

*Leave of Absence**Tuesday, January 05, 2010***SENATE***Tuesday, January 05, 2010*

The Senate met at 1.30 p.m.

**PRAYERS**[MR. VICE-PRESIDENT *in the Chair*]**LEAVE OF ABSENCE**

**Mr. Vice-President:** Hon. Senators, before I start, may I just wish every one of you a Happy New Year.

I wish to inform you that the President of the Senate, Sen. The Hon. Danny Montano is out of the country.

I have granted leave of absence to Sen. Dr. Sharon-ann Gopaul-McNicol, who is also out of the country.

**SENATORS' APPOINTMENT**

**Mr. Vice-President:** Hon. Senators, I have received the following correspondence from His Excellency the President, Prof. George Maxwell Richards, T.C., C.M.T., Ph.D.:

“THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO

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

/s/ G. Richards  
President.

TO: MR. FOSTER CUMMINGS

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

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

Given under my Hand and the Seal of the  
President of the Republic of Trinidad and  
Tobago at the Office of the President, St.  
Ann's, this 5<sup>th</sup> day of January, 2010.”

*Senators' Appointment*  
[MR. VICE-PRESIDENT]

*Tuesday, January 05, 2010*

“THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO

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

/s/ G. Richards  
President.

TO: MR. RAPHAEL CUMBERBATCH

WHEREAS Senator Dr. Sharon-ann Gopaul-McNicol is incapable of performing her duties as a Senator by reason of her absence from Trinidad and Tobago:

NOW, THEREFORE, I, GEORGE MAXWELL RICHARDS, President as aforesaid, acting in accordance with the advice of the Leader of the Opposition, in exercise of the power vested in me by section 44 of the Constitution of the Republic of Trinidad and Tobago, do hereby appoint you, RAPHAEL CUMBERBATCH, to be temporarily a member of the Senate, with immediate effect and continuing during the absence from Trinidad and Tobago of the said Senator Dr. Sharon-ann Gopaul-McNicol.

Given under my Hand and the Seal of the  
President of the Republic of Trinidad  
and Tobago at the Office of the  
President, St. Ann's, this 4<sup>th</sup> day of  
January, 2010.”

#### OATH OF ALLEGIANCE

*Senators Foster Cummings and Raphael Cumberbatch took and subscribed the Oath of Allegiance as required by law.*

#### PAPER LAID

Annual audited financial statements of National Maintenance Training and Security Company Limited for the year ended December 31, 2008. [*The Minister of Trade and Industry and Minister in the Ministry of Finance (Sen. The Hon. Mariano Browne)*]

#### ORAL ANSWERS TO QUESTIONS

#### **Salt Water Intrusion into Agricultural Lands (Prevention of)**

**202. Sen. Dr. Adesh Nanan** asked the hon. Minister of Agriculture, Land and Marine Resources:

Could the Minister indicate the mechanisms that have been put in place, since 2007, to prevent salt water intrusion into the agriculture lands of Caroni?

**The Minister of Agriculture, Land and Marine Resources (Sen. The Hon. Arnold Piggott):** Mr. Vice-President, the answer to this question is not yet ready and I would ask for a deferral of the response.

*Question, by leave, deferred.*

### Energy Efficient School Buildings

**203. Sen. Dr. Adesh Nanan** asked the hon. Minister of Education:

- A. Would the Minister indicate whether any school buildings are energy efficient?
- B. If the answer is in the affirmative, could the Minister name the school(s) and mechanism employed?

**The Minister of Energy and Energy Industries (Sen. The Hon. Conrad Enill):** Mr. Vice-President, if the Senate permits, I am in a position to answer the question on behalf of the Minister of Education.

With respect to part A of the question in general, the schools of Trinidad and Tobago were built prior to a time when the briefs supplied to architects required energy efficient buildings, natural systems of ventilation and temperature control had been relied upon traditionally. In more recent years the introduction of computer rooms and specialist laboratories has led to the requirement for air conditioning with the attendant increase in energy demand.

With regard to schools which are being constructed or are to be constructed in the foreseeable future, the national concern for achieving energy efficiency certainly has not been overlooked by the Ministry of Education. In this regard, energy efficiency concerns have been and are being addressed in the design process by pursuing design options which either, minimize energy demand or which provide for the use of energy saving devices and lower cost energy sources or a combination of such designs.

**Sen. Dr. Nanan:** In part B, I did not get from the answer—I do not know if the answer really is saying that there are no schools with any energy efficient mechanisms involved?

**Sen. The Hon. C. Enill:** The answer suggests that there are no schools. It simply says that with regard to schools that are currently being constructed or which are to be constructed in the future, the manner in which you are dealing with this is through the design brief.

**National Test Results  
(Release of)**

**204. Sen. Dr. Adesh Nanan** asked the hon. Minister of Education:

Could the Minister indicate the date for the release of the National Test results for the June 2009 Examinations?

**The Minister of Energy and Energy Industries (Sen. The Hon. Conrad Enill):** I am in a position to supply the answer. The answer is as follows: The national test results for the June 2009 examinations will be released to schools by January 08, 2010.

**ANTI-TERRORISM (AMDT.) BILL**

Bill to amend the Anti-Terrorism Act [*The Minister of National Security*]; read the first time.

**Mr. Vice-President:** Hon. Senators, the Anti-Terrorism (Amdt.) Bill, 2010 will be circulated in a little while to Senators.

**INTEGRITY IN PUBLIC LIFE (AMDT.) BILL**

[Fourth Day]

*Order read for resuming adjourned debate on question [12<sup>th</sup> May, 2009]:*

That the Bill be now read a second time.

*Question again proposed.*

**Sen. The Hon. J. Jeremie SC:** Mr. Vice-President, the debate on this Bill has been long and acrimonious. The Government proposes this afternoon to make several changes to the legislation to take into account the concerns which were expressed during the course of the three days of debate beginning in the middle of May. Those amendments are principally to clause 12 of the Bill, that is to say the complaints procedure. I think that is the clause which has generated the greatest degree of acrimony, both inside and outside of this place and the Government is prepared to make substantial changes to the clause as it is drafted.

We are also prepared to make amendments to clauses 4 and 10; to delete clause 17 and to make a change to clause 14 of the Bill.

I wish to thank all Senators for participating in the debate. It has been a difficult debate, but as I said, I hope this afternoon we would arrive at some measure of consensus.

Mr. Vice-President, with those few words, I beg to move.

*Question put and agreed to.*

*Bill accordingly read a second time.*

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

*Senate in committee.*

**Mr. Chairman:** Hon. Senators, the committee stage will be suspended for 15 minutes.

**1.45 p.m.:** *Committee suspended.*

**2.02 p.m.:** *Committee resumed.*

*Clauses 1 and 2 ordered to stand part of the Bill.*

*Clause 3.*

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

**Sen. Mark:** Mr. Chairman, I would like the Attorney General to explain the relevance and significance of (e) in this new clause 5(1).

**Sen. Jeremie SC:** The clause in its global sense seeks to increase the powers of the commission by adding to its existing power to investigate complaints regarding alleged breaches of the Integrity in Public Life Act, the power to investigate complaints in respect of any alleged commission of any offence under the Prevention of Corruption Act. The rationale there is to give the Integrity Commission greater powers than it would otherwise have.

**Sen. Seetahal SC:** Attorney General, under the current 5(1)(e) there is a provision that the commission may or shall receive and investigate complaints regarding suspected offences under the Prevention of Corruption Act. The difference seems to be that now we are deleting "suspected".

If one goes back to the parent Act and what is substituted, what is proposed to be substituted is really an inclusion of the word before commission; the "alleged" commission. We did not have that before. We had "the commission of any offence or any suspected offence". What has been deleted is "or any suspected offence". I do not see the purpose of it.

**Sen. Jeremie SC:** We thought that was compensated for by use of the word "alleged".

**Sen. Seetahal SC:** So much drafting has been so suspect, I just found it was very odd to introduce something which caused some confusion.

**Sen. Mark:** Attorney General, what is the fundamental difference in terms of "suspected offence" as opposed to "alleged commission of any offence"?

**Sen. Jeremie SC:** It is not merely a difference in semantics. We think that an allegation is wider. If the Senate thinks otherwise, we are prepared to leave the situation as is. This is not a clause that the Government is fundamentally wedded to, so if you prefer the existing form of words, then—

**Sen. Mark:** I think so. I would support that we go with the existing form.

**Sen. Oudit:** Mr. Chairman, in 5(e) it reads in the original Act:

"alleged breaches of this Act or the commission or any suspected offence..."

I am looking at the word "commission" there as supposedly referring to the Commission as in "the Commission", proper noun.

**Sen. Jeremie SC:** No, that is not what it means. It is the alleged commission, the alleged doing.

**Sen. Oudit:** Okay.

**Sen. Seetahal SC:** "breaches of this Act...to receive and investigate complaints regarding the commission or any..."

It should be, "the commission of an offence or any suspected offence". It should really be "the commission of an offence"; that is what it should have been. They should have amended that clause to include "the commission", including the words "of an offence". I think this is what this tried to do.

**Sen. Jeremie SC:** We have:

"the alleged commission of any offence..."

**Sen. Seetahal SC:** Maybe we should include "or the commission of"—maybe we should include that in the proposed amendment and leave it as is. Your amendment is better grammatically than the clause. I suggest that you amend your amendment to say, "or the commission of" or "the alleged commission". In other words:

"...receive and investigate complaints regarding any breaches of this Act or the commission or alleged commission of any..."

**Sen. Jeremie SC:** Do you not think that "alleged commission" would capture both commission and allegation?

**Sen. Seetahal SC:** Suppose it is an offence that is established, it is not an alleged offence again?

**Sen. Jeremie SC:** There is a procedure by which the commission would be established; so at the stage when it comes to the Integrity Commission inevitably it would be an allegation. So it is the purpose of the Integrity Commission to investigate allegations to determine whether or not—

**Sen. Seetahal SC:** Then we could strike out "alleged", because if it is complaints, it is complaints regarding the commission of offence. Implicit in it is that it is alleged anyway.

**Sen. Jeremie SC:** I am prepared to take the amendment, if you could just read it.

**Sen. Seetahal SC:** Delete the word "alleged" in the substituting of the provisional paragraph.

**Mr. Chairman:** "...receive and investigate complaints regarding any alleged breaches of this Act or the commission of any offence under the Prevention of Corruption Act."

**Sen. Seetahal SC:** Delete the word "alleged" both times.

**Mr. Chairman:** "...regarding any breaches of the Act or the commission of any offence under the Prevention of Corruption Act."

The question is that clause 3 be amended by deleting the word "alleged" in both places and it would now read:

"...receive and investigate complaints regarding any breaches of this Act or the commission of any offence under the Prevention of Corruption Act."

*Question put and agreed to.*

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

*Clause 4.*

*Question proposed, That clause 4 stand part of the Bill.*

**Sen. Jeremie SC:** There is an amendment which takes into account some of the contributions which came from the Independent Benches:

Delete the word "shall" in proposed subsection (2) and substitute the word "may".

**Mr. Chairman:** We have an amendment to clause 4.

**Sen. Drayton:** Mr. Chairman, what is the reasoning for this?

**Sen. Jeremie SC:** It was advanced by Sen. Seetahal SC, I think, that the President ought to have a discretion with respect to removing persons from the Integrity Commission. I think Sen. Ramkhelawan also joined in that observation,

*Integrity in Public Life (Amdt.) Bill*  
[SEN. THE HON. J. JEREMIE SC]

*Tuesday, January 05, 2010*

so we are trying to meet those concerns. We agree that these are the grounds on which removal might be made, but we do not want to compel the President to do anything. We think that since appointments are at his discretion, removal should be at his discretion. Of course, these grounds would constitute very powerful grounds on which he ought to exercise a discretion, but that is really up to him.

*Question put and agreed to.*

*Clause 4, as amended, ordered to stand part of the Bill.*

*Clause 5.*

*Question proposed, That clause 5 stand part of the Bill.*

**Sen. Mark:** Mr. Chairman, first of all we are saying in clause 9(6) that we should have "public" before "officer" and then we should remove "the Public Service". I am wondering if the Attorney General could explain to us why he is removing the public service, what the policy position is here and what he is hoping to achieve in this context. Are we going to deal with persons in the statutory services? Are we dealing with state enterprises? What is the objective of removing the public service? I need to have some clarification.

**Sen. Jeremie SC:** Mr. Chairman, we are not removing the public service. What we are doing is expressing the concept differently; so that instead of "officer in the Public Service", all we are saying is that it is up to the appropriate service commission to approve the transfer of a public officer to an office within the commission, and that an officer so transferred shall, in relation to gratuity, pension and other allowances be treated as continuing in the service of Government. We think this is the proper nomenclature which fits this category of case.

**2.15 p.m.**

**Sen. Seetahal SC:** I remember some of us had some concerns that it would only relate to members under the Public Service Commission because of the capital P and capital S and that is why it was suggested public officer.

*Question put and agreed to.*

*Clause 5 ordered to stand part of the Bill.*

*Clause 6.*

*Question proposed, That clause 6 stand part of the Bill.*



**Sen. Mark:** Mr. Chairman, if you go back to clause 11 of the Bill, we are talking about a sum that—

**Mr. Chairman:** Let us deal with the amendment, there is an amendment to clause 6 from Sen. Drayton which is to delete paragraph (b).

**Sen. Drayton:** The hon. Attorney General's amendment is already dealing with section 12 where all that would have been deleted anyway.

**Mr. Chairman:** So you are withdrawing it?

**Sen. Drayton:** Yes.

**Sen. Mark:** I was indicating that the previous number was less than \$10,000; what has caused this change? There have been some complaints coming to the Attorney General's Office suggesting that \$2,000 was small and they have to require people to declare this and you say rather than \$2,000 we want to extend it to 10,000. Is there a basis for going to 10,000?

**Sen. Jeremie SC:** Yes, there was a basis for going to 10,000. We felt that \$10,000 was the de minimis amount reflecting the current value of money, and that was the explanation for it. I did speak informally—because there is no Integrity Commission in place as you know—to persons who have served on the Integrity Commission in very senior positions and they felt that given the present nature of their tasks which really require them to scrutinize a number of these returns, that this figure was appropriate.

**Sen. Mark:** And then increasing the period from six to 12 months. I thought we would have been more stringent and propose three months, but I see we are extending it to 12 months.

**Sen. Jeremie SC:** In speaking to this amendment, I have to disclose an interest. My interest is this; I returned to Trinidad on May 29, I would have been required to complete this declaration right away. I had no personal effects with me; it took me months to get my personal effects from the United Kingdom. This is a one-off case with me, so my declaration was filed quite late and all the section does as it is amended, is to empower the Commission to grant up to 12 months. It does say you have a right to submit your declaration at the end of 12 months, you have a right to submit it on time, they have a duty to monitor any requests you make for an extension of time to see whether it is reasonable.

I think in my case it might be reasonable, but that is me advocating my own case.

**Sen. Mark:** The reason I am asking, there has been a flurry of complaints coming from the Integrity Commission concerning applications for extensions from the minimum or maximum period of six months and, therefore, they have to exercise a discretion at times and they are asking the Parliament, through you, that we go from six to 12.

What is the evidential material that could justify this big increase from six to 12?

**Sen. Jeremie SC:** It is anecdotal that there has been no formal request, but we know of several cases in which the Integrity Commission has said it is constrained by law and all we are doing is seeking to enlarge its discretion to give them more power to do their business. This is not a compulsion; we are giving them more power to do their business.

**Sen. Ramkhelawan:** Mr. Chairman, the extension is really not in congruence with what I would consider proper governance and practices because it takes you from five months from the end of a year for submission to 17 months from the year of submission and I feel that really is not what we would have intended to do. But if you talk about six months beyond, that takes you to November already and I do not see why we should have a 12-month extension beyond a further five-month extension. I think six months is more than adequate and it takes you into another year as well.

**Sen. Jeremie SC:** Senator, to refer to my case, six months was not sufficient for me; my effects were still being shipped on the high seas. That might be the odd case, but it is a case and it might not occur every day, it might happen once every two or three years but you want to give the Commission the power to treat with exceptional cases.

**Sen. Ramkhelawan:** I do not have a major objection to it, but I think that the clause prior to that which allows or requires the Commission or a person not to include in the declaration income and assets, the value of which does not exceed \$10,000, I think there is too much room for interpretation with regard to this particular clause and it should be to the value of an aggregate, because you can have—based on my understanding of the legislation—25 categories of income or assets, when you add them up, they would be significant, if on aggregate, it is not more than 10 or 20; for that matter it makes sense.

My interpretation of the amendment that is noted here suggests that in each category you could have—because it speaks respectively to a \$10,000 allowance.

**Sen. Jeremie SC:** I am prepared to accept your amendment; that is 6A(1). I understand the concept. Do you have a form of words?

**Sen. Ramkhelawan:** I would say:

A person shall not be required to include in the declaration income, assets or liabilities the aggregate value of which you do not declare income of up to \$10,000.

So it might be that you have a mutual fund account or something for \$50 or \$70 that you forgot about, or you have to go back and look for \$100 or \$200 as the case may be. Just remember persons holding public office are not entitled to accept gifts in excess of a particular figure, I think it is \$2,500 if my memory serves me right.

So I think when you put both of them together, you juxtapose them, you would want an aggregate value in each category; income, assets, et cetera but on aggregate.

**Sen. Prof. Deosaran:** Mr. Chairman, have we finished with the extension to 12 months or are we still on it?

**Mr. Chairman:** We are still on it.

**Sen. Prof. Deosaran:** I want to support the extension to 12 months for a practical reason as well and it is not anecdotal. Many people who file these declarations had been requested by the Integrity Commission to furnish additional information which requires repeated correspondence with banks, credit unions, and these things are outside the control of the applicant. So for these and other reasons, those of bureaucracy and administration, I want to support the extension for 12 months with the point the Attorney General made; that the Commission still has the discretion.

**Sen. Seetahal SC:** In relation to what my friend has said that this really deals with the furnishing of the declaration, when they ask for additional information, separate time periods apply so this will be the initial filing.

**Sen. Jeremie SC:** Even in respect of that, if you have someone who is required to put in a declaration on "x" day, but for some reason or the other it is prejudiced and requires an extension. There are difficulties which you experience in getting information from the banks, financial institutions and third party institutions. Some of them depending on the type of resources you have—for me, it is quite simple—I am a man of meagre means, so I just go to one or two institutions and my business is fixed. But for Sen. Mark, who has assets in Australia, Switzerland and Paraguay and so forth—

*Integrity in Public Life (Amdt.) Bill*  
[SEN. THE HON. J. JEREMIE SC]

*Tuesday, January 05, 2010*

We are friends, but we want to make sure that he is okay and it might be that his fund manager—because these people have fund managers—may not be able to provide the information in the time he requires.

**Sen. Dr. Nanan:** Mr. Chairman, based on the anecdote given by the Attorney General, I need some clarification with respect to the statement made in terms of getting his assets here. When you are filling that form, if you filled it out, you will be putting your assets overseas.

**Sen. Jeremie SC:** The form will require me to make a declaration in respect of the past year. You might not remember but when I returned—this is my business, but I am happy to share it with you—to Trinidad I did so with a suitcase, so my records and my meagre assets were in the United Kingdom. Such records as I had to substantiate my assets were in the United Kingdom with my personal effects. I had one small suitcase and it took me quite a while to ship my personal effects and get my household in order for me to be able to see what was there.

**Sen. Ramkhelawan:** Mr. Chairman, I am prepared to support the Attorney General on the question of the timing because the discretion still remains with the Integrity Commission.

**Sen. Mark:** Mr. Chairman, had the Integrity Commission chairman requested through their report that there were some challenges, I think the Parliament would have been dutifully bound to consider those complaints and interventions.

I looked at all the integrity reports for the last few years and nowhere did I see any recommendations to the effect that they were asking for an extension from six months to 12 months and they wanted to increase the allowance that it should not exceed \$10,000. So we have a very fundamental position on this matter, we do not support it and we would have much preferred if the status quo could have been retained.

**2.30 p.m.**

**Sen. Jeremie SC:** Just in response to Sen. Mark, can I just say that I saw—this debate started on May 12; it continued on the 19th; as I said, I was sworn in on the 29th. Life changes quickly. But I did read the *Hansard* and I saw those comments raised and, as you know, there is no chairman of the Integrity Commission at the present time. There is no commission so there can be no chairman. But what I did was to ask my deputy CPC to interview some individuals who had served in senior positions in the integrity commission to determine what were some of their problems and on the basis of that interview, I must say, I

signalled to the Parliament that this is not the end of our consideration of this matter. There will be more in the way of amendments which will come in the next session, based on the discussions which we held with him and the report which I have in my possession.

But there is a difficulty in terms of the Integrity Commission dealing with the sheer volume of work that it has to do and this provision is intended to empower the commission to extend time and to reduce its workload by putting in a figure which is de minimis, as I have said.

**Sen. Mark:** Mr. Chairman, I have heard my hon. Attorney General, but we still maintain our position. The Government can have its way on this one, but we are not in support of it.

**Sen. Ramkhelawan:** Mr. Chairman, through you, has the Attorney General given thought to how this (1)(a) would be amended to reflect "aggregate value"?

**Mr. Chairman:** One suggestion was just to include the word, "aggregate".

**Sen. Jeremie SC:** But that would require a change to "do". It would be "does"; "does not exceed".

**Sen. Ramkhelawan:** "does not exceed on aggregate"?

**Sen. Jeremie SC:** "A person shall not be required to include in the declaration, income, assets or liabilities, the aggregate value of which respectively does not exceed ten thousand dollars."

**Sen. Seetahal SC:** The only problem I have with that, though, through my colleague and through the Chair, is what aggregate? Let us say you have in one bank \$20,000; in another bank, \$5,000; another one \$2,000; another one \$1,000, is it that you have to add up, what?

**Sen. Ramkhelawan:** No. Through you, Chair, when you are dealing with—if you look at the form that is required to be filled out, you will have different categories of assets. Some might be cash, property; various categories. Okay? And if you did not report in—what this is interpreted as is that you can have in the report \$10,000 in each category and you might have 10 categories that might turn out to be \$100,000. I do not know how to couch it legally, but what I am saying is that it should not on aggregate, what is not reported, be more than \$10,000.

**Sen. Seetahal SC:** And I am saying the aggregate of what? Is it the aggregate of assets or the aggregate of—

**Sen. Ramkhelawan:** The aggregate of assets or the aggregate of liabilities or the aggregate of income, as the wording is in the legislation.

**Sen. Seetahal SC:** In each place or each what?

**Sen. Ramkhelawan:** In each category. [*Interruption*]

**Sen. Oudit:** So if you have \$10,000, is that the aggregate of \$10,000?

**Sen. Ramkhelawan:** That is right.

**Sen. Seetahal SC:** Yes, but in which category?

**Sen. Ramkhelawan:** If you did not report income to the aggregate of \$10,000, then you fall within the Act. If you did not report assets to the aggregate of \$10,000, then you are within the law. [*Interruption*] No, no. But if you had several categories, it could run into a lot. So you look at how the form is structured, it could run into a lot. So you have some property and you have this and you have that and you have the other, it could run into a lot.

**Sen. Jeremie SC:** We are minded to accept—

**Mr. Chairman:** Okay. So the amendment is to include the word "aggregate" between "the value" and instead of "do", "does". Okay?

**Sen. Seetahal SC:** Mr. Chairman, I think we are trying to resolve whether that aggregate captured what my colleague was saying, which I think he has left it up to the Attorney General and I am saying it is not clear. If the purpose is to not leave it ambiguous, it does not fulfil that purpose, because you need to say, "the aggregate in each category" maybe, or something like that. You cannot just say, "the aggregate" because—

**Sen. Ramkhelawan:** Could you say "respectively"? You have assets, income and liabilities respectively.

**Sen. Seetahal SC:** In each category or each sub-category. I am not sure what you meant.

**Sen. Ramkhelawan:** In each category of assets, liabilities, income, respectively. I think that would answer it.

**Sen. Seetahal SC:** So if you have \$9,000 in bank A; \$9,000 in bank B; \$9,000, you do not need to declare each one; that is what it would mean. I just want to make it clear. But if you have \$12,000 in one bank, you need to declare that. That is what it seems to mean. That is what I would interpret it to mean.

**Sen. Jeremie SC:** No, well, I would not interpret it like that. I am open to suggestions as to how the clause can be improved. I think we understand what we are seeking to achieve and that is the concept which—

**Sen. Seetahal SC:** Yes, but we need to get it clear.

**Sen. Jeremie SC:** A total of \$10,000 in all the various categories. We think that it is captured by the use of the words:

"A person shall not be required to include in the declaration, income, assets or liabilities, the aggregate value of which, respectively do not exceed ten thousand dollars."

But I am open to suggestions. We have a draftsman here if you want him to spend some time looking at it.

**Sen. Dr. Nanan:** Why can it not be: "the total of which should not exceed \$10,000"?

**Sen. Jeremie SC:** Do you want me to ask the draftsman to think about this; mull it over while we move forward?

**Sen. Seetahal SC:** Maybe he could do that, but, you know, Mr. Attorney General, and through you, Mr. Chair, I cannot see anyone here really having assets less than \$10,000, if we are looking at aggregate. Therefore, it means that if you have \$20 in some credit union and you have \$5,000 in another place; \$12,000, you will have to include the \$20 under the definition, and that is what you are trying to avoid. Right?

**Sen. Jeremie SC:** Yes.

**Sen. Seetahal SC:** Right. But that would not avoid it, because your aggregate of each together, the total sum, is over \$10,000.

**Sen. Jeremie SC:** I will ask the draftsman to mull it over.

**Mr. Chairman:** We will postpone clause 6.

*Clause 6 deferred.*

*Clause 7.*

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

**Sen. Mark:** I think we should defer that one as well, consistent with what we have just discussed, because we are going back to \$10,000 and more. So we could just defer that until a little later.

*Clause 7 deferred.*

*Clause 8.*

*Question proposed,* That clause 8 stand part of the Bill.

**Mr. Chairman:** We have an amendment proposed by Sen. Baptiste-Mc Knight, and it is to delete the proposed new subsection (5).

**Sen. Baptiste-Mc Knight:** Thank you, Mr. Chairman. My amendment reads as follows:

“Delete the proposed new sub-section (5).”

I really cannot understand what the purpose of this new subclause is. If I do not have an official clearance from the commission saying that my filing has been accepted and is in order after 18 months, how does this clause help me?

**Sen. Jeremie SC:** It says that by law the declaration is deemed to have been fully made after 18 months and the point is that—and this again is anecdotal evidence, but this part is factual—the Integrity Commission in Trinidad and Tobago, I have been told by a former chairman of the commission, has the largest workload of any integrity commission in the world at this point in time, that is to say, in terms of its coverage of persons; its coverage of institutions and so on and so forth, it just might not be possible. And as a matter of fact, it is more often the case that after 18 months there is no certificate of compliance forthcoming, and the clause is to introduce an element of finality in the process. So that both the commission would know that it has 18 months to do its business in terms of either challenging or issuing a certificate of compliance, and it gives the individual the assurance that if after 18 months that has not been done, his return has been duly made and he can go about his business—I am not saying that he should destroy his records—but that we do not think that it should be left open-ended, given the constraints which are actually there and exist on the ground.

