SENATE

Tuesday, February 09, 2010

The Senate met at 1.30 p.m.

PRAYERS

[MR. PRESIDENT *in the Chair*]

LEAVE OF ABSENCE

Mr. President: Hon. Senators, I have granted leave of absence to Sen. The Hon. Mariano Browne and Senators George Hadeed and Helen Drayton who are out of the country and to Sen. Basharat Ali who is ill.

SENATORS' APPOINTMENT

Mr. 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: MS. ANWARIE RAMKISSOON

WHEREAS Senator Mariano Browne 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, ANWARIE RAMKISSOON, to be temporarily a member of the Senate, with effect from 9th February, 2010 and continuing during the absence from Trinidad and Tobago of the said Senator Mariano Browne.

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 4th day of February, 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. NOEL GAYLE

WHEREAS Senator George Hadeed 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, NOEL GAYLE, to be temporarily a member of the Senate, with effect from 9th February, 2010 and continuing during the absence from Trinidad and Tobago of the said Senator George Hadeed.

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 5th day of February, 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: MRS. PARVATEE ANMOLSINGH-MAHABIR

WHEREAS Senator Helen Drayton 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, in exercise of the power vested in me by section 40(2)(c) and

section 44 of the Constitution of the Republic of Trinidad and Tobago, do hereby appoint you, PARVATEE ANMOLSINGH-MAHABIR, to be temporarily a member of the Senate, with effect from 9th February, 2010 and continuing during the absence from Trinidad and Tobago of the said Senator Helen Drayton.

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 8th day of February, 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: DR. ROLPH BALGOBIN

WHEREAS Senator Basharat Ali is incapable of performing his duties as a Senator by reason of illness:

NOW, THEREFORE, I, GEORGE MAXWELL RICHARDS, President as aforesaid, in exercise of the power vested in me by section 40(2)(c) and section 44 of the Constitution of the Republic of Trinidad and Tobago, do hereby appoint you, ROLPH BALGOBIN, to be temporarily a member of the Senate, with effect from 9th February, 2010 and continuing during the period of illness of the said Senator Basharat Ali.

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 8th day of February, 2010."

OATH OF ALLEGIANCE

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

Anwarie Ramkissoon, Noel Gayle, Parvatee Anmolsingh-Mahabir, Dr. Rolph Balgobin.

PRISONS (AMDT.) BILL

Bill to amend the Prisons Act, Chap.13:01, brought from the House of Representatives [*The Minister of National Security*]; read the first time.

PAPERS LAID

1. Report of the Auditor General of the Republic of Trinidad and Tobago on the financial statements of the Land Settlement Agency for the year ended December 31, 2002. [*The Minister of Energy and Energy Industries (Sen. The Hon. Conrad Enill)*]
2. Administrative report of the Ministry of the Attorney General for the fiscal period 2006 to 2007. [*The Attorney General (Sen. The Hon. John Jeremie SC)*]

ORAL ANSWERS TO QUESTIONS

Mr. President: Sen. Prof. Deosaran, Sen. Annisette is not here, did you ask anybody to put his questions for him?

Sen. Prof. Deosaran: I am sorry, Sir. I know nothing about the issue and I would like to do it, but I would have to spend a minute or two to apprise myself.

Mr. President: All right, what we would do then is that we would take his questions at the end.

Environmental Management Agency
(Vehicles Powered by Compressed Natural Gas)

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

> Could the Minister indicate to the Senate the number of Environmental Management Agency (EMA) vehicles that are powered by compressed natural gas (CNG)?

The Minister of Planning, Housing and the Environment (Sen. The Hon. Dr. Emily Dick-Forde): Thank you, Mr. President. Until CNG-ready vehicles are available for purchase, the only available option is converting or retrofitting current gasoline-fuelled engines or diesel-fuelled engines to natural gas. There are two types of conversion options: the dedicated conversion vehicle which runs on CNG only by fuel or dual fuel conversion vehicles which run on either a combination of CNG and gasoline or CNG or diesel.

In Trinidad and Tobago, retrofitting is currently undertaken only for gasoline powered vehicles. Diesel to natural gas conversion requires careful engineering

on the base engine modifications as well as the control system. Such modifications are required as a typical diesel engine has a compression ratio between 16 and 18 to one, while CNG usually works best between 10 and 12.

Since the natural gas fuel cannot be ignited in required time by compression ignition alone, an alternative means of igniting the charge must be implemented. Technicians need to be trained to convert diesel engine to use CNG and also maintain the vehicles after conversion.

The Environmental Management Authority had gasoline powered vehicles and at present the EMA has converted three of its 12 vehicles to dual fuel, thus providing the opportunity to use either gasoline or CNG as fuel. A fourth vehicle is to be converted to dual fuel—the response says by January 27, so I am not sure if it was done as yet. The remaining vehicles are currently utilizing only gasoline as fuel. Thank you very much.

National Academy for the Performing Arts
(Energy Efficient Building)

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

A. Could the Minister indicate whether or not the National Academy of Performing Arts is an energy efficient building?

B. If the answer to (A) above is in the affirmative, could the Minister identify the energy saving measures involved?

C. If the answer is in the negative, could the Minister give reason(s) why the building is not energy efficient?

The Minister of Planning, Housing and the Environment (Sen. The Hon. Dr. Emily Dick-Forde): Thank you, Mr. President. The National Academy for the Performing Arts, Port of Spain is an energy efficient building. The energy saving measures at the National Academy for the Performing Arts exist in four varied categories:

(i) Architecture: the material for both exterior and interior roof is insulated metal. The heat installation material is fibreglass placed between with aluminium panels with high efficiency thermal performance. All glass material is specially laminated, tempered transparent glass with high heat installation performance. The glass that is used at the National Academy for the Performing Arts has a high reflection weight which assists in reducing power use for cooling, which is for air conditioning.

(ii) The second energy saving measure is plumbing: the cooling tower and the heat exchange is energy saving and the latter has a temperature control device. The cooling tower recycles water. The centralized hot water system uses mechanical recycle to maintain water supply temperature and reduce the loss of cold water. Flush accessory for sanitary ware is water saving as well.

1.45 p.m.

(iii) Heating, ventilation, air-condition: Ventilation equipment is all in accordance with requirements for energy saving and efficient performance index. Furthermore, the AC system is practical and uses auto control systems and meets the requirements of comfortable energy saving with monitoring. Indoor ventilation can be individually adjusted according to each room's function; and

(iv) Electrical, which is the transformer and diesel generator in the substation are all high, efficient and low energy consumption. The low voltage transformer in the mechanical room can be set to increase power factor. Most of the lighting at the National Academy for the Performing Arts are fluorescent lights and gas discharge lighting, and the fluorescent lights use electronic current regulators which not only increase the power factor, but also reduce energy consumption.

The building automation system uses monitor and auto control AC, plumbing, electrical and lighting equipment to reduce energy consumption.

Part C is not applicable.

Thank you, Mr. President.

Sen. Dr. Nanan: Minister, could you say whether that building is a smart building? I understand in your response you talked about auto control of air-conditioning and lights, but in terms of smart building, is there a computer system that controls the lighting in various parts of the building?

Sen. The Hon. Dr. E. Dick-Forde: I do not know the details of that, but from the response I received from UDeCott, the idea that you can control the lighting for each room, may make it something that is not controlled only by computer. It means that you can manually turn off lights, and so on. But if you want more details on how smart it is, we can ask UDeCott.

Thank you.

Climate Change
(Measures in Place)

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

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

The Minister of Planning, Housing and the Environment (Sen. The Hon. Dr. Emily Dick-Forde): Thank you, Mr. President. From 2007 to present, the measures put in place by the Government of Trinidad and Tobago, and in some cases, continued those that commenced prior to 2007, to combat the effects of rising sea levels due to climate change, include projects such as: the Manzanilla Coastal Protection Works—this is a project that is listed as completed. This is a 2.3 kilometre of rubble mound revetment, along the south Cocus Bay between the Nariva River and the Ortoire River. The design of this revetment took into consideration the global rate of sea level rise over its designed life. This is phase one of a possible three phase solution. The other two phases include a beach nourishment scheme and the construction of offshore breakwaters.

The other project is the North Coast Study between Blanchisseuse and Ortoire Toco. The purpose of this study is to develop coastal protection works along this stretch of coastal line. Currently, the modelling exercise is on the way for the design of the structures. A sea level rise rate of 2 millimetres per year is being used—that is for this project alone.

Another project is coastal monitoring through the Environment Research Programme of the Institute of Marine Affairs—this is not a project. This is an ongoing study—which collects data on beach profiles, coastal erosion, coral reef monitoring and mangrove monitoring.

Data from the coastal monitoring programme will be used in modelling the changes at the shore, and determine the local rate of sea level rise. The programme has collected data for 65 beaches in Trinidad, and 45 beaches in Tobago. Some of the beaches have data spanning 20 years, while others are more recently added to the monitoring programme. Information generated in the coastal monitoring programme is used to advise the Town and Country Planning Division on setback distances, as well as for the construction of coastal structures across Trinidad and Tobago.

Monitoring of the reefs systems, particularly those in Tobago, also provides for indications of change due to climatic variations. The data obtained will assist in determining the impacts on the reefs and the protection offered to the coastlines.

Finally, the comprehensive national drainage study which includes North Oropouche River Basin, Ortoire River Basin and Caroni River Basin. This is intended to develop best management practices for flood mitigation in the mentioned basins. The design process of these best management practices has taken into consideration rainfall trends and patterns due to climate change.

Thank you, Mr. President.

Mr. President: Sen. Dr. Nanan?

Sen. Dr. Nanan: Thank you, Mr. President. In the answer the Minister gave, she highlighted the north coast area and the east coast Manzanilla, does the Minister have any specific plan for the south-western peninsular?

Sen. The Hon. Dr. E. Dick-Forde: Not that I now have before me, Senator, through you, Mr. President.

Mr. President: Sen. Ali is not here and neither is the Minister in the Ministry of Finance, so I think we will have to defer those questions. [*Interruption*] I think we will leave them for Sen. Annisette to put himself. There may be issues arising out of that, that he knows what he wants to get. That might be the most prudent approach, Senator, but thank you very much for the support.

We move to item 9 on the Order Paper.

The following questions stood on the Order Paper:

Landate
(Findings of)

1. Sen. Michael Annisette asked the hon. Minister of Health:

Could the Minister inform this Senate of the findings of the Ministry's enquiry into the Landate matter? [*Sen. M. Annisette*]

Landate
(Commission of Enquiry)

2. Sen. Michael Annisette asked the hon. Attorney General:

Could the Attorney General indicate to this Senate what action the Government intends to take with respect to:

(i) the findings of the Commission of Enquiry into the Scarborough Hospital; and
(ii) its investigation into the matter which included Landate? [*Sen. M. Annisette*]

Crude Oil and Natural Gas
(Details of Pricing)

21. Could the hon. Minister of Finance advise the Senate on the following:

(a) In accordance with section 13(3) of the Heritage and Stabilisation Fund Act, what is the eleven-year moving average price for crude oil and natural gas used for estimating petroleum revenues in the financial year October 2009 to September 2010?

(b) What is the estimated production and petroleum revenues for crude oil and natural gas as the aggregate of supplemental petroleum tax, petroleum profits tax and royalties for the financial year October 2009 to September 2010? [*Sen. B. Ali*]

Revenues for Oil and Natural Gas
(Details of)

22. Could the hon. Minister of Finance advise the Senate on the following:

(a) What was the estimate production and petroleum revenues for oil and natural gas for the quarter October to December, 2009?

(b) With respect to (a), what was the actual production and petroleum revenues collected for that period?

(c) With reference to (b) whether the actual revenues exceed the estimates for that period by more than 10 per cent; and

(d) Whether the excess revenue has been or will be transferred to the Heritage and Stabilisation Fund (HSF)? [*Sen. B. Ali*]

Questions, by leave, deferred.

WRITTEN ANSWER TO QUESTION

The following question was asked by Senator Dr. Adesh Nanan:

Emission Reduction
(Record to Date)

8. Could the Minister of Planning, Housing and the Environment indicate the record to date of emission reduction credits from 2002 to present on Government projects for either electricity savings or natural gas savings?

Vide end of sitting for written answer.

EVIDENCE (AMDT.) BILL

Order for second reading read.

The Attorney General (Sen. The Hon. John Jeremie SC): Mr. President, I beg to move,

That a Bill to amend the Evidence Act, Chap. 7:02, be now read a second time.

In moving the second reading of this Bill, I put in context the Government's legislative efforts over the past few months in this area. Hon. Senators would recall that in 2007, we amended the Evidence Act to allow for the admissibility of first-hand hearsay statements made in writing by witnesses who were subsequently killed. Hearsay in this sense is not used in the pejorative sense of information received from other persons which one cannot adequately substantiate, that is to say, rumour. Rather, it is used in its technical restricted sense to mean, "evidence which is other than viva voce live evidence of a witness given in court on a matter discerned through his own senses". This was accomplished in 2007 by creating an exception by statute to the hearsay rule to allow the use of such statements in certain limited circumstances. Of course, other instances exist in the general law of exceptions to the hearsay principle.

In December 2009, hon. Senators will recall that we amended the Evidence Act in a number of important respects. Senators would recall the changes made in the 2009 amendment Act were to the use of bad character evidence and prior inconsistent statements. We also sought to amend the Act to allow for the use of audio-visual evidence, but only in very restricted circumstances. Today, even as we acknowledge that we are at war with the criminal elements, the Government has taken careful note of the statements uttered publicly by the Director of Public Prosecutions on the passage of the 2009 amendment Act in December, in which he welcomed the changes made by that Act and the comments uttered just a few days ago by the hon. Chief Justice in relation to jury tampering. Even as we are moving to deal with the latter, we move this afternoon to further strengthen the 2009 amendment Act, insofar as the use of audio-visual technology is concerned.

Mr. President, the Bill now before this honourable Senate entitled the Evidence (Amdt.) Bill, 2010, was originally aimed at reviving the common law doctrine of recent complaint. But as I have remarked, we have taken the opportunity to expand further, the use of audio-visual technology to all criminal matters, and in respect of matters even where witnesses are absent at the trial.

I turn first to the doctrine of recent complaint, which I have said was the original, if limited, ambition of the Bill. The doctrine of recent complaint is an

exception to the general rule which applies throughout the law of evidence to prohibit the introduction of prior consistent statements made by a witness in order to bolster his or her credibility. This is generally forbidden as a form of self-corroboration. One cannot point to a statement, self-serving as it is likely to be to say, "You see, I said I was robbed by Peter in 1999", to prove that you were robbed by Peter in 1999, at a trial in 2005. You must give evidence in 2005 of that fact. If it were otherwise, then you will be permitted to prove your case by self-serving contemporaneous statements. Evidence of recent complaint never constituted corroboration because it did not come from an independent source and it remains the case that it cannot constitute independent confirmation of the complainants evidence, and the jury should be directed as to the limited effect of such evidence.

In fact, in the case *R v Churchill* reported in *1999 Criminal Law Report* at page 664, the English Court of Appeal ruled that a judge should stress that evidence of a complaint made to a third party is not independent evidence, and therefore, should not be regarded as evidence from that third person as to the correctness of the allegations.

At common law, recent complaint evidence is an exception to this general rule against self-corroboration, and it is only admissible in trials for sexual offences where it is admitted to show consistency and to rebut consent which as we all know, is fatal to rape, the central offence in the sexual offences.

If the doctrine applies, evidence of a previous oral or written statement by the victim may be admitted against the accused. The rule therefore operated at common law to bolster the credibility of victims of sexual offences. However, in order to be admissible, the complaint must have been made voluntarily and at the first reasonable opportunity after the commission of the alleged offence.

At common law, a warning must also be given to the jury that the complaint is only admissible to the extent of showing the credibility of the witness. It cannot be used as evidence of the truth of the fact that the sexual offence was committed by the accused.

Mr. President, in the case of *R v Lillyman*, reported in 1896, Vol. II of the Queen's Bench at page 176, it was held that the fact that a complaint was made by the prosecutrix shortly after the alleged offence, along with the particulars of the complaint, may be admitted in evidence by the prosecution, not as evidence of the truth of the fact complained of, but as evidence of the consistency of the conduct of the prosecutrix with her story as related by her in the witness box, and as tending to negative her consent.

2.00 p.m.

Mr. President, section 31 of the Sexual Offences Act, Chap. 11:28, which this Government in 1986 was responsible for, abolished the doctrine from the laws of Trinidad and Tobago. One rationale for the abolition of the doctrine was the notion that it embodied and perpetuated a timing myth, a relic from the days when the victim of an alleged sexual assault was expected to immediately inform someone or to be deemed to have consented.

It was recognized that, in fact, many victims, particularly children, may be afraid or reluctant to make an immediate complaint. Furthermore, factors such as the context in which the attack occurred, the nature of the opportunity available to report the assault, the victim's capacity to articulate what happened and the impact of the trauma were considered to be irrelevant in the context of the doctrine.

In the year 2000, when my friends on the other side held the reins of power, section 18 of the Sexual Offences (Amdt.) Act of 2000, which is Act No. 31 of 2001, repealed and replaced section 31 of the Sexual Offences Act, effectively removing mention of the abolition of the doctrine from the laws of Trinidad and Tobago. Though the intention might have been to revive the doctrine, the technical question which arose was whether the repeal of a provision which had altered the common law had the effect of reviving the common law. But why should we now seek to revive an old and jettisoned doctrine? The answer is that the doctrine, together with the appropriate safeguards, can be an effective tool to bolster the prosecution's case in very many sexual offences.

Concerns have been raised that the exclusion of recent complaint evidence in point of fact creates further difficulties for the prosecution. Victims of sexual offences are deprived of an opportunity to adduce evidence in support of their credibility and a jury may assume that the fact that no complaint was made, suggests that no offence was committed, thus prejudicing the victim's credibility, the very thing that we are, in fact, seeking to avoid. Having regard to this and the practical difficulties which have occurred in the prosecution of these offences, caused by the abolition of the doctrine without more, the Government proposes to complete the task which our friends opposite attempted in 2000, by expressly reviving the doctrine with the appropriate safeguards to bolster the credibility of victims of sexual offences in respect of this category of troubling crime. The probative value of the doctrine, as amended, to use the language of the interests of justice test, appears to outweigh any prejudicial effect.

Mr. President, the question is: Why did the attempt in 2000 fail to revive the doctrine? I refer hon. Senators to section 18 of the Sexual Offences Act of 2000,

which repeals section 31 of the 1986 Act. It would be recalled that it was the 1986 law which sought to repeal the doctrine. Section 31(1) of the Interpretation Act, Chap. 3:01, addresses this point and provides that:

> "The repeal or the amendment of a written law shall not be construed as a declaration as to the previous state of the law."

The common law is, therefore, not revived in and of itself by an Act which repeals it.

This has now been confirmed by the Court of Appeal in a thorough analysis of the law in the case *Godfrey Gabriel v the State*, where the Court of Appeal in considering the arguments advanced by counsel for the State, my good friend, Independent Senator, Sen. Seetahal SC, held that the Act had the effect of reviving the doctrine on the admissibility of recent complaint—the arguments advanced by counsel for the State that the Act had the effect of reviving the doctrine on the admissibility of recent complaint evidence, noted at page 9 of the judgment that:

> "…the repeal or amendment of a written law is not to be construed as declaratory of the previous state of the law. 'Law' in 'state of the law' certainly includes the common law. In each case the repealing Act will have to be construed to determine whether it was Parliament's intention to revive the previous law. In this case it is common ground that the 2000 Act does not contain such an intention. The consequence therefore is that the repeal of the 1986 Act did not reinstate the common law rules as to recent complaint."

In light of the foregoing, it is now proposed that the Evidence Act be amended to expressly revive the doctrine in respect of sexual offences.

The question, of course, is: Why do we now seek to undo that which we have previously and explicitly set out to extinguish? As I had previously pointed out, there are difficulties which are posed by the abolition of the doctrine without more on the victim's credibility. Mr. President, the admission of evidence of recent complaint enables the jury to have a more complete picture of the facts of the case and to hear direct evidence relevant to the circumstances. The main purpose of introducing recent complaint evidence is to support the credit of the complainant. Its exclusion would mean that the jury would be denied the means of making a proper assessment of any supporting contemporaneous evidence and, hence, of the overall credit of the complainant.

The exclusion of recent complaint evidence can undoubtedly result in a real risk of speculation on the part of the members of the jury, which may well be very

unfair to the complainant and contrary to the interest of justice. It is noteworthy that the English have now expanded the doctrine which we seek to revive today. Not simply is it used to bolster the credibility of the victim in England, but to prove that the commission of the wrong was, in fact, done to her.

As the Government moves to strengthen the pillars of the criminal justice system, the objective of this amendment legislation is simple: To empower witnesses and victims of crime and, in this case, the accused himself, and to facilitate successful prosecutions. Further, the combined effect of the various changes to the law of evidence in 2007 and 2009 is to provide for a system of justice which would ensure a fair trial, safeguarding the rights of an accused, whilst bringing before the courts the best evidence, protecting the rights of witnesses and facilitating the conviction of the guilty. As we seek to reintroduce the doctrine, we exercise care.

One response to the flawed assumption with regard to time underlying the doctrine, has been to impose a requirement on trial judges to warn the jury that in cases where there has been a delayed complaint, the delay is not necessarily evidence of falsity and that there may be good reason why a victim may hesitate in coming forward.

The Australian territories, New Zealand and Barbados are examples of jurisdictions which now have some form of this requirement and the proposed section 15AB in this amending Bill seeks to impose a like requirement. We, therefore, seek to revive the doctrine, but to negate its deleterious effect which led our predecessors to the radical step of abolishing the doctrine altogether.

