

*Paper Laid**Wednesday, December 30, 2009***SENATE***Wednesday, December 30, 2009*

The Senate met at 1.30 p.m.

PRAYERS[MR. PRESIDENT *in the Chair*]**PAPER LAID**

Annual report of the Ministry of Science, Technology and Tertiary Education (MSTTE) for the period October 01, 2007 to September 30, 2008. [*The Minister of Energy and Energy Industries (Sen. The Hon. Conrad Enill)*]

ORAL ANSWERS TO QUESTIONS

**National Academy for the Performing Arts
(Details of)**

190. Sen. Dr. Adesh Nanan asked the hon. Minister of Planning, Housing and the Environment:

With regard to the Academy of Performing Arts, could the Minister state:

- (i) Whether the building is energy efficient;
- (ii) If the answer is in the affirmative, could the Minister identify the energy saving measures involved; and
- (iii) If the answer is in the negative, could the Minister give a reason or reasons why the building is not energy efficient?

The Minister of Energy and Energy Industries (Sen. The Hon. Conrad Enill): Thank you, Mr. President. The Minister is not here but I am aware that the Government is not in a position to answer any of the questions stated on the Order Paper.

Mr. President: Do you wish to put the questions anyway or—

Question, by leave, deferred.

**Environmental Management Authority
(Vehicles Powered by CNG)**

191. Sen. Dr. Adesh Nanan asked the hon. Minister of Planning, Housing and the Environment:

Could the Minister indicate the number of Environmental Management Authority vehicles that are powered by CNG?

The Minister of Energy and Energy Industries (Sen. The Hon. Conrad Enill): Thank you, Mr. President. The Government is not in a position to answer this question today.

Sen. Dr. Nanan: Mr. President, question No. 191 is only asking, “Could the Minister state the number of Environmental Management Authority vehicles that are powered by CNG?” That is a simple answer.

Mr. President: Senator, you cannot debate the issue. If the answer is not ready for whatever reason it is not ready, so please put your questions.

Question, by leave, deferred.

**Environmental Management Authority
(Date of Last Report on the State of the Environment)**

192. Sen. Dr. Adesh Nanan asked the hon. Minister of Planning, Housing and the Environment:

Could the Minister identify the date of the last report, done by the Environmental Management Authority on the state of the Environment, which was submitted to Parliament?

The Minister of Energy and Energy Industries (Sen. The Hon. Conrad Enill): Thank you, Mr. President. The answer to question No. 192 is not now available.

Question, by leave, deferred.

**Effects of Rising Sea Levels
(Measures Put in Place to Combat)**

193. Sen. Dr. Adesh Nanan asked the hon. Minister of Planning, Housing and the Environment:

Could the Minister indicate what measures have been put in place from 2007 to present to combat the effects of rising sea levels due to climate change?

The Minister of Energy and Energy Industries (Sen. The Hon. Conrad Enill): Mr. President, the answer to question No. 193 is not yet approved.

Sen. Dr. Nanan: Through you, Mr. President, could the Minister indicate when it would be ready?

Sen. The Hon. C. Enill: In two weeks, Mr. President.

Question, by leave, deferred.

**Emperor Valley Zoo
(Percentage Completion of Work Done)**

197. Sen. Dr. Adesh Nanan asked the hon. Minister of Tourism:

- A. Could the Minister identify the percentage completion of work done on the Emperor Valley Zoo as at October 31, 2009?
- B. Could the Minister state whether it is the intention of the Government to have the animals relocated to facilitate the said upgrade?

The Minister of Energy and Energy Industries (Sen. The Hon. Conrad Enill): Thank you, Mr. President. I seek a deferral of this question for a period of two weeks.

Question, by leave, deferred.

**Zoological Society
(Role of)**

198. Sen. Dr. Adesh Nanan asked the hon. Minister of Tourism:

Could the Minister indicate the role of the Zoological Society following the upgrade of the Emperor Valley Zoo?

The Minister of Energy and Energy Industries (Sen. The Hon. Conrad Enill): Question No. 198 follows the similar pattern, the answer from the Zoological Society—I think it is—is not yet available.

Question, by leave, deferred.

**Tourism Development Company
(Role of)**

199. Sen. Dr. Adesh Nanan asked the hon. Minister of Tourism:

Could the Minister indicate the role of the Tourism Development Company in the Emperor Valley Zoo upgrade?

The Minister of Energy and Energy Industries (Sen. The Hon. Conrad Enill): Mr. President, according to the information the answer to this question has not been approved. I therefore seek a two-week extension.

Question, by leave, deferred.

PROPERTY TAX BILL

[Second Day]

Order read for resuming adjourned debate on question [December 29, 2009]:

That the Bill be now read a second time.

Question again proposed.

Mr. President: The following is a list of those who spoke: Sen. The Hon. Mariano Browne, mover of the Motion; Sen. Wade Mark; Sen. Prof. Ramesh Deosaran; Sen. Dr. Sharon-ann Gopaul-McNicol; Sen. Helen Drayton and Sen. Raphael Cumberbatch. Senators wishing to join the debate may do so now.

Sen. Basharat Ali: Thank you, Mr. President. I am pleased to make a contribution to phase two of this debate which is basically now the Property Tax Bill.

Forty eight hours ago I was preparing my notes for this session and this is what I wrote: "My position is that I am a conscientious objector to both Bills on the grounds that there has been a rush to judgment on both Bills resulting in errors of omission in the original Bills, made worse by amendments tabled and passed in the later stages of the debate in the other place." So, 48 hours later I have no reason to change my mind on this position and I did vote "no" on the first Bill, that is the Valuation of Land (Amdt.) Bill. I did register a no vote and I would like the *Trinidad Guardian* to credit their report, there was only KM written on it and it said I was not here for the vote. So, I would like KM of TG to correct that. [Laughter] That is all I have, KM and it was in TG of today, to make a correction tomorrow, that I did vote "no" on that Bill.

Mr. President, I would like to address a few of the subjects of the Property Tax Bill and the effect it is going to have. As I said I take the position of a conscientious objector speaking for a particular group of people also, including myself. I follow the lead from my comrade, Sen. Prof. Ramesh Deosaran, and declare an interest in both of the Bills that we have been doing, in that I am a joint owner of a property in Haleland Park, Maraval; it is a property which was built for me from scratch; land in '74; finished in '75 and I have been resident there for the period 1975 up to this morning and I do not propose to move elsewhere. So I expect to be a property owner enjoying this home which my wife and I made a lot of sacrifices to complete.

Some of the Senators here may not know that I joined the public service in 1973 after 16 years in Shell and my salary then was \$1,950. That compared well within the civil service, in fact I was getting a few dollars more than a range 68

person, but I could not get more, because they said at that time local consultants did not get more than a Permanent Secretary, for example. So, that was my salary on a contract basis. I was never a civil service officer; I was a contract officer; I was 40 years old and I have to say that at that salary with taxation at very high levels—I understand we have been talking about the benefits that we now have, 25 per cent tax, \$60,000 allowance and good salaries.

But I did not enjoy any of that, as I said \$2,000 a month and I had one contract for three years and had a second contract for 3½ years just under \$4,000 a month. And for probably all of it your wife's salary, well, was added on to yours, so it is marginal rate for that, it was not separate returns, so it was very difficult.

We both managed to do it and that is why I feel very strongly about it. We were very prudent; we saved and we paid our mortgage. I completed my mortgage after 15 years, so from '76 to—you can add 15 to that, '91 or whatever it is; I was finished paying my mortgage and we were both combining our salaries. I was fortunate in that having worked with Shell I had a provident fund which was not much in today's money—\$42,000—but it was seed money for me to buy a piece of land and build a house.

So today I will be very deprived when I am told, okay, you have been enjoying the fat of the land for all of these years because my land and building taxes is \$284.50 per year. I know how it was calculated because I went there with the valuation officer and showed him around and told him what my contract price was—I had a fixed price contract for \$100,000 and it was his choice as to what that figure would be.

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

He chose capital value of \$61,000 and at 6 per cent he worked out that—I mentioned that before and 7½ per cent of that was \$274.50 plus \$1 so \$275.50, but then in 1985 is when they changed that, they said that for the first one acre it was \$10. That is why my property tax has remained constant at that figure of \$284.50 and I acknowledge it is a low figure and I will speak about that in a short while. So that is the position with my personal arrangement and why I say I am saying it upfront, I wish others would have done the same thing like—hon. Minister I wish that you would have said, look, this is my interest—and notwithstanding that you are very much in favour of the Bills before us—and what you were paying or expect to pay. I do not know how much—I know you know what you expect to pay in your property tax. So that is my first declaration of interest.

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The second one is also that I am the majority shareholder of Joyce E. Ali and Company Limited; our family optical company. I own 50 per cent which is the majority share, because my wife and daughter own the balance. But that is the company which we built from scratch, once again we bought a piece of land and we had that building made for us, architect designed, a place for optical, optometrist and sideline work that goes with the filling of prescriptions.

So there we have the other source of concern at this stage: what are we going to pay as property tax on this commercial building? We come within the municipal corporation and we pay presently, I think, \$8,200-plus per year as property tax, so that is not peanuts in a business with a lot of competition and it is a small business. It is nothing more than a small business. So if my wife and I have concerns and we employ people at professional levels right down then I think we have a genuine concern, and when we are uncertain as to what we are going to do, it makes it very difficult.

Mr. Vice-President, I said I was going to speak on behalf of retirees and the retirees I like to speak about, firstly the public servants who have given, as very often we hear the term, long and meritorious service to this country, who are receiving a pension based on low salaries and who, in some cases, may not yet even be eligible for the Senior Citizens Grant, either by age or otherwise. But I think certainly, there is a very strong possibility that these people in the long run might be pauperized to the extent that they have to apply for a Senior Citizens Grant.

Look at their ages, if anybody at age 60 in 1990 would have retired from the civil service, and these include all levels of people, they would have reached their old age pension date in five years from that in 1995 and many of them now are over 70 years old and over 75 years in some cases. So what do these people have to look at? I have spoken to some people from the public service associated but not directly, to one of these persons, but I know they live in a very impecunious manner, they have their pride—some of them have had to take on new employment in order to carry on.

Now most of these people would have acquired homes, even people working in Port of Spain, in the public offices here, from the days of even Diamond Vale, houses were quite low in cost then, but the people have spent money to buy these homes and improve them, and now, today, they may be facing the position where they say, okay, this is the valuation for these houses and that is what they have to pay.

So when I say there is a potential for pauperization and it may be not so far away, and these people have to apply for Senior Citizens Grant, I am not exaggerating, it is a fact of life. Let them check and they will find out that, that other group of people—you were not in the Chair, but on October 19, I spoke on behalf of some of the retired judges and I spoke of those who are getting a fixed pension below \$3,600 a month and I mentioned that is what a Clerk Typist I—hon. Minister you would know the ranges, that is range 11 in the public service chart, and in 2007 they were already there, in 2009 and 2010, two more years, although they did get some of these allowances, but they now will be earning more than a retired judge's pension.

But more than that, these judges have always lived at certain levels and this is why it is critical for them just as it is for me, because as a person in that position they live in a residence of a certain level and where will that residence find itself now in terms of property tax. They have heard about the five levels—the hon. Minister has said it, the Minister of Works and Transport as Leader of Government Business in the other place said it, those five levels: Executive, modern, standard, sub-standard, and as they say the people who do the valuation or whoever it is say, shacks.

Now, I was trying to get what are the criteria for these different categories of houses, and so far all I can see is that they relate to square footage area in whatever—well they may put them into area, but listening to the Minister, I did not get his verbatim, but I got that impression that an executive house has so many square feet, et cetera—[*Minister Browne sends document across*] That is something to help me, right.

I believe that what I am thinking is probably confirmed by what the hon. Minister said, the important thing is—and I was quoting him in my contribution—“location, location, location”, that is what the Minister said and he is quite right. It is location and that is what the hon. Minister in the other place was saying—well this is a very long document, may I read part of it?

The category comprises best designed dwellings normally by an architect, and they gave all of the fixtures, et cetera: air condition, no swimming pool and jacuzzi, that is what I was told is an executive, but there is no area given there, how many bedrooms and whatnot.

I do not know what modern is, I know that ancient and modern relate to hymns [*Laughter*] but I do not think we are going through the hymn book here, but here you say well-designed—not best designed—buildings, modern construction and materials, usually contain two washrooms and over two

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bedrooms, may contain servant quarters and specialized rooms, carport usually of sound construction, not unusual to have above average room covering, floor finish, either tiled or carpeted, not unusual for a bedroom to be air conditioned, usually occupied by the persons in the middle income group. Okay, that is fine, that seems to be a description of my home, although it is modern, it is from 1975 to now, because that is when our home was completed.

The hon. Minister has presented me with some more figures which make it—we say as an executive, I am not too sure whether it is standard per square metres—oh these are rates, but I do not know whether it is square metres or inches—it is 10 square feet to square metres. I do not know whether it is 2,700 for an executive—

Sen. Browne: Square feet.

Sen. B. Ali: It is square feet. My house has more than that, so I have an executive style house in terms of area, I have a modern house in terms of having three bedrooms and servant room, et cetera. So, when I start looking at the rates here it is interesting to look after, so tax of \$5,700 per year, this is the bottom line there you are talking about for an executive. I do not know this is the area that includes Haleland Park where I live.

This is what we face \$5,700—or, I see the next one is \$3,900; I do not know where they will put me and then standard was \$2,900 and we go outside of that area to various other areas, but I am looking at myself personally. So those are the locations, locations, so this is what I am saying.

My property tax will probably go somewhere in that \$5,000-plus region. Somebody told me recently that I am going to be hit hard whichever way you go because when you look into Haleland Park there is so much land available so the land would probably fetch a bigger price than anything else and I see a lot of apartments—you must pass in going to Santa Cruz, you probably pass some of them there on the Saddle Road, they are being built for more than five years now and I understand that they are going at \$3 million or \$4 million, so I am very sure that by the time I see my return or the assessment before March 31, I will be in tight pants. I will be. I cannot afford to pay that, and the same thing applies to other people who are living in Fairways, Bayshore—a lot of judges for example are living in these areas but they also would have to pay that.

If you are a judge getting a pension of \$3,600 a month, you can work out how difficult it is to pay \$5,700 or \$4,000-plus a year for property tax and will come back to what we get for it.

Sen. Browne: \$3,500 a year not a month.

Sen. B. Ali: I know that is per year but even one is \$3,600; you cannot multiply faster than me—12 x \$3,600 is \$13,000 or \$15,000; somewhere around there.

Sen. Browne: \$400 a month.

Sen. B. Ali: Okay, \$400 a month, but I am saying with their salary is \$3,600; so it is 25 per cent of their salary or more. I do not know. Let us not go there because the fact is that it is a good chunk coming out of your moneys and this is why I say these are the people I would like to—I have spoken on their behalf many times.

I have been speaking on their behalf for about five years, since I have been in this Senate because I have met with the Retired Judges Association—this was in October—and I spoke on their behalf during the President’s Emoluments (Amdt.) Bill, that is when I spoke and I have been intending to go to the Attorney General to discuss it further, but he might tell me he is only handling the law, but he might have to direct me elsewhere, which is what he told me once before. *[Interruption]* Okay, I will urge a couple of my Senators to join me when that day comes.

So this is something like the residential tax war already and I am just confirming that I am going to be—I pay for a number of services, now the only service I receive from my municipal corporation is garbage service and they do a good job. Hon. Minister, you would know last year when we did that Bill for the extension that I was very displeased with what service I got, so, maybe they say well, okay, you only pay \$285 a year—but garbage service is good, I can always say that. I compliment those people, but I noticed some of the trucks now have Ministry of Local Government on them. Monday I saw the garbage guy who is there from the San Juan/Laventille Regional Corporation, so I said how come your truck does not have the painting of the Ministry of Local Government? He said, “Well, we are contractors and those are the subcontractors”. Who they are subcontracted to? I do not know. The Minister of Local Government must know because they now control all of the garbage contracts as far as I know, because all of them went out in your name at the time.

So this is something that I am concerned about. I am aware on taxes overall, how they were calculated, I am aware on the question of the industrial taxes, that is why when the hon. Minister—I did not mean to be rude or anything like that to the hon. Minister of Health, but I do have a background in these things for doing a great deal of work. I was saying I worked as a board member in the Industrial Development Corporation. I spent nine years there and I was always a member of

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the industrial estates committee, that is where they gave land out for a small cost—whether Trincity, Macoya, Diamond Vale or wherever it is, so I am aware of all of these things.

Fortunately, I have a reasonable institutional memory and I depend on what is in there to guide me, I may be wrong sometimes and I admit that if I am wrong I am willing to say I am sorry, I need to be corrected. But that is part of my institutional memory and when the hon. Minister said that I appeared to be confused, I did not know what he was talking about. When he said double cycle something, that is all I heard—double cycle plant I think he said.

2.00 p.m.

I was just trying to say that if you have a combined cycle electrical generation unit, you have in respect of the Schedule a facility that comes in two parts; part of it is housed under a solid building and part is housed in the open. So I was asking what you are going to do.

To me, the easiest way is to take the total capital cost and put a number. I am not the Commissioner of Valuations, but that is how it was done throughout the years. I do not know why you all want to shift to this system. I was talking to a friend on Monday night who has been involved in project work at various levels and he said when they built a methanol plant at Point Lisas, a private company, Couva/Tabaquite/Talparo had to do the valuation for lands and buildings taxes. It cannot be done that way. If it is so much easier, you will just have to trust that the people who are coming to you have those numbers. Those are the numbers which you put before bankers and so you have to be able to stand by them. I know because I have had to do it myself. So I hope the hon. Minister was not too annoyed, but I do not think he could have given me any help. Hon. Minister, you have given me much more help even by showing me these things today. I am seeing a lot more light than before.

So I have come to the conclusion that it must be related to the area because the hon. Minister of Works and Transport gave a series of houses and how much annual rent they will pay. I will give you a brief list of what he gave us. He said in Laventille, a standard three-bedroom house was \$1,500 a month rent; a standard Woodbrook house was \$4,000; a standard three-bedroom house in Gasparillo was \$2,000 and a three-bedroom house in Egypt Village, Point Fortin, which is a very low-level area of housing, was \$1,500 a month.

So I knew already that this is the trend, and the mansion he mentioned of the Member for Caroni East will fetch a rental of \$15,000—\$20,000 per month which worked out to be \$7,000 a year tax. The hon. Minister should then have said that I

live at Lisa Avenue, Hillsboro and this is what I would pay for my mansion. He gave what the hon. Member for Caroni East would pay but he never said what he was going to pay. You cannot give part of the facts; you have to give all the facts to be analyzed. Do not do it by sifting out where you give \$1,500, \$2,000, which is just to say it is not so bad, but I am not convinced that it is not so bad until I start seeing.

Hon. Minister, maybe you did a little injustice by not saying all of these things, but the valuers in the division are professional people so I do not expect them to be guessing numbers. But this is very interesting and it helps, but not that much. The hon. Minister of Works and Transport gave figures for Pleasantville which is important for the Member for San Fernando East. He said that a Pleasantville home was going to have its tax reduced from \$1,700 a year to \$583, so I was going to guess that it was going to happen and for me personally, that is exactly what I see is going to happen.

I could not say where I was going to be classified, but when I read that and I looked at the area and kind of house, I had built this house a long time ago. I have upgraded it, et cetera, and I know the tax should be a little more, but when you spread it across at this time when many people are so concerned, I just think it is the wrong time to introduce it. It could have been phased in.

Even if you take the commercial; right now, Port of Spain commercial is 10 per cent. That is why I said a little business like ours; two-storey on a piece of land is \$8,000 plus a year of municipal corporation tax. So I told my staff, I do not know where we are going to go. Many of you do not know that optical businesses are everywhere; from Oxford Street to Duke Street you can have about 10 optical houses.

Sometimes people say they are going next door, we say fine. Many of them return to us and we are unlike others, if they say they want a prescription we give them without charge, but that is for the Optometrists Association to see about. It is below the ethics of the profession to test people, give them a prescription and if they do not fill it with you, you say they have an extra fee to pay. In other words, you are giving them a discount if they left their work with you. So that was one of my major concerns.

I mentioned yesterday that I felt that the property tax on industrial property was going to be lower than what we have at present on the lands and buildings taxes on the existing facilities in the major industrial estates; Point Lisas, Phoenix Park, and Point Fortin with Atlantic LNG. Those are the major ones that bring a

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fair amount of revenue. For me, \$1 million plus was a lot of money in 1980. I do not know for example how much lands and buildings taxes PCS Nitrogen pays.
[*Interruption*]

Why is it so low? All of these new companies coming might benefit. I would like to see a summary of some of these major places, Petrotrin, a state-owned company falls there but they have very substantial assets in terms of plant and equipment. I say my background was from doing new projects; the level of lands and buildings taxes in 1980 for a methanol plant would have been almost \$2 million per year and a joint venture owned with the Government would have been about \$3 million plus a year.

Whether they are relooked at, do they get depreciation? When they go to their insurance company they do not look for a depreciation, but the replacement value at today's cost and that is what we should be looking at. Just as houses are looking at replacement value at today's cost that is what should be looking at and that is a source of revenue. If you are looking for revenue it is easier to find it there.

I believe the Point Fortin Corporation must have been doing very well from lands and buildings taxes and it was not going into the Consolidated Fund as far as I can see. When I looked at those figures of lands and buildings taxes, I did not see the list for Point Fortin giving any big amount. Hon. Minister, if you go to the Draft Estimates Statutory Corporations and other bodies you will see they have been collecting about \$15 million a year. If Point Fortin does not have that in terms of commercial or residential tax, so it is coming primarily from Atlantic LNG and Trinmar.

So when you say they have to replace some of those things, that is why you went from \$254 million to \$172 million, I believe you said or 325 to -75 and then you say you still have to give them, but that is the way the statutory bodies work, they have always worked so. But if you took away from Point Fortin the \$15 million, then you would have to make it up if you are giving them from Government subventions. You can tell me at any other time, hon. Minister, what the numbers look like.

Mr. President, I am a little puzzled still by the Schedule and as I say it looks like the process plants would be 3 per cent of whatever the taxable value is because they are outside and not in a building; whereas the factory looks like it is going to be 5 per cent. That is why I was talking about combined cycle plant which has 50 per cent under cover and 50 per cent open. How are you going to evaluate it? That is what I was driving at. I would have liked to see some more numbers in that respect, hon. Minister.

I would like, Mr. President, after going through that to look at some of the exemptions and that is where I go to the Bill itself and clause 16(1)(f) says:

"(f) land belonging to and in occupation of —

- (i) the State or its servants;
- (ii) a Statutory Authority; or
- (iii) state enterprise controlled by the State.

for public purposes;"

Mr. President, I have some concerns there because there is no real definition for a public purpose. The only one I know is for those acquired for public purpose through the Ministry of Agriculture, Land and Marine Resources and those are the ones that are published and they say what the purpose is, whether it is a park or whatever, and it is debated in both Houses and passed. That is what we know. I do not know how else one can deem something to be land for public purpose and I would like some feedback on that. Many of these state enterprises have a lot of land already, so they are not seeking to acquire any more.

Petrotrin for example has plenty land, too much land in fact, so they do not have to acquire a piece of land. How do they get exemption from property tax for it to be treated, if it is being treated for a public purpose? It is a question I do not know the answer to and I expect to get one from the hon. Minister in due course.

That is one area I have a concern about, companies like Petrotrin whose business is in a different sector, development of energy, production and refining, et cetera. Or if we say a company like Phoenix Park Gas Processors. My view is that they have very little land to be qualified for a public purpose and I want to make it plain that when I say land for these companies, and if they are processing plants for any such facilities, whether it is refinery upgrade, separation of ethane for example by Phoenix Park Gas Processors, those are not for a public purpose, they are commercial plants and we will be doing injustice to all other producers if we even think of them as being for a public purpose. That is where we really see levelling of the playing field; let them be equal to all the others like private companies in the field that will have to pay their lands and buildings taxes.

I know we have a tendency to give these foreign companies so many fiscal incentives. I know Essar Steel may never come here in the long run and some people would not believe me when I say Essar Steel has all the incentives that you will require from the Fiscal Incentives Act of this country. They have tax holiday,

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repatriation or sending out their dividends free of tax, they have import duty concessions and everything else. If we wanted to do in a local environment, we would not get all of that and Essar Steel is not even nearly there. They keep saying they are going to be here, but I have great doubts and I do not know what they are going to do.

Between Essar Steel and those other steel plants, I do not think they add to this country. All they do is add to the carbon footprint and we keep talking so much about the carbon footprint and yet we give all these incentives to a company that wants to come here and use 140 million cubic foot a day of gas to produce flat plates. I do not know what we are going to do with all those flat plates. I am told they are used for making motor cars. I did not know we were going to be making motor cars. I know that product is going to go to the United States where Essar Steel has also acquired downstream facilities. So they would just ship them out and we will be paying all these benefits to them. I would prefer to see our local firms get these incentives and we have to push them, if necessary, to do it. It is a pity that CL Financial has found itself in that position, but they were the ones that were doing it. That is why I always supported them.

They are the ones who got the breaks and used them, they developed their local people and were exporting their expertise to countries like Oman. So that is what we should be doing, developing and not paying all these people who take away—they have the emissions of all the carbon dioxide and then we talk about keeping it down by capture and sequestration. Capture of all of those gases is just talk.

Unless you have a real plan to do the carbon capture and sequestration by making it productive, it is just a big cost.

Mr. President: Hon. Senators, the speaking time of the hon. Member has expired.

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

Question put and agreed to.

Sen. B. Ali: Thank you, Mr. President. Thanks to my colleagues on both sides for the extension. I was hoping to be shorter but I have one subject that is close to my heart and in looking at these exemptions, apart from (f), on which I would like to get some feedback on what it really means in terms of state enterprises for public purposes, we still do not have for all these special purpose enterprises any

form of transparency or accountability. That is true; you have it within your system but we do not have it in the public domain. So when you take Education Facilities Company Limited and they build schools; are they not doing something for a public purpose? I do not know whether that would be defined as something for a public purpose. Or UDeCott for that matter building all these things. There are a number of things; everywhere you go they are there from RuDeCott to UDeCott, they all have fancy names and the Rural Development Company of Trinidad and Tobago or RuDeCott has changed its name to something else.

So all of these companies set up and being used, or in some cases I think misused, to carry out all these tasks which I hope nobody would say is for a public purpose, or if they do they can prove it is so. I am waiting for a response to that from the Minister.

Mr. President, one other item of exemption to which I take very strong objection and that is 16(1)(n):

"(n) lands belonging to the University of the Southern Caribbean."

Since 2008, I have been raising that question of what I consider discrimination in the employment practices being published in the newspapers and I have written to the President of the University of the Southern Caribbean on the matter. I do not propose to read the letter but basically, I am saying for secular professorial jobs you should not have that condition of either "committed to high Christian standards or ethics" and the other requirement of "being committed to high spiritual and ethical standards of the University of the Southern Caribbean".

I have taken exception to that and I am not going to say more except that my letter was dated August 10, 2008 and it was based on some set of career opportunities I had seen in which they gave the local people a small window to apply. In this connection, the Ministry of Labour and Small and Micro Enterprise Development, where all these applications are supposed to go, we know what that is for; it is to apply for work permits. Nobody can fool us about that. I know it very well because I have worked in the oil sector where everybody does that.

Mr. President, I would like to say today that my position is being considered as a complaint from that period of August 2008 by the Equal Opportunity Commission and on November 19, 2009 I got a letter from the Chairman of the Equal Opportunity Commission.

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"November 19, 2009

Senator Basharat Ali
65 Frederick Street,
Port-of-Spain.

Re: Alleged Discrimination in the University of the Southern Caribbean.

Dear Senator Ali,

We refer to the above captioned matter.

Please note that we are now in the process of obtaining staff to fill the position of Investigators at the Commission.

We therefore wish to advise that your matter will be more fully investigated by the assigned Investigator so that all facts and information relating to your complaint can be obtained.

Thanking you for your patience in this regard.

Respectfully.

Professor John La Guerre.

Chairman-Equal Opportunity Commission.”

In reply to that I wrote a very short letter.

Mr. President: Senator, are you making a personal case here, or does this have something to do with the Bill? If you are making a case dealing with a personal matter of a complaint, I would suggest that really is not right. I am not quite sure where you are headed with this, but if it is a personal issue, you really should not go there.

Sen. B. Ali: Thank you, Mr. President, but it is not a private complaint; it is a complaint in the public domain because these people are advertising these jobs. I have not applied and I do not know of anybody who has applied.

Mr. President: Does it have something to do with the Property Tax Bill?

Sen. B. Ali: Yes, Mr. President, I am objecting to (n) exemption of lands belonging to the University of the Southern Caribbean. I am objecting to them getting this concession because if they get it, we are condoning what they are doing.

I responded to Prof. La Guerre's letter as follows:

"Dear Professor,

I was pleased to receive your letter dated November 19, 2009 on the above subject and have noted the contents of same.

There have been some developments since my last letter which I wish to bring to your attention. The first relates to Government subvention in fiscal 2008 which has been confirmed as \$30 million as a transfer from the Ministry of Science, Technology and Tertiary Education. A similar amount was included in the 2009 Budget. However, in the Budget Estimates 2010, there was a revised 2009 estimate of zero and no allocation for fiscal 2010."

I objected to that and I continued:

"USC continues to advertise 'Career Opportunities' with similar 'other requirements' outlined in my previous correspondence. In this respect, I am enclosing their advertisement in Sunday Guardian, August 23, 2009 which is self-explanatory."

So this is part of my background information which I have sent to the Equal Opportunity Commission.

2.30 p.m.

I stand prepared to back up or sit with anybody at the University of the Southern Caribbean or the Equal Opportunity Commission to say that we are happy with what we are doing. That is why the Government continues to give GATE to all the students here and we do not want to frustrate the students who are going there for their education. If they are a commercial entity, let them pay the property tax if you want to do that. But in any case, that is against the Equal Opportunity Act.

I am pleased for this opportunity to speak on this Bill. I am looking forward to some reply. I do not know whether I would get some relief by the time March comes around. If I join the line of the penurious or I have to seek senior citizens discount, I would have to do that, notwithstanding my position. I know that when I am here I would not be doing it. When I leave this position and lose the salary and benefits, it is quite possible.