**Sen. Seetahal SC:** What benefit do you have to have to say that it is fully made? There is no benefit, so I understand what Sen. Baptiste-Mc Knight is saying, at least from my point of view; it is just to say that it is deemed to have been fully made, what? Because if you are acting illegally, that does not matter; you can still be investigated. So the purpose and benefit of this to the person who files, the declarant is, what? He does not have a certificate of compliance in his hand.

**Sen. Jeremie SC:** Well, we cannot compel the Integrity Commission to issue a certificate of compliance, but we can say that he is not at prejudice of the Integrity Commission calling on him to say, "Well, you have not submitted X or Y



or Z. Your declaration is fully made." You can be charged, as we can all be, in respect of a fully made declaration. The certificate is only in respect of compliance with the Act, you know.

**Sen. Seetahal SC:** Right.

**Sen. Jeremie SC:** So that even after you get a certificate of compliance, the Integrity Commission could put a charge on you.

**Sen. Seetahal SC:** Well, they will have a problem because they would have agreed that everything was fine. But that is another story. The point about it is, there is no benefit.

**Sen. Jeremie SC:** No, well, you would have agreed that you have complied with the provisions of the Act, that you submitted the information as required, but if information comes to them after the fact that you have lied or something of that nature, then you are at prejudice.

**Sen. Mark:** Mr. Chairman, I really want to fundamentally disagree with this provision. I think it is weakening the legislation; I think it is making room for corrupt elements to escape the hangman's noose and I do not believe that this Parliament should be legislating any measure where, for instance, somebody might be found wanting, escaping the law after 18 months. I think that is totally unacceptable and I think that the Attorney General is well advised to delete and leave this section out completely and leave the status quo as is, as it relates to—

I must get a certificate of compliance that everything is in order. I do not think it should be left up to an individual that if the Integrity Commission is not in a position to supply me with a certificate of compliance, I must take it for granted that I am in the clear. I do not believe that is acceptable and we should be really strengthening the legislation and I believe that the AG's intention is to strengthen this provision. In your absence—and I must admit that you were not here, and now that you are here with your position, I think that we should leave the legislation as is and leave out this clause 8. It does not help, as far as I am concerned.

**Sen. Ramkhelawan:** In looking at the particular clause, I do not think that there is anything really invidious in the clause in that it simply says that a declaration has been fully made. If the declaration is false in any way, I do not think that there is anything in the clause that suggests that action cannot be taken. Of course, the commission cannot charge anybody, as the hon. Attorney General suggested. The commission can send its recommendations to the Director of Public Prosecutions.

**2.45 p.m.**

I do not see anything invidious in terms of the particular clause. In that event, I think that I am prepared to support it. There must be some equity. Very often the Integrity Commission leaves something hanging and the person in public office does not know whether his or her declaration has been accepted or is in compliance in terms of the requirements. We have argued in this Parliament on many occasions that we need to have balance and evenhandedness. I see this as a step forward in terms of evenhandedness and balance. I do not know if my hon. colleague would support that.

**Sen. Drayton:** I think that we are seeing a situation where public bodies have a responsibility and because they have too much work, we decide to legislate to lower the standard. Basically, this is what this clause says. If I do not receive a certificate saying that I have fully complied, because of inefficiency or somebody has too much work, then, let us legislate for that. That is where I have a problem.

**Sen. Enill:** Let me put another piece of perspective. One of the conditions for appointing a CEO to an insurance company is that you must get the approval of the Supervisor of Insurance at that time. All public institutions are governed by institutions that lend themselves to some of the things that Sen. Drayton has talked about.

In the case of the Integrity Commission, when they want staff they come to me and say, "I need you to second this or that person." Therefore, until I make that decision you are right. The public institution can have a situation in which its resources are not available. The question that arises in my mind is: Should individuals be held to ransom because of that?

I do not necessarily accept the argument that the bar is being lowered. What will happen is that we are going to give those who have decided to offer themselves in public service, an assurance that by this particular point in time you do not have to be in a state of in-betweenity.

In the case of the CEO of the insurance company, the Act says that if you have not heard from me within one month you can go ahead and permanently employ the individual. Within the law as it is currently configured, there is a provision similar to this one.

I want us to consider that this is the Integrity Commission that you are talking about. This is a situation where at some point in time you would want to know that your obligations have been discharged or you have complied and everything is okay. Right now, I have done everything and I am waiting on mine. "I eh geh it yet." What does that mean?

**Sen. Jeremie SC:** How many years?

**Sen. Enill:** I do not know. It is just a difficult situation in which case I have done everything but I have no control of the institution. The institution is independent. I cannot even talk to them. I figure that we should put some mechanism that allows me—I have done absolutely nothing wrong—to know that after this particular period of time I have complied. Put it in the legislation. If you do not get your compliance certificate, you know that after 18 months—

**Sen. Jeremie SC:** It is our hope that they would take action to issue the compliance certificate. In some years, I was there when they started and got staff. They made a serious attempt, before they became overwhelmed, and issued certificates of compliance. The fact of the matter is that there are two sides to the story. One is to give some assurance to the individual that after a period of time which is reasonable, that the declaration would be deemed to be a completed declaration. It is not that he is immune from prosecution. You are never immune from prosecution.

As my friend rightly corrected me, the files can go to the DPP and they have in fact gone to the DPP. There are concrete examples where persons have submitted declarations which have been deemed to be complete and notwithstanding that, after a period of time, the information has come to light which has led the commission to take action to forward files to the DPP. Persons have been charged and there are matters pending. There is a matter which has gone all the way to the Privy Council on a point similar to this.

We are not introducing a bar to prosecution. We are saying that the secretarial process involved in filing your declaration is at an end. You ought as an individual to have that assurance. On the other hand, the Integrity Commission is an independent institution, it ought to be put on notice that it has 18 months to do its business and proper practice would require it to issue a certificate of compliance in that time, otherwise the law would kick in.

**Sen. Oudit:** I will like to respond to Sen. Enill as well as the remark by the Attorney General. In the first instance, I imagine too often we come to Parliament when loopholes are pointed out in hindsight. Here you have the opportunity where a loophole is pointed out even before you do it and there is resistance.

The public perception not only nationally, but also internationally, which brings me to the second point, is that when we seek as Sen. Drayton referred to—we are seeking to bring legislation to deal with an overwhelmed commission, to use the words of the Attorney General. Therefore, we need to strengthen the commission rather than come afterwards and take the tail end and say that we would fix it somehow.

**Sen. Jeremie SC:** Can I say that we have done everything that the commission asked of us in terms of manpower and strengthening.

**Sen. Baptiste-Mc Knight:** Mr. Chairman, there are two things in operation here. The hon. Attorney General says that the commission is overwhelmed. If the commission is overwhelmed, it means that they do not have the human resources necessary to deal with the quantum of work they have within a period of 18 months. If this subclause is meant to deal with that, you need to ensure that the commission, at any point in time, has the required resources.

This by no means gives a discharge to the person who has submitted a form. When you submit your Integrity Commission statement you get a little letter immediately saying they have received it. This is tantamount to that same letter. It gives you no comfort. It does not say that you are discharged.

**Sen. Jeremie SC:** Nothing can. Even a certificate of compliance does not. The certificate of compliance says that you have complied with the provisions of the Act insofar as meeting the time lines and making a declaration is concerned. It does not say that your declaration is correct or not fraudulent.

As a matter of fact, there are instances in which persons who have had completed declarations filed with the Integrity Commission have subsequently been charged in respect of making false declarations. You cannot do anything about that. This shuts the door with respect to administrative matters.

**Sen. Baptiste-Mc Knight:** Mr. Chairman, I submit that in that case this whole legislation is completely flawed. You have a whole lot of people running around outside there thinking that they have been discharged, when in fact, an axe can fall on them in the morning. When the people outside there understand what the Attorney General is saying, it means that you would never get people to accept any position where you have to file because it means forever after, anybody can decide that something is fraudulent. You have to find lawyer and millions of dollars. This is not good enough. This is not what we are about. You cannot tell me that I file with the Integrity Commission; I get something from them saying that I am discharged—

**Sen. Jeremie SC:** It does not say that you are discharged. It is a completion certificate.

**Sen. Baptiste-Mc Knight:** It says that I comply. But comply with what?

**Sen. Jeremie SC:** Comply with the requirements of the Act.

**Sen. Baptiste-Mc Knight:** It has the same effect as the piece of paper that the guard gives me saying that he has received my filing. This is not good enough.

**Sen. Jeremie SC:** This is how they have been operating since the inception.

**Sen. Baptiste-Mc Knight:** I now understand that. If I knew that, I would not accept this "lil" ten days. [*Laughter*] Because it "doh" make sense to put my life in hock. For what?

**Sen. Jeremie SC:** Sen. Baptiste-Mc Knight, you are perfectly in order, I am sure. I am sure that there is no fraud in your history.

**Sen. Baptiste-Mc Knight:** "Me too, because I doh have enough assets." [*Laughter*]

**Sen. Jeremie SC:** I am sure that you and I have meagre assets and the Integrity Commission has business beyond you and I.

**Sen. Baptiste-Mc Knight:** There are people who have assets who would like to serve and in fact, they might be as clean as the driven snow. The fact is that the assets are so plentiful that they cannot recall all of them and you do not have enough paper to put them on the file. It means that these people would never think of serving because it means that their life is in hock forever.

**Sen. Jeremie SC:** That is a problem we have at the present time. Those persons would only be in jeopardy if there is fraud or wrongdoing in respect of their declaration.

**Sen. Baptiste-Mc Knight:** "Yuh not getting the message."

**Sen. Seetahal SC:** The case is where people have a lot of assets, my understanding is that they have accountants to do it.

**Sen. Baptiste-Mc Knight:** If your accountant leaves out something—

**Sen. Seetahal SC:** I am saying this is what happens. Bear in mind, if we go back, the whole purpose of the Act was to deal with unjust enrichment. You are looking at a comparison between one year and the next year. That is the problem with integrity in public life legislation all over the world.

We have several other places like Dominica and Jamaica where people do not like it, but that is the point. If you are prepared to take a post in public life, you subject yourself to it. You do not like it.

Coming back to what the Attorney General is saying, I think that that certificate of compliance is a little more than that. It says that you have complied with the requirements of this Act. Therefore, they are not going to bother to send

you these letters saying that you have to fill out clauses (e) and (f). It means that like in all other cases where there are false documents, the police can investigate in the normal course of things and you are liable for a normal criminal offence which is very rare anyway. Only two persons have been charged under this Act.

**Sen. Drayton:** I would add two more comments. Quite frankly, you might as well then eliminate all need for a certificate of compliance. If what the hon. Attorney General is saying is so, basically, we know that we are not going to receive any certificates.

The second point I wish to make is that I do not think it is a question of too much work. I think that it is a question of how we make legislation which is in a very inefficient piecemeal way. If that is the case, then, the Government should have reviewed that parent Act which is totally flawed and eliminate all the people who should not be filing, like the people in the Zoological Society or charitable institutions and include those who should be filing. If we are talking integrity in public life, bring them under the ambit.

We have brought an amendment maybe, to satisfy some basic interim requirements rather than dealing with a substantive issue of the integrity legislation which is absolutely flawed.

**3.00 p.m.**

**Sen. Jeremie SC:** Sen. Drayton, I remind you that that was what I said a while ago. There are serious problems with the parent legislation. There are too many persons making declarations. You and I spoke about the Zoological Society and there are others. I do not know if the Zoological Society makes a declaration, but they are caught. There are several bodies which are caught, which ought not to be the subject of compulsory declarations.

A suggestion came from one of the past persons in authority in the Integrity Commission that perhaps the way to go is to have the commission decide who should have to fill in the forms. All these things will take some time; will require consultation, but what is before us this afternoon is in its amended form because the Bill which was laid in this House, I accept, was fundamentally flawed. We have sought to correct those errors and we are enhancing the powers of the commission to do its work.

**Sen. Mark:** I would like to reiterate that clause 8, in its present form, is redundant and, given what the Attorney General has said, we can delete it completely. I also want to say that I have a great degree of respect for the hon.

Attorney General, but I believe that he has misinterpreted the law. I do not understand how, in 2010, we could get from the Attorney General a position that when a member of the public, who is captured by the Integrity in Public Life Act, receives a certificate of compliance, criminal charges could still be proffered against that individual. It does not make sense.

**Sen. Jeremie SC:** Mr. Chairman, both Sen. Seetahal SC and I are lawyers. Sen. Mark may not yet be; but hope is eternal. The difficulty is that a certificate of compliance is not blanket immunity; it cannot be. It just says that you have complied with the provisions of the Act. We have said time and again, an Integrity Commission, if having issued a certificate of compliance to you—I do not know if you are required to fill out a declaration—

**Sen. Mark:** I am like you. I am an officer in public life and I receive my certificate every year.

**Sen. Jeremie SC:** The difficulty is if we were to find out—and God forbid we should ever find out—that about Sen. Mark; but if we were to find out—perhaps Sen. Mark is a bad example, but since we are on him, I would use it—that he had an account in Liechtenstein instead of the declared ones in Ireland and Australia, he may have difficulty with the Integrity Commission. They may decide that his explanation for omitting the account is reasonable.

**Sen. Browne:** Let me give a comparable example. This is in income tax law. We file an annual return and get back an assessment. Notwithstanding that, it is not a complete notice of discharge because the ability to reassess a person in the event that new information comes to light is written into tax law. The fact that you have been given a return does not invalidate that right.

**Sen. Drayton:** It is not really comparable because you are getting a return and the Board of Inland Revenue does not have discretion as to whether or not to assess. They must do so by law. We are taking this law and giving the Integrity Commission discretion as to whether or not they would send a certificate of compliance. We ought to make a decision either to scrap the certificate of compliance because it does not make sense in the light of this amendment or to mandate in legislation that they must send a certificate of compliance by a certain date; but let us not legislate for inefficiencies.

**Sen. Prof. Deosaran:** I understand the serious concern. In my case, when I get the letter of compliance, I feel satisfied that nothing else would accrue. But the way we are examining the issue now, I would say that the Integrity Commission is more of an administrative body than a judicial entity. In any case, there has

*Integrity in Public Life (Amdt.) Bill*  
[SEN. PROF. DEOSARAN]

*Tuesday, January 05, 2010*

been no gathering of evidence in any way to counteract whatever information that has been put before it which would have put it into an adjudication function. That would have to be left for another kind of treatment. The compliance certification, in my view, is an administrative device used to say that you have satisfied the particular request in the legislation itself. Whatever happens after that with respect to offences and misrepresentations, to me, is a related, but separate matter for a separate kind of adjudication. That is how I see it, putting it in layman's language. I do not know if I am making sense.

**Sen. Seetahal SC:** Seeing we have not had a functioning commission for one year, persons who submitted their 2007 declarations in March 2008, if they had not heard from the commission by December 2008 means that now they would fall under this, and other persons who submitted it in May, if the commission does not get down to its business by the end of this year, will also be deemed to be fully—in other words, the commission cannot write you this letter and ask to be supplied with additional information. Do you want to have it, because there is no functioning commission for a year, that all those persons who submitted in 2007 cannot be called to answer questions and, most likely, persons for 2008?

**Sen. Jeremie SC:** That is a very useful point. It has not occurred to us. We have not had a commission for some time, so it would be inappropriate to proceed at this time with this amendment. We withdraw it.

*Amendment withdrawn.*

**Mr. Chairman:** Sen. Baptiste-Mc Knight, your amendment that we delete the proposed new subsection (5) has been accepted.

*Question put and agreed to.*

*Clause 8, as amended, ordered to stand part of the Bill.*

*Clause 9 ordered to stand part of the Bill.*

*Clause 10.*

*Question proposed, That clause 10 stand part of the Bill.*

**Sen. Jeremie SC:** Mr. Chairman, I beg to move that clause 10 be amended as follows:

Delete clause 10.

**Sen. Seetahal SC:** In 2008, there was a case, *Finbar Gangar v The Magistrate* that went to the Privy Council. It was held that although the Integrity in Public Life Act does not have any limitation and would normally be six



months, because the legislation envisages that things would happen after two years and so on, the normal six months would not apply. It was held that there was no limitation period. You would have to look at the purpose of the Act.

What is proposed in the original 10 was to include a provision that there would be a five-year limitation period, but there is an inclusion "other than an offence under section 25", which would suggest that 25 does not have this five-year limitation.

My suggestion is that we bear in mind Finbar Gangar and decide whether we want a five-year limitation for the entire legislation or do we leave it in accordance with the statute. The Attorney General's amendment to delete that entire clause is in keeping with that 2008 case and I have no problem with it.

*Question put and agreed to.*

*Clause 10 deleted.*

*Clause 11 ordered to stand part of the Bill.*

*Clause 12.*

*Question proposed, That clause 12 stand part of Bill.*

**Sen. Jeremie SC:** Mr. Chairman, I beg to move that clause 12 be amended as follows:

Delete clause 12 and substitute the following new clause:

Section 34 amended      12. Section 34 of the Act is amended by renumbering subsection (5) as subsection (7), deleting subsections (3) and (4) and substituting therefor the following new subsections:

“(3) Where a person fails or refuses to disclose any information or to produce any documents required under subsection (2), the Commission may apply to the High Court for an order to require the person to comply with the request.

(4) A person who refuses to comply with an order of the Court commits an offence and is liable to a fine of one hundred and fifty thousand dollars and to imprisonment for three years.

- (5) A person who—
- (a) makes or causes to be made a false complaint to the Commission; or
  - (b) misleads the Commission or an investigating officer by giving false information or making false statements or accusations,

commits an offence and is liable on summary conviction to a fine of five hundred thousand dollars and to imprisonment for five years.

- (6) Where during the course of an investigation, the Commission is satisfied that there are insufficient grounds for continuing the investigation or that the complaint is frivolous, vexatious or not made in good faith, it may terminate the investigation.”

**Sen. Baptiste-Mc Knight:** Mr. Chairman, there is an amendment being proposed for section 33(1) and that is that a new (b) be inserted that would give back to the commission the authority on its own to initiate investigations. The current amendment removes that right from the commission and limits them to initiate on the basis of declarations furnished.

**3.15 p.m.**

**Sen. Jeremie SC:** I do not have the amendment in front of me; I am trying to get it.

**Sen. Seetahal SC:** They are deleting clause 12 you know.

**Sen. Baptiste-Mc Knight:** They are deleting clause 12?

**Sen. Seetahal SC:** Yes, the whole clause 12, so that would not apply.

**Sen. Mark:** Maybe the Attorney General could point out to me where in this new clause do we have the flexibility for the commission to initiate on its own?

**Sen. Seetahal SC:** That is section 33(1)(a).

**Sen. Mark:** Where is 33(1)(a)?

**Sen. Seetahal SC:** In the original legislation.

**Sen. Jeremie SC:** It is in the parent Act.

**Sen. Seetahal SC:** Which is now being tampered with.

**Sen. Ramkhelawan:** Any attempt to tamper with 33 which we have argued against has now been removed by the deletion of the clause. Why do you have this Act anyway?

**Mr. Chairman:** The question is that clause 12 be deleted and substituted with the following new clause as circulated.

*Question put.*

**Sen. Seetahal SC:** Before you continue, because I have a couple of changes in the substituted clause.

**Mr. Chairman:** Okay, so you have some amendments to the amendment?

**Sen. Seetahal SC:** Now, the amendment which I do not think the Attorney General has really gone into detail appears to me to be that instead of a person now being liable if he fails or refuses to disclose information or produce documents required he is normally, under the current legislation, liable to a fine. It is an offence.

The idea is now that instead of it becoming an offence immediately, you must go to the High Court. So there should be an application by the commission to the High Court to have the person produce it and if he does not produce it, then it becomes an offence. I find that was a bit cumbersome. Why was that so, because if he did not produce it in the High Court it would be a contempt anyway. That is my first question.

Secondly, the new 34(5) which replaces what was 34(4), where it talks about where you make a false complaint, there is no inclusion in that of the word "knowingly". The old legislation says: "Any person who knowingly misleads the Commission" meaning that you would have to have the mens rea, so my suggestion would be that this (5), a person—we either say "knowingly", or "intentionally", or "recklessly", must be one or the other, but it cannot be a strict liability offence as is suggested. The draft you have, Attorney General, suggests that.

The third point is the fine of \$500,000—you see these extreme fines, I find is unreasonable, it is out of line and we might as well go back to what it was before, \$250,000.

**Sen. Oudit:** One hundred thousand dollars.

**Sen. Seetahal SC:** Well, the original legislation said \$250,000—[*Interruption*] Sorry, I have \$250,000 in 34(4), so I think we should at least go back to that for some kind of consistency, although I think it is still outrageous really but—

**Sen. Jeremie SC:** Mr. Chairman, we agree to insert mens rea, there was no intent to create a strict liability offence in (5)(b); that is to say before the words “misleads the Commission”.

**Sen. Seetahal SC:** After who—sorry to cut you, Attorney General? Under (5), a person who, include the word “knowingly” there. It is at the bottom of the first page of amendments.

**Sen. Jeremie SC:** So it would capture both (a) and (b)?

**Sen. Seetahal SC:** Yes, it would include both.

**Sen. Jeremie SC:** Subsection (5) is at the very end of my page, I did not see it, and we agree with the figure of \$250,000.

With respect to the first proposal, our position is different, that is, that we want the Commission to be under a duty to go to court first before the offence is created. It must go to court, seek an order of the court; if that order is not granted then the consequences will follow. Yes, it is a contempt of court, of course, but we want consequences as well to be spelt out in the legislation.

**Sen. Seetahal SC:** [*Inaudible*] that is more fees than everything.

**Sen. Jeremie SC:** We should be happy.

**Sen. Seetahal SC:** Well, I am concerned about the Treasury and the state of the Treasury. [*Laughter*]

**Sen. Jeremie SC:** I am always concerned about the Treasury.

**Sen. Seetahal SC:** Well then we should cut out this. I do not feel strong about this.

**Sen. Jeremie SC:** Yes, we think so, but we have explained. We do not want the sanction to follow immediately from the Commission.

Last week we had a similar argument in terms of the inter-positioning of the court. This is one where we agree with you that the court should come between the Commission and the subject.

**Sen. Ramkhelawan:** Mr. Chairman, under 12A, 34A.(1)(e), I wonder whether the Attorney General could explain this particular subclause?

**Mr. Chairman:** Clause 12A, we have not reached there as yet.

**Sen. Ramkhelawan:** You have not reached there as yet; I thought you were voting, sorry.

**Mr. Chairman:** That is a new clause. We have not reached there yet.

The question is that clause 12, as amended be further amended by including the word “knowingly” after “a person who” and also to change \$500,000 to \$250,000.

*Agreed to.*

*Clause 12, as amended, ordered to stand part of the Bill.*

*Clause 13 ordered to stand part of the Bill.*

*Clause 14.*

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

**Mr. Chairman:** We have an amendment by the Attorney General where we delete clause 14 and substitute the following new clause:

“Section 39 amended      14.      No personal liability shall be attached to any member of the Commission in the discharge of functions of the Commission under this Act unless it is shown that the member acted recklessly or in bad faith.”

**Sen. Jeremie SC:** Mr. Chairman, this clause is influenced by the contribution made by Sen. Drayton. We think we met her some way, we might not have gone all of the way that she wanted, we thought that the standard that she imposed was appropriate for the private sector, but at this time we build in incremental stages.

**Sen. Seetahal SC:** Attorney General, through you, Mr. Chairman, clause 13 that was dealt with when I was looking at something else and we have passed it, but there is (a), (b) and (c) and there is no longer any (b). Clause 34A(7) no longer exists, I think we need to go back to clause 13. Clause 13 deals with the original 35.

**Mr. Chairman:** We will come back to clause 13.

**Sen. Seetahal SC:** All right.

**Sen. Drayton:** I am quite satisfied with the amendment, never mind it might be private sector standards, but it is certainly holding the Integrity Commission to

*Integrity in Public Life (Amdt.) Bill*  
[SEN. DRAYTON]

*Tuesday, January 05, 2010*

a higher standard and I am sure the hon. Minister of Finance would also agree with that. [*Laughter*]

*Question put and agreed to.*

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

*Clause 13, recommitted.*

*Question again proposed, That clause 13 stand part of the Bill.*

**Mr. Chairman:** Delete (b).

**Sen. Seetahal SC:** Right, there is no (b) again, and you have to renumber (c) as (b).

**Mr. Chairman:** There is no (b); that is correct.

**Sen. Seetahal SC:** I would like us to crosscheck to see if 33(2) which would have referred to the redrafted 33(2) makes sense. I think we need to do that bearing in mind—

**Sen. Oudit:** Mr. Chairman, before you go back to 33(2)—in the original Act on 34(5) there is a role of the DPP before the termination of an investigation, but in your amendments it is the description only of the Commission to terminate an investigation, is there any particular reason for leaving out the DPP?

**Sen. Jeremie SC:** Where is that?

**Sen. Oudit:** In the original Act, 34(5) it says here:

“Where after the conduct of an investigation, the Commission is satisfied...that an offence has been committed, it shall make a report to the Director of Public Prosecutions who may take...action as...appropriate.”

On the other hand, if you are terminating an investigation is there any particular—

**Sen. Jeremie SC:** It has not been changed, this subclause is the same.

**Sen. Oudit:** Okay, so section 6 where you made the amendment to terminate, is it simply the power of the Commission as is, on its own to terminate that investigation?

**Sen. Jeremie SC:** Section 6.

**Sen. Oudit:** The amendment you just proposed.

**Sen. Jeremie SC:** Can we go back to section 6 another time?

**Sen. Oudit:** I am confused. I find it was a very lengthy piece—

**Sen. Seetahal SC:** I think she is talking about clause 34(6)—

**Sen. Oudit:** Yes.

**Sen. Seetahal SC:** Well, say that—in clause 12. She is talking about that subsection (6) which is now proposed that we just passed.

**Sen. Jeremie SC:** This is internal to the commission. This is before you get to the DPP.

**Sen. Oudit:** In terms of terminating the investigation on its own initiative—

**Sen. Jeremie SC:** If it is satisfied on those conditions that it is mischievous.

**Sen. Oudit:** Okay, fair enough.

**Sen. Seetahal SC:** There is no 33(2) and there is no 34A(7). Those were in the original deleted sections if you look at the parent Act. So I think you could just delete clause 13 and go back to what was in 35(1), because it really does not make a difference. That was really created because you had a new 33 and a new 34, but since you have no 33 and 34—and the original one talks about the Prevention of Corruption Act anyway—You think they are with me?