In Canada, which has abolished the doctrine, judges in that jurisdiction gave instructions to the jury in the case of delayed complaints. The Supreme Court of Canada in the case of *R v DD*, reported in 2000 at Volume 2 of the Supreme Court Reports at page 275, noted at page 65 that:

> "There is no inviolable rule on how people who are victims of trauma like a sexual assault will behave. Some will make an immediate complaint, some will delay in disclosing the abuse, while some will never disclose the abuse. Reasons for delay are many and at least include embarrassment, fear, guilt or lack of understanding and knowledge. In assessing the credibility of a complainant, the timing of the complaint is simply one circumstance to consider in the factual mosaic of a particular case. A delay in disclosure, standing alone, will never give rise to an adverse inference against the credibility of the complainant."

It is, therefore, proposed that the Act be amended to expressly revive the doctrine in respect of trials for sexual offences, but with an expressed provision to speak to cases where there is, in fact, no recent complaint to ensure that persons, women and children who react differently to sexual offences, are not prejudiced by delays in making complaints.

At the appropriate stage, the Government intends to introduce a few amendments to the Bill; though they are few in number, they are important, in our view. This Bill which initially had merely two clauses, will now have six clauses; there are four additional clauses.

Essentially, these amendments seek to expand the use of video recorded evidence in criminal proceedings. Where such evidence is admitted in evidence, obviously it is not viva voce evidence and it is hearsay evidence, not in the pejorative sense of the word hearsay, as I have described before, but as being evidence not actually spoken out of the lips of the witness live in court. For example, evidence of a dead witness, if admissible, is hearsay evidence.

Perhaps, at this juncture, I should recall for the benefit of hon. Senators the changes that were made to the hearsay rule, first in 2000 and then in 2009, last December to be exact. [*Interruption*]

Sen. Dr. Nanan: As you have reached this particular part, let me ask: In the US jurisdiction you could have expert witness testimony, can you have that in our jurisdiction?

Sen. The Hon. J. Jeremie SC: The short answer to that is yes, it is permissible.

I was making the point that I wanted to trace what we had done in respect of amendments to the hearsay principle, first in 2007, to facilitate the reading of witness statements by witnesses who have been killed, that would be first-hand hearsay, and then in 2009 to facilitate the use of audiovisual technology.

In 2007, by the Evidence (Amdt.) Act, which is Act No. 5 of 2007, a new section 15C was inserted into the Evidence Act to provide for the admissibility of first-hand hearsay statements in criminal proceedings. This is just one of many exceptions to the hearsay principles. Several exceptions are found, both in the common law and in statute. That amendment now provides that the written statement of a person can be admitted as direct oral evidence, if it is proved to the court that the person is dead, physically or mentally incapacitated, is outside the jurisdiction, cannot be found or is kept away by threats of physical harm. The

thrust of the 2007 amendment was to ensure that evidence of witnesses who, for the various reasons I have just mentioned, death most importantly, could not be present in court, may nonetheless be admitted into evidence. This was a necessary step at that time and it remains necessary today. I think all in this Chamber would appreciate why the Government took the step at that time and why it is necessary for us to have such a provision on the books today.

As a procedural safeguard, such a statement can, however, only be admitted with leave of the court, that is to say, there is no automatic right to admit the evidence, even in the case of a dead witness and in the categories I have set out before.

2.15 p.m.

The court would only grant leave in the interest of justice and in so doing will take into account the content of the statement, the risk of unfairness and any other relevant factors.

Hon. Senators, therefore, should note that there is no automatic right to have these statements admitted into evidence. The power to exclude or include them is vested in the High Court to declare the statement admissible or inadmissible depending on the satisfaction of the interest of justice test, that is to say, whether the prejudicial value of the statement is greater than its probative value.

Mr. President, the constitutionality of the use of such hearsay evidence, not in the pejorative sense has been accepted by the Privy Council in the Jamaican case of *Stephen Grant v The Queen* which is Privy Council Appeal No. 30 of 2005. In that case, similar provisions in the Evidence Act of Jamaica were expressly upheld by the Privy Council to be constitutional and, of course, we referred extensively to this case during the course of our debates in 2007 and December last year.

Mr. President, in continuing to address the problems of the criminal targeting of witnesses, the Government sought by the Evidence (Amdt.) Act, 2009, Act No. 16 of 2009, to further push the boundaries of the hearsay rule in December last to allow for the use of, as it were, indirect evidence in certain limited cases in criminal proceedings. The Evidence Act was amended then to provide for the admissibility of a video recorded statement by a witness in proceedings for an indictable offence or for the summary trial of an indictable offence. We left untouched in December therefore, all other non-indictable offences of a criminal nature, a vast array of criminal offences.

One of the main focuses of the 2009 amendment is to ensure that the statement of a witness may be admitted into evidence even though the witness has suffered "a loss of memory". All of us in this Chamber understand what is meant by that. That is to say, he recants on his original statement.

This is achieved by the use of a video recording of his statement being admitted as evidence in chief. Of course, hon. Senators will recall that this can only be done if the court directs the video recording to be played. The intent was to provide a mechanism to ensure that proceedings were not frustrated or aborted because of the change of heart of witnesses who might be threatened or intimidated instead of simply being killed.

Mr. President, so devious is the criminal mind that they are aware now that the killing of a witness may result in the so called hearsay statement being admitted. The criminals adapted swiftly moving from killing witnesses to now intimidating them; that drove our response in December last year. I pause here to remind hon. Senators of the words of the hon. Chief Justice spoken outside this Chamber on jury intimidation. I will address that matter soon.

Our December amendment was restricted to:

(a) a video recorded statement of a witness who was required to be present in court; and

(b) to proceedings for an indictable offence or for the summary trial of an indictable offence, if the amendment did not apply to the accused or to an absent witness.

So, if for any reason, the witness was frightened away or even killed, the audio-visual recording could not be used and it could never be used against the accused. This, Mr. President, the Government believes is too restricted. That was the limited application of the 2009 amendment.

This amendment does not and cannot by its very terms apply in the case where the witness is absent, as I have said, for any reason including fear or death, and likewise, it does not apply to an accused person. I just reiterate that point. So, on further reflection, the Government now seeks in this Bill, at this time, to make the fullest use of the technology.

We seek first to expand the use of video recorded statements in criminal proceedings altogether. It is proposed that the use of such statements be extended to apply to all types of offences and not just those which were mentioned in the 2009 amending Act, that is to say, indictable offences. It is also proposed that a

video recorded statement of both the accused and an absent witness may be admissible in all or any criminal proceedings. That is all this amendment seeks to do. It does this by inserting two principal clauses; that is all.

There are only two primary additional clauses which we have added to the Bill before this honourable Senate. They would have been circulated yesterday by way of e-copies at 2.42 p.m. Mr. President, it was my right to come this afternoon and speak to these amendments at the relevant point and to deal with them at committee stage, but out of deference to the Senate, I circulated to all Senators an e-copy highlighting in bold all the changes which I propose to make to the Bill this afternoon.

I invite hon. Senators to read along with me, the Bill with amendments in bold sent by email to all Senators. I now turn to address the clauses in the Bill.

Clause 1 of the Bill now before this honourable Senate would provide the short title of this Act. I propose that this clause be amended to provide for a commencement provision, thus clause 1 will be renumbered as clause 1(1) and a new subclause (2) would be inserted.

Mr. President, it is proposed that two new clauses be inserted before the existing clause 2. The first new clause numbered clause 2 would provide for an interpretation provision.

The second clause numbered clause 3 would provide, as is the norm, and as we did before in the case of the 2009 statute for the constitutionality of the Act. Consequently, the existing clause 2 will be renumbered as clause 4.

The renumbered clause 4 will amend the Act by inserting after section 15A, sections 15AA and 15AB. The proposed section 15AA seeks to expressly revive the doctrine of recent complaints for the reasons I have given before.

Mr. President, at the appropriate stage the Government will circulate a further list of amendments which will propose four further changes to the Bill; two to the renumbered clause 4 and two to the new clause 5.

It is proposed that two further changes be made to section 15AA. It is proposed that a date be specified for the application of the common law rules in this jurisdiction because of the radical changes made to the law of recent complaint in the United Kingdom—so that forms a part of the common law in the United Kingdom. We do not want to go that far, we do not want recent complaint to be proof of anything, we want it simply to bolster the credibility of the victim. In England they have gone further, so we have put a cut-off date by which the common law is to take effect.

The Criminal Justice Act of the United Kingdom in 2003 by sections 12(4) and 12(7), effects radical changes to the law relating to recent complaint evidence. First, the complaint may relate to any offence, not simply sexual offences. Secondly, the terms of the complaint if admissible are admissible not merely to show consistency or credibility as I have just said, but as evidence of their truth. Hence, this change in England as of April 04, 2005 superseded the entirety of the former law, they have gone leaps and bounds beyond where we propose to go today.

Therefore, we must amend the proposed section to clarify that the common law of England in this area of the law, prior to this radical change in that jurisdiction with the common law is applicable to Trinidad and Tobago upon the commencement of this amending Act.

The second change to the proposed section 15AA is merely to clarify and make more certain the intent of the provision.

The proposed section 15AB seeks to impose a requirement on the trial judge hearing a sexual offence case to warn the jury that an absence of complaint, or a delay in complaining does not necessarily indicate that the allegation that the offence was committed is false since there may be good reasons why the victim of a sexual assault may refrain or hesitate from making a complaint. I have explained this too, before.

As I mentioned earlier in my presentation, amendments are now being proposed to the Bill, that is the constitutionality clause and the interpretation clause which I have circulated to Senators before. These are in bold in the consolidated Bill circulated last afternoon. In addition to those which I previously mentioned, two material clauses would be inserted after the renumbered clause 4, as clauses 5 and 6. This is also in your consolidated Bill.

The proposed clause 5 would seek to amend section 15C of the Act which was introduced by the Evidence (Amdt.) Act, 2007. Section 15C makes provision for the admissibility of first-hand hearsay statements in criminal proceedings, as I mentioned before, largely to treat with witnesses who were killed after giving a written statement.

The proposed amendment to this section merely seeks to expand the application of that principle in writing to allow a video recorded statement, whether made by an accused or a witness.

Mr. President, it is proposed that subsections (1) to (6) of section 15C be renumbered as subsections (2) to (7) and that a new subsection (1) be inserted.

This new subsection (1) would seek to provide the power to make a video recorded statement. But why insert this power? I had spoken in this Senate before on many occasions of our cautionary principle which we adopt on this side in passing legislation. All that we did in December proceeded on the basis that there is a power to make and use a video recorded statement. We now make that assumption crystal clear. So if it was open to question whether there was any specific power to make a video recording of a statement, this provision puts the matter beyond doubt.

Mr. President, it is to be noted that where leave is granted by the court under the renumbered section 15C(3), a video recorded statement made by a witness shall be admissible under the renumbered section 15C(2) in the proceedings.

As I mentioned earlier in my contribution, a second list of amendments will be circulated which is very short; the second set of changes to be effected by this new list are to the proposed section 15C(1) renumbered (2). It is proposed that section 15C(2) shall not apply to an accused, but only to a witness because the conditions set out in section 15C(2) will not apply to an accused, he would not be dead, for example.

2.30 p.m.

Hence the new clause 5(c) has been redrafted to reflect this change. Consequently, as seen in clause 5(b), the proposed new subsection (1) is amended. The change provides for a statement by both an accused and a witness to be video recorded. It is to be noted that such a statement of an accused is not admissible under section 15C(2). Section 15C(2) only applies to a witness.

Hon. Senators should also note that the existing conditions under the renumbered section 15C(2) would also be applicable when the court is considering granting leave in relation to the video recorded statement. Those conditions are death, physical or mental incapacity, absence from the jurisdiction, cannot be found, kept away from the court by threat and fear.

Further, under the renumbered section 15C(3), certain factors are specified. The court is required to take these into account when considering whether to grant leave for the admissibility of a statement. It is proposed that these factors would now equally apply when the court is considering granting leave to admit a video recorded statement by a witness or an accused.

It is proposed that additional factors be provided when the court is considering an application for leave to admit a video recorded statement. Senators are asked to

note that these additional factors as specified in the proposed subsection 3A of section 15C essentially, are the interval between the events and the recording of the statement; the quality of the recording and any other factors which may affect the reliability of the recorded statement.

I now turn to the proposed clause 6. This new clause seeks to amend section 15I of the Act. Section 15I was inserted in the Act by section 7 of the Evidence (Amdt.) Act, 2009. This amending Act came into force on January 25, 2010, by Legal Notice No. 10 of 2010. That is just a fortnight ago.

The proposed amendments at paragraphs (a) and (b) of clause 6 are consequential amendments. Essentially, it is proposed that two subsections be deleted and the remaining subsections renumbered. At the proposed clause 6(c), four new subsections are proposed to be inserted. The proposed subsection (1) provides that a video recorded statement would be admitted whether or not there is an existing written statement, whether given before or after the recording.

Under the proposed subsection (2), where a video recorded statement is admitted, that statement shall be admitted as the evidence in chief of the maker of the statement.

By the proposed subsection (3) a video recorded statement made by a person is admissible whether or not the statement was made on oath.

Finally, subsection (4) provides that where a child gives a statement which is video recorded under the proposed section 15C(1) which is proposed in clause 5(b), the statement must be made in the presence of an adult chosen by the child.

The proposed clause 6(d) seeks to provide that video recorded statements shall be admissible in all criminal proceedings—I had mentioned this before—and not be limited to an indictable offence or for the summary trial of an indictable offence.

The proposed clauses 6(e) and (f) provide for consequential amendments. Hon. Senators may wish to note that the major consequential change is that the court may now be able to order that the video recorded statement of an accused be admitted in evidence.

It is proposed that the Bill be enacted by a special majority under section 13 of the Constitution. To that end, it is proposed that the Bill be amended to include the relevant Preamble and that the existing parliamentary certificate at the end of the Bill be deleted and replaced with the special majority parliamentary certificate.

The Government is strong in its resolve that adequate procedural safeguards do exist in the proposed Bill. Our position that the original Bill passed in the Senate in 2009, by a special majority required only a simple majority for its passage, has now been vindicated in *Re Horncastle*.

However, out of an abundance of caution, the Government has again decided that this Bill too, should be passed with a constitutional majority under section 13 of the Constitution, to make certain of the point and more so, because the 2000 Bill was in the end, passed with a special majority, we seek one again, today.

I beg to move.

Question proposed.

Sen. Wade Mark: Mr. President, this is indeed difficult, complex and far-reaching legislation which requires some pause and deep contemplation lest we are innocently hoodwinked into supporting legislation which surreptitiously, could strip the citizens of their human rights and fundamental freedoms. There has been a patent and blatant lack of public consultation with the various stakeholders on an extremely far-reaching measure which we are debating at this time.

There is the network of nongovernmental organizations of Trinidad and Tobago for the advancement of women. From our information they have not been consulted. We understand from reports that even the Women's League of the PNM has strong objection to this measure, but they have been overruled. At the appropriate time, we would like the Attorney General as the titular head of the Bar to share with the honourable Senate whether the Bar Association of the Republic of Trinidad and Tobago has been consulted on such a far-reaching piece of legislation.

My information is that the Rape Crisis Centre which deals with sexual predators and women who are victims of sexual aggression, they too, have not been consulted on this very important piece of legislation. I think that the first flaw in this particular measure is the absence of democratic participation and involvement by the stakeholders, advocates and victims, of this particular measure that is before us.

The second area I bring to your attention is that this is the seventh or eighth piece of legislation in the last year that has been brought to this Parliament infringing, violating and abrogating the rights and freedoms of the citizens under sections 4 and 5. This cannot be taken lightly.

May I also point out to you as I deal with this very significant measure before us today, that under section 5(2) of the Republican Constitution, this Parliament may not make laws that are going to deprive a citizen of the right to a fair hearing in accordance with the principles of fundamental justice for the determination of his rights and obligations.

Under 5(2)(f)(ii), it shall not, it may not deprive the citizens to a fair and public hearing by an independent and impartial tribunal.

Mr. President, I want to let you know that we were shocked at the very simplistic approach being adopted by the hon. Attorney General when it came to the issue of properly and adequately informing Members of the Senate, as it relates to the sweeping amendments to what can only be considered as a completely new Bill.

Under section 48(1) of our Standing Orders, when new Bills are introduced, outside of money Bills we need 15 clear days notice. What we have today is what I would like to describe as ambush legislation. [*Desk thumping*] Do you know what is even more sad, Mr. President, we are told by the hon. Attorney General, in a very sleight of hand manner, that we have four more pieces of amendments to circulate. A Bill that is going to infringe on the rights and liberty of the citizens of the country, this kind of flippant manner of the Attorney General who is supposed to be the guardian of our Constitution, it leaves much to be desired.

We on this side of the Senate are very disappointed as it concerns the kind of contempt and mistreatment being meted out to Senators, lawmakers of this honourable Senate who are being asked to support a measure that will infringe on the liberty of the citizenry of this country. We have the Attorney General of this country telling us this afternoon, having received at 3 o'clock yesterday afternoon, sweeping amendments to a matter and measure that is before us today, and before we could adequately digest those measures, we are being told by the Attorney General that he has more measures and more amendments and in a lighthearted manner, those amendments shall be circulated shortly.

2.45 p.m.

We cannot be making laws under duress. We cannot be treated in that discourteous manner by the Government of this country because it believes it has the majority in the Senate; because it believes it can ride roughshod over the rights and freedoms of the people! We are very disappointed in the manner in which this matter has been addressed.

Apart from this revival of the doctrine of recent complaint, which is what we were dealing with initially—and we had difficulties in dealing with this matter—we were trying to balance the scales of justice as it concerned the accused and the victims or the complainant. We tried to see how the scales of justice could be evenly balanced as far as is practically possible. Before we can get over that hurdle, we are confronted with a new amendment that has nothing to do with the Sexual Offences Act.

The Attorney General has exploited this Senate today by taking advantage of this measure before us, introducing measures that have nothing to do with sexual offences. Do you know what is even more dangerous? He says in a light-hearted manner today that these measures before us shall now incorporate all criminal offences. That is dangerous. You have had no consultation with the Bar Association or the Law Association of this country as it concerns these measures; you have had no consultation with the stakeholders of this society who are dealing with women and the rights of women and the victims of sexual aggression, and you expect us, as a responsible Opposition, to come here this evening and give our support to a measure of this magnitude? We cannot! You cannot treat the Opposition and other Members of this Parliament with such—you know, almost, I want to say, contempt. We would not stand for it. Therefore, we want to serve notice on the hon. Attorney General and the Government of this country; you see this measure? it is very, very draconian.

We are not lawyers by profession but we are lawmakers. This is a measure that requires the intervention of stakeholders via a joint select committee where, for instance, we can meet with these stakeholders: the Bar Association; the Rape Crisis Centre. We can meet with the Non-governmental Organization for the Advancement of Women and we can meet with other stakeholders. The PNM Women's League, we would like to invite them as well, because this is a matter that involves women; one aspect of it. Where is the opportunity?

Last week we had to beg, literally, the Leader of Government Business to stop the Attorney General from proceeding at 7 o'clock last Tuesday to move this Bill. We were happy that we were able to get the cooperation of the Government. But he was prepared to move this Bill through all its stages last week Tuesday, and look at the gravity of this measure.

This is draconian, dangerous, far-reaching legislation and I would tell you, we cannot take a sledge hammer to kill a fly. That is a classical case of the Government seeking to destroy a fly by using a sledge hammer. We cannot be responsible and the citizens of this country cannot take responsibility for the

failure of this administration to take appropriate measures to protect their safety, security and liberty. And now you are coming with anti-democratic measures because of your failure to take the appropriate measures in the last seven to eight years to deal with those issues that you are now confronting and seem to be out of control. We cannot be responsible for that. Therefore, we are not going to be part of any demolition of the rights of the citizens of this country. We are not going to be party to that, whatsoever. So we serve notice on the administration that, do not count on the Opposition for support on measures that will demolish the rights and freedoms of the citizens. We will not be party to that.

May I tell you also that the legislative revival of the doctrine of recent complaint, which is the first leg or limb of the measure that we are dealing with today, has certainly opened up the possibility of a miscarriage of justice and the real possibility of innocent people being unfairly dealt with and not being able to enjoy a fair trial. Those who do the crime must do the time. We have no problem with that, but our responsibility in this Parliament is to ensure that innocent citizens in this country are not taken advantage of and there is where we have concerns about this piece of legislation that is before us. It seems to be a bundle of contradictions. There seems to be inconsistencies in what is being proposed here today. Therefore, I want to make it very clear that we, in the UNC are, in fact, committed to balancing the scales of justice so as to avoid those scales weighing in only one direction. That is what we are concerned about.

We would like and we are committed to upholding the rights of the victims; those complainants; those women and children who are victims of predators; who are abused by men. We want to protect them; we want to safeguard their rights. So we are all in favour of protecting and safeguarding the interests of the victims and the complainants, but at the same time we must balance the scales of justice to ensure that innocent people are not sent to the gallows; are not sent to jail because of how the laws are being framed at this time. The hon. Attorney General is correct when he made reference to the whole issue of credibility when it comes to the doctrine of recent complaint. We are also concerned about the reliability of statements being given long after a sexual assault matter was to take place.

If you go to clause 2 of this particular measure before us today, you will see that there is an express desire to revive this doctrine. The hon. Attorney General has sought to give some rationale for its reintroduction. I thought he was going to provide this honourable Senate with some hard, statistical data to show, since this doctrine was abolished in 1986, and when an attempt was made to have it revived in 2000 through the Sexual Offences (Amdt.) Bill, why did it take the

Government, if it was so interested—why did it take the Government so long? Because the former Attorney General in a UNC administration sought to revive that doctrine, as we understand it, but it never took effect because of the Interpretation Act referred to by the hon. Attorney General; section 27(1)(a) of the Interpretation Act. The matter went to the courts and there was a judgment by some Justices of the Appeal Court on this matter and, therefore, the Government had a few years, if it was interested in this matter, to have this doctrine revived. But we are now in 2010, having had a judgment in 2005/2006, the Government has now sought to revive a doctrine which the former Attorney General, the hon. Russell Martineau had some very strong words to describe that doctrine in terms of its backward nature and outdated relevance as it concerns this particular measure.