Mr. Minister, I get my pension from an energy company which is 75 per cent of the Senior Citizens Grant. That is my only pension other than NIS. I am

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telling you. I am not making a big case or dramatizing it. Those are the facts. When you see me with my begging bowl on Frederick Street outside our building, then you would know the story.

Thank you very much.

Sen. Mohammed Faisal Rahman: Mr. President, the Property Tax Bill is a defining Bill at a defining moment in the history of this country. It is a Bill that defines the core of this administration's thrust and the values that it attaches to matters that are of extreme importance to the world and us. I would like to say at the outset, particularly too, I would like to call him my friend—the hon. Attorney General—he calls me his friend when he speaks to me across the aisles—and advise him that I am aware of all the explanations and arguments that he has put forward in support of retaining certain objectionable clauses in the Bill.

I understand your argument for the constitutionality of those clauses and the question of receiving clauses. I do not remember all the legal terms but I understand the legal logic and methodology that leaves your heart, totally at ease, by retaining clauses that strike at the heart of human and civil rights. I have just said to you what I said, so that you would not feel obliged to rise to inform me of my misdirection which you may perceive.

I want to develop this matter of the questionable constitutionality of the clauses that you have retained. I ask a simple question: If this Government were the government of the day in the United States of America, when Rosa Parks sat in the wrong place in the bus, would they have said that it was the law that she may not sit there and would have agreed to remove her? What I want to say is this. When a constitution receives a prior law in the circumstances in which our Constitutions of 1962 and 1976 have been brought into effect, it was a necessity that was observed outside the realm of easy rectification, because you cannot overhaul all your laws in one day to reform a whole body of laws in order to form a constitution.

We are moving along in history, 1962 comes along and we become independent. So, we have inherited British law. Clearly, at that time British law had to be acceptable. So, we validate the British law. I would say I asked in this Senate when your predecessor was here: Why does the Government not undertake a global revision of all the laws of this country, so that injustices and differences in fines can be sorted out and regularized? The good Attorney General at that time told me that that was a very huge exercise. I think that the Attorney General

at that time even told me that it was being undertaken. I am not too sure. It might have been on the cards. It was a long-term exercise and laws had to be changed and amended as we went along.

I would imagine that when you establish your Constitution in that circumstance of necessity and you receive laws that are objectionable, it might not have been objectionable at the time, but in the course of social, human, civil and civilized development and the development of civilizations, we have incremental developments which are taken into account. Laws are reviewed and revised as we go along.

In 1962, we had an opportunity and we could not have done it all at once. Along came 1976, because we were going republican and we did not have a chance in the interim because of those developmental years and marching to Chaguaramas and all sorts of nice things. We could not attend to all the laws. From 1976 to 2006, years have passed and here we have, not a necessity to overhaul the global legalistic framework that we have, but a property law that is being revised in such a fundamental way where laws are being repealed and this law is being established today, after a fresh chance to look at it in its entire framework.

What do we have? We have in this age when constitutionally permissible things such as hanging have become circumscribed as in the case of the Morgan and Pratt decision, where we now have to ensure that if we are going to hang, we hang within a certain time and all sorts of other devices that are used, we have to try to surmount. The point I am making is that even law, if I may say as a layman, is a developing science and is meant to suit the societies as we develop along the way of history.

To come at a time like this in the 21st Century, when we have a 2020 vision—I would hate to feel that a 2020 vision is steel and concrete—sometimes I get up in the morning and wonder if this is the 21st Century. The 21st Century has a tenor to it that gives me goose bumps at times. We were looking forward to 1984 at one time to see whether certain things would happen, but the years keep trudging along. We are getting old but we are getting experience of a sort that cannot be understood. I wish I had the time to write and transmit some of these thoughts. This life is an adventure with the developments and technology.

This morning I was reading on the Net about the fabulous technological things CNN picked out as the 10 or 20 most amazing. We are contexted in a 21st Century and we have been presented with a very serious face, and the Minister of Health

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talked down to an MP and said that you would promote breach of the law and castigated him in a way to asperse against his character. The law is not always just. I propose to you that this new law now being introduced has wilfully on the policy of this Government which claims to be a caring government, brought in measures that impact upon the rights of people in the most fundamental way.

Freedom of the free enjoyment of property has become meaningless. I will explain why there is no mitigation of this freedom simply because a person does not pay a bill. You would see where the payments that are being required of the populace, even though they have been in the statute books for so long are unjust, improper and misplaced in terms of law. What we have here is a justification of injustice and having retained these injustices at a time when we are being given a new law. When we make laws we must pay regard to the circumstances of the society. I remember when in 1990, treasonous people went before the Privy Council, the Law Lords said that in this season of rebellion, they used a phrase, and on that basis they mitigated the entire offence and these people were released.

Here we have people who, at a time when the Government is in deficit spending and old age pensioners—who are not as fortunate as our fellow Senator here with his senatorial position and business enterprises—have nothing to get other than a pittance from the Government. They have horrendous bills to pay. We expect them to find extra money to pay the Government, money which the Government says it does not need. The Government said that this is not a money raising Bill.

Instead of saying this was a nuisance tax, they were not collecting it very efficiently; they were getting a pittance out of it and as the UNC government did, cut out the dog licence, the car licence and all the nuisance taxes, they have set out to perpetuate what was essentially a nuisance tax and brought it upon the people as a punitive measure. It is at a time when you cannot balance your budget and you expect the poor people to balance theirs. It is not only to balance theirs, but also to find the funds to pay bills that they have not catered for and worst of all how did they come by those properties? Those properties, if they were not inherited, were laboured for and bought from incomes on which income tax was fully paid. You are taxing their saved income a second time in perpetuity.

Now, not only did they pay income tax and struggled to build their houses brick by brick—it is only in recent times that the Government has been able to put out a lot of houses and spread around some of the largesse. Before that, men and women had to slave for years. As my Senator colleague said, starting off with \$42,000, I think that it was his gratuity and I want to make mention of that in a

while—they had to slave and pay taxes at a time when taxes were very high. Now, when houses have been built in the last 20 years, there has been purchase tax on every nail, screw, piece of lumber, galvanize, roofing and paint that went into those houses.

In 1977 or 1978, Dr. Williams took a turn on the business community and he was angry that because of certain things what he saw as windfall profits were being availed of by the business community. When prices went up internationally, they immediately raised their selling prices. He saw that as reprehensible. It was for profits. There is a reason for that because when you are going to buy the goods you would have to pay a higher price. If you do not provide for the profit as Mr. Sydney Knox had said, you are being taxed on illusionary profits. If the replacement value is now equal to your present selling value, why would you give away the goods at the replacement value? It is not a windfall tax.

I wrote a letter at that time to the press and I had a very interesting experience. I am going to take this liberty because my friend recounted his life's experience very interestingly. I think that this will interest everybody. I wrote a letter to Mr. Lennox Chongsing (or something like that) who was the editor of the *Guardian* at the time. I took it to him. In those days we had to type a manuscript, proof read, correct and type again and then take it to the *Guardian*. Today it is beautiful. Tick, tick, tick, gone!

When I took it to the editor he said that everybody was writing on that what I could say again. I said, "Boss listen. Read it. If you like it print it, If you don't like it, throw it in the bin." By the time I reached back to my office, his secretary had called me. She said that Mr. Chongsing said that he would publish it tomorrow. First of all, I showed Dr. Williams and they put a picture of Dr. Williams in the letter. The government enjoys windfall taxes because when a barge is moving with oil from Trinidad to wherever, when the price goes up and it reaches that side they charge current day price. They do not charge the original price.

This is the point I want to make. When goods come you pay duties at that time and whatever taxes are payable. You pay duties on the freight, insurance, cost of the goods and port charges. The government was getting 10 per cent and 5 per cent at every end. When you paid your employees' salaries you had to deduct the tax because the doctor say, "yuh paying to learn." That was the day when PAYE came in. The government was getting money at every stage of the business chain. Then, at the end of it, when you made your profit at the end of the year, you paid 50 per cent as corporate tax. Do you know what? The government used to

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make—just throwing out a figure, I cannot remember the exact figure—where the businessman made \$1 for the whole transaction, the government was making \$3 on the same item that it was accusing the businessman of making windfall profits.

I do not know if anybody here remembers that. I do not expect that you would. That is one of my little feathers in the cap. It is a story which I give to my children from time to time. It illustrates the injustice of this current Bill. In these houses there are all these inputs which the Government has taken its share and put in its pocket. You are asking people in the twilight of their years to pay taxes.

Sen. Narace: Relevance.

Sen. M. F. Rahman: Excuse me! Excuse me! Today, you are asking people to pay taxes on properties. Does that sound familiar or relevant to you? That is what I was talking about. Pay attention! You are asking people to pay taxes on properties on which the Government has already milked the guts out of it and people in the twilight winter of their years cannot make ends meet. You want to charge them surcharge and interest, penalties upon penalties. Then you want to seize their goods, take away their properties, divest some of it and throw them on the streets breaking down the door in the interim. Devil take the hindmost.

As a government you do not give a hoot to what happens to the citizens. I suggest that if you are mad enough to impose this tax and treat it as a money Bill when you say that it is not a fiscal measure—you have said that it is not for raising money—it is a Bill that deals with public law. It is not a money Bill. Regardless of who has put their signature on that it is not a money Bill at the level of the Senate. The definitions are there. Tax law is not money Bill and fiscal measure. The Government has admitted. If you are crazy, insensitive, uncaring, callous and shortsighted enough as a government to proceed with this Bill, at least put a little humanity into it. Say that if the people cannot pay their property taxes, “We the Government would buy it from you, take your property and sell it on the market to somebody who can afford to pay the bill and put you in a house from the HDC and charge you a decent rent which you would be able to pay from the money we paid you.”

You would have equity, reasonableness, a human face and justice. Do not do as in the old time movies when the Pharaoh comes, drags away the boy and the mother is crying and begging, “Leave meh chile alone.” We have Pharaohs today running governments insensitive to the needs of the people and could not care less about the human rights of the people.

Some of us here are well-placed. We do not anticipate that we may one day be at the receiving end of this sort of, I hate the word “draconian”, it is so overworked but it is a good word. We do not believe that we would face these draconian measures, so we can sit and make law without thought to people's welfare and needs.

One of our sages said do not hate anyone too much and do not love anyone too much because the wheel of fortune turns and one day the man you hate good may come to him and you would be hurt, and one day when the wheel of fortune turns and evil may come to the man you love and you would be hurt. Do not love too much and do not hate too much. The wheel of fortune is turning. You know the story, oh how the mighty have fallen. Mighty men have fallen. Today, you may live in a palace, but do not believe that there is a guarantee that you would always be in such a situation. If there is faith that there is a God above, do not believe that even if you die in splendour that you would enter the hereafter in splendour. Oppression is worse than slaughter. That is one of the maxims in my faith. Oppression is worse than slaughter. When you promulgate laws that are so oppressive fundamentally, you are doing worse than slaughtering people.

The point I go on to is that the Government said that it does not need this money. It has brought a Bill without removing the dirty parts. It is as if it has done a barbecue with the cow with all the entrails inside. Pretty Bill, dirty in content. If you had a heart and a mind to think and you ask yourself—there is an article by the economist Mary King which echoes what I am saying. Why are you using a device to oppress the people when you have no necessity to do it? We follow an economic system that dictates certain things as to how much money we should have in circulation and how much of this and how much of that. It is a system that is given to grave injustice.

Let us say that we keep the system and you want additional taxation, although the Government says that it does not want or need it, it is bringing this for less than wise purposes. Let us suppose that you say you want it. As the economist Mary King says, which I have been saying, why not tax other areas or increase taxation in other areas where the people can afford to pay the tax? Tax income as a good way, so that you do not have the people who have no income having to pay tax on a non-income situation. Then I started to think.

Some time ago, Sen. Prof. Deosaran brought a motion in the Senate regarding campaign finance. Although the Government abstained, it carried the majority. That told me something very important. The corporation tax that was moved from 50 per cent to 25 per cent is to facilitate whom? Who benefits from the

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corporation tax, if not to campaign finance and political support? This is why the business community enjoys, in my humble view, such a preferred position in terms of government's policies. Bank taxes are reduced. The way it is made open for businesses to function and make masses of profit at reduced taxation and then you come with a tax measure like this which you say is money that you do not need. You impose it in such a way that it is a trickle down tax because it would go down to the consumers. There is no way that the tax would not be passed on by landlords and pity the poor soul who is not a landlord but a resident in his property who has no income.

3.00 p.m.

It is unjust to tax wealth on which taxes have already been paid—I am making several points here—and worse, to penalize people into destitution. I call this a property appropriation tax. The Government is setting out to appropriate the properties of poor people. It is opening the way for the wealthy to be vultures over the masses. Over a period of 25 and 30 years in property ownership, we will come back to barons and fiefdoms and the poor masses will not have shelter and the owners of the properties and their descendants will occupy the residences in the land. The law may very well then be that slavery is permitted and that it will be legal with this law the Government is bringing.

If it is law, it is legal. You pass the law as it was in the days of Rosa Parks and discrimination was legal. You know that the longest journey starts with the first step? This is the first step along a dangerous road. It is clearly fascism, communism; not even communism, because communism is supposed to share for everybody. It is fascism being imposed in a communist way: you do what I tell you or get into trouble.

Now, we cannot have a peaceful protest outside the Chamber that is promulgating this law against the interest of the people. We cannot protest silently to say that we do not want this tax. Margaret Thatcher, no matter how we dress it up, fundamentally tried to impose an unpopular tax. The Minister of Finance in the other place dressed it up to say it was not this tax; it was another tax; but the principle is the same. At the end of the day, this tax will affect every individual.

The Minister of Health said that they were looking to preserve the little residual income that the poor householder has, so they were taxing the cigarette so that he would be discouraged from buying cigarettes, so that he would keep a few dollars to buy food for the baby. What is the principle here when they are seeking to take the same money they are saving him from spending for a property tax that they say they do not need and could print?

Any way you look at it, it is an absurdity and a vicious imposition that has no merit and goodness. It is a Bill that defines this Government in terms of what it is working toward. Maybe it is doing it innocently, being driven by a power it cannot understand or overcome and when voices are heard in the night saying to do this and that, they believe it is a divine instruction. God sent his evil spirit to send Saul astray. People say that there will be a price to pay for this legislation. It may be a gruesome price; not merely a change of government.

When Sen. Cumberbatch mentioned incidents in the past, the Minister of Health was outraged. How can he say that? It is history. When Louis XIV and Marie Antoinette were in power, they were not paying attention to the voice of the people. The Jamaican Prime Minister is paying attention to the voice of the people. He is a bigger man for it. He can say it is unpopular and I cannot alienate my people and be unjust to them. Increase taxation on businesses which have profit. What is the rocket science in that philosophy? What makes that difficult to grasp? Why, despite all the protestations of every dissenting Member in both Houses, the Government is set upon its course and finds that it must railroad and ram this legislation down the throats of the people without alteration? Why must it not go back anywhere? Why must it be passed as it is?

There are so many things that I can say about this matter that redounds to the disgrace and discredit of this Government. Maybe I should talk and let the public hear; but they cannot eat too much in one meal; they could get indigestion. I think maybe I have said enough at this stage.

Let me take a quick flick and see if there are any important issues. The Minister of Finance said that the Bill was carefully thought out since 2008, but every wise Minister of Finance knows that in 2008 America was already in recession and the subprime crisis had already started. It is an excuse that this was not from needing money. The rest of these points are really good points, but not as dramatic as those already made.

In closing, I do not know what language I can use to convince the Government to review this matter and not impose a tax on the people, which it does not need. Why not consider imposing taxation in ways that do not inflict pain on the poor?

I feel honestly drained. I have said enough. I will now take my seat and hope that the message has sunk into the minds of the people.

The Attorney General (Sen. The Hon. John Jeremie SC): Mr. President, I rise to make just a few comments on certain of the remarks made, more latterly by Sen. Rahman, but also by my good friend, I thought, Sen. Prof. Deosaran and some of the comments made by Sen. Drayton.

I speak here to the questions they have raised on the constitutionality of the Bill. I am not going to speak to the policy considerations which have brought us here today and which underpin the interventions made by the Minister in the Ministry of Finance.

I begin with the last contribution made by Sen. Rahman. Sen. Rahman accepted implicitly that the law might be constitutional; but his argument was that it is not because it is constitutional; it is just. He referred to Rosa Parks. The fallacy in that argument is that the law which prevented Rosa Parks from riding in the front of the bus was an unjust law. What you have before you is a law which, I will demonstrate, exists throughout the world and is a feature of tax administration.

To understand that, you have to understand that the type of tax with which we are dealing runs with the land. They are not personal debts—in Latin, they are not debts in personam; they are debts in rem. They are akin to property rights. They have existed in that shape and form since time immemorial. They have existed like that at the time of the Magna Carta, in the 17th Century in the UK.

I will come back to that. I want to begin with the provisions of our Constitution. I will speak to Sen. Prof. Deosaran's and Sen. Drayton's contributions because Sen. Drayton, in her contribution suggested, I think, that there was something wrong about our looking at what obtains in other parts of the world.

As a lawyer, that is my only remit. I look primarily at my Constitution; but my Constitution is not drafted in isolation. The Bill of Rights in the Constitution traces its roots to the Magna Carta. It borrows heavily from the American Bill of Rights. As a matter of fact, there are cases—the La Salle case to which I will refer in a while in which the courts have held, as high as the Privy Council and one of our strongest Courts of Appeal comprising Mr. Justice Hyatali, then Chief Justice, Mr. Justice of Appeal Phillips, that the due process clause of which Sen. Mark spoke in respect of his property rights, is to be construed in the same way as the American due process clause in their constitution.

So when you spoke about borrowing and looking at what goes on with other Commonwealth and common law jurisdictions, I bristled because my training suggests that when I look at a matter in the court, lawyers look at precedence.

Precedence might be one of two types. You may have a legislative precedent or a case which is precedent. The law we bring today and, in particular, those provisions that have caused disquiet in the bosoms of Sen. Prof. Deosaran and Sen. Rahman are part and parcel of normal tax administration statutes. I will demonstrate that in a while.

The starting point for us is: What does our law and our Constitution say? By section 2 of the Constitution, under the heading, "Preliminary", it declares itself to be the supreme law of Trinidad and Tobago. It says:

"This Constitution is the supreme law of Trinidad and Tobago, and any other that is inconsistent with this Constitution is void to the extent of the inconsistency."

A plain, unambiguous statement set out in the preliminary part of the Constitution.

Yes, we, as a Parliament, are sovereign, but the Constitution is supreme. Our Standing Orders are subject to the provisions of the Constitution and every law we pass must pass constitutional muster if it is to have legal effect. There is nothing we do that is immune from attack on constitutional grounds. Even in the ordinary legislative process, if it infringes by accident a non-entrenched provision of the Constitution—not one protected by a three-fifths, a two-thirds or a three-fourths majority—just an ordinary provision of the Constitution, it is void. So the Constitution is the supreme law. That is the context in which Sen. Mark's and Sen. Prof. Deosaran's reference to sections 4 and 5 of the Constitution must be read.

They speak really to section 4 of the Constitution. I quote:

"It is hereby recognised and declared that in Trinidad and Tobago...there have existed and shall continue to exist, without...discrimination by reason of race, origin, colour, religion or sex, the freedoms following fundamental human rights and freedoms, namely—

"(a) this is the one Sen. Mark referred to and the one I believe Sen. Prof. Deosaran was speaking to—"the right of the individual to life,"—not relevant here—"liberty,"—not relevant here—"security of the person,"—not relevant here—"and enjoyment of property"—relevant here—"and the right not to be deprived thereof except by due process of law;"

That clause has been the subject of judicial interpretation and that is what prompted me to make an intervention when Sen. Prof. Deosaran was speaking. You cannot read the clause in isolation. There are cases which are decided on

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point and in respect of a tax in statute. So the first case you look to in Trinidad and Tobago is *Mootoo v the Attorney General*, which was known in the other place. My good friend, the former Attorney General, Ramesh Lawrence Maharaj was junior counsel in the case.

This is a case which dealt with the raising of a tax in respect of unemployment. Unemployment was a problem in 1976 and the Government of the day sought to raise a levy. It did not expressly state that it was for a public purpose and, on that basis, the measure was challenged. It was argued that the unemployment levy sought to deprive people of property, in the vernacular sense of the expression, and to channel those resources into training for persons who were unemployed. It was argued that that was not a public purpose.

In the course of delivering the judgment—and this is one of the strongest courts of appeal we have had—it comprised Justices Hyatali, Phillips and Corbin; perhaps the only one missing was Telford Georges. The court held that the Act was a valid exercise of the power of taxation. It says that there are three elements of a tax that are required in order for it to be upheld. It must be imposed by the State or other public authority; it must be compelled; and its imposition must be for a public purpose.

They also went on to make some comments about the taxing power in respect of section 4 of the Constitution. They said of section 4 that the power to tax rests upon necessity and was inherent in any sovereign legislature under its general legislative power.

By that, I should refer to section 53 of the Constitution. That is the power which says that:

"Parliament may make laws for the peace, order and good government of Trinidad and Tobago."

—it based the power to tax on the doctrine of necessity—and goes on to say that the due process clause was not a limitation on the taxing power of the Legislature and only applied if the Act was so arbitrary as to compel the conclusion that it did not involve an exertion of the taxing power but constituted, in substance and effect, the direct exertion of a different and forbidden power as for example the confiscation of the state of property.

The tax we bring this afternoon bears none of these characteristics. It is not a confiscation of property.

The court went on—and this is for Sen. Cumberbatch as well, who spoke directly to me at 12.30 a.m. this morning and asked me how sure I was about the tax we were about to impose. The only answer is that I can only be as sure as the cases bear out. Every single case that I refer to is supportive of the tax we impose and of the specific provisions that some of the Senators; not Sen. Cumberbatch, interestingly enough—he kept away from those distress and forfeiture provisions; I listened to him very carefully—but some of the others jumped in and went directly at them.

This is what Mr. Justice Phillip says of the taxing statute. He said, first of all, the general principle is that if you want to say it is unconstitutional, the onus of proof is on those who seek to allege unconstitutionality. In other words, there is a strong presumption of constitutionality in respect of a taxing statute.

That is important because he is quoting from an American case *Crowell v Benson*. He said that when the validity of a taxing statute is brought into question, even if a serious doubt of constitutionality is raised, it is a cardinal principle that this court will first ascertain whether construction of the statute is fairly possible by which the question may be avoided. He is clearly saying that the onus of proof is on those who seek to challenge the statute.

This is the standard of proof. It is not that the onus of proof is on you if you seek to challenge the constitutionality of a taxing statute. This is because of the special nature of it. It is a statute based on the doctrine of necessity.

He goes on to say that the standard of proof is proof, not "beyond reasonable doubt" as in the criminal trials. For a taxing statute to be invalidated, he says, quoting another case, it must be proved "beyond all reasonable doubt". That is the standard of proof.

He goes on to refer to a case from Antigua, which you may remember. This is the *Attorney General v Antigua Times Limited*. We know that Antigua had a difficult period of adjustment under a previous regime and all sorts of taxes were levied in respect of people who owned presses and who might have been in the opposition.

He said that the presumptions in favour of constitutionality and the proposition that the Legislature correctly understands and appreciates the need of its own people are authoritatively stated by the Privy Council in *Attorney General v Antigua Times Limited*. Those are strong statements and, put in context of what we are about today, that is not the end of it.

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Mr. Justice Phillips says this—and I am going on now to look at the specific provisions that relate to distress and forfeiture. He is quoting an American text. That is why we as lawyers look all over the place for precedence. The text is Mason and Beaney, *American Constitutional Law: Introductory Essays & Selected Cases*. He quotes this passage:

"A Government, like its individual citizens, must have regular income to pay bills and maintain credit."

He goes on to say—and this is important—

"In addition, a government must have coercive power to collect taxes."

That is what he says in the case *Mootoo v The Attorney General*.

This case was decided in 1976 and can hardly be said to be a relic of our colonial past. It, in effect, underlines the power which is clearly established by common law by the property principle which applies to distress and forfeiture. Those are ordinary property principles that have existed since the 12th or 16th Century. They have been a part of our law forever.

I will just give one example. I purchased a motor car using the government facility and I was required to execute a Bill of Sale. If I do not pay the State, why should they be put to the onus of having to run to court to prove a case against me in respect of non-payment of a debt, when the ordinary commercial meaning of a Bill of Sale gives the ordinary creditor the right to seize the property? You could be driving on the Churchill-Roosevelt Highway; someone will come into your car and take your keys and you will have to step out and take a taxi and go your way. That is how commerce has always been established. That is how bills are paid and that is how tax administrations run.

In addition to that, I am coming to the specific powers. There is a book by our own Claude Denbow, called *Income Tax Law in the Commonwealth Caribbean*. He is referring to the garnishee proceedings. The principle is the same. You do not ask the revenue office to get a court order in respect of debts due and where payments come from third parties.

3.30 p.m.

I am sure Sen. Dr. Gopaul-McNicol knows very well. At page 163, this is what was said by Dr. Denbow.

"It is quite clear"—he quotes the section from the Income Tax Act, section 112—"from the foregoing provision, that a mere letter from the revenue has

replaced the court order, which could sometimes be required to be served by an ordinary litigant in garnishee proceedings."

I say all of that, to emphasize the point that the right guaranteed under section 4(a) of the Constitution is subject to and has always been recognized to be subject to the taxation power of the State.

In her book, Margaret Demerier, who is another daughter of the soil, she used to teach at the Cave Hill Campus of the University of the West Indies, titled *Fundamental Rights in the Commonwealth Caribbean Jurisdictions*, she speaks of the case of Mootoo and she says:

"The courts have clearly admitted one state power as a fetter on property. Thus, when a taxing statute authorizes a deprivation of property, it is carried out by due process of law, by reason of it emanating from the taxing power of the state. That is all that they require, due process."

There is nothing more that is required, due process. That is all that is required for due process. There is nothing more that is required for due process than for it to emanate from the taxing power of the State.

That is the old common law. It is part of how taxation systems are administered throughout the common law Caribbean. In every Commonwealth Caribbean state that you can look at, you have taxation regimes which are based on these principles.

In the United States, there is the specific question, that is to say, whether or not it is fair for you to have forfeiture and distraint proceedings, which are outside the remit of the court. That was considered by the Supreme Court of the United States. What the Supreme Court in the United States did was to refer right back to the Magna Carta. The Magna Carta declares that no person shall be deprived of his life or liberty or property, but by the judgment of his peers or the law of the land.

They go on to say:

"To have taken the clause 'law of the land' without its immediate context might possibly have given rise to doubts. They go on to speak about the English Monarchy, the summary method for the recovery of debt due to the Crown, especially those due from receivers of revenues."

They said that it is difficult to trace where all these things come from, but the Magna Carta itself declares that:

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"We our bailiff shall not seize any land or rent for any debt as long as the present goods and chattels of the debtor do suffice to pay the debt and the debtor himself be ready to satisfy therefore. Neither shall the pledges of the debtor be distrained as long as the principal debtor is sufficient for the payment of the debt."

The only fetter on these rights at common law, is the ability of the individual to pay the debt. That is the only fetter on these rights of common law.

What the case of *Murray v Hoboken Land* in the United States decided is that all of the these common law remedies in the United States, with a similar enacted in different circumstances, in a revolutionary context, are saved by the Constitution. It makes no sense to argue, you cannot maintain an argument that the exercise of these rights to distrain, forfeit, or garnish; the exercise of all these common law rights are unconstitutional. It just cannot be done. That is what the Americans say and it is similar to our case of *La Salle v the Attorney General* to which Sen. Rahman just referred. That is the Privy Council in *La Salle v the Attorney General* in speaking of the due process clause. They say that due process means not simply by a court, but by a recognized procedure in the law.

If you have garnishee proceedings issued under the hands of the Commissioner of Inland Revenue, which have been a part of your law from ever since, that is due process of the law. The short point is that, on this basis alone, there is no infringement of section 4(a) of the Constitution. This is not a deprivation of property contemplated by section 4(a) of the Constitution.

Even if everything we have said was wrong, you have section 6 of the Constitution. Section 6(c) says that you cannot wish it away, it is there and it is there for a purpose. It is not there for the purpose that Sen. Rahman said, to make valid everything that took place prior to independence. That is not strictly speaking what it is there for.

It goes further than that. In section 6(1)(c), it speaks to what we are doing here today. It says:

"Nothing in sections 4 and 5"—the provisions which derogate from the fundamental rights—"shall invalidate—

- (c) an enactment that alters an existing law but does not derogate from a fundamental right guaranteed by this Chapter in a manner in which or to an extent to which the existing law did not previously derogate from that right."

What we have done, just in case everything that we said before was wrong, which I think is impossible to argue, in the face of all the authorities, is enact law which alters an existing law, but does not derogate from the fundamental right to an extent or in a manner in which the existing law did not previously derogate from that right.

The Privy Council itself, two weeks ago, held in the case of *Johnson Balwant v the Attorney General*, that the decision of the court in *Matthews*—some of you might not remember *Matthews*. *Matthews* was a case which came about because the Privy Council in Roodal decided in 2005, just after I came into office, that the death penalty in Trinidad and Tobago was unconstitutional and void. We thought that was the end of it. They said that the old law, the 1861 statute, the Offences Against the Person Act, which sets a mandatory sentence in respect of the death penalty, that was not saved law. That ran counter to everything that I knew, and as a consequence I spoke to the Attorney General in Jamaica, at the time AJ Nicholson; the Attorney General in Barbados, at the time Mia Mottley and we decided, with the backing of the Cabinet, that we were going to ask the Privy Council to do the unprecedented; to re-examine itself and to give us a broader panel. It was a split decision, three to two. I said this is wrong, it contravenes everything that we know about how our Constitution works and they gave us a broader hearing. They impanelled the largest board to be assembled in 180 years; a nine-man board and they overturned Roodal. In so doing, they upheld the decision of Mr. Justice de la Bastide in the Court of Appeal. What that does, in effect, is to reaffirm the vigour and vitality of our special savings law clause. We won, Barbados won and Jamaica lost because they did not have a special savings law clause in their Constitution.