**Sen. Jeremie SC:** That is correct; there is no need for it any longer. We delete clause 13.

**Mr. Chairman:** The question is that clause 13 be deleted.

*Agreed to.*

*Clause 13 deleted.*

**3.30 p.m.**

**Sen. Seetahal SC:** Now that we have taken out the whole 13—

**Mr. Chairman:** We will do it at the end and, if anything, we will rename it clause 13.

*Question put and agreed to.*

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

*Clause 16.*

*Question proposed, That clause 16 stand part of the Bill.*

**Sen. Seetahal SC:** We have to change that, because there is no 34C. This would have been in the amendments.

*Integrity in Public Life (Amdt.) Bill*  
[SEN. DRAYTON]

*Tuesday, January 05, 2010*

**Sen. Jeremie SC:** That is correct; that has to come off.

**Sen. Seetahal SC:** Deleted.

**Sen. Jeremie SC:** Mr. Chairman, I beg to move that clause 16 be deleted.

*Question put and agreed to.*

*Clause 16 deleted.*

*Clause 17.*

*Question proposed, that clause 17 stand part of the Bill.*

**Sen. Drayton:** Could I just speak to the entire proposed amendment here. My basic reasoning is that in the absence of—this is with respect to the proposed amendments to include A and B under the Schedule. My reasoning is that in the absence of the President of the Republic, the President of the Senate or in his absence the Speaker of the House, has to act as President. The Office of President is exempt from filing declarations for obvious reasons. It is the Office of the President that has to appoint members of the commission.

Both the President of the Senate and the Speaker of the House are declarants. What I am seeing here is that in the absence of the President for any prolonged period, whatever the reason, there may be a serious conflict of interest, in that, now it is the Acting President who may have to appoint or may have to terminate. If we look at the original Act, I think it is under 15, it is the President who is called upon to appoint tribunals to investigate declarations, if there are issues with declarations. I am just wondering whether there would not be a serious potential for conflict. Maybe the Attorney General could address that.

**Sen. Seetahal SC:** Before we get there, that is not in the amendment, so we have to deal with this and then Sen. Drayton has to propose her own amendment.

**Mr. Chairman:** That is a new clause you are proposing.

**Sen. Seetahal SC:** We have to deal with clause 17.

**Mr. Chairman:** It is suggested that clause 17 be deleted.

**Sen. Jeremie SC:** Mr. Chairman, I beg to move that clause 17 be deleted.

*Question put and agreed to.*

*Clause 17 deleted.*

**Sen. Seetahal SC:** So then there is now a proposal for a new clause 17. We have to deal with the new clause 12A first.



**Mr. Chairman:** Before we go to any new clauses, we have to go back to the postponed ones; so we go back to clause 6.

*Clause 6 reintroduced.*

**Sen. Jeremie SC:** The draftsman has come up with a formulation which takes out the aggregate which he says captures it. If I could just read from the parent Act, that is final disclosure under 11(1). The new section would read:

"A person shall, within three months of becoming a person in public life, complete and file with the Commission in the prescribed form a declaration of his income, assets and liabilities that exceed ten thousand dollars in value, in respect of the previous year and thereafter on the thirty-first May in the succeeding year that he is a person in public life. He shall file further declarations of his income, assets and liabilities."

**Sen. Oudit:** What about cash in the bank?

**Sen. Jeremie SC:** Everything over \$10,000 in value; that is the effect of it.

**Sen. Drayton:** It is, therefore, an aggregate of \$10,000?

**Sen. Jeremie SC:** He is not saying aggregate, but that is what it means, because you are only required to fill out the declaration in respect of assets in excess of \$10,000 across the spectrum of all classes.

**Sen. Oudit:** In excess of \$10,000 respectively?

**Sen. Jeremie SC:** Yes, income, assets and liabilities.

**Sen. Dr. Nanan:** I want some clarification on this matter. If you have jewels, a bank account and a painting, for example, and they are all under \$10,000, they would be exempted; is that correct?

**Sen. Jeremie SC:** No; if the value of them—

**Sen. Dr. Nanan:** Individually.

**Sen. Jeremie SC:** No; if the value of your assets and liabilities that you are required to put on your prescribed forms, which would capture various categories, exceed \$10,000 in value then you have an obligation.

**Sen. Dr. Nanan:** So if your jewels are under \$10,000 and your painting is under \$10,000 and your bank account is under \$10,000, but they all add up to over \$10,000, do you have to file?

**Sen. Jeremie SC:** Yes.

*Integrity in Public Life (Amdt.) Bill*  
[SEN. DRAYTON]

*Tuesday, January 05, 2010*

**Sen. Dr. Nanan:** I do not know if that is what we want to capture there.

**Sen. Ramkhelawan:** You cannot escape the legislation by having several categories that are \$9,000 in each case.

**Sen. Dr. Nanan:** So that is what we are trying to capture?

**Sen. Seetahal SC:** I thought the intention was that when you have those \$10 and \$20 accounts, you would not have to declare them. That is what I thought the intention was, but I do not seem to grasp that from this.

**Sen. Jeremie SC:** The new 11(1) would read:

"A person shall, within three months of becoming a person in public life..."

Mr. Chairman, it is from the parent Act. We are just inserting a few clauses. You are inserting after the word "liabilities" in line 3, the words, "that exceed ten thousand in value". This is in 11(1); that is in the parent Act.

**Sen. Seetahal SC:** So there would be a commensurate amendment? Is that what you are saying?

**Mr. Chairman:** "Section 11 of the Act is amended by inserting after subsection (1)"—

**Sen. Jeremie SC:** Not after subsection (1).

**Mr. Chairman:** "Section 11 of the Act is amended by inserting after 'assets or liabilities that exceed ten thousand dollars in value...'—"

**Sen. Seetahal SC:** If you are going with (1)(a), why are you amending (1)? Mr. Chairman, (2) imposes the liability to file and (1)(a) is the exception; so I do not know why you would have to amend (1). Then you do not need to put that in (1).

**Sen. Jeremie SC:** We are not going to (1)(a).

**Mr. Chairman:** "Section 11 of the Act is amended..."; we are not going with (a).

**Sen. Seetahal SC:** That is what I just asked and they said, "Yes, we are going with it."

**Mr. Chairman:** No, no, no.

**Sen. Seetahal SC:** You did not answer.

**Sen. Jeremie SC:** I said no.

**Mr. Chairman:** "Section 11 of the Act is amended by inserting after 'assets or liabilities' the words 'that exceed ten thousand dollars in value'.

**Sen. Ramkhelawan:** Chair, do you not have to take out 11(1)(a) in clause 6?

**Mr. Chairman:** That is what we just did. [*Laughter*]

**Sen. Ramkhelawan:** So you are amending by deleting this?

**Mr. Chairman:** Yes, by deleting it and substituting in section 11.

So the question is that clause 6 be amended by deleting (a) and including after the words "assets and liabilities" the words "that exceed ten thousand dollars in value".

*Question put and agreed to.*

*Clause 6, as amended, ordered to stand part of the Bill. [Crosstalk]*

*Clause 7 reintroduced.*

**Sen. Jeremie SC:** We do not see that there is a difficulty here; it follows from what we said before. What is the problem with clause 7?

*Question put and agreed to.*

*Clause 7 ordered to stand part of the Bill.*

*New clause 12A.*

**Sen. Jeremie SC:** Mr. Chairman, I propose a new clause 12A which reads as follows:

New clause 12A

Insert after clause 12 the following new clause:

New section 34A.

Insert after section 34 the following new section:

34A. (1)

The Commission may, on receipt of a complaint and after examining same, reject the complaint if the Commission is of the opinion that the complaint—

- (a) is frivolous or vexatious;
- (b) was not made in good faith;
- (c) is devoid of sufficient grounds for an investigation;
- (d) is not supported by evidence of probative value; or
- (e) does not pertain to a matter the Commission is empowered to deal with under this Act.

- (2) Where the Commission has rejected a complain it shall—
- (a) inform the complainant in writing of the decision within fourteen days of the date the decision was made; and
  - (b) provide the complainant with the reasons for its decision.

*New clause 12A read the first time.*

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

**Mr. Chairman:** Now we will go for amendments.

**3.45 p.m.**

**Sen. Seetahal SC:** Mr. Chairman, before we go there can we rename it clause 13?

**Mr. Chairman:** Anything else on any amendments?

**Sen. Ramkhelawan:** Under 12A, the amended 34A(1)(e), I do not quite follow why it is necessary to state if something "does not pertain to a matter the commission is empowered to deal with under this Act." The commission knows its work and does it. Something that does not pertain to the commission is superfluous and unnecessary. I do not know what the Attorney General thinks, but I do not think it adds anything in terms of elegance or effect to the legislation.

**Sen. Jeremie SC:** It does. I do not know if in your day, but certainly subsequent commissions have taken the view that once a complaint is made in respect of certain sections, they have to dedicate resources whether or not they consider the complaint to be a meritorious one or frivolous and vexatious.

I am telling you based on experience that commissions have said they have a responsibility to commit public funds and their own resources to investigations which they know will go nowhere. Therefore, we are giving them an express power to do precisely that.

**Sen. Ramkhelawan:** Yes, but you have now inserted a particular clause which requires them not to act recklessly and in bad faith, which we did not have before, where they could have done anything and not be held liable to it. So this is not necessary.

**Sen. Jeremie SC:** We think that there is a separate power which is required to be given to the commission to deal with complaints which are made by mad people.

**Sen. Ramkhelawan:** That is why I feel now that we have entered into the area of frivolousness and vexatiousness because we gutted the core of this Bill; we have taken out Schedule II and much of the suggested amendment in clause 34 and so forth and what we are really left with is a frivolous piece of legislation that the Government should have simply allowed the thing to lapse and not bring us here to waste more time. We have wasted a lot of time now, in my respectful view, Sir.

**Sen. Seetahal SC:** I have some concerns like that, but I think this specific clause is useful because the Commission actually has complained—and I have heard it in the public fora—that they have had to waste time on frivolous complaints because of their interpretation. They have done it since 2000. It may be wasting time, but they felt there was nothing in the Act which allowed them to do what police officers do.

But I thought Sen. Ramkhelawan was asking about (e), the last clause. Why was it put there that the Commission can throw out a complaint which does not pertain to a matter it is empowered to do. I thought he was saying that was redundant, but if he is not objecting to it—I thought that was his focus. Is there a reason for that?

**Sen. Jeremie SC:** No, I can take that out if you wish.

**Sen. Mark:** I do not understand this provision at all, I do not support it, I believe that the Government is attempting to again stymie the discretion of the Integrity Commission and I really cannot understand.

When the Attorney General says it is devoid of sufficient grounds for an investigation, who is to determine that, Attorney General?

**Sen. Jeremie SC:** Sen. Mark, I am so happy to be able to respond to that question. Obviously it is not me and it is not you, it is the Commission. So when you say that we are trying to emasculate the Commission, what we are doing is giving it the power to determine whether a complaint is devoid of sufficient grounds for an investigation. They do their work.

**Sen. Mark:** But where have they complained apart from what Sen. Seetahal SC said about some forum? I have looked at all their reports and I have not seen any complaints.

**Sen. Jeremie SC:** They have made these complaints.

**Sen. Mark:** Where, at the Hyatt?

**Sen. Jeremie SC:** Sen. Mark, as I said, we come with open arms.

**Sen. Mark:** Yes, I know. "Yuh giving meh ah bear hug here man."

**Sen. Jeremie SC:** That is what you deserve, a bear hug, a tight hug.

**Sen. Mark:** Mr. Chairman, I cannot support this amendment.

**Sen. Prof. Deosaran:** Mr. Chairman, can I comment on (e) before you decide to eliminate it? We have to construct a situation where the Integrity Commission receives a complaint and it has to respond as precisely and as legally as possible. What (e) does, is provide the Commission with an instrument to explain to the complainant why it has been rejected rather than making it appear as if the Commission on its own discretion without any available instrument makes the decision.

I think (e) really clarifies and helps empower the work of the Commission in responding to a complainant.

**Sen. Jeremie SC:** We find ourselves in the uncomfortable position of having to agree with Sen. Ramkhelawan and now you have made a point which—

**Sen. Prof. Deosaran:** If you find difficulty, I will withdraw it but I just want to put my piece in and look at it from their point of view.

**Sen. Jeremie SC:** The point which Sen. Ramkhelawan is making and which I think a reasonable commission would operate on the basis of, without having this in the legislation, is to say that this is a matter which we cannot deal with.

I get letters all the time complaining of all sorts of matters. I do not have a legislative authority to deal with complaints on judges and magistrates, but they come to me.

**Sen. Prof. Deosaran:** Would it not help you if you can refer in your response to section so and so?

**Sen. Jeremie SC:** No it does not. I know my job and I simply pass it on.

**Sen. Prof. Deosaran:** I would not press the point, I thought in the area of further transparency, well so and so, but I will leave it at that.

**Sen. Ramkhelawan:** I do not know why the hon. Attorney General is uncomfortable in agreeing with me.

**Sen. Jeremie SC:** No, I said I find myself in the uncomfortable position in having to agree with both you and Sen. Prof. Deosaran.

**Sen. Mark:** Mr. Chairman when we look at 34A(1)(d) which says:

"is not supported by evidence of a probative value;"

What is this? Why are you putting this burden on the Commission? So I am lodging a complaint and you are saying to the member of the public if I am submitting a complaint, I must provide evidence of a probative value? The ordinary man who sees some corrupt thing in his workplace, what does he understand by evidence of probative value?

I believe, with the greatest respect—I know you are trying—this is tying the hands of the Commission and it is not encouraging people to file complaints. We cannot support this.

**Sen. Jeremie SC:** Sen. Mark, we have taken care—I know you are looking for a reason to support the Bill.

**Sen. Mark:** I will support you, but I cannot support this.

**Sen. Jeremie SC:** If you can just look at a few words in the proposed amendment, 34A(1) provides "The Commission may" not "shall".

"on receipt of a complaint and after examining same, reject the complaint if the Commission is of the opinion that the complaint—" is one of these things.

**Sen. Mark:** I could say leave (a) and delete everything else.

**Sen. Jeremie SC:** We are giving the Commission the power and that is the theme of what we are doing here today. We have recognized that the legislation as it was brought before the House was deficient and we have made the changes.

**Sen. Baptiste-Mc Knight:** Mr. Chairman, clause 34A(2) says:

"(2) Where the Commission has rejected a complaint it shall—

(a) inform the complainant...

(b) provide the complainant with the reasons..."

What about the person against whom the complaint was made?

**Sen. Seetahal SC:** I was worried about that myself, I thought the reasoning was that person would not have been brought into the picture as yet.

**Sen. Jeremie SC:** At all. It rejected the complaint at the very outset.

*Question put and agreed to.*

*Question proposed,* That clause 12A, renumbered, as amended, be added to the Bill.

*Question put and agreed to.*

*New clause 12A renumbered clause 13, as amended, added to the Bill.*

*New clause 17.*

**Mr. Chairman:** New clause 17 proposed by Sen. Drayton reads as follows:

The Schedule is amended by:

- A. Including after the words “Members of the House of Representatives” the words “with the exception of the Speaker of the House”;
- B. Including after the words “Senators” the words “with the exception of the President of the Senate”;
- C. Including “11. Members of Tenders Committees of all Statutory Bodies and State Enterprises including those bodies in which the State has a controlling interest.” In the appropriate numerical sequence.

*New clause 17 read the first time.*

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

**Sen. Seetahal SC:** The Senator was justifying why she proposed to amend the Schedule.

**Sen. Drayton:** I had not concluded, may I just conclude? Basically I was asking why the position of President of the Senate or Speaker of the House of Representatives should not be above the law. I wondered whether this was an appropriate mechanism in that there is an element for serious conflict in the event in an acting capacity, a tribunal has to be appointed if they are the declarant under investigation, or in the acting capacity having to appoint or dismiss a commissioner. So I see the potential for conflict here, I would imagine similar to the judges where I know that has been the subject of a High Court action and I would speak to item (c) after we have debated (a) and (b).

**Sen. Seetahal SC:** I do not agree that the Speaker of the House of Representatives or the President of the Senate should be exempt. The President of the Republic is in a separate category by virtue of his post and how he is selected by everyone.

These are essentially what I would call political appointments and I do not think there is any justification for omitting them. They are persons in public life like the rest of us and I do not see the potential conflict because it is not of a permanent nature.



**4.00 p.m.**

A corollary to that would be, for example, you have an acting Prime Minister who is not a member of the House of Representatives although the Constitution says that a Prime Minister should be a member of the House, so we do not see a conflict there, so it will be a real stretch to see a conflict in this case to justify, in other words, the omission of these parties. I do not see it at all.

**Sen. Mark:** Mr. Chairman, I support that position. I do not support this amendment whatsoever.

**Sen. Jeremie SC:** At this time the Government is not able to support the amendment. It is something that we will look at. As I say, this is not the last that we will hear of an amendment to the Integrity in Public Life Act. The Act needs to be amended and it is something that we will look at. I am not making a commitment one way or the other.

**Sen. Mark:** Mr. Chairman, may I ask the Attorney General, having done all this work, could you tell this Parliament when the Government, through the President, is going to appoint the commission?

**Sen. Jeremie SC:** Sen. Mark, I am really—I would not say that I am surprised at you, because a man of your experience, you would know that people like you and I have no business in that court of business.

**Sen. Mark:** Because you know the whole process is being frustrated.

**Mr. Chairman:** What about the second part?

**Sen. Drayton:** Well, again, if the Attorney General proffered that the purpose of this amendment was to strengthen the powers of the Integrity Commission and members of tenders committees are not within the ambit of the Integrity Commission, which I think is something very strange and a serious omission, so I believe that members of tenders committees of all statutory bodies and state enterprises, including bodies in which the State has a controlling interest, that such tenders committees should be included in the Schedule, and I cannot see any reason why this simple amendment cannot be made. Most of the situation with respect to alleged corruption has to do with contracts and tendering, yet a tendering committee which is making a decision to recommend awarding millions of dollars under contract to a particular tenderer, is outside. All these members are outside of the ambit of the Integrity Commission, so that, to me, that is one of the weakest areas and serious flaws in the current Bill and I feel that this is worthy of serious consideration.

Now, I appreciate the fact that as it is, too many people are included and this is why I feel that the Government needs to look very seriously at that parent Act, but there is absolutely no reason why this simple amendment cannot be made. Then let the tenders committees, once they fall within the ambit of the tenders committee, the tenders committee, a good committee, will make a decision as to which declarations it will spend the majority of its time scrutinizing. So how could you be having a country on a development mode; you have billions of dollars, not millions, being awarded under contract; you have an integrity commission; you have legislation, and these people are not within the purview of the integrity commission? To my mind it really makes no sense.

**Sen. Ali:** Mr. Chairman, on the same question of the tenders committee, I do not know whether Sen. Drayton is aware in each ministry even, or each state enterprise, there are different tenders committees for different sums, delegated responsibilities. What are you going to do, include all of those?

**Sen. Jeremie SC:** If I could just say that the point was well made and I repeat what I have said before, that this is a work in progress; there are people inside here, who ought not to be caught and there are persons—not only persons on the tenders committee; there are some persons that I can call that would create a furore in the society if I did, but there are some persons who are absolutely required to be inside here. The Government needs to take a policy position on these matters and revert to you. This is something that we cannot do this afternoon within the four corners of the legislation which is before us.

**Sen. Seetahal SC:** One point before we move on. I know you wanted to move right on. I raised it on the last occasion and I want to get a direct comment from the Attorney General. Seeing that the High Court has said that judges and magistrates which are listed at 8 in the Schedule, are not to be caught; virtually exempt because it is unconstitutional—I sort of saw the rationale with judges but, anyway, that is another point—has the State appealed this judgment? My understanding some months ago, that it had not.

**Mr. Chairman:** Could you take that privately?

**Sen. Seetahal SC:** No. The judgment is why they have not amended the Schedule, because if it is that it is declared illegal that judges and magistrates should not be in the Schedule, why are they still here? Why is the amendment not covering it? That is the point, Mr. Chairman.

**Mr. Chairman:** All right.

**Sen. Jeremie SC:** What I would say is that there is a first instance judgment on it which we are studying. That case is under appeal. The Integrity Commission has cross-appealed; has filed a notice of cross appeal. TSTT has appealed. So you have had no final determination in respect of the disposition of that matter. I am not sure that the issue as to whether judges and magistrates are covered is captured in the appeal, but to answer your question, we have a first instance judgment on it and I am not satisfied that that ought to be the basis for us taking action here. I am studying it and it would be premature for us to do anything at this point in time.

**Sen. Seetahal SC:** It is over a year old.

*Question put and agreed to.*

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

*Question put and negatived.*

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

*Senate resumed.*

#### LEAVE OF ABSENCE

**Mr. Vice-President:** Hon. Senators, we go back to “Announcements”. I have granted leave to Sen. Dr. Lenny Saith.

#### SENATOR’S APPOINTMENT

**Mr. Vice-President:** I have received correspondence from his Excellency Prof. George Maxwell Richards. T.C., C.M.T., Ph.D.:

“THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO

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

/s/ G. Richards  
President.

TO: MR. JOEL PRIMUS

WHEREAS Senator Dr. Lenny Saith is incapable of performing his duties as a Senator by reason of his absence from Trinidad and Tobago:

NOW, THEREFORE, I, GEORGE MAXWELL RICHARDS, President as aforesaid, acting in accordance with the advice of the Prime Minister, in

*Senator's Appointment*  
[MR. VICE-PRESIDENT]

*Tuesday, January 05, 2010*

exercise of the power vested in me by section 44 of the Constitution of the Republic of Trinidad and Tobago, do hereby appoint you, JOEL PRIMUS, to be temporarily a member of the Senate, with immediate effect and continuing during the absence from Trinidad and Tobago of the said Senator Dr. Lenny Saith.

Given under my Hand and the Seal of the President of the Republic of Trinidad and Tobago at the Office of the President, St. Ann's, this 5<sup>th</sup> day of January, 2010."

#### OATH OF ALLEGIANCE

*Senator Joel Primus took and subscribed the Oath of Allegiance as required by law.*

#### INTEGRITY IN PUBLIC LIFE (AMDT.) BILL

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

#### PRISON (AMDT.) RULES

**The Minister of National Security (Sen. The Hon. Martin Joseph):** Thank you very much, Mr. Vice-President. I beg to move the following Motion on the Order Paper standing in my name:

*Whereas* it is provided by section 17(1) of the Prisons Act, Chap. 13:01 that the Minister may, subject to affirmative resolution of Parliament, make Rules for the better carrying into effect of the provisions and purposes of the Act;

*And whereas* the Minister has on the 4<sup>th</sup> day of December, 2009 made the Prison (Amendment) Rules, 2009 (hereinafter referred to as "the Rules");

*And whereas* the Rules have been laid before the House of Representatives and the Senate;

*And whereas* it is expedient that the Rules now be affirmed;

*Be it resolved* that the Prison (Amendment) Rules, 2009 be now affirmed subject to the following amendments:

Rule	Extent of Amendments
3	Delete the words "Superintendent, or Deputy Superintendent or an Assistant Superintendent" and substitute the words "Commissioner, or the Deputy Commissioner, or a Prison Superintendent"

- 4 Delete the words “cell phones and other electronic devices” and substitute the words “cell phones, electronic devices and any other equipment and components that facilitate the transmission and reception of data”

Hon. Members, before you today is an amendment to the Prison Rules, Ch. 11, No. 7 published in the 1950 laws of Trinidad and Tobago. These rules were made under the West Indian Prisons Act of 1838. Today the Government is seeking to amend rules 178 and 233(2) of these Prison Rules. I wish to inform this honourable House that the Government is currently in the process of doing a total review of all of these Prison Rules and this process has been a long and time-consuming one. Most of the rules are quite outdated, having been originally drafted some 171 years ago, as I said earlier on, under the 1838 West Indian Prisons Act.

We have recognized that some of these rules are, therefore, not in keeping with the Government's current initiative to move from retributive to restorative justice and we wish to be meticulous in our examination and redrafting of these rules. To this end, the Government intends to complete this process soon and proposes to lay in Parliament sometime this year, the new prison rules which will encompass this restorative penal philosophy and make the management of our nation's prisons more contemporary.

#### **4.15 p.m.**

Certain critical issues exist currently however, that necessitate this Government's urgent action with regard to two significant parts of the existing prison rules. While detailed provisions have been made in the current draft rules for the searching of inmates, officers, members of staff and members of the public, as well as for trafficking of prohibited articles, the Government has decided to take immediate action to deal with the serious problem concerning the issue of contraband in the nation's prisons. We are demonstrating this awareness today, by the introduction of these amendments to tackle this issue head on.

Rule 178, Submission to Search. It is proposed that rule 178 be amended by providing for searches to be conducted by the prison supervisor or any other officer of a higher rank. What pertains now in the current rule is that such searches can only be conducted by the commissioner, deputy commissioner or a prison superintendent. Therefore, only 14 officers currently have the authority to conduct such searches under this rule.

*Prison (Amdt.) Rules*  
[SEN. THE HON. M. JOSEPH]

*Tuesday, January 05, 2010*

The rationale behind this amendment is this. Unlike a prison superintendent who works during the hours eight to four, not including nightly visits, a prison supervisor is directly in charge of supervising officers and inmates over any given 24-hour period and would, therefore, be in the best position to have information and gather intelligence as to which of his officers are involved in trafficking and what security measures to put in place to best catch them in the act.

With the amendment, the rule will now read as follows:

Every officer or servant of the prison shall submit himself to be searched in prison if called upon to do so by a Prison Supervisor or any other officer of a higher rank.

This amendment to rule 178 would give the power to search to 37 more officers bringing the total to 51 officers, thereby creating a larger body of officers who would be authorized to conduct such searches. It is therefore expected that this larger number would assist in curbing the trafficking of prohibited and unauthorized articles in prison. More officers being authorized to conduct such searches would undeniably mean a greater opportunity for detecting contraband items and identifying corrupt officers within the service.

**Sen. Mark:** Mr. Vice-President, the hon. Minister of National Security, where is the amendment to which you have just referred? We are looking at the amendments in the Order Paper and they do not coincide with what you are advancing. I do not know if you have a new set of amendments that you need to circulate to us. We are not seeing what you are reading before us.

**Sen. Seetahal SC:** The original amendment was what the Minister read, but when it went to the House of Representatives it was changed. You referred to the original one. That was the confusion.

Reference was made that the new rules will now substitute the words, "Prison Supervisor or any other officer of a higher rank". That was proposed.

Our resolution is that we are to substitute for the original words "Commissioner, Deputy Commissioner or a Prison Superintendent". That is what we are dealing with.

**Sen. The Hon. M. Joseph:** Mr. Vice-President, I will circulate the House amendments. They are on the Order Paper on page 2.

**Sen. Rahman:** What has been circulated to us is the old one.

**Sen. The Hon. M. Joseph:** You have the new one. The amendment before us should be, “Every officer or servant of the prison shall submit himself to be searched in prison if called upon to do so by a Prison Supervisor or any other officer of a higher rank”.