But here it is, and so on, we are seeking to have this doctrine revived and we do not know what the real reason is, because all we are hearing is that the prosecution has not been as successful as it ought to have been in sexual offence cases. But the Attorney General has not provided this honourable Senate with hard statistical data.

For example, we would have liked the Attorney General to tell—maybe he would do it when he is coming back on his legs later on to wind up. Maybe he would tell us how many cases under the Sexual Offences Act have been thrown out by the courts, by the Court of Appeal, by the Privy Council because of the absence of this doctrine of recent complaint. We have not seen any data on the matter. We have not heard from the Attorney General on how many cases are involved here. Maybe it would guide us as to the gravity and the need and urgency to have this particular doctrine put back onto the statute books of our country. But we have not heard that.

As I am on this matter, I would like to find out why has it taken so long for this Government to take action on this young child called Akiel Chambers who was murdered in this country? My information is that the police are aware of the culprit involved in this matter. He is walking about Trinidad and Tobago to kill another Akiel Chambers. We understand the police officer who was involved in that matter has been removed from the Homicide Bureau and he is now within the operations of the Anti-Crime Unit of Trinidad and Tobago. Is the Government really interested in bringing the criminal to justice in the case of Akiel's death at the age of 10 years or thereabouts?

3.00 p.m.

The name of that individual is now a public secret. I will not call his name; but it is now a public secret who actually did the crime and why the police, the

Attorney General and the Minister of National Security have not taken action to bring this criminal to justice.

Sen. Jeremie SC: Sen. Mark, could you give way? Thank you. One of the first things that I did on assuming office in 2003 was to make investigations about that particular matter. I had heard it bandied around by you and your good friend, the President of the Law Association, Mr. Daly. I was reliably told by the police and the then Director of Public Prosecutions that there was no evidence available to charge anyone. That is what I was told by the then Director of Public Prosecutions, Geoffrey Henderson, who is my good friend, and the police.

Sen. W. Mark: Mr. President, I have information that there are people willing to give evidence on this matter. The Attorney General should know that. I will not detain you on this matter any longer. It is a disgrace that after this young child was murdered and that the person responsible continues to live in Trinidad and Tobago to kill more Akiel Chambers. I do not want to go further on that matter.

When we come to this doctrine of recent complaint, as you know, it focuses on the speed with which the victim of a sexual assault reports the offence to the authorities or to other persons. We know that a rape victim's credibility suffers if he or she fails to complain of the offence immediately. That is one of the problems we have had.

In some jurisdictions, it is argued that when someone is raped, they should report this matter within 15 minutes. It is a point that a former Attorney General, Mr. Russell Martineau, raised. He made the point that the dignity of women would be at stake here. The trauma that they would have experienced when these kinds of violence is unleashed on them would not permit them to run immediately to the authorities to make a report. That is one of the reasons he had advanced, in 1986, they were going to abolish this doctrine of recent complaint. We are now being told that the Government has seen reasons to reintroduce this particular doctrine, but we believe that there are some challenges in this particular arena.

When we go to clause 2 of the Bill—15AA and 15BB—we believe that this requires some greater reflection and consideration. Our research has revealed that in all trials, judges are required to direct juries in relation to the application of relevant laws, particularly when it comes to the question of sexual offences. They are also required to comment and/or even warn juries about the reliability of certain types of evidence.

We cannot understand why we should put this particular provision into the legislation where the trial judge, in clause 2, section 15AB, it is being said that:

"…the Judge shall—

(2) give a warning to the jury that an absence of complaint or a delay in complaining does not necessarily indicate that the allegation that the offence was committed is false;"

Historically, the common law viewed complainants in sexual offences cases as a class of inherently unreliable witnesses. That was how it was looked at in the past and it was felt that these inherently unreliable witnesses were predisposed to fabrications in dealing with this question of delays, as being advanced in clause 2, section 15AB(a) and (b) respectively. This is where we found it contradictory.

On the one hand, we are being told by the Attorney General that the doctrine of recent complaint will assist the prosecution and give the victims a greater degree of flexibility as it concerns their rights; but, at the same time, we are being told that the judge shall issue a warning to the jury to the effect that if someone did not report the matter within a reasonable time frame, delay ought not to be used as a basis for any kind of falsehood. In other words, I am reading into the legislation that even if you delay in reporting a matter, the judge shall direct the jury not to worry about delays.

Sen. Seetahal SC: That is not true.

Sen. W. Mark: This is what I am reading into the legislation here. He gives a warning to the jury that an absence of complaint or a delay in complaining does not necessarily indicate that the allegation that the offence was committed is false.

What is being said? I am seeing the scales of justice not properly balanced here. Therefore, I would like to put forward some sweeping amendments as it relates to this particular provision. I believe, just as the judge is being directed to inform the jury not to use delay as a basis to discredit the victim, we should also be cautious in terms of the judge using that same power to inform the jury that the credibility, reliability and consistency of the victim's statement could also be in question and, therefore, you have a balancing of the scales of justice. As it stands here, I can see where innocent people could be in trouble.

It was against that background that, in the Australian jurisdiction, the whole concept, based on their experience where the whole failure to complain within a reasonable time frame or a delay in complaining, a concept called the Kilby Direction, was advanced by the leading authority on the construction of a complainant's delay.

This particular High Court decision in Australia held that trial judges should instruct juries that delays reflected on the credibility of the complainant's account and also supplied an important factor in determining whether his or her allegations were fabricated. This is what I discovered as the Kilby Direction coming out of the Australian leading authority on this matter.

I am concerned about balancing the scales of justice. As I am on this, I would also like to indicate that it is also a fact that sexually assaulted victims may not make an early complaint and this is why the hon. Russell Martineau, then Attorney General, sought to abolish that doctrine in 1986.

Here are some of the reasons why victims of sexual aggression may not be able to report these matters on an early basis. The nature of the assault is one of the factors we need to take on board. The relationship of the perpetrator to the complainant is another factor. The trauma resulting from such an experience needs to be taken on board. The victim's age and his or her ability to relate what has occurred are also important when we are addressing the question of delay.

There may be very powerful reasons which may cause victims not to make a complaint immediately—social, emotional and even economic pressures. It could also be a desire not to cause distress to family members; fears of being disbelieved; and feelings of guilt and shame about the assault. These things militate against revelations. In dealing with this matter, we must be even-handed and fair.

The provisions we have in clause 4, both 15AA and 15AB, it seems to me were plotted directly from the Tasmanian Criminal Code of 1987. I have been doing some research on that and I see the same provisions contained in our legislation; just different language and changes here and there.

Why does our Attorney General not go the full route? Why pick and choose? In the very Tasmanian experience, there are provisions to ensure balance and fairness in the criminal justice process; both for the accused and for the victims. We have discovered from our research that, with all these advances that have taken place, there have been subsequent judicial interpretation and developments in the coming law, which have served to erode the effectiveness of the very reforms we are now seeking to advance.

3.15 p.m.

Mr. President, in order to ensure a fair trial, judges should issue at all times appropriate warnings to juries, not on a one-sided basis. What I am seeing in this legislation here today is a one-sided dictate. I am seeing where the Government is

bringing legislation to say, if you are sexually assaulted—whether you are a man or a woman, a male or a female—10 years ago, what this legislation is saying, you can go and complain and the person will be charged based on a sworn affidavit, the police would arrest you, and do you know what would happen, Mr. President?

Sen. Jeremie SC: All of that is in the legislation? You wrote it?

Sen. W. Mark: In a practical sense, innocent people could be ruined in this situation.

Hypothetically, if someone is charged and you have a case where some individual, because he has some problem with an individual—a women having a problem with a man and let us say that person alleges that the gentleman in question molested her or sexually assaulted or raped her; just suppose this is done out of spite and malice, according to this legislation you can come five years later—because delay is not an excuse or a bar according to this legislation—and complain, go to a Justice of the Peace, swear to an affidavit and then you find the gentleman is arrested. Of course he would be freed at the end of the day because the medical evidence would not be able to support the arguments of the individual. But do you know what, Mr. President? His reputation and his entire family life could be ruined. So, this to my mind is dangerous legislation.

You cannot just say on the one hand you want to revive the doctrine of recent complaint and people have to report speedily, but on the other hand you are coming to tell the judge—imagine this? We are directing the judge—I thought the Judiciary was an independent arm! I thought the Judiciary was a separate arm of the State! Why are we legislating in this Parliament to direct a judge what to do? This is saying "shall"; they are not saying "may". So we are telling the judges in the High Court who have all the evidence—we are not there, they are flexible, they listen to all of the facts and all of the evidence before them and we are saying in this legislation he "shall" do that or she "shall" do that.

We should not be infringing on the flexibility and the discretion of our judges. The judges should have the flexibility to do what they know best to do. How can we as lawmakers in a mandatory way tell a judge how to run his court and how to determine his cases? I do not support that. I believe that is a wrong matter, the language is poor and I am going to tell the Attorney General it is poor and we should remove "shall" and put "may".

Sen. Jeremie SC: You just told me that.

Sen. W. Mark: I am telling you again. Again, I am telling you. [*Laughter*]

What we are saying is that there must be balance in this whole thing and we are not seeing the balance in the legislation, and therefore we are telling the Government, this is dangerous, innocent people could get convicted under this legislation as it is right now. My only concern is not about the guilty. The guilty must pay. My concern in this Parliament is the innocent. Those persons who are innocent, I want to make sure we protect them and no policeman set them up or no women set them up either.

Sen. Seetahal SC: Woman?

Sen. W. Mark: Well, I say female.

Sen. Seetahal SC: But men do it.

Sen. W. Mark: Well, men too. Men set up women and women set up women. [*Interruption*] Yes, when I say women it could happen. [*Laughter*] I am not being antifeminist.

Sen. Seetahal SC: Sexist.

Sen. W. Mark: Or I am not being sexist.

Sen. Jeremie SC: You cannot.

Sen. W. Mark: I cannot, I dare not. [*Interruption*]

Mr. President, what we would want to—is it a fact that you are going to become the next Minister of National Security?

Sen. Jeremie SC: [*Stands*] Yes?

Sen. W. Mark: I am just asking.

Sen. Jeremie SC: You are asking—[*Inaudible*]

Sen. W. Mark: No, no, I am just asking.

Sen. Jeremie SC: Minister of National Security?

Sen. W. Mark: Yes.

Sen. Jeremie SC: I do not know about running down bandits, Sen. Mark.

Sen. W. Mark: Okay. I understand that they are going to promote you to the Ministry of National Security just now.

Sen. Jeremie SC: [*Inaudible*]

Sen. W. Mark: All right, okay. [*Laughter*]

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

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

Question put and agreed to.

Sen. Jeremie SC: [*Inaudible*]

Mr. President: Senator, I would be grateful if you would give me a chance to do my job; I gave you a chance to do yours.

Sen. W. Mark: Thank you very much, Mr. President. I also want to bring to your attention two other warnings that I have come across dealing with what is called the "Longman warning" and this is another experience coming out of the Tasmania experience, which essentially said that the Longman warning directs the jury as to the dangers of convicting on the complainant's evidence alone and which is to be given whenever necessary to void a perceptible risk of miscarriage of justice arising from the circumstances of the particular case in question. So this Longman warning is another area that we need to pay attention to in seeking to balance the scales of justice.

There is also something called the Crofts direction which requires the trial judge to give a balancing direction to the direction required, and to inform the jury that delay in complaining may affect the credibility of the complainant's account. This is what is called the Crofts warning.

Now we have to be careful. Do you see what they are saying here? It is a balancing direction to the direction required to inform the jury that delay in complaining may affect the credibility of the complainant's account. I am saying these are matters that we need to take on board. We just cannot accept whatever the Attorney General brings here. The essential intentions of both the Longman's and Crofts warnings are to achieve a fair trial. We want a fair trial for the victims and we want a fair trial for the accused, and we want a fair balance between the interest of the accused and the complainants in the conduct of trials.

Therefore, we would hope that the Government in dealing with this particular matter would take into account these very important caveats to ensure that whatever we are doing it does not appear one-sided only in favour of the prosecution. This is a prosecution Bill. I am seeing where the elements of this Bill are only for the prosecution. What about the accused? What about those people who are innocently accused? Where is the justice for them in the legislation?

The Opposition is fair unlike the Independents. We are here to ensure that the scales of justice are evenly balanced. That is our role. [*Interruption*] I apologize. I apologize in the meantime then. I withdraw. [*Interruption*] I withdraw, Mr. President. All I am saying is that this is our role and we want to ensure that we carry it out very fearlessly in terms of what our responsibilities are.

Mr. President, if we go to the Bill where we have additional clauses, what is this thing about "video recorded statement"? If you go to page 7 of the Bill you would see:

> "Where under subsection (3), the Court is considering granting leave in relation to a video recorded statement, the Court shall consider the following additional factors:"

And it went on to talk about the quality, the interval as well as other factors. But when you go to page 8 of the legislation it goes on to say, and this is frightening, hear what it says:

> "Where a video recorded statement is admitted under this section, the statement shall be admitted as the evidence in chief of the maker of the statement where he is available to be cross-examined."

This is very weak language. I thought that if somebody accuses me of something I have a right to face my accuser and to have my accuser cross-examined by my defence counsel. I thought so. [*Interruption*] Well, if he dead, he dead, but I am talking about if he is alive. [*Interruption*]

The language of this particular provision does not make a distinction of whether you are dead or you are living, and I am saying it is dangerous. I am calling on the Attorney General to recast this provision to make it compulsory for persons who are accusing others of doing certain things, they must be available for cross-examination.

Right now there is a major case in the European Court of Justice involving this same matter and I understand a decision is yet to be handed down. So all of this thing that you are talking about, the Privy Council and Stephen and so on, I want to tell you that the Supreme Court of England, there is a matter that has been appealed upon around this same matter that we are dealing with, that is now before the European Court of Justice and they are yet to deliver a judgment on this matter.

Sen. Jeremie SC: Can I interrupt?

Sen. W. Mark: No, you write. I am speaking; I want to complete my statement.

Sen. Jeremie SC: I just want to correct you?

Sen. W. Mark: No, do not correct "meh" now "nah". [*Interruption*] Yes, this is one of the judgments outstanding. [*Interruption*] You have it? What is the name of the judgement?

Sen. Jeremie SC: [*Inaudible*]

Sen. W. Mark: No, that is not what I am talking about. [*Interruption*] I do not have the name right now, but I know what I am talking about; it is not that. You are wrong, go back to my records, "nah" when I was dealing with the same Evidence (Amdt.) Bill and you would see—

Sen. Jeremie SC: [*Inaudible*]

Sen. W. Mark: No, no, you are wrong on that. [*Laughter*] I am not a criminal lawyer, you know, but I have some facts.

Hon. Senator: You are talking like one.

Sen. W. Mark: This particular provision here says that they are going to entertain written statements or video recorded statements and they are saying that those statements shall not affect the admissibility of the video recorded statement in criminal proceedings.

This Government on the one hand come and tell us that they are dealing with sexual offences and then all of a sudden they move from sexual offences to all criminal proceedings. [*Interruption*] Do not come here and try to exploit the Senate in the context of how we are being exploited today. If you come and tell us in an original Bill about amending the Evidence Act to deal with sexual offences and then you come overnight at 2.45 yesterday and you bring video recording, all criminal proceedings, absence of witnesses—Mr. President, overnight! You expect us to come here and support this measure overnight, and then you come and tell us that you have amendments to circulate. Mr. President, when amendments are circulated and I have not seen them—

Sen. Seetahal SC: It is here.

Sen. W. Mark: No, well I have not seen them.

Sen. Jeremie SC: They are on your desk.

Sen. W. Mark: Mr. President, I have not seen them—would I be in a position, with your leave, to get back up to rise and speak on those amendments, Sir?

Sen. Jeremie SC: [*Inaudible*]

Sen. W. Mark: I am listening to my President.

Sen. Jeremie SC: He said no.

Sen. W. Mark: Mr. President, this measure we have before us is absolutely dangerous and we do not support this subsection (2):

> "Where a video recorded statement is admitted under this section, the statement shall be admitted as evidence in chief of the maker of the statement where he is available to be cross-examined."

3.30 p.m.

He must be available once he is alive, and I want it to be explicitly stated in the legislation because this could be misinterpreted. Already, Mr. President, when we look at the amendments to the Evidence (Amdt.) Bill, there is a provision that talks about fearful—if somebody is fearful, they do not have to appear. So we have to be very careful in terms of what we are doing here.

All we are advancing is the rights of the people to have a fair trial. People must have a right to a fair trial, and people must have a right to cross-examine the accused. You must have the right to confront your accusers, and I am not seeing it in the legislation. This is a serious encroachment on the rights of the people, and it is totally unsatisfactory. Totally unsatisfactory!

Mr. President, hear this classic and I quote:

"A video recorded statement…"

Mr. President, this is a video recorded statement, where somebody is accusing you of doing something. They say any criminal proceedings—all criminal proceedings. So, somebody accuses X person and they have it recorded via a video statement. They say:

> "A video recorded statement made by a person under this Part is admissible whether or not the statement is made on oath."

So a person can go and tell an untruth. I would not use the word because that is unparliamentary. But they could come and tell an untruth about you or anyone else, and you know what, Mr. President? The Attorney General, the guardian of our Constitution, the titular head of the Bar, is telling us today, that person could make that statement without swearing to Almighty God, that he is telling the

truth, the whole truth, and nothing but the truth. That must be deleted completely from the legislation. That is wrong and we are not supporting any measure like that. Are we living in a jungle economy or democracy? Where are we living? Zimbabwe? No, you cannot bring that kind of legislation to our country and to this Parliament, saying a man could give a video recorded statement and he does not have to swear, he does not have to take an oath. No! We are saying that the Government is wrong on this one, and we are not supporting this.

So, Mr. President, we have served notice on the Government. We are giving them choices. The first choice we are giving the Government this afternoon or the option we would like to advance to the Government, we would like you to have this matter because of the gravity of it, one, because of the fact that you brought it in pieces and you ambushed us effectively over the last few hours, you must either agree to have this matter sent to a joint select committee—The reason I would like it sent to a joint select committee, because it is our view on this side that stakeholders have not been consulted on this measure.

I have been in contact with many stakeholders and organizations, and my information—I have been informed, I could be wrong—is that the Women's League of the People's National Movement is opposed to the measures that are before us today. That is what I understand. I do not know. I could be wrong.

Sen. Jeremie SC: Senator, can I rise, please?

Sen. W. Mark: You will talk at the appropriate time. I am winding up. Mr. President, I have about two more minutes. So all we are saying is that we would like the hon. Attorney General to consider having this measure referred to a joint select committee of the both Houses, where we will invite the Bar Association, the Rape Crisis Centre, the NGO for the Advancement of Women in Trinidad and Tobago, all the stakeholders who would like to have a say on this measure before it becomes law. So we are asking the Government to be a little magnanimous in this season of festivity because I notice whenever the Government wishes to introduce draconian legislation, they use the Midnight Robber approach, Carnival, when people are all in a state of festivity and they are frolicking. I understand some of them could not even come here early today because they had a big fete at Balisier House last evening.

Sen. Joseph: Which was a success!

Sen. Manning: Eight thousand.

Sen. W. Mark: Well, all right. So, Mr. President, I would like to appeal to the Government and to the hon. Attorney General, do not rush this legislation

today. Rushed legislation is bad legislation, and we would like to appeal to the Government to have this matter referred to a joint select committee of both Houses so we can get the benefit of the experts on this particular measure. That is the first proposal that we would like to make to the hon. Attorney General.

The second option we are going to make available, we are going to make sweeping amendments to this measure if the Government refuses to send it to a joint select committee. If they refuse to at least take on board our amendments, we would have no choice. We would be left with no choice. We would not be able to give support to any legislation brought by this Government, like a Midnight Robber, virtually, in order to force us into agreeing to something that we have not discussed with the national community of Trinidad and Tobago. We want to have time to consult with the people. We want to have time to discuss with the stakeholders. If you do not want to do it, we want to do it. We are the alternative government, and we want to consult with the stakeholders.

Hon. Senator: We who?

Sen. W. Mark: We! So, Mr. President, with those few words, I would like to thank you for giving me the opportunity to make my contribution on this very important measure, and I hope that the Government will take on board our constructive criticisms in the context of bringing this Bill forward and making it the kind of Bill we would all like.

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

Sen. Dana Seetahal SC: Thank you very much, Mr. President. If there is one thing I agree with Sen. Mark about in relation to this Bill is that one should not rush legislation. Having said that, let me point out that the amendment to the law in respect of recent complaint evidence of sexual offence victims has been delayed some 10 years.

Mr. President, this legislation, the proposed Bill, deals with two things. It deals with amendments to the law in respect of recent complaint evidence and amendments in relation to video recordings, that is, video recorded evidence, and in substance, it permits evidence of recent complaint to be given again, as it was prior to 1986. It permits video recordings of a witness statement—that is a video recording of it—to which Sen. Rahman referred last year. Why is that not to be admitted? Why is it only written statements? The amendment allows now that kind of recording to be admitted, where the witness is dead, unfit, out of the country, is kept away and other circumstances, such as threats and fearful. So it deals with situations where you have a statement of a witness not sworn. In 2007, we

passed legislation with written statements, now you have video recorded statements being added to that mix, a witness who could be either killed or have been killed, or kept away, or is fearful, and that evidence is now to be admitted if it is video recorded. Prior to that, only if the evidence was written in a document form would it be admitted—since 2007, that is.

This Bill also permits evidence of a witness who is present that has been video recorded, to be put in as evidence where the witness wants to renege, or where the witness may not recollect what that witness said. So that is really all that this Bill proposes to do. The concerns expressed by my colleague, Sen. Mark, about the statement being sworn or not sworn, that was already in the 2009 Act, and is law since January 25, 2010. Normally, if you are video recording a statement of a witness, you do not have the witness swear to that. This is a person who comes to the police station, you put on your recorder, you have the person go there and you take a statement, so you would not swear to that.

