate knowing very well the similarity of these regulations; knowing very well that it was a government of which the Senator was a part; knowing very well that this was the arrangement made with the majority union; and knowing very well that a former public service chairman, Kenneth Lalla, said that the regulations were the same and then come to—let me find the proper language—make us believe that this is not so. I find that is very sad.

You know, the Senator did not slip when he said that his only objective was objection. In speaking with the Senator a while ago—I always try to speak with him, because I think at some point I expect that he would engage in some reform. [*Interruption*]

Mr. Vice-President, I really hope that at some point we in this Senate would seek to do the people's business and not object for objection sake. It is very unfortunate that we should have Senators here at this early hour in the morning debating regulations that should not have been challenged in the first place. The Senator knows very well what he is speaking about. I am not going to go through all the other regulations, but regulations 14 and 15 are basically the same thing.

The Senator asked what would the regulations do to increase bed capacity, and that is the heart of the problem. What we have today is an Opposition which tries to call the Government to account—they do not want the public servants to account—and the Ministers to account, and when the Ministers try to provide the policy framework, the regulatory framework and the infrastructural framework to try to get the environment that would serve our citizens better, they start to talk about their objective is objection.

What we are seeking to do is to build a First World health care system. Only this week the Cabinet agreed in principle to a plan for the transformation of the health sector. This is a plan where the Government proposes to renew the health sector so that we can provide First World health care. Critical in this plan are several pillars, one of which is creating capable institutions and a proper workforce.

In order for us to have that workforce deliver to the national community in a manner that they would find acceptable, we are required to put the necessary framework in place. Presently, there are no regulations. The management of these organizations—both for the managers and the employees—are really difficult and at the end of the day it is the citizens and the employees who would really be hurt by such a process. Mr. Vice-President, these regulations would work for any employee and indeed the national community.

Mr. Vice-President, I do not want to keep you back too much longer, but simply to say that the selection of a CEO is through a process. There is a public advertisement and there is a whole process. So, when a CEO is selected, it is based on proper procedures and that is why we are trying to bring in these regulations in the manner in which we are seeking to get the Regional Health Authorities functional so that we can deliver better services which would include more beds and all the other things that go with it.

Mr. Vice-President, I know that it is quite late and I know that this Senate is now convinced that these regulations should have never been challenged in the first place. I wish to reaffirm the Government's commitment to reviewing these regulations on an ongoing basis; the Government's position to dialogue; the Government's commitment to collaboration—including MPATT and those on the other side—to ensure that we can get regulations that would assist us in modernizing not just the health sector, but the public services.

I want to reject out of hand the Motion brought by Sen. Mark. It is clear that this is a week of defeats for him. He was defeated in the other place; he was defeated earlier today; and he has now done a hat-trick in less than three days. With those few words, I call for the Motion to annul these regulations to be rejected out of hand.

Thank you very much. [*Desk thumping*]

Question put.

Motion negatived.

ADJOURNMENT

The Minister of Energy and Energy Industries (Sen. The Hon. Conrad Enill): Mr. Vice-President, I beg to move that the Senate do now adjourn to Tuesday, September 23, 2008 when we would debate the Finance (Supplementary Appropriation) Bill. It is the intention for us to transfer some resources from the Consolidated Fund to the Infrastructure Development Fund and the Heritage and Stabilisation Fund just to close the year. As soon as the Bill is available it would be circulated to Senators in its normal form. Because of the nature of the debate and on the basis of not wanting to do this, I propose that we begin the debate at 10.00 a.m. on Tuesday.

Sen. Mark: I would like to suggest to the hon. Minster that the Public Accounts Committee is having a meeting at around 10.00 a.m. that same morning, and we are going to meet until about 12 noon. [*Interruption*] I understand that the

meeting was postponed. Do you anticipate that we will go until 2.00 a.m and that is why you want to start at 10.00 a.m?

Sen. The Hon. C. Enill: As I understand it, we have Sen. Mark, Sen. Dr. Nanan, Sen. Dr. Charles, Sen. Sharma, Sen. Rahman and Sen. Dr. Kernahan who would generally speak for at least one hour each. So far we have been unsuccessful to get them to participate in an exercise where we would not actually do this. So, in recognition of that and based on the fact that we are into budget and so forth, I am hoping that we can leave early rather than subject ourselves to that. So, in those circumstances, I propose that we begin at 10.00 a.m. and whenever we finish we will adjourn.

Sen. Mark: I think it may have slipped the Minister that next week is supposed to be my day—next week Tuesday is Private Members' Day. The Senator has asked—because of this particular Bill that has to be addressed—the Opposition to give up that day in order to allow him and the Government to address the matter that he has just made reference to. We have obliged and he has also indicated that Private Members' Day would be given immediately after the budget debate in this Chamber. So the first Tuesday after the budget debate will be Private Members' Day for the month of September, and then we are going to have another one in October. So, there are two days set aside for us in the month of October. So, I just wanted to put that arrangement on the record.

Sen. The Hon. C. Enill: That will be good.

Sen. Mark: No problem.

Question put and agreed to.

Senate adjourned accordingly.

Adjourned at 12.20 a.m.