**Hon. Senators:** We do not have that amendment.

**Mr. Vice-President:** Hon. Senators, we will take the tea break now and we would resume at 5.00 p.m.

**4.21 p.m.:** *Sitting suspended.*

**5.00 p.m.:** *Sitting resumed.*

**Sen. The Hon. M. Joseph:** Mr. Vice-President, before we took the tea break, there was an issue with respect to my proposal to amend rule 178. We discovered that the full extent of the amendments were not circulated. As a result, we would be in the process of circulating them.

For the information of the honourable Senate, at some point in time, an amendment was made to this rule to remove the positions of “Superintendent, Deputy Superintendent or Assistant Superintendent” and replace them with “Commissioner, Deputy Commissioner or Prison Superintendent”. When it was debated in the other place it was the original positions of deputy superintendent and assistant superintendent that were brought to the House, only to realize that since that time amendments were made to those positions. Commissioner, Deputy Commissioner and Prison Superintendent were the existing positions that were entitled to search.

That amendment had to be made and also an additional amendment. At the end of the day, the intention of the amendment is to extend the group of persons who will carry out searches. At the end of the day, the amendment would read, “a Prison Supervisor or any officer of a higher rank”. That is the intention. That was not circulated and before I am completed, that would be circulated.

Earlier on I said that the intention was to extend that group of persons. As it stands now only 37 officers are in a position to conduct those searches. We want to extend that to an additional 51 officers. That would give the prison authority the ability to conduct searches properly. We also need to know that as we speak there is an officer population of about 2,383 officers. The intention of the rule is to expand that category of persons who would be entitled to conduct searches.

The second rule which is intended to be amended is rule 233(2) which deals with prohibited articles. It is proposed that the present definition for “prohibited

*Prison (Amdt.) Rules*  
[SEN. THE HON. M. JOSEPH]

*Tuesday, January 05, 2010*

articles” that exists in rule 233(2) of the Prison Rules be amended to include the words, “cell phones, electronic devices and any other equipment and components that facilitate the transmission and reception of data”.

Among the list of prohibited and unauthorized articles stated therein thus creating an expressed prohibition of anyone entering any prison with such devices, the rule would read as follows:

“No person shall without authority convey or throw into, or deposit in a prison, or convey or throw out of a prison, or convey to any prisoner, or deposit with a view to its coming into the possession of any prisoner, any money, clothing, food, drink, tobacco, letter, paper, books, tools, cell phones, electronic devices and any other equipment and component that facilitate the transmission and reception of data or any other article whatever. Anything so conveyed, deposited or thrown without authority shall be deemed to be a prohibited article and may be confiscated by the Commissioner.”

**5.05 p.m.**

Mr. Vice-President, the issue of contraband in prisons is a worldwide issue, particularly as it relates to cellphones. Last year alone, state prison officials in California confiscated some 4,130 contraband cellphones for the first nine months of 2009; more than all those seized in the previous three years combined, according to statistics from the California State Penitentiary.

In the United Kingdom, for the 12 months prior to July last year, 255 were discovered at maximum security prisons, while jails with lower security reported finding 8,393 cellphones. These figures represent phones seized from visitors as well as those thrown over prison walls.

In December, 2008, Scottish officials recognized the need to outlaw mobile phones in prisons and, therefore, the Prisons and Young Offenders Institutions Scotland (Amdt.) Rules, 2008 were introduced to extend the definition of a prohibited article at Rule 5 to include personal communication devices, including mobile telephones and component parts.

Previously, the Scottish definition was similar to ours, in that reference to cellphones in the definition of prohibited articles was omitted. The inclusion of the amendment, therefore, specifically prohibits personal communication devices, including cellular phones as well as SIM cards. The UK amended their law in 2007 to criminalize the bringing, throwing or conveying of mobile phones into prisons. This was done in their Offender Management Act, which amended the list of



prohibited articles under the Prisons Act, 1952, specifically to make it a criminal offence to convey or leave it intending it to come into the possession of a prisoner or give a mobile phone to a prisoner without authorization.

Regionally, statistics for 2009 show that in Guyana, out of a prison population of some 1,948 inmates, some 80 cellphones were seized. Sixty cellphones were confiscated in the Turks and Caicos Islands, which has a prison population of 106 inmates. In the Bahamas, out of a prison population of 1,350 inmates, 80 cellphones were seized. In Antigua and Barbuda, the number of phones intercepted was 150, out of a prison population of some 291.

With respect to local statistics, between January 2008 to November 2009, 417 searches were conducted throughout the seven prisons and the Youth Training Centre and a total of 1,143 cellphones were confiscated. This clearly shows that it is a serious security risk in the nation's prisons. Just for information, our prison population is some 3,560 inmates.

There are recorded cases where inmates smuggle the cellphones into the prisons. There are also cases where visitors and family members of inmates have attempted to smuggle cellphones into the prisons and, in actual cases, have sought to throw them over the walls of the prisons, some of which have been intercepted by vigilant prison officers. Moreover, there have been incidents whereby prison officers themselves have been caught, while reporting for duty, attempting to smuggle cellphones and cellphone chargers and other items of contraband.

Since these rules were first introduced to our jurisdiction in 1838, there have been infinite developments in technology and communications and the way that information can be transmitted and processed. When these Rules were drafted in 1838, no form of electronic communication was even conceivably thought of, thus this could not have been captured by the legislative drafters. Even with the inclusion of the words "or other article whatever," which arguably can capture anything, electronic items would not have been part of the mischief that the legislation was created to prevent.

However, in this modern age, where it is quite apparent that prisoners use cellular phones as a tool of chaos within the prison, this makes a compelling argument to now include it expressly as Scotland and the United Kingdom have done in the list of articles prohibited from entering the prisons. Worldwide, states have adopted the explicit inclusion of cellular phones in their definition of prohibited articles. This insertion also serves to avoid any ambiguity on the part of

*Prison (Amdt.) Rules*  
[SEN. THE HON. M. JOSEPH]

*Tuesday, January 05, 2010*

the members of the public and make them aware that cellular phones and other forms of electronic items are prohibited articles and ought not to be brought into prisons thus eliminating the argument that they were ignorant of that fact.

It is a fact that gang leaders use cellphones to continue to manage their organizations from within the prison walls to execute their rivals; to control and engage in money laundering; to facilitate the supply of and the payment for illegal drugs; to organize and arrange the trafficking of contraband in the prisons; and to orchestrate the commission of other reprehensible crimes, such as kidnapping, extortion, planning escapes and witness intimidation.

Cellphones and other electronic devices present a legitimate danger to the lives of officers, members of staff and the public, as threats have been arguably made and carried out, sometimes with fatal outcomes. Additionally, with the technological advancements made in the world of telecommunications, phones have been seized that possess cameras, Internet, voice- and video-recording capabilities, which can be transmitted to other phones and electronic devices anywhere in the world.

It goes without saying, Mr. Vice-President, that such devices seriously compromise the safety and security of prison establishments. They destabilize national security and threaten the lives of the public, prison officers and members of staff.

Furthermore, there is evidence to suggest that a few rogue officers continue to play a major role in assisting in the trafficking of cellphones among the prison population and in so doing endanger their colleagues and neglect their duty to the State and the citizens of Trinidad and Tobago.

These cases I have cited serve only to highlight the urgent requirement to extend the power of searching of prison staff to prison supervisors and to make an unambiguous reference to cellphones and electronic devices in the list of prohibited articles in the Prison Rules.

This Government is determined to be tougher on those persons who try to continue criminal activities while in prison. Serving a prison sentence should not in any way enable a criminal to continue his life of crime. The smuggling of mobile phones into prisons is becoming increasingly difficult to detect as the technology is becoming more advanced. The prison service is committed to detecting them and by making these critical amendments, this Government is showing that trafficking in contraband will not be tolerated under any circumstances.

With these few words, I beg to move.

*Question proposed.*

**Sen. Wade Mark:** Mr. Vice-President, the Motion before us seeks to amend certain rules dealing with conditions within the prison service. The Government, through this particular measure, is attempting to address, somewhat belatedly, a situation that has developed over the last few years. The Motion before this honourable Senate is seeking, along with the amendment, to address Rule 178 and Rule 233(2) and, as the Minister pointed out in his presentation, we are talking about rules dating back to 1838. It was difficult for us, but we did eventually locate Ch. 11, No. 7 of the Prison Rules made by the Governor and the Executive Council under the West Indian Prisons Act, 1838.

What is the Government seeking to achieve by bringing this measure here today? The Government is seeking, according to the amendments as well as the substantive Motion on the Order Paper, to address the use and abuse of cellphones and other electronic devices and, at the same time, give the authorities within the prison service the power to search individuals within the prisons, including prison officers; and they are now seeking to extend the category of prison officers who can conduct such searches.

**5.20 p.m.**

Mr. Vice-President, the prison service is like an abandoned child by the Minister of National Security. The Minister of National Security in the last few years has spent a lot of time focusing on the police service. He has neglected the fire service; he has neglected, as far as we are concerned, the prison service and we will tell you why. Therefore, this Motion is more like a knee-jerk reaction to a situation that has somewhat embarrassed the Government, where they have hit men serving in the prison putting out hits on certain persons in the society.

**Sen. Browne:** How do you know that?

**Sen. W. Mark:** That is now public knowledge. The Minister has admitted that; the Minister in the Ministry of State, hon. Donna Cox has admitted that, that the reason the Minister of National Security is taking these steps today is to see to what extent he can reduce the extent to which these electronic devices are being used in order to carry out criminal activities from within the prison walls.

**Sen. Browne:** So you agree then?

**Sen. W. Mark:** What we are saying, is that this is a measure that ought to have been adopted, ought to have been promoted by the Government several years ago, because cellphones did not arrive two days ago, electronic devices did not arrive a few weeks ago and we know that corruption is rife in the prison service as it is rife in the Government.

*Prison (Amdt.) Rules*  
[SEN. MARK]

*Tuesday, January 05, 2010*

You have not only prison officers—some of them, not all of them, are involved in the contraband trade as the hon. Minister alluded to and you have a very brisk and flourishing trade taking place behind the walls of the various prisons in Trinidad and Tobago. Therefore, it is not surprising when we are told by the hon. Minister that over 1,100 cellular phones have been discovered in the prisons. They have located 1,100 cellphones. It does not mean that more cellphones are not in the prisons. That is what they have located, that is what they have discovered.

Mr. Vice-President, you would know and I would know that on the various talk shows that we have in this country, sometimes we have breaking news and when you tune in there is an inmate communicating to the radio host from the prison what is taking place in the prison. This has been going on for years. What was the Minister of National Security doing? Sleeping! But he has just awoken to deal with this question that is affecting national security and the entire national security sector in this country.

Mr. Vice-President, you are aware that in this particular period where the Minister brings a Motion to address the issue of cellular phones, other electronic devices and any other equipment and components that facilitate the transmission and reception of data to this honourable Senate—Does the hon. Minister really believe this measure, this piecemeal—“knee jook”, [*Laughter*—knee-jerk reaction and measure is going to solve the problem in the prisons? You really think so?

Just as how the Minister and the Prime Minister recognized that the management of the police service was at the heart of the inefficiencies and the bureaucracy, and they brought legislation to put the management of the police service in the hands of the Commissioner of Police from a certain rank up to a certain rank, why has the Minister of National Security not brought to this Parliament similar legislation to give the Prisons Commissioner that kind of managerial control over his operations and over his men? [*Desk thumping*] That is what, for instance, we should be discussing today; not two amendments to two 1950 rules. That is not going to solve criminal activities within the prisons. Everybody knows that the conditions at the prisons remain very poor and in some instances Amnesty International has described prison conditions in our country as cruel, inhumane and degrading. The Minister has just reminded us that there are over 3,560 inmates in the various prison facilities in Trinidad and Tobago.

I want to remind the hon. Minister that what is taking place that has prompted him to bring these changes to the rules is very poor, substandard management of the prison services or the prison service in Trinidad and Tobago. Reform the Prisons Act. Bring about changes to the Act and give the Prisons Commissioner the power to deal with the internal conditions affecting him and his men.

Many prisoners have been brutalized in the prisons; many prisoners have been murdered in the prisons and many prison officers have also been murdered in this country. But we will talk about that later on because we would like to know what measures and what steps are being taken by the Prisons Commissioner and the Minister of National Security to protect the life and limb of prison officers who perform their duty under very challenging conditions in this country.

Mr. Vice-President, as I am on that particular point, may I also remind the hon. Minister of National Security, just as how we have brutality inside the prisons and there is little or no mechanism for people to grieve, prison inmates or prisoners do not have the kind of facility or mechanism available to them to grieve when they are being brutalized by prison officers, some of them, at any rate. Just as how the citizens of this country do not have the facility to grieve [*Interruption*] to bring their complaints to a legitimate body when police engage in brutality execution style against innocent citizens in this country.

Mr. Vice-President, when the Minister comes with this kind of measure, he must explain to us what kinds of measures and steps he intends to take to deal with the riotous conditions, the oppressive conditions, the poor conditions that citizens who happen to run afoul of the law, how is the Minister treating with those issues? That is what the Minister ought to tell us here. We need a Prisons Complaints Authority where prisoners can complain against brutality and oppressive behaviour and conduct on the part of some prison officers. Where is the Prisons Complaints Authority to deal with that? Where is it? That is why you have violent reaction in the prisons because of very oppressive conditions that people are subjected to in there.

I want to tell this hon. Minister of National Security, just as how we need to have a Prisons Complaints Authority, tell this country why after three and a half to four years your Government has taken no step to establish the Prisons Complaints Authority and in 2008, 43 citizens have been murdered by policemen in this country and their mothers are crying blood in this country and there is no redress for them. We understand that in 2009 close to 50 citizens have been murdered and executed by police officers in this country.

**Sen. Joseph:** Mr. Vice-President, on a point of order, I cannot sit here and have Sen. Wade Mark accuse the police officers of executing people. We cannot. That is not fair to those hard working police officers who are there to protect and serve this country. [*Desk thumping*] I ask him to withdraw that statement.

**Sen. W. Mark:** I am not withdrawing “no” statement like that. I want you to launch an investigation as the Minister of National Security into the execution of citizens by some members of the police.

**Sen. Joseph:** Mr. Vice-President, again on a point of order, he is talking about execution. In other words, he is saying that there is some extrajudicial activity taking place by police officers and I reject that.

**Sen. Piggott:** You need to be responsible.

**Mr. Vice-President:** Sen. Mark, I am sure that you are a responsible Senator and you know your duty in this Senate, so I am sure—[*Interruption*—]—you would use the correct terms. But on another point, this is a debate on prison rules and amendment, so could you keep your contribution strictly—because I am not going to allow much leeway in this debate.

**Sen. W. Mark:** I know it hurts you know. [*Laughter*] The truth always offends. We understand there is a hit squad in the police service and you must tell us if that is so.

**Sen. Joseph:** Mr. Vice-President, again on a point of order—

**Sen. W. Mark:** A death squad you all have in the police service, with your permission.

**Sen. Joseph:**—he is taking it to another level.

**Mr. Vice-President:** Senator, I think you should withdraw that statement please—

**Sen. W. Mark:** I withdraw it. I withdraw that.

**Mr. Vice-President:**—and if you continue on that—

**Sen. W. Mark:** All right, I am going to “meh thing”.

**Mr. Vice-President:**—line I would have to ask you to take your seat.

**Sen. W. Mark:** Both of us would go out of here.

**Mr. Vice-President:** Yes, no problem.

**5.35 p.m.**

**Sen. W. Mark:** Let me get back to the Motion. I have information on you; on the Minister of National Security. [*Sen. Mark points to Sen. Joseph*]

**Sen. Browne:** Bluffing again. [*Laughter*]

**Sen. W. Mark:** I will tell you more about that later on, Mr. Vice-President. [Crosstalk]

We talked about contraband goods, Mr. Vice-President. I know you want to put me straight on course, so let us deal with contraband goods in the prison. I want the Minister to launch an investigation into contraband goods being sold by prison officers that were supposed to be given to prison inmates. They are being sold at exorbitant prices at canteens. There was a report in the *Newsday* of December 30 on that. I want the hon. Minister to investigate and give us a report on that matter. Let him investigate that.

I am not making up things. I have a US Department of State report which is dated February 25, 2009, on the whole question of prison conditions in this country. I want to quote this particular report:

"Conditions in the prison system's eight facilities were somewhat upgraded but continued to be harsh. According to the prison service commissioner, the Port of Spain prison, originally designed to accommodate 250 inmates, held 528 prisoners..."

Is that a fact? I would like the Minister of National Security to tell us whether the Port of Spain prison on Frederick Street was originally designed to accommodate 250 or 150 inmates and whether there are over 500 prisoners in there at this time. They hold eight to 10 prisoners in a 10 by 10 cell. Is that a fact? Are they sardines or are they human beings who have run afoul of the law and therefore have human rights too?

I have something here, if you want to query that issue, from the United Nations, that deals with the whole issue of what they call "Standard Minimum Rules for the Treatment of Prisoners"; I have it here. You are in violation of several of these rules. Hear what it says:

"On October 03 a High Court judge ruled in favour of convicted murderer Colin Edghill's complaint that the conditions at the Port of Spain prison were debasing and dehumanizing to both prisoners and to prison officers."

Do you understand why cellular phones are in the prisons? Do you understand why they are there, Mr. Vice-President?

The article continued:

"In the ruling, the judge cited concerns about air, light, sanitation, hygiene, exercise and food....two new prisons were under construction and temporary converted storage facilities might be used to remedy the situation.

*Prison (Amdt.) Rules*  
[SEN. MARK]

*Tuesday, January 05, 2010*

Prison authorities reported bringing charges against 25 prison officers for assault and battery or for poor conduct on the job, including possession of narcotics and provision of cellphones to inmates."

This is in the report.

When we talk about cellphones, the US Department of State is saying here that cellphones are provided to inmates by prison officers. Not all of them, just as how all the policemen who are involved in Trinidad and Tobago are not bad policemen, but I know that there are some elements in the police service, like they got the green light from the authorities to execute young people—*[Interruption]* or allegedly execute; let me withdraw that.

Here we have persons in prison and the Government has not taken any measures to separate the hard core criminals from those coming in just on a maintenance warrant or charge. They were unable to fulfil their obligation to their wives, or wife, and they put that person in jail for six months. Where does that person end up? With the hardened and hard core criminals, and as soon as that person leaves the remand yard, he comes out more hardened than he went in. So where is the rehabilitation taking place? Where is the restoration taking place, as it concerns reforming these prisoners, so they could come out and live decent lives and become reconditioned and resocialized within the framework of civilized society?

We know the Government has been making efforts since, I think, 2002. They brought in Amalgamated and, in recent time, privatized the prison transport system, Justice on wheels.

**Hon. Senators:** Justice on Time!

**Sen. W. Mark:** Justice on wheels too. They are not only on time, but they are on wheels. Mr. Vice-President, let me tell you that if you are coming from Arima, get out of the way. Do you know that? They would run you off the road with that black car you drive; that nice Peugeot they call it; nice, nice car. When these Justice on wheels are coming down the road, police in front and these big heavy vehicles behind, you have to get off the highway, otherwise they could run into you.

Do you know how much they got in the last few years, from 2002 to the end of 2008? They got \$98 million. "Plenty money, eh?" But to date the Government cannot establish a Magistrates' Court in the prisons, possibly. I do not know if the hon. Attorney General will join the debate and indicate to us the efficacy of



putting a Magistrates' Court in remand yard, so rather than transport prisoners, persons can come from inside the prison and go before a magistrate. [*Crosstalk*] I am not sure; I am just asking. The Government has failed the citizens of this country; this Government has failed. All this thing about cellphones that they are coming to deal with here and electronic devices, and searching persons, that is an afterthought.

Let me tell you something; when the UNC was in power up to 2002, do you know what the per capita homicide rate in Trinidad and Tobago was, as compared to the whole world in terms of 100,000? It was 10 per 100,000. Do you know what your claim to fame is now, as at the end of 2009? It is 42 per 100,000 citizens in this country. That is your claim to fame.

There was a report put out; I want you to read it; guns and gangs in this country, and the Government was implicated with the gangs. When the Minister talked about gangs in the prisons making telephone calls and issuing hits on people, Mr. Minister, do not stop there. Tell us where the gangs came from. You nurtured and nourished those gangs. You gave those gang leaders government contracts. A "fella" called "Kerwyn Fresh", somebody from Laventille, had a big contract to build the health centre in Port of Spain East. Mark Guerra, a criminal, was all over the place campaigning with the PNM for the 2002 General Election. All those things are on record. So when this Government comes here and tells us that they want to reform this and reform that, who is the Government fooling?

There was an international report published just two days ago, implicating the Government of Trinidad and Tobago with gangsters and gang leaders.

**5.45 p.m.**

That is what the report has said, not me, and that has gone all over the world, but you come here today to deal with cellphones. Cellphones could solve criminal activity in the prisons? That is not going to solve it. The Government has to be serious about prison reform and it is not committed.

Mr. Vice-President, we have been talking for years now about a parole system where in the prison, rather than focus on cellular phones and electronic devices, when people committed offences that would not attract heavy sentences, instead of putting these young men and women among hardened criminals, let them go and do community services. Where is the Community Service Act? Why has it not been implemented? Why do we need to have 3,700 of our people in prison?

*Prison (Amdt.) Rules*  
[SEN. MARK]

*Tuesday, January 05, 2010*

I want the hon. Minister to know that these measures that he has brought to this Parliament today are not going to cut it and bring about the kind of changes the Minister perceives. Modern technology would tell this Government if it wants to find guns how to do so. Technology is available today that you can make a sweep in Laventille and find every gun in every house in Laventille. Why is the Government not implementing it? Why is it not buying that technology?

But they buy technology worth over \$100 million to spy on you and other persons in this country and every time you make a telephone call they listen to your conversation, but will not invest technology to jam the frequency to allow these people to make telephone calls within the prison. They do not have to search people to find out if they have cellphones. Get the electronic equipment and the modern technology to tell you what frequency they are using so you will be able to detect it. That is a simple matter.

I do not understand how this Minister of National Security who was very active with the Jamaat at one time does not see the need to introduce—when I say active, "yuh wasn't in Mayaro?"

"All right sorry, yuh wasn't there, it was me. I was in Mayaro with de Jamaat, not you. Is not him, is not him, is me, forget dat. Do not get up yuh know. Is me was there."

So, Mr. Vice-President, when you are serious about dealing with crime, there is technology available to deal with that. You do not have to come with this frivolous, vexatious, nonsensical amendment to say you are going to search people for cellphone. What backward kind of thinking is this in 2010 when you can introduce technology in the prisons to detect that? Every telephone call that leaves the prison you will know if you have the technology, and it is available.

Why is the Minister wasting our time today? We should be resting somewhere enjoying the New Year somewhere else rather than being here. I should be campaigning for the patriots and Mr. Panday. [*Crosstalk*] I am simply saying that the Government does not appear to be serious and they are joking and mamaguying people and making people feel they are doing something. What is the Government doing? Nothing, just fooling themselves and the country.

I want the Minister in the Ministry of Finance to tell us, they made us pass a Property Tax Bill recently and he is about to come with something called the Revenue Authority. They spent \$98 million on private security but you cannot provide technology to deal with cellular phones in the prison.

Mr. Vice-President, my information—and I want the Minister to deny it tonight. We understand from reliable sources that close to \$10 to \$12 billion are being owed by big businesses in this country over the last 8—10 years but because of campaign finance, one alone is owing about \$160 million, but because they are giving the PNM \$5 million to campaign, the Government turns a blind eye, but comes to tax poor people.

Mr. Vice-President, let me turn to you, they are getting a bit jittery. I want to ask the hon. Minister what is he doing about the prison officers who are asking to be armed to protect their lives. By coming here today and telling us that he will introduce measures to search, is that adequate?

Let me go to the old 1830 Queen Victoria Rule No. 178 that we are amending today which says:

"178. Every officer or servant of the prison shall submit himself to be searched in the prison if called upon to do so by the..."

And we have an amendment which says either by the Commissioner, Deputy Commissioner or a Prison Superintendent, or a Prison Supervisor, or any other office of a higher rank.

Mr. Vice-President, I want to ask the hon. Minister how long has he been aware of contraband goods; how long the Minister was aware of cellular phones in the prison? How long has he been aware of electronic devices being used? Was it yesterday, two weeks ago, a year ago? Why have you not been searching people?

Cellular phones do not have to be only traded in the prisons you know? What is the role of some police officers in this situation? You have a situation in which prisoners are taken to courts and we know for a fact there is corruption in the police service, some elements. *[Interruption]* I was going to say I hear the braying of somebody, but I do not want to say it.

"Ah never beat meh wife eh, ah never beat meh wife in meh life. Ah never committed violence against my children, ah never beat meh wife in meh life, and ah never committed violence against my family, and ah doh have no report in St. Clair Police Station, none. Ah have a report on a man here in this Parliament where that was done, ah won't call his name."

**Sen. Joseph:** I remember the House you used to have in Diego Martin.

**Sen. W. Mark:** "Joe, Joe, doh go there. Yuh know why yuh mustn't go there? All right I will tell yuh later."

**Mr. Vice-President:** Address me and you will have no problem.

**Sen. W. Mark:** "I never tief yuh know, ah never tief in meh life. Ah never try to destroy a hard drive." Oh, sorry, sorry.

**Mr. Vice-President:** Debate the Motion and not anything else, okay.

**Sen. W. Mark:** You see, Mr. Vice-President, when you are on your legs and you are hearing these echoes, you have to respond.

So I am saying that if you go to 233—remember this is the penultimate day so we must have some excitement, you must laugh man. "Ah want to hear Mariano laughing out loud."

Rule 233 says:

"(2) No person shall without authority convey or throw into, or deposit in a prison, or convey or throw out of a prison, or convey to any prisoner, or deposit with a view to its coming into the possession of any prisoner, any money, clothing, food, drink, tobacco, letter, paper, books, tools, cell phones or other electronic devices or other article whatever. Anything so conveyed, deposited or thrown without authority shall be deemed to be a prohibited article and may be confiscated by the Superintendent."

This is the amendment the hon. Minister is seeking to amend in rule 233(2). All I ask of the hon. Minister of National Security is to come clean. What do you expect to realize from this kind of knee-jerk reaction manifested in this amendment when everyone knows that the problem is deeper than what meets the ordinary eye?

Therefore, we call on the hon. Minister to bring sweeping and comprehensive amendments to the rules governing the prison service. We cannot be dealing with this piecemeal and knee-jerk reaction to some kind of incident that occurred. The Minister who has been there for a number of years, a total failure insofar as national security is concerned—

The Prime Minister is afraid to get rid of the Minister because he holds secrets for the Prime Minister and for Mariano Browne from Barbados. [*Laughter*] So, Mr. Vice-President, why after all these years, our Minister of National Security cannot bring comprehensive measures to deal with the prison service and with prison reform? Do you know how long we have been hearing about a prison complex? I would like the Minister to bring us up to date today when he is

winding up. Where are we with the prison complex? They boasted that they acquired 100 acres of Caroni (1975) Limited lands to build a prison complex. I would like him to tell us where we are with this prison complex today.