What the court, two weeks ago in the *Johnson* case, said, is that there can be no question of the board reopening the hard-fought decisions of the Privy Council in *Boyce* and the Queen and *Matthews v the State of Trinidad and Tobago*. They are not going back there. They had a nine-man Privy Council. We have settled that issue. The existing clause does not preserve only whole statutes, it preserves pieces of statute which you repeal and it preserves, as a matter of fact, law which is incorporated as part of our law under the Supreme Court of Judicature Act, section 12.

All that I would like to do and I was not permitted to do by Sen. Prof. Deosaran last evening, at this stage is to refer briefly to some of the other taxing administration systems which exist throughout the common law world. I do so only because as a lawyer, all that I know is precedent; whether it is judicial or legislative precedent.

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In Barbados—with a Constitution which is similar to ours, as the Privy Council held in the Boyce case, which was decided on the same day as Matthews—there is provision in their income tax law for garnishee proceedings. All it provides for is the Commissioner under the Act—they still speak of Crown because obviously they are not a republic. If you are indebted to the Crown under this Act, the Commissioner may deliver to you a demand for payment, stating the name of the person indebted to the Crown and you go simply to garnish the wages. In Antigua, St. Kitts and Jamaica, there are similar provisions. In Jamaica, the law is old. In Barbados, it is new; the property tax in Barbados is new. In Trinidad and Tobago, this is also a precedent, I can only turn to what happens in respect of WASA rates, what happens in respect of the Income Tax Act at the present time and what happens under the Rates and Charges Recovery Act and the Lands and Buildings Taxes Act.

If you look at section 74 of the WASA Act it says:

"...water rates and sewerage rates payable to the Authority, shall be payable and recoverable in accordance with this section and not otherwise."

By subsection (5), it refers you to the rate charges recoverable under the Rates and Charges Recovery Act or partly in one and the other. You have to turn to the Rates and Charges Recovery Act, Chap. 74:03. What that Act does is to provide for powers to distress for arrears and for sale under section 11. These are our laws. This is our precedent. That is the rates and charges and water rates. In the Lands and Buildings Taxes Act, I have already pointed to sections 26 and 27, which speak to the power to forfeit lands. And in 22—I am missing something—it speaks to the power to distrain, but I am subject to correction on that. I seem to have misplaced that page.

The only other section that I referred to is section 112, the Income Tax Act, which provides for garnishee proceedings. As Dr. Denbow has said, that is done by way of a straightforward letter, without the interpositioning of the court.
[*Interruption*]

Sen. Mark: May I?

Sen. The Hon. J. Jeremie SC: No, not as yet. In the United Kingdom, which I was rudely stopped from referring to last evening, section 61 provides a language which is similar, I think, to what we have before us. This is the Taxes Management Act of 1970.

Section 61(2) states:

"For the purpose of levying any distress, a person may...information on oath that there are reasonable grounds for believing the person is neglecting or refusing to pay some charge. You do not go to court, you issue a warrant in writing authorizing a collector to...break open in the daytime any house or premises calling to his assistance any constable."

What I have done is not to say that these powers are powers which are in and of themselves not draconian. They are powers which are strong, but in most common law jurisdictions, there are powers which are thought necessary for the revenue to possess in order to administer taxes. They are not unconstitutional, either on the basis of the Mootoo case and what the court expressly says about the taxation power being based on the doctrine of necessity and not being caught by the 4(a) prohibition. They are not unconstitutional either on that basis or if Mootoo is wrong, and the provisions are ultra vires the Constitution, they are saved by section 6.

Mr. President, I am pleased to tell Sen. Cumberbatch, as I did last night, that I stand behind my own work, because I have been living with these cases for some time and I stand behind the work of my technocrats. I have not spoken to the merits of the measure. My colleague will do that, but I have spoken, and I think I lay to rest the problem with respect to constitutionality of the Bill and I look forward to the day when the provisions are challenged by Members on the other side with caveat that if they lose the matter, in the same way that I gave the undertaking downstairs, that I will pay. I told my colleague, the Minister of Finance that she should fear not and put her resources at risk. I have meager resources, but they are at risk.

I issue a challenge to them to put their source on the line. So if they bring this sort of frivolous litigation, in respect of this matter, where the courts have spoken time and again that they too should say: "My resources can be in jeopardy."

Sen. Prof. Deosaran: Thank you very much, Mr. Attorney General. Let me first of all apologize for not giving way to you yesterday. I had given way twice and on the third time, for some reason at the moment, I did not give way and I wish to apologize very sincerely to you.

The way you have instructed us, through you, Mr. Vice-President, has indeed been very gracious. I am speaking for myself and I am quite sure many other Senators. It has been quite instructive.

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I do not wish to be contentious, except to ask for a clarification on a puzzle which I have found. Given the background of your knowledge, perhaps my mind and the others can rest in peace. With respect to the lands and buildings taxes, for example, in 1920, you have referred to the Schedule which allows the warrant to be issued by a public servant. What struck me was, in the 1990 legislation, the municipal corporations legislation, there is a Schedule where the warrant to enter and break into the homes is signed by a magistrate. I thought, in the scheme of things, that we had raised the bar of due process. I thought that was the precedent that would have been more suitable, in order to show that the law is organic and moving with the times.

In terms of why is there in the 10th Schedule in the Municipal Corporations Act, a warrant for entry and breaking into signed by a magistrate? Why did we not follow that precedent? I know you have cited a number of other cases, but as you know in law, there are other cases which can bring those citations into dispute. The question remains: Why is it that the 10th Schedule has a warrant signed by a magistrate? I am encouraged to raise a point with specially you, because on the last occasion, you cited a paragraph from a book that I wrote, *Trial by Jury*, which indicated that the law should try and keep up with the times. I would be very grateful.

Mr. President: Before you go on, allow me to do this. 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. [*Hon. C. Enill*]

Question put and agreed to.

Sen. The Hon. J. Jeremie SC: Mr. President, I will be a few seconds. The answer to the question posed by Sen. Prof. Deosaran, obviously has to do with the complexity of this new exercise, the number of persons who might potentially be captured by it and the ease of administration, which is contemplated by having the process be a summary process. That is recognized as well. I am not saying that another process, that is to say, having a warrant issued by a magistrate, putting a judicial officer in the middle might not, in certain circumstances, be justified. But, my drafting instructions—and I go on the basis of drafting instructions—tell me that the number of persons who are expected to be caught by this exercise would be too much to go by way of a magistrate each time.

Sen. Mark: Hon. Attorney General, I know that you have not completed your contribution, so—

Sen. The Hon. J. Jeremie SC: I have.

Sen. Mark: Okay, Mr. President.

Sen. Michael Annisette: Thank you, Mr. President. Hon. Members of this Senate, I rise to make my contribution in this debate in a manner and a fashion that will speak to several issues that I believe are fundamental and critical.

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

I want to do this against the backdrop that the question of housing is a fundamental issue and I believe it is a rights issue.

While I have sat and listened to some of the debates, some of the questions that have been going through my mind are: What are we debating? Who are we protecting and who are the people in Trinidad and Tobago or in this society that own most of the lands and properties? Therefore, from where I sit, what kind of contribution can I make that will speak to protecting the pensioners, the workers on minimum or fixed wages, the unemployed; and the underprivileged in the society? I think it is critical in this debate.

In this context, I want to make the point that most of the times the explanation is not the explained and the description is not the described. Therefore, some of the concerns that I have are: What mechanisms are we going to put in place to speak to our cultural history and antecedents, as opposed to citing precedents from other jurisdictions? While I appreciate what you are saying, I think that in any law, provisions must be reflective of our own history and culture for it to make sense. To simply or blindly just go down the track of quoting precedents from other jurisdictions and not taking into consideration our own history and antecedents, can make your law, while right, flawed. The law has and must be a reflection of our own realities in our society. In that context, my concern generates from what we do to protect those citizens who are not fortunate.

Let me make a fundamental point out front, so that people can know where I am coming from. I support the concept that you must have tax and that people must pay tax on their property. I think what is happening in Trinidad and Tobago—everybody knows that it is obscene, in my estimation, that people can own millions and millions of dollars worth of property and they are paying as much as \$300—\$1,000 in tax.

I know of a case—you go to Sangre Grande and there is a house that was built by a docker who struggled hard. The docker pays more tax than that individual who can afford. Therefore, the legislation is flawed, in the sense that those

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considerations were not put into consideration. The Government's policy in housing is something that I have applauded and will continue to applaud. I make the point in the context that the only institutions that I know that speak to affordable housing for the people that most of us like to talk about, the downtrodden, are the Government housing, the housing projects by the National Union of Government and Federated Workers, and the Seamen and Waterfront Workers Trade Union, with obvious support from the Government. Those are the people I am concerned about; and obviously the pensioners.

4.00 p.m.

I think that you have to pay attention to that. I do not share the view—I want to express the view—that you are waiving the payment of the tax, but if the person dies and his family takes over the property, they have to pay the tax. To me, this is something that the Government should look at in a real way.

[MR. PRESIDENT *in the Chair*]

The other point is the affordable housing scheme—the 2 per cent. In that system, there is a horizon. If you look at a five-year horizon to determine whether or not that individual can continue his payments, given what is happening economically, why that kind of consideration was not put on the table? I think it is critical. As you know, hon. Attorney General, in terms of law, the question of property tax has preference over mortgage payments, and the Government can go and take the payment away as opposed to the mortgage finance company. I think that is something we need to address.

The other issue of concern to me is how this tax—I think, in all honesty, you all have failed. I think the greatest problem here is that you have become your own enemy, in a sense, where you have not articulated properly—notwithstanding what you have said—the property tax and the process that was used to bring it to the public, and this leaves much to be desired.

From where I sit, my concern is: How do you come to the highest forum and say that you are going to introduce a system that has not been properly thought out and when questions are being asked, you are unable to articulate, in a meaningful way, the benefits of what you are proposing to do? I am yet to be convinced, notwithstanding what has been articulated on the other side, that there is a real benefit that will flow from this new regime that is being introduced. There are many people outside there who are of that view. I think the Government owes the people of Trinidad and Tobago a responsibility to articulate those benefits in a meaningful and helpful way so that the people can be more

appreciative of its attempts. This is in the context that you are saying that we would not have to pay more tax. Make no mistake about it, we are paying property tax. It is nothing new, but the fear outside is that this new tax regime will result in some astronomical increases that may or could lead to properties being confiscated by the Government. We need to understand if that is not so. This must be done demonstratively by the Government.

The other question I have a concern with is: How do you justify putting the money into the Consolidated Fund? All the reading and research that I have done speak to property tax being used by the local community to develop their infrastructural needs and, therefore, for my support of the Bill, I need to be guaranteed or assured that a mechanism will be put in place so that the money that is being collected would be used for the purpose for which property tax ought to be used. I think that is critical in allaying the fears of the population outside there.

I have no issue whatsoever in paying increases. I have a property and the price I pay is obscene. However, the point I want to make is that if there are increases, I need to see some kind of benefit flowing from the increase to justify the increase. The increase cannot and must not be in a vacuum. When you speak to putting the money in the Consolidated Fund, you fuel the thinking in the minds of the people that this is being done because the country is running out of money. That may not be so, but the fact is, if people have that mindset, it creates all kinds of issues for you to grapple with. I think you need to take what I am saying seriously. You need to revisit the question of placing that money in the Consolidated Fund and use the increase in revenue for the purposes of what property tax revenues are used for all over the world.

Having said that, the other issue of concern to me is: Do we have the administrative support and capabilities to deal with all the issues that are going to flow from this new regime that is being implemented, given the fact that the proposal is for the implementation of this new regime in March 2010? I think that a more critical analysis has to be done, in terms of that reality. May I suggest that the Government look at extending that period from March 2010 to December 2010 to afford a smooth transition that would be seamless and which will not create the issues that I know are going to flow because of the shortness of time to implement this proposed regime.

I have been trying to get a concrete answer as to the methodology that would be used to do the calculations. I am hoping that when the hon. Minister is winding up, the matter can be addressed. I have some concerns as to whether or not the methodology has been worked out and fine-tuned to the point that we would not have any hiccups in the system.

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The issue of the pensioners: I have seen in some jurisdictions that there is exemption for paying property tax for certain pensioners and workers whose salaries or disposable incomes are at a particular ceiling. That is something that the Government should pay attention to. This would demonstrate, in my estimation, that the tax is humane and it is not, as some people say, draconian, but that due consideration was being given to people in the society who live on fixed incomes like the pensioners who would have left the public service 10 or 15 years ago, and because of the pension system, there is no increase in their disposable income. Any kind of increase, however minute it is, can materially undermine their ability to live and survive. I think that is a critical and fundamental issue that you must look at.

For those persons who are on minimum wages and who have government housing, we need to make some kind of consideration for them and put a ceiling whereby those groups of persons are exempted from paying the property tax. I am talking about workers whose salaries make it almost impossible for them to make those payments. This is being done in your HDC policy with the rent-to-own homes, et cetera. I see no reason why it cannot be introduced in this Bill.

The other concern that I have is: What kinds of adjustments would the citizenry have to make as a consequence of this new regime? Is it substantial? Is it material and, if so, could it be demonstrated again so that the listening public can understand and appreciate what they are being asked to accept as a people? I think that knowledge and information on this Bill is lacking, and the Government needs to do a better PR job as it relates to it.

I have no fear in the context of whether or not the Bill is a good Bill or a bad Bill. It is only time that is going to determine that. I have learnt something from where I sit. I recall in 1968 when PAYE was introduced by the Government, dock workers had stopped working. We shut down the port because we did not understand it. We made noise, cursed and marched up and down only to eventually discover that it was the best thing that ever happened to us. Only time determines what happens. Life is not static; life is evolving; life is changing and, therefore, we need to be able to change with the time.

I recall distinctly also when the NIB board was introduced. It was the Seaman Union again which had to take the mantle and go all over the country to justify the NIB. There was another group of trade unionists who were talking and saying that the Bill was draconian; it was not right; the government is unfair; and the government wants to take money from the people and use it for its own purposes. Today, the NIB programme is one of the best social programmes that we have in the Caribbean.

I remember we had a big issue with the Industrial Court as to whether or not to set it up. The Congress of Labour had the vision to say yes, because there were many industrial strikes at that point in time, but the Council of Progressive Trade Unions branded us as being traitors and the Government sell-out. Today, I have lived to see that the Industrial Court is one of the best things that happened to us. The industrial landscape has been able to change to the benefit of both workers and employers as a consequence of the setting up of those institutions.

So, the point I want to make is that most of the times, I am not worried about Bills that come here. At the end of the day, it is the people who are going to determine whether or not the Bill did justice or not. Is only time will determine that. I say that against the backdrop that I have seen too much readiness to have political spin in order to make a compelling propaganda case in favour of people's personal self-interest. That has me a little worried.

I have learnt, from the settlement we had with workers, that if you come around the table and into a debate without any fixed ideas, ideologies or with a dogmatic approach, but you come with your mind open, in that kind of discourse and dialogue, we can have resolutions where the people of Trinidad and Tobago can be proud. I think that if our debates are centred on that kind of concept, we will be able to do justice to the office and our responsibilities as Members of this Parliament.

My concern is—I might drift a little, but I will bring it back—when I hear some of the conversations and the debates and I contextualize them in terms of the realities, it has me a little worried. We talk about the people and the people's rights, but when we tried to set up a Caribbean Court that speaks to our own culture and history, you have some people saying no, they want to go to the Privy Council. I see some contradictions that have me so worried, because it speaks to the colonial past where we do not have faith and confidence in ourselves. I want to take this opportunity to tell the Attorney General to bring the Bill. Let us determine who are really Trinidadians, who are for the Caribbean and who is still living in the relics of the colonial past. Bring the Bill!

I have learnt that the cornerstone of the temple is not higher than the lowest stone in its foundation.

Sen. Mark: Bring it and we will reject it. We will vote against it.

Sen. M. Annisette: You see there is a saying by Michael Manley that men stand strongest when they are their own masters. [*Desk thumping*] An individual effort remains the primary instrument of self-empowerment. I am saying that with

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all the hooray about the tax—whether it is draconian or whether it is not—
[*Interruption*] I have read a book, *Talking Left but Walking Right*. [*Laughter and desk thumping*]

Sen. Mark: Do not attack the UNC. [*Interruption*]

Sen. M. Annisette: Mr. President, I am asking for your protection. I deliberately did not raise any political parties or anybody. I stayed far away from that. I do not want anybody to go on the papers and say they always believe I had no right to be a Senator. So, I am very careful.

Sen. Mark: Do not attack the UNC.

Sen. M. Annisette: Again, I want to assure the public that I am not attacking anybody, but who the cap fit they would pull the string. [*Laughter*]

Sen. Mark: I will pull it. Do you know that people say that Michael Annisette is a PNM? [*Crosstalk*] He is also my comrade.

Sen. M. Annisette: Brother Wade, I want to assure you that you are my comrade. [*Laughter and desk thumping*] Once a trade unionist, you will always be a trade unionist. [*Laughter*] As you know, in the trade union movement, there are many roads to go to the same place.

Sen. Mark: I know.

Sen. M. Annisette: I know some of the roads that we have taken. [*Interruption*] You have a right to defend. I would never ever, contrary to what people may say, take away that right. I would always defend your right. [*Interruption*] You see, in the war of ideas, we need to worry a lot less about how to communicate our actions and, much more, what our actions communicate.

Having said that, my concern is that most of the Bill protects the citizens from rural areas, and property taxes are targeted to those persons who can afford. While we may say Port of Spain is urban, Port of Spain configuration is not like the metropolitan areas. We have Laventille, Gonzales and all those other areas. I think that the Bill must be tinkered to speak to the protection of these vulnerable groups of persons who may suffer exposure as a consequence of this new regime. I am saying this in the context that the Government has failed miserably to articulate, demonstratively, that the Bill in question would not in any way interfere with these groups of people—the pensioners, the workers on fixed wages, minimum wages and those workers who I know would have saved and built a house over a five or six-year period, because they did not have the ability to build those houses. Those are the people I think we have to protect.

I have a concern when I see certain people talking about the Bill, because I want to make the point, who are we really protecting based on the ownership of property? Who owns the majority of properties in this country? I am not talking about Tobago in this instance.

Sen. Nicholosn-Alfred: This is the first time I hear Tobago being mentioned.

Sen. M. Annisette: I know the people in Tobago are on their own, but I am talking about the land grab—those persons who own property in Trinidad and Tobago and the kinds of moneys they pay in taxes for those properties. I support in principle, the concept of property tax, but I am saying that the property tax cannot and must not be used in the context where the less fortunate, the pensioners, people on fixed wages and those on the 2 per cent HDC housing policy will suffer as a consequence of this regime. I think that if you can give me that assurance, I will support the Bill. I wish to thank you all. [*Desk thumping*]

Mr. President: Sen. Baptiste-Mc Knight, it is 4.25 p.m., would you like to start now or at 5.00 p.m.?

Sen. Baptiste-Mc Knight: At 5.00 p.m.

Mr. President: We will take the tea break now and resume at 5.00 p.m. The sitting is suspended until 5.00 p.m.

4.26 p.m.: *Sitting suspended.*

5.00 p.m.: *Sitting resumed.*

Sen. Corinne Baptiste-Mc Knight: I thank you, Mr. Vice-President, for the privilege of intervening in this very important debate on the Property Tax Bill.

When this first came to my attention it was during the debate on the budget and I promised that I would hold my comments until such time as I actually was able to see the Bill and study it. Well, I have now seen the Bill and I have kept my promise, this is my first comment on it.

The explanatory portion of the Bill states clearly that its purpose is to create a new paradigm for assessment of property for the purposes of tax.

The hon. Minister in presenting the Bill was at pains to let us know that part of the purpose of the new reform is to produce a more user friendly tax system. He has emphasized that the element of revenue collection is negligible. Well, I think that to state that revenue in the area of a couple of hundred million dollars is negligible, this is something that can only be heard in Trinidad and Tobago, but I accept the Minister's statement that this is not the prime purpose of the Bill. Of

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course, we have been bombarded on television, on radio and in various utterances from technocrats as well as our politicians, so that we are aware now, we have no doubt whatsoever that it is not a new tax, but there are new elements which have been introduced—I guess that is where the user friendliness comes in.

But what I want to do today and I do it against the background that I am aware that the Government is neither able by virtue of its time constraints nor in a mood to make any amendments, yet I will still produce some amendments just to keep this Senate honest. Why? Because there are some fatal flaws in this Bill that I know, when and if it becomes an Act, that Act will have to be revisited by us shortly so that by the amendments—people would be aware of the sort of things they need to do to fix the Bill.

Now, as my colleague, Sen. Annisette said, and I think we all agree, our laws really need to reflect who we are and who we want to be, who we want to become. So I look at this Bill and I wonder how the new elements of the Bill and the old elements that are transposed from the old Bill into the new one, how do these reflect—what should I call Government's ethic? How consistent is this new package with Government's vision of itself as caring, as competent and as progressive? Further, I ask, how does this Bill fit the demographic to which it is addressed and what do I find?

In order to make it easy I would go through the Bill in its chronological order. I start at page 12, where there is a definition of owner; it is different from the old definition in that it deletes mention of the lessee of a property. So in 1920 the British Government—this is not indigenous folks—making a law, really and truly meant to collect taxes from their people and from other Europeans who were residents here to collect taxes from them, they decided that an owner was also a lessee and occupier; but this is 2009, the last year of the first decade of the 21st Century and we are dealing in Trinidad and Tobago with a totally different profile of landowner and what do we find? Our Government ascribes responsibilities to a tenant, and occupier, that belong to an owner, and at some time, some place, I can recall it being said that this new Bill introduced equity.

Now, the simplest meaning of equity is fairness and it cannot be fair to hold my tenant responsible for what I have not paid for whatever reason [*Desk thumping*] especially when as we go along in the Bill there is nothing that alerts the tenant to how much I am supposed to pay and when, so that they can even remind me, if they are aware that the responsibility for keeping the agents of the Comptroller of Accounts out of their property falls to them.

So we move on to page 15, clause 16(e) where we talk about land of a designated class. What is land of a designated class? There is no explanation for that any place. I guess we would find out.

On to clause 17(1) where, interestingly it says “The Board shall, on or before the March 31”, now, what is the magic of March 31st? If we check clause 33 we will see that March 31st is the day on which this tax becomes payable. Now, if I am legally bound to pay a tax on March 31st how can I be receiving the notification on March 31st. Hello, something is wrong! So to make this vaguely sensible “on/or” has to be deleted, so the onus is on the board to ensure that I have my notification before the 31st so that I can be held responsible for it from March 31st.

Now it goes on to say that this notice can be delivered to the owner or the occupier. Now if you deliver this notification to my tenant, have you delivered it to me? How can I be held responsible for it? Let us assume we had words and the tenant just decides—or the tenant might be like me, just do not get around to checking out mail every day and the thing gets lost, but you have delivered it to the tenant and I am responsible. No, if the responsibility belongs to the owner it must be delivered to the owner and the owner alone. [*Desk thumping*] There is accommodation here for it to be posted even overseas, and it is considered delivered within 15 days locally and within 30 days overseas. So there is no need to deliver anything to any occupier.

At least I forgot to mention that like my colleague, Sen. Ali, I too am involved. I too have a—little better than a shack, but in a wonderful location, Westmoorings. [*Laughter*]

Although all the occupiers of my shack are named Baptiste and any of the occupiers, well most of them would pass on my mail as soon as I get it, I want it delivered to me. I am not delegating that authority to anyone else.

Now clause 18 is very interesting and it is something that I note keeps cropping up in law here, where the Government absolves itself for its incompetence, “Liability for tax...shall not be affected by an incorrect or incomplete assessment”, and in another place it says if you spell my name wrong, if the number of my house is wrong, any mistake you make is not your problem. If we want to be developed people by 2020, should we not now start being innovative enough to get rid of this type of foolishness rather than putting it in a law? Do not tell me it was in the law in 1920. In 1920 it was unwise English

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people who were doing this. Now it is bright Trinidadians, educated at Government expense [*Desk thumping and laughter*] from cradle to tertiary, and you are telling me that they must do foolishness and I must be responsible for it. No way!

Let us move on to clause 19 where they talk about land that was omitted. Fine! If for whatever reason an owner does not seek to have the land assessed, by all means once the tax is assessed it is due. But it says it is due and payable on the expiration of 30 days from the date of such notice. Now, everywhere else in this Bill we talk about six months. If the Government has a refund for you—I will deal with that later—there is a six-month grace period before penalties kick in. If I have moneys for Government there is a 5½ month period before penalties kick in—I would clarify that later, because here it is not six months.

Now let us assume this person is an absentee landlord, by the time they get notice 30 days after it was sent, the 30-day grace period is up and nobody knows how the person can deal with these arrears, so something is missing from 19(3). I do not know whether it is a 19(3)(a) or something else.

Moving on again, clause 20(1), a refund: When there is an overpayment and there is a refund due the board shall forthwith refund. Now what day of the week, month or year is forthwith? Who determines forthwith? I do not know whether the element of four has anything to do with it, but it is “forth”, so it could be the fourth of every month [*Laughter*] or it could be the fourth of every year, but here it is forthwith. Not good enough. [*Interruption*]

Amazingly, except paragraph two, when Government owes you money guess what the rate of interest is? One point two per cent per month or part thereof from the day after six months expire. Now, listen to the equity involved here, the fairness. When I owe Government tax, due on the 31st and I get a grace period until September 15, which is five and a half months, on September 15, the amount is immediately inflated by 10 per cent, and guess what, on the 16th amount plus 10 per cent attracts 15 per cent interest; equity means that that is what must happen when Government owes me money too. [*Desk thumping*] Simple!

I mean, I am one of those that understand enjoying the fat of this land you know. [*Laughter*] My mother never paid a day's school fee for me from the time I went to school till when I left university. That is living off the fat of the land, and you know what? I reach back here and I spend all of my days until I hit 60 years old working for the Government. I have never earned a penny in my life that did not come from government taxes. That is living off the fat of the land.

[*Interruption*] And “all yuh” going to look at me fattened by the fat of this land [*Laughter*] and tell me this stupidity; that I stupid enough to let you pay me less money when you owe me than I have to pay you when I owe you. No way! [*Desk thumping*]

So, let us move on again, where we talked about the objections to assessments, listen to this! The owner has 21 days if he or she is dissatisfied to object to the Board. The Board under subparagraph (2) could take its own sweet time to refer it to the Commissioner of Valuations. No time frame. Then the Commissioner of Valuations has nine months to deal with it. Oh boy, equity, there we go. If there is a challenge the board will ask for more information within a specified time. Could we not say two months? Three months? Is this another way of saying forthwith? [*Interruption*] Then again the Board has within one year—at subparagraph (6)—of receipt of any notice of objection to deal with it.

So when I read all of this I come to the conclusion that the board has a year within which to hand it over to the Commissioner of Valuations and then he has nine more months. I dead by then. [*Laughter*] That might be the purpose of the exercise. I do not know. [*Interruption*]

Then we go down, at subparagraph (8) it says “An application under subsection (6) may be made out of time”—et cetera. Guess what subsection (6) says—it is on page 20 in case anybody is interested in following—“The Board shall, within one year of receipt of any notice”—et cetera. There is nothing there to talk about “application”. So to what does this refer? But I guess that is covered by the clause that says if they make any mistake it is not their fault.

Now we come to clause 23. Now, this is one of the attempts really and truly to be of assistance, because this specifies that payment can be deferred—there are specific persons who qualify for this deferral, all of whom would qualify as indigent. Sen. Ali added a few to that list. Let me add a couple more for you. You know everybody thinks that Government salaries—and I talk about Government because this is what I know, and the largest part of the workforce in this country works for the Government, so let us see who is being left out when you talk only about people on public assistance, disability, senior citizens, et cetera.

I do not know if the youths in the Government Cabinet are aware of what salaries in Government were up to 1979, let me give you an idea: Range 68, which was the highest range under Permanent Secretary would retire with a pension of \$1,522 a month—absolutely sure, these figures I got from the CPO booklet. It is a good thing I like to keep old things home. In 1980 there was the

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first real review of salaries. In that year the 1979 salary plus Cola and whatnot amounting to \$229 was improved by 37 per cent, so that someone in range 68—and this is a fixed salary no increments, no longevity—would then have retired at \$2,240. That is not a week, that is a month [*Laughter*] and if they were young enough to retire in 1992 they would then retire at \$4,202.

Now, those are the people who out of these salaries bought houses in Haleland Park, Goodwood Gardens, Westmoorings, Glencoe and Valsayn. So do not behave as if everyone who is living there win sweepstake or selling drugs. [*Laughter*] No! It is hard work and sacrifice. [*Desk thumping*] So when I was an FSO II in 1973 earning \$600 I bought a house, thanks to NCB. It was a good thing Philip Rochford was there too, because the other banks would not look at me, I was simply too “dark”. [*Laughter*] I was able to get a mortgage and buy a house for \$48,000 and you are going to look at me today and tell me because International School is there, Dunross is there, St. Anthony's is there; all within walking distance of me and I could walk it without even working up a sweat, and even the church is there if I am that way inclined, opposite St. Anthony's. You are going to tell me that this is an executive house. [*Laughter*] Because a friend could give me an air condition unit that you see sitting down outside there; you are going to tell me that \$48,000 migrates to, perhaps \$1-plus million and I now have to wonder when I finish this little 10 days how I am managing to pay “all yuh” tax on this. But I am not the problem, the bulk of civil servants retire after 33½ years service between ranges 40 and 54. Someone who is 80 now retired at \$928, range 54 or \$720, range 40.

Nowadays, with the \$2,000 NIS, guess what? Range 40 and lower all qualify under the Senior Citizens Grant to get the little extra \$100 to bring them up to \$2,800, but those same people except for those under range 11, I think it is now with the new salaries, would be above the cutoff point of \$2,800 to qualify for this deferral.

5.30 p.m.

Now we are talking about people who before the days of maxi-taxi travelled from Arima, Sangre Grande, Siparia to come to Port of Spain to work for 33½ years to buy a little house, pay off the mortgage and now, through no fault of theirs may not be able to afford the tax. They cannot even apply for this assistance because they are earning \$100 or \$1,000 more than the stipulated amount.

It is not thoughtlessness or callousness on your part; it is that you are not aware. It is that the technocrats with whom you are working all grew up in the era when we have money. They do not talk to their parents about the days when we did not have money.