The other concern is that the witness will be not be cross-examined and so on. If the witness is there, then you are dealing with the provisions under 15I, where the witness will be cross-examined. It is only if the witness is dead, kept away, is fearful or out of the country, the evidence will go in. That is really what the law is now in relation to written statements, and it will become in relation to video recorded evidence. That is the general provision.

I just want to deal with the specifics, and if I may before I go on, commend the Attorney General for bringing this legislation before us. [*Desk thumping*] Mr. President, as the Attorney General indicated, I was involved in a matter before the Court of Appeal in 2006, and I am dealing here with the issue of the recent complaint, where the Court of Appeal made it very clear that the law passed in 2000, by the then administration, to revive the doctrine of recent complaint had not been successfully passed. So since 2006 this happened, and nothing has come before this Parliament. So I would hardly say that this is rushing legislation. If it is that perhaps other Ministries were to be more proactive in some way in bringing legislation, then it would not seem as if we are rushing this legislation some three years afterwards. This should have been done soon afterwards, and the fact that it is now being brought and additional amendments are being put in place, must be to the credit of the Attorney General. I wish the Minister of National Security would pay heed and bring legislation in relation to SAUTT, which was promised to this Parliament this year. But I am sure he would deal with that in his contribution.

Mr. President, in 1986 as the Attorney General said, the then Government, which was a PNM government at the time, prior to NAR, abolished the law in respect of recent complaint. Recent complaints simply mean where a victim in a sexual offence case—and that could mean rape, indecent assault, buggery, any of the above, and of course, other variance of sexual offences—made a complaint soon after the incident, that evidence was admitted to show that her or his testimony was consistent. That was all, because sexual offences occur in private, unlike most other offences. So you would hardly have another person being able to give eyewitness testimony, other than the victim.

So there was this provision in the law that, yes, we could assess your credibility better, maybe, or you could say that you were more credible if you made a recent complaint, a complaint soon thereafter. The judge, however, under the common law would tell the jury, "Members of the jury, bear in mind that while she did make a recent complaint, this does not mean that the complaint, that the fact of rape was true." She could merely be a consistent liar, but the evidence was still admitted to show consistency, and you take that in the overall picture of accessing the credibility of the victim or the alleged victim.

In 1986, for whatever reason, I heard that it was abolished, my belief is from my enquiry, that it was inadvertently, when the 1986 Sexual Offences Act was passed by a sleight of hand when a lot of things were put in place and a whole new Sexual Offences Bill was drafted. We did not have a separate Act before. They omitted that. They decided, well, let us abolish it because this is too much trouble, and that was the problem. So prosecutors for the last 14 years, Mr. President, have had to deal with situations where they have to omit any complaint made.

In a normal case you could say, "Well, a person came to the police station and made a report that he was robbed." In sexual offences cases prior to 1986, a sexual offence victim could say, "I went to my aunt and I told her that Harry had raped me; that he had taken me behind a cemetery and done so and so and so." That would have happened, been allowed.

3.45 p.m.

Now, because the rules in relation to the common law were abolished, prosecutors were even afraid to say that the victim went to the police and made a complaint. So it was bare, you had no report even that a complaint of rape was made.

The Government in 2000, recognizing that, sought to say in their 2000 amendment to the Sexual Offences Act, that section 31 was repealed. So they

repealed the section that abolished the common law. The question which arose, of course, was whether that revived the common law principles.

The Court of Appeal in *Geoffrey Gabriel v the State*, Criminal Appeal No. 30 of 2005, held that it did not. Fortunately in that case, the Director of Public Prosecutions' (DPP) lawyers had not led evidence of recent complaint, even though it was available so the conviction, where the appellant had been convicted of sexual intercourse with a minor, his sentence of 20 years imprisonment, stood. That was fortunate because the State had omitted to lead that recent complaint evidence, which this case held in 2006 was not admissible under the law. It was not admissible because our Interpretation Act basically said:

> "The repeal of an Act which itself abolished the common law did not serve to revive the common law."

So in September of that year there was indication that the State should move to do something about it, should they so wish, and the State obviously so wished, which is why this amendment was put forward.

I see comments circulated by the Network of Non-governmental Organizations (NGOs) and it is stated that the Bill does not appear to ensure that a victim of sexual offences gets a fair hearing. Sen. Mark somewhat alluded to that but he also talked about balance for the accused. So I am not sure exactly what the concern is: if one is saying that the victim does not get a fair hearing or, on the other hand, the accused does not get a fair hearing.

My point is that this amendment serves to reinstate the law as it was prior to 1986, which was fair to victims and fair, in my respectful view, to the accused as well, in the context of those particular offences. Sexual offences do not occur, generally, in the presence of other persons who are likely to be witnesses. They may occur in the presence of other accused persons, if you have a gang rape; so it is difficult to get any other eyewitness except the victim. That is why reinstatement of the recent complaint law is a good thing.

Insofar as the other provisions are concerned it states that:

> "A judge shall give a warning that the absence of recent complaint..."—it does not say "recent", but I think we should include it here—"or a delay, does not necessarily indicate that the allegation was false."

That is a good thing. How can the Network of non-governmental organizations complain about that, because without that, the jury would have to deal with what is the common law now? Well, was the common law that we do not have

anymore? The judge would tell this jury, "This is a recent complaint; it is evidence of consistency, but it does not mean it is evidence that the person was raped." That is what the judge would tell the jury.

To balance that out, the judge would also tell the jury, "Listen, the fact that she did not make a complaint of rape or he did not or that it was delayed for some months, does not mean that he or she is lying." What is wrong with that? How can that be unfair? How can that be against due process? To the Network of NGOs, that is something surely no victim or person concerned about victims' rights should complain about. It is an advantageous position to the victim in a way yes, but it is also balanced, because the judge would say, "It does not necessarily indicate that the allegation is false."

Bear in mind that these directions are not given in a vacuum; they are given in a case scenario where you have facts, so the judge's directions would be tailored to the particular case, and you would have a jury of sensible men and women, nine persons in the case of rape, who will decide whether or not they accept the prosecution's case; bearing in mind that the prosecution has the burden of proof. So that is the recent complaint legislation.

Insofar as the other part of the Bill is concerned, which, on first reading, appears to be somewhat confusing, the reason it appears to be is because there is a lot of renumbering in these provisions. Therefore, it requires that you put it together with the Evidence (Amdt.) Act of 2007, No. 5, and the Evidence (Amdt.) Act of 2009, because this Bill really amends section 15(c) of the 2007 Act and 15I of the 2009 Act.

In 15(c) is something I alluded to before. The 2007 Act allowed witness statements of persons who were dead;—not sworn evidence by the way—persons who were unfit, persons who were out of the country, persons who were fearful; persons who were kept away, to be treated as evidence. There would be no cross-examination. In other words, if you have a perfectly good witness, minding his own business, giving his statement to the police, and somehow that witness turned up dead—it happened in one case I remember, where the witness was killed and you could not find his head, so it was difficult to determine if that was the witness. So there were problems putting in his depositions. The fact though, is if you have a witness who is dead, who is kept away, you would have been able to use the "kept away" provision, because you would not know where he was, you could not prove that it was his body he might be fearful, any of those things, and that evidence would go in.

So persons who are minded to eliminate witnesses, which is what we have been talking about—if you recall the report last week, a witness was gunned down, to quote the newspapers, in New York; he left protection and decided to come and visit his family. He was apparently followed and gunned down, in a scenario where he had given a statement before, that would be evidence. If a witness is intimidated; supposing they decided not to kill him; they call up his family and say, "I know where you live." Once a report is made to the police or whoever, evidence can be led in court, without the witness coming, that this witness has been made fearful and his statement would go in.

If we continue to use this law, in time, those persons who make it their business to get rid of witnesses, one way or the other, would not be able to do so. That is why it is important to pass this legislation.

The legislation we passed in 2007 went some way, this legislation would complete the picture and, in fact, would be advantageous to both sides, because you will now have not just a flat written statement of a witness who is dead or so, you will have a video recording if this legislation is passed. So then the jury can see what they hear very well and maybe the accused counsel, when he is cross-examining, could point out matters in that video recording evidence which may assist him. So that is the video recording part of the evidence, where the person is dead.

What if the person is alive and kicking, or well? Provision is now to be made to allow his evidence in chief to be tendered, if he is fearful or is reneging or recanting. That has to be a good thing, because witnesses go in the box and say, "I forgot." Often witnesses who do that are persons who are themselves accused of crime. So all you have to say is, "You forgot"?, then you play his video recording.

Therefore, I do not want to press the matter further, but I think there is no gainsaying that the proposed legislation is beneficial to advancing criminal justice in this country and it ought to be passed.

Thank you.

Sen. Dr. Adesh Nanan: Mr. President, I rise to make a contribution on this Bill.

In 15AB the amendment speaks to judges warning in absence of a delayed complaint:

> "Where on the trial of an accused person for sexual offence evidence is given or a question is asked of a witness that tends to suggest an absence of complaint in respect of the commission of the alleged offence by the person,

upon whom the assault is alleged to have been committed or to suggest that delay by such person in making any such complaint, the Judge shall:

(a) give a warning to the jury that an absence of complaint or a delay in complaining does not necessarily indicate that the allegation that the offence was committed is false; and

(b) inform the jury that there may be good reason why a victim of a sexual assault may refrain from making, or may hesitate in making, a complaint about the assault."

When I read this amendment, I did some research to see the success of this particular measure in other countries. I thought the Attorney General would give us some idea, when this particular amendment came before us, of success in other countries or any kind of comparison. I looked at some of the comparisons.

We heard in this debate about "unfairness" and "advantageous". In Australia, as the Attorney General pointed out, this particular measure has been used, that is, the trial judge must warn the jury, in terms of direction of the jury. In New South Wales, the reports are not encouraging, Attorney General, because half of the trial judges, although it is law, are resistant to giving this direction to the jury, because they found that doing so would give a balance in favour of the complainant at the expense of the accused.

In Victoria, one of the three trial judges complained that if this direction were introduced, it would have some interference. It would be seen as interference by the judge in the process, which would definitely introduce an element of unfairness. So we have to be guarded in terms of how we approach this particular measure. On the one hand, the Attorney General is being applauded for this particular amendment, but if we look at where it has already been utilized in other countries, we see some hesitation on the part of some judges to give this direction, because it may prejudice or be considered unfair.

When I asked the Attorney General in terms of our jurisdiction, the US and the UK with respect to expert witness testimony, it is very important that particular measure be brought into the debate. The expert witness testimony allows the prosecution the ability to put the case forward, for this particular situation, where there is a delayed reporting mechanism by the complainant.

Let us analyze the situation with respect to this particular measure and what may have triggered this in 2000. If you look at some of the cases—and the Attorney General should have given us statistics, as Sen. Mark rightly said,

because we would have had cases in our courts, so we would have been able to see the situations where the defence was making mincemeat of the prosecution.

4.00 p.m.

And I think the debate should have gone in such a way that we look from the point of view of the defence and the prosecution because as it is now, we are seeing a decline in the conviction rate and I think the Attorney General is coming forward with this measure to increase the percentage of convictions, but there is still that perception of suspicion and belief, and this barrier to successful prosecution of sexual assault cases.

There is still a culture of skepticism, and victims battling to gain credibility at each stage of the criminal process and the complainant's behaviour and the whole concept of untruth or unreliability. Prosecutors may also need guidance in terms of how they approach the complainant's testimony. They may just throw it out as unbelief so when they are given that kind of guidance by expert witnesses they may look at the situation from a different angle.

There are certain factors to be considered especially when you are dealing with the jurors, prosecutors and defence. The Attorney General made reference to that particular situation. These defence lawyers are tearing the complainants to shreds in the witness box, and it is because of this delayed complaint. This particular measure that is abolishing the doctrine of recent complaint which was there in 2000, but because of some drafting situation, it could not have been utilized at that time.

Sen. Mark spoke about a 15-minute time frame in reporting a sexual assault, but there are cases showing that if the complainant is delayed by one or two hours, the defence lawyers shred the complainant to threads because of that delay, and it is done with respect to minor discrepancies.

If you analyze a complainant and any individual in terms of memory lapse, you will see we are not video recorders. If there is an incident, it is recorded by a video camera and you play it back and get the exact picture; the mind is different especially in a stressful situation. If you are very close to an accident, or almost on the point of an accident and you have to recollect what had transpired, you have a complete memory lapse. It is only when people give you information then you remember what had happened. That is why an eye witness testimony is so important at that time.

It is not a video recording of the memory of a person that is happening so there will be discrepancies between the complainant at pre-trial and at the trial, so the statement will vary and if it is delayed over a period of time, the longer the period of time, the more the defence has that capability of smashing the complainant in the witness box. So this delay in the reporting, as the amendment is putting forward for the judge to direct the jury, leads to the defence being able to overrun the prosecution. That is why in 2000 it was felt that this doctrine of recent complaint needs to be reintroduced to give the prosecutors the ability to counteract the defence lawyers at that particular time. Even in the witness box, the defence lawyers are so thorough that they will look at minor discrepancies by the witness and utilize that to discredit the witness and this whole aspect was dealing with discrediting the testimony of the complainant, especially if you are dealing with children.

The reason I have brought the expert witness in this particular scenario was to show that this report by the NGOs that Sen. Mark referred to, some of the same people who are here can be considered as expert witnesses because they have had the experience as counsellors and would have worked in the field. So they can be considered as expert witnesses and come forward and give their testimony. I am sure the defence lawyers would say these people are not qualified, but it is up to the judge to determine.

There are some cases that the judge does not require any expert witness, and based on the evidence they can go with that, but the option is still there. [*Interruption*] There are certain rape crisis counsellors who may be involved in these particular situations. In some jurisdictions, the police is used to give evidence which can stand up because of the experience of 300 rape cases they dealt with. They can show that the complainant went through trauma, post distress syndrome, post traumatic stress and all different situations that led to the complainant giving that statement later on, and that was also the reason for the lapse of memory.

With respect to expert witnesses; psychologists—and psychologists, we have to be very careful of the kind of expert witness who is brought into a case because he/she can brainwash a jury into thinking that this is the syndrome that the person may be undergoing at that time. Because of the syndrome phenomenon the complainant follows a pattern. The defence can also use that pattern to say that the witness is following that pattern as a result of direction by the prosecution. They can say that is why the person came with the complaint later on, so you have to be very careful how we use the syndrome. It can be used by the prosecution as well as the defence in terms of the complainant making a statement later on.

In bringing in the expert witness, there are certain cases where the defence appealed based on the fact that this expert witness could have caused unfairness. It is called the aura of science—the expert witness came in with all this scientific information and the jury went in that direction and convicted. So I agree with Sen. Mark in terms of truth and credibility which are important here.

Mr. President, they have also moved away from the shift on the focus of this credibility or discrediting the complainant to enhancing evidence gathering and case building, that is why when it comes to enhancing evidence gathering and case building, we have to look at the Minister of National Security in terms of the low detection rate with respect to the crime situation. That is why it was brought into this debate.

If we examine that particular direction of the prosecution and the defence in terms of this measure, we would have to be very guarded. Although we may be giving some judges that discretion by giving them the ability to direct the jury, they may not think that is the way they want to go. So we have to take that factor into consideration.

There is also the consideration of fear which was raised in this debate. One of the main problems in this situation dealing with sexual assault cases is that of belief and the kind of trauma the victim will undergo in the witness box, and then we have family situations where somebody will not want to come forward because it may affect the entire family structure and that is why there are a number of cases that are not reported.

There is a situation where a person may say well, I was drinking at that time, or taking drugs so I may be at fault. So, all those factors may come into consideration for matters not reported. There is another situation in terms of the examination, and I gave an example of the situation dealing with the defence lawyers and their thoroughness. I can give another example in terms of the actual act where the defence lawyer could ask the particular complainant if he/she saw a watch on the accused hand, or a scar. Those are the details they would be looking for from the complainant which can discredit the witness.

Mr. President, there was a particular case which I remember where a child was being abused in a family vehicle and the defence lawyer was asking at that time if the complainant remembered the model, the colour, and the upholstery. That is the kind of detail these lawyers are going into. It is very interesting when you look at this situation in terms of the confrontation between the prosecution and the defence.

You also have to factor into the whole equation the fear of reprisal, fear of the police. In this country there is the fear of the police and the fear to testify in court. All those things and, of course, the psychological situation with respect to the witness.

Mr. President, that is the situation in terms of the 2000 amendment and why we are here with respect to the doctrine of recent complaint being reintroduced properly. This particular measure of the videotaping of the accused that is now being utilized, I find we need to be very careful. There was a situation already with respect to video recording and we had much discussion in terms of who will do it and the doctoring of tapes and so forth.

4.15 p.m.

I do not want to go into that particular area of doctoring of videotapes and things like that. That is a whole aspect of technology that can be utilized that we have to be guarded against. When Sen. Mark raises those issues in a debate, he must be taken seriously in terms of what can happen especially in a situation where we are seeing our democracy and freedom being eroded on a daily basis by the present administration.

The other area I will deal with in this particular amendment is the existence of a written statement in relation to the same matter by the making of a video recorded statement shall not have affect on the admissibility of that video recorded statement in criminal proceedings. We have to get clarification from the Attorney General on this particular introduction. The existence of a written statement in relation to the same matter by the maker of a video recorded statement shall not affect the admissibility. If the written statement and the video recorded statement are different, what would happen at that point in time?

> "Where a video recorded statement is admitted under this section, the statement shall be admitted as the evidence in chief of the maker of the statement where he is available to be cross-examined."

I want to ask the question with respect to cross-examination. That was a major issue. Cross-examination is a major issue in this particular amendment. In cross-examination of any complainant in terms of sexual assault, it is very difficult for that witness to be considered credible when the odds are stacked against the witness.

If you are dealing with this particular measure:

> "Where a video recorded statement is admitted under this section, the statement shall be admitted as the evidence in chief of the maker of the statement where he is available to be cross-examined."

If you are cross-examining the maker of the statement at that point in time and you have this video recorded statement as the statement for evidence in chief, you are going with the video recorded statement as evidence in chief. The first part talks about the existence of a written statement. What would happen to the written statement? Will that be part of the case building or will you take both?

In the doctrine of recent complaint, according to Sen. Mark, you will have the complaint 15 minutes after the act was committed. Fifteen minutes after that is committed, the defence tears you apart if you are one or two hours because according to some of the writings, if you do not report in a reasonable time frame, then your credibility is reduced. With respect to the time frame and this particular measure, I am showing the experience of the defence in terms of lawyers and the prosecution. I am not judging anybody. I am showing the kind of situation that can develop in the courtroom with respect to these witnesses who are coming forward. We are going to have a situation with witnesses coming forward based on this particular measure when it is passed after the Joint Select Committee's deliberation.

All these must be taken into consideration in terms of the analysis in the courtroom scenario. Although we are discussing in terms of a debate, we can consider the courtroom scenario because that is where it is actually taking place with respect to the witness, accused, prosecution, defence and the jury. If we are dealing with the existence of a written statement, we are taking both into consideration and have that great discrepancy—this video recorded statement did not say at what particular time. [*Interruption*] Soon. What is soon? I guess soon is probably one or two days.

If you use the benchmark of Sen. Mark in respect of 15 minutes, one hour and two hours, you would have the prosecution with respect to the statement of the accused being utilized. You cannot have a long period. If you have a long period between a video system—let us say that the video statement was made later on for some reason than normal, you would have the video statement and a written statement. We would go with a written statement because they would say that a written statement was given right away and everything is fresh in my mind. This video statement is coming down the road, they would consider memory lapse with respect to this particular statement. In terms of video recording, is this statement only for the accused? [*Interruption*] For the witness.

We have that same situation developing in respect of what I talked about earlier in the debate in terms of time frame. The same would apply with respect to the defence between the written statement and the video statement. They will use

that and all the other factors would come into play with respect to the various syndromes, especially if we are dealing with sexual offences cases. We have to be guarded if we are giving food—on one hand we are trying to assist the complainant if it is a sexual offences case, but we do not want to go too far to give the defence material to the case of the complainant. If it is there we do not need anything, but if it is not there we need to consider that in terms of the time frame of the video recorded statement and the written statement.

A video recorded statement made by a person is admissible whether or not it was made on oath was cleared so I would not go into that.

Now:

> "Where a person who gives a video recorded statement under section 15C(1) is a child, the video recorded statement shall be made in the presence of an adult chosen by the child."

That was already passed in a debate. They did not say who the adult is, if it was the guardian of the child. The child has to choose. Those are some areas that probably need to be clarified and why we need to go to a joint select committee to ensure that this is tightened properly. That particular area in terms of the recording is what I wanted to make reference to.

Section 15C is amended. It states:

> "Where a person,…gives a statement in relation to an offence, that statement may be video recorded."

It may be video recorded. It is not mandatory that it be video recorded. Why should it not be? If we are going towards 21st Century technology, we should consider having all these statements video recorded. If you are giving a statement you may want to consider having that statement video recorded. We know that particular situation with the courts will take a long while because of the state of our courts.

A little discrepancy here is:

> "Where under subsection (3), the Court is considering granting leave in relation to a video recorded statement, the Court shall consider the following additional factors:
>
> (a) the interval between the time of the events in question and the time when the video recorded statement was made;"

The court will consider that factor. The quality of the video recording is important. In terms of quality of video recording, what level of video recording

are you considering? We have the lower level and the high definition recording. That might be another area at which we need to look. How are we going to do this video recording? Is it going to be on disc or tape?