Too many people in this country are losing their lives. Do you know I read recently that Trinidad and Tobago, or Port of Spain, the capital of our country is on the same level as Baghdad in terms of murderous—

**Sen. Dr. Dick-Forde:** That is not true.

**Sen. W. Mark:** I am telling you I read that.

**Sen. Browne:** Where you read that?

**Sen. W. Mark:** Look it here, you want me to quote?

"No Other Life

Gangs, Guns, and Governance

in Trinidad and Tobago

By Dorn Townsend"

It tells you that Trinidad and Tobago is on the same scale as Baghdad. Read this report, it has gone international. I want the Minister of National Security to hold a press conference and deal with this report, it has gone all over the world.

Mr. Vice-President, you know at one time Jamaica was the gun capital in terms of murder? Small Trinidad and Tobago with 1.3 million people has now surpassed Jamaica in terms of gun-related murders! This country under the PNM, there were 550 persons murdered in 2008—I am dealing with cellular phones too you know. [*Laughter*]

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

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

*Question put and agreed to.*

**Sen. W. Mark:** Mr. Vice-President, we are not going to oppose the amendments that the hon. Minister has brought to the Motion re the Rules. We are saying that it is a piecemeal approach and the Minister should really deal with this matter in a more comprehensive manner and we do not support this kind of lazy approach by the Government on very important issues affecting the lives of citizens of this country.

I want to tell the hon. Minister that the same kind of interest he has shown to the police service on Christmas day when he is supposed to be drinking his sorrel and eating his ham you were outside giving support to the soldiers—[*Crosstalk*]

He is a Muslim? He could have been a Muslim, he was close to Bakr.

**Sen. Browne:** Not as close as you.

**Sen. W. Mark:** “You were close to Owen Arthur, dah is why Thompson ain’t like you yuh know. David Thompson ain’t like you at all yuh know, you funded Arthur. And ah have de figures, de amount ah money he gave Owen Arthur to campaign when he was de man in charge ah Butterfield. Ah have ah file on him, ah know him good, Mariano is my friend yuh know.” [*Laughter*]

Mr. Vice-President, as far as we are concerned, we think it is a troubling start, a faltering start, and the Minister is drifting towards the direction that is positive, but he is very weak at this time; we need to help him because we believe that there is need for comprehensive, sweeping reform within the prison system and not the piecemeal arrangement we are getting today.

If he wants help, let us know. We are prepared to leave this side of the Bench today, take over that side and put you here. We have the capacity, the ability and the manpower to take over this Government and run it properly.

**Sen. Browne:** Who is your leader?

**Sen. W. Mark:** We believe in gender equality. Who is my leader? I am the leader here. [*Laughter*] And the real leader who you fear is the hon. Basdeo Panday, and I know you fear him.

### **6.05 p.m.**

But, anyway, as I said, we are on the last leg of this journey until we resume in the next couple days, our third session. What was significant about this debate—my contribution so far and I want to record it—why it is we have been debating the need for what is called an affirmative resolution. You see what an affirmative resolution does? When you have an affirmative resolution, you must bring the matter before us, as simple as it is—to bring cellphones in and to amend the rules to bring electronic devices—you bring it here so we can debate it. This is what affirmative resolution is all about. If we did not have this affirmative resolution, we would not have been debating that now.

So as far as I am concerned, I want to recommend this very important piece to the Government; this piece about “No Other Life; Gangs Guns and Governance in Trinidad and Tobago”. I recommend it to the Government and particularly the

Minister of National Security. This is a damning indictment against the Government of Trinidad and Tobago particularly, and the Minister of National Security owes this country and the world a duty to debunk this report, to take this report apart and to tell the world that this is not true; your Government is not involved with the criminal elements. You must tell the world that, because this report is saying that you are supporting the gangs in this country and you give them contracts in order to live.

So you have to deny that, Mr. Vice-President. That is why, when the prison population expands, you want to know why it is expanding to this number. It is the Government of this country that is fuelling the criminal behaviour and activities and conduct of people in this country and that is why—

**Sen. Joseph:** Mr. Vice-President, I cannot sit here and allow Sen. Mark to make that type of statement, because that type of statement is not correct and he cannot justify that and support that statement, and I will say something also about the very same report which he is referring to, because the report is the result of articles, et cetera, printed in the media that form part of this report. And, yes, the Government will deal comprehensively with the report. It is right here in the hands of the Minister of National Security.

**Mr. Vice-President:** Senator, could you withdraw the statement that you made?

**Sen. W. Mark:** About what? That is my opinion. I did not make a statement; it is an opinion. I am entitled to that, you know.

**Hon. Senators:** No, no. [*Crosstalk*]

**Sen. W. Mark:** Anyway, you want me to quote it, Sir? I have it here. You want me to quote it? All right, let me quote it for you.

**Mr. Vice-President:** Senator, if you are making a quotation from a document, is one thing, but you made a statement. So withdraw your statement and then you can quote whatever you want.

**Sen. W. Mark:** All right. You want “meh” withdraw it?

**Mr. Vice-President:** Yes.

**Sen. W. Mark:** You want “meh” destroy it or withdraw it?

**Mr. Vice-President:** Withdraw it.

**Sen. W. Mark:** Okay. “Ah coming up to Arima to withdraw it with you.” I withdraw it, Sir.

**Mr. Vice-President:** Thank you.

**Sen. W. Mark:** Let me quote it now for you, “nuh”. I know you are comfortable with quotes.

**Sen. Browne:** Page?

**Sen. W. Mark:** “Wha yuh hurry about?” Do not worry, I am coming. Mr. Vice-President, I have about 10 more minutes?

**Sen. Seetahal SC:** No. Seven and a half.

**Sen. W. Mark:** Mr. Vice-President, let me just quote for you from page 22. The headline is: "Politicians and gangs". Let me quote for Trinidad and Tobago what this reporter said:

"While the country has a parliamentary form of democracy, the ruling party (which is the PNM) is seen as propping up its support by catering to, and sometimes relying on, suspected criminals. This strategy has worked. For instance, on balloting day in 2002, cases of voter intimidation were so numerous in some narrowly divided electoral districts that the UNC leadership felt compelled to offer a free door-to-door shuttle service and robust protection for would-be voters too scared to go to polling stations. These offers were broadcast over the radio."

It goes on:

“But the sessions also cemented a relationship whereby...top gang bosses like Mark Guerra and Kerwin ‘Fresh’ Phillip were able to lead parallel public lives. As highlighted below, the government's behind-the-scenes interactions with gangs have not always seen the light of public disclosure, and these private sessions have prompted suspicions of government complicity with the gangs’ criminal agendas."

That is what is here.

"Saluted as community leaders..."

The last sentence.

“Saluted...”

by the Prime Minister of this country and the PNM:

“as community leaders and...bankrolled by the government...”

[*Crosstalk*] Mr. Vice-President, let me read that again for the hon. Minister. “He getting warm; he getting warm; yuh getting warm because the truth affecting yuh.” Mr. Vice-President, let me read it for you. Mr. Vice-President, I know I have your protection. [*Crosstalk*]



**Sen. Joseph:** Mr. Vice-President, on a point of order. Mr. Vice-President, on a point of order! The Senator is quoting and as a result he has to quote accurately. He left out in brackets "(it is alleged)". Why does he not read that too? Come on, man, Senator! Come on!

**Mr. Vice-President:** Senator, I would hope that you are reading correctly, because if you want to quote, you should quote everything.

**Sen. W. Mark:** I agree with you, Sir.

**Mr. Vice-President:** So, please—

**Sen. W. Mark:** Let me read it again. I take your point and I take the hon. Minister's point. Let me just read it; let me read it. You are correct; you are correct. [*Interruption*] No, you are correct, Joe. What is your problem? You were my teacher. You are correcting me; you are correcting me. You are correcting me, man. Mr. Vice-President, he is my teacher. [*Crosstalk*]

**Sen. Gronlund-Nunez:** Mr. Vice-President, on a point of order. Standing Order 35(6) clearly states that the hon. Member should refer to another by his office.

**Sen. W. Mark:** The Minister of National Security, Sir, my honourable friend and my former teacher, who is a failure. Hear what it says:

"Saluted as community leaders and (it is alleged—see below) bankrolled by the government, these men were also subject to continuous investigation by the country's police..."

Right. Okay? So I quoted it properly now? Mr. Vice-President, did I quote it properly, Sir? Joe, did I quote it properly?

**Sen. Gronlund-Nunez:** Mr. Vice-President, once again, 35(6). I do not know if the hon. Member is unable to read the Standing Orders but it is quite clear that he should refer, once again, to the colleague as his office so declares.

**Mr. Vice-President:** Hon. Senator, I think you are well experienced in the Senate to know that Members should be referred to by their titles. So please refrain from—

**Sen. W. Mark:** I refer to the hon. Minister of National Security, Sir and the Minister in the Ministry of Planning and Development?

**Sen. Dr. Dick-Forde:** Planning, Housing and the Environment.

**Sen. W. Mark:** Mr. Vice-President, as I said, we have a duty to expose this Government. This Government is involved in activities that are not in the interest of the people and we must expose them and tell the world what this Government is doing. So sometimes I am a bit harsh, not because I want to be, but I am dealing with facts. No, I should say a fact sheet.

So we have no problem on this side in really trying to help this beleaguered Minister who is in trouble. We want to help him and we want to give him whatever guidance we can. Right? We want to help him, but you cannot help people who do not want help. But what we are saying is that these measures—he is attempting to start an exercise which we believe should become more comprehensive and more sweeping. That is all we are offering him. We offer him some good advice and we say that in the future, let us work together to make this place a better place. Let us work together so that we can make the prisons more habitable and more acceptable to those persons who inhabit those surroundings.

We call on the hon. Minister to really give this thing some deep and some real serious thought, so that when he comes with new measures it would be more sweeping and more all-embracing and more comprehensive.

I thank you very much, Mr. Vice-President, for allowing me to say these few words this evening.

**Sen. Dana Seetahal SC:** Thank you very much, Mr. Vice-President, and after that contribution by Sen. Mark, I feel almost as if I am wilting and I do not know if I would be able to measure up even fractionally to all of the things that he addressed in that spirited contribution. But perhaps I will just stick to the rules in the course of my contribution and to point out that I do agree that the amendments to the rules proposed here really amount to a piecemeal way of dealing with the changes that we have talked about for the last seven years on the Prison Rules. But I am of the view that something is better than nothing. So even though there are over about 300 prison rules currently and there are substantial changes necessary to keep them in tune with the modern world, these two are perhaps significant enough to not wait until the rest of the rules.

It was in 2004 that an announcement was made in this Senate that the prison rules would soon be with us and the then Minister in the Ministry of National Security, I believe he was then—or shortly after—Fitzgerald Hinds, went on different public fora and made that same announcement, and so I looked forward with bated breath to the propagation of those new rules which have still not

arrived. I say this because I remind the Minister at the same time and the same breath of the promise to bring the legislation in relation to SAUTT. So if I am to take one with the other, I am hoping that that legislation is coming soon and that the real full prison rules would be with us before the end of the year.

Now, two rules that we have before us that are to be amended is Rule 178 which deals with the power to search prison officers, not search prisoners—power to search prison officers—and the other rule is really prohibited items; to expand that definition. Now, Rule 178 is the rule dealing with power to search officers or servants of the prisons, which means prison officers or minor workers there.

It was amended previously, as it now reads:

"to provide that every officer or servant shall submit himself to be searched in the prison if called upon to do so by the Commissioner, Deputy Commissioner or Prison Superintendent."

Prior to that, the Commissioner was called the Superintendent. So in the old rules, you had a Superintendent of Prisons. We did not have a Commissioner. Then with, not necessarily, independence but looking towards that, we had a commissioner. So those words were changed throughout the rules.

Now, what it is proposed—the new proposal—is that a prison supervisor or other any officer of a higher rank will be able to search prison officers, because if you are talking about one deputy commissioner, I believe there is; a commissioner, of course, and I think it is about two or three assistant commissioners, then there are these few people who would have to converge on the different prisons to search prison officers if it is alleged that they are bringing in contraband, which would be cigarettes—the most minor of the contraband, of course—drugs, cellphones, money.

Those are the basic items, and it has been alleged, firearms on occasion. I do not know that that is so. That has not been, to my satisfaction, proven. In other words, I have had evidence of the others; evidence such as people calling me from the prison directly and you tell them, "Well, I am not taking that call. I am not dealing with it"; evidence, such as going to the prison and you know a prisoner had just smoked a cigarette, and you know about drugs in the prisons. And, of course, I have had to deal with people directly who, in the evidence that they give—prisoners in the evidence—have talked about the exchange of cellphones within the prison.

*Procedural Motion*

*Tuesday, January 05, 2010*

**6.20 p.m.**

**Mr. Vice-President:** Procedural Motion.

**PROCEDURAL MOTION**

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

*Agreed to.*

**PRISON (AMDT.) RULES**

**Sen. D. Seetahal SC:** Thank you very much, Mr. Vice-President. The point I was making is that I have had evidence that persons have been using and transporting cellphones within the prison. I am clear that these two rules need amendment and it is almost immediate implementation.

Insofar as the second rule that deals with prohibited items, I am of the view that the generic term in any other Act would cover all those terms. We are talking about cellphones, components and so on. That is my view. However, my view being as it is, I do not know what problems exist currently that require the amendment in the wider terms as the Minister seeks. I do not object to that.

I have to say—this is anecdotal reference—that in the course of interaction with prisoners, it first came to me what a SIM card was. I actually never knew that my phone had a SIM card—this was several years ago—until a prisoner whom I was interviewing, in giving a statement talked about a SIM card being sent to him through another prisoner to make phone calls to facilitate an illegal transaction. That is when I realized that this person could not read or write but he knew about a SIM card. The proliferation of those items in the prison is such that you have an underground network that exists in the prison. Practically everyone, unless he is out of the loop, has a cellphone.

Unless you are out in the cold and nobody is talking to you, once you are in there, your family will pay for that cellphone to be provided. It sounds bad but they want to give you comfort. Instead of bringing food or clothes, they might do that too. They provide for a cellphone. Therefore, they unwittingly—they want communication, of course—as the Minister said, facilitate criminal activity. At this point it is not known how many murders for example, have been effected through communication arising out of the prison.

As for the suggestion by Sen. Mark that you could with technology, blanket the whole prison, I think the problem is that there are prison officers who work there and other persons who go to the prison and those persons would be affected.

You might create a security situation because they would not be able to contact out of the prison. That is not an answer to the problem in my respectful view. You need to have that changed.

As for the necessity of searching prison officers, I do not know if the Minister mentioned it or I cannot recall in any substantial detail. In recent times it has been well publicized that prison officers have been found with contraband items and you need to search them. Of course, we know that prisoners have had items hidden in certain parts of them that we would not mention here. There is always that need too. It is an accepted fact.

Whilst I am on that, I want to point out for the benefit of the Minister and the Government, certain rules that I think need to be looked at. The Minister talked about the whole plan to revise these rules. I draw his attention to rule 235. It might also have some significance to the Minister of Health who is not here at present. Rule 235(1) deals with a prisoner not being given or allowed intoxicating liquor except in pursuance of the order of a medical officer.

Rule 235(2) says:

No prisoner shall be allowed to smoke or have in his possession any tobacco except in accordance with such orders as may be given to the Superintendent.

Probably that means the Commissioner of Prisons. At that time it was given by the commissioner. That was amended to read by the commissioner.

Now, we have passed the Tobacco Bill and the question of smoking in enclosed premises would arise. Everyone who is associated with prisoners or has dealing with the criminal justice system knows that apart from illegal drugs cigarette is king in prison. You could easily sell a pack of cigarettes for \$100 or more. That is an item of barter so it is very important to the life of prisoners. A colleague of mine who is an attorney for prisoners in Brazil told me that they were given options to stay in one very nice prison, where you have the latest and televisions and another prison where they could smoke. In the updated one they cannot smoke. You know what they chose? They chose the prison where they could smoke.

The fact is that when you have many people in that kind of confinement, mostly male, stress relief is in the form of cigarettes. I do not know how you will deal with it. I do not know if the Minister of Health has any plans to do that. I suggest that when you reform or change these rules that you bear that in mind because you do not want to have a prison revolt because prisoners cannot smoke.

It is as serious as that. With the stress they would start feeling that they are deprived of one of the last things that they can have. That is something to look forward to. You might want to be heavy handed and talk about doing it for people's health, but when you are dealing with people who already have a sentence of life or 20 or 25 years and you are going to deprive them of their one fun or relaxation.

I never understood this but perhaps, Mr. Minister, you might want to have your technocrats, or as the Attorney General likes to say, contemplate the prison dress. Do you know that the prison dress of every convicted prisoner shall be for males, a shirt, a pair of shorts, a hat, a handkerchief and a night shirt. That means they have to wear shorts. What is a night shirt? For females, a dress and a cap. I have seen female prisoners, my clients and they have had no cap. It is in breach of this. A combination of underclothes, a handkerchief and a nightgown. No mention of shoes. Many of them wear rubber slippers. There is one rule which talks about written authority of the medical officer to get shoes. These are barefooted prisoners according to the rules that you have.

Do you know what the bedding is? Male prisoners shall be supplied with a hammock and a blanket. Female prisoners shall be supplied with bed boards and a blanket. That is the kind of rules that we have. There is no hammock. I saw one, to be fair, in the Maximum Security Prison, where a prisoner in the cell put a hammock between two parts of the cell just to have one, but he also had his little piece of sponge thing on the ground where he slept. If one wants to talk about breaches in the prison rules, somebody is breaching these rules. Because the rules are outdated and illogical you have daily breaches of these rules.

There is one rule that is observed more in the breach. This is rule 245. You would have heard Sen. Mark make statements of eight persons in a cell. The prison rule at 245 provides where accommodation is available every prisoner shall occupy a cell by himself by night. There has been much publicity as to the accommodation available in the Maximum Security Prison. Now it is two-thirds filled so accommodation is available. There should be one cell provided until it becomes too filled.

This amazing rule continues:

Where for medical or other special reasons it is necessary for prisoners to be associated...

I do not know that you could have medical reasons to be associated.

no fewer than three prisoners may be placed in one cell.

The prison rules say that you should have at least three. If you are moving from one you have to jump to three. I do not know if they do not want people to double up. I do not know if the suggestion is that they become too close. I do not know the reason. It is a strange rule to have. The prisons interpreted that to mean that you must have odd number of prisoners so that they cannot form close associations. Probably, you would not have eight; you would have three, five, seven and in the remand up to nine. Hopefully the remand is not as bad. I have heard that there have been changes. It used to be like the black hole of Calcutta, not that I ever saw the black hole but what I imagine it would look like. It was terrible in the dark with very little light and these people were putting out their hands and calling your name. It was horrible. I hope that some of these things including that rule would be addressed.

There is a rule which provides for visits. Unless you are a death row prisoner, you are only entitled to a visit once every two months. That is cruel, I think. That is in Rule 262 which talks about every prisoner shall be allowed to write and receive a letter and to receive a visit at intervals of not more than two months. If you are in death row however, death row prisoners have better opportunities. They are allowed to get their teeth cleaned and they have better medical attention. There is one cell per person. They are not called upon to work and they are allowed to have visits as they desire from their relatives, friends and legal advisors. They are under the constant care of a prison officer. They do not get as much airing.

These are anomalies in the prison rules that need to be cleared. The prison has created within the system outside these rules a kind of a graduation process. They are there, when they learn enough or do what they are required to do, they would move them to another school room setting and three months before they are discharged they have an exit kind of training. That is what I know happens in the prison. These things are not contained in the rules. It is to the credit of the Commissioner of Prisons and his band of senior officers that this is happening outside of the rules.

I have a problem with the rules dealing with legal visits and censoring of letters. Through the Minister, some of these rules breach the legal professional privilege. One rule, 246(2):

The legal advisor of a prisoner may with the permission of the Commissioner see such prisoner with reference to any other legal business in the sight and hearing of a prison officer.

If it is in relation to the matter in which you represent him, it would be in the sight but not hearing. A prisoner officer must see you meet with your client but not necessarily hear you, although the place is so small that they invariably hear you. You have to whisper and sometimes you are not sure if you are getting the right instructions. They whisper and you want to see what your client is signing. If you do not know your rules, then you would give it up and that would be a breach of privilege. Anything said there, next thing you know somebody is going to use it as evidence in court. There are other legal matters. If it is not he who is the party they have to hear what is happening. That is clearly a breach of the privacy and confidentiality of your client, but not if he is directly your client but he is involved as a witness.

There is another provision at 267. It states:

Every letter to or from a prisoner shall be read by the Commissioner or by a responsible officer deputed by him for the purpose.

When some people say why do you not write your lawyer, that is why they do not write their lawyer. Prohibited items like letters are secreted out of the prison.

### **6.35 p.m.**

If someone comes to visit, they give it to another person and they carry it outside. The censoring of letters is something that needs to be seriously revised. Every letter that I have gotten has been signed by an officer of the prison, which means that he knows all the contents; so which client will include all the information in that letter? These are serious rules that one would have thought would have come up for change. Six years have passed and we are still waiting.

Another problem is earnings. Prisoners right now work outside the prison, if they are trusted. They will paint some building. I saw some painting the Bishop Anstey High School. You may have seen the walls painted finally after a lot of years. I have seen some of them clean outside the Police Second Division at Long Circular Road and different places.

What do they get paid? Some may say they should not get paid, but let us look at it. For the first 13 weeks, no remuneration; for the 14th to the 52<sup>nd</sup> 50 cents per week; for the 53rd to the 130th week, 70 cents; and the grand maximum is 90 cents. It may be a lot money to a poor man like you, Mr. Attorney General, [*Ha ha*] but, in advanced countries or states, they have industries within the prison—I do not mean that they give them the full thing; they give them a slice of it—and prisoners buy their way. They also give a portion of what they earn to compensate the victims.



For instance, in Minnesota, I visited a medium security prison where they make furniture. To control them, so that they do not wield the instruments on other people, every hour they come to a spot where their number is, so you know that they are accounted for. If they were not, they lock down the prison right away. They had their own little TV and other things and they sold beds and desks. That is the kind of thing we should be looking at, rather than this free labour and there is no proper accounting. You want to help out, but it should be in a more structured way.

I draw attention to Schedule 2 of these Rules, which deals with the uniform of the matron and officers. There are references to aprons, caps and straw hats with a blue band. Do you realize that if they do not have straw hats with a blue band, they are breaching the rules? That is the requirement for the matron and female officers. None of them wear this; they were brown. They have brown shoes. They do not have the white dresses and they do not have six caps. So your duty, Mr. Minister, is to provide six caps, three white dresses, two pairs of white shoes and a straw hat with a band to every female officer; not to mention a whistle and a chain. There is a lot of nonsense in this.

If I were a prison officer and I wanted to make some fuss, I could sue and say you have not given me my entitlement. I want my blue hat, my this and that, my whistle and chain. I do not know what I would do with a whistle and chain, but it is there. I want my pair of puttees. I am not sure what they are. Mr. Vice-President, you may be more equipped than anyone here to tell me.

**Sen. Joseph:** What you wrap around boots.

**Sen. D. Seetahal SC:** Finally, I thought this was laughable. Mr. Vice-President, are you aware that there are four diets in prison? If you were a prisoner, you would be entitlement to six ounces of bread, maximum—that is about two slices; if you are a sea prisoner, you are not getting any milk, but the other prisoners get two ounces. Do you know what two ounces of milk is? You would get one ounce cocoa powder and two ounces of sugar. That is your breakfast unless you are on a special diet. Everybody tries to be on a special diet, but few are admitted.

You get six ounces of rice, three ounces of dried peas—not every day of course—half an ounce of salt pork; no vegetables unless you are a vegetarian and when you are a vegetarian, you do not get many of the other things—this is one month—no fresh fish at all; no provision. In other words, it is a carbohydrate-loaded diet and it is very little. The last meal you have is at 4.30 p.m., so if you

*Prison (Amdt.) Rules*  
[SEN. SEETAHAL SC]

*Tuesday, January 05, 2010*

want to eat after that, "yuh dogs dead". That is an old-fashioned, out-of-date, retrograde, looking-for-people-to-revolt set of rules. It is not excusable that the Attorney General has not assisted the Minister of National Security in getting this legislation going for the last six years. The onus is on the legal adviser to the Government to do these things. You have to get it going. It is 2010 and there are only ten more years for First World—

**Sen. Jeremie SC:** I am sure that the Minister was about to tell you that the Rules are 99 per cent complete. They will come, but they do not elevate prisoners to the status of persons on vacation at the Hyatt Regency Hotel.

**Sen. D. Seetahal SC:** I am shocked at those words from the Minister. I am talking about the guardian of human rights in this country because he is the guardian of the Constitution. I am merely asking for more than half an ounce of salt meat.

**Sen. Jeremie SC:** That is too much.

**Sen. D. Seetahal SC:** You hear the words, Mr. Vice-President. I am sure the hon. Attorney General has to be joking. We have to have legislation that is human. You do not want just cold lentil and rice every day.

The only good thing about the diet in prison is that in Maximum Security Prison, the prisoners actually bake their own bread. I have eaten that bread and it is very good. They gave it to me. [*Interruption*] Because they like me; unlike you.

That is my contribution to this Motion.

**Sen. Lyndira Oudit:** Thank you very much, Mr. Vice-President. On December 12 this year, the hon. Minister in the Ministry of National Security, the hon. Donna Cox, made some telling statements in the House of Representatives as she proposed amendments to this Motion.

When I read that and the report in the newspapers, it was an admission of defeat; telling the country that they have failed. It is telling and I would like to refer to several points that the Minister made in her contribution.

The Minister started off—and I quote from the *Trinidad Guardian*:

“Gang leaders continue to run their organizations from within the prison walls using cellphones to manage empires, execute rivals, control money laundering and orchestrate crimes from kidnapping to witness intimidation.”

Out of that statement, I have a few questions. If this is the admission of the Ministry of National Security—Sen. Mark asked the question: How is this legislation going to address the problems?—if the Minister has indicated that gang leaders are managing their empires—an empire is not something that comes about overnight; it is built brick by brick. So how has the Ministry been able to hinder or to manage in any way the building of such empires and to reach to the point, in January 2010, of saying that there is an empire? What did the Ministry of National Security do before it became an empire?

The Minister admitted that kidnapping was being done from within the prison walls using the cellphones. There is no statistical data presented to show the link between cellphone use from within the prison walls to kidnapping. If those links are in the public domain as admitted by the Minister, then what has been their apprehension or stoppage rate? How many potential kidnappings were averted as a result of some action on the part of prison officers to stop the kidnapping from taking place, and, if you have that inside information, how many kidnappings in the last years have been solved? How has that information helped the Ministry of National Security to deal with a matter that is so extremely crucial to the hearts and minds of the people of this country? From what I read, we have over 900 missing files on persons. Was that a cellphone call that said to destroy the files?