When you do qualify and give proof of your eligibility, under clause 26(1), the Board has the right to revoke this authorization. What system are you setting up to "maco" all these people's business to know when they get an extra \$50? This is ridiculous, it is not possible and the Government's track record suggests that there is no way. Unless their picture appears in the newspapers as winning a lottery. Take it out one time.

Now, when this person dies the deferred tax becomes payable. Being semi-retired, because I have this little 10-days to deal with, I have time to do stupidity. So I worked out how much the deferred tax would be: after five years it is only \$7,000 and change, but after 10 years, it just short of \$30,000. So you have a little person you put into one of the nice, new developments, something Heights and something Drive all over the place but in the Heights they are old, but they are taking care of the grandchildren because the children are on cocaine and they are not there.

They can hardly cope, but they are taking care of the grandchildren; 80 years heart attack, the heart gives out she dies at 80. So by then the deferred tax is about \$148,000. Now somebody can waive that because given her situation, she has left this in the names of the three little children she was looking after. The last one is two years old, so a magnanimous Government is again going to step in and start a new set of deferrals for this child. But this is a rambunctious little animal out to live. So at age 18 a full adult, ready to take over the house. Hello! One hundred and forty-eight thousand dollars in arrears.

Again, I think this has not been properly thought out.

Hon. Senator: Draconian.

Sen. C. Baptiste-Mc Knight: No, it is not draconian, it is not callous, it is just thoughtless. We have to make these differentiations because a Government that says and by its actions shows that it is interested in widening home ownership as far as possible will not want to deny the child at age 18 of this house. It is just that they have not thought it out properly. So I am appealing to you all to think about it now and bring it back to us with the little amendments that I am going to pass to you.

[MR. PRESIDENT *in the Chair*]

Mr. President, clause 31(1) says:

"The annual tax to be paid in respect of all land shall be paid by the owner of the land."

No problem.

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Clause 31(2) says:

"...the amount to be collected from the owner...may be collected from the tenant or occupier..."

Something is wrong here. It also says that the tenant may deduct the rent from the landlord. If I give you a Belgian lease for my house and you sign it and as a part of that you sign that if I give you the house with grass half inch high, when you give me back the house it must not be less than half inch high, and I do not care how much drought you had, I do not want any brown patches, I want grass and you have to pay for it.

If I give you the house with shrubs 2 inches tall and where I bought it the garden shop told me it is supposed to grow three inches a year; after five years it is supposed to be 18 inches and if it is not 18 inches I am charging you for a tree that is 18 inches high. Are you going to say that you pay tax for me so you have a right to deduct money from my rent? "Somebody got to be crazy, and it ain't me."

You cannot give and take back because you give in subclause (2) and take back in subclause (3) by saying:

"(3) Nothing ...shall be construed as affecting any contract between the landlord and tenant..."

Make up your mind.

Mr. President, through you, I am appealing to the technocrats who are sitting there to think of these things before you bring them back to your bosses because they are going to blame you in the end; it is always the civil servant.

In subclause (4) it says quite clearly if you have machinery, the owner is entitled to recover from the tenant. I could live with that, but tidy up the other thing.

The hon. Attorney General was at pains to explain about the distress and the chattels and everything, and I tried to listen carefully.

Sen. Dr. Nanan: That same machinery with respect to the owner and tenants, it is the right of the owner with respect to the machinery to deduct it from—to recover it from the tenant. So in a case like that, let us say the equipment is valued over \$500,000 would that be improving the building?

Sen. C. Baptiste-Mc Knight: I think that should be directed to somebody over there. I am only reading what is here.

We are talking about the distress on any goods and chattels, et cetera. This is the last part of the final sentence of clause 32(1). Every case that the Attorney General mentioned a while ago involving garnishee and distress, he always mentioned the principal debtor. So it seems as though the Privy Council and all these honourable people acknowledge distress on the principal debtor who is the landowner.

I do not think they are going to agree with you bursting down my tenant's house to take out his things to pay my debt, "yuh" know. Because they do not belong to me and you have an address for me because you sent me a notice. You come to my house, break it down and take my things. Where is the element of caring that you are going to put in a law, an element that opens your citizens who cannot afford their own homes to losing their property because of a recalcitrant owner? I am sure you really did not mean that.

Let us move on to something I am really interested in, clause 34. It says:

"34(1)Where any amount of tax is not paid on or before the 15th September..."

Now, between March 31 and August there are five months, and up to September 15 it is 5½ months you send a notice. That is fine, but then we come to the amounts that are payable. I want to draw this to your attention. There have been notices on radio, television and the hon. Minister of Finance has reiterated on many occasions that as a means of helping you can pay your tax monthly because everything is quoted in so much per month, but if you start paying monthly in March, by September 15 in the case of the cheapest tax—I got this in my mail.

The annual tax is \$486 by September 15; you have paid \$202.50, so you are attracting interest of 10 per cent on \$283.50, so if you hustle and get a loan to pay on September 15, you pay \$311.85 but if you have to continue paying monthly, you end up having to pay \$358 so that you pay roughly \$561 instead of the \$483.

That is misinformation because unless there is some authority under which the Comptroller of Accounts, District Revenue Officer can exempt someone who is paying monthly from this, they attract the interest and the surcharge. It cannot work. So something has to be done to correct that bit of information that is out there. Accommodation of monthly instalments is not on, you have to pay it off in five months' time.

It says at clause 34 if the board is satisfied that failure to pay the taxes did not result from default. How is the board going to arrive at that, when the bulk of people are taking up the Minister's invitation to pay it off monthly?

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I want to draw your attention to clause 37 where it says:

Mr. 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. Prof. R. Deosaran*]

Question put and agreed to.

Sen. C. Baptiste-Mc Knight: Thank you, Mr. President, and I thank you for the chorus of "Ayes", it means that you are enjoying the entertainment.

Clause 37(1) says:

"(1) ...the Board has served Notice under section 36 and twelve months have elapsed since the same became due and owing..."

I know somebody is going to tell me that it is a typographical error because you talked about section 41 which does not deal with 12 months. So if it is a typographical error before you run it by His Excellency, fix it up.

We will delete 37(2) because we are not going on the goods and chattels of any tenant or occupier. I am not ever going to agree to that. And you see this breaking open door; you can break it open if you add here that you are going to board up the place before you leave. In this day and age where everybody is worried about crime, you are going to break down a man's place, remove what you want of his things and then leave the place open? No. If the Privy Council says you can break it down, I say you must at least board it up.

Clause 38(1) says you can keep the things for four days. If the December 23 is a Friday and you move the things on the Friday, the 25th is a holiday, the 26th is a holiday and the 27th is a holiday. How is this man going to manage to retrieve his belongings? "At least, have a heart, make it four working days nah." If I come into my house and it is empty, trust me, four working days are enough for me to sort it out. It will take me a little longer to get even with who did it.

Clause 41(2) says:

"(2) The President shall not sign a warrant ...unless the Board has previously caused a notice to be published..."

This person could be out of the country. You publish notices all over the place. What is missing here? Nobody has given any notice to the owner. That must be included here, that is the first person you must give notice to, then you can do all the other things. You can plaster the town with it, but give notice to the owner.

And then at 46(1) where it says that a petition for re-grant must be addressed to the President. Nobody in this House knows where the President is living? Why must it be addressed to the Commissioner of State Lands? It is not for him, it is for the President. Let the President then send it to the Commissioner of State Lands. Then it says that "The President may, where he thinks fit ..."

How is the President going to know whether he thinks fit when it does not reach him? It does not say he may refer it to the Commissioner, but as I read this, he does not have to. The fact is, he can do nothing unless he gets it. Everybody knows where to find the President.

Mr. President, I have tried to go through this and see how much consistency there is between this, what Government says and what it has done. Trust me, it has nothing to do with the season of goodwill but I forgive you all because I know this was done in haste. Please, have a good look at the amendments that I have passed on, listen carefully to what I have said, listen to the angst that is coming out from the public and please, at an early day, sort this out.

Thank you, Mr. President.

Sen. Dr. Jennifer Kernahan: Thank you, Mr. President, for the opportunity to contribute to the Property Tax Bill, 2009.

Before I get into my contribution, I want to remind the Senate of a remark that the Attorney General made when he said that a government must have coercive power to collect taxes.

Mr. President, we clearly need to balance that equation, so therefore, the people of this country clearly need a Constitution where the citizens have coercive power to ensure that the Government provide us with our constitutional rights; the right to personal security, the right to the rule of law and the right to live in peace in the land of our birth. We really need to balance that equation. You want coercive power to impose taxes; we need coercive power to ensure you do the job that you purport to do on behalf of the people of Trinidad and Tobago.

Mr. President, a wise man once said, "do not ask for whom the bell tolls, it tolls for you". And so it is with this Property Tax Bill before us this afternoon; the bell tolls for all of us. It tolls for the wealthy, the middle class and the poor. And I am sure that even the Minister in the Ministry of Finance can appreciate that it tolls more loudly for the middle class than for the wealthy class, and it tolls even more deafeningly loudly for the poor and the vulnerable in our society.

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Why is that? It is because the Minister in the Ministry of Finance has declared that none shall escape the onerous property taxes that he has proposed, since he has proposed five classes of properties; executive, modern, standard, substandard, and he has proposed to tax even humble, poor citizens in their shacks.

Mr. President, may I say from the outset that we on this side object very strenuously to the imposition of the property tax on the citizens of this country, and in the manner in which it is proposed to be imposed. We maintain that this property tax will accelerate already difficult economic and financial situations in which the people of this country find themselves. It will accelerate the escalation of inflation, the cost of goods and services will go up in this country as all landlords and owners of commercial property seek to pass down their increased taxes to the consumers.

Mr. President, the Prime Minister of this country apparently in his Christmas message, promised the population that things will get better in 2010, and then the Minister of Finance brings this piece of legislation which will ensure increased costs, increased inflation, increased hardship and poverty.

Mr. President, Sen. Basharat Ali was one of the Senators who spoke to the difficulty that will be experienced by retired judges because of this property tax, and Sen. Baptiste-Mc Knight gave a very in-depth understanding of the implications for pensioners, those on fixed pensions and those who have retired after working for this country all their lives. The reason for that is that this tax is not based on any income that the citizens receive, they are not taxing any dividend or income that you may be receiving, it is based on an arbitrary figure plucked out of the air in terms of this annual rental value, which is very subjective and arbitrary and, therefore this tax has to come out of your regular income; the income that you have normally apportioned to live and survive in this inflationary environment, this very harsh economic environment, this recessionary environment where there is a lot of unemployment because of the global financial meltdown.

Therefore, this tax will reduce disposable income, household income, and increase hardship for the more vulnerable in our society especially low income families, people who work for minimum wage, and single parent families, families headed by women. We know traditionally in this country it has been shown that families headed by women are afflicted with high levels of poverty. It will affect these families, as well as middle class families who are simply struggling to survive, pay the bills and go back to work.

Mr. President, it will affect the people who rent, and this point has been made because the landlords clearly—and the Bill has that provision—are entitled to recoup their increased cost in terms of this tax from tenants, and this is in the context of the fact that in the East-West Corridor it is impossible to find any decent, modest apartment, maybe a one-bedroom that will cost less than \$2,500—\$3,000. So you are talking about a single parent household, single women headed households, and having to deal with this sort of environment, probably working for minimum wage in a factory, a commercial enterprise or a fast food enterprise. These are the kinds of rents that families have to face at present and the Prime Minister is promising us a better 2010 in an environment where those landlords are going to add to their rents.

6.00 p.m.

This Government is callous and cynical, so the bell tolls for all of us, especially for the poor. We have to understand—I listened to Sen. Baptiste-Mc Knight and she is convinced that the Government has not thought this thing through and it is an oversight and so on. I beg to disagree, because government policy is a serious thing. There is a whole Cabinet to sit and work on government's policy. When the Government presents policy it always has an objective.

The Minister in the Ministry of Finance has refuted the suggestion that the objective of the Property Tax Bill before us is to raise revenue. He has claimed that only \$250 million or so would be realized in terms of increased revenue. Claims were even made that the property tax in some areas would go down. That remains to be seen. If you are claiming that increased revenue is not the objective, then what is the objective? We totally reject the stated objective of equity and equality. There is no equity and equality in taxing somebody who lives in Tamana, the same types of rates that you would tax somebody who lives in Port of Spain. Many Senators here have debunked the equity and equality theory.

I submit that the objectives that would be achieved under this regime of property tax, are that the Government by means of this Bill before us, would institutionalize and legalize landlessness in this country. The objectives that would be achieved by this Bill in the short, medium and long term would institutionalize homelessness, poverty and promote a culture and mentality of transience among our citizens, pretty much as in the bad old days of the colonial regime, where you had this whole atmosphere of discrimination, injustice, oppression and alienation from land and property. This is the root of our reality today.

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As I said yesterday, it is the root of the reality that thousands of people in this country, especially in the East-West Corridor, have no place to call home. They rent from the big landlords who own land. From where did these people get land? The Queen gave them land. The colonialists would look at a piece of land and say all this is yours, and for generations this land would pass down to their descendants. Based on that colonial approach to land and property where poor people were excluded from even voting if they did not have land and property, we have generations that are landless and property-less.

The objectives that would be achieved by this Bill, are to perpetuate that situation of alienation from land and property, it would increase and promote this mentality of being a transient of passing through your land and watching life go by in your country. We have to connect the dots. Maybe, this mentality of being a transient, a renter, no fixed place of abode and so on, you always hear and see these remarks being made in the newspapers, that young men before the courts gave two addresses. "He is from Belmont and he is also from Sea Lots". They make these connections that they are transient; they have no fixed place of abode and live all over the place. I am making the connection between those colonial policies that have affected our generations and the neocolonial policies of this Government which have exacerbated the situation.

It has to do with maybe the mentality that the young men of this country have. They characterize themselves as "going Gaza". Maybe, they know more about the conditions of homelessness, landlessness and poverty than the Palestinians in Gaza are forced to endure. They identify with those conditions so they form these groups and say that they are "going Gaza". When you say that you are "going Gaza" that means that you are up to anything and you would do anything that you need to do to survive.

This is the mentality that would be reinforced with the imposition of this Bill. The mentality of a transient population, powerlessness, landlessness, is fuelling, has fuelled and will continue to fuel the tremendous and horrendous loss of life of young men in this country. We have a headline today, "Seven killed in 24 hours". This is where we have reached. I remember when this country was scandalized when we had reached one-a-day murders. We graduated from there to five and then to seven murders in 24 hours. We have to make the connections with landlessness, poverty, the transient mentality and the Gaza mentality with what is happening in this Bill.

When I look at this Bill I realize that the Government has hit rock bottom in terms of the type of legislation that it has descended to, to bring to Parliament. One of the striking features of this Bill is that you see so many clauses that seek to

legalize upfront, inefficiencies and errors by the Government. It seems that the Government is now reduced to drafting legislation with a view to protecting itself from the consequences of bad governance as demonstrated in the errors of the bureaucracy and legislation it brings.

Some of the Senators spoke to this issue. Clause 8 of this Bill says:

"No error, misnomer or mis-description in any notice or the Assessment Roll and no omission to enter therein the names of owners or reputed owners, nor any error in the names of owners or reputed owners, nor any error in the names entered therein as those of the owners or reputed owners of any land, shall in any way vitiate such notice or any valuation or assessment contained in the Assessment Roll or in any way affect the liability of any owner to any annual tax payable in respect of such land."

This is a shameful clause because the Government is legalizing inefficiency. Another Senator made the point. How can you legalize inefficiency? Get your act together; get your notices straight and ensure that you have correct information. There is a penalty of fines and so on for citizens submitting incorrect information. Why should you entrench in the legislation any lack of culpability for inefficiencies and errors? There is no equity here according to Sen. Baptiste-Mc Knight. It is wrong and it is bad governance.

Clause 9 of this Bill says:

"The owner of land which has for any reason not been entered in the Assessment Roll or assessed shall not by reason of that fact be relieved from the liability to have the land valued and taxed and the Commissioner may at any time value such land in accordance with the Valuation of Land Act."

I object to this because it seems here that this clause puts the liability of the assessment of the land on the owner and not the Commissioner of Valuations for which the Bill provides. The Bill provides for a notice to be sent to you by March 31st every year that gives all the information that you need to have in order to pay your tax. It gives the premises and assessment. If the Commissioner of Valuations and the Government have not done their work in getting your property on the assessment roll, why must they tell you that you should not be relieved of any liability to have the land valued?

Do you have to go to them? What is the situation? Are they going to come to you to value your land and send this notice? Tell us upfront what would be the situation. Do you have to go to them by January and beg them please to value

your land and ensure that you are on the assessment roll? Where is the liability? Where is the onus here? It is very nebulous. On one hand you are talking about the Commissioner of Valuations to do this job and give a notice and, on the other hand, you are saying that the citizen is liable to get assessed.

Clause 17(1) of the Bill says:

"The Board shall, on or before March 31 in each year, cause a notice of assessment specifying—

- (a) the unique land identification...
- (b) the annual rental value...
- (c) the annual taxable value...
- (d) the annual tax payable...
- (e) any deductions and allowances...
- (f) the time when and where such annual tax is to be paid;
- (g) penalties and consequences for failure to pay the tax; and
- (h) the right to object to such assessment..."

Sen. Baptiste-Mc Knight made the point and I agree with her when she said that this is an important notice because the owner is liable to pay this tax. This notice can be served or delivered to the owner or occupier of the land. I agree with Sen. Baptiste-Mc. Knight that this is totally wrong. If the owner is liable, the owner must be the one who is served with this important document.

In clause 19(2) there is a contradiction. It says:

"The Board of Inland Revenue shall give notice to the owner of the omitted land under subsection (1) of the amount of tax assessed thereon."

In one part of the Bill the notice of tax can be served to the occupier, and in clause 19(2), where the land has been omitted from the assessment roll at any point in time, it must be served to the owner. Let us be consistent. If the owner is liable and has the obligation to pay the tax, let us be consistent and we must know that the notice would be sent to the owner.

Clause 17(3) says:

"A notice sent by post shall be deemed to have been served, in the case of a person residing in Trinidad and Tobago, not later than the fifteenth day

succeeding the day when posted and, in the case of persons not so resident, not later than the thirtieth day succeeding the day on which the notice would have been received in the ordinary course by post,..."

This is not satisfactory. I live in Cumuto and it seems to me that in my case, they get letters and say this is for Kernahan and throw it in a bin. They do that for about three or four weeks and then bring all and drop them in the mailbox. I get a whole bunch of mail. Do you know how many times I got mail for events two and three weeks before? When you look at the stamp you know that it was posted in good time. This is a lot going on in terms of TT Post and the service.

I have a story. My daughter was due to enter university in the United States of America. She had applied and got through but we never got any mail from the university until a recruiter came down and said what is happening; we sent you information. This was the first we heard that she got into the university and was supposed to be responding. Up to now we never got that mail. This is the status of the service in this country.

If you have a situation where an important notice for property tax which can mean forfeiture of your land eventually and tremendous taxes imposed on you after September 15, 10 per cent and another 15 per cent after that, you have to be sure that the owner will receive this mail. Unless it is registered mail, it does not say so in this particular clause, we cannot be sure that anybody in Trinidad and Tobago would get any mail within 15 days. This is maybe in another country and another place where they have proper services and people get mail in one or two days. This clause is totally unrealistic.

Clause 17(4) says:

"Any default or failure to comply with the provisions of this section or the non-receipt of a notice of assessment by the owner of land shall not affect the liability of the owner to pay any tax in respect thereof nor shall it affect the validity of any action taken for the recovery of such tax."

It is a serious thing not to receive your mail and you would still be liable and face all the penalties for not paying your tax. The question of delivery by mail and the notice being deemed to have been served after 15 days is totally unacceptable.

Clause 18(1) says:

"Liability for tax under this Act shall not be affected by an incorrect or incomplete assessment or by the fact that no assessment has been made."

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What is the role of the Commissioner of Valuations? We are legislating that the Commissioner of Valuations can have incomplete and incorrect assessment or no assessment. Do you know whose fault it is? It is our fault. We are liable. We have to pay. We are responsible. What is the role of the Government and that department entrusted with such an important job? You are dealing with people's property where they sleep at night. We are not dealing with simple matters but fundamental matters of homelessness, poverty, loss of jobs, children and family. Those are the issues that would come out of this if not properly handled. You are legislating that because of the incompetence of the Commissioner of Valuations that the citizen is liable. What type of governance is this? In what type of country are we living?

We have another part, clause 18(3) which continues. Half of this Bill before us is entrenching inefficiency and illegality. It says:

"An assessment shall not be impeached or affected—

- (a) by reason of a mistake therein as to—
 - (i) the name or surname of a person liable;
 - (ii) the description of any property; or
 - (iii) the amount of tax charged; or
- (b) by reason of any variance between the assessment and the notice..."

PROCEDURAL MOTION

The Minister of Energy and Energy Industries (Sen. The Hon. Conrad Enill): Mr. President, I beg to move that in accordance with Standing Order 9(8), the Senate continue to sit until the conclusion of this debate.

Question put and agreed to.

PROPERTY TAX BILL

Sen. Dr. J. Kernahan: Mr. President, this Bill is about the Government refusing to take responsibility for any errors that would cause serious harm and distress to our citizens and putting it in the legislation. It is unbelievable.

Clause 19(1) continues along the same line. It states:

"Where land has been omitted from the Assessment Roll, it may at any time be added while the Assessment Roll is in operation and shall thereupon become liable for payment of the tax for the year within which such addition is made and also for the payment of any tax for the preceding period during which the Assessment Roll has been in operation."

We have a law that says that the Commissioner of Valuations must come and value your land. They have a GIS system and know everything about properties. They are supposed to have valuers and 80 trained persons. They said that they have everything under control. Yet, they put in the legislation that you can be omitted from the assessment roll, but if they inadvertently omit you from the assessment roll, they can come at any time and tell you that you were omitted and you have to pay all these back taxes together with all the interest that accrued maybe over a couple years or what they decide to deal with your situation. They can tell you that because you were omitted or incorrectly you have \$50,000, \$60,000 or \$70,000 for the Government. It gets worse.

Clause 19(3) states:

"The tax assessed under this section shall become due and payable on the expiration of thirty days from the date of such notice."

They can omit you through their carelessness and lack of due diligence and after two or three years, they can come and tell you that you owe \$60,000 and you have to pay within 30 days. In what kind of banana republic are we living? This is wrong, illegal oppressive and unacceptable.

Another point that was made by Sen. Baptiste-Mc Knight that I want to reinforce is that when—[*Interruption*] I have to make the point. How do you know which point I want to reinforce? You could go home.

Clause 20(2) states:

"Any amount of a refund under subsection (1) that remains outstanding for more than a period of six months after the date by which it became due, shall bear interest at the rate of one point two per cent."

This is in the case that you are overpaid and they have to refund you, you get a refund of 1.2 per cent. When they have to pay you, they pay you 1.2 per cent, but when you have to pay them, you have to pay up to 25 per cent if you are delinquent in paying your taxes. I agree totally with Sen. Baptiste-Mc Knight. There is no equity. That is oppression; the power of the State and the big stick on the citizens of this country. We did not elect you for that. The citizens did not elect a government to hold a big stick over them. I listened to a calypso this morning by Chucky. He said that the government must rule and guide this country but not be oppressive. This is the cry of the people.

Clause 21(6) says:

"The Board shall, within one year of receipt of any notice of objection in respect of an incorrect assessment of tax, consider the objection and may either confirm, reduce or increase the value or make such other adaptations thereto as it considers just."

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I want to know why it would take the Board a year to deal with an issue of an objection. In five months if you do not pay your tax, it is due at the end of March, by September, they would be ready to send you a letter of demand. By September 16, they would impose an additional 10 per cent on your tax and after that an additional 15 per cent. In six months they would be ready to impose serious taxes on you if you do not pay.

If you have an objection that you lodged with the board, it can take them a year to respond to you and deal with your objection. That is not equity. This is the State in all its glory, the big stick, the riot police behind them and people who come to break down your door. They do it because they can.

Clause 23 talks about deferral. This is something that Senators spoke about. Obviously, we are totally opposed to this whole concept because it transfers debt from one generation to the next. Sen. Baptiste-Mc Knight was very clear on this in terms of a generation being faced with thousands of dollars of debt to pay for a property. That reinforces the point I made. The objective of this Bill is to accelerate the whole question of transfer of land from the poor to the rich. At the end of the day, that young man who has inherited that house and is so happy, when he looks into it he would have \$148,000 to pay. He would have to sell it to somebody who can snap it up, and he would have to look for a spot in the car park on Besson Street. All the sacrifice that his parents made to have that property because they were poor and unable to pay the taxes would be snatched from them. This is the objective of the Bill. At every turn you would see at the end of the day a massive transfer of property and land from the poor to the rich, who can afford to pay the taxes.

Clause 23(2) makes mention of the conditions under which a deferral may be granted to a person who is in receipt of public assistance and disability. I agree with Sen. Baptiste-Mc Knight that these are not the only persons who would not be in a position to pay taxes. There are many other persons who are not necessarily at the lowest level, but they would not be able to pay those taxes and therefore, this net of deferral needs to be widened if it is to make any sense.

I do not know if the statute should be “deferral”. I do not believe that people within a certain income bracket who do not have the income to sustain the taxes—the Government must look at that and not have people who are on fixed income subjected to these taxes. That is clearly inequality and it is wrong. The whole issue of deferral has to be looked at. People whose financial and economic situations do not allow them to pay these onerous taxes should be exempt from these taxes. It should not be from executive to shack.

You have to deal with the people of this country in a more humane manner. It is not equality to say that you would tax the rich and poor in the same manner. That is not equality. That is ensuring that a certain programme takes place over a certain number of years. It is not because they did not think it out. They thought about this long and hard. It is well crafted and planned. It would be well executed if we do not get rid of this Government at the earliest opportunity.

6.30 p.m.

It is not a matter that they did not think about it and they do not know what they are doing. It is a well-thought-out plan. The colonial government did it and now they are doing it. They have learnt well from their colonial masters and now they are doing it in a high-tech way. You now can go on the Internet and see how much tax you owe and how much you have to pay. How can it be nice and easy to pay a tax when the money would previously have gone to pay some groceries, transport, school fees and books? What is so convenient about that? It is a high-tech, modern-day lynching of the population; a neocolonial approach.

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

I have been discussing clause 31 with my colleague and I was so upset. Sen. Baptiste-Mc Knight made the point: How can you have a situation where you say:

"(1) The annual tax to be paid in respect of all land shall be paid by the owner..."

And then come back and say:

"(2) Notwithstanding subsection (1), the amount to be collected from the owner of the land may be collected from the tenant or occupier of the land or any part thereof and the tenant or occupier may deduct the amount paid from the rent payable by him in respect of the land."?

I totally agree with Sen. Baptiste-Mc Knight. This seems illegal and highly irregular. If you do not have a lease agreement to the effect between the landlord and the tenant, how can the tenant do that and come and tell the landlord he is deducting from his money because he paid his tax? I am not a lawyer, but it seems highly irregular. Sen. Baptiste-Mc Knight made that point also and it needs clarification.

I dealt with clause 34 in the context of the non-payment after September 15. It says that they would add 10 per cent and if it is not paid by September 15, a further 15 per cent per annum would be applied. The reality is that by

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March 2010, these notices will go out to citizens—people who are on a fixed income; people working for a minimum wage, single mothers; people who are "catching as catch can" and who are trying to survive and stay sane.

On March 15, they will get these notices and before they can blink, September 15 comes around and people are ready to send them to the car park and down to Tamarind Square. Within 12 months of the demand notice, they will be ready to run to your house and break it open and take your chattel. We would like to find out from the Attorney General where is the role of the court in clause 37(1), (2) and (3) where it says:

"For the purpose of levying any distress under this section, any person may, if expressly authorized in writing by the Board, execute any warrant of distress, and if necessary, break open any building in the daytime for the purpose of levying such distress."

This is illegal. This is the action of a banana republic here. This whole question of levying and distress must be provided for by a magistrate; by a court of law. This is what obtains in the Municipal Corporations Act. Any distraint on property must be signed by a magistrate. Why are we regressing and bringing legislation where any person can break open houses and take property?

[MR. PRESIDENT *in the Chair*]

The other thing I want to find out from the Attorney General is—many citizens take things on hire purchase and they are not theirs unless they have paid for them. The Bill is saying that any person can break open your door and take away your things. I wonder where the legality in that is. Hire purchase goods are not the property of the person in charge of them until they pay for them. What is the legality of a government officer taking away the goods that are not the property of the person from whom they took it? They are the property of the store with which they have a hire purchase agreement. That is a murky area that must be explained.

This is pure brutality and illegality that go on in clauses 37 and 38 with respect to how we deal with people. If they take your goods and sell them—Sen. Cumberbatch made the point that the residue shall be payable on demand to the owner of the goods distrained upon.

Mr. 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. W. Mark*]

Question put and agreed to.

Sen. Dr. J. Kernahan: Thank you, Mr. President. My colleague, Sen. Cumberbatch, asked why you had to demand payment of the residue. That should be a person's right. They are supposedly your goods and your debt has been paid and that should come to you in the post as promptly as possible after the sale. This is distressing the citizen; is authoritarian and is not what a caring Government is about.

Clause 39 says that:

"...the Board may distrain upon all such goods, chattels and effects wherever the same may be found...not upon lands actually charged with and liable for the payment of any tax."

This is something that Sen. Mark made an objection to. I do not even know how that will be enforced. On what basis will you decide that the goods and chattel in someone else's home is that of the person whose goods you are trying to distrain? Where are you going to get the papers and receipts to determine that? Clearly, clause 39 is unenforceable. You can still have some idea that the goods and chattel in someone's home are his, and that is not necessarily true based on hire purchase agreements. How will you determine that the goods and chattel in someone else's home belong to that particular citizen? It is impossible. I do not know what the Government is thinking about. Is it that it is an excuse to invade people's homes and privacy under pretext of looking for goods and chattel belonging to a particular person? You can come into my house and say that you are looking for goods and chattel belonging to a cousin or pumpkin vine family. Is that how this will work?