If you know video recording, if you put it on VHS according to how long you are keeping it, it would be destroyed. The tape will get fungus and it would spoil. For how long are we going to keep these video recordings? Is it when the case is finished or longer? We would have a long library to start this information. If they are going to use video recording—you said they have a particular department—but for some reason they cannot have a proper video camera at that time and they are going to use an ordinary 36mm camera and a flash drive to store that information, they have to be extremely careful. That does not stay long on the flash drive. Once you pass a magnetic strip near a flash drive all the information goes. We have to be very careful about the quality of video recording.

Any other factors that might affect the reliability of what the person said in the video recorded statement are vague. Let us say that while the person was giving that recorded statement there was an earthquake, are you considering that? How broad are we going? Let us say that the statement was being taken and there was a shooting outside the police station or somebody drove a car into the police station and crashed. I need some clarification on how they are going to consider that particular situation. If it is discretion, it is fine.

We are doing video recorded statements. A child is giving a video recorded statement in the presence of an adult chosen by the child. We have to be practical in terms of giving the statement. When will you take this video statement? If you take that video statement when the person is right after giving the written statement and the adult is present and the person is crying, are you going to take it at that point in time or at a different time when the person is calm? Does the state of mind come into play with this recorded statement? If there are rules, fine. If not, we need to consider that. If you have a written statement when the person is calm and able to think properly and then you come with a video statement and the person is in a total different mind—do you know what is important? While this written statement is being taken, that child rehearses the particular event—

Mr. President: Hon. Senators, I think that we will take the tea break now. When we return we would take the oath of a new Senator. The sitting is suspended until 5.00 p.m.

4.30 p.m.: *Sitting suspended.*

5.00 p.m.: *Sitting resumed.*

LEAVE OF ABSENCE

Mr. President: Hon. Senators, I have granted leave of absence to Sen. The Hon. Tina Gronlund-Nunez who is ill.

SENATOR'S APPOINTMENT

Mr. 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. JOEL PRIMUS

WHEREAS Senator Tina Gronlund-Nunez is incapable of performing her duties as a Senator by reason of illness:

NOW, THEREFORE, I, GEORGE MAXWELL RICHARDS, President as aforesaid, acting in accordance with the advice of the 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, JOEL PRIMUS, to be temporarily a member of the Senate, with immediate effect and continuing during the period of illness of the said Senator Tina Gronlund-Nunez.

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 9th day of February, 2010."

OATH OF ALLEGIANCE

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

EVIDENCE (AMDT.) BILL

Sen. Dr. A. Nanan: Mr. President, the Attorney General, in his contribution, made reference to the legislation that the Government has piloted with respect to

crime and dealing with matters dealing with victims. I want to put on the record, on page 36 of the United National Congress Manifesto 2000, under the hon. Basdeo Panday and former Prime Minister, under the topic "Women". Sen. Mark made reference to the particular situation dealing with Hazel Brown as the coordinator of this particular: "Good intentions must be translated into good laws" and we fully support this piece of initiative there. Under "Women" it states:

> "Gender issues have become important in every society in the world. The UNC has done its utmost to address issues of gender equality and the development of women generally in our society. The Panday Administration's commitment to gender equality cannot be questioned.
>
> The UNC has introduced:
>
> - The Maternity Protection Act guarantees female workers pay for maternity leave and protects women from being fired when they become pregnant.
> - Comprehensive legislation to protect women. The Domestic Violence Act of 1999 is an example.
> - In addition, we established 19 Drop-In Centres for immediate assistance and information to abused women.
> - Every new police station is better equipped to provide assistance to victims.
> - Further, Police officers are being trained to provide more effective intervention in such situations.
> - The UNC Government passed the Co-habitational Relations Act, the main beneficiaries of which are women historically deprived of any claims to property and assets acquired by partners in common law unions.
> - The Equal Opportunity Act will entrench the rights of women and will provide them with recourse when infringements of their rights are proven...
> - The Girl Child - Abuse Syndrome: We have developed a programme to provide support to young victims of abuse and this programme will be staffed by properly trained and qualified personnel.
> - Children Orphaned by Acts of Domestic Violence - We have established a fund to provide financial assistance to young children orphaned by acts of domestic violence. "

And domestic violence could be acts of sexual abuse:

> "This programme seeks to assist by providing for the basic needs of such children until an alternative and appropriate care giver is found.
>
> - Harassment in the workplace - In response to the cries of many women, we have a Draft Policy to deal with sexual harassment in the work place."

All these various mechanisms and measures are part of the extrapolation from sexual abuse cases and what is also important too, is in the doctrine of recent complaint it would be very important in terms of the forensic capability at that point in time in collecting the evidence.

We have to call upon the Minister of National Security, especially in terms of forensic capability in the Ministry of National Security, especially with this particular piece of legislation because we are going to put the onus now on the complaint in respect of the 15-minutes time frame. So we must have the forensic evidence capability to be able to build a case. It is all about building cases and gathering evidence. So we have to call upon the Minister of National Security to give us an idea, or the Attorney General, in terms of the detection rate and what mechanisms are being put in place to increase the detection rate, even the gathering of evidence.

The Attorney General should have told us in this debate in terms of DNA analysis and the use of DNA in these cases, if DNA is being used, or if it has been used in these sexual abuse cases, and if it is not being used, why it is not being used and when it would be introduced, because this particular aspect will give the complainant some capability now of having a greater opportunity to be more creditable in terms of the gathering of evidence.

So it is very important that our police are trained in terms of gathering of evidence. We have had several reports of policemen arriving on various crime scenes and they have not had the proper training in how to gather evidence. So in terms of gathering evidence and gathering data, the police must be trained in such a way that they must be able to gather evidence properly; not only gathering the evidence, but how the evidence is stored, because these cases may come up but because of the backlog in our courts and the time frame in terms of getting these cases to be actually heard at trial, there may be a little delayed period. So is the particular evidence being stored? Because we had evidence being removed from the Couva Police Station. So we have to have that kind of assurance from the Government in terms not only of gathering the evidence but storage of evidence and that the evidence would be available at the time of trial.

In conclusion, this is the direction that we are looking at in terms of the capability of the Government, because we have very little confidence in the Government in these various areas. All these satellite areas are very important when you look at the entire mosaic for the criminal justice system to perform creditably. And we have seen, in terms of the court administration and the court as a whole, the situation with the Arima Magistrates' Court. It is ironic that a debate took place in this House and we were told of the great improvement in various areas and we have seen people walking out of the Arima Magistrates' Court. So we urge the Government to walk the talk and not only come and tell us about the great measures that are being put in place; we want to see evidence on the ground that you are making strides in terms of the fighting of crime and dealing with the court system and improving the criminal justice system as a whole.

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

Sen. Prof. Ramesh Deosaran: The particular offences we are dealing with are so horrific and often brutal that I think, as reflected in the legislation, no attempt should be spared to convict those guilty. But this is a Parliament responsible for legislation that must be fair and balanced.

Throughout the discussion so far, from which I have learnt quite a lot myself, by the Attorney General, by Sen. Mark and by my colleague, Sen. Seetahal SC, and more recently by Sen. Dr. Adesh Nanan, the struggle throughout all those discussions was really how to convict those who are guilty and yet how to protect those who are innocent. And especially in this kind of legislation concerning a crime which, as I said, is so brutal and horrific; it damages a life, sometimes permanently. It is not only a physical attack, as defined in the legislation—Sexual Offences Act, Chap. 11 No. 28—but there are serious psychological consequences of being raped, subjected to incest and child molestation; very tragic consequences.

So it is not merely a technical exercise in which we are engaged; we are really engaged in a matter of lifelong consequences; social implications; in some communities quite a lot. If a woman is raped, she carries a stigma for life, sometimes even affecting her chances of being married. That is just one example to indicate the difficulty in having the crime quickly reported, if reported at all. Women prefer—many of them—to suffer in silence than to disclose the truth, the experience that they have gone through.

Many a child, seven, six, five years old, molested at that age, sexually, carries not merely a stigma as an adult would, but the trauma and the memory of that

experience creates a list of phobias that could be discussed at another time. I am making my entry into this discussion with the seriousness that it deserves and trying to suggest that rather than merely looking at how to prosecute and how to defend, I think a related and fundamental objective is how to reduce the number of victims of rape, incest and child molestation. In other words, it is a large part of public health, Mr. Minister of Health, through you, Sir. This falls into the realm of public health in its prevention side and in its treatment side.

5.15 p.m.

There is something I would not normally do because of the language used, but I wish, in order to push my views forward, to refer to the Sexual Offences Act, section 2 and how "grievous sexual offences" is defined. I will indicate why I am making this reference. It says, among other things, "the penetration of the vagina or anus of the complainant by a body part", and it goes on, "of another person". It also talks about the penetration in the vagina or anus by an object used by another person.

We have had cases in this country where young boys have been so injured and there was the normal drama; candlelight procession; “it must never happen again;” all those pleadings and rituals that follow such unfortunate incidents rise and fall as time passes by. But we must look for permanent solutions. It is also the placing of the penis of the accused in the person's mouth and so on.

You can understand why people are reluctant to explain what happened to them; especially in communities such as we have where those affected are sometimes, more often than not, jeered at, made fun of and subjected to very severe gossip. You can understand why you cannot really blame the victim for not wanting to report the crime.

It is not just a matter of fear, which, of course, is another psychological condition. It is the shame and embarrassment that flows from a community that should know better so as to lend support and sympathy. But that is the real world. When we are discussing recent complaint, we have to discuss it, among other things, in that particular context.

The Attorney General, in my view, has done us a commendable service in bringing the legislation at this time. In my view, it is belated, as indicated by my colleague; but the manner in which he connected it to a number of other legislation, I commend him for it. Sometimes we forget there is a staff that does a lot of this work and I extend my commendations to the staff in the Attorney General's Office; for those responsible for tidying up and bringing forward the legislation. He should be so kind to convey my commendations and encouragement to them.

Many a time, if I might digress, we forget those who work in the dark corners of offices during the night to prepare people like ourselves, especially Ministers, and to bring forward matters under their jurisdiction. Of course, that includes the staff of Parliament.

I suspect that what he has brought today is also a reflection of what the Chief Justice has advised and what other judges have been saying in recent times. We need to have a proper balance in the court. We need to protect the victim; that is a primary condition. But protecting the victim does not necessarily mean having laws that make it unduly easy to convict the innocent.

This crime—before I refer to the role of the judges—is so horrific and full of such imagery in the public mind that whenever such a crime is committed in a community, especially upon a young child—the crimes that fall under the Sexual Offences Act especially—by the slightest whiff of suspicion in the public mind, they quickly convert that suspicion into guilt. As the accused person is brought to court, you see crowds of people cursing and pelting because they themselves recognize that the crime is serious, but even so, we are not sure that the person being brought before the court is guilty. The community fast-tracks itself and, just as they often pour scorn on victims, they, very prematurely, hurl insults on those still innocent before proven guilty.

I am, therefore, articulating the framework into which this legislation falls. I am using my role in this Parliament as a legislator to help ensure that there is fairness on both sides. It does not merely stop at enunciating the principle. The principle of fairness in such matters is extremely difficult to operationalize, as we can see in the discussion so far.

It is easy to take the side of the victim and run in that direction; quite legitimately so. It is also easy to speak of human rights and the protection of those rights of the accused and run away in that direction; but to seek a balance in such a context is an extremely delicate matter.

I am reasonably satisfied at this moment, and subject to other pieces of legislation which have been promised, that this legislation strikes the balance regarding sexual offences. For example, I refer to one of the amendments, clause 4, which seeks to insert new sections 15AA and 15AB, to indicate how the balance is articulated in the legislation:

> "15AB. Where on the trial of an accused person for a sexual offence, evidence is given or a question is asked of a witness that tends to suggest an absence of complaint in respect of the commission of the

> alleged offence by the person upon whom the assault is alleged to have been committed or to suggest a delay by that person in making any such complaint, the Judge shall—"

Let me pause at the word "shall". There was a view that the word "shall" is too restricted; it should be optional, "may". I beg to differ because the balance you seek is better satisfied by the word "shall" than "may". That is what will bring the balance in the absence, for good reason, of recent complaint.

I proceed:

"…the Judge shall—

(a) give a warning to the jury that an absence of complaint or a delay in complaining does not necessarily indicate that the allegation that the offence was committed is false;"

In other words, from a layman's point of view, not because you did not make a recent complaint, the event did not happen. Of course, the converse is true. Not because you made a recent complaint, were you raped. So the balance is extremely difficult.

It is as easy to postulate about human rights just as it is easy to postulate on false charges. That is the dark area in which we are probing to come up with some enlightened legislation. It goes on, in the same way of the court seeking a balance. I can cite other such provisions, but that should be enough to underline the point I am making.

On the other hand, apart from the offences defined under the Sexual Offences Act, Chap. 11:28, there are a number of persons documented who had to be freed on the production of, for example, DNA evidence. There is a whole organization in the United States which investigates verdicts in trials where the evidence seems not to be convincing. One of their primary tests is the DNA test.

Again, because of the horrific nature of the crime, the public is so angry that it wishes that the first person caught or suspected is guilty; that is how low the threshold could be in the midst of public anger. We are not and should not be a vigilante community. That is why I think the legislation seeks to provide balance.

I have been mesmerized as to why the provision for recent complaint was removed in the first place. I will explain why in a short while. I understand fear and embarrassment. We have to deal with this threat of fear brought upon witnesses and victims. We have to come to grips with that rather than merely say

someone is fearful and he or she cannot go further. Who is causing the fear? Let the person be known and be dealt with by the law. You cannot have persons frightening others and be hiding and not known.

The time has come where policy and legislative attention have to be given to those who cause fear on others, especially when the streams of justice need to be properly and fairly activated. This matter of fear, if we continue like this, we are already in a large state of fright for a number of reasons related to crime, but when it comes to the victims of rape, incest, molestation and buggery, you cannot have the victim being a victim twice. You are already a victim through physical, psychological and social damage by being raped and sexually molested; will you be a victim a second time by suffering in silence?

There are so many books, papers and stories of women suffering in silence and young boys, too. We are reaching the stage, if you look at the court records when men have been raped and buggered; some of them in prisons. Sexual offences in prisons ought to be dealt with urgently because the more frail and vulnerable of convicts are being exploited and damaged. Could they complain? It would be double jeopardy. Who should protect them? We know who should protect them; but even the protectors need guardians because they themselves are breaking the law. So you see the position?

5.30 p.m.

One of the easiest ways to bring down a high profile person that you do not like is to slap a rape charge or a charge of sexual offence against that person. One of the easiest things to do, because the climate is such now that as soon as you hear the word rape, sexual molestation and so on, you are looking for a victim, and sometimes if you cannot discover one, you invent one, merely to satisfy the public appetite for what they call justice.

The Mighty Sparrow had a calypso about justice—I forgot the word he used, not vigilante justice but "cowboy justice". According to the Mighty Sparrow we would end up with cowboy justice, but we do not want that. So the way to deal with these things—and not through community rage, anger and ideology—is to make sure the legislation is properly balanced.

When Michael Jackson was accused of child molestation, look at the great embarrassment he endured. Up to now we do not know whether he was guilty or not. But the embarrassment alone for such a high profile person was punishment enough, and I am not too sure if that experience might have driven him in a certain direction that might have also led to his eventual demise. It stresses you. It

stresses the victim, but if not properly handled by the proper legislation it could bring added stress to people who are innocent and that is what worries me too. Because I have read a report from the organization that looks after people who are wrongfully convicted and it has led me to suggest that we should put equal emphasis now in trying to reduce the number of victims of sexual assault.

If I may proceed; I want to support the expanded legislation on video recording. Once again, through you, Mr. President, I want to commend the Attorney General for appearing so vigilant in his duties. We have been having a range of legislation coming up before the Senate and it shows an increased level of activity and diligence. I have said to be equal, if we are talking about fairness, that there are some Ministers who would cause the PNM to lose the election. I have said so; they show up themselves and the public knows them and the party should know them, but there are other Ministers who could help the PNM remain where they are especially in these days of rising political threat.

So you need good Ministers. We need good Ministers. We should not be complacent by just passing the legislation. We should seek an accompanying programme by the Attorney General's office linked to the Ministry of Education and also the Ministry of Social Development to educate victims and to educate the general public, and do so in conjunction with those non-government organizations, the one whose circular I have before me, the Network of Non-governmental Organizations for the Advancement of Women in Trinidad and Tobago authored by Ms. Hazel Brown, noted activist.

I think as a start, five guidelines should be published, because we are all sympathetic to the victims, but hear what I want to propose: Five guidelines—five quickies—and I use the word quickie in its literal meaning:

1. A quick report of the offence, and as I say, deal with any fear at the same time. I have already elaborated on that;
2. Quick medical check-up on examination;
3. Quick police response;
4. Quick victim care counselling therapy; and
5. Quick speedy court trials.

This is a special kind of offence—sexual offences.

To have some rape cases going on for five, six years with the victim experiencing all this embarrassment and stigma, and you want to call yourself an efficient judicial system. Just last week I had to make the point and I will make it

again, put some more compassion in the administration of justice; put some more sensitivity; put some soul in the administration of justice. And if you want a case to illustrate the justification for my appeal, in these offences, there are women, sometimes boys, less often men who have to endure the suffering once and then to endure the embarrassment for four, five or six years; no, that cannot be justice. That is bureaucracy. That is overloaded bureaucracy being put before the human condition. So we need now to improve the architecture of legislation by putting in further provisions that next time it comes around for speedy trials, within a certain time limit. Do not use the word "may" use the word "shall". Trials shall be finalized within so and so.

Why you need this quick action? All related to recent complaints. We have to suggest to the national community and victims, the best way out really is recent complaints, because with the recent complaints you would have all of these conditions being satisfied. Quick examination. Because if you take so long to make the complaint, what you do is to reduce the possibility of hard evidence: evidence on semen, evidence on blood, evidence of fiber from your clothing, evidence on hair; where would you get that five, six years afterwards? The accused might possibly be dead by that time; dead in more than one way.

When I say prevention—just for a minute or two, Mr. President. I think it is important for us to seek all means to reduce the level of victims, but we have to look at the kind of socialization environment in which we live. We live in an environment which is culturally charged with sexuality. I think this small country is more sexually charged than any other country I know about. Carnival largely is a celebration of phallic symbolism. Every advertisement we use, whether it be rum, roti, motor car, you see this half-naked leg somewhere in your vision. I need not go any further except to say—and I am not making a judgment. I am merely describing it, the inference is yours. I am merely describing the national community in which we live.

Of course we enjoy it. We are adults we might say. But I am not speaking about the adult population only, and I am aroused to make the point after witnessing a concert at a primary school where an eight year old on stage, singing a calypso and the kind of "wine"—to put it in local parlance—he put down there, and if it was done by himself would be all right, but in the full stage he held on to this other female student and I do not have to tell you where he put this "wine" down and how he put it down in full display. You cannot blame him.

I am not saying that should cause the little boy to go and rape, but I am saying something psychological. I am saying that the thought precedes the deed, and if you grow up in that kind of environment, with your imagination, you inculcate a sexual imagination that could lead to possible disrespect for the opposite sex. Where is "Boom, boom and I wine she down and jep bite ninah in she behind"—

Sen. Seetahal SC: "Behina".

Sen. Prof. R. Deosaran: "Behina", well "jep bite ninah in she behina". And it is not the lyrics, you are seeing it on the television, and these children get inculcated.

A sexual offence is a serious offence. This is a very serious offence when it happens to you or your family. We have to now look and see well, we cannot say censorship; we cannot stop the flow of cultural activity. Not at all. We have come too far to turn back now. So what you have to do is to inculcate in the younger generation through the education programmes I am talking about and to the various ministries I am talking about, moral restraint, self-restraint. Not to become priest, pundits, saadhoos and so on, but to know where the line has to be drawn between the thought and the act, even in the midst of provocative temptation, otherwise the frequency of such victims would more likely than not, increase.

There is a lot of sex in the schools you know. We do not know the true figure of illicit sexual activity in our schools. But you talk to the principals and teachers one to one as I have done and known by the Minister of Local Government—I almost said the Minister of Education, I cannot forget because you have left such large footsteps in that ministry. You talk to teachers on a one on one basis and they will tell you about the underwear found in the toilet and under the desk. So do not think this is merely a matter for technical and legislative attention. It is necessarily so, but we must not be afraid to look at the other possibilities that are facing us.

The calypso is less and less smutty you would say. The lyrics are a little more respectful, perhaps because of economic reasons. The attendance rates have been going down, both ethnically and perhaps in terms of women. But the chutney is taking over now. The chutney in terms of sexuality, lewdness, I think they have taken over but there is a marketplace for it, so I am not saying to stop it. I am just saying that for our young people coming up, we have to inculcate what is called some moral and spiritual values, not only values to have as an idea but the restraint that goes with those values and let parents take greater care and protection of their children in such a sexually charged environment, Trinidad and Tobago.

So that is the preventive measure and it will give us legislators less work to do because there will be fewer victims and we hope in time it will not become so serious as that which faces us now.

I like the idea of video recording. In this era of technology you cannot stop it, but not only that, it produces higher efficiency. But I would really like to see the Attorney General and his staff become a bit more modernized and courageous. There are many reasons and I would not go into them, Mr. President, because I might digress a bit too far. But I think we should have, at least on a pilot basis, television cameras in court trials, because several times I have spoken about how lawyers harass witnesses, or, I said, how the judges might improve their judgments, or how juries behave, and seeing these things through the newspapers really do not give us a true picture. You might see where people would gallery. Well, let them gallery; that is their right. They said the same thing about this Parliament when the broadcasting issue came about, but it has proven to be reasonably successful.

5.45 p.m.

Put TV cameras in the court. Let the public see what happens in their courts. They are the taxpayers, they are the victims, they are the accused, they are the families; let them see what happens in that very expensive institution, the Judiciary, that very important arm of the State. If you can broadcast Parliament, I do not see why you cannot broadcast what happens in court, and then you will see their performance rather than hearing about it in the newspapers.