The Minister also admitted that cellphones are being used to orchestrate witness intimidation. In this very Senate, I have spoken about the problems of the Witness Protection Programme and here we have a Minister admitting that it has been compromised. How can the Minister indicate that empires run from within the prison walls have the power to intimidate witnesses? Where is the integrity of our Witness Protection Programme? Those are questions that the Minister of National Security has to answer before the country. The Minister cannot come and say that they know all of this and they are now trying to tell us that what is contraband is now illegal.

The Minister went on to state that the amendments to the Motion would allow for more searches at the prison and the outlawing of contraband. In which part of the world is contraband legal? By the very name, contraband is already illegal, so how could the Minister in this day and age admit that the purpose of the amendments is to outlaw contraband? It tells the country that we really have a lot of inefficiency and I do not only mean of systems and infrastructure, but of personnel.

**6.50 p.m.**

According to what the Minister has indicated, she says here and I quote—and also with reference to what the Minister himself today said:

‘...prison officers have been caught while reporting for duty, attempting to smuggle in cellphones and cellphone chargers and other items of contraband.’

Again, this does not happen overnight, how many—Mr. Vice-President, to the hon. Minister of National Security—rogue officers have been dismissed or suspended? How many of them are under investigation? If you have identified what your rogue officers are doing in such detail that you can tell the country what they are doing, how they are hiding it; what they are bringing and what they are not bringing, you expect the country to support these rules, but you have yet to explain what you have done for all of these years.

Mr. Vice-President, I would like to refer to a conference for prison reform held at the Hilton Hotel, April 15—21, 2006 and the feature address was given by the former Minister of State in the Ministry of National Security, Mr. Fitzgerald Hinds, and in it—and remember please this is in 2006, and I would like to refer—our present Minister of National Security indicated that with this amendment we are going to have an increase of 37 officers which brings to the prison service a total of 51 officers who would then be authorized to conduct such searches.

I would like to refer to the former Minister Fitzgerald Hinds where he had said in 2006:

“Cabinet approved the creation of an additional two thousand and seventy-three (2,073) posts throughout the ranks of the Prison Service including,

Deputy Commissioners

Assistant Commissioners...”

but at that time we went down low in the rank and fourth-to-last in the ranking of almost 12 post:

“(24) Prisons Supervisors

(277) Prisons Officers II

(1,666) Prisons Officers I...

(31) Welfare Officers I...”

and so the list went on.

I ask the hon. Minister today, how many of these appointments have taken place, so now you are boasting that you are going to, by this piece of legislation, increase the number of authored personnel to 37. But since 2006 your Cabinet approved 2,073 posts, how many of those have been appointed? It goes even further, I have a letter—Minister of National Security dated February 21, 2006; addressed to Mr. Russell Martineau SC, President of the Law Association and it is signed Minister Martin Joseph, and he says here:

“I refer to your letter dated November 10, 2005”—

What was accompanying that letter was a list of proposals of the Council of the Law Association and the actions being taken correspondingly by the Ministry of National Security.

Proposal No. 2 says:

“Legislation should enact laws to provide for electronic monitoring of persons convicted of certain crimes”—on the right hand column—“action being taken by the Ministry of National Security not currently being pursued.”

It goes on under prisons, “The first proposal by the Law Association”—the implementation of the recommendation in the report of prison reform for the immediate improvement of prison conditions—it says here:

“The action being taken is that a programme's unit has been established within the prison service which functions as the central coordinating unit and it is currently overseen by a senior superintendent. The ministry is currently awaiting Cabinet approvals for the expansion of staffing structures.”

And what was most telling in that particular response by the Minister of National Security, and which is really my next point, one of the proposals of the Law Association then and continues today is that the Inspector of Prisons must make a report to Parliament on matters relating to prison conditions so that the public may be aware of them.

Mr. Vice-President, I would like to read for you what the response was of the Minister of National Security to that proposal. It says here:

“The onus is therefore on the Permanent Secretary, should it be deemed necessary, to relay such information to the Parliament and by extension, members of the public. The practice at present is to use that information to guide the development of work programmes and other activities geared at improving the outlined conditions.”

So the role and responsibilities of the Inspector of Prisons has been handed over to a Permanent Secretary who now, should it be deemed necessary, may pass it through. How often has that inspector of prison report been brought to the Parliament? Has that ever been brought to the Parliament?

**Sen. Seetahal SC:** Never.

**Sen. L. Oudit:** Never, so when you come in 2010 to say that you are going to see about making an item that is illegal—a contraband item—which is in fact ironical, but here you are saying that you are going to deal with all the issues and you are going to tackle crime by making cellphones now illegal, I wish you luck. There are, in fact, several suggestions, and being that we would like to help you Minister—

**Sen. Browne:** Thank you.

**Sen. L. Oudit:** We would really like to help you. You see in a situation like this, when the criminals attack—

**Sen. Browne:** They attack everyone.

**Sen. L. Oudit:**—they attack more than others—

**Sen. Browne:** Everyone.

**Sen. L. Oudit:**—and some people by whatever position or favour are protected, so I have no such protection.

**Sen. Browne:** Me neither.

**Sen. L. Oudit:** My family and the general public does not have the type of inherent protection against the criminal minds, [*Interruption*] so I represent the majority of the population, and when I speak and I say that I feel there is a sense of despair, a loss of hope that these rules are in any way going to bring about any meaningful change in tackling crime, again, I wish you luck. I do not believe in luck though, but I wish you luck, because that is what you are grasping at, luck.

It cannot be that this is any tangible thing to get the results that we desire, the people, but I would like to offer you—Sen. Mark spoke about the technology and I believe that we have to fight fire with fire. So technology has created within the prison walls a means of managing their empires, so in order for us to fight that piece of fire we have to use similar fire. Therefore, it is my proposal again, our fire must be technology, but it cannot be of a lower standard than what is being used by the kingpins and the drug lords; it has to be of a higher standard.

There are two main areas that the world has—developed countries in particular—looked at dealing with this issue of cellphones in prisons, because this is not a new problem. Right now there is a whole idea in some parts of the world, what they call the “cellphone jamming”. Unfortunately, in February of 2009 the Washington District Department of Corrections (DCDOC) determined through the Federal Communications Commission in the US—according to section 333 of the Communications Act which identifies that it is forbidden for any wilful or malicious interference with licensed radio signals. So when I saw the amendment that referred to cellphones, electronic items and components that facilitate the transmission and reception of data, I would urge both the Attorney General and the Minister of National Security to look at the ruling of the Federal Communications Commission which simply prohibits the manufacture or importation or sale of devices that deliberately jam or disrupt wireless communication as against the Constitution.

We want to look at that, however there is one other area that seems to have a little more potential with the use, and that is simply dealing with the technology which is available, what you call "sniffing out", and Sen. Mark alluded to it. It is sniffing out and the technology exists, where, instead of making cellphones inoperable as the cellphone jamming would do, there are companies that basically sniff out where exactly your cellphones are located and the guards therefore have an easier job of determining where they are.

So we do not need to go back to the drawing board on every issue. We do not need to simply indicate that we have to start from scratch. There is help out there, but we have to be very cautious that what we do does not run afoul, and certainly in this case—again, I am not convinced that these rules are in any way going to deal with the matter.

I urge the Minister of National Security to get real. Get real, because this problem here is big and it is enormous in fact. It is not just big, it is overwhelming and if you have to deal with big business from behind prison walls, I suggest we get our act together and big business is dealt with at this level so that we can effectively deal with this problem.

That is my contribution today, Sir. I thank you.

**Sen. Prof. Ramesh Deosaran:** It is true that the amendments are minimal in relation to what is really required, but I think given the circumstances and the pilfering and subterfuge taking place in the prisons and with all of the serious consequences—for my part I want to welcome the initiative taken by the Minister.

*Prison (Amdt.) Rules*  
[SEN. PROF. DEOSARAN]

*Tuesday, January 05, 2010*

It is a matter of some urgency, and let me repeat, because of the serious implications for committing crimes both inside and outside, but more than this, having the prison officers as possible accomplices in this whole scenario. In fact, sometimes I wonder that the Minister with such a heavy load and faced by public pressure and in charge of several important institutions, each one having a load of problems which have backed up over the years, and then also being, if I might say so, secretary of his political party—the PNM—some people would say he has more guts than a calabash in dealing with it.

So to help him in his perseverance, I stand here to give him and the Government ministry my support in seeing this exercise through. Except that I wish to make some comments in response to some policy statements he has referred to and also to some of the comments made by my Senatorial colleague, Sen. Mark. In so doing, I also wish to support the points raised by Sen. Seetahal SC with respect to examining all of the rules as amended in 1961 and going back to 1838. But for my part I would not go into the specific rules, all the rules, over 200 of them.

**7.05 p.m.**

I think that is a matter for further debate, because each one would attract widespread disagreement. I would like to suggest, as my first point to the distinguished Minister of National Security, that when he does have the review of all the rules in hand, that he does not rush with it to the Parliament—of course, after going through his legislative committee through Cabinet—but that it be published for public comment and reaction. This is so for two reasons.

Overall, I find that the system of administration of justice has left the population too far behind and there is a dissonance and disconnect between what happens in the police, what is about to happen in the prisons and even what is about to happen in the courts, without the public having a say. After all, these institutions are not made for the professionals involved in the police or the prisons or the courts. In a democratic society, these institutions are supposed to serve the public, especially in terms of matters of rehabilitation, punishment, deterrence and sentencing.

I am not seeing the public's presence in a number of these public policies, especially in the issue of sentencing and now you come to rehabilitation, where people feel that you are soft pedalling on the criminals and you are using too tender a glove, when the public right across the country are living in desperation and fear. I, therefore, suggest with respect, that the Government move carefully



and create a balance with restorative justice and also let the role of punishment, justly applied, so that the potential offenders would have a fear of the law as well, also a fear of the Lord, if that could be done, and also a fear of getting into prison.

When we speak about conditions in the prison—and I listened to the Attorney General's response—it has to have a balance. A prison is not a place that is a tourist resort. A prison should not be a place for better comfort than what you had outside. A prison should not be a place where you look forward to returning. We already have a 60 per cent rate of recidivism in this country, where those who are sentenced to prison once, they come back two, three, four times; so something is wrong with the prison and not necessarily as a solution leading to rehabilitation and restorative justice.

I would want to suggest in this transformation programme of restorative justice that a second look be taken at it. Let the prison, following the sentences imposed by the courts, be carried out in a just way; not only for the prisoners' benefit, but to satisfy the population that, yes, there is a punishment for certain crimes especially. We, therefore, have a lot of work to do. Disaggregate the punishment, categorize your prisoners into different groups and see where the punishment is just and should be applied with the rigour that is intended by the court and with the expectation of a population.

You cannot just say the population is hungry for punishment and, therefore, a higher realm of justice, something ephemeral, ethereal, romantic, nice sounding, must be applied. I think the public is very disappointed with the way criminals are treated in the courts, and increasingly so, in the prisons.

So when, therefore, about two years ago, a Minister in the Ministry of National Security took a bus load of prisoners down Chaguaramas for a visit to the sea, as part of restorative justice, I stood back and wondered, "What does that tell the national population?" Especially when they are witnessing an increase and escalation in criminal activity, especially those committed by those who already have been in prison.

Punishment has unfortunately taken on a kind of connotation: brutality, assaulting, but punishment is a component of justice where it is deserved; otherwise how would people fear the law? The law has to do with justice and part of justice has to do with punishment. Let us not get carried away by seeing restorative justice as the major way out. There will be regrets along the way.

We still have to maintain a balance such that prisoners must be fearful of returning to prison, because it is not a happy place. You have to have a modicum

*Prison (Amdt.) Rules*  
[SEN. PROF. DEOSARAN]

*Tuesday, January 05, 2010*

of physical conditions, because this modicum of physical conditions in terms of air, water, food and space must be supplied in order to have restorative justice succeed where it is necessary. So fear is an important component of deterrence.

You have to fear the courts; you have to fear the police; you have to fear the law. Today I could tell you with some disappointment that it seems as if criminals have no regard, far less fear, for the police, for the court or even for prison. But the people who are in fear and who do not deserve to be in fear, is our lawful population. So it seems as if we have a reversal of conditions in this country, which I implore with respect the Minister of National Security and the Government, to take a severe look at, because that is what the population expects today; otherwise you will have a breakdown as you are having in law and order.

You will have a further breakdown in lawfulness. Too many lawful persons in this country remain suffering, sometimes silently, but they expect the Government to act on their behalf in the manner of which I am speaking. This is one of the major reasons I was tempted to take part in this debate, because of what I have heard in the debate so far.

Sen. Mark did make some points, to which I feel obliged to respond. I do not think I have ever seen the Minister of Local Government so exasperated as when Sen. Mark was speaking. It was the first time I ever saw her so—I think exasperated is the word. [*Laughter*] He was saying things that seemed to be really out of line with respect to the Minister of National Security. She rose to the defence, as a loyal Government Minister.

For myself, coming after Sen. Mark in the speaking line up, is no easy task because you are left with almost nothing else to say. So I will pick out those areas that I find require some comment.

On this restorative justice track, you have got to have certain structural conditions and policies parallel to the philosophy of talking to them, getting them in touch with the victim, having the priest come and tell them how it was bad to commit crime, how their future is destroyed. The preaching has its limits. Be not fooled, there are some persons, since Adam and Eve, who will always want to commit evil against those who are lawful. You have to know who is who in prison. Save those who are worthy of being saved and who are willing, visibly and convincingly, of wishing to be saved from the path of evil and criminality. Let me say that some people will continue to carry evil in their hearts. Jesus had 12 disciples, one of them broke down.

History has repeated itself, because you cannot have good—it is impossible to have good, without having evil. So we do not need to get into all that philosophy to underline the point that there are some people who deserve to be punished, there are some people who deserve to become fearful of the law, fearful of prison and fearful of the police; because we made the mistake once.

When community policing came about, about 30 years ago, and it was blown up as something that would save everything, and law enforcement was condemned and almost pushed aside in order to have community policing in the centre, in partnership with the community, being friendly with the community, following the community proposals for police work, partnership, I was one of the persons who in this country rose, here and abroad, and told them that you could not have community policing alone in those terms in a police service; you need law enforcement as well. In other words, you need to look at the situation in which the offence is committed, or is about to be committed and apply. If law enforcement is required, you arrest, you hold down, you even squeeze if it is necessary, if you are getting resistance that is undue, but the police must be allowed to exercise law enforcement.

If you try to stop that exercise in which they have the required powers, you would end up unwittingly demoralizing your police service. Tell them, yes, you need community policing in the terms in which I have briefly alluded, but you also need to maintain a high degree of law enforcement in the country. Just as you need in the prison restorative justice, you need those that are repeat criminals and who are visibly intent on pursuing a life of criminality by being recidivists, a different kind of treatment for them.

We would have come a long way in prison reform if we had looked at the reports which went before in prison for penal reform. One outstanding one was done by Rev. Clive Abdullah, a commission of enquiry, with almost 30 or 40 recommendations alluding to some of the very things that we are speaking about.

If I might say so as well, the Centre for Criminology and Criminal Justice at the University of the West Indies also produced a report, a database with about 25 recommendations. We were pursuing the exercise in such a way so as to build further at the policy level, in terms of balancing restorative justice with elements of deterrence. But for reasons which I would not get into, that exercise was unfairly and unduly aborted.

I was, indeed, Mr. Vice-President, keenly attracted to the statistics that the distinguished Minister conveyed to us this evening, in terms of how many cellphones were seized over a certain period. But more than that, I remember the

*Prison (Amdt.) Rules*  
[SEN. PROF. DEOSARAN]

*Tuesday, January 05, 2010*

Minister in the Ministry of National Security, Mr. Hinds, brought a briefcase where he showed a range of weapons and other illicit items to the Parliament. So two questions arise: Who is responsible and if those responsible are known fairly, what has happened to them so as to stem this influx of illicit items?

It is not only passing the amendment before us, in terms of the range of items being increased, you need a stiffer managerial approach with a similar sense of urgency, which I unfortunately did not hear from the Minister.

So what we are seeing as we move along this track is that you must have parallel conditions; you cannot do one without the other. What you need is to enforce the rules, as they already are, in this list of rules which is Chap. 11, No. 7 in the Revised Ordinances of 1950.

When I look through these rules, you have rules requiring punishment for delinquent officers who are accomplices, who helped perpetrate the crime and offences that the Minister just spoke about. But I have to ask myself what we should also hear. I am sure you would agree with me; it is in the interest of good management; it is in the interest of institutional building, and the prison is an institution.

So what you need to tell us, if not now, sometime later, is how many prison officers were charged, how many were alleged accomplices and how many were convicted. Because when I read the existing regulations, there are powers of discipline to exercise, a number of things; considering salaries, even dismissals after due process. But I hope you do not do like you do with the police service, that when there are serious transgressions you merely transfer one from here to over there. This is not a free bus ride. This has to be something to convince the public. As I repeat once again: You are leaving the public out of all these exercises. You feel there is no public out there; the public is watching with anxiety, with fear, hoping for some consolation, some measure of comfort. When you transfer one officer from a place where there has been some contaminated activity to somewhere else, maybe you are only transferring the problem. If you want to look at it that way.

Here again I say: Bear in mind you have a public looking at us, especially ministers of government and the Cabinet. So this is not any political criticism. This is an issue of governance and a means of trying to draw attention so that the Minister and his Cabinet may spend some time along these lines, because they are necessary steps to be taken.

I ask the question: Where is the Inspector of Prisons? Anytime the "inspector" is seen or mentioned, there should be some performance indicators, some particular report from him, from that office, to help the Government, to help the Minister, so that when he comes here what I am speaking about and what I am asking for, the kind of parallel statistics I am asking for, would be in such a report.

Let me say this with respect again: I get the feeling that ministers of government, all governments, NAR, UNC, PNM, feel obliged to protect their agencies. To me they feel unduly obliged to protect officers in the public service. You see me, if I were a minister, I would do as the Prime Minister said, "Every pot sits on its own bottom", when it comes to public service and performance in the public interest, because in the end it will come to your doorstep. That is where a lot of this has reached now, and you are still not learning your lesson. Say who is not doing their job well, with the evidence before you, because that would invoke a measure of accountability and heightened performance.

When you keep them in the shadows protected by some feigned measure of loyalty, you are becoming an implicit accomplice. So when you lose your credibility in that way, because the public would know what you seem not to know; where the incompetence is. As Sen. Seetahal SC and Sen. Mark mentioned, in different ways of course, the public knows what is happening in the prisons.

**7.25 p.m.**

So you count upon the Inspector of Prisons with the regulations which give him certain powers and obviously have not been used and in my view, looking at it, not as politics but as organization effectiveness, you keep the Ministers or this particular Minister in an embarrassing position.

He has no handle on which to work forward, that is why I say when you have these rules prepared, publish them for public comment because it concerns the public. Do you know there are almost 4,000 prisoners? In the study we did at the University of the West Indies, they have left behind 8,000 unskilled spouses and children of very young age. So what would happen to the 8,000 which produces another issue? You may want to consider in restorative justice because in this instance, to me, restorative justice where it should apply should not consider only the actual prisoner, but what is left behind in distress and in ways unkempt especially since the spouse in a majority of cases is an unskilled mother.

**Sen. Enill:** Thank you, Senator, for giving way. I have heard this comment before and I hear you make it again which is to bring a measure of accountability within the system by exposing individuals who do not perform and you were giving that advice to Ministers.

Unfortunately, the only way you are going to get anything done is through the same system, and I do not know if you have a suggestion. The difficulty in doing that is if you are getting 10 per cent now, you are getting it through a system. If you criticize those who are giving the 10 per cent, there are currently no mechanisms in the system for us to have removed, changed, or get this body that is not working out within a five-year period.

So what you are suggesting in the context of the system we operate in has consequences that are far worst, in my view, than trying to work within the system. I have heard it enough times this evening to see that if there was a mechanism, for example, in which the Permanent Secretary who is the CEO of the organization had control over the staff, then that would make sense, but in our current system that is not the case.

You basically get a group and are told to work with the group and that is the end of that. I just wanted to put that on record because I do not want there to be a belief that we can operate within that system because we cannot at this point in time, given the way the system works.

**Sen. Prof. R. Deosaran:** I appreciate your response, but I beg to disagree with you for several reasons. In my disagreement some measure of your helpfulness will be implied.

In my experience and what I know—you use the words "the body". It is not the whole police service that is corrupt or inefficient you know; it is not all the prison officers who are allegedly corrupt or inefficient you know; but what you lack in the application of your responsibility under the Constitution is the well targeted intervention of the police and prison service as examples.

I noted with interest the remark made by Sen. Seetahal SC. She said, not all the officers and we usually make that remark. Secondly, I will tell you that those who have come to me—I get a lot of correspondence from the prisons as you know—the usual ones and the very unusual ones.

There are many well-performing officers, there are many dedicated police officers and prison officers who are willing to make a career in their respective agencies, but they are being blocked and frustrated by these miscreants who are not in the majority. So when you speak about the body, you have to differentiate between the culprits and those who have good intentions and use those with good intentions from senior to junior officers and let them build up the optimal capacity to shunt out those miscreants. They are willing to do so but they need ministerial and other senior sources of support.

So in my respectful view, Mr. Minister, I find you are prematurely pessimistic and a bit too indifferent, I should say, to what should really be done. Let me say once again as a citizen and as a university professional, I am willing to give any assistance you want in this matter of national emergency, crime and lawlessness, free of charge because I do not want anybody to say the Government give me a consultancy. Free! I have given it to the Minister, but he is not as willing as I thought he should be. But perhaps one of these days he will see the light.

There is more to say on this, Minister of Energy and Energy Industries, but I would not like you to give up hope. I know there are blockages but we have to develop the strategy to get inside the service and select those. That was the reason you created SAUTT you know. In fact, I was the one who triggered the formation, the steps towards forming SAUTT when the NAR was in office.

I suggested to Ministers Atwell, Charles and Toney; there were three Ministers in the ministry. That is why I feel sorry for this present Minister, he only has two. Atwell had three in all and he still could not do the job. [*Crosstalk*] I suggested—when they were complaining about police corruption and there was the Bruce Report somewhere around the corner, that was before the O'Dowd Report—why do you not select from your police service, a group of distinguished officers of different ranks and try to use them to set a model of example and performance for the rest, and so the trek started. It has come to be known as SAUTT pending legislation. That was the idea, but do it a different way now and it can be done. There will be another time we could elaborate on the point.

I want to refer to some other remarks made by Sen. Wade Mark. He said that you should give the Commissioner of Prisons a similar kind of power in terms of range as we have done with the Commissioner of Police; that might be a reasonable solution, but I am left with the question: These changes we have made in giving the Commissioner of Police Office such increased powers, I want to ask what difference has it really made in the two or three years where such powers were provided?

I think the Minister himself should ask that particular question. We should be shown what the results are and I do not want to get into the murder rate where 2009 is less than 2008, that will carry us into the report on guns, gangs and governance. I want to have a wider profile of performance. One thing I must say to the Acting Police Commissioner is that there have never been so many disciplinary charges before as we are seeing now. Which means—not that the police are more corrupt—that there is more vigilance and an improved vigilance over police misdemeanour, and for that, I congratulate all those responsible including, if it does apply, the Minister.

**Sen. Joseph:** You were saying—and I do not want us to get into a debate because it is really not about the police, so we have to be careful. It is because you were asking whether or not we are seeing the kind of results we ought to be seeing given the fact that we have increased the autonomy of the Commissioner of Police.

**7.35 p.m.**

But that is what it is. What you are saying is that you are now seeing a commissioner who is now exercising some of that authority, but because it is new, they are now coming to terms. Remember, there was a former commissioner who used to refer to former commissioners as toothless bulldogs.

**Sen. Seetahal SC:** So he got teeth.

**Sen. Joseph:** Exactly, he got teeth.

**Sen. Prof. R. Deosaran:** But you see, if you would remember my words, I said I am asking the question and I wanted that question answered, not so much for my benefit but for the public's benefit. So I have not made an accusation. I think I have better sense and judgment than that. We are not dealing with the police but the parallel was made between the prisons commissioner and the—as I was trying to show.

The other point Sen. Mark made about putting an electronic blanket, a blockage, over the prisons buildings so as to block cellphone calls from going in and out, I think that point was already made, that you will also block official correspondence and communication. So that technology, though available, will not be applicable in the prison.

I am coming to the end, but I want to make three minor points. With respect to the prisons, Mr. Minister, I do not know if you have any leverage in this matter, but, really, the “Justice in Time” transportation is becoming more and more dangerous. These vehicles cut in and out mercilessly, recklessly, and let us not wait until something happens to try and put a solution. Do not do these things retrospectively. An attempted bombing took place in an aeroplane, now everybody is busy trying to put things in place. The Twin Towers got bombed, they want to put things in place. We are sounding a warning over and over and this is not the first time. The way they travel so recklessly and with such rush, they are creating hazards in the way they drive.

There are two solutions: You put the remand yard somewhere else or you put a magistrate in the proper place, or you amend the legislation requiring—or the rules—that prisoners appear in court ever so often only to have their cases



postponed time and time again. So there are things that can be done alongside the amended rules that will bring greater comfort and effectiveness and bring great honour to the Minister of National Security.

My final point is that this Mr. Townsend who authored the book on *Guns, Gangs and Governance* did come to see me, but I want to make the record clear, because two reporters asked me what did I tell him because he did quote a journal which I edit and the implication was that I spoke with him; I was not available at the time he came in the office.

For myself, I have grown very suspicious when foreign, so-called, journalists or reporters come to interview people like myself, because I know when they report, they leave out 90 per cent of what you say and put only the 10 per cent that draws an audience or their readers' attention. I have been a victim of that with certain newspapers which name I will not call. They are distinguished papers in their own right, but I am not going to play the role of being a reader's bait, as it were, by having my statements and views taken vastly out of context. If it is done in Trinidad and Tobago by a local newspaper, I could deal with it—and I have dealt with it sometimes—but not when the *Miami Herald* and the *Independent* in London and so on.

So I did not see him; I want to make that very clear, because I myself am not quite comfortable with all that has been—I say, with all that has been in the report; some parts of it, but there are other parts of it. So I hope my comments given in good spirit and in good faith will be taken up whenever the opportunity does present itself.

Thank you very much, Sir. [*Desk thumping*]

**Sen. Dr. Adesh Nanan:** Mr. Vice-President, I rise to make some brief comments on the Motion.

“Whereas it is provided by section 17(1) of the Prisons Act, Chap. 13:01 that the Minister may, subject to affirmative resolution of Parliament, make rules for the better carrying into effect of the provisions and purposes of the Act;”

When I look at the amendment before us, I have to ask the Attorney General for some guidance with respect to the drafting, because when I looked at rule 233(2), it points at the very end to "or other article whatever". So if you read this particular rule, it says:

"No person shall without authority convey or throw into, or deposit in a prison, or convey or throw out of a prison, or convey to any prisoner, or

*Prison (Amdt.) Rules*  
[SEN. DR. NANAN]

*Tuesday, January 05, 2010*

deposit with a view to its coming into the possession of any prisoner, any money, clothing, food, drink, tobacco, letter, paper, books, tools or other article whatever."