This is very suspicious. It is so unenforceable, there is a reason it is there. The Government has thought it through and brought it last night and early today when everyone is supposed to be sleepy and tired and not looking at anything, figuring that people are still feting and celebrating. They are saying that they can come into my house to look for goods and chattel belonging to someone else. How are they going to determine that? Highly suspicious activity, reminiscent of banana republics.

We have a situation in clause 41:

"(1) Where any tax...in respect of any land remains in arrears and unpaid for the period of five years from the day when it became due and payable, the President may, by warrant under his hand, reciting that a sum specified in such a warrant...is and has for the full period of five years been in arrears and unpaid, order that such land be forfeited to the State..."

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These poor people, with limited resources, may be trying to work at an extra job to get moneys to pay the arrears and after five years they may lose their property, their livelihood, their children and husband. That is what this caring Government puts in legislation. Why should the Government be so anxious to forfeit land and property? They are the agents of social dislocation.

Many people who live in car parks and under trees have been evicted from their homes by the HDC. This is what is happening under the aegis of a caring Government; it is they who have half the people out there; not private landlords.

One of the last issues I would like to discuss is clause 49, which says:

"Anyone who prevents any person authorized by warrant under this Act from taking possession of any land, or who molests, obstructs or hinders any such person in taking such possession, or who assaults, obstructs, molests or hinders any person whomsoever in the execution of his duty or in doing anything which he is empowered to do by any regulation made under this Act, commits an offence and shall be liable on summary conviction to a fine of five thousand dollars."

This is a setting for war. I cannot see anybody sitting by and allowing people to break into their house and take everything. People will react and there will be serious confrontation and violence. This society is on a tinder box right now and the Government is applying some more gun powder and dynamite with the legislation they are bringing. They are allowing for confrontation and violence. We already have a lot of guns; we had seven murders in 24 hours. People are going to react and arm themselves to protect their goods, their chattel, their women and their livelihood. Nobody will take these things lightly. That is the reality. People are killing you now because you watch them too hard, much more going into their homes to remove their things. This Bill is setting up the society for serious violence. This Bill is about an oppressive, neocolonial Government carrying out the policy of the colonialists of the old days. It is about transfer of property from the poor to the rich tenement; carrying us back to the barracks and tenement yards; it is about violence, dispossession, poverty and homelessness. This is what it is about, by this loving, caring Government.

I thank you.

Sen. Annette Nicholson-Alfred: Thank you for this space, as I rise to make my contribution to the debate on the Property Tax Bill, 2009.

I listened to most of the debate in the other place and here in this Senate. I am more than disappointed that very little, if anything, has been said about the impact of such a tax on the residents of what we conveniently call the sister isle, Tobago. You will, therefore, forgive me if my contribution dwells mainly on the effects of the Bill on Tobago. I may be a lone voice crying in the wilderness; however, I will continue to cry.

It is said that the property tax is aimed at improving the environment in which we live. Then I ask: Does that statement really apply to Tobago? Tobago, as you all should be aware, has a unique history and as such varies in a number of ways from Trinidad. Because of its peculiarity, there are a number of concerns with respect to the property tax, which need special attention and special treatment.

Tobago has an age-old problem with the ownership of land, thus we have a greater problem with understanding the property tax. Our concern is that almost 80 per cent of the land in Tobago does not have good title. They do not have a living owner. The owner is long dead; sometimes as many as as 60, 80 and 100 years ago. Their bones have since disintegrated. No one who is alive today knows the owner, thus the bulk of the property tax in Tobago will be imposed on occupiers of the land, not owners, and that is our main concern. We in Tobago want to be owners of our lands like any other place in the world. We also want to pay our taxes in our names.

Owners of land in Tobago comprise a mere 20 per cent and for years the 80 per cent without titles to their land have been crying out for a solution. This picture needs to be rearranged in that there should be 80 per cent landowners and the next 20 per cent in the process of perfecting their titles through a practical and simple application.

Tobagonians take pride in passing on their assets to their young ones. I know the history of older folks who were able to buy properties in the names of their newborn children just to ensure that the name remains. How can we continue this without proper titles? It is demoralizing to have 80 per cent of persons on an entire island not having proper documentation to their lands. In fact, it is a disgrace and results in discrimination against those people.

It impacts on so many things if you do not have title to your lands. Persons in this position are not able to advance to the banks to get loans. Plans for growth and development become stunted. We are unable to pass our lands to our children as all civilized people dream of doing. Tobagonians are unable to use lands as security for business, to educate their children and even to seek medical attention. They are unable to do many of the things that people can do when they own property.

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This is one of the reasons why Tobagonians lag behind in their efforts to develop themselves or to fund their children's education. They cannot use the land to generate profits to enable them to pay the very taxes the State now demands of them. Thus, we have to resort to alternative means of earning money, which takes longer than if we had ready access to finance and funding.

By dint of hard work and sacrifice, Tobagonians, however, have managed over time to construct their homes even in the face of daunting circumstances. With no title documents, they have worked, saved and built little by little. After a while, one owns a dwelling house with two to three bedrooms on the top floor and about four apartments downstairs where a holiday rental business is carried on; all of this on lands to which he or she has no title. This person now finds himself or herself with a possible 5 per cent property tax for commercial properties because he or she tried to help himself or herself in getting additional space for renting.

Without heeding the long-standing cry of the people of Tobago to have their titles regularized, the central government has decided that the taxes on the lands that Tobagonians occupy must be increased a thousandfold. I ask Senators: Is this fair? We in Tobago say no. This drastic increase in property tax is provocative, abusive and oppressive to the entire country, but especially to the people of Tobago, in light of what I have described.

This measure will single-handedly drive a greater wedge between the people of Tobago and the central government. I am very mindful that the problem of defective land titles exists in Trinidad, but I am certain that it is not on the scale and magnitude as in Tobago. Tobago's problem has its roots in history, going back to the annexation of Tobago to Trinidad. With such annexation, Tobago was demoted from a stand-alone colony to a ward of Trinidad. The island thus became controlled and operated from Trinidad. Thus a relationship that should have brought greater development and independence for the island brought greater dependence on Trinidad.

After annexation, the Tobago facilities for the registration of births, marriages, deaths, instead of being upgraded, were all dismantled. These functions had to be performed in Trinidad. Think of what has been involved in getting these documents from Tobago to Trinidad registered and stored. Think of the many documents that were lost or destroyed in the process. I am certain that the births, deaths or marriages of many persons were never registered because of what was involved in getting from Tobago to Trinidad. Remember there was no plane, no telephone, no fax, no Internet then; only the boat, which perhaps came once per week or two weeks or perhaps once per month.

People kept some of these documents in their cabinets and safes as they were called. Yet it is on the production of these very documents that the present system to regularize titles depends. One has to show death and marriage certificates of the assessed owner, who may have been married in, say, 1868 and died in 1910. We must show that neither his wife nor children are alive. So their birth and death certificates must also be produced. It is like looking for a needle in a haystack. The collective memory of a village would never, even now, be able to trace back so far to understand who owned what and when.

The system is so unfair and antiquated that it has produced a gridlock in applications to regularize titles to lands. Hundreds of registrations are lying unpursued. The Registrar General's office is waiting on some death or marriage certificate from 1910 that just cannot be located. So we have cried out for a solution from successive governments. We have cried out even up to last year when the then Attorney General promised me help, but to date, to no avail.

We in Tobago have a property title problem that must be fixed first. We need it fixed before we can think of paying property taxes. The people who should pay the taxes are long gone. Their bones have disintegrated. What is even more troubling is the fact that I understand that the laws to address Tobago's problems and that of regularizing property titles have already been enacted.

Since 2000 a package of land laws has been passed by this Parliament which would deal once and for all with the regularizing of land titles in this country; but for 10 years they have remained unimplemented for some unknown reason. Maybe someone can tell us why.

The problem can be fixed, but Tobago cannot fix the problem by itself. Maybe we have to beg and plead with the central government and wait patiently until the latter condescends to do so. Until it is fixed, it is unconscionable for a government, which is fully aware of the problem, to impose a property tax in a situation like I have described.

Today, my message is that the property tax is wrong, provocative and oppressive to the people of Tobago. I suggest that there should be no taxation until there is title regularization for Tobago's properties. There should be no taxation without first bringing into force the Land Adjudication Act, the Land Registration Act and the Land Tribunal Act, that would ease Tobago's sufferings.

We in Tobago are aware that these problems can be fixed and we appeal to the Government to fix the problems so that we can pay our taxes. It is not easy to pay increased taxes on properties that do not legally belong to us. This is the number one reason why I cannot, I do not and I will not support the measure.

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Tobagonians in one voice say: “No taxation without property regularization.” I think we are very, very firm on that. If this is a country called Trinidad and Tobago, the powers that be need to recognize that the country is not Trinidad alone; it is Trinidad and Tobago and sometimes one needs to look into the needs of the stepsister.

In a place like Tobago, the cost of living is as much as 25 per cent higher than that in Trinidad. Food, building materials, medicine, doctor bills and whatever, cost us so much money. Living in Tobago—you all know when people come from Trinidad, a lot of them bring everything with them. They walk with water and all because they say they cannot afford to buy what we have in Tobago. If our cost of living is 20—25 per cent higher than Trinidad, "oh gosh", the Government is going to come again and ask us to pay increased property taxes? No reasoning! No reasoning!

When the Government came up with this new property tax plan, was any study done on Tobago? I do not think so. We were, as usual, forgotten and brought in at the last minute. I want to say to the planners that the suggested tax reform would wreak havoc on business in Tobago.

In addition, Tobago has been designated a tourist island and has been such for many years. We joined with the Tobago House of Assembly to develop a tourism plan. Today, for those who do not know, there is nothing called tourism on the island. I am speaking from what I know. I am not guessing and nobody has to tell me. Where there would be apartments and bed and breakfast places filled at this time of the year, they are empty. Even when the tourist boat comes, the moneys are all paid somewhere out there. We get nothing out of it. I do not know how the people of Tobago are going to make it. The land titles are not ours, the lands are not ours, cost of living is higher than everywhere else and tourism on which we depend is almost dead on the island. How do we pay a property tax? I do not know how the apartments or our buildings are going to be assessed. Apart from being dead, tourism would usually be a seasonal thing; December to April and July to August. How then will these properties be valued or calculated? How will the property values be determined?

I want to add here that promises have been made to assist the people who have undertaken repairs, refurbishments and additions to their plants. Moneys have been promised. I want people to understand that the moneys that have been promised are just to pay your staff, so it would look as though unemployment is at

a good level. But what happens to the insurance you have to pay for your building, maintenance, upkeep and even the said taxes we are asked to pay? How do we pay that? How are we going to pay it?

Mr. President, Tobago has a special case. Tobago has a special need and I am calling on the Government to look into it before forcing us into doing something we really will not be able to afford. I have already said that titles are not straight, tourism is at its lowest ebb and the cost of living is 20—25 per cent higher than Trinidad. What is going to happen to the Tobagonian? How are we going to survive? How are we going to pay property taxes?

In addition to the points I have raised, I have other views on the Bill, a lot of which has already been said. I think Sen. Baptiste-Mc Knight and others would have really explained and gone deep into some of the problems or concerns, but I was taught that you repeat for emphasis. In my case, I like to repeat for emphasis. The proposed formula for determining the amount of tax to be paid, results in an increase that is too drastic and excessive.

The proposal is to use the true rental value of the property. The fallacy of this approach is that if all properties in Trinidad and Tobago were to become available for rent, then the rental value for each of them would drop way below the present prices. Thus, because of this fact, one has to discount the rental value heavily. Where \$36,000 per year may be the rental value, in present conditions, when all properties are available for the rent, the amount payable would be about \$12,000. Thus, the assessed tax would be much lower and much more acceptable. Instead of 3 per cent of annual rental value, let us try half of 1 per cent. That would also produce equity; the equity we have been talking about. I want to make this clear. I have no problem and I would not quarrel with increase in taxes when it becomes due, but it must always be reasonable and prudent, not illogical, draconian, punitive nor exploitative as this one appears to be.

The hon. Minister has said that the new regime would bring equity to property taxation in the country. How is that so, when last year ordinary persons were paying—I call myself an ordinary person—about \$112 and this year you are called upon to pay about \$960? The math is beating me there.

Secondly, a shack which is located in close proximity to an affluent area may be assessed like a well-appointed dwelling house. How does the owner of that shack pay that kind of taxes?

Thirdly, is it not true equity when people living in the city areas pay more taxes than those in the rural districts? After all, one considers the better quality of services that are available to the city areas.

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Under section 21(1), it says an objection to the assessment of tax on one's property shall be dealt with by the Commissioner of Valuations within nine months of its receipt, however the Bill is silent on what obtains in the event where the Commissioner fails to deal with the objection within nine months of receipt. Something needs to be said here. Does it mean that the old tax would prevail?

Section 23(1) and (2), which provide that certain categories of persons may apply for a deferral of payment of the assessed tax on the grounds of impoverished condition of the owner and his inability to improve his financial position significantly by reason of age, impaired health or other special circumstances.

Somehow, I take strong objection to the fact that our senior citizens, after having rendered years of devoted service to the development of this country, have to spend the evening of their years trying to prove that they are impoverished and unable to improve their financial position. They should be basking with pride in the admiration and respect of the country. Instead, this legislation seeks to demean the last days of their existence by setting them out on a process to show proof of their impoverishment. How heartless! How uncaring! My position is the same in relation to the disabled and those on social assistance.

After years of having to beg and humiliate themselves by seeking the State's welfare and sometimes being looked down by others, the State of Trinidad and Tobago now wants to top off their life of embarrassment by publicly demonstrating their poverty. What kind of mind would conceive of these ideas? We in this place must reject that.

Well, I think Sen. Baptiste-Mc Knight said everything that we could want to hear about the pensioners. I am talking about people whom I know, who might have taught me in school, and people with whom I would have worked in the public service when I started. Where are their names on that list; a list which includes so many others; those people who may have worked so hard for this country? Over the years, they have been left out. Could you understand somebody drawing a pension of \$900 having to deal with this, even if they get whatever assistance, what kind of money? After they worked hard and would have built their house part by part, now you are asking them to pay what they have never seen and cannot afford as property taxes.

Enough thought was not given to this matter. The people are just thinking of, maybe, themselves and what money can be raised. The important thing is to treat our citizens, especially the senior ones, in a more appreciative way. There are

instances of people reporting other people when they should get this pension money or the Senior Citizens Grant. We know there are people—I do not know if they have been placed there—who would just report others and say: "Well no, they can afford, they have houses renting, so don't give them that money." I could see these same people doing the same to the people who are trying to say: "I am impoverished." Trying to tell whoever it is: "No, they could afford." We have to look out for that.

In addition, the relief obtained by the applicant on the tax is not permanent. It is a loan that ends on the death of a successful applicant, at which time, the sum deferred is to be paid out of the estate of the deceased owner. That has been touched here a number of times. That is unacceptable, repugnant and contrary to the principles by which we operate or want to operate in Trinidad and Tobago. That is a draconian measure. Is it that the Government is subtly reintroducing the inheritance succession tax? That is an oppressive move. We cannot pass those debts on to those who are left behind. When the person is dead, the debt dies.

I looked at clauses 41, 43 and 44 and I see a naked attempt by this Government to cure the title of defects of property by virtue of its forfeiture by the State.

In the current environment, where regularization of land titles—I am talking especially for Tobago, but it goes for everybody—has come to a standstill, the issue of a warrant for forfeiture by the State would provide at least a better title to the purchaser of such land than the original owner.

I would have been there suffering and begging the Government to regularize my ownership and they did not do that. When I cannot pay, my land would be sold to somebody. Of course, the rich get richer here; somebody who has the money. Directly, that person gets the right to go to the bank and use the land as security and the person who was there begging and pleading all the time never had the opportunity. What are we going to do about something like that? It is not fair. It is totally unfair to the original owner.

One of the clauses in the Bill that I find most objectionable is section 54. It provides that if you are in arrears of taxes under the old law, you will be treated as though you are in arrears under this new Act, thus you would be treated as owing the increased tax that is payable under this new law. This, to my mind, is a law with retroactive effect. We all know that this is totally unacceptable in democratic societies. We have regard for good governance and fairness. No law—I am not a

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lawyer, but my readings tell me that laws like this should not be retroactive. How can civilized people conceive of such an idea? Therefore, how can civilized people sit by and accept this?

Mr. President, I end with a cry from Tobago that this measure be withdrawn. It is not good for us in Tobago, neither is it good for the entire country. I know that we in Tobago are the people who are bearing the burden and the brunt of this attack. Fix our land titles first. Give us something to pay taxes for. Now, it is like we are paying for wind; for empty paper and a tax receipt in the name of a dead person. Make this Bill a fairer Bill, with a reasonable increase. Some people suggested bringing it in bit by bit. Do not burden our senior citizens with having to prove that they are impoverished. It is demeaning to them after rendering such sterling contribution to the development of this land. Do not make this law retroactive; it is obnoxious.

This Bill amounts to domestic violence by the Government on the people of Trinidad and Tobago. I demand that better sense prevail and that the Bill be withdrawn, before it leads to mayhem and possibly, God forbid, civil unrest.

I thank you.

Sen. Dana Seetahal SC: Thank you very much, Mr. President. I have read the Bill, which is a draft Act, and I have looked at previous Lands and Buildings Taxes Acts, Part V to the Municipal Corporations Act, the Taxes Exemption Act and other legislation, but those are the main pieces. As well, I have studied this current Bill.

In material aspects, this Bill is not different from what was there before. Now, I say this because there have been many assertions that—or example the forfeiture provisions. My colleague, Sen. Nicholson-Alfred just referred to how draconian that provision is. Many other provisions were referred to by other Senators. If one takes the time to go through the Lands and Buildings Taxes Act and Part V of the Municipal Corporations Act, Chap. 25:04, one will see that essentially the provisions are the same. The forfeiture provisions in the current law that exists are in fact in some ways more draconian than what is now proposed.

I am not here to support any legislation, unless I think that it is of value to the country and by the same token I am not here merely to criticize the legislation because it is not popular. The legislation that is being proposed is not popular because the new method of assessing the annual rental value would increase in urban areas, in particular the tax payable; and that is really what ought to be the concern of all, in my view.

If it is that persons would like the Legislature to consider whether or not we should have forfeiture, one must bear in mind this is actually not an uncommon measure in the legislation for certain things. For example, the Comptroller of Customs has very wide powers for forfeiture and he exercises them. The citizen does not have much recourse in those instances when you bring in stuff and it is not entered properly. You have those provisions from the old laws. One may ask: Why are you repeating those provisions in the current law? That is something one may ask, but the fact is, it being there before, it is considered essentially saved law. Under section 6 of the Constitution, legislation in its substantive form existed before 1976 and it is repeated in the new legislation, then it is saved. Therefore, it is not unconstitutional. I think the Attorney General would have alluded to this, if not here, elsewhere. Yes, he did this morning, I understand. I was not here as I had other pressing matters to attend to, but it is something that is fairly well accepted.

With respect to the provisions of forfeiture, I want to point out that probably, not for consolation, but for comfort of my colleagues, that the provisions proposed are in fact much better than under the old legislation. The current clause 34, for example, provides for a notice to be sent, then a notice of demand within six months, then a levying of distress within 12 months and forfeiture only if taxes are due for five years.

Previously, forfeiture could be had under section 27, if taxes were overdue for one year. There is a benefit, as it were, to having this new clause passed. Under the previous section 27(1), which is still the current, but will be previous presumably from next year, if any tax or any part thereof due in respect of any land remains in arrears and unpaid for the period of one year from the day when it became due and payable, the President may by warrant under his hand order that such lands be forfeited to the State. That was if it was overdue for one year.

The proposal under clauses 34 to 37 and moving right down to clause 41, which is identical in material regard to the current section 27 says:

“...the President may, by warrant under his hand, reciting that a sum specified in such warrant, due on account of the tax and for five years in such warrant, is and has for the full period of five years been in arrears ...order that such lands be forfeited...”

I think we must get a balanced picture. One needs to look at that and the fact that the proposal is to put the citizen in a better position, insofar as the forfeiture powers of the State are concerned. The forfeiture powers as now exist are infinitely more draconian than what are proposed. That is something that you need to know.

Things like the increased tax of 10 per cent and the increased interest—I thought it was important for me to look at what currently exists, so I actually brought the receipts for my own lands and buildings taxes and my house rate and I notice that in respect of both I paid both an increased tax, because I did not pay my taxes on time. Actually, I paid them yesterday to make sure that I did not fall under any new law. I paid that increased 10 per cent and a 15 per cent interest. That currently exists. So the problem or the citizens' concern should really be, I feel, not to protest against this new property tax, because it is really a rehash of what existed, but, as to whether what we already have, could not be refined in a more equitable manner for the people of Tobago, as my colleague was mentioning.

If in fact you do not have properly registered land, then you would have a lot that flows from that. That is another issue, which I think has to be considered when imposing and applying these measures. But, just so we know that several of these measures are nothing new and currently exist. We might be better off marching to the fact that right now the State can seize your property if you are overdue for one year.

I think, to be fair, to the State in the person of the District Revenue Officer and others, I have been in arrears for years. Sometimes we forget, or have other things to do and no one has made any effort to seize anything. It might be slackness, probably, because I never got a notice or anything of the sort. Now, under the new legislation, you are to get notices and you are to get warning. My view is, if this gives some assurance to the citizens, in the stream of how things are done with the State, it is unlikely that people's property will be forfeited, even after the five years, which the State will now be entitled to do. I am not saying that we should condone inefficiency, but that is how things go and you also have provision in the legislation for a board and for an appeal to the Tax Appeal Board. That is three degrees of appeal, the Board, the Tax Appeal Board and the Court of Appeal. There you are. We have measures in place.

My concern really is with a couple of things in substance. I note that—and I think it is a good thing—now we no longer have two sets of parallel taxes. We have the house rates for municipal corporations and then you have the lands and buildings taxes for those persons outside the city or municipal areas. Now we have everything under one umbrella, property tax. That is fine, at least to me.

The Board of Inland Revenue however, has to prepare the roll of all the lands. I do not know that the Board of Inland Revenue is the proper authority. That is one of my concerns, which may seem to be a minor concern. But, if we are looking for efficiency and for people who know what is happening and what is relevant, I do not know whether that is something that they will be familiar with.

My major area of concern lies with three things. The first is the drafting, which I think, in some regard, is poor. The second more important thing is this whole question of the ATV and the ARV. I refer to clause 13, which would become section 13 in that regard. I want some answers from the Government on this matter of clause 13, as compared to clause 14. I want to know if those clauses are not the same, and if they are not, then what is the difference? If they are, then why do we have two such clauses? Clause 13 says:

"Where the Valuation Roll identifies the value of land for the purpose of assessment of tax on the land, that value minus the allowances and deductions allowed under section 14 shall be considered the annual taxable value..."

7.30 p.m.

So, essentially, what you are saying is, the value of land for the purpose of assessment of tax minus the allowances will be the taxable value. That seems clear enough. Now, what is the value of land for the purpose of assessment? Is that not the annual rental value? I do not see the Minister here. I was looking for a nod, but I would think that is what it is supposed to be.

Hon. Member: He is listening.

Sen. D. Seetahal SC: Whether he is listening or not, I do not see him responding, so I merely point that out. So, the annual rental value is, and has been held out to be the value for the purpose of assessment of tax.

Now, clause 14 says:

"The Board of Inland Revenue in assessing any land for the purposes of this Act may make deductions and allowances in respect of voids and loss of rent equivalent to ten per cent of the annual rental value given in respect of the land in the Valuation Roll."

Is that not the same thing? What you are saying in clause 14(1) is that you would make deductions—by the way, the same thing was in the old legislation—up to 10 per cent of the annual rental value, and then in clause 13, you are saying, essentially, the same thing—where the annual rental value, which is the value for the purposes of assessment. You have that fixed, but if you minus the allowances and deductions that will be the annual taxable value. So why do you not use—where you mean "annual rental value"—the words? Clarify it and clear it up for us. This is confusing the legislation. It makes all of us wonder what it is all about, and then it will create more mistrust, and people will not believe. It is not just something to say casually. It seems to me so simple. I read the legislation about

three times. Any proper drafter ought to read it about five times; the first time for typos, the second time for sense and the third time to go over to see if you capture the thing and so on. So, those two clauses are just not making any sense. Now, if you are really going to be helpful, I will give way.

Sen. Jeremie SC: He is always helpful.

Sen. Browne: I thank the Senator for giving way. As you know, drafting legislation, as you have pointed out, is a very difficult process, and you always need to do some stuff to get it right, but it is also a compromise between some of the persons who are in the room when you are drafting. The difference between these two clauses, in effect, represents a compromise between some of the technical persons who are involved.

Clause 13, as you rightly pointed out, reflects the role of the Valuation Division, and clause 14 reflects the role of the revenue collection agent. Essentially, this is as a result of the two different parties being in the room, so we have those two clauses.

Sen. D. Seetahal SC: What it looks like is, if you are saying that you have those two or three different parties that are involved in the legislation, because of different roles—one person drafts a clause which represents what they do and the other person drafts one which represents what they do—they have described the same thing in different ways, and it is put into the legislation without regard to the fact that there is a definition section which tells you what is what. I would think, that being so, and since the person who has the overriding control of this would be either the appropriate Minister or the drafters—it ought to be the drafters—they would do away with that and clear it up. I do not think that anyone can hold another to ransom when you are cleaning up legislation. I understand what you are saying, but I am merely pointing out that this is a recipe for confusion, because what you mean in clause 13 is annual rental value. It is clear.

Now, clause 15 says:

"The owner of land shall be liable under this Act for the payment of tax."

Now, you see, this is basic. If you are saying "the" of anything, it means that you would have referred to that person before. So, I would not say: "The man in the brown suit", unless you knew who the man in the brown suit was. So, when you say the owner of land, in recognition of that statement, it should be something like "an owner of land" or "any owner" or "every owner of land". This is normally how people draft. I know some of the drafters here myself, and they must agree

with me. They are nodding, because that is basic. I taught legal drafting, and that is about the first thing you teach. I know the Minister did not teach it but I am talking about getting something right. It is legislation; it is not a miracle, because many of these clauses are the same.

I have them all listed here, the ones that are the same: section 34, the old 22, 24 and 27. I went through the Act, so it is just not acceptable to say that we were having a drafting issue, and that brings me to my other concern.

Mr. President, we have been here in this Parliament for two years. Now, there was a time before, in another Parliament, I was here for five years, and so were you, Mr. President, but I cannot recall that we have been this late with any legislation emanating from the budget. Now, I am sure there are efficient people in the Government, but the fact that this has come so late in the day, leads to some concern and question as to whether this is so. Why are we debating this Bill on December 30, 2009? This should have been done since in October or November. [*Desk thumping*]

If it had been done then, I could understand some excuses at the drafting as an issue, but not this late. It is not acceptable, and it is time that people understand that you cannot come at the last minute—the FIU was one thing, but something supposedly as important as this that comes into effect on January 01, 2010 is not right. It is not fair to the country.

Persons who have concerns about this Bill would have expected some educational something out there—whether it is a symposium or something—but not just a couple of advertisements with some man asking me, “what is it?” If you happened to listen to that radio station, you might have grasped something but, again, that might be seen as mere propaganda. It would have been better to have an open symposium for people to discuss matters of that kind in a way that they would understand that the forfeiture provisions are there, and have been there, and you are improving it and doing it better for the country, and tell us that the annual rental value is going to be based on assessments.

It really boils down to the assessments. People do not know what is going to happen. People are telling us that it is going to be conservative and conventional, and there is a system somewhere where you have different types of houses and so on, but it is not there. Even so, this Bill was not out for public comment, and that is the problem. Those are the matters that I wanted to bring to the attention in substance; the substantive matter.

I also want to raise a couple of other little drafting matters. For example, clause 5 says:

"The Board of Inland Revenue shall on the commencement of this Act, prepare a roll..."

You have in the definition clause:

"'Board' means the Board of Inland Revenue..."

So, if the definition clause says that, why are you saying "the Board of Inland Revenue" here? You see, those are the kinds of things that I am talking about.

Sen. Jeremie SC: Move on, we understand.

Sen. D. Seetahal SC: Excuse me! Well, I do not know that. I want the national community to understand it as well.

Clause 6 says:

"The Assessment Roll shall comprise of..."

Well, I thought I learnt in basic English that "comprise" includes "of ". So it should read: "The assessment Roll shall comprise..." There are many of these things throughout.

Let me just read this last one and maybe, the Attorney General might be careful about saying move on again. Clause 21(2) says:

"Where the objection received under subsection (1) in respect of an assessment by an owner of land, is on any of the grounds set out in section 22(a)..."

Now, what does this mean? Clause 21(1) says:

"The owner of land who is dissatisfied with the assessment of the Board may, within twenty-one days...notify the Board in writing of his objection..."

So, you have a normal owner, you object, and you notify the board. The next matter is:

"Where the objection received under subsection (1) in respect of an assessment by an owner..."

Now, an assessment is not made by the owner. What do you mean? We are trying to guess. It does not say objection. It says:

"Where the objection received under subsection (1) in respect of an assessment..."

It cannot be received by the owner. Where the objection, received under... of an owner? Is that what is meant? I do not know, but that is so incongruous. I read it a few times. It continues:

"...set out in section 22(a), (b), (c), (d), (e) or (g)..."

Now, if one looks at clause 22 there is (a)—(g) and it does not have any other subclauses. So, the normal drafter would say, "set out in section 22" and leave it like that, because everything in clause 22 is included there. Do you see what I mean? So, why that? It begs the question.

Finally, clause 21(3) says:

"Where the Board is in receipt of an objection under this section in respect of an incorrect assessment of taxes it may, by notice in writing, require the owner of the land to furnish within..."

Now, clause 21(4) says:

"Where in reconsidering an assessment for the purposes of an objection, the Board, under subsection (3), requires the owner..."

Now, do you reconsider an assessment "for the purposes of an objection"? Think about it! Clause 21(3) deals with an objection, and you are talking about where you have received the objection, because it is an incorrect assessment. Now, you are talking about where you are giving the board power to require the owner of the land to furnish certain particulars, and you are saying:

"Where in reconsidering an assessment for the purposes of an objection..."