I want to implore the Attorney General and the Government, please, this Bill is important. We know that. It is of very grave, deep public interest. Several Senators on the Bench have silently whispered to me that they would like to contribute, but they would need a little more time to engage the Government, and to bring forward the best that they could in the public interest.

Mr. President, I want to suggest to the Attorney General, especially since he is such a vigilant understanding person, if he could defer the closure of this debate for a next occasion when we meet after the Carnival. It will bring great benefit and great goodwill to your initiative.

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

Sen. Lyndira Oudit: Mr. President, thank you for the opportunity to speak in this debate. With respect to what Sen. Prof. Deosaran spoke about in terms of the experience of the teaching profession and the principals, I think I would like to

start my contribution today, by a simple experience that I had at a junior secondary school at which I taught. In one session, I took the children down to a lab, and in it was a fetus that was kept in alcohol. A young girl, a Form I student, was extremely interested in this particular fetus. She kept going back to this particular fetus. She subsequently left the school about a month after. I did not see her for almost three years, when I did, she had two children and they were all for her father.

Mr. President, this particular Bill, if I seem to be coming from an emotional point of view, it is because too often in this Senate, the people that form or come up with the legislation are so far removed from those who are affected by the legislation, that I feel the experience going to the people and finding out from the people what is required, is much more an important response and that is truly what is needed. Sen. Prof. Deosaran spoke about the teachers, but there are many more. I do agree that we should have more compassion and soul in our legislation. However, I would like to disagree with one point raised by Sen. Prof. Deosaran, when he said that one of the easiest things is to slap on a charge of rape on someone you do not like. I disagree with that because when you accuse someone of rape, it is not only the accused who goes on trial, it is also the alleging person or the victim, especially in this case with the majority of rape cases against women and children, I do not believe that any victim of an alleged rape is going to really want to go through that ordeal. Not only once, but every single time you have to bring evidence in a court, you have to relive the experience of that alleged ordeal. So I do not agree with that, but I agree with him that legislation is needed to have more soul and more heart.

At this point, I am very saddened that Mrs. Hazel Brown is no longer in the public gallery with us, because I found she lived up to her name as co-ordinator for the Network of NGOs, in bringing here to the Parliament, some of the views of the particular NGOs, and while there are things in it that may be agreeable to some and not so agreeable to others, I think it shows that persons who do this, participate at this level in a particular Bill, show a true need for consultation.

Mr. President, this Bill is concerned as my reading of it, with three things:

1. the revival of the common law rules relating to evidence of recent complaint;
2. 15AB, the absence of a complaint; and
3. 15AB(a), the delay in complaining.

So there are three things: the revival of the common law rules in relation to evidence, the absence of a complaint and a delayed complaint.

My concern today is not with the revival of the common law, and it is not with a delayed complaint. My concern here today, is in the absence of a complaint. With that in mind, Mr. President, this Bill to me in its barest form is a slap in the face. It is a slap in the face for any person in this country who has ever had a sexual assault or any ordeal of that nature. Is this the response in 2010, to those persons who have been so attacked? Make no mistake, a sexual attack is not a robbery, it is not even the case of murder. We have heard many times where persons who are so attacked might tell you, they are better off dead. Those are psychological and permanent scars that no one can recover from. So I do not think this is something that should be rapped on the table and to say good job; it is a slap in the face.

The PNM as the current party in Government, and the party in Government for 43 years, since 1956, should have had today, a piece of legislation that was more commensurate with the evil that we call sexual abuse. We cannot afford to pussyfoot, and we cannot afford to play games while our children and women suffer at the hands of perverted adults and corrupted psyche.

Mr. President, this Bill is woefully inadequate. This Bill is a virtual admission of the failure of the PNM to provide solutions to this particular problem, and this Bill is an acceptance of the PNM, of defeat, and even more so, it shows an unforgiving lack of consultation with criminologists, guidance officers, medical personnel and other professionals who had they been consulted, you would have brought to this Parliament, a much more relevant and comprehensive piece of legislation that would have better amended the original legislation, whether it be the Sexual Offences Act or the Domestic Violence Act, or any such nature, even the Evidence (Amdt.) Bill, which is what this Bill is.

Mr. President, this Bill for me is offensive, and to me it is an admission that the PNM has no clue on how to fix this particular problem. As far back as 1992, the West Indian Commission in Chapter VII mandated the then Government and allow me to quote:

> "…the Region still has far to go in correcting certain fundamental disadvantages which have for too long characterised the situation of women in the Region.
>
> The time has therefore come for"—that to be corrected— "so detrimental"—is this—"not only to women, but also to the wider society… The question…is thus not whether special policy is necessary…but how the absence of such action will affect the stability of the Region's societies."

Existing legislation has not been able to protect our women and children.

According to an *Express* article dated May 11, 1992, the Feminist Review Journal No. 33 and I quote:

> "An estimated one in four T&T households experience domestic violence, and one in three women is battered."

In a *Sunday Guardian* article June 16, 1991, according to the Rape Crisis Centre it says for every case reported, another eight go unreported. This in the 1990s, and since then, we have had numerous studies that were done by various organizations. We had the Institute of Social and Economic Studies, the Economic Commission for Latin America and the Caribbean, UNICEF, CAFRA, and ISCR, all of those bodies, groups and agencies have done research on this exact topic. How many of these studies were reviewed to bring our legislation up to 2010? How many of the recommendations were reviewed through consultation, in order to bring amendments to this point, and today, clearly that was not done and this is why for me, this Bill is even more frivolous and vexing. This Bill reeks of arrogance. It reeks of arrogance because it leaves untouched, the truly frightening horror of rape and sexual abuse that many women and children face.

Section 15AB to me is the most critical flaw, and subsequently the greatest weakness in this piece of legislation. It says the judge "shall"—not "may"—give a "warning"—not a "direction"—to the jury…and shall inform the jury that good reason\s may exist which prevented a victim from making a complaint.

Let me state that this time, some of my analysis goes to the heart of law enforcement and some of the problems within law enforcement, not only at the level of the police, not even at the courts, but I would like to state, for the record that I recognize and Members on this side recognize, the efforts of dedicated personnel within law enforcement. We recognize that many times there are substandard physical infrastructure for you to work; we recognize as well that there is often a lack of resources and equipment; and we also recognize that law enforcement officers often work in highly politically-charged environments, where discrimination and victimization may be the order of the day. It does not, however, take away from the ills that plague our police service and law enforcement agencies, when it comes to the sensitive matter of sexual offences.

6.00 p.m.

Mr. President, I believe that section 15AB, as it stands currently, is literally going to blow a hole wide open; so that mismanagement in the police service,

improper recordkeeping, biased interpretation and, in some cases, the possible police manipulation of information, could be done in a particular case.

Section 15AB identifies an absence of a complaint. As I stated earlier, that is my concern; not a delayed complaint, certainly one is expected in traumatic situations. Sen. Dr. Nanan spoke about post-traumatic syndrome. While someone may have delayed in making a complaint, I have no problems with that. I have no problems even in reviving the common law. My concern is in the absence of a complaint.

Mr. President, reports of evidence gone missing, is as commonplace as rats. In fact, an article of October 26, 2009, quoted in the *Guardian*, according to the Ministry of National Security:

> "These were among other documents being stored in a 40-foot container which was flooded by rainfall, resulting in the documents being severely damaged.
>
> 'A team of officers, led by the chief clerk, was tasked to examine the documents. It was determined that they were damaged beyond use, and could not be salvaged.'"

This is just one example in one murder case of a 40-foot container of documents missing, damaged by rainfall. We have rats eating cocaine; we have reports of guns missing. Does this in any way deal with the mismanagement and poor handling practices of records? It does not.

The absence of a complaint is not the fault of a victim only; the victim may very well have submitted a report. So how does one determine or assess whether the absence of a complaint is not the fault of the police? Who is to determine that, the judge, the jury?

With respect to 15AB, I must ask the question: What good reason should a judge offer? What good reason shall a judge offer or accept when it is given that a victim may refrain from making a complaint? This clause points directly to the failure of a system. It points to the failure of a process between the victim, the police and the court systems. Section 15AB points at what I refer to as the social reality of crime, the occurrence of crime as well as the formal and informal responses and reactions from law enforcement personnel.

For any of us, sexual assault is not something we can easily define. It is not something that is unambiguous and clear cut; it is extremely subjective. The subjective nature of these offences directly determine the official responses and

perspectives, from the police officer who comes to take the report, to the prosecuting attorney, as well as to the judge who may offer that in the absence of such a complaint, you have to take the good reason.

The idea of socialization was brought up by Sen. Prof. Deosaran. Socialization is what determines our value systems. Judges are also socialized. The whole notion of women's sexuality, which is oftentimes tied to the concept of what we call "family honour", oftentimes these are shared value systems, so that the victim is a part of a society in which the shared value system is that of the police, that of the attorney, as well as that of the judge and jury. It is very important for us to understand the whole notion of socialization, when it comes to the interpretation of law.

In the *Sunday Express* of April 19, 1991, there is a ruling by the Court of Appeal Judge Mustapha Ibrahim. This became a landmark case in 1991 and has been used by many women groups and NGOs throughout the country since then. After serving four years out of a 20-year sentence for raping and killing his wife, in the Appeal Court, Judge Ibrahim criticized the harsh, heavy penalty and sentence imposed on the first-time rapist. He believed in his ruling that 20 years was too harsh for a first-time rapist. At what point do we expect a rapist to get harsher punishment? After how many attempted rapes and convicted rape charges? How many convictions of rape do you expect? Is it an incremental thing so that the first rape case should be easy and then incrementally you build? What are we building here? What was the message sent, that 20 years was too harsh? You rape a woman and she subsequently dies, so you have committed murder, but because she was your wife you get 20 years; appeal and he says, "You know what, that sentence was too harsh." [*Interruption*]

Mr. President: Senator, one of the things we would not do in this Senate is to criticize judges or the Judiciary. I ask you to withdraw that last statement and go no further. If you want to talk about an unnamed case, please do not go there.

Sen. L. Oudit: I am so guided, Mr. President, but this was in the *Express*. I am just referring to an article, but I take your ruling.

After that particular case, Diana Mahabir, referred to in the *Express* of September 03, 1991, said:

> "Since most rapes are acts of violence committed by men on women, it is obvious that we have to start by changing the way men are socialized from early childhood to use violence to get what they want."

A UNICEF report of June 2000 was a very telling one. The entire journal was dedicated to domestic violence. It says here:

> "Investigations...have found that in cases of domestic violence, law enforcement officials frequently reinforce the batterers' attempts to control and demean their victims...'when committed against a woman in an intimate relationship, these attacks are more often tolerated as the norm...those who commit domestic violence are prosecuted less vigorously and punished more leniently than perpetrators of similarly violent crimes against strangers.'"

It is UNICEF Report, No. 6 of June 2000. The revival of recent complaint will not improve how law enforcement officers deal with and handle a case from the initial charge to the sentencing; surely the Minister knows this. [*Interruption*]

Sen. Joseph: You said the Minister knows that?

Sen. L. Oudit: Do you want me to recall the article?

Somebody asked for statistics. What are the statistics we are dealing with? This is according to the Institute for Social and Economic Research Report on interpersonal violence for three territories in the Caribbean: Barbados, Jamaica and Trinidad and Tobago, which was submitted to the University of the West Indies in November of 2007 and was revised and accepted for publication on April 29, 2008. The study identified persons between the ages of 15 and 30 and included 3,401 participants. In all three territories, 70.9 per cent of all surveyed reported some level of sexual violence, victimization. Out of that, 62.8 per cent of all surveyed—and we are talking about the three territories—were perpetrated in a relationship of an intimate nature. That report further went on to tell us that in Trinidad and Tobago up to 25 per cent of all hospital admissions were from injuries resulting from sexual or domestic violence on persons under the age of 30. Up to 25 per cent of all hospital admissions in Trinidad and Tobago were as a result of domestic or sexual assault.

Reviving recent complaint in the absence of a delayed complaint—how are we dealing with this? How does this Bill help 15 per cent of all admissions to hospital, which are as a result of sexual or domestic assault? Officers of the law must understand the seriousness of what we are dealing with.

This Bill seeks to direct a jury as to the reasons, which may be good, for a victim to have either refrained from or hesitated in making a complaint; but in no way does it even start to deal with the deeper issues of police bias when recording a crime. It does not deal with the whole idea of plea bargaining that takes place before the court case in a courtroom. Even the sentencing, the lessening of initial charges, how does this relate to all these things? For me this is truly pointing to a gross inadequacy in this Bill to deal with the issues. If amendments ought to have

come, they should have come after a more studied approach of the recommendations that were given by the NGOs involved in this particular matter.

Mr. President, this Bill puts tremendous responsibility on a judge and in the ability of a judge to so think. We are not going to analyze the judge, but we are looking at the Bill. According to the Judicial and Legal Service Commission report for 2007, there are four criteria used for judicial appointments and two out of those four are integrity and temperament. What does that mean? Is this referring to religious background or upbringing of a judge? Does this refer to stated positions on things like homosexuality or abortion or sexuality? Does this identify a temperament that is weak or meek or aggressive? In what way are integrity and temperament, which are so subjective, measured?

In warning, where a judge warns in the absence or delay of complaint, according to the Bill, how much of a judge's opinion is determined by his belief system, that is shaped by his religious background, his opinions on sexuality and even his ability to define what is appropriate behaviour or appropriate punishment?

The UNICEF report in 2000 went on; for the benefit of the Minister, it is on page 4 of the report. It speaks clearly to inconsistency in the definition of domestic violence which could range from physical abuse alone to physical, sexual and psychological abuse.

6.15 p.m.

Mr. President, section 16 of the Sexual Offences Act clearly stipulates that acts of serious indecency are not even punishable if committed in private between a husband and wife. How does the temperament of a judge determine which one is more important? The serious indecency committed, or the level of privacy between the husband and wife? Is privacy a good reason not to complain because it happened in the privacy of your home, so the serious indecency could take place? But because it is in the privacy of your home which becomes the factor that the judge is better able to assess?

Mr. President, according to this Parliamentary Association Report dated October, the Parliamentary Conference held in Tanzania, I would direct all Members to look at page 340. The issue points to a lack of political will in dealing with the problem of violence and sexual abuse of women. It says:

> "A need for training of those in the legal system was identified, from the Supreme Court justices to public defenders and prosecutors to social workers and support personnel who deal with women whose rights have been violated."

It went even further and referred to socialization. It says:

> "…the reality is that violations against women's human rights are often sanctioned under the garb of cultural practices and norms, or through misinterpretation of religious tenets."

Mr. President, is this Bill a legal sanction under the garb of cultural norms? Does this proposed legislation in any way affect or address the plight of victims who, even if this piece of legislation becomes law, are they going to stop facing the injustices that are meted out to them at the hands of the attackers? Are they going to be protected from ill-trained and misguided police officers who will tell them plain: "That is husband and wife business?"

Are we going to have any piece of legislation that is going to stop a biased judge from having a religious background against the women and says, "Give him two years, 20 are too many?" The compelling argument for anybody who read this *Parliamentarian* issue should have been reason enough for the PNM to even reconsider bringing this piece of legislation without revising it.

The article says:

> "…violence against women is exacerbated by legislation, law enforcement and judicial systems that do not recognize domestic violence as a crime."

and there is need to pass legislation that can protect the violated persons.

Mr. President, this Bill is dangerous as it can be used subjectively to prosecute persons who as it was pointed out, we just do not like. No complaint, we are bringing back, we are reviving all the old doctrines but it is also dangerous because we do not address the real issues.

I would like to offer some solutions before I wrap up. In all my contributions I do offer solutions because at no point should the current PNM administration indicate that nobody told them and they did not know.

Mr. President, my first recommendation is that more involvement and greater consultation with the groups so identified must take place before bringing legislation to the Parliament; we must strengthen the school curriculum so we deal with issues of socialization when it comes to gangster and macho bravado. We need to address those things because what Sen. Prof. Deosaran referred to as sex in schools is not a fallacy, it is not a myth, it is a reality and we are training, giving or allowing sexuality to develop at earlier and earlier ages. So we have to look at our school curriculum; we also have to retrain our police officers to better

assess and determine sexual misconduct and to look for signs and symptoms, and further, to include more qualitative and quantitative studies on the role of law enforcement from the initial assessment to the treatment implications.

Mr. President, this Bill ought to go—if not completely withdrawn—to a joint select committee. When suggestions and recommendations are given, it is often the choice of the PNM from what they say and what they do not say, that they simply do not have to, but I would just like, as I end, to indicate—

Mr. President: Senator, I thought you would have wound up in a few seconds but you did not. We have a Procedural Motion.

PROCEDURAL MOTION

The Minister of Energy and Energy Industries (Sen. The Hon. Conrad Enill): Mr. President, in accordance with Standing Order No. 9(8), I beg to move that the Senate continues to sit until the conclusion of the debate on this Bill.

Question put and agreed to.

EVIDENCE (AMDT.) BILL

Sen. L. Oudit: Mr. President, I will just take two minutes again. I believe at some point, someone is going to turn to the PNM and say: "Your legacy is not what you have left now, but it is that you did not listen to your Opposition." It is possible that you were guided by your founder and I am going to read from a book which I love, *Inward Hunger* by Eric Williams at the time, before he was doctor.

On page 28 he says that he had a very serious fall in his youth while playing football. No doctors were called in, but he could not ignore the fact that something was seriously wrong with his hearing. He said he grew more and more convinced that that fall had something to do with the deterioration of his hearing.

> "Not that I regret it, a Hearing Aid is a powerful weapon against an Opposition in Parliament, you can always turn it off."

So, in light of that, I do not know if the hearing aids are off and this is why the Opposition's suggestions are never listened to, but it was also the wisdom of the man to state on page 25; he was a very visionary man and he said:

> "On the surface the situation in Trinidad seemed fixed for all time. Its beneficiaries no doubt thought so. But below the surface rumblings could be detected by those who had ears to hear… The portents were internal also.

Opportunity, then, was knocking at the door. Trinidad in 1911 would move only in one direction—forward."

Mr. President, I assert that in 2010 Trinidad will only move forward.

Thank you.

Sen. Subhas Ramkhelawan: Thank you, Mr. President. As I join the debate on this Evidence (Amdt.) Bill, 2010 there is no doubt that ours at this time is an ailing society because when we look at the statistics, what is very clear is that crime of all nature is on the rise and certainly in terms of sexual offences even when one allows for the additional reporting that may have come about lately, there is still a significant increase in this area of crime and offences.

I think this piece of draft legislation while in and of itself cannot resolve the problem of an increasingly ailing society, it is meant and it should be judged on the question of its incremental effectiveness to the justice system; and I say justice system to differentiate it clearly from the question of the legal system and the Judiciary.

Who can really at this point in time of our society stand against the notion of video recording as evidence when we have seen perpetrators of all kinds find ways to deflect, and in many cases beat the system of justice? Those ways have already been discussed in detail in this debate by my colleague Sen. Prof. Deosaran and so many others. So it is not worth repeating how perpetrators have been able to find ways to defeat the system.

Who can argue against the adjustments that are being sought for the doctrine of recent complaint? I myself cannot speak in any eloquent terms at all about these legal matters and various doctrines. I think that has been eloquently done by my colleague, Sen. Seetahal SC and, of course, the hon. Attorney General.

When we look over the past decade with regard to this matter of recent complaint, or delayed complaint, we need not look further than some of the scandals that have taken place in the churches where priests, men of the cloth have savaged young girls and boys and they have had to keep this torture, they have had to keep this shame, as they think it, to themselves for many years. And if we did not have something akin to this doctrine, what would have happened to those persons who came forward 10 and 15 years later when it seemed, not just appropriate to do so, but when they would have had to summon up the courage to speak out in their own defence?

Therefore, I want to applaud—and I do not often do this—the hon. Attorney General for this particular measure.

Because in one piece of legislation we cannot solve all the problems of an ailing society, and those who think that with one piece of legislation we are going to so do, they are sadly mistaken. If we take the right steps in the right direction to try to solve these problems and improve our system of justice, we are taking the right road.

Therefore, my support for this aspect of the Bill which deals with the doctrine of recent complaint, and delays in bringing complaints, my support is unequivocal and I think it is something that I am prepared wholeheartedly to support.

As to video recording, if we can take written statements—Sen. Seetahal SC spoke at length about that—I think it makes sense that we move forward to video recording as evidence. There is no reason why we should not because what is happening is that the perpetrators have more protection in the court than the victims and we cannot continue with a situation without trying to remedy it. We cannot continue with a situation like that without trying to find a balance or rebalance of it.

6.30 p.m.

Therefore, this question of video recording may have its deficiencies, but do you know what? In terms of those persons who are brought before the law, they have many measures of redress in the said courts of law if they find that they need to look for redress. That is not the case with the victims because the deed has been done and the damage has been done. Therefore, when these persons who seek redress before the courts, and in some cases attempt to intimidate witnesses in various ways, the ultimate being to take their lives, but to threaten and cajole in an attempt to dissuade those persons from coming forward and giving evidence as they would have put in a statement or video recording, then the time has come—no, the time has not come—the time is long past due for what we are seeking to do today.

I do not support the notion of any select committee in addressing both these issues. I think that the matter is clear cut as it could be. If there is need for redress, those persons have the option for redress in the very courts of law. There is one thing that troubles me. That is five years to put this together after the realization that the doctrine of recent complaint does not simply find itself back into common law with the ruling that took place. Five years, four years. [*Interruption*] Three years. I stand corrected by the Attorney General. Three years to put those measures in place and 24 hours to put five, six, seven, eight amendments and then more amendments to come.

It makes it difficult for us who are not, should I say, we are not attorneys-at-law, we are lawmakers. So our ability to absorb and digest some of these changes within this very short period of time is somewhat difficult and challenging. I add my voice to my colleague, Sen. Prof. Deosaran in asking that some more time be allowed to digest these other changes. I understand that my colleague Sen. Dana Seetahal SC having been in the area for so long would be able to digest easily, some of these changes.. I cannot say the same thing for myself. I am not sure about the case of my other colleagues on the Independent Bench.