Now, I do not know if there is any definition of "article" with respect to what is being in the rules, but would the "article whatever" not cover with respect to what we have before us, cellphones and other electronic devices? So I do not know if that was taken into consideration with respect to that particular rule, because as I read it, if it is blanket coverage here, it will be already in force with respect to cellphones and that particular amendment, so it may not be necessary for that particular amendment there, with respect to the cellphones.

The other issue with that amendment is: one amendment talks about cellphones and other electronic equipment and the new amendment talks about cellphones, electronic devices. Now, a cellphone is an electronic device, so you may need to correct that, in terms of—

**Sen. Joseph:** I thank the hon. Senator for giving way. Sen. Dr. Nanan, when I was moving the Motion, I had indicated the reason we specifically indicated "and other electronic devices". It was because we were saying it is not just cellphones, and there are likely to be new developments in technological things that we cannot anticipate at this particular point in time, and that is the reason for such a wording.

**Sen. Dr. A. Nanan:** I was not querying that particular issue, Mr. Vice-President; I support that. What I am saying is, in the first amendment we had before us, it was "cellphones and other electronic devices"; now we have "cellphones, electronic devices". Now the way it is reading, a cellphone is not an electronic device. So what I am just saying is that you may need to consider "cellphones and other electronic devices", how it was before, for clarity.

We have a situation here where we are dealing with the prison environment but we also have to look at, as we are dealing with prison environment and we are looking at numbers in the prisons with respect to this particular amendment, in terms of the cellphone, the cellphone is really a modified computer, radio piece of equipment and as was rightly pointed out in this debate, you could actually sniff out these cellphones. But if you look at the prison environments in terms of detection rate—and I want to support Sen. Prof. Ramesh Deosaran when he made reference to a reversal of conditions in this society in the year 2010. I want to go back to the United National Congress Manifesto of 2002 on page 15, on "Law, Order and the Security of Life", under "Crime". That is in 2002 and we are in 2010.

"The entire nation is gripped with a level of fear, which is unprecedented in this country. Criminals have taken control of the country while the PNM Government remains impotent."

That was stated in 2002 and today in 2010 we heard of a reversal of conditions in this society.

But the Minister of National Security in his contribution not only talked about prison reform but also mentioned certain things about the situation with the police and I just want to go briefly into some of those measures, because we are dealing with these amendments with respect to prison reform. If you look at, in terms of detection rate, in terms of actually apprehending criminals, if we really have a balance between the number of prisoners and the level of crime in society; if we could reduce the level of crime, obviously we will have less prisoners to deal with and we will have less cellphones being thrown over the walls and things like that, and less contraband in the prisons.

I just want to put on the record in terms of the UNC government and what would have been introduced and what was missed out. It deals with fingerprinting, the scene of the crime, photography. And do you know what is interesting? I was told recently—I do not know if this is true but I feel it is, because the proposal really was for the crime of kidnapping; it was to have kidnapping officers trained to properly investigate kidnapping, and I want the Minister of National Security to listen.

A category of crime which now is of the greatest concern to all—that was in 2002—the necessary surveillance equipment will be supplied. We have reports of very sophisticated equipment being utilized in various parts of the country, as Sen. Mark made reference to in terms of tracking people's cellphone calls, text messages and email messages. So everything is out in the open with respect to what is being communicated across the country, and there is a bank that is being stored in terms of audio. All that equipment can be used to monitor people's conversations on a regular basis.

But in terms of the crime of kidnapping, we have not heard of any increase in kidnappings over the period, that is the latter part of 2009 and 2010, not because it is not being reported, because there are certain reports that are saying that people are being forced to pay to prevent the kidnapping from taking place in certain parts of the country and the Minister of National Security needs to deal with that, because that is the fear aspect that Sen. Prof. Deosaran was talking about. With respect to that particular issue that I am dealing with, is the fear of kidnapping and

*Prison (Amdt.) Rules*  
[SEN. DR. NANAN]

*Tuesday, January 05, 2010*

people are being asked to pay in advance to prevent kidnapping taking place. So the kidnapping officers that would have been introduced would have been trained to deal with that particular area which would have been that matter that we are faced with now.

The other area that was not mentioned in the debate is community policing. It would have been reintroduced in 2002. I know the Minister of National Security might jump up there and say that, "Yes, we have community policing but it is not a separate unit." It would have been reintroduced and properly controlled, that is, the community policing aspect. Also, we heard of a committee that Sen. Prof. Ramesh Deosaran spoke to, but in this particular recommendation we were dealing with the Sir Ellis Clarke Committee, and if you recall the Sir Ellis Clarke Committee made certain recommendations for the overall improvement of the police service and every effort will be made to implement that report, particularly in respect of hiring, training, promotion, firing and discipline. That is with respect to that particular committee and the recommendations.

**7.50 p.m.**

I have to quote from the manifesto of 2000. On page 40, under Prisons, the United National Congress introduced:

“The New Women's Prison at Golden Grove which is scheduled for completion by the end of 2000, will provide the opportunity for the protection of our women even while they are in prison.”

We introduced community justice by the Community Mediation Act to enable young offenders to have matters mediated with the assistance of mediation centres, thereby diverting them from the court process. We were putting measures in place to deal with that situation that we were faced with in 2002. It is unfortunate that in 2010, we are in almost the same position or even worse than we were in 2002.

If some of the measures here were implemented, they would have assisted the Minister of National Security in terms of computers.

“Computers to be installed in as many police stations as possible and training programmes appropriate for the police to be designed and offered.”

We heard about the Maximum Security Prison in this debate. It was built under the United National Congress. I do not know if it is completely operational under the present administration. *[Interruption]* I hear some rantings from the Attorney

General to which I will not respond. I want to stay on track. I do not want to be sidetracked in this debate. I showed that the Women's Prison in Golden Grove was constructed and the Maximum Security Prison was also built. While these prisons were being constructed, there was a plan in place to reduce crime. With the present administration crime is out of control. The prison population is increasing but very slowly because their detection rate is very low in terms of apprehending anybody. [*Crosstalk*]

Another part that would have been very interesting is the gathering of information in intelligence, something that is lacking in the Ministry of National Security. Adequate sums of money would have been provided for the gathering of information and training suitable personnel. It was all in the manifesto of 2002, in terms of the way to go in reducing crime.

Mention was made in terms of the rules and I would not go into that particular issue. I was dealing with prison reform in the manifesto and the proposals. [*Interruption*] There is another interesting part of this manifesto that talks about the actual policing and vehicles. We are seeing a number of vehicles on the road which are increasing. [*Interruption*] It is dealing with crime, prison reform and the prison environment. Just to take a little bit of time to put something in perspective in terms of the lack of highway patrol, that is a major problem in the Ministry of National Security.

**Mr. Vice-President:** I have allowed you a lot of leeway. You seem to want to debate crime. Please stay on track. It is a motion on the amendments to the prison rules. Please stay on track.

**Sen. Dr. A. Nanan:** I will not be long again. I wanted to see if I could have assisted the population with respect to the lack of highway patrol, but apparently you would not give me the chance to do so. I would have to take that to the platform.

Something that is relevant to this debate is that matter about justice on wheels and justice on time. From time to time, I encounter these vehicles on the road and it is a hazard. Sometimes you are not paying attention in the rear view mirror and suddenly these vehicles come up on you and want to run you off the road. In terms of safety on the roadways we have to look at that again, in terms of justice on time and justice on wheels.

I know that it is not a debate on crime, prison reform and telecommunications, but it has ramifications of other issues. It has been a pleasure to speak on this particular Motion. I will put those two amendments to the Government side as I close.

Thank you.

**Sen. Corinne Baptiste-Mc Knight:** Mr. Vice-President, while I can and will support this Motion, I think that it is necessary for me to point to a couple concerns that I have. As has been said by some of the colleagues who preceded me, these two amendments seem to be minimal, but I think that if these are effectively implemented they can make a significant contribution to arresting the current problems that exist in the prisons. Why do I say that?

The amendment to rule 233 means that prison officers would be required to check their cellphones at a particular point when they enter the prison for service. It is going to be extremely important that they are sensitized to the benefit that it would be to them, to follow these rules without any deviation. They should be convinced that wherever they lodge their phones, they would be safe.

In terms of the general public coming to visit, it would be extremely important that they are notified well in advance and reminded that cellphones and these other devices are not going to be permitted on the compound. They must be reminded of the sanctions which must be applied without any thought.

I am wondering, if the searches are not automatic it means that the officers who are empowered to search are dependent on information coming from other officers. I am not sure that any officer is going to be willing to expose himself or herself by providing this kind of information. One only has to be breathing the air in this country to know that morale within the prison service is not high enough for us to expect that. I suggest, with the greatest humility, that the ministry and the Minister of National Security consider placing body scanner machines in these prisons to relieve the search officers of the responsibility of being thought to be targetting certain people. If there are a few bad eggs these are the people who would be searched continuously and would complain that they are being unfairly targeted.

What recourse does the officer who is authorized to search have, when one person is searched three or four times for the week? If you have a machine that everybody passes through, it not only obviates that possibility, but as my colleague, Sen. Seetahal SC noted earlier, it could assist also where visitors come in with SIM cards. I cannot figure how an officer searching someone is going to find a SIM card on them. If that person passes through a body scanner the SIM card would show up. Problem resolved.

We have to put our money where the people can see that it is of benefit to them. We spend hundreds of millions on fast patrol boats and we cannot see the boats come in for years. Let us put a little money into body scanners to put in

these seven places where you can find miscreants and protect the people who mean well, but are a little weak. If the prisoners understand that the officers are prevented from having cellphones within the compound, the temptation would eventually lessen. It may not evaporate but it would lessen.

I think that it is also very important that all the ranks who would be required to search people be properly trained so that these searches are carried out in a respectful manner and everybody knows how a search would be carried out, so that there would be no problem when you are required to be searched.

**8.05 p.m.**

Of course, I am not aware of all the ramifications of the technology, but really and truly, perhaps at least initially, it might help to jam the cellphone within the context of the particular area and see if you can get TSTT to cooperate so that land lines can once more become an effective means of communication.

My experience is that my land line is more effective than my cellphone because I do not turn it on. I know that there is life before and without cellphones and this is the message we have to get across to prison officers for their own protection. Indeed, the health benefit of not having a cellphone attached to you as an appendage should be highlighted because a lot of these little problems that people are having in their brains and in their nether regions are not being helped by the cellphone appendages.

I feel that if some of these procedures are put in place to assist this whole programme in being effective, we will see a reduction in the existing problems in the prisons. It is for this reason that I support this Motion without reservation.

Thank you very much, Mr. Vice-President.

**Mr. Vice-President:** Before Sen. Rahman speaks, let me remind Senators please to speak on the Motion and the amendments. I will allow a little leeway, but do not stray too far.

**Sen. Mohammed Faisal Rahman:** Thank you, Sir. I take it that those comments are directed to me. I do not know whether to feel honoured or distressed. By your doing that, you have given me a lot of life because I was sitting here having a difficult time keeping my eyelids open.

Although all the contributors in this extended debate have taken care to be short, the sheer number of people standing by to speak is an indication of how important this little Motion really is. It is a little tip of an iceberg. If we are not

*Prison (Amdt.) Rules*  
[SEN. RAHAMAN]

*Tuesday, January 05, 2010*

careful, we will overlook the tip and hit the iceberg. We have to look at this matter with a certain amount of concern.

We are dealing here today with regulations that pertain to an 1832 Act. It is amazing that so much time has gone by and we are now beginning to play catch up. Despite the assurances of the hon. Attorney General when he asked the Minister of National Security to let us know that most of the overhaul of the regulations is almost finished, I am not buoyed by that. I understand that, since 2004, Mr. Hinds had indicated that this would have been handled. I am also not reassured that the Government will produce, out of this very antiquated set of rules, anything that would impress us in terms of its forward development.

I say this with a great amount of pain because recently we had a 150-year-old piece of legislation brought here and passed against the will of the country, which contained anachronistic, regressive and retrograde measures aimed at civil and human rights. With the mindset of the Government, without paying regard to these fundamental human rights issues, I do not know that we will see any more elevated thinking in this bit of overhaul than we are being promised will take place in the prison regulations. I am not consoled in any way; I am apprehensive. If we are setting about to deprive free citizens of their rights, what will we do with regard to our incarcerated citizens who have been deprived of almost all their rights?

It is disturbing to realize that, as Sen. Dana Seetahal SC pointed out, by citing some of the regulations, that the Government is, without intending, actually in the forefront of breaking the laws with regard to prison regulations. If you have rules and regulations that the Government and the prison authorities break willy-nilly, there is no concern for the observance of law on the part of the Government.

I am not saying that the regulations are not good regulations; I am saying that they ought to have had the priority concern of the Government. I realize that this Government is taken up with far more weighty matters. It is concerned with solving the problems of the world; of the Americas; of the Commonwealth, but not very much taken up with the problems of the community over which it has been elected to govern. This is a very sad situation because there are regulations crying out for correction. This is scratching the surface of the need for prison regulations overhaul. I have not studied the Prisons Act and I do not know what is going on in terms of what the Government is going to do; but from the complaints we hear from prison officers, the constant turmoil from the rest of the country, paralleled with the complaints of the prison authorities, one wonders how the country is staying together. It seems to be threatened at the very seams and one of



these days there will be consequences for the decay that has been permitted to enter into this country where the rot of the institutions will simply overwhelm and we will have a total collapse. *[Interruption]* So you understand the concept. It applies to the Government. You are looking forward to January 24. Sir, I am being invited to digress. I hope I am protected and that the inviters are the ones censured and not myself because I am just responding.

The point is that the prison is a tremendous institution; it is a corrective institution and we are now trying, in the present state of civilized development, to make it a restorative institution designed to return people into the society.

That is pretty ambitious because some of us are genetically inclined and pre-programmed to vileness and evil. Sometimes I wonder if we are headed in that direction because I do not think we have many cat-o'-nine-tails and things of that sort anymore. The challenge I had taught me that consequences have to be catered for and if you have never been taken to task or have never suffered the consequences of your action, you are going to continue to do exactly what you are doing.

I have mentioned the pleasure principle before—the things that give you pleasure. If criminality gives prisoners pleasure, they will continue to do it until they feel the opposite of pleasure. Are prison officers permitted to take their own cellphones into the prison?

**Sen. Joseph:** No.

**Sen. M. F. Rahman:** So then, what is the problem in blanking out and jamming the system? If the reason was given that prison officers would not be able to make calls out, why not stick to the old wireless system which police used to use and, insofar as the electronic devices are concerned, jam the whole area and blank out all.

**Sen. Browne:** You will blank out everything else too.

**Sen. M. F. Rahman:** How? There are frequencies. Technology today allows you to blank out selectively. *[Interruption]* Are you? You are talking about barriers that are blocking you. What the hon. Minister is trying to submit is that he has an insurmountable problem and cannot stop prisoners from getting cellphones. Is that what you are saying, Sir?

**Sen. Browne:** I did not tell you that.

**Sen. M. F. Rahman:** Do you have a clue how to prevent it?

**Sen. Browne:** Yes, Sir.

**Sen. M. F. Rahman:** Then why do you not do it?

**Sen. Browne:** Because it affects everything else in the area.

**Sen. M. F. Rahman:** So you are allowing it to happen; you cannot stop it. Mr. Vice-President, the Government is incompetent and incapable of solving this problem. Why bring a change of regulations when you will not be able to solve the problem?

I have seen here all the stuff about what is thrown over the wall and how it got into the place. I have not seen a single penalty for someone who breaches these rules. Is there any penalty for someone who brings a cellphone and is caught?

**Sen. Joseph:** If you had listened, when I presented the Motion, I had indicated that the Prisons Act is in another place for amendment, but that it would make no sense if we were not in a position to capture that pool of persons whom we need to capture. Yes, there will be an amendment to the Prisons Act to deal with the penalties. That amendment has already been laid in the other place.

**Sen. M. F. Rahman:** I have been told that we are not supposed to anticipate legislation here. I am saying that there is no reference to penalty and that is a failure. Do not tell me about the Bill you intend to bring. I am not supposed to pay attention to that.

We have a lot of ground to cover in terms of reform, but we must bear in mind the question of inhumane treatment. That is why I come back to the antiquated, autocratic laws that trample upon the rights of citizens. We have to be very sure that we do not trample on the rights of the prisoners.

In the United States of America, prisoners have a lot more rights sometimes than a free man walking in the street and they have different ways of getting their rights. We do not want to get to the situation where we give the prisoner more rights than he has. At the same time, we want to safeguard against inhumane rights.

**8.20 p.m.**

When I hear that only one visit is permitted per prisoner every two months, I want to know, how is it that there can be so many people coming in bringing contraband and equipment that we cannot scan or body search everyone. One visit

every two months, is it that they are breaching this law and that prisoners are actually allowed visits as in the hospitals every day? I cannot understand it.

If you have one visit every two months per prisoner, how is it that the influx of visitors so easily facilitates the bringing in of contraband equipment and cellphones? It confuses me.

Now, coming to the actual wording of the—"oh", just a minute, Sir—am I to understand that the only miscreants in the prison service are from below the rank of supervisors down? I would like to know, have we ever had a supervisor or somebody higher than a supervisor found guilty of transgressing the prison laws? If we ever had one or two, that is enough to review this whole matter about who is going to be responsible for checking, because it is the fellow who has things to bring in will pay the biggest police and checking all of the juniors.

You are dealing with intelligent human beings and these people, I understand there are very big rewards given by the high-ranking criminals to get the facilities that they are able to get from these prison officers. It is not to say that a prison officer out of the goodness of his heart brings a cellphone or another thing for a prisoner. It is because he is being bribed, and there is a very simple thing, you see a prison officer wearing a lot of gold jewellery and flashing a fancy car—recently we had a case of US \$94,000 being misappropriated, and I think the person and his accomplice were discovered because he was flashing money around.

You have prison officers earning a particular salary per month living above their lifestyles, am I missing something? And the authorities could not care less? I am talking about police officers too; because if you have any idea what jewellery costs, you would know that sometimes one ID band could cost more than a month's salary. There are indicators that the authorities should pick up who are the ones most likely to be involved, so we have two or three matters here. What are they doing to look into the modus operandi of the people who may well be involved in these things?

You see, bringing legislation and not being able to implement them, I am observing that may be a breach—all we are doing here is coming to the Senate and letting all of us get hot under the collar, talk our heads off and at the end of the day nothing is accomplished, because the murder rate—well, this year we have had a tremendous reduction, as celebrated by the Government, what a ridiculous situation, we crossed 500; that is absolutely unacceptable.

We have prisoners being murdered in their cells by whom, prison officers? With all the regulations in the world we are not developing our prisons—

**Sen. Joseph:** Mr. Vice-President, on a point of order the Senator is talking about prisoners being murdered. Would you please tell the honourable Parliament where it is that he has evidence of prisoners being murdered in our prison system by prison officers please?

**Sen. M. F. Rahman:** Mr. Vice-President, I want to withdraw that and modify the words.

**Sen. Joseph:** Yes, modify the words.

**Sen. M. F. Rahman:** Prisoners have died in prison custody—

**Sen. Joseph:** Yes, and we are not the only jurisdiction that has happened.

**Sen. M. F. Rahman:**—from injuries. Prisoners have appeared to have hanged themselves when they could not have done it physically themselves. And when you put two and two together you usually get four. It is a simple matter of deduction.

When you have removed all of the possibilities, the last possibility that remains, even if it is absurd is the solution to the problem. So I am not going to say any prison officer did this and that, but the circumstances in which prisoners have died have been very condemning of the authorities into whose care they have been entrusted and that is dereliction enough.

**Sen. Piggott:** Is that the mathematics that you—[*Inaudible and laughter*]

**Sen. M. F. Rahman:** I did not hear you, I did not hear you.

Mr. Vice-President, the Government does not seem to understand that we are living in a dynamic world where we are always in a forward going, developing situation and if you do not act today, the cumulative effect of your dereliction is going to come up with you and swamp you. What is happening is they do not regard the prioritizing of legislation as the perspective from which they should view this, and it is very important.

We have to have a paradigm shift in the thinking of the Government for this country to advance in terms of prison reform, police reform, social reform and reduction in crime. We cannot simply go about this matter in-between summits, heads of government meeting, Copenhagen visits, UN appearances, building buildings and runaway contracts, and in-between we splice in a little thing to keep the population a little “fool up”—like you throw a banana and they are going to keep happy with that.

Mr. Vice-President, I have been speaking for—

**Sen. Browne:** Too long. [*Laughter*]

**Sen. M. F. Rahman:**—19 minutes; 19 minutes of pain inflicted on the Government because they do not like to hear these things. [*Laughter*] I have not strayed because you have not interrupted me, so very kindly or maybe you have been tolerant, I do not know which one. [*Laughter*]

I want to say this, I am tired. I do not want to stay here debating this sort of—because you know what, we are not even going to move ahead with these amendments. You have 200, 300 or 400 rules being observed in the breach and you bring two little innocuous amendments and expect to revolutionize management and prison reform, it is insulting. It is insulting, Sir.

Anyway, with those few words I will now take my seat to the relief of the Government side. Thank you.

**Sen. Gail Merhair:** Mr. Vice-President, I thank you for the opportunity to contribute to the Motion before us today, and let me say from the onset, I am particularly pleased to contribute on this Motion since December 02, 2008, I did in fact ask the hon. Minister of National Security the question: “Would the Minister inform the Senate as to the number of cellphones confiscated in the nation's prison for the years 2002—2007?”

So, with that in mind, I regard this as the first step in the long and winding journey that is prison reform and I think that the hon. Minister needs to be commended on bringing these two amendments forward. I would also like to commend the Minister in, not only bringing these two amendments, but also assuring us of such amendments of more robust search procedures, increased patrol surveillance in the vicinity of the prisons, disallowance of foodstuff from family and friends, general orders and staff circulars and disciplinary actions. These things that he mentioned did in fact come in response to the question that was answered on December 02, 2008.

Now, Mr. Vice-President, I have a serious problem with some elements within our society who are bent on frustrating the system in the name of civil rights and moral authority and let me be clear from the onset, Mr. Vice-President. I do not think that any citizen of Trinidad and Tobago would stand before us in this place or in any other, would stand by and let the security of our nation's prison be compromised in the name of civil rights and in the name of moral authority.

With that in mind, Mr. Vice-President, I would like to quote from an article in the *Newsday* written by Rhondor Dowlath of Wednesday, November 15, 2006 in which the article is entitled, “Expose the ills behind prison walls”, and I quote:

*Prison (Amdt.) Rules*  
[SEN. MERHAIR]

*Tuesday, January 05, 2010*

“TWO PROMINENT south Trinidad attorneys yesterday slammed the warning given by Prisons Commissioner John Rougier to members of the media over liaising with prisoners who called the media via cellular phones. The lawyers said the issue was more a moral one rather than a constitutional one.”

The article goes on and I quote:

“‘It is not about prisoners having cell-phones but it is what they are using it for and that is informing the public of the inhumane conditions in which they are faced with. As expected, the Prisons Authority would want to keep the ills of the prisons a secret. This is merely a moral issue and not a constitutional issue’, Ramlogan said. On Monday, during a press conference, Rougier announced that it was an offence for members of the media to communicate with prisoners via cellphone. According to the constitution of Trinidad and Tobago—Prisons Act Chap 13:12, ‘Any unauthorized person holding intercourse or interfering with a prisoner while in any prison or public place is liable on summary conviction to a fine of two hundred dollars.’”

Mr. Vice-President, if a prisoner is incarcerated and is behind the walls of prison, their owning a cellphone is illegal. You cannot communicate with the media or anybody else and I totally agree with the amendment before us. If these prisoners have a problem with the inhumane conditions then deal with it as is set out in the legislation with the law, and that is let your attorney know, do not call the media houses, that is against the law. I stand firm by what Prisons Commissioner John Rougier has stated, it is against the law. If they feel that whatever is given to them is inhumane then there are matters to deal with it and they should not be calling the media house, and I agree with the amendments before us.

Now, the problem of contraband within the prison walls of Trinidad and Tobago is not unique to our situation at all. I quote from a paper—and I am looking at Florida, April 2008, “Office of Program Policy Analysis & Government Accountability”. The paper is entitled “‘Corrections’ Contraband Effort Is Sound; Cell Phone Penalties and Warden Consistency Are Needed *at a glance*”. This paper speaks about:

“Florida compares favorably to other states in its efforts to control contraband in prisons, using narcotic canine teams, contraband sweeps, visitor and officer pat searches, and metal detectors at all prisons. While random drug tests show that Florida has a relatively low rate of inmate drug use, other types of contraband, notably cell phones, are a growing problem.”

So the problem we are experiencing in Trinidad and Tobago is not unique. The paper also goes on to say that:

“...in Florida, contraband is a long-standing problem in prisons. During Fiscal Year 2006-07, the department recovered from its prisons

- 222.7 oz. of marijuana;
- 9.8 oz. of cocaine;
- 1,805 unauthorized and/or unidentified pills;
- 140 inmate cell phones; and
- approximately 3,500 assorted makeshift weapons.”

The paper also goes on to say that what is recommended is that narcotic canine teams be introduced, metal detectors, pat searches, security inspections, contraband sweeps, institution shakedowns and formal investigations.

So, Mr. Vice-President, what is being proposed is not different to anywhere else in other parts or in other jurisdictions.

Now dealing with Great Britain, and I know the matter has come before us, a number of my Independent colleagues and Opposition colleagues spoke on the issue of cellphone jammers within the precincts of the nation's prisons. I quote from a telegraph article entitled “Corrupt prison guards fuel drug culture” and it is an article by Christopher Hope, Home Affairs Editor of the *Telegraph*, and I quote:

“More than £80 million will be spent on new technology, including ‘body scanning’ chairs, and other measures to crack down on drugs in prisons. Jack Straw said.”

The article also goes on to say that:

“Despite the measures, the Government’s top prisons official admitted that it was almost impossible to rid Britain’s jails of drugs, with one in every two prisoners addicted to hard drugs.”

The article also goes on to say:

“A report commissioned by Mr. Straw highlighted the role played by corrupt employees in smuggling drugs and other contraband.

Prison guards and visitors were able to smuggle in £30 mobile phones and sell them for up to £800 to prisoners, who then used them to arrange their next drug fix.

*Prison (Amdt.) Rules*  
[SEN. MERHAIR]

*Tuesday, January 05, 2010*

The report from former top policeman David Blakey found that ‘smugglers’, including prison guards, were able to make nearly £2 million this way.”

**8.35 p.m.**

Mr. Vice-President, from this paper I strongly suggest, and it is a matter that the Government should look at deeply, that the prison service should also introduce mobile phone blockers in high risk areas to stop inmates using smuggled handsets, as is being suggested by this report from the United Kingdom.

The report also proposes a ban on visitors handing property such as clothes to inmates, because illegal drugs could be stitched to garments, for example. Drugs were also thrown over prison walls and weak spots in security identified using Google mapping technology, the report suggested. There is an estimated 100 million worth of drugs in Britain's jails, the report also goes on to say. So what is happening in Trinidad and Tobago is not unique to UK and Florida jurisdictions.