Do you mean where, in reconsidering an assessment as a result of an objection? You do not reconsider to enable somebody to object. It cannot mean that. I point out those things to say that my real objection is such as this; the drafting errors which were allowed to pass in the haste, in my view, to bring this legislation before us and in the other place, if left uncorrected, it would lead to confusion in specific aspects of this Bill such as the aspect dealing with setting the assessment—the provision for reassessment—and also the uncertainty as to how you are going to arrive at the annual rental value. Even though Senators have made contributions from their own personal knowledge, the only thing I know for sure is that with vacant land, there is a certain percentage. Under the old legislation, there is a provision, in determining the annual rental value, where the

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district revenue office could use a 6 per cent of the capital value in lieu of anything else. There is no such general provision now. So, there is still that concern and that really is the nub of the whole issue, as far as I am concerned and the country. I think that is their real concern.

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

Sen. Gail Merhair: Mr. President, before I begin my contribution on the Property Tax Bill, I wish to outline to this august Senate, my fundamental beliefs when it comes to Government.

I believe the strength of our nation lies with the individual and that each person's dignity, freedom, ability and responsibility must be honoured.

I believe in equal rights, equal justice and equal opportunity for all, regardless of race, creed, sex, age or disability.

I believe in free enterprise and encouraging individual initiative has brought this nation opportunity, economic growth and prosperity.

I believe government must practise fiscal responsibility and allow individuals to keep more of the money they earn.

I believe the proper role of government is to provide for the people only those critical functions that cannot be performed by individuals or private organizations, and that the best government is that which governs least.

I believe the most effective, responsible and responsive government is a government that is closest to the people.

Lastly, I believe that Trinidadians and Tobagonians must retain the principles that have made us strong, while developing new and innovative ideas to meet the challenges of changing times.

Mr. President, I would like to look at this Bill from the standpoint that I know best, and that is from the private sector. This is the first time, for the two years that I have sat in this honourable Chamber, that I have seen a piece of legislation that I would regard as anti-business or anti-private sector. [*Desk thumping*] I know that many of my colleagues who have gone before me, spoke about other sectors in the society, but you know, I come from the private sector, so let us deal with that.

When you have other countries in the world like the United States of America, Japan, France and the United Kingdom bailing out the private sector in 2009, in Trinidad and Tobago, we see that the Government's aim is to get more money

from the private sector. Mr. President, I cannot begin to understand what is going on. I speak particularly to clause 16(1)(f)(iii), and this was an amendment that came from the other place. It says:

"land belonging to and in occupation of—

- (i) the State or its servants;
 - (ii) a Statutory Authority; or
 - (iii) state enterprise controlled by the State,
- for public purposes;"

I also speak to Schedule I which states that plant and machinery housed in a building will attract a rate of 6 per cent and plant and machinery not housed in a building will attract a rate of tax payable of 3 per cent. Mr. President, as far as I know, these taxes were not there before.

Let me deal with clause 16(f) first. You are saying that the State, a statutory authority or a state enterprise controlled by the State for public purposes—Sen. Mark, you mentioned National Flour Mills, but you were a little wrong, because NFM falls under the statutory authority. You could talk about NFM when it comes to Nutramix; you could talk about bmobile and Digicel; you could talk about CNMG and Citadel; CNMG and the Trinidad Broadcasting Corporation; and CNMG and the *Trinidad Express*.

What we are seeing here is, when you take these groups of businesses out of the loop, do you know what is going to happen? You would be creating a monopolistic situation. You are encouraging the creation of monopolies on state companies. You are not encouraging direct foreign investment, because you are now making Trinidad and Tobago unattractive for companies to come in, and you are not fostering a climate of free enterprise. Competition is needed; competition is necessary. Do you know what a lack of competition would do to Trinidad and Tobago? It will give us poor service. It will hamper advancement in technology, and these sectors will become complacent in the industry. We will have higher pricing, and there will be a lack of variety of goods and services for the consumers. We are also going to see a rise in unemployment.

Mr. President, do you know what is going to happen? Some of these businesses will go to other islands in the Caribbean where they would get the tax breaks and other concessions. When they go, what is going to happen? They are

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going to put people on the breadline and unemployment will rise. So, in terms of the business domestic investment, we are going to see a breakdown in that. I am totally against this amendment.

Secondly, when you want to tax businesses that have never paid these taxes before on plant and machinery housed in a building at 6 per cent—that is manufacturing companies—and plant and machinery not housed in a building at 3 per cent, do you know what is going to happen? It means that the operating cost of doing business will go up. [*Desk thumping*] When that operating cost goes up, do you know what is going to happen? The unit cost of goods and services will also increase. Do you know what that means in the long run? Inflation! The ordinary citizens of Trinidad and Tobago will now have to pay more for goods and services. That is what it means. Mr. President, the business sector will always survive.

One of my business colleagues called me when this Bill was introduced, and asked me for a copy and I sent it. They called me back and told me that this Bill is a declaration of war on the business sector, and I said: "No man", because I was enjoying the Christmas holidays and so on. But when I read this Bill on Sunday and looked at it in detail, sometimes I have to agree with people. They may be a little harsh, but this is the reality of the situation. Tell me, where is the equity? Why are some companies coming out of the tax break? You have taken statutory boards and Government owned enterprises out of this, and other companies are not out. Mr. President, I cannot support this at all. [*Desk thumping*]

Now, another valid point, before I get down to the Bill, came from Sen. Cumberbatch. I really did not think about it, but I have to thank Sen. Cumberbatch for it. He spoke about the banks and mortgage companies. If a property is encumbered to the bank and the taxes are not paid—I do not know if the Minister in the Ministry of Finance could explain this to me—who is going to be responsible? I could tell you what is going to happen. You know that banks, financial institutions and mortgage companies do not lose at all.

Mr. President, for those of us who have mortgages, I can tell you that you have to pay everything even if it is not written. When you get approval for the mortgage, there are all these other fees that you do not know that you had to pay before, they give you the final cheque that you have to end up paying. That has happened to me. So, I understand. What is going to happen is that these mortgage companies and financial institutions are going to say: "Hear what, we cannot rely on you any longer to pay this land and property tax." So, they are going to calculate it and put it in your mortgage. So, if your mortgage is 15 years, 19 years

or 20 years, they will put it in your total mortgage and charge you interest, and every month you have to pay it. The bank does not want to know that the Government has first claim on a property and not the financial institution. Hon. Minister, please clear that up for me. If somebody takes out a mortgage on a property, and that person did not pay the taxes, who is responsible?

Sen. Browne: The position is well set out in law that statutory bills rank before even secured lenders. So, the priority, for example, unpaid taxes, would rank in advance of, and in priority to a fixed mortgage.

Sen. G. Merhair: Thank you very much, hon. Minister. Do you know what to expect? Interest rates are going to go up, and the banks are now going to include property tax in your mortgage agreement when you take out the loan. They are going to take it out. Of course, if the bank has your property, they do not want to know that they lose it to the Government.

Now, with respect to clause 3, I do not agree with the definition of "owner". According to the Bill, "owner" includes the owner or occupier of any land. The occupier could never be defined as an owner. According to the *Webster Dictionary* "owner" is defined as to have or hold a property; possess, to have power or mastery over wanting to own his own life and to acknowledge or be true valid or as claimed. So, nothing in this definition relates to an occupier of land. As a result, I think the definition is flawed.

Now, when it comes to clause 5, there is reference to the Board of Inland Revenue, but is it not the Government's intention to establish the Trinidad and Tobago Revenue Authority? Would it not make sense for the Government to wait and introduce the authority before this Bill? Furthermore, according to the Revenue Authority, from what I have seen, it is the intention of the Government to make political appointees. This raises an issue of trust, confidentiality and probably compromise. I have a concern here because if the Board of Inland Revenue is replaced with the Trinidad and Tobago Revenue Authority and the Revenue Authority encourages political appointees, then that means that your land is now in the hands of political appointees. When it comes now for your land to be put for sale, hon. Minister, tell me, would other people have the first grab of your land before you do?

Sen. Browne: Thank you very much for giving way. First of all, I do not think you ought to anticipate the arrival of the Trinidad and Tobago Revenue Authority or its method of operation. I could tell you that at this time, the

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intention is to create walls where such an eventuality will not take place. Quite frankly, you ought not to make an assumption that the board will have political appointees. [*Interruption*]

Sen. G. Merhair: Mr. President, through you, I thank the hon. Minister for clarifying that. I look forward to debating that Bill when it comes before this House. I am going to make sure and check the clauses to ensure that does not happen.

Clause 16(1)(a) says:

"lands used exclusively as churches, chapels and places of public worship of any religious denomination..."

Mr. President, there is this thing going on in Trinidad now where any and everybody is going into people's yard and erecting a little church, shed and so on. I think that we need further clarification on this matter. I think this legislation is drafted too loosely. I know persons who were in all sorts of activities before, and the next thing you know they are priests, pastors, reverends and ministers. Sometimes I have to wonder. Many people renew their lives from one life into another, and I am a little concerned about this exemption.

8.00 p.m.

Clause 16(1)(b), talks about school buildings, offices and playgrounds of schools within the meaning of the Education Act. What crossed my mind when I was reading this is the Accreditation Council of Trinidad and Tobago, no mention was made of schools registered under the accreditation council. I just wondered that if the schools that are registered with the accreditation council will now be charged taxes, is it that students when they go and apply for tertiary education would now have to pay a higher registration fee, because, again they are private sector owned and when taxes are raised they would have to get their fees from elsewhere. So is it that certain schools registration fees and tertiary education fees might very well go up because of that registration?

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

Now, in terms of clause 16(1)(g)—I dealt with (f) already in terms of the statutory authority and state enterprise—we spoke about land used for the purpose of public hospitals, public asylum and all houses and institutions for the relief of the poor, whether publicly or privately administered.

Again, Mr. Vice-President, especially privately owned—who determines that this is a private institution? I find that this definition is too loose. Is it that the private institutions have to be registered somewhere? Do they have to be registered with the Ministry of Social Development? I do not know, what happens to people like Vision on Mission? They have their own home, are they going to be exempted here? I find that this definition is too loose, it is not saying who is responsible for saying the privately owned bodies that are going to be getting exempted.

Clause 17(1)—this is a long clause and it deals with “The Board shall, on or before March 31 in each year, cause a notice of assessment specifying”—and from (a) to (h) it identifies the annual rental value of the land, the unique land identification number and so on. What I see happening here is an indexation of property, so I am asking that if over the years your property is based on the development of the area and the property, if that is the case, why the Government does not index wages to inflation in the public service? [*Desk thumping*] It is only fair. If you have to index land then you might as well index wages as well.

In clause 18, you know, Mr. Vice-President, this is a worrying thing, in this clause, “liability for tax under this Act shall not be affected by an incorrect or incomplete assessment or by the fact that no assessment has been made.” I am deeply concerned that the Government has exempted itself or absolved itself from any inaccuracies and outdated information and I think that this is only going to promote mediocrity, I think some of my other colleagues, in particular Sen. Corinne Baptiste-Mc Knight, dealt with this clause.

Clause 19(3) deals with: “The tax assessed under this section shall become due and payable on the expiration of thirty days from the date of such notice.” Now, this period of notification, I think, is too short and I formally object to it and I think other Senators have also objected to this.

In clause 19(5), I think this entire system is too cumbersome and I wish to suggest that the recalculated values will be entered on the register for the following year thus reducing the bureaucracy and the manpower that would be necessary to ensure that the register is immediately updated before a new building is erected on the land. That deals with that.

Now 21(4) deals with the time period for the owner to provide particulars for objecting to the assessment and it is my hope that the board will take into consideration delays from third parties that may affect the owner's ability to provide particulars. Again, we live in Trinidad and you all know when you try to

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get information from one body to another what happens and I think that the Government should establish within the legislation a minimum time frame that the board can set.

Clause 27(1); I think enough has been said about this, but since I absolutely object to this, I think I just have to say it again. I absolutely object to the fact that people have to pay deferred taxes. [*Desk thumping*] Now, I cannot seem to understand this, after somebody is exempted because of public assistance and because they are senior citizens, are you going to tell me that my parents, when they pass something on to me that I now have to pay tax on that property? It does not make sense. This clause should be taken out, and I think my colleague, Sen. Baptiste-Mc Knight, went on to explain the calculation which I would not get into, but absolutely not. Deferred taxation, why? When you all want everybody to own a home, that just does not make sense. No, no, at all.

Clause 32(2) is inconsistent with earlier clauses, where it states that the roll must be updated immediately upon the erection of any new structure or part thereof, but in this case it is stated that even if the moveable tenement is replaced it shall remain a charge on the land until, I presume reassessment. It is in my opinion that the owner is just being prejudiced in this manner, so you cannot be charging something that is not there.

Now clause 37(1)(b), again, I strongly object to this clause, a tenant should not have to pay for the neglect of the owner. [*Desk thumping*]

Mr. Vice-President, there is a saying that goes and you know I always like these sayings because, forgive me, I have been around a number of very mature persons in my growing up, you know there is a saying “cockroach has no place in fowl business”. Anyone ever heard that before?

Hon. Senator: We all did.

Sen. G. Merhair: All right, so I cannot see how a tenant could be in the owner’s business. At all, at all, at all!

When I come to clause 37(3) that one is out of the question, because you know what clause 37(3) is saying? People may identify themselves as police, agents of the board and then, really, they could be criminals. We have had instances where people show TSTT ID and T&TEC ID, Flow ID and actually held people up, so how is the population going to know the difference? I think this clause is extremely oppressive.

Now when we get to clause 39 it gets better. Clause 39 allows the board to seize goods not upon the lands actually charged with the tax. So let me see if I get this right: If I am renting a property here and let us say the property is at (a) and my landlord does not pay the taxes here, the earlier clause said that you can come and seize what is in my property, but if the landlord happens to have property elsewhere and he does not pay the taxes on that, it means that you can come and seize things on this property. So again, this is extremely dangerous and it does not even take into consideration joint ownership at all, because you know, in Trinidad sometimes people have 12 children and they leave property for all the children and this one—we would not get into that.

Again, these clauses when you all thought about it—I said yesterday in my other contribution that the culture of Trinidad and Tobago was not looked at, or we really did not understand how things work in Trinidad and Tobago, so clause 39, I strongly, through you, Mr. Vice-President, object.

I see the hon. Minister is enjoying my contribution and since he came out of Christmas he is having a little fanfare.

Clause 41, I object again to the forfeiture of property as outlined in clause 41(1). I think the Government should consider simple fines and the last time I checked we live in a democratic State where all citizens are entitled to enjoy their property. We should find another way.

Clauses 41(2) and 44(3), spoke about being published in one newspaper. I think it should be published in all dailies. Clause 41(2) spoke about the daily circulation in the *Trinidad and Tobago Gazette* and post up in a conspicuous place at its office. Again, I am concerned about that, because you know in Trinidad and Tobago we have some smart people about, they go and see these things posted up and this could lead to a situation of land grabbing when people see land becoming available, so I am extremely concerned about that.

Clause 43, I have a problem accepting “as conclusive evidence as facts contained within the recital,” especially since the Government and its agents are not to be held liable for inconsistencies, errors and omissions.

I think again, clause 47(2) should outline the credentials of those who can be assigned to prosecute and conduct any complaint.

Now, Mr. Vice-President, given the debate over the property tax in the public domain, especially relating to the issues of the movement of the collection of tax from municipal corporations to central government, I would like to look at a paper

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of which I would like to read into the *Hansard* entitled FAOs Land Tenure Studies 5, Rural Property Tax System in Central and Eastern Europe: Given the emergence of these states from communism, Government was forced to devise new systems of tax including property tax—and the study indicates and I quote:

“The rental value base of assessment is a well-tried basis of assessment. Works in almost any circumstances. Many fiscal advantages. The easiest tax option to collect. Less well understood than capital value assessment in situations where there is a limited or statutorily controlled market.”

It continues:

“It is widely recognized that the incidence of taxation on land and property can have profoundly distorting effects on property markets. Many taxes impinge on property and the design of each has the potential to affect the market in different unintended and undesirable ways. But there may also be ways in which the tax system encourages beneficial consequences.

In the final analysis, property taxes can play an important role in developing sustainable rural livelihoods and communities. The tax is transparent, cheap to administer, efficient to collect and well understood by the taxpaying public. It is administratively feasible in virtually any circumstances.”

This document went on to state that the taxes can be collected by local government, central government or by sub contracting it out to the private sector.

On the other hand, I refer to another paper entitled “Fixing the Property and Land Tax Regime in Developing Countries” written by Roy Bahl and dated February 2009, and it states:

“Even the property tax at its best, however, comes with some difficulties. There are two issues to consider. First it is costly to administer in an efficient way. In particular, the cost of maintaining a full roll of liable taxpayers and an effective system valuation and revaluation are expensive. Second, the property tax is hugely unpopular with taxpayers and therefore with elected local politicians. There are several reasons for this. The property tax, unlike the VAT for example, is transparent. People know how much they pay. Its assessment is judgmental in that assessors determine the tax base in ways that seem mysterious to many property owners, and it is a tax on accrued rather than realized gains. There is plenty of evidence from the United States that this unpopularity is rolled out into ‘reforms’ that damage the integrity of the property tax. One could argue that this unpopularity of the property tax would travel to the developing countries if the tax were levied at a higher effective rate.”

And I go on to another part of the paper where it says:

“...the business environment better off under a plethora of licenses designed primarily as revenue measures, or a property tax that is badly administered and imposes a differentially higher rate on commercial and industrial property? The answer to this question depends on whether there are prospects for reforming the property tax so that its neutrality, equity and revenue mobilization advantages can be captured.”

Again, we have a problem with the private sector. We see it as a measure of inequality where it goes after the business community and the upper class. It reeks of redistribution and advancement towards socialism.

I speak now of the 2009/2010 budget presentation of the Minister of Finance in the other place and in it this was what the Minister had to say in terms of what was Government's policy, and I quote:

“Mr. Speaker, the Government recognizes that in the present international climate countries such as Trinidad and Tobago are challenged to do more with less and that we must strengthen our export potential. In furtherance of ‘Enabling Competitive Business’ and ‘Promoting Effective Government’, enshrined in the nation’s Vision 2020 Strategic Plan, we will continue to bolster the private manufacturing and service sectors as we work to increase export revenues offering attractively priced, higher quality exports. We will continue to provide incentives and support to manufacturers, negotiate increased market access, foster electronic trade and improve our business facilitation model.”

Mr. Vice-President, this is a contradiction of this property tax before us, because in one hand in the fiscal measures 2009/2010, the Government spoke about supporting the private sector, offering attractively priced higher quality exports, supporting incentives.

What has happened to all of these incentives that you gave for expansion in the budget? Remember there is something in the budget that when you expand and you buy more equipment that you get a tax write-off. What this property tax is saying now is when you upgrade your equipment and your plant and machinery you are charged a high tax. What about people who got loans from BDC and Nedco? You all remember those people that you all promised to help? You all increased the ceiling. What about all of those hairdressers, people who have tyre alignment centres, and people who have all of these little shops, would plant and machinery be taxed now? What is going to happen to all of these people? Yes, I can understand that you want to bring all of these people in a tax bracket.

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I understand that is probably the intention of the Government to capture all of these individuals who are probably not paying tax, but remember all of these people when they pay insurance they pay a 6 per cent Government tax, they pay VAT, they pay corporation tax, some people pay Green Fund, so here you are asking businesses and people who are getting into business to pay another tax on plant, machine and equipment. I think this is regressive. This tax is regressive and it is a complete contradiction to the promise made by the Government to facilitate the growth and expansion of the local private sector.

I would like to make a suggestion, there is need for the creation of a land court, because I think coming out of this that the Tax Appeal Board cannot handle all of the problems, you need to have a land court to handle all of these problems. You need in Trinidad and Tobago a creation of a property council to facilitate consultation between the stakeholders—Mr. Vice-President, this is a question I asked and was answered, but the Government said it was not their intention to reintroduce the Rent Restriction Board or any authority to monitor rent restriction.

But I have a letter here from the President of the Guild of the University of the West Indies in which he asked, that now students who rent are going to be asked to have to pay higher rents, because landlords have already given their intention and their notice that once they have to pay higher land and property tax, it is going to be passed on.

What is going to happen to all of these students of the University of the West Indies, not only of the University of the West Indies, but UTT, COSTAATT and all of the other institutions? It means that a body should be put in place to monitor any arbitration between landlords and tenants. It works both ways, not only for the tenants but also for the landlords as well. So, I think the Government needs to think about having some authority in terms of the Rent Restriction Board to deal with persons who cannot go through the entire process.

Mr. Vice-President, there is a pervading sense among the citizens of this country—they are a bit concerned about this property tax and the standardization of the tax structure, but given the fact that we are in a recession and given the fact that we are into a period of heightened crime and given the fact that there is a perceived disconnection between the Government and the people, I think that in order to have a smooth transaction into this system the Government should have rethought how this tax was introduced.

In principle, I do not agree with the tax, but if it comes into place I believe that the population should be given sufficient time to adjust and to fully understand the working of a new tax system. We need to have equity for all

citizens of Trinidad and Tobago and the private sector should not be asked to shoulder the burden of this additional tax. The taxing of property, plus land, plus plant and equipment can only have a negative effect on the competitiveness of Trinidad and Tobago.

In the long run, all initiatives and all incentives that the Government is putting forward will be done away with because the property tax will now be charged and as a result you are going to have the ordinary citizens of Trinidad and Tobago having to pay more for goods and services, and in this light I ask the Government, and I know not much can be done but I think it is important that we all speak out, because that is our democratic right and that is our role that we need to speak out when we see things are not right.

We need to speak out when we do not agree with certain things, and according to my colleagues on the Bench, perhaps the Government did not have the time to think about all of these clauses very carefully, probably they had a lot to do and I think that by us making our small contribution it is our hope that they will take notice and they will reflect on what is before us and we can see some changes, because I think the citizens of Trinidad and Tobago, and I want to stress Tobago—

I think my honourable colleague Sen. Nicholson-Alfred has virtually begged the Government and it is my hope that the first piece of legislation that comes before this honourable House in the next session should deal with that issue of Tobago. It is really overdue by now and I really feel for my counterparts in Tobago, because after all, we are Trinidad and Tobago; we are one people; one nation and we have to move forward as one society and one citizenry.

Mr. Vice-President, with all the sectors and I spoke on behalf of the private sector, my other colleagues spoke on trade unions and some of my other colleagues spoke on other sectors of society, but all sectors of society were represented here today and with one voice we asked the Government: Think and reflect what you do because it affects all of us no matter who sits where.

Mr. Vice-President, I thank you.

Sen. Dr. Adesh Nanan: Mr. Vice-President, I join the debate on the Property Tax Bill, 2009 and like my friend, Sen. Cumberbatch, I too am very angry this evening but I would try to control my anger and I do not know if I would be successful.

When I prepared for this particular Bill and I looked at the measures, I wrote a few notes and this is a complete takeover by the State of the private sector, it is

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what is called Hitler development state capitalism. [*Desk thumping*] It is totally unsatisfactory for a Minister of Trade and Industry to stand by and witness the emasculation of the private sector in this particular piece of legislation. [*Desk thumping*]

Mr. Vice-President, this is what you call a middle class wipe-out plan. [*Interruption*] And as I look through the various measures we see here especially with that measure in clause 6 dealing with that university that Sen. Basharat Ali made reference to. [*Interruption*] Yes, that is lands belonging to the University of the Southern Caribbean. [*Interruption*] But what about (k): “Land belonging to a tertiary learning institution owned or managed by the State”—what about all of those private institutions and tertiary level institutions that are not state controlled?

We are going to have now a situation where education is much more expensive under this present Government because of this particular measure. If we even go further we will see that this measure, if a person—now if you know the traditional culture of our society and the way we operate within the various communities, if somebody cannot afford—in fact, that is what would happen now, they cannot afford to own a home, the parents would normally set up a little downstairs apartment and they would stay with the family.

What we are seeing under this present administration is a breakdown of the family unit. [*Interruption*] We will have visiting relationships coming back in, [*Interruption*] common law relationships, a breakdown of marriage because of this particular measure in this debate today. [*Interruption*] Visiting relationships and common law relationships will come back because of this measure. This property tax—

Sen. Dr. Gopaul-McNicol: Will mash up family life.

Sen. Dr. A. Nanan:—will mash up families.

Sen. Narace: Relevance, 35(1).

Sen. Dr. A. Nanan: Anyway, I am coming to you, Minister of Health. [*Laughter*] I cannot see that you would stand idly by, you as the beacon of light for the Government—

Hon. Senator: “Ehmm.”

Sen. Dr. A. Nanan:—stand idly by and witness a measure like this particular one here, “land used for the purposes of public hospitals”—and we see—

Sen. Jeremie SC: [*Inaudible*]

Sen. Dr. Kernahan: The “AG” jealous or what?

Sen. Dr. A. Nanan: Sorry, “AG” I will get some other term for you later on, but right now I am dealing with others. [*Laughter and desk thumping*]

Sen. Jeremie SC: All right, I feel better now.

Sen. Dr. A. Nanan:—public hospitals exempted under this particular piece of legislation. But I ask the question, what about private hospitals? Private hospitals in this country, if we look at the kind of capital expenditure, land and building over \$50 million, we were talking about. We are not talking about \$1 million or \$2 million plant, machinery and the land and building is over \$50 million to \$60 million.

8.30 p.m.

This is not movable equipment but fixed, so we are seeing large taxation being placed here and we ask the question: Where will the people go, because fees will increase? We are seeing a competition taking place between the State and the private sector and it has to be compared.

I want to make the comparison because Sen. Merhair introduced this measure and I had all those points in my notes. I am very happy to support you, Sen. Merhair, we are thinking alike this afternoon. You made reference to some state enterprises, but I want to go further with respect to the service stations in this country. If you look at Unipet which are private sector driven stations, what will happen here? They work on a 6 per cent commission and when you introduce this property tax there is going to be an increase in the fuel cost and the cost of doing business at these stations. You are competing directly with NP, so you are marginalizing the private sector.

What about your manufacturers? I am surprised at the Minister of Trade and Industry, he should withdraw this because you are now scuttling the Caricom market. Our manufacturers will not be able to compete anymore and plant and machinery will be taxed to that level that they will become uncompetitive and, of course, unemployment will rise and there will be a situation of labour unrest in this country.

That will be a ripple effect because of this measure in the Senate this afternoon. Manufacturers will suffer and they were given incentives to go forward, and suddenly you come with the iron fist on them. Is it a shift in Government's policy? The Government was supposed to be the facilitator of the private sector, but we are not seeing that. [*Desk thumping*] We are seeing a

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scuttling of the private sector by the Government. Is it a new policy to take over the entire country by the Government? Is it that kind of surreptitious approach that we are seeing here?

Sen. Dr. Kernahan: Umm, nice word, nice word. [*Laughter*]

Sen. Dr. A. Nanan: I am very cool, Mr. Vice-President, I am controlling my temper, so I will go very slowly. [*Interruption*] I must get vexed when I am dealing with UDeCott, a runaway institution where corruption is rampant and poor entrepreneurs who are trying to go forward, you are competing directly with them.

We do not know what the motive of the Government is, if it is a new policy direction and why it is triggering this kind of measure. Two Senators asked the question with respect to commercial property and I am asking it on behalf of the dental fraternity because a number of dentists have their own building with equipment and some are renting. For those who have their own building and have dental equipment close to \$1 million and more, how would they be assessed in terms of plant, equipment and building?

If you look very carefully you will see that because of the failure of the Government to have investment in the oil and gas sector especially in exploration, I am informed—I may be wrong—that when the Government went out for tender on the packages, they were too onerous, there was a kind of grab for money and they lost out. So we do not have that position that we had before in terms of our ranking for people to invest in the oil and gas sector in our country. So we are now being marginalized and other countries are going ahead so we are not seeing the revenue. Of course, we are seeing oil prices going up, natural gas prices remaining low and our production of oil is at the lowest right now.

So a situation is developing where our revenue stream is being questioned?

Hon. Senator: Are you supporting the Bill?

Sen. Dr. A. Nanan: You said it is not a revenue raising measure so why are you asking me if I am supporting the Bill? [*Crosstalk*]

Minister of Trade and Industry, I am totally appalled at your behaviour. In the exemption list I want you to include trade unions because they are non-profit organizations. Schedule II talks about a distress warrant and the "Ward of"; are we still having "wards" in our country, or is it a typographical error with respect to this warrant? So you may have to consider going back to the House to check that.

So that the situation with the plant and equipment has to be clarified and the next question is in terms of the clause that talks about the tenant, I am confused and I need some clarification on that issue, Minister in the Ministry of Finance. That is the matter dealing with the tenants, the landlord and plant and equipment.

If the tenant has \$1 million worth of equipment in the area he is renting, will that improve the commercial value of the building? If it does, will the landlord pass on the increased property tax to the tenants? As we speak leases are being drawn up now to include in the lease if property tax comes in, the rent will increase that has already been made in provisions.

If you look at car parking facilities the rates will go up, and passed on to the consumers and leases are also drawn up for that reason. So what you are having with that measure is a ripple effect. We also have to weigh the situation in terms of development.

Our country was going ahead in development, our houses are at a certain high standard and a breakdown is given in terms of the various executive, modern, standard, substandard and shacks. We are going to stifle development because who will want to landscape their house? If you do so your property value will go up and you will have to pay more tax, so you will stifle that initiative. Although it is being glossed over, that might be a very important point. Indirectly, if that is so, landscaping is a business, so you are going to put a number of persons out of business if people move not to improve their capital stock because of that situation.

What is also interesting is that Sen. Alfred-Nicholson talked about the situation in Tobago; she is right based on the Bill. The Tourism Development Bill to which Minister Ross is supposed to pay attention and he is not paying any attention to Tobago; he is only talking about how many cruise ships are coming to Trinidad. He needs to pay attention to Tobago and look at the Tourism Development Bill which is now an Act passed under the United National Congress administration that makes allowances for the same improvements in their bed and breakfast facilities. They were supposed to be given those rebates with respect to those upgrades in their property, but it is not happening in Tobago. So I fully support her request with respect to that particular issue.