I do not know that it is of such an urgent nature that the vote cannot be deferred to another session. A week from now will be Carnival Tuesday and I suspect that many of the Senators here would not be available for a sitting. There would not be a sitting. I do not want to pre-empt anything. I appeal to the Attorney General. You have brought so many amendments in such a short order. Please consider it so that at the end of the day when this vote is taken, people can with clarity make a judgment and vote for probably, without any reservations, all these additional amendments which have been brought and we have not been able to assimilate properly.

That is my only request because I do not have a difficulty with the policy prescriptions that are being proposed in this piece of draft legislation. The legislation, as it is crafted, tightens the degrees of freedom or areas of doubt that our judges would have had before. It is, in my mind a welcome adjustment.

In conclusion, I am prepared to support the measures here because they are strong and effective which would go some way to improving effectiveness of the justice system. I would like to have some time to study some of those myriad amendments that have been brought by the Attorney General in the last 24 hours. That being said, I thank you. [*Desk thumping*]

Sen. Dr. Sharon-ann Gopaul-McNicol: Mr. President, I would like to make my contribution which will be brief—I am certain that it should not go past 20 minutes—by focusing primarily on the sexual offences as they pertain to children, albeit, I may make reference from time to time to the sexual offences as they pertain to adults. I will also like to focus my attention on the psychological aspects of this Bill especially as it pertains to the new sections 15AA and 15AB. I will offer some solutions for consideration by the Government.

Looking at the Evidence (Amdt.) Bill 2010, there is no question that we have to do better with respect to our timeliness in responding to complaints of sexual offences. Let me say upfront that sexual offences meted out against children is so

heart wrenching that it is very difficult to speak on this issue without feeling the emotional and psychological scars that our children have wittingly or unwittingly endured in this society. I must admit that when you think of innocent victims like Sean Luke and others who were brutalized by children a few years older than they, we must understand the serious psychological ramifications of child sexual offences.

I take this opportunity to commend the presenters of this Bill. The attempt to change the Sexual Offences Act 1986 by abolishing the doctrine from the laws of Trinidad and Tobago because it is premised on the archaic notion that if the victim of an alleged act did not immediately inform someone, the victim would be judged to have consented. This is indeed a necessary change. I commend the presenters of the Bill, the Attorney General and his team. There is no doubt that victims, especially children, may very well be afraid and reluctant to make an immediate complaint. This may result in a jury assuming that since there is no complaint the victim's credibility is compromised.

I am pleased to see that section 15AA was included after section 15A. Section 15AA seeks to revive the doctrine of recent complaint which is a good idea given how long it can take for a victim to reach a psychological place that he or she would be emotionally and cognitively comfortable to articulate his or her feelings and experiences in making a legitimate complaint.

In the case of a child five years old who may have been a victim of a sexual offence act, for instance in the judicial system of the United States, in many of the states as far back as 30 years, 25 years later, a child is allowed to make a complaint by the time the child is age 30. This is excellent in that it allows the statute of limitation to be extended. It allows the victim to grow emotionally and cognitively and even to understand the traumatic impact that that sexual offence may have had on his on her life at a very young age through the help of psychological intervention. It also allows the child being a young adult to file a complaint against a perpetrator of a sexual abuse act that may have crippled that youngster's life for many years on end.

While I agree with the insertion of section 15AA as I mentioned, I disagree with the section in clause 2, new section 15AA that states that evidence of recent complaint in sexual offence cases shall apply from the date this Act comes into force. I disagree with the statement "from the date the Act comes into force." I think that it should be "retroactive with no statute of limitation at all".

I would like the Government of Trinidad and Tobago to consider very strongly the issue of the statute of limitations or initiating proceedings with regard

to sexual offences. In other words, there should be no upper time limit where feasible in national law and for a minimum of 25 years after the complainant has reached 18 years of age because 18 years is the accepted definition, internationally speaking, of an adult. If you were to look at countries around the world, you would see that it ranges from one year to 25 years for the statute of limitation.

In some cases there was no statute of limitation for sexual offences, for instance in Alabama, Alaska, Delaware, Idaho, Maryland, Mississippi, New Jersey, North Carolina, Vermont, Virginia, West Virginia and Wyoming. We must understand that statute of limitation established a period of time during which proceedings must be initiated. Once that period had elapsed, the problem is that litigation can no longer be pursued. This in and of itself is a problem. When you look at the convention of the rights of the child rather than the date of the alleged offence, victims are allowed because of the freedom of the statute of limitations—child victims who may be unable to speak about their experiences until years later would have the freedom to regurgitate these experiences many years later.

Numerous studies have shown that childhood sexual offences are so crippling that for decades children cannot come forward to explain their situation. I would like to explain it in the context of the post-traumatic stress experience which I will discuss in a moment. We need to keep in mind that psychological issues can prevent victims without a doubt, not only expressing the pain within, but also intimidation by abusers and perpetrators of sexual offences make it even more difficult.

If you were to look at predators you would see that they have a mission in keeping victims very quiet. Most of the times children or young adults may be willing to come forward with information especially if the current statute of limitation allows them to do that. The law seems to protect predators more than the victims. You can see a continued molestation and reliving of these experiences by the victims.

I am very concerned that the limitation period in some cases is too short. I am not sure what our procedure would be because I have not seen any time limits placed on the statues in Trinidad and Tobago. I hope that we have no statute of limitation. This is my recommendation. We have to understand that the passage of time a person endures in their young years does not dull the memories and horror of it all. That is why it is so important that we allow people who were victims of sexual offences to struggle through their recovery with an extended period of time.

6.45 p.m.

We must note that a weak legal framework which is partly what this Bill attempts to address and change, much to the commendation of the recommended

changes, can make children very vulnerable and encourage sexual exploitation. In fact, if you were to look at perpetrators of sexual offences, they tend to seek destinations where the laws are very lenient in those parts of the world. You find that they orient towards places where the laws are very lenient. So we need to have very rigid, strict and severe penalties for any sexual offences, especially offences perpetrated against children.

I recall when in the US Assembly, Sheldon Silver, on June 12, 2008 passed legislation extending the statute of limitations completely, over a lifetime and people thought that was an outrageous recommendation. But if you understand how trauma works—which I am going to discuss now; the post-traumatic stress disorder—you will appreciate section 15AB which seeks to warn the jury that an absence of complaint or a delay in complaining does not necessarily mean that the offence committed was false. This is so true, because if you understand post traumatic stress disorder, you will realize that people relive this extreme trauma and persistent re-experiencing of the traumatic event is not unusual, and they go through this. But in other cases, they are also unresponsive and very numb by the traumatic event, so much so that they may not be able to speak of it, may not be able to explain it, may be psychologically—as they refer to it in terms like psychological numbing, emotional anesthesia, and this can go on for years and years on end.

So when you look at the present symptoms—and post-traumatic stress disorder is an anxiety disorder. It is a disorder that if not addressed, leads to depression, so you see people become very depressed over an extended period of time. I will say this much; that this can serve as an impediment in one recalling the event and making the complaint, even. It is without a doubt, scientifically well-grounded and recognized that post-traumatic stress disorder, which begins at any age, actually, including childhood, symptoms usually can begin three months after the trauma or up to a lifetime.

One may say: how do you put a solution on something like this? The point is, with the amount of recommended changes that I will go through before the end of my discourse, it will help you to realize that people can come through this if the laws are in place, as well as the psychological and educational interventions.

Before I offer recommendations, I want to support the insertion of section 15AB, especially subsection (a) and (b) which speaks to a judge:

> "(a) giving a warning to the jury that an absence of a complaint or a delay in complaining does not necessarily indicate that the allegation that the offence was committed is false;"

I think this was really a good section to include. Likewise the judge shall:

> "(b) inform the jury that there may be good reason why a victim of a sexual assault may refrain from making, or may hesitate from making, a complaint about the assault."

This is important for our legal minds, as well as the average person in society and families, to understand why a person may not do that.

Notwithstanding the strength of these two sections that were included, I would be remiss if I did not mention my concern about this Government's penchant time and time again not to explore to its fullest, in my assessment of it and certainly my own personal experiences in understanding the modus operandi of this administration—to cover up cases of child sexual offences, as I have personally witnessed and experienced on August 03, 2005, being told: "Leave it alone. We want nothing to hurt the political party of the PNM."

I recall when this was said to me, what it did to me as a professional person who was raised my entire life understanding that the three times that you violate confidentiality is in homicide, suicide and child abuse, and here it is, we have a system where leaders can be so flagrantly recalcitrant about something as important as this. I recall also when I encouraged one family to report to the police the case of their child who was sexually offended by a leading person in this society, the sergeant at the station said: "What do you want to do, destroy the man's career?" And the family was further traumatized by such a response coming from a sergeant himself.

So when you think of these kinds of things, it is not unusual, I recognize, in a small society where half of us know each other and the other half know the other half and so on, but we must have a code of ethics that must guide us as leaders and professionals in our own personal life. We must be clear that we must at all times, protect the well-being of our children, and when this happens, when you think of Akiel Chambers and Dane Andrews and so many others, it is unfortunate.

But I will get into the recommendations in terms of what the Government may want to consider to strengthen section 15AB—the insertion of section 15AB—as well as the Bill as a whole.

In Australia, there is a major undertaking by women safety strategy groups by using an integrated service model and we may want to consider how we can integrate this model. I spoke about it in one of my books, a multisystem approach to governing, to intervention, to addressing the social ills of a society. This

approach allows services to families most at risk of violence, like barrel children, for instance, who may be left unsupervised. Oftentimes this happens. How they deal with things in a more structured and systematic way; through NGOs and agencies; sharing information, cushioning and protecting children at risk who will be easy prey to sexual predators. A Government needs to support these types of NGOs by supporting families and encouraging families to navigate their way through using the services and offering financial support to those NGOs to bring about psychological relief to families.

I would also want us to consider, these programmes will help in the prevention of violence; in the provision of services to victims and, certainly I would like you to consider the training of police officers in a way that police can respond in a supportive, sensitized kind of way, a way that will help police to be more sensitive to family needs, especially to people who have been victims of such vile sexual offences.

I would like us also to consider as you put in place policies for change, effecting change and in addressing this situation, policies and guidelines for preventing workplace bullying. It is a practical guide, really, to prevent these kinds of sexual offences in the workplace as well.

It is also necessary to look at clinical forensic type of medical counselling responses to victims of sexual offences. This includes the provision of cognitive behavioural-types of programmes for those in prisons, especially men who have been abusive to women and children and so forth, to address their offending behaviours; to prevent recidivism of these behaviours and to engage in what is internationally and widely known, called: "Stopping Violence Programme". It really is a widely known programme and has been found to be effective.

Another recommendation is setting up what is termed, extraterritorial legislation. I think this is a great tool to fight child sex tourism, if you were to look at this form of sexual offence. You may want to consider that, Mr. President. Recognizing the global nature of this growing problem, we have to strengthen the legal frameworks through the enactment—[*Interruption*]—you are doing that? Okay, good—of extraterritorial legislation.

As of now, over 40 countries have enacted such laws already and there have been varying levels of success in implementing them. Through these extraterritorial jurisdictions, countries that are deemed very highly offensive in terms of committing these kinds of offences, you will find that we would be able to cover the borders, not just nationally, but internationally. So I think this is a

particularly useful tool in terms of persecuting an offender who escapes from one country and is trying to get to another. It is certainly a clear message that we would be sending that we will not be tolerating any citizens taking a holiday from their own legal type of systems by going off to another country.

Another recommendation is the establishment of national and international database on child sexual offenders in order to facilitate the national and international exchanges of information on victims and perpetrators. This is very important, because at a touch of a button we should be able to identify child predators in our midst and we should be able to share information on people who are working in environments where there are children who can be easy prey to such persons. So hotlines should be established, I would hope, to provide channels for the public to report child sexual exploitation.

I strongly recommend that we develop specialized medical and psychological-type of services for child victims, including their ability to socially reintegrate into the society. I also recommend appropriate training, particularly legal and psychological, for persons working with children who have been victims of such sexual offences. Many times we have people who have not been appropriately trained. They are working with such a population that requires so much clinical attention and yet they have not been appropriately trained. I hope we would do that.

I also hope that we strengthen the collaboration with non-governmental agencies, the NGOs, in particular those that support advocacy efforts. When you think of so many of our children who have been victims of sexual offences and they have very few people who advocate and lobby in their interest and who empower them by exposing the families to their rights and so on, we need to encourage that.

We also want to look at all possible measures that should be taken to avoid stigmatization and social marginalization of child victims. This is a very sad occurrence that happens when children are victims of sexual offences. They become themselves, believe it or not, criminalized and they are sometimes even penalized because their behaviour following sexual molestation, they tend to act out those very vile acts that were done to them onto others. So they are criminalized and they are certainly penalized in our system without recognizing that they themselves were victims of sexual offences and did not get the appropriate intervention to help them.

A point in case are the persons who perpetrated the acts against Sean Luke; the two youngsters. One was 15 and one was in his late teens. So what we are looking at is that, we need to have this taken into consideration, that we do not

criminalize sexual offenders. We need to strengthen international cooperation by regional and bilateral types of arrangements for the prevention, detection, investigation, persecution and punishment of those responsible for acts involving the sale of children pornography and so on.

Finally, I do agree with Sen. Mark when he made reference to the fact that we need to do more consultation in public, in that this requires that a lot of the information should be spread or widely disseminated, even on the Internet to the public at large. We really need to provide information to civil societies and various organizations and youth groups. In other words, strengthen the borders and the support systems; a multisystems approach—strengthen that around our youngsters who have themselves been victims of sexual offences.

We need to ensure that the legal system will have adequate penalties for perpetrators. This is critically important if you are going to bring about some kind of conformity with international human rights standards. There must be adequate penalties for perpetrators. It should not be anything like, this is too harsh. People must stand the consequences for the vile actions against children in our society.

7.00 p.m.

We need also to link criminal law and child protection laws with laws on organized crime, in particular, provisions regarding the seizure and confiscation of criminal assets and special investigation techniques. In other words, people must be prepared to stand the serious consequences by linking criminal law and child protection law with organized crime law. We must see the connection.

We must also be clear that we have to screen people working with children, especially if they were offenders in some way. They must be excluded from being rehired unless they have gone through a tremendous psychological intervention. There is no question that we need a register of offenders and a register of perpetrators and sexual exploiters to prevent reoffending and to ban them from entering occupation sectors where they come in direct contact with children. We need training and knowledge on child rights and cooperation through Interpol, international child abuse imaging facilitating cross-border cooperation and so forth.

Finally, we need more quality research to identify gaps in the national legislation. All in all, this Bill is the beginning, as far as I see, of putting in place the structure toward bringing about, through the legal system, the justice so desperately needed for persons who are victims of sexual offences, especially children.

While I strongly support the Bill, we should, maybe because of the complexity of sexual offences, sit in joint select committee and hammer out these concerns. It may be best before we proceed with this particular Bill.

I thank you.

Mr. President: This is the last time I am going to let you come here with anything that looks like verbatim notes and make that effort in reading. I did not stop you this time; I let you go through. Next time, make small notes and speak from your notes. You have been here long enough and I do not want you to read anymore. It is contrary to the Standing Orders.

Sen. Mohammed Faisal Rahman: Thank you for the opportunity to make a brief intervention on the Evidence (Amdt.) Bill. I confess to a feeling of inadequacy with regard to this particular amendment. I have been flip-flopping in my mind trying to understand the significance of the question of the doctrine of recent complaint. At times it seems to be doing one thing, and at another time, another thing.

I am indebted to Sen. Seetahal SC for her explanation. The bottom line is that it would help the cause of the victims rather than hinder it. From that aspect, I am taking that at face value and accepting that reintroducing the doctrine is a good thing. At the same time, several things come to mind and these are the points I would like to come to grips with.

First of all, most of the contributors today have reflected the horrors that sexual abuse produces and this highlights the emotive nature of this particular crime—

[SEN. LINUS ROGERS *in the Chair*]

I congratulate my colleague on this temporary elevation—[*Interruption*] I will not transgress any laws, so I will make his job easier. Today is not one of my days for rampaging. This is a very sobering amendment and there are some aspects I want to deal with. It is not going to be a political speech.

The emotiveness and emotions that these crimes and prosecutions generate immediately jeopardize the rationality and the objectivity that should be applied to criminal cases. I want to make this point early. On February 02, 2009, at our debate on the Supreme Court of Judicature (Amdt.) Bill, I made a very important point. I will tell you why I am saying that. I did not know it, but at lunch time, the CJ was making the same point at a luncheon at the Trinidad and Tobago Chamber of Commerce. Our Attorney General said that he would have more to say on that

developing aspect. I am referring to the concept of dispensing with jurors who are more prone to intimidation and bribery than we can ever expect judges to be.

We had a case in recent times where a certain judge banned jurors for life. This is why I would like to repeat—and I said it in a general sense on February 02; and post-haste and bringing it forward—the concept of a panel of judges should be mandatory for sexual offence cases, particularly where it is not merely a recent incident, but one of the distant past. Upon reflection, even in the immediate cases, you have the whole question of intimidation and jury tampering.

I repeat the recommendation that the Government move expeditiously to come to the point where judges who are at arm's length from the hurly-burly of the public will be the ones to sit in judgment in cases particularly as offensive as this. This is a matter I want to highlight.

While we have the matter that a judge "shall" tell the jury that the lack of reporting does not necessarily mean that the offence did not take place; putting "shall" there—and for this reason I am arguing—if he fails to do it, that case gets thrown out on appeal because he did not make that point and in the interim the defence attorney has a chance to "ramajay" on the accused and all sorts of things can happen. Leaving "shall" there prejudices the matter if the judge slips. If you were to put "may" there, there will be no loss should he fail. In the course of a case, a judge can forget; we do not remember all the laws all the time.

The other matter I want to raise is that we have had, internationally, cases where people who have been in jail for 20 and 30 years have been declared innocent on the basis of DNA evidence. This is remarkable. This is why I am so grateful that we have a hereafter when we will stand in judgment because all who got away here will not get away there. Whoever was victimized here, will be compensated there. So, while we are on this earthly plane, we have to look at the reality that surrounds us. While we have DNA evidence freeing people, we are now faced with a situation where the lack of DNA evidence means absolutely nothing, so that a man or woman can be convicted.

[MR. PRESIDENT *in the Chair*]

Women can be charged for molestation and so on. A man or woman can be charged for molestation without any evidence, simply based upon an accusation by someone who may or may not be a victim. This is where a serious issue arises.

In the United States—and we run in tandem with them or right behind them—we have had cases where people have gone to psychiatrists or psychologists with

all sorts of problems and either deliberately or inadvertently ideas are implanted in the minds of children—Sen. Prof. Deosaran agrees with me—that germinate and gestate and come out as concretized instances of abuse.

This is a very serious matter and persons charged are parents and siblings. I can think of nothing more horrible than for a parent to be accused falsely by his child for having done him something when the child is young. Even if he were exculpated, the horror, trauma and misery he has undergone for the period and after would be unimaginable. People commit suicide under those circumstances.

This is one of my serious concerns with this matter. A matter need not be untrue if it is not reported on time. Germination of an implanted idea is a horror we simply cannot overlook. I ask the hon. Attorney General to bend his mind to this matter so that we can incorporate into the law, if not now, later, a safeguard against such matters occurring in the justice system in our country. This is extremely important.

With regard to where an offence is established, we look at revising the law as to the penalties that shall be applicable, as Sen. Oudit mentioned, the question of people getting off lightly. I am of the strong view that penalties should be increased and very serious reparations be made mandatory.

I can understand my colleague Sen. Mark asking for the matter to go to a select committee and I would love for that to happen, but the Attorney General did not take that on. [*Interruption*] The debate has already taken place. The point is, even if we were to defer committee stage to facilitate Independent Senators, what practical purpose will be served? Who will be able to speak? With the exception of three or four Senators, everyone has spoken. Even if we are given two weeks to look at the matter, what will we say? A select committee may be the way to go and if you go that way, we would be very pleased. Do we have an indication that is being considered?

7.15 p.m.

You run a risk, do you? Well, I would not push you there. We would let some time pass and those who survive will be here to fight another day. But I would like the assurance of the Attorney General that these measures that are being taken, that you keep a keen eye upon them to see how they work so that later on you would not take eight and 10 years to bring an amendment but you would act expeditiously, have a sort of committee that would have an ongoing review of these touchy aspects of law so that every year items are revised along the way.

Whether I am here or I am not here, I have a concern for the welfare of the nation, especially with regard to legislation. I have become addicted to this legislation thing you know. I have not got any wiser or more qualified, but I have certainly got more interested.

There is one other thing, you see in individual cases where implanting ideas which I have had support for can germinate and produce, gestate and produce a false accusation, where we have a single individual molesting a large number of young people, as in the clerical cases mentioned earlier, then the question I suppose is an automatic thing. When you have a number of accusations coming up and corroborating on a particular case and bringing their own cases, the matter would be pretty easy to be dealt with there.

So it is such a case where you do not need as many safeguards, but I want to underline the danger that we face in people being genuinely convinced because they have been abused, they have been assaulted when the whole idea was in fact a matter that existed here [*pointing to head*] and not in reality.

Mr. President, with those few words, I take my seat and I thank the Senate very much for its wisdom.

Sen. Dr. Jennifer Kernahan: Thank you, Mr. President, for the opportunity to contribute to the Bill before us, the Evidence (Amdt.) Bill 2010.

In presenting the Bill the Attorney General spoke on behalf of the Government and he spoke about the Government being at war with the criminal elements. It is not clear from the Attorney General's statement whether the Attorney General's perception is that the Government is winning the war or losing the war, but perhaps an answer might be found in a very recent statement by the Chief Justice who spoke out against a very insidious and dangerous development of jury tampering.