What we do have also occurring as well is that prison officers are demoralized over promotions and a lack thereof. I quote from an article entitled "Promotions in the Prison Service", which was taken off the prison association's website, dated Friday, March 28, 2008:

"The area of promotions within the Prison Service has become a very contentious and litigious experience over the past decade. Notwithstanding the existence of regulations outlined by the Public Service Commission (PSC) which is the main entity responsible for promotions, it is clear that something has definitely gone wrong with the process, procedures or the prominent people involved or all of these. This could be concluded based on the fact that a number of officers have taken their matters to the courts of Trinidad and Tobago and even as far as the Privy Council in England and have been promoted as a result of the ruling of the court. Certainly, this situation has not helped the image, morale or efficiency of our beloved Service since officers remain with feelings of being disadvantaged, discriminated or downright victimized by the system."

Many good persons have been rejected and many good persons feel that they have been demoralized by the positions within the present situation in the prison service right now. There is need for an easier way in which we could challenge these rejections. Shorter time needs to be taken in terms of the confirmation of these appointments.



I would also like to look at a paper prepared by Mr. Norton Jack, senior legal advisor in the Ministry of the Attorney General. I am certain that the hon. Attorney General may have a copy of this document in which Mr. Jack stated:

“None of the relevant Acts or Regulations relating to the Civil, Fire, Prison and Teaching Services contain provisions setting out ways to challenge a decision made in the selection system. A person aggrieved over an administrative decision may, however, seek redress under his constitutional right to equality of treatment from any public authority in the exercise of any functions (section 4(d) of the Constitution). He may also apply for judicial review of the decision on grounds listed under section 5 of the Judicial Review Act, 2000.”

With that said, perhaps—[*Interruption*]

**Sen. Jeremie SC:** Would the Senator give way? The letter from which you have just quoted, you said the author, is addressed to whom?

**Sen. G. Merhair:** It is taken from the document:

"Trinidad and Tobago's response to the questionnaire on the provisions of the Inter-American Convention against corruption selected in the second round and for follow-up on the recommendations formulated in the first round."

Mr. Vice-President, from this paper that I have just concluded, it would seem that we need to make small steps to prison reform and rehabilitation. Radical overhaul is needed and I agree that it is needed and a significant reduction in crime and violence in our society in terms of repeat offenders.

What we have seen happening is a rise in repeat offenders. These two amendments are necessary since it is alleged that a lot of persons who are incarcerated do, in fact, use cellphones and other devices in order to transmit information to other members of their gangs.

We need to understand and appreciate the fact that these leaders must not be allowed to run their organizations from inside the prison walls. With that in mind, I firmly agree with these amendments. I think they are steps in the right direction. I agree with some of my Independent colleagues in that serious overhaul is necessary, but in these difficult times when we have crime escalating and when various sectors of our society are, in fact, crying out for measures to be brought forward, I think it is admirable that the Government came forward with these two amendments. I look at these amendments as steps in the right direction which are much needed right now in our society. It is a step in the right direction in terms of penal reform and restorative justice.

I look forward in this year 2010 to more aggressive legislation by this Government to deal with the criminal elements in society, because I think some of these matters that come before us are, indeed, serious. These amendments are much needed; I applaud the hon. Minister and the Government at this time for these two amendments.

Mr. Vice-President, I thank you.

**Sen. Raphael Cumberbatch:** I thank you, Mr. Vice-President and hon. Members of the Senate for allowing me a very brief intervention. I know the Members of Government like the use of the qualification of brief intervention; I shall not be long.

I think we have heard quite a lot of what needs to be said in a debate of this nature. For myself, I would want to place on the record a group of persons who spend quite a lot of time at the Royal Gaol and at our prison institution out at Mausica. These are people who are on remand and I wish to remind hon. Members that while we refer to them as prisoners, they have not been convicted in any court of law. Therefore, the rules that deal with segregation of prisoners should come up for consideration.

I understand the hon. Minister is working on a comprehensive list of amendments to the rules; I know that is necessary. I have no reason to doubt that he would be bringing it early in this session, but we must always remember and distinguish that prisoners on remand have not been found guilty and, as such, we should be very careful as to how we manage that category of prisoners. Why? Because we know, we have evidence, that our prison is a breeding ground for criminals. We have to be very careful about that aspect of the prison system.

I come from a district where anecdotal evidence tells me what transpires in the remand yard of our prisons. It is totally unacceptable, absolutely; the abuse, the unsanitary conditions, the lack of proper facilities, even basic facilities we are talking about. We are not talking about the gross profiteering that the cafeteria is doing which formed the basis of an editorial in a newspaper today. We are not dealing with that. We are talking about how we keep persons in custody pending being found guilty by a court of law.

The first step in any restorative justice for Trinidad and Tobago is to close down that Royal Gaol. You see that archaic building there, you could never transform it to deal with restorative justice. It simply was never designed for that purpose. It is a scar on the city; it should be moved and closed down and turned into a museum. There should be no Royal Gaol in the heart of the city; it is a

security risk. When I leave here tonight, if I try to go to Belmont, I have to go all the way around, because I cannot pass through. They close off all the streets around it, like they are expecting a prison break. No; it is just a security risk in the heart of the city; close it down. Build the complex that has been promised. How many acres was it, one hundred acres, somewhere down in the Central region? Build your complex; let us get serious about restorative justice and all these good things. At the end of the day, it was our government that built that one up there. *[Interruption]* The one up there; the new one we have. *[Crosstalk]* The UNC government built that prison up there, the Maximum Security Prison.

**Sen. Joseph:** The one we cannot operate, because of how they built it?

**Sen. R. Cumberbatch:** It is not my fault that you cannot operate it. *[Crosstalk]* When you reply, hon. Minister, you will tell us of the shortcomings that have prevented you from maximizing the use of our Maximum Security Prison. I am sure you would be able to tell us.

**Sen. Joseph:** We cannot use it.

**Sen. R. Cumberbatch:** Tell us; let us deal with it as an aside; it is a fundamental point I am making. There has been nothing by the current sitting Government, absolutely nothing. This piddling thing that was brought here, two rules, sure we will support it. Anybody would support that. That is an easy matter to support, but that does not treat, even in the smallest way, with the problem that I am talking about, which is about the conditions at the Royal Gaol. That is where my problem lies. My problem lies with prisoners who are on remand and the kind of treatment they receive. *[Crosstalk]*

I am not going up for election, so whether it is 3,000 inside or less than that, it does not concern me really. My concern is that we must not mix up civil rights and human rights. We must not mix up legal and what is just and right, because there are a lot of things that are legal but not right, and that must be put right—a former Prime Minister of a former PNM government. I will not detain the Senate this evening with any long dissertation on restorative justice and all these things, but I ask the Attorney General in particular to review those draft rules that are coming to make sure that the rights of persons who are incarcerated and have not been found guilty are taken care of in a serious manner. That is my problem.

Once you deal with that and the Minister understands that, it is not meant to be anything more or anything less than what I am making it out to be. That is all I need to say.

Mr. Vice-President, I thank you.

**Sen. Dr. Jennifer Kernahan:** Mr. Vice-President, thank you for the opportunity to contribute to the Motion before us. We on this side are disappointed and disheartened this evening, those of us in this society who are deeply concerned at the decay and deterioration of the criminal justice system under this Minister of National Security, after eight years in office. This administration, after six years, after promising to change the rules and to bring more modern rules with respect to the penal system, they have brought amendments to just two small rules to this Parliament this afternoon.

Before I go into my contribution, I noticed that when Sen. Seetahal SC made her contribution, the Attorney General made the point that prisoners were not guests at the Hyatt Hotel. I do not know if he said it jokingly, but under every statement that Members of this Government make, there is a very serious implication. The implication here is that somebody who is a prisoner, as Sen. Cumberbatch said, a remand prisoner at that, in some cases, has lost his right to basic human rights. *[Interruption]*

**Hon. Senators:** No, no, no; we are not talking about human rights.

**Sen. Dr. J. Kernahan:** This is what is happening in the penal system in Trinidad and Tobago. It seems that once you are classified as a prisoner, whether you are on remand or not, then you have no human rights. This is the attitude that this administration has and that is why they have left the criminal justice system, including the penal system, to deteriorate to the point where the Minister has to come and admit to certain horrific events taking place in the system this evening.

Mr. Vice-President, what is the key to punishment under the system that we have now? Is it simply to lock somebody up and take away all their human rights and treat them less than human? Is that what we call punishment? I think we have gone past that stage also, although the prison rules in force, at this point in time, are still those of 1888 under the colonial regime.

**8.50 p.m.**

It indicates that there is no fundamental change in the way the colonialists looked at the penal system and the way this Government looks at the penal system.

Sen. Seetahal SC outlined several anomalies in the rules which are breached by the prison authorities themselves and the Government has refused to recognize the need for any fundamental reform of the prison service and the way we deal with prisoners.

Mr. Vice-President, that is extremely unfortunate and bad for the society because the way we deal with the penal system and prisoners is fundamental to our personal safety and security as citizens of this country, it is fundamental to the rule of law, to reducing the number of repeat offenders you have in the society who are going out there and committing crimes against the citizens of the country over and over again, and it is fundamental to the rational use of the resources of our society.

So when you disregard these issues for eight years and the issue of bringing new rules that would underlie a new philosophy and a new way of dealing with the justice and penal system in particular, then it says to us that you do not care about the life of the people of the society, their security and the very future of this country.

Mr. Vice-President, what is even more alarming is there is no excuse for such disregard of penal reform because extensive investigations and reports have been done by persons including our own Sen. Prof. Ramesh Deosaran. In a Research Policy Report; Prison Recidivism towards Reduction, Rehabilitation and Reform which was done in 2003 and presented to the Minister of National Security, based on this report seven years ago if this Government was serious, we should have had on the books a revision of the archaic and colonial rules. Based on the very concrete and detailed analysis that Sen. Prof. Deosaran made of the prison system, he had very extensive recommendations to reform it.

It puzzled me a bit because when Sen. Prof. Deosaran made his contribution he spoke to the fact that prisoners should have a deep fear of going back to prison and of the system and that puzzled me because I thought we had moved from the retributive form of justice to restorative justice and I thought we had moved to the point where we felt that we had to deal with rehabilitation, education and trying to get people to be functioning members of the society.

Mr. Vice-President, one of the issues that Sen. Seetahal SC made about the contradiction between the rules and what actually obtains came out in the study that Sen. Prof. Deosaran did and the rules under health and cleanliness. For example rule 246 which says:

"Every prisoner shall obey such directions as may from time to time be given by the Superintendent as regards washing, bathing, shaving and hair cutting."

*Prison (Amdt.) Rules*  
[SEN. DR. KERNAHAN]

*Tuesday, January 05, 2010*

Rule 249 says:

"Every prisoner shall keep his cell, and the utensils, books and other articles issued for his use, and his clothing and bedding, clean and neatly arranged, as may be directed."

We found in Sen. Prof. Deosaran's study of the conditions in the Port of Spain Prison with respect to what is actually happening. So on one hand, you have rules very nicely laid out with all the prescribed conditions that are supposed to obtain in prison and on the other hand the reality is different. Sen. Prof. Deosaran wrote in his report:

On entering the main prison area, we observed the proximity of the toilet facilities to the kitchen. There was a strong stench emanating from this area despite the fact that inmates meals were being prepared. We also witnessed the presence of many flies in the area.

A little further into the main prison revealed a courtyard with many inmates relaxing in this same area. Inmates were seen showering nude in open view of all.

That is what actually obtains in contradiction to the rules that say something else. The report says:

There were no toilet facilities and inmates complained that they were not allowed mandatory one hour each day, small pails the size of one gallon paint buckets substituted for toilets inside the already cramped cells and when these buckets became filled which occurred regularly due to the number of inmates in the cell on a daily basis, they were emptied into the small drain that runs in front of the cells on either side.

Mr. Vice-President, it is clear that this is a total violation of the human rights of a person regardless of the fact that they are on remand or convicted. You have a situation where, as the report says it presents a health problem and the spread of disease among prisoners and prison officers and this has nothing to do with punishment. It has to do with a clear violation of the human rights of ordinary human beings.

Based on some of the contributions I have heard, we would like to put on the table that there is no contradiction between the concept of the respect for human rights and appropriate punishment based on the laws and a strong criminal justice system. You can have a strong criminal justice system, your penal system, your laws, your rules and all that are applicable and relevant, but you cannot have a situation where, within the system people are denied their basic human rights. There is no contradiction between the system of restorative justice and a strong, modern, penal system.

Even in Sen. Prof. Deosaran's contribution, we were leaning towards the way that restorative justice is no longer relevant because of the type of crime and criminality we have in the country, and this is exactly what would lead us down the road to anarchy and a total disregard for systems, rule and for law if we believe that people who are prisoners and because they are accused by the law that without even a final determination by the court, people's human rights can be taken away.

Mr. Vice-President, Sen. Prof. Deosaran spoke about the fear prisoners should have of going to jail and going back to jail, but we have to understand that part of the issue of prisoners not having fear for the system, the police and the prison officer is exactly the complicity with which some members of the police service and penal service, protective forces in general engage in respect to criminals and criminal activity.

So if you have a system whereby too many police officers and prison officers are in complicity with criminals and doing their biddings and being involved in criminal activity, then they lose their fear. There is no fear of a criminal for a policeman who helps him to get drugs or guns to rent and so forth. Therefore, that lack of fear of the system is based on the fact that there is too much corruption, too many rogue elements in the system that have not been weeded out and, therefore, they corrupt and weaken the whole system and pose a danger to dedicated and serious officers who want to uphold law and order.

Not only do the criminals not respect or fear the people who are in league with them, but they do not respect or fear the dedicated and the ordinary penal officers and this is the root of the problem. You have to get rid of the rogue elements and be very determined and deal very harshly with people who corrupt the system because it undermines the system completely. People have no fear because they know when they go to jail they can run the system.

They know that the prison officers would bring the cellphones for them and all the contraband articles. They know that the policemen who are in complicity with them would give them the favours they need. So they have no fear. What is the fear? If you are comfortable in that environment where you run the environment and have gangs in jail who are able to get everything they want and get all the drugs, cigarettes and the cellphones they want, what fear do they have of the system? That is the problem.

Mr. Vice-President, the evidence of this complicity, the Minister brought to the table when he made certain statements in his presentation. For example, on page 7 of the *Hansard* he said:

“Furthermore, there is evidence to suggest that a few rogue officers continue to play a major role in assisting in the trafficking of cellphones among the prison population and in so doing endanger their colleagues and neglect their duty to the State and to the citizens of Trinidad and Tobago.”

The Minister admitted that is an issue.

Mr. Vice-President, recently there was a report of a prison officer being hauled before the court because he was found outside the prison with contraband and so forth. So that is a serious issue and we are saying that the rules that we have waited six years for must reflect the policy of moving from retributive to restorative justice and to this end, the Government must be very forthcoming with the proper implementation of the new rules that would enhance this move.

I know the Assistant Commissioner of Prisons, Mr. John Rougier has embraced the new concept and in the report by Sen. Prof. Deosaran, he has been quoted as saying the prison system is informed by the restraint policy which has a low concern for the prison population and the community. So he admits that right now the situation is not satisfactory, they have this restraint policy in effect which is of low concern for the prison population and the community.

However, he said that there is need for a new system similar to the restorative justice system which will allow offenders to accept responsibility and make new relations with their community. This is the way we have to go; we cannot say people have no human rights and they should be locked up and the conditions in prison are not important because they are criminals. This will not help our society; we will not go forward with this type of mentality.

Mr. John Rougier also called for penal policy and model to complement this which he said should focus on the community. He indicated that the criminal justice system needs to be considered as one of the crowning problems and it represents the fragmentation of the criminal justice system and must be dealt with. So based on this, the Minister of National Security brought the amendments to two rules. In rule 178 he proposes to increase the number of prison officers who are given the authority to search and, therefore, he hopes with this measure there will be chances of finding contraband goods in the prison, especially cellphones.

Mr. Vice-President, one of the problems that we have and it is documented, is that the prisons are horribly overcrowded. Therefore overcrowding of the prisons implies a low ratio of prison officers to prisoners.



**9.05 p.m.**

Therefore, with this high level of overcrowding, because of the penal system, because of the way we do not have the restorative justice system in place and everybody is just sent to jail: new offenders; repeat offenders, everybody goes to the same place, it is difficult to deal with the issue of control. Therefore when you have an overcrowded prison, it is difficult for the prison officers to control and to search for contraband. Therefore, based on this situation, you have a serious endangerment of the lives of prison officers when you have this high proportion of prisoners to prison officers.

But the other issue is that in providing this amendment where you hope to move the number of officers who are able to search from 41 to—how much is it? You want to move it from 37 to 51. You therefore expect that this will enhance your ability to find contraband. Then again, this is one view, but then you might have another aspect of the situation arising, that increasing the number of prison officers who are authorized to search, you can have, actually, a situation where the security in the prison is actually compromised, because you have all these junior officers now, who are less well-trained and, as the Minister said, who neglect their duty to the State and to the citizens of this country who might be tempted to let things slide; to let things go and to not penalize the people whom they are in cohorts with, and so on. A greater number of persons can possibly denote a lack of security, a greater compromise of the situation. So this is not necessarily the solution to this problem. You might have a greater level of compromise of security.

The issue of the fact that these contraband items in the prison and the fact that it is so dangerous to the citizens and to the fact that these items have been used to call hits on persons outside the prison, and so on, that has been well documented in the media; stories of hits on even mothers and girlfriends and wives of prisoners, and so on. That has been well documented. We have spoken about this here. I have spoken about the fact that I got a call from the prison and was horrified to understand how come somebody can be calling me from the prison. Therefore, this is something that the Minister is trying to curb in terms of this particular amendment and so on. But the problem is who are to guard the guards? Because if you have a situation that prison officers themselves have a high level of complicity in getting contraband to the prisoners and so on, how are you going to ensure that these officers are not rogue officers; that they do their duty as they have, maybe sworn to do and that they do not allow prisoners, and so on, to get these items and they do not carry these items to prisoners?

*Prison (Amdt.) Rules*  
[SEN. DR. KERNAHAN]

*Tuesday, January 05, 2010*

So I think the problem here—I see Sen. Merhair has outlined that in different countries these issues are difficult to resolve, and it is true. All over the world people have the same problems, but in our society that does not take away the responsibility of the Minister to deal very seriously with the reforming of the whole concept of prison reform and the criminal justice system and the amendment of the rules which are extremely archaic. It does not take away from the responsibility of the Minister to do what we have to do in this country to carry our country down a safer path.

The problem we have, though, is that there is a level of perception in the society that there is a lot of corruption and it starts from the top and everybody is on the take and everybody is dirty, and so on. So if the lower ranks feel that the upper ranks are involved in corruption and are on the take and they see flaunting of wealth that is not compatible with salaries, and so on, everybody feels it is okay to do it. Because if the priest could play, who is me?

That is the general attitude in this society. There is a high level of materialism and consumerism and people wanting to live above their means, and so on, and this is very highly significant, especially in the protective services, among the police, in the army and people who are tempted daily by the criminals and so on, who are out there and who are able to proffer and induce with all the wealth from the underground economy and so on, and they are able to induce some of our hard-working officers to participate in that criminal activity.

So this is the dilemma and we have to face this as a society and we have to find ways to solve this problem. It is not an easy problem to solve, but where we have to start is dealing with the underground drug trade. We have to start with dealing with the white collar criminals in our society, because they are the ones who are corrupting from top to bottom in our society: politicians, protective services; business people and so on. There is a whole section of our society that is deeply involved in criminal activity and this will manifest itself right down the line to the prisons, to prison officers, to prisoners, and so on, and no matter how many rules you change, no matter how many people you increase to search for contraband, and so on, it would just mean that you have more people who are open to that level of corruption and the security might be further and further compromised.

So we have a task on our hands, but the first duty of the Government is to deal with white collar criminals, to deal with money laundering, to deal with the corruption that is taking place at the very head of the society, at the top levels of the society, and then we could deal with what is happening at the level of the prisons and the penal system and the criminal justice system.

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

**The Minister of National Security (Sen. The Hon. Martin Joseph):** Thank you very much, Mr. Vice-President. Let me first of all start by thanking every single one of the nine Senators who participated in this debate. I think that Sen. Rahman indicated that the mere fact that so many persons participated, reflected the importance that each Senator saw as it related to these two simple amendments to the Prison Rules.

Let me start off by also indicating, since Sen. Mark led off the debate, spoke the longest, and I believe touched many of the matters that others followed, let me speak with Sen. Mark. Sen. Mark started off by saying that I have neglected the prison and the fire service as Minister of National Security. I am sure Sen. Mark is very much aware that there is a Minister of State that has direct responsibility for prisons. In this case it is the hon. Donna Cox. Prior to her, it was Minister Fitzgerald Hinds; prior to him it was Minister Anthony Roberts. So to say that there has been a neglect—because he said I was focusing on the police and the reform of the police, et cetera—there is a Minister of State who has direct responsibility for prisons—direct responsibility for prisons, and not in any superficial sense, but in a very operational sense. Under normal circumstances it would have been her because she piloted this in the Lower House, but I am the Minister here. Okay? So that overall—

**Hon. Senator:** But the buck stops with you.

**Sen. The Hon. M. Joseph:** It has nothing about "buck stops." He was saying that insufficient attention was being paid to the prison and he was blaming the Government for not paying the kind of attention. I am now responding to that because that is, in fact, not so. So let us get that out of the way.

The second one: He said this is a piecemeal, knee-jerk kind of response. That is also not so. I have indicated—and I think Sen. Seetahal SC also indicated—that there are 280-odd Prison Rules which we have been dealing with for the last two years. It has been an exercise that is taking some time for a couple of reasons: because of the nature of the rules; because of the number and because of how far back they are dated. We are very close to completion of those rules. They are now at the LRC.

Sen. Prof. Deosaran, in his contribution, made a very interesting observation and a recommendation which we are going to consider, that is, he believes and that it may be timely that those Prison Rules be put out for public comment. He feels that it is a policy position, and it is, and he says that it will provide the population with an opportunity to see the question of how those rules are likely to impact on the criminal justice system.

*Prison (Amdt.) Rules*  
[SEN. THE HON. M. JOSEPH]

*Tuesday, January 05, 2010*

Now, I have to weigh doing that now with some more delays. You follow what I am saying? So I want us to be clear that the question about the transformation and the review of those prison rules, those have been considered and are being worked on, but it was felt necessary to take these two out and I am glad that there are a number of Senators who recognize that taking these two rules out, while it is not a panacea, it will provide the prison authorities with the ability to do certain things.

You would remember us talking about the fact that we need to address the prison officers who, for whatever reason, are exploiting the loopholes that exist. I must say to Sen. Dr. Kernahan, I do not agree with her on her logic that by expanding the pool of persons who are likely to be able to search, we are compromising the security. I do not agree with her, as far as that is concerned, because not only that, at the time when those persons were authorized to conduct the searches, the size of the prison officer population was much smaller. This is the reason I said that the prison officer population is about some 2,700-odd, so that by allowing 50-odd persons the ability to now supervise, I do not see, as you are seeing, the concerns that are likely to arise.

Somebody also talked about the fact that we went to Cabinet and got Cabinet approval. The Minister of State in the Ministry at the time had talked about an increase in the number of prison officers, but that is over a five-year period, to increase the staff of the prisons.

Sen. Mark talked about—he shifted gears and expanded his contribution to talk about this publication by Dorn Townsend. "No other life. Gangs, Guns and Governance in Trinidad and Tobago", and quoted selectively. Sen. Prof. Deosaran indicated that he was also a little skeptical because he was being interviewed and he was concerned about the manner in which some of the same information contained in an interview forms part of some international document.

Do you know what is amazing? A couple of times I had to get up, which is something I do not normally do, to correct the record. Because sometimes it is the very same record and the very same statements that we make in here, I believe designed to score political points, et cetera, that now become open source. And do not be surprised, in another publication they will say, "Senators said that the Government this; the Government encouraging that; the Government encouraging judicial murders", et cetera.

So we have to be careful when we say these things and believe that we are scoring political points, we are not realizing what we are doing to the general reputation of the country. But I am not surprised. I am not surprised. I understand

that there are some of us here who went to an international organization, from what I understand, and asked the international organization to downgrade us. [*Desk thumping*] So I am not surprised at some of these comments that are being made. [*Crosstalk*]

Mr. Vice-President, it is a late hour. I can give the assurance to Senators who made their contribution, that our style is to go through the *Hansard*, identify all the matters raised that are important that need to be addressed so that they can be addressed and as a result, implemented.

With those few words, as I said, I thank all Senators for contributing. I do not know what is the procedure with respect to the moving of the amendments, but I beg to move. [*Desk thumping*]

**9.20 p.m.**

*Question, on amendment, put and agreed to.*

Rule	Extent of Amendments
3	Insert the following as new paragraph (b):  “Delete the words ‘Commissioner, or the Deputy Commissioner, or a Prison Superintendent’ and substitute the words ‘Prison Supervisor or any other officer of a higher rank’”.

*Question put and agreed to.*

*Resolved:*

That the Prison (Amendment) Rules, 2009 be now affirmed subject to the following amendments:

Rule	Extent of Amendments
3	Delete the words “Superintendent, or Deputy Superintendent or an Assistant Superintendent” and substitute the words “Commissioner, or the Deputy Commissioner, or a Prison Superintendent”

- (b) “Delete the words ‘Commissioner, or the Deputy Commissioner, or a Prison Superintendent’ and substitute the words ‘Prison Supervisor or any other officer of a higher rank’”.

4

Delete the words “cell phones and other electronic devices” and substitute the words “cell phones, electronic devices and any other equipment and components that facilitate the transmission and reception of data”

#### ADJOURNMENT

**The Minister of Energy and Energy Industries (Sen. The Hon. Conrad Enill):** Mr. Vice-President, I beg to move that the Senate do now adjourn to a date to be fixed. By way of information, this is the last session of this Parliament. Unless otherwise updated, I believe Parliament would be prorogued on January 08, 2010, and we would return shortly thereafter.

Our first sitting on our return—and it may have to be that we will call a special sitting—would be to deal with the Anti-Terrorism (Amdt.) Bill that we circulated this afternoon. The reason we have circulated it is that Senators can have the opportunity to review it. When we return, at our first session we would relay the Bill and indicate when we would debate it. The Bill has a time constraint on it and we would try to facilitate that. Recognizing that we are introducing it here, we can look at the Bill in the manner in which we have grown accustomed and then it would be debated in the other place. It requires a special majority and therefore, in that regard, we would want participation.

At the end of it all, we are trying to get a good piece of legislation on our books. We have a commitment for review which we must meet by January 21 and we would try to facilitate that within the context of the time that is available.

I beg to move that the Senate do now adjourn to a date to be fixed.

*Question put and agreed to.*

*Senate adjourned accordingly.*

*Adjourned at 9.25 p.m.*