There is a further point, Mr. Vice-President, and it is the collapse of the Tobago economy with respect to tourism which the Government needs to pay attention to. As we go along in this Property Tax Bill, I want to go back to the situation with education because it is very important. When they were lifting some of these provisions especially the one on land use for the purposes of public

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hospitals, asylums and all alms houses, there are many typographical errors there. But going back to education and school buildings, offices and playgrounds of schools within the meaning of the Education Act, every private school in this country is registered with the Ministry of Education. At a glance we can see all the private schools registered in this country.

I do not know if the school buildings, offices and playgrounds of schools within the Education Act include private schools because they are registered with the Ministry of Education. We need clarification here because I am not sure if they would be covered under the Education Act because it makes allowance for registration and supervision.

With respect to the same public hospitals, asylums and all alms houses, if we go back to dealing with the private and the public sectors and we extrapolate even further outside of the energy and manufacturing sectors there are a lot of industries—as pointed out by Sen. Merhair—that will be stymied and apart from those there are other industries that are coming on board in various communities. We have to be very careful that we do not marginalize these entrepreneurs because it is the lifeblood of our society. That entrepreneurial spirit needs to be fostered; probably it is an oversight on the Government's part as was pointed out by Sen. Baptiste-Mc Knight, but I still feel it is a diabolical plan that has been exposed. [*Interruption*]

You know what really affects me seems to be a big joke to the Attorney General, but it is a serious measure here that is being introduced which will have a negative impact on 95 per cent of the population. You are dealing with a different level of individuals now; it is not like long time, people are much more literate in the society in terms of how they take what you are dishing out, and as time draws near, you will know.

The other issue I want to deal with before I take my seat is clause 20 which says:

"(1) Where, as a result of any reduction in the valuation of land, there has been any over-payment of the annual tax due, the Board shall forthwith refund the amount of such over-payment to the owner of such land."

Well, we do not hold our breath because it is my information that income tax refunds from last year or the year before have not been paid. So one has to question the Government in respect of cash prices; so this particular measure of refunds may never be implemented.

As I was extrapolating, our dollar to the US dollar is now \$6.40 and climbing. What is going to happen there? Costs are going to rise and everything you have to purchase from abroad will increase, so there will be inflation as Sen. Merhair said which will be passed on to the consumer at all levels.

Sen. Mark: I understand the IMF is at the Central Bank.

Sen. Dr. A. Nanan: I never said that. I want to support Sen. Anisette because clause 23 has an allowance which is for the owner of the land.

"23(1) The Board may upon the application of the owner of land authorize the deferral of the payment of the assessed tax on the land on the grounds of the impoverished condition of the owner and his inability to improve his financial position significantly by reason of age, impaired health or other special circumstances, that undue hardship to that owner would otherwise ensue."

What about the person who is renting; the pensioner or salaried worker who is renting let us say a 50-apartment building? The landlord is not going to study who is a pensioner, who is a single mother, or who is bringing up three children on his/her own. The landlord is just going to pass on the tax directly to these individuals. So there must be some provision here if you are really going to implement this—which I think from this contribution, you may hold your hand. *[Interruption]*

I know the beacon of light is affecting you, Attorney General; you have to go to be elevated to that level. I was making reference to clause 31(4) which says:

"(4) Where the owner of land has contracted to let the same to a tenant at a stated rent and the annual taxable value of the land is subsequently increased by reason of the fact that account is taken of machinery and plant therein..."

When you signed the lease probably six or seven years ago and you said you were going to put equipment in that particular space, there was not this property tax so there was nothing about plant and machinery being taxed. Now, the assessable value which includes the annual taxable value of the land is increased by the fact that you are taking into consideration the machinery and plant.

- “(a) the machinery and plant belong to the tenant; and
- (b) the contract was made without reference to the possibility that the machinery and plant might be taken into account for the purpose of determining the annual taxable value of the land,

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the owner is entitled to recover from the tenant, as a civil debt the amount by which the tax payable by him has been increased by reason of the fact that the machinery and plant had been taken into account.”

So we need to have clarification in terms of this machinery and plant. Is it machinery and plant with respect to the larger areas like the Point Lisas Industrial Estate or do the machinery and plant include all those dental offices and medical offices that have machinery and plant especially? We are going to see a rise in all these essential services because of this property tax. This particular subclause is saying that the owner is entitled to recover from the tenant.

What is the poor tenant facing under this administration? Electricity cost went up, water rates went up and so many other taxes are being taken from the poor tenant; the tenant has to pay the Green Fund Tax, he has to pay VAT, he has to pay import and export costs, all those other things that are going up and now you have this passed on from the owner to the tenant.

So the Government needs to consider this because if this particular measure is not clarified it can be very detrimental to the society. It can cause poverty, it can cause the citizens poverty levels in terms of our numbers to go up and also indirectly, if this is passed on, the fees now will increase so people will not be able to access proper medical care for these essential services. *[Interruption]*

I want to make the point that the national community would know that this was a clause that the UNC is very concerned about. And we recognize if this is not taken into consideration it can cause major disruptions in the society and this can also lead to breakdown in family life.

Before I take my seat, the other one is clause 32(3) and I want to know what we are encouraging. Is this is a new policy of the Government?

"(3)For the purpose of this section, 'movable tenement' means a residential unit which is not permanently affixed to the ground or any other structure."

I know many of you have travelled the islands and especially in Barbados and I remember in Antigua the residents do now own the land and they build their homes on bricks or boulders. Are we now introducing this particular measure in our society? Is that a new housing policy, or part of the housing programme? We need clarification on clause 32(3).

I want to reinforce the point made by Sen. Dr. Kernahan because we believe it should be the magistrate to sign the warrant. If you go back to the Municipal Corporations Act, Chap. 25:04 you will see it there, so it is supposed to be signed by the magistrate and not what you have in the Bill, any person authorized by the Board.

In terms of the Regulations, we want affirmative resolution. Clause 53(1) says:

"(1)The Minister may make Regulations for the better carrying out of the purposes of this Act."

We want this subject to affirmative resolution, and before I close, I want to look at the—

Sen. Jeremie SC: You have said that four times already.

Sen. Dr. A. Nanan: Well I have a few points—property tax calculation for residential properties. How is my property tax calculated? It is calculated by multiplying the rate of tax that applies to your property 3 per cent for residential by the annual taxable value of your property.

What is the annual taxable value? It is 90 per cent of the annual rental value? What is the annual rental value of my property? It is the market price your property can fetch if it were to be rented based on (1) its category and (2) its location. There was a breakdown in terms of the category; executive, modern, standard, sub-standard or shack and then they went on to describe the various areas in terms of location.

The annual rental value is the monthly rental value of your property multiplied by 12 months; this is just a chronological sequence of events. Who determines the annual rental value of my property? The valuers at the Valuation Division, and this is where we have a serious problem because we believe that the revenue authority is a political tool of the PNM.

9.00 p.m.

An example for the property tax calculation for residential property: If the Valuation Division in the Ministry of Finance has determined that your house can be rented for \$3,000 per month, your annual rental value would be \$3,000 by 12 which is \$36,000. Your annual taxable value would be 36,000 minus 3,600, so it would be 32,400 which is 90 per cent. The property tax would be 32,400 by 3 per cent which is \$972. We heard figures of \$81 and \$82 a month.

As I am looking through my documents, I would make reference to this clipping on page A13 of the *Trinidad Guardian* dated December 29, 2009. I will not read the article because it is in the newspaper. It is My Christmas Poem, my Prime Minister's Speech. It makes good reading. I could go on to read some of the replies but I do not think that they would be permitted. It might be unparliamentary, so I would not go there.

Sen. Browne: Do not go.

Sen. Dr. A. Nanan: I could go there if you insist, you know. [*Interruption*] I am not going to read from the manifesto. I have read from the housing policy. Let us discuss that \$81. Although it seems like a small amount monthly, it can provide a meal for an individual; it can provide transportation for an individual and it can provide clothing for an individual to some extent. Although you say that \$81 is a small amount to put towards your property tax, some people have very extreme difficulty in paying that \$81. It may look like a small figure, but for the salaried worker it is extremely difficult.

Somebody pointed out to me that if you look at a monthly income of \$4,500 and mortgage payments which are \$3,600 and more in some areas, you would be barely making it. Mention was made of a cable bill. When you make the comparison between paying your cable bill and property tax, that is an insensitive comparison because you do not know how difficult it is for people in this country to make ends meet. Although your unemployment figures are showing—it is beginning to rise, but it is low to some extent and we do not know how true that is. If you go on the ground and see how these people are suffering in our country, it would probably make a difference. That is why we are saying that you should have had proper consultation on this Property Tax Bill.

We have a letter from the Institute of Surveyors. It is dated December 21, 2009:

Mrs. Karen Nunez-Tesheira MP
Minister of Finance
Eric Williams Financial Complex
Brian Lara Promenade
Port of Spain
Hon. Minister,

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We are writing to put this on record, our comments on this important new legislation. Our concerns are listed for ease of reference.

- (1) Lack of consultation. We have not been consulted on these important measures and we would suggest that a better way to approach this process would have been for the Government to seek informed comment from the relevant professional bodies and civic society organizations.

[MR. PRESIDENT *in the Chair*]

No consultation. It is signed by Afra Raymond, President of the Institute of Surveyors. I want to put that on record.

Sen. Browne: Let me see it. I have not seen it.

Sen. Mark: Not you. “Dey eh address to you is Karen. Remember you and Karen doh talk so yuh cyar see dat.” [*Laughter*] “No, ah know all yuh doh talk. All yuh in separate office. Yuh want to geh rid a de woman an ting long time, yuh know.” [*Crosstalk*]

Sen. Browne: You feel we operating like you operate in the UNC.

Sen. Mark: “I know how you operating long time yeah.” [*Crosstalk*]

Sen. Dr. A. Nanan: Mr. President, I would not ask for your protection.

Sen. Mark: “I have a *Mirror* article where yuh blast de woman in a Cabinet meeting, yes.”

Sen. Dr. A. Nanan: This one is, “The Ignorant Behaviour by Minister”, *Sunday Express*, December 27, 2009. I would make a quick reference here. It is the same comparison with respect to the reference of the monthly payment of the property tax. This is by Justin Silva, Westmoorings.

I know \$81 a month may not be much for you, but that money can buy two loaves of bread; a block of cheese; a packet of ham and a pack of milk which could feed a small family for several days. Yes that is all \$81 can buy in food these days.

Of course what I did not mention is, rising food prices. Major, major problem in this country, although the Government said that it has it under control.

It has been a pleasure to participate in this debate. I hope that the Minister of Health—what I was trying to show in my contribution is the negative fallout from this particular measure and the State grab for power. Do you know something, Mr. President? It reminds me of the days when they had a magazine called Popular Electronics. I do not know how many of you remember that magazine. If you recall, in some of the magazines you would see something called a “grab bag special”. It is electronic books in a grab bag that you subscribe to. You do not know what you would get. This is what this is about. This piece of legislation is what we call a “grab bag special”.

Thank you.

Sen. Subhas Ramkhelawan: Mr. President, as I commenced my preparation for the Property Tax Bill, 2009, it came to me in this season, render unto Caesar the things that are Caesar's. It seemed rather simple that if you have a fair, equitable and properly managed tax measure, then the Government is well within its right to apply a taxation, if it is in the best interest of the community and the nation and in its proper utilization. I thought that it would have been rather easy and simple to come here to support this particular Bill. How will the Government perform its job? How will the Government provide services for the benefit of all its citizenry, if not through equitable taxation? Therefore, render unto Caesar the things that are Caesar's, provided a guiding principle as to the support for a just and equitable tax measure.

I am in the very unaccustomed position on this Bench of batting last. I thought that on the basis that the tax was equitable and just, maybe, in batting last all I needed to do was to "voop" a little, have a cavalier innings and whether or not I troubled the scorer, it was of no consequence, because here it is a government is seeking the benefit and welfare of its citizenry.

Why should I be bothered too much? The principle of taxation is well entrenched. As I studied the Bill a number of questions and issues arose. It is not my intention tonight to repeat, to regurgitate, some of the very telling points that my colleagues on all Benches have been making over the past several hours, yesterday, this morning and this evening. That is not my intention. It would be remiss of me if I did not put into perspective, this notion of a property tax. The economists speak about progressive taxation where the higher your income, the more you pay as in corporation tax, income tax and regressive taxation which would be consumption taxes, sales taxes and so on. In both cases, whether they are sales taxes, income taxes or corporation taxes, there is some relation to income and cash flow. Whether the arguments are for or against, in principle, the point is that you have some form of income and it is that income, cash flow or revenue that is taxed.

Property tax is entirely different. Property tax is a tax on an asset where the person who owns the asset or would have inherited the asset may have zero cash flow, but is being made to pay tax on an asset value or the increase in that asset value, but it is not related to or there is no corresponding relationship with income as far as that individual is concerned.

I do not want to repeat but I would refer to the very potent argument made by my colleagues, Sen. Basharat Ali and Sen. Corinne Baptiste-Mc Knight. These arguments were for—they made a case where persons who over a long period of

time owned an asset now find themselves with their incomes, still very much truncated, but the asset value, the property having risen to such an extent—having to take cash which they may or may not have, out of their pockets to pay for something by dint of their hard work and long-term saving. Sen. Basharat Ali spoke eloquently about pensioners and retired judges. Sen. Baptiste-Mc Knight spoke about public servants who have served this country so well.

In a sense, while the tax might not be regressive or progressive, it is indeed a retrograde tax. It puts people back. It does not take them forward. Over time, I have come to have a healthy respect for many of my colleagues on the Government Benches. Healthy respect because the seniors among them who speak and are allowed to speak have said to me on many occasions, “Our job is to make good law.” I find no argument against making good law. Indeed, I am a great supporter of making good law. But then, we have to ask ourselves the question whether this piece of legislation falls into that category of good law. If it is, I can support the principle of taxation and good law and there is no reason for me to stand here to raise any objections to this particular Bill. Is it good law?

Many of my colleagues here have pointed to defects and deficiencies in this piece of legislation, clause by clause by clause. Here is the problem. It is a problem for my respected colleagues and hon. Senators on the Government Benches. They find themselves with their backs against the wall on December 30. What is likely to happen is even if sensible amendments are suggested for what I consider to be a somewhat weak piece of legislation, I have a suspicion that none of them would be taken into account. None of them would be taken into account to ensure that the best interests of our citizens are served. If that is the case, my hon. colleagues on the other side are asking me to participate in making law that is not good law. There is where I have a problem and we may have a point of departure.

If we cannot make good law for our citizens; if we feel hamstrung by time limitations and we must do something for January 01, 2010 or before January 01, 2010, without taking into consideration the legitimate and proper issues that have been raised in the Senate, then, we are doing ourselves and citizens by extension a great injustice. [*Desk thumping*]

It is now left for us to see what is going to happen here tonight. It is now left for us to see if amendments are made and suggested, how the hon. Minister in the Ministry of Finance is going to address them. If I am convinced that there is no sense in those amendments; the arguments are faulty and that his way is indeed

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the best way in order to give effect to this legislation, then, it would be very easy. As I said, I have a suspicion that we are going to find ourselves in an area or place where the question of whether or not we are passing good law would come into question.

I turn to a couple of issues in the Bill for which I am concerned. The first deals with the question of agricultural land. I listened to my various colleagues who joined the debate, but I did not hear the point brought up. I want to bring it up at this point in time. The tax on agricultural land is a bit different from tax on residential, commercial and industrial. If you have the same area of land you can produce more value via commercial and industrial. In terms of agriculture, it turns to the point of what can be the output on a piece of land. We have heard in the debate location, location, location. I ask the questions in terms of the taxation of agricultural land, whether a piece of land in El Socorro should be taxed more than a piece of land in Cedros or Oropouche. If the land is being used for the same purpose which is for tomatoes, peas or whatever, why would you tax somebody in El Socorro more for two acres of agricultural land than somebody in Cedros? I do not understand the basis for the taxation.

I hope that when the Minister in the Ministry of Finance is winding up, he would be in a position to say whether this would be an equitable situation, where you tax agricultural land in El Socorro more than you tax in Cedros and why we are going to put a measure like this. Same land same output. I suggest that as far as agricultural lands are concerned, we should move to one flat rate. Once you deem it agricultural land, one flat figure, not one flat rate. You have one flat rate across the board for everything for the various sectors.

I want to endorse some of the comments with regard to the various definitions whether annual rental value, taxable value and so on. I think that my colleague, Sen. Prof. Deosaran has spoken in detail about that matter of the ambiguity of some of the definitions. I turn to one area which was touched upon, but I would provide some details in terms of what certain exemptions under clause 16, can do and the kinds of implications that they have overall for the economy in general and taxpayers, in particular. I draw your attention to clause 16. It says:

“All land in Trinidad and Tobago is liable to taxation under this Act, subject to the following exemptions:”

Subclause (f) exempts State enterprises controlled by the State for public services. What is the definition of “public services”? Let us look at an example. Not for profit is a different definition than for public services. Public service purposes can

mean anything; commercial purposes, non-commercial purposes, not for profit, for profit. This is for public purposes. Unless I am advised and directed otherwise, I would continue to hold that particular view.

You now have a state enterprise that is exempt from property tax. My honourable colleague, Sen. Mark, used as an example the National Flour Mills, but for different purposes. The National Flour Mills or the Telecommunications Services of Trinidad and Tobago (TSTT) or Tringen or any of those firms would have a very significant level of property holdings. They are engaged in competition with other players in the economy. Take the case of the National Flour Mills which I believe the State owns about 51 per cent; in the case of Tringen, about 51 per cent and TSTT, a significant property holding. Plipdeco might be a slightly different case because of a monopoly type situation. I want to use these three examples. With significant property and that exemption, it gives some of these enterprises a decided competitive advantage over other players.

I cannot tell the Government how to run its business. I could tell the Government a little bit about how to make laws, since I have a role and a duty in participating in making laws. I believe that when we start to speak about equity, this particular subclause is inequitable. It creates an advantage for that state enterprise over other competitive enterprises in the economy. If that is your intention and your goal, then, by all means, go ahead. But when we go into that area, making flour is non-strategic and making petrochemicals in terms of a monopolistic situation is non-strategic.

I clarify the matter to ask the question. If this is not your intent, you would need to find a way to amend it to ensure that your intent is properly aligned with the goals you have set in terms of Government's stated objectives about creating level playing fields in various areas. I think that this matter has to be addressed.

It is one of many areas, but those areas have been dealt with in great detail by hon. Senators who have gone before, so I do not want to repeat any of them.

9.30 p.m.

While there are many things I would like to say, I will refrain, but there are a few that I must. I would like to raise again this matter in clause 37(1)(b) where, if the landowner does not pay the tax, there could be a levying of distress upon the goods, chattel, et cetera on the tenant or occupier of the land. This, of course, has far-reaching implications for tenants.

In practice, a tenant could be caught in the middle. What if, according to this piece of legislation, the tenant pays the tax or part thereof not paid by the owner and then the owner makes a demand for his rental and the tenant produces payment of the tax or part thereof and the owner says that they have a contract and it should not be disrupted in any way. So we find ourselves in a situation where the landowner—and it has been known to happen—takes all the belongings of the tenant and puts them out on the street because he has not paid the full sum. What is the redress? What is the defence? What is the timing of the redress, which is more important? Is it that the tenant, at his own expense, will have to file an injunction at great cost to stop the landowner? [*Interruption*] He will have to do that. It is disruptive and against good practices whether in business, residence or else. I thought I should mention this because I have not seen a logical and clear resolution to this particular area.

Clause 37(3), which needs repetition, in this subclause:

"For the purpose of levying any distress under this section, any person may...in writing by the Board, execute any warrant of distress, and if necessary, break open any building in the daytime for the purpose of levying such distress."

I thought we were moving to modernize legislation. I thought that we were talking about Vision 2020 and not Vision 1920. This piece of drafting of legislation seems to be archaic, a throwback. From the year 2020 to 1920 is 100 years; a long time to go back in time. I think, if it is necessary to make the legislation more effective, more palatable, that "any person", as we are putting it into law now, there should be fit and proper criteria for that person—who that person should be and under what conditions they could get a constable to kick down the door of an owner.

While these may be very logical and appropriate amendments, the question is whether these suggested amendments would see the light of day. We shall soon see.

That brings me back to Caesar. The Government, in its haste to get this Bill in place before December 31, 2009, might be doing itself a disservice, with the best intent in the world. As it approaches its midterm, with the great dissatisfaction and concerns for the implementation of this tax, the Government should be careful, as in Caesar.

My colleague and friend, the hon. Minister in the Ministry of Finance, is a man who prides himself on some modicum of knowledge of literature. I remind

him to beware the Ides of March. In the haste to pass legislation that is unpalatable, as you approach your midterm, beware.

Remember—I am sure the hon. Minister would remember because his greater talent is actually in literature; not finance. It is a secondary calling to him. Remember what they said to Caesar—he is a dreamer. When the soothsayer said: Beware the Ides of March! He said: He is a dreamer; let him pass. And they let him pass and Caesar was dead on the Ides of March.

I am just suggesting that literature has a place in history and be careful that you pass a measure that seems so draconian, weighty, inelegant and so inoperable that in your haste you forget that we are all in the service of the people to make good laws that are equitable and justifiable.

I do not wish to regurgitate. In concluding, the question I ask myself and suggest that all hon. Senators ask themselves is: Is this piece of legislation, as currently constructed, without amendments, good law? I have some concerns which I have articulated in part and which hon. Senators who have gone before me have articulated in great detail.

Being the last on this Bench to speak on this Bill, I am reminded of the last straw. I am reminded of the very logical—because we have talked about Caesar and all those things—statement that we are all familiar with. "Is de last chile does kill de mudder." If you do not understand the last straw, understand that. It is logical because nobody else could.

Let this not be a taxation measure that is of good intent that can be justified by tax principle; let it not become, without the amendments, that last straw. Let it not become that political faux pas, when there are the best intentions about modernizing the tax system.

My hon. colleague, Sen. Prof. Deosaran, spoke about insensitivity and the hon. Minister in the Ministry of Finance responded that he did not want to be insensitive or words to that effect. What struck me about the measure most of all was that it only was intended to raise, apart from the restructuring, net, by the hon. Minister's figures, \$172 million in a budget that is \$44 billion. So why the haste? Why the rush? Why are the backs to the wall? I was going to say that no amendments will be entertained, but I cannot presume that. Let us see.

It would be a challenge for me to support this legislation with its various deficiencies as pointed out, in the form that it is in, without amendments. If there were amendments to make the Bill into a workable one, short of defects and

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deficiencies, it would be something that I certainly would consider supporting, if not wholeheartedly, because tax measures are never liked. Nobody likes taxes, so we know that there would be opposition. We know that people would be adversely affected; we have heard that here, but we know that the Government has to do its works. It needs to raise taxes to ensure that it closes the fiscal gap of \$7 billion; but \$172 million from a measure that seems somewhat challenging and unpalatable to taxpayers, I wonder what the intent is and what the impact will be.

In concluding, it is late in the evening and it will be the last time I would be on my legs for the year. I wish my hon. colleagues on the other side and on this side; you and the staff of the Parliament, and the entire country, best wishes for health, wealth and happiness in the New Year and best wishes for the making of good legislation for the citizenry of this country.

I thank you, Mr. President.

The Minister of Trade and Industry and Minister in the Ministry of Finance (Sen. The Hon. Mariano Browne): Thank you very much, Mr. President. I would like, once again, to thank hon. colleagues, as I did last night, for their contributions, comments and criticisms, if only because they will help us to become stronger and better.

I am reminded that, of the 12 apostles, there was at least one tax collector in their midst—Matthew—so I have to say there is always hope for those of us who raise taxes, if only because they have rewards in another life.

One of key themes—there were two or three key themes amongst all the contributors today and yesterday with respect to the budget—was: What does equity mean? Another was the position inequity insofar as those persons who, in an advanced stage of life, were on fixed incomes and may be disadvantaged by the introduction of this measure. There was the theme with respect to agriculture and agricultural lands. There was clearly an issue with respect to trade and trade policy and how it would be affected by the implementation of this tax.

There was one other vexed theme on the issue of the benefits to us of introducing this particular tax. How does it relate to services? Sen. Prof. Deosaran and Sen. Drayton made the point that if we could have given some level of justification, with respect to the increase in services, there would have been some measure of justification for the introduction of the tax. They went on to make the point that was one of the critical areas in which we needed to face facts and that we needed to talk about it from a budgetary perspective.

I think that there are some realities that we need to face and we need to put them in context, following on from the particular perspective that we are moving a revenue source away from the regional corporations, cities and boroughs.

I would like to go back to a fundamental thing and I will pick a couple of numbers here. We know that we raise, over the years, a flat number in terms of land and building taxes for the central government, somewhere in the region of \$75 million, as a maintainable figure. We know, in the case of the regional corporations, that it was approximately \$75 million. We can also say, and one person used the example of garbage collection services, that the total amount of revenue collected from land and building taxes and taxes from the regional corporations, could pay only one thing if you add both of them. They would only be able to pay for garbage collection services and, if the regional corporations, cities and boroughs depended upon land and building taxes to pay garbage collection services, they would be in deficit by \$70 million. The cost of garbage collection services in terms of contracts is approximately \$150 million. The total amount of revenue collected by all the regional corporations, cities and boroughs is \$77 million. It would not be able to pay for garbage collection services. The fallacy that the land and building taxes and taxes raised at a local level go toward paying for services is just that; a fallacy.

If we continue along that line, and we continue by way of example—it is a safe example—by saying that the National Health Surcharge goes toward paying for the health care that is delivered by our regional corporations. That again will defy logic, budgetary numbers and budgetary perspectives.

The cost of running one mid-sized Regional Health Authority is \$700 million. The total number collected under the National Health Surcharge is approximately \$200 million. If you were to add up all the National Health Surcharge collected, it would not pay to run one regional authority.

We have to get to some realities here. The realities are that the services provided by the regional corporations and the Regional Health Authorities are funded by taxes from the Consolidated Fund. In fact, the recurrent budget for the Port of Spain City Corporation is \$172 million; the San Fernando City Corporation, \$92 million; the Arima Borough Corporation, \$54 million; Point Fortin, \$33 million; Chaguanas, \$65 million; Diego Martin, \$71 million; San Juan/Laventille, \$129 million; Tunapuna, \$156 million; Sangre Grande, \$55 million; Couva/Tabaquite/Talparo, \$82 million; Rio Claro/Mayaro, \$54 million; Siparia, \$59 million; Penal/Debe, \$51 million; Princes Town, \$61 million; a total of about \$1.2 billion.

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The reality of matching land and building taxes or taxes raised by the regional corporations to services delivered by the regional corporations is fiction; it does not exist. These things are funded out of the Consolidated Fund. That is the reality and I hope that clears the matter up. I do not want to match up the revenue collected by Port of Spain in relation to its budget. The sum of \$71 million for five corporations does not come up. Chaguanas Regional Corporation, which has an \$81 million budget, collects \$4.3 million. Those are the realities.

Sen. Mark: How much is Port of Spain?

Sen. The Hon. M. Browne: \$29 million.

Sen. Mark: And San Fernando?

Sen. The Hon. M. Browne: \$24.1 million; Arima, \$3.4 million; Point Fortin, \$16.5 million. So the reality of saying that we are matching services off the crust is not a reality. So the issue of it going to the Consolidated Fund is a non-issue. That is one of the reasons for local government reform and for a number of other changes. We will discuss that at another level. I do not want to anticipate that debate here tonight, but I want to make that point to you and to the national community in case it is a criticism that is likely to be continued.

With regard to the issue of equity and fairness and, since I am the Minister of Trade and Industry, let me deal with the trade issue—that the Property Tax is anti-competitive and so on. That is clause 16. I think that everybody raised the issue and what it attempts to do, which is to provide exemptions. The point was made by Sen. Cumberbatch in great detail that clause 16 gave all these exemptions, and, surprisingly, some of these exemptions are contained in the Lands and Buildings Taxes Act.

These are the exemptions contained in the Lands and Buildings Taxes Act:

- Buildings occupied solely as churches, chapels and in places of public worship and any religious denominations;
- School houses, offices, playgrounds of any school established under the Education Act;

That sounds like clause 16(a) and (b). In fact, 16(b) is exactly that. Subclause 16(a) was expanded a bit more.

- Hospitals, whether public or estates, asylums, alm houses, institutions for the relief of the poor;

- Lands and buildings belonging and occupied—and the occupation is stayed—and its immediate servants for public purposes;
- Lands and buildings belonging to the University College of the West Indies or its immediate servants;
- Lands and buildings belonging to the Council of Legal Education.

Those provisions under clause 16, in large measure, come from the Lands and Buildings Taxes Act.

With respect to the specific and egregious items, which is the issue of the expansion of land and building belonging to an occupation of the State or its servants, statutory authorities, state enterprises controlled by the State for public purposes. For example, National Flour Mills, the production of flour, is not a public purpose; it is a money-making business. NGC and its subsidiaries are money-making businesses. Petrotrin is a money-making business. Those are not exempted; so that the private sector can be assured that the purpose here is not to create monopolies or areas in which certain state entities are given advantages that it could not enjoy.

In particular, with regard to TSTT, we have already committed ourselves to a competitive system and have gone so far as to open the market. That is one of the reasons we have Digicel here and the intention is to ensure that there is a competitive situation.

I just want to put that in the public domain so that the business sector understands that the purpose is not to be anti-business. If anything, the definition of statutory authority is very clear and what we were talking about, one of them makes money and one does not. Both of them are monopolies—that is WASA and T&TEC. The other state enterprises that would be controlled by the State for public purposes would be the special purpose companies, which will be RuDeCott, CISL, and the Education Facilities Company would fall in that category. In other words, the entities that exist for the execution of government stated public purposes. Nipdec and East Port of Spain would be two other cases in point.

All these companies do pay land and building taxes, but it is left pocket/right pocket. We give a subvention; they pay it back in land and building taxes. That is the reality; that is how it works. All those companies operate by subventions. I just wanted to clarify that point since it was common to almost every Senator.

Sen. Basharat Ali had made the point that they are not sufficiently transparent. I do not agree with that particular point, but I hear what he has to say and I make the point that it is only those entities that are for government public purposes.

Sen. Ramkhelawan: Is the hon. Minister saying that the interpretation of the drafting of this law ensures that these entities will not be allowed to make a claim?

Sen. The Hon. M. Browne: That is a separate question. The question you asked is about my position as an attorney, which I am not. I suggest that notwithstanding your capacity in finance, neither are you. No offence meant. The answer is that there is always a different interpretation. Put two lawyers in a room, they will come up with a different interpretation. This is the intent and, at the end of the day, these are companies that are controlled by the State. We are not going to be robbing anybody on that basis.

The issue raised with respect to Sen. Corinne Baptiste-Mc Knight under clause 16(e):

"land of a designated class that is declared by the Minister to be exempt wholly or partially from taxation under this Act;"

Just in case anything else comes up, I am not making a statement that we are dealing with agricultural land. Just in case you wanted to treat with a particular class of land, it gives the power to the Minister to be able to do so. In other words, the Act must give sufficient latitude and flexibility because it cannot anticipate every future event. This is one of the reasons this clause is here. It is a clause which allows change, should anything else arise.

I understand Sen. Ali's and Sen. Merhair's position with regard to 16(a), but the expansion of every cemetery, burial ground and churches, situations of public relations of any religious denomination is to ensure that it covers all entities.

With respect to incorporated charitable institutions, under the law we have not-for-profit entities. I think that, "by an incorporated charitable institution"—charitable institutions come up and disappear all the time and it is to give, for example, an organization like the Salvation Army, a level of continuity. There are a couple of other entities, and the State has a policy with regard to assisting charitable organizations. The idea is to ensure that those organizations would not be distressed. If they were, they would come to the State and ask for assistance with regard to their annual subventions taking into consideration X, Y and Z. That is why this exemption is done in this way.

Mr. Mark: I would like the hon. Minister to indicate whether the University of the Southern Caribbean is a profit-making body? How are we going to place the trade unions in this legislation—under what section would they fall?

Sen. The Hon. M. Browne: With regard to the University of the Southern Caribbean, I understand it is a charitable organization that serves a charitable purpose—the advancement of education. I am not sure if it is a not-for-profit organization.

10.00 p.m.

Remember, the Government has taken on a large measure of responsibility for education; that means assisted schools. As long as it is within the definition of the Education Act, then it covers those schools, Sir. I cannot answer you that one immediately off the top of my head, so I cannot give a particular statement with regard to that. I hope that clarifies the issues with regard to clause 16(f) which is one of the issues. I think it is also on several areas which we had.

One of the other things I want to clarify and most people spoke about, is certainly that they considered some of the sections which carried, what they considered to be offensive provisions, for example, levy or distress. I think that is in clause 37. I think that was dealt with very clearly and adequately, but the point has still come up, certainly with regard to distress, distraint, so on and so forth.

Let me make the fundamental point that property tax is a tax which deals inherently with property. One of the reasons that were eminently and eloquently articulated by the hon. Attorney General is that the reason that the tax attaches to the property, not to the owner—which goes to the point that is being made by Sen. Gail Merhair, where they stand from the point of view, in terms of priority—is because taxes and property taxes are deemed to be a statutory debt and, therefore, they have legal priority. In as much as they are a statutory debt that attaches to property, all of the normal concerns which attach to land, which is in all property legislation and all common law property issues, are covered by the issues of landlord distress, distraint against land, the ability to enter property and the ability to forfeit, attach and acquire. Those are standard provisions of the property law. Whether they are obtained in 1920, 1820 or 2020, the fundamental provisions of property law will remain the same.

Property law goes back, not even to 1920, as the point that you were making, but to the Magna Carta in 1115. That is where property law derived its origin. In fact, it probably goes beyond that too. It is codified in common law, where we get our history from. The provisions, although they may look, how shall we put it, draconian, are what currently exist in the law. That is what is there. I want to make that point. In fact, Sen. Seetahal SC, made that fundamental point when she made her contribution.

Sen. Nicholson-Alfred: Hon. Minister, I do not know whether this is your take or your question to be answered, but I want to know what consideration, if any, would be given to the situation as it exists in Tobago with the three main points that were raised this evening?

Sen. The Hon. M. Browne: I wanted to—I was waiting to get to you separately. I wanted to give you special consideration, especially since you said that Tobago was only mentioned as part of Trinidad and Tobago. I take your point. I understood and had great empathy with the point that you were making, particularly with the historical antecedents. I want to add a little history here. In fact, Tobago was not a ward of Trinidad; previous to that it was a ward of Barbados.

Sen. Nicholson-Alfred: I know this.

Sen. The Hon. M. Browne: Yes, but you left that out and said that you stood alone and independent. I just want to let you know that you switched from being a ward there to a ward here.

Sen. Nicholson-Alfred: I am just following you everywhere.

Sen. The Hon. M. Browne: Quite the opposite, I was following Tobago. In fact, I have to tell you, when there was the dispute between Trinidad and Tobago and Barbados, with the issue of the flying fish, the Prime Minister of Barbados at the time made the point to me that there were Barbados flying fish in Tobago waters and they were just simply doing that because they had an historical relationship and that they were going home for holidays. I just say that by the way of light comment.

The point that you are making with regard to land regularization in Tobago and land ownership structure is a very important point, but cannot be dealt with in the ambit of this legislation. We could not make exemptions for Tobago within the ambit of this legislation. Tobago has to be addressed by a special legislative intent. I am informed by one of the members of the Legislative Review Committee that there are in fact three pieces of legislation which would come to this House in the next quarter, which will deal with that particular issue.

Sen. Nicholson-Alfred: I am listening and taking notes.

Sen. The Hon. M. Browne: You can take notes. I want to tell you—I heard you privately berate the Minister of Agriculture, Land and Marine Resources—he was not there, so I could warrant on his behalf—that the Minister has raised your issue and the issue of Tobago and has followed it. I just want to make that point.

Sen. Nicholson-Alfred: He is the issue too.

Sen. The Hon. M. Browne: He is the issue too.

Sen. Cumberbatch: On the question of the banks, clause 41(1), I heard you explain that the State has a first claim, but the way this provision is couched, nobody has a second claim. The State has the only claim and that is the problem with clause 41. It is not a first claim. The language there makes it an only claim.

Sen. The Hon. M. Browne: Yes, and the answer to treat with is that a large body of law with regard to property which establishes priority, there is the whole question of charges and state charges, which is well described in the law and well developed.

In fact, I thank Sen. Michael Annisette for raising the point, with regard to his memory of what happened when they introduced NIS and of what happened when they introduced the Retrenchment and Severance Benefits Act. I am comfortable with it. [*Interruption*] I am getting to that point. All those measures, when they were introduced, were new and dealt effectively with taxation measures. They engendered a high degree of difficulty on their introduction. I was at the bank at the time when they introduced the Retrenchment and Severance Benefits Act. There was the whole question of what we are going to do, in terms of how we register our charges. I want to allay Sen. Merhair's comments in that regard. A way was found.

In North America, I am not saying that this is going to happen here in the banking system, in terms of mortgages, when you take out a mortgage, you actually pay your property taxes to the bank and the bank pays the property taxes on your behalf. Under existing law in Trinidad and Tobago, for any mortgage, they ask you to bring in your lands and buildings taxes receipt, annually. Most people do not do it because even as we speak, without this law being passed, lands and buildings taxes is a priority. This is not going to lead to any hell and damnation or any great changes, in terms of how it operates. There has been a methodology which has been in position all the time. There is no reason for those changes to take place; it is the same thing with WASA. WASA has certain priorities under the Act. They always ask you, especially when you are making transfers of land, to bring in your land tax bill or bring your WASA bill. That is why they do it, to ensure that any priorities that existed therein are also dealt with and moved away. [*Interruption*] I have a headache too.

Agricultural land—I know, if you keep talking, we would take longer. There is a notion that agricultural land would be disadvantaged by the introduction of this property tax. I want to suggest unequivocally, as strongly as I can, that is a

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fallacy. Let me give you some demonstration as to exactly how that is going to take place. In a country where everything has been said, farmers and owners of agricultural lands will actually realize some savings. There will be no negative effect on the farmer and the farming community that arises from the revision of this property tax. Much of the angst that has been expressed by the farming community is in fact out of whack.

Currently, on a one-acre piece of land, which is normally valued at approximately \$55,000, the annual ratable value is approximately \$1,100. On that basis, using the 2 per cent calculation and the annual taxable value as a result of that, it would be approximately \$990. At 1 per cent, it means the tax for the year on one acre of land is \$9.90. That makes no change from the existing position of \$10 per acre. But it gets a little better. As you go up the spectrum and you own more land, 10 acres of land at \$55,000 gives you an annual ratable value of approximately \$1,100 and an annual taxable of \$9,900. A tax rate on the basis of 1 per cent is \$90; currently it is \$100. For 20 acres, the current rate is \$250, the future rate is \$198; 50 acres, the current rate is \$700, the actual rate now, if this Act is passed, is \$270; for 100 acres, the current tax is \$1,450 and the proposed tax is \$540. So, for those who are thinking that the agricultural sector is going to have doom and gloom, prices are going to go up, they have this to pay, so on and so forth—

One of our difficulties, of course, in the agricultural sector is that it is perhaps—we have 14 pages of incentives for agriculture—do you know what the incentives require? They require the farmers to report. That is one of the reasons they do not use it. They do not file income tax returns. Their income is in the form of cash and it is very difficult to determine what an agricultural income is. "Ah lose all meh crops, dey had a flood. Crops wipe away, ah doh know how much ah loss", and so and so forth. They did lose money, no question about that, but they also made money other times of the year. The moral of the story is that we do not have any idea of what their total income is. From the point of view of agricultural land, the tax rate payable on the agricultural land is down. That is the reality. The estimation of doom and gloom in that particular area will not happen.

The point has been made with regard to valuation where—I want to deal with some of the specific issues in that regard—in fact, the only set of amendments that were circulated were done by Sen. Corinne Baptiste-Mc Knight. I did have a conversation with her, with regard to some of these provisions. Perhaps, I need to speak to some of them.

Clause 17(1), I think I explained to Sen. Seetahal SC what is the position. With regard to clauses 13 and 14, it does no injustice to the Bill. It probably would be neater if there was one clause instead of two, but it does not do any harm.

With respect to the notice of assessment, clause 10, I think, sets out the fact that tax would become due and payable on January 01.

"The Board shall, on or before March 31...cause a notice of assessment..."

I indicated last night when I was winding up that we had about 500,000 pieces of data and we should be in a position to send our notices for approximately 220,000. The purpose for:

"The Board shall, on or before..."

In other words, a worst-case situation. They might not send it out, but they have to do it before March 31. The idea is that they would get it done before March 31, so you have a couple of months and in any event, penalties do not kick in until September 15. We do not want to mix it up with September 15. We want to make certain our notices get out before then. As I explained last night, we have beefed up the Valuation Division for us to do a whole set of stuff where this is concerned. It is in fact a computerized programme. A lot of data is being fed into it, so that we would be able to generate it automatically and also be able to create online versions following through.

Under clause 18, the question of liability, a couple of people mentioned this, the liability of a tax on income paid or an incorrect assessment and the fact that no assessment was made. This is precisely because we are moving to a system which is computerized. You could have garbage in garbage out. That is the reality. We ask you to send in the form. If you do not fill out the form correctly or your handwriting is not legible, you make an improper transcription. It is really up to you to follow up and make certain that it is done right. That is really what this provision is saying. We need to get it right, so write legibly so that we could understand. Type it preferably. There is always the capacity for human error, so at the same token, double-check.

There was the objection, with respect to clause 19, the expiration of 30 days. It becomes due and payable in 30 days. I think the way the Act is written, the penalties do not kick in until September and the surcharge does not kick in until the day after September 15, which is September 16 and penalty interest thereon is 15 per cent. I think I was making the point to Sen. Baptiste-Mc Knight, that 1.2

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per month, multiplied by 12 is in fact 14 per cent, which is a little better than is done factually under the VAT law. You will find that the position is a lot better than what exists at the moment in other law elsewhere.

Under clause 20, you also raised the question with regard to:

"...the Board shall forthwith refund the amount of..."

You wanted to know in a specific amount of time. The definition of the statute on interpretations, which is under section 23, defines the status here. This is actually stronger; this wording is stronger than what is contained in the statute of interpretations, which actually says "within a reasonable time". By putting in forthright, it is trying to, if you want, improve the standard of operation to make it firmer and faster and it is the intention for us to operate in that direction.

Objections—I think that was clause 20. Clause 19 also makes provisions for proportions of monthly payments—to the assessment. I was not clear on the reasons for the objections here, because you have notice within 21 days and the reply coming in nine months. I think that—that was not your particular objection.

Sen. Baptiste-Mc Knight: Thank you for giving way. My problem is that 21 days to object to the Board, but there is no time frame for the Board to refer to the Commissioner of Valuations.

Sen. The Hon. M. Browne: I think the answer there is "reasonable time". I did not think there is a limit of nine months. The position there is definitely that it should be done in a reasonable time and certainly that also falls in the statute of interpretations. A lot of these provisions that are contained herein are actually items which are transcribed or brought over from the previous legislation. I think that is the point that was being made elsewhere and I think I responded to that.

The deferral of tax—*[Interruption]*

Sen. Baptiste-Mc Knight: Not yet.

Sen. The Hon. M. Browne: Not yet? You are not happy with me?

Sen. Baptiste-Mc Knight: No. Subclause (8), where it refers to subclause (6) and subclause (6) has nothing to do with that.

Mr. President: Senator, if you wish to speak please rise, this is not in committee stage.

Sen. Baptiste-Mc Knight: Thank you, Mr. President. Subclause (8) refers back to subclause (6), but it is not clear exactly what the intention is there.

Sen. The Hon. M. Browne: The intention is to cater for some of the instances that you yourself described. There may be times, for example, where the person may not be here, may not have seen it or may not have known that the board does have some discretion to allow. This is what subclause (8) does.

"An application under subsection (6) may be made out of time where the Board is satisfied that there was a reasonable excuse for not making the application within the time limit, and that application was made thereafter without reasonable delay."

That is what it means.

Under the issue of deferral of tax, that certainly is a provision that does not exist elsewhere and has not existed in any of the predecessor legislation. What this clause does is allow for personal relief of the indigent and also in the event that the heir is unable to pay. The successor, the person who inherits the property—I think somebody raised an objection about the fact that the property tax attaches to the property, as I indicated, that is a standard provision in law to operate now under lands and buildings taxes. If you inherited the property and there is outstanding tax, you have to pay for it. That is the reality now, as we speak. This is not a new provision. This is not an incredulous provision, all it does is continue what existing law recognizes.

This also goes much further. It gives the Board the opportunity to make some judgments, with respect to deferral moving forward. This clause was put into the legislation specifically to recognize the fact that there were pensioners and those people who are operating on fixed income who may have some difficulty and to allow for a measure of relief, which is not allowed in the law at present. The current law makes no allowance for deferral. This is actually a significant improvement in the law, in terms of what it allows the property owner to do. Again, I make the point about the owner in this particular case and its heirs and successors in the event that the person inheriting the property is in a similar position.

I think the question was raised as to whether they have the capacity to waive the tax. The answer is: Yes, they have the capacity to waive the tax, the circumstances warrant. That is a feature which is not now existing in the law. This is a substantial improvement.

I am not going to deal with the provisions, with regard to the recovery of taxes because I have dealt with those before.

Sen. Baptiste-Mc Knight: Mr. Minister, please. My point goes further. This here is limited to the four categories of people at clause 23(2)(a). My point is that it does not cover a substantial number of people who find themselves in similar situations.

Sen. The Hon. M. Browne: This is a fundamental issue and that is one of the reasons this was put in. The four categories were for immediate. In fact, the subsection under clause 23 says, for example, that it will act as a certificate. In other words, that is automatic. Once you show this, it is automatic. You do not have to check anything at all. The section does empower the Board. The relief that it is meant to bring is meant to be a general relief. Even though these may automatically get it, it does not exclude and avoid other persons. I understand the point that you are making.

I am advised by the Attorney General that what we would do as well, because we are implementing it for the first time, is a matter that we will keep under review and if necessary amendments have to be made, they will be amended. The idea is not to introduce any item that will cause hardship. We understand that. By the way, I understand that you may not be able to—I also understand that from a political point of view, we would not want to include or bring anything to bear that would put us in a situation which will cause us undue and unnecessary grief. We do not want to do anything to give our friends here some help. They do not need any. There is no reason for us to give them any.

Sen. Mark: May I seek your help?

Sen. The Hon. M. Browne: No, you cannot. Please do not.

Sen. Mark: It is not a point of order. There is a term called “a Trinidad and Tobago conditional cash transfer card”. There is no definition under the interpretation section as to what this particular concept means. I am suggesting that ought to be defined in the interpretation section. I am also asking: Can the Minister not consider the Government retirees as a category for relief and exemption under this particular part of the legislation?

Sen. The Hon. M. Browne: Conditional cash transfer payments is a well understood and well accepted definition, even if it is not included in this particular law. It is done by practice.

Within the question—I made the point before, this is a section that certainly would be kept under review. It is a section that we must keep under review, if only because we are making some changes and we want to see the general

applicability; the fact that we are going to have universality, which is something we may not have had before. It certainly requires us to keep it monitored.

One of the other things that I must point out is that we will have far more relevant data and information being generated by the system than we have ever had before and that gives us a whole capacity to do things which we do not at present have, in terms of an information system.

One of the fundamental issues—I go back to the point that was made by Sen. Prof. Deosaran when we asked the question: Why should we do it? What is this change? What does equity under the arrangements that we are talking about now mean? The equitable positions that we are talking about and the changes that we are making, what we are doing here is creating assessment equity. What do we mean by assessment equity? We are ensuring that comparable properties are assessed comparably within each individual area. That is the point about location. We have these five classes. Those five categories are general categories that will be applied universally. We understand what executive, modern, standard and substandard is and we have definitions, in terms of what the properties will include and also the approximate sizes of the properties. We expect that property sizes will vary between locations, so the definitions will vary. The standard rates that will apply and be captured by the Valuation Division will also vary. That is what assessment equity means.

By tax equity, what we are also trying to achieve and will achieve by making these changes is by ensuring that the rates are standard. As I indicated in my opening remarks, there is no rational reason for having 2 per cent, 8 per cent, 10 per cent to 7.5 per cent, which are the existing rates. We are moving to one standard rate for agriculture property, one standard rate for residential, one standard rate for commercial and one standard rate for plant. We are also using and introducing a consistent and uniformed methodology. In addition to which, just to summarize, in terms of some of the equities that we have introduced—

Mr. 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. [*Hon. C. Enill*]

Question put and agreed to.

10.30 p.m.

Sen. The Hon. M. Browne: Thank you very much, Mr. President, and hon. Senators. I would not detain you for too long. [*Interruption*]

I just simply want to summarize some of the changes that we are putting in position here, which would effectively bring some more lenient terms than currently exist in the legislation. Those lenient terms are, essentially, to reduce the time frame for distress for non-payment—distress for non-payment has to do with one of the provisions that many Senators did not like but, as we said, exist in the law. At the moment, under the Lands and Buildings Taxes Act, distress for non-payment is three months, and what we have done is extend that to one year. The time frame after which land can be forfeited under the Lands and Buildings Taxes Act for non-payment was one year, and we have moved that to five years.

Mr. President, for persons suffering from financial hardship well, as I said before, they can now apply for a deferral. Finally, the time frame before which unoccupied property and assessed land may have been forfeited to the State has been extended from five years to 16 years.

So, part of the reasons for trying to maintain some of the concepts as existed under the previous law was because of their familiarity. The reason for maintaining some of the provisions with regard to, if you want, action and forfeiture by the State—that has been adequately explained by the Attorney General—is that land and property attract certain remedies, and those remedies continue, insofar as they apply to all properties, and this is one of the reasons they have been continued under this particular legislation.

I think several Senators made this point and that is the difference between an “owner” and an “occupier”. Because it is property, you can make arrangements to have mail delivered elsewhere—those arrangements can be made—and you could always ensure that the mail is delivered to the owner as distinct from the occupier, but in terms of the remedies and in terms of common law, the remedy of common law always attaches to the property. That is one of the reasons in the definition section of the Act, “owner” and “occupier” are identified as being one. So, if you have to take action, and you are taking action against the owner—quite frankly, from the point of view of recovery, it recognizes that your primary cause of action is against your property. Under the income tax law, your primary cause of action would be against where you earn income. That is what garnishee orders do. In fact, garnishee orders do not give you any room for discretion; a garnishee order is it. Pay the money! In other words, it does not matter what you are getting paid, the money goes to the State. That is the reality.

So, with these few words, I just want to make the point that the Valuation Division has spent a lot of time developing data. I understand that there is an element of fear and there is an element of uncertainty with respect to the valuation. We are keeping the concept of the annual rentable value as the basis for calculation. There are some rough measures with regard to calculating out, and that is one of the reasons we amended the Valuation of Land Act. We talked about commonalties of principles, and also setting up certain classes of land; the distinction between agricultural land, residential land, commercial property and industrial plant.

Ladies and gentlemen of the public and Senators, I think we have ventilated much of the ideas and much of the difficulties as contained in the Bill, and we have given more than enough explanations. I want to assure the population that the purpose of this Act is not to cause stress; it is not to cause difficulty or fear, and as it goes by—in the same way we came to understand national insurance; in the same way we came to understand the Severance Pay Act—we will come to understand this and we will find that it contains tremendous equity. Ladies and gentlemen, I beg to move. [*Desk thumping*]

Question put and agreed to.

Bill accordingly read a second time.

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

Sen. Mark: Mr. President—

Mr. President: Let me put the question.

Question put.

Sen. Mark: Mr. President, in accordance with Standing Order 63, we would like to move that this Bill be referred to the entire Senate in accordance with the Standing Order.

Mr. President: Senators, that is why I put the question. The question will decide that. If, as a result of the collection of voices, it is in the negative, the Bill automatically goes to a committee of the whole Senate. There is no reason for any other discussion. I may put the question again.

Question again put.

Sen. Mark: We want a division on this.

Mr. President: Are we all here?

Hon. Senators: Yes.

Mr. President: Very well.

The Senate divided: Ayes 17 Noes 10

AYES

Enill, Hon. C.

Saith, Hon. Dr. L.

Jeremie SC, Hon. J.

Browne, Hon. M.

Joseph, Hon. M.

Manning, Hon. H.

Piggott, Hon. A.

Narace, Hon. J.

Dick-Forde, Hon. Dr. E.

Gronlund-Nunez, Hon. T.

Hadeed, G.

George, W.

Rogers, L.

Lezama, Miss L.

Melville, Miss J.

Deosaran, Prof. R.

Annisette, M.

NOES

Mark, W.

Nanan, Dr. A.

Kernahan, Dr. J.

Rahman, M. F.

Property Tax Bill

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Gopaul-McNicol, Dr. S.
 Cumberbatch, R.
 Ramkhelawan, S
 Baptiste-Mc Knight, Mrs. C.
 Nicholosn-Alfred, Mrs. A.
 Merhair, Miss G.

Senators B. Ali and H. Drayton abstained.

Question agreed to.

Mr. President: Now, the third reading.

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

Sen. Mark: Division.

The Senate divided: Ayes 16 Noes 12

AYES

Enill, Hon. C.
 Saith, Hon. Dr. L.
 Jeremie SC, Hon. J.
 Browne, Hon. M.
 Joseph, Hon. M.
 Manning, Hon. H.
 Piggott, Hon. A.
 Narace, Hon. J.
 Dick-Forde, Hon. Dr. E.
 Gronlund-Nunez, Hon. T.
 Hadeed, G.
 George, W.
 Rogers, L.
 Lezama, Miss L.

Melville, Miss J.

Annisette, M.

NOES

Mark, W.

Nanan, Dr. A.

Kernahan, Dr. J.

Rahman, M. F.

Gopaul-McNicol, Dr. S.

Cumberbatch, R.

Deosaran, Prof. R.

Ali, B.

Ramkhelawan, S.

Baptiste-Mc Knight, Mrs. C.

Nicholson-Alfred, Mrs. A.

Merhair, Miss G.

Sen. H. Drayton abstained

Question agreed to.

Bill accordingly read the third time and passed.

ADJOURNMENT

The Minister of Energy and Energy Industries (Sen. The Hon. Conrad Enill): Mr. President, before I move the adjournment of this Senate for this year, let me just take this opportunity to thank all Senators for being involved in a process that has gotten us to this stage.

The year 2010 which is about to come on us, will certainly present us with many more of the challenges, especially those that we have been engaged in over the last 48 hours. Certainly, as the Government moves to deal with its reform agenda, there will be significant issues that we would have to work through. It is my own view that we may find a different way to deal with our issues, but that may not be possible. I think at the end of the process, we usually get it right. I wish to thank all Senators, the parliamentary staff, you, Mr. President, and all my colleagues for engaging in this particular exercise, and I hope that at the end of it all, the people of Trinidad and Tobago would have benefited.

Adjournment

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While I agree with the sentiments expressed that we should pass legislation that is good legislation, I think we need to remember that this is a relay, and that from time to time we are going to have to do things, but we will continue to improve on them as and when we have more data; as and when we have more time; and as and when we have more information. That is going to be our approach and that is what we are expected to do.

I, therefore, wish now to adjourn this Senate to Tuesday, January 05, 2010 at 1.30 p.m. where it is our intention to deal with the following business: Under “Government Business Motions” there is a Motion by the Ministry of National Security to amend the Prison Rules. We propose to deal with that. We also propose to deal with the continuation of the Integrity in Public Life (Amdt.) Bill. Mr. President, you would recall that we were at the committee stage and, time permitting, we would deal with some matters under “Committee Business” as stated on the Order Paper.

Greetings

Sen. Wade Mark: Mr. President, let me on behalf of the Opposition UNC express our best wishes to you and your family, and let me at the same time extend to all my colleagues on the Independent Bench and their respective families, and my colleagues on the Government Benches and their respective families, along with all members of staff of the Parliament—the hard-working staff—Hansard, Secretariat and members of the protective services, for providing us with the kind of support and protection for the period that we have been here for the year 2009.

It has been a very challenging session for us, and we would hope as we continue to work in the interest of the nation and to promote, advance and safeguard their rights, freedoms and privileges that in 2010 when we resume next Tuesday, we will pay more attention to bringing about, through dialogue, conversation, discussion and, of course, consensus, better legislation and good legislation that would redound to the benefit, interest and welfare of the nation as a whole.

I know that my colleague, particularly the Minister of Health, would like to leave this Chamber to continue his public relations as he has started in 2009, but I want to wish him and his family the best as we proceed.

Mr. President, it has been a great pleasure for all of us to participate productively and constructively. I want to pay special tribute to my colleagues; both on the Independent Bench, Sen. Prof. Ramesh Deosaran and the Leader of

Greetings
[SEN. MARK]

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Government Business, Sen. The Hon. Conrad Enill. I must say that we have been able to establish a certain kind of relationship in an effort to ensure that the business of the Parliament is conducted in a professional manner. We have our differences, because we are in different political parties, but I must say his presence has generated a new wind of change—[*Desk thumping*—]in the context of how we have conducted our business unlike the previous leader.

Hon. Members: Nah! [*Interruption*]

Sen. W. Mark: Okay, I withdraw that Sir, all in the spirit of togetherness. I withdraw that statement. I do not want to generate all that kind of anxiety and uncertainty.

As I said, I want to really thank my colleagues and thank you as well. I know that you have been a hard taskmaster at times, but you do your duty, and we hope you and your family would have a very wonderful, healthy and very positive and progressive 2010.

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

Sen. Prof. Ramesh Deosaran: Mr. President, following on the heels of the two previous speakers, on behalf of this distinguished Bench of Independent Senators, I wish to extend our own greetings to Members of the Government side. As we have hinted earlier on, the work on the Government side has been quite strenuous and challenging, particularly in some ministries, and we wish you a prosperous New Year. We appreciate the work you have done in the interest of the country.

Most precisely, I would not like to lose the moment to emphasize that the last two Bills we have debated have tested our mettle, particularly on the Independent Bench. There were some moments when I felt very proud to be a Member of this Independent Bench, all of whom have contributed so wisely to the two Bills which have been brought before us. Those two Bills really raise very serious and fundamental questions about governance and equity and, I think, we have all tried to take up the challenge in the best way that we could, which is another piece of evidence regarding the role of the Senate, to the benefit of the country.

People have argued about the role of Independent Senators and some people have different views, but I would say if ever it comes to the removal of the Independent Bench from the Constitution, all I could say is that you would never miss the water until the well runs dry, in terms of balance and in terms of what you have always asked us to produce enlightenment and, more particularly, to yourself and to Sen. George Hadeed, for carrying on the presiding of this Senate with such endurance. I know

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sometimes your endurance would naturally have been tested by some of us, but for your patience and devotion to duty, even in the late hours of the night, we on this Bench want to express our appreciation to you and Sen. Hadeed.

To all my colleagues, I wish you a happy New Year and the future looks bright. I think we should still keep our optimism up, because the way forward looks very bright if only we can join together and march forward holding hands in the way that we have done in this particular session. Thank you, Sir. [*Desk thumping*]

Mr. President: First of all, let me thank you all for your very kind sentiments to me and my family. Let me express warm wishes to the staff of the Parliament, especially the Hansard workers—[*Desk thumping*—who have to maintain the highest degree of concentration through long, long speeches and late, late hours, but they do an excellent job, and I would certainly like to commend all of you for the very hard and dedicated job that you do.

I would like to thank the Parliamentary Attendants, the Deputy Marshal, the security officers and all the other staff in the Parliament. I would like to wish you all a very safe, happy and prosperous 2010. I shall not be with you for the next two sessions, I am away to a presiding officers conference in New Delhi, and I promise to return at the earliest opportunity. [*Laughter*] I would be back to do my duties here.

It has been a pleasure to work with all of you over the past year. Certainly, the Bills that were before us certainly vexed my mind over the last two days, because I may have been put in a position where I may have had to cast more than one casting vote as I did yesterday. I was quite prepared to do so. I understand the Constitution; I understand the Standing Orders; I understand the traditions of the Parliament; and I feel I understand the duties and the role of the Independent Bench. Fortunately, they did not put me in a position where I had to demonstrate what was my understanding.

I would like to wish you all the very best and, in parting, I would just say be safe on the roads, do not drink. We now have the breathalyser test, and may I say also do not smoke, because the Minister of Health might catch you somewhere. [*Laughter*] I wish you very well.

Question put and agreed to.

Senate adjourned accordingly.

Adjourned at 10.56 p.m.