That is frightening to us all, because the jury system is the cornerstone of the criminal justice system that we practise in this country and we on this side have been warning this Government for years now that the untrammelled development of criminal activities in this country would eventually lead to the tampering of juries and elimination of witnesses and so on, and it has come to pass. I remember when we first made those statements right in this honorable Senate people looked at us as if we were crazy or something, but we have seen the Chief Justice actually admit that these are very fundamental institutions, the criminal justice system is severely being undermined. Even though the Attorney General said that

the Government is working towards building the pillars, my perception is that the criminals are being allowed to tear down the pillars faster than the Government is able to build them.

The statement by the Chief Justice is also frightening, because we are wondering on this side if it means that we are moving in this country towards trial by judge and we are also wondering within that same vein, if we are going to be moving from the frying pan into the fire with respect to how we conduct the business of criminal justice in this country.

We are very concerned also with respect to the manner in which these amendments from this Bill were brought to the Senate, at very short notice. The Attorney General very helpfully pointed out that the amendments were sent to us at 2 o'clock yesterday afternoon. And clearly, because of this, there is a total lack of consultation with our stakeholders, the law fraternity, the legal fraternity, the NGOs and the stakeholders in this country; because all of the citizens of this country are stakeholders in the criminal justice system and we are representatives of the stakeholders of this country, and we were dealt with very cavalierly as outlined by the Leader of Opposition Business, Sen. Wade Mark.

Sen. Wade Mark spoke of this Bill being rushed through the Senate this afternoon. Sen. Seetahal SC made the point that it is not being rushed through really because it is long overdue, that amendment, because of the anomaly with the 1986 law being repealed and the common law not being specifically revised, it is not being rushed through—in fact it is long overdue. But I think that Sen. Wade Mark is clearly referring to our ability to deal with the amendments, look at them, to digest them, to understand the implications of the amendments before us, because there are several amendments before us and some that we have not even looked at properly.

So it is our duty as lawmakers to be fully apprised of what the Government intends to do and the amendments they intend to bring, and it is our duty to be fully cognizant of the implications of these amendments. I think this is another system, like the criminal justice system, that has been undermined here this afternoon.

Mr. President, it is clear that these amendments are important because the Attorney General mentioned that they not only affect the sexual offences but they also affect all indictable offences, and therefore this is something which should have been thoroughly researched and looked at by Senators on this side. Unfortunately, this was not possible.

The Attorney General mentioned in piloting this Bill before us, that in 1986 the Sexual Offences Act of 1986, Chap. 11:28 by section 31 abolished the

doctrine of recent complaint, and therefore despite an attempt by the UNC administration in 2000 to revive the doctrine of recent complaint, it was not done in the manner that it should have been done because he explained that the repealing of the Act does not automatically revive the common law. Therefore we are here this afternoon to specifically and expressly provide for the provision of the common law doctrine of recent complaint.

In addition to the legal issues with respect to sexual offences, this whole Bill and the issues involved are very emotional for our society and for our women and children specifically, because it involves a lot of trauma, it involves a lot of pain. The issue of sexual offences, psychological abuse and wounds that do not heal very easily after several years, was so adequately explained by my colleague, Sen. Dr. Gopaul-McNicol, and we have to understand that there are a lot of pros and cons on either side; the abolition and the revival of the doctrine of recent complaint.

Mr. President, of course it was explained by the Attorney General that the doctrine was repealed. It was abolished because it was felt that it was archaic and therefore unless a victim immediately or within a certain time frame reported an act of sexual aggression and so on, that would lead to a lack of credibility on the part of the person with respect to whether or not the act actually took place and that any delay in reporting such an act would imply, to some extent, consent.

So that was the major argument in favour of abolishing that Act. The Network of NGOs presented a paper and so on with certain arguments which supported that—the abolition of recent complaint—because they felt that women were reluctant to complain of sexual abuse and they made the point that over 50 per cent of sexual assault are not reported by women, because of the very fact of the shame, the horror and the trauma of a woman, a child or any victim having been sexually abused, many victims, up to 50 per cent, do not actually complain or maybe they would find the will and the strength to complain long after the abuse would have taken place.

Part of that reluctance to complain immediately has to do with the culture that has been engendered in our society over a number of years, whereby women have the perception and the reality that when you go to the police station to make complaints you are greeted with disdain, maybe with derision, disbelief and ridicule; you are put there to sit in the charge room—the culture that we have engendered over the years for them to sit in the charge room and you are questioned by a batch and maybe that batch would leave and then another batch would come in and they would question you all over again; people walking up and down looking at you in a salacious manner and so on.

This is the sort of trauma traditionally that victims of sexual abuse have had to undergo in this country because we have not been able to change that cultural perception of sexual abuse. Many men take it as a joke, as something that they could laugh and make fun of unless it happens to them of course, and then it becomes serious. But generally, women have not had an easy time of it; victims have not had an easy time of reporting sexual abuse to the police. I would expect especially male victims—I suppose there are very few male victims brave enough and strong enough to go to a police station with this culture of "machoism" and so on, and report sexual abuse.

So, this is the root of the problem. What has been the problem, is the absence of specialized units within the police service to deal with victims of sexual assault, to deal with women and children in a humane manner and professional manner, and the existence of people who know what they are doing and who are trained to do these things. And this has been part of the problem, and this has been part of the argument for the abolition of recent complaints. Because of all of this, people felt that people are to be given a longer time to come to terms and to maybe deal with the issue and gain some strength to report the act.

Mr. President, on the other hand, as the Attorney General pointed out, the argument for the abolition of the doctrine of recent complaint is strongly grounded in the fact that unless some sort of immediacy with respect to the complaint takes place, there is going to be less evidence when the trial comes around, and to ensure a successful prosecution. Because obviously, there is a policy in place.

7.30 p.m.

I would expect that it takes place in this country, whereby when somebody reports sexual abuse, there are certain steps—I have seen on the television, NGOs and so on advising women that they do not wash off the evidence. They must go straight to the police station and they would take you to the hospital. There is a rape kit and there are certain procedures that have to take place: swabs and so on; clothes, evidence has to be taken and they have to be preserved in a certain way. There is a whole process which would eventually support your case and support the prosecution of your case, and to come to a successful conviction of the perpetrator. Therefore, immediate reporting would redound to the favour of the victims, eventually.

Mr. President, the Attorney General also in his presentation, made the point that any prejudice against the accuser caused by the abolition of the doctrine of recent complaint, may be mitigated by the clause that imposes a requirement that

the trial judge has to warn the jury that any delay does not necessarily indicate that the allegation of the offence was false since there may be good reasons for the delay. Therefore, he is proposing that this would mitigate any problems caused by the victim not immediately reporting the case.

Mr. President, the abolition of the doctrine of recent complaint also meant, and we were concerned about that, that years after, somebody, a woman or a man, whichever, could target a victim and claim sexual assault sometime earlier, but it would be then a case of "he say, she say". There would be no evidence, there would be no real substantive evidence or any sort of backing for that claim, and therefore, as many other Senators said here today, once somebody is accused of such a crime or such heinous crime, as we say in Trinidad, "No salt water cyar wash you off". Therefore it is very, very frightening that without this immediacy of complaint and so on, years after, people could be targeted. [*Interruption*]

Sen. Seetahal SC: I am trying to understand, and through you, Mr. President, that people could be targeted or they could probably be setting up from what I understand, if there is not an immediacy of complaints. That is what is being said by the Senator. But the recent complaint law has nothing to do with requiring a complaint to be made. Nobody could require that because there are cases that currently exist, where people have reported matters two years after. Like you are a child and your stepfather raped you. I know of one specific case which I did, but two years after she made the report and the person was convicted. So this amendment has nothing to do with those things. It is merely saying that where you make a complaint soon after, it could be used to show consistency. It does not affect the substance of the matter.

Sen. Dr. J. Kernahan: I do not know if I did not make myself clear. I was not referring to abolition of recent complaint. I was saying we are revising the previous status where we abolished the issue of previous complaint. I am saying that under that particular status in the law, persons can be targeted or could be targeted long after an alleged act might have taken place, because it would mean that there was no statute of limitation, there was no time limit within which you would have to—[*Interruption*]

Sen. Seetahal SC: There is none.

Sen. Dr. J. Kernahan: Okay. So I am saying, Mr. President, that the implementation of recent complaint means that the victims would be properly processed, properly examined, physical evidence preserved and so on in a proper manner, and therefore, that is a good thing for victims of sexual abuse in this country, whether men, women or children.

The issue that concerns women and I think Sen. Oudit, Sen. Dr. Gopaul-McNicol and other Senators made the point, is that we have to deal with and perhaps put systems in place in legislation that would allow for humane treatment and care of victims. This is to enable a flow and a process to take place which will support the traumatized victim and also ensure that a successful prosecution takes place at the end of the process.

Mr. President, section 15AB of the Bill before us raises the question of defence. It says:

> "Where on the trial of an accused person for a sexual offence, evidence is given or a question is asked of a witness that tends to suggest an absence of complaint in respect of the commission of the alleged offence by the person upon whom the assault is alleged to have been committed or to suggest a delay by that person in making any such complaint, the Judge shall—
>
> (a) give a warning to the jury that an absence of complaint or a delay in complaining does not necessarily indicate that the allegation that the offence was committed is false;..."

I think the Network of NGOs had made the point that this would not necessarily help the victim because the defence counsel would have already been engaged in tearing the victim to shreds, and therefore, the jury might have already been influenced and so on.

So, I would say that the concerns of the network of NGOs are real and it is a very emotional issue, and they are concerned about that regardless of this addition to the Bill before us, if the judge is required by law to explain that any delay would not necessarily mean that the allegation is false, it means that if there is a perception that the jury would be influenced by a defence counsel in tearing the victim to shreds and undermining the credibility of the victim because of any delay in reporting the crime, there is then, need for a strong and an ongoing national programme that sensitizes our population as to the emotional and psychological issues experienced by victims and survivors as they struggle to overcome the events of that sexual assault.

As I said before, there is this culture that people tend to take these issues as being not important, especially the men and so on, and you are expected to get over it, get up the next day and be strong and go about your business normally. So there is this need to sensitize the population with respect to the whole psychology of sexual abuse victims and trauma, because it not only affects the victim, it affects the victim's family, the victim's husband or wife, the children, the family

life, the home. Families break up over these issues of persons not being able to get over the trauma of sexual abuse. So it is very, very serious. It has many serious implications for family life and communities. It affects the whole community because communities in many cases are polarized by these issues, if the victim and the alleged perpetrator are from the same community. Some people take sides with respect to this issue, and it polarizes the whole community. It can even cause violence, and we have seen it because violence in communities where communities are polarized, people take sides.

I take the point that the Network of NGOs was making when they spoke to this issue, that there needs to be a wider approach to this issue. It is not just a question of a judge instructing a jury that this person would not necessarily be giving false evidence because she brought the complaint late. The whole society has to be more sensitized as to why women and children do not come forward; why children are more easily terrorized by adults; and who victimized these children. One of the Senators, I think it was Sen. Subhas Ramkhelawan spoke to the issue of children in churches being abused by priest and so on, because it is a father figure, a figure that is supposed to generate respect and authority and it is very difficult for children to really come forward and expose these predators. Clearly, part of it is naked fear. Children are really terrorized and threatened in many circumstances. Women are terrorized and threatened not to reveal the identities of their predators.

So, it is a national issue, it is a community issue, it is a family issue, and therefore, it has to be dealt with in that way. I think what the Network of NGOs was trying to say: the legislation has to represent that; the legislation has to reflect that; the legislation has to have clear policies and programmes in place that would mandate certain actions to take place; organizations and institutions to interact and come into that situation; specialized counsellors and professionals that can assist the victims; families; and the communities in recovering from these acts of violence against members of the community.

So, Mr. President, if we are able to put these issues into context when we develop this legislation and when the Attorney General brings these amendments, and if we are able to take a step back, talk to the stakeholders, talk to the Network of NGOs, talk to women who have undergone these traumas and experiences and so on, and get a proper feedback as to what is necessary in legislation, then we would do a service to our community, family, people, with respect to really carrying this society forward. It is not just enough to say you want to re-vindicate the issue of recent complaint and that will solve the problem and is going to make

everything all right. I think Sen. Oudit made that point also. We have to go further than that. We have to have a little more vision than that. We have to have more compassion for our women and men, because there are increasing cases of sexual assault against men and young boys. Therefore, it is even harder for them to report these acts.

So you must have institutions and systems set up, whereby people would feel safe and protected, they are not being laughed at, called names and ostracized from society. This is a very serious issue and as Sen. Dr. Gopaul-McNicol had said, people who are victims of sexual abuse and are left unattended, they themselves become perpetrators. It is a vicious circle and we are nowhere near to dealing with these issues in a proper way. The situation is deteriorating. Clearly, from the information from the NGOs who are responsible for these social issues, the situation is deteriorating.

7.45 p.m.

Mr. President, on Tuesday, February 09, 2010, the *Guardian* headline was:

"Child abuse on the rise in Trinidad and Tobago

For the period January to September of this year the Child Line Centre received 13,684 help calls, an increase of 5,527 for the same period last year. The statistics included physical abuse, domestic violence, incest, child abandonment and sexual abuse against children."

So this is a very alarming statistic; the situation is deteriorating and, therefore, the amendments have to go far beyond what is presented to us and they have to be much more holistic, taking into account institutions that would prevent and preempt, and if and when sexual abuse happens, there should be a clear policy, a clear system and a whole train of events that would not only help the victim to recover and reintegrate into society in a positive manner, but would help to catch perpetrators and make sure that they are convicted.

Clause 5 makes provision for the admissibility of a video recording of a witness or accused. It says in (1):

"Where a person gives a statement in relation to an offence, that statement may be video recorded."

The issue of the potential for a lack of credibility in video recording is recognized in this same clause at (3A), where it says:

"Where under subsection (3), the Court is considering granting leave in relation to a video recorded statement, the Court shall consider the following additional factors:

(a) the interval between the time of the events in question and the time when the video recorded statement was made;

(b) the quality of the video recording; and

(c) any other factors that might affect the reliability of what the person said in the video recorded statement."

Even though this Bill says that the video recording is recognized as evidence in chief and the court in considering the granting of leave to use the video recording, I would like to find out—because I thought that these provisions were rather vague—what is the significance of the court taking into consideration the interval between the time of the events in question and the time the video recorded statement was made? Is it that if the interval is long that the court would have a certain view or if it is too short, the court would have another view? I am not sure exactly what the court taking into consideration the interval between the time of the events in question and the time the video recording was made, means. Is the court saying that you should have the shortest possible time between the event and the video recording? What is the significance of that, in terms of the view that the court is going to take?

Regarding the question of the quality of the video recording, as it says here, I am not sure if this means the quality in terms of the actual ability to hear the witness or hear what is being said or to see clearly the persons who are part of the video recording or if it means that the court would have the professional, technical expertise afforded to it to ensure that the video recording is not tampered with, that it is authentic, that it is not something which might have been altered in anyway. Is that what it means by the quality of the video recording? Does it mean that the court would have technical advice and expertise at its disposal, in the first instance, before it even looks at a video recording to authenticate it? Is that what it means?

Sen. Dr. Saith: [*Inaudible*]

Sen. Dr. J. Kernahan: It is not clear in the Bill. This is a Bill, this is law, and it talks about the quality of the video recording. The quality of the video recording could mean anything. It could mean that there are gaps. It could mean that it is not clear; it could mean anything. What does it mean? If you are

bringing legislation, we should have a very clear idea what we are passing and what we are assenting to. [*Interruption*] So you leave something open and vague for the court to decide, is that what the Minister is saying? One minister is saying yes, another Minister is saying no. [*Laughter*]

Mr. President, it says here:

> "any other factors that might affect the reliability of what the person said in the video recorded statement."

What does that mean?

Sen. Dr. Nanan asked what would happen if you had a video recording and a statement contradicting each other. Is that one of the factors the judge would take into account that might affect the reliability of what the person said in the video recording? What are the other factors? I have seen other pieces of legislation in other jurisdictions where these things are mapped out and carefully explain what exactly the legislation is trying to say. When you make these wide open statements and you leave it like that, it gives a wide berth to the judge. You would have all these appeals and people objecting and so on; I think this clause is extremely vague.

In clause 6 it says that:

> "A video recorded statement made by a person under this Part is admissible whether or not the statement is made under oath."

I think Sen. Mark made this point; I do not know what the reason is for that. Normally if a witness or an accused gives a statement, it has to be under oath. The fact that you take an oath would mean something to the court. If you are going to do a video recording, why do you not have to take an oath and that is going to be acceptable to the courts? What is the difference? Why does the oath mean something in one case and it does not mean anything in another? [*Interruption*]

Sen. Seetahal SC: I just want to point out that in general when witnesses give statements they do not give them under oath. Only if you are a co-accused and you want to turn State witness that you give it under oath. The only time you give evidence under oath is when you actually go to court and do so, but a normal statement or a video recorded statement is not done under oath.

Sen. Dr. Saith: She is only asking rhetorical questions. [*Laughter*]

Sen. Dr. J. Kernahan: Mr. President, Sen. Seetahal SC made the point with respect to a witness. Is it that the video recording of an accused is not necessarily going to be under oath?

Sen. Seetahal SC: He does not swear; in fact, never.

Sen. Dr. J. Kernahan: The accused?

Sen. Seetahal SC: Yes.

Sen. Dr. J. Kernahan: These are some of the concerns we have on this side with respect to the Bill before us. We agree with the Network of NGOs and other stakeholders who have had an opportunity to look at this Bill; we understand their objections, we understand their concerns. This is a very emotional situation that we deal with and a very dangerous situation, because it affects succeeding generations. Parents who have been abused, tend to be abusers of their children.

In other developed countries, like in the UK, I know that there are systems and units set up in the legislation for the support, protection and recovery of victims of abuse. There are professionals who work in these units. The issue of sexual assault and sexual abuse of women and children is taken very, very seriously.

We have a situation in this country where these things are laughed at and dismissed; people are run out of the police station; persons are given advice, "Go back to your husband"; persons are given all sorts of runaround and that is why the network of NGOs says 50 per cent of victims of sexual abuse do not report it, because of the humiliation and lack of any sensitivity as to its seriousness.

We understand the aspect of the abolition of recent complaint, but we would like to see a more humane approach. We would like to see more policies and programmes which protect victims inserted in the Bill. We would like to see the establishment of institutions that would implement these issues, but, of course, we would also like to see the establishment of homes for the abused and for battered women and children. Mr. President, $250 billion has been spent in this country and we have not seen that. There are a lot of things we would like to see that we have not seen.

The Government has refused to implement these serious institutions that would protect women and children; so there is very little hope on this side that we would see what we are calling for implemented. There is no infrastructure out there. Even if you were to set up the counsellors and so forth, there is no infrastructure out there to house battered women and children.

Just the other day I was listening to the radio and they were making the point that there was a Carnival concert going on in the St. Michael's Home for Boys. [*Interruption*]

Mr. President: Senator, it is getting late. If you are not going to stop yourself, I am going to stop you. Please wind up and talk about the Bill.

Sen. Dr. J. Kernahan: Mr. President, legislation alone is not going to solve the problem; we must have the infrastructure; we must have the capability; we must have the professionals in place to deal with these issues. They must be done very quickly, because there is a great deal of suffering in this country of victims of sexual abuse.

Thank you.

The Attorney General (Sen. The Hon. John Jeremie SC): Mr. President, I wish to thank all Senators who have contributed to the debate this evening. In particular, I wish to thank the Independent Benches, Sen. Seetahal SC, Sen. Prof. Deosaran and Sen. Ramkhelawan, who made sterling contributions. By way of exception, I do not think that I have ever done this, I also wish to thank Sen. Dr. Gopaul-McNicol who I felt was quite effective this evening in her contribution to the debate.

Sen. Ramkhelawan made a couple of critical points, which I just want to repeat, at this stage; by a couple I mean just two of the points that he made. He said first that the Bill was really part and parcel of an incremental improvement in terms of the justice system, and that was a correct observation. He also said that one piece of legislation could not solve all the problems of an ailing society. It has been some time since I have heard words of wisdom like that from anyone in this Chamber.

It seems as if the society is all waiting on a magic bullet, a silver bullet to assist in eradicating the scourge of crime for all time. If that were the case, the Government would have found that magic bullet, used it and obviously rid this nation of crime for all time. One thing that we do possess on this side, is, as my friend suggested, political will. If that were the issue, we would certainly have dealt with this problem.

Crime is a difficult problem. It is one that requires the combined energies of all of us on this side.

8.00 p.m.

Mr. President, the Government has listened and although we are confident because we have heard each and every single independent voice speak in support of the legislation and—to use the words again of Sen. Ramkhelawan—in unequivocal support of the legislation.

We are confident that we can pass this legislation this evening, but we have listened to the Independents in particular and we think that a week will not hurt us. So, we are prepared to defer any further progress in terms of my winding up until such time as we return when I propose to deal with the individual contributions of each Senator and, perhaps, I can treat with any of the concerns which they might have raised in the committee stage.

If I can just reiterate the point that Sen. Seetahal SC made, that this legislation is not rushed legislation, I could have come this afternoon and presented as is the norm with this Senate. We all know that legislation comes with amendments made by the Minister who is piloting the Bill. What I chose to do, was to indicate to Senators a week ago that the Bill was going to be substantially amended. I then took it upon myself not simply to circulate the list of amendments, but the very point that Sen. Seetahal SC made, that the list of amendments itself is confusing, what I did was consolidate that list of amendments against the Bill which is at present before the Senate.

I did that consolidation putting in bold the specific amendments to the Bill which was laid in the Senate and before us for debate. So I did all that I could possibly do to facilitate the debate to finality on this measure this afternoon. I thought that the two operative clauses in the Bill—because there are, in effect, only two—would not detain us that long.

Mr. President, I have heard the requests from the Independents in particular; I reject the comments of the Front Bench Opposition. I hope to see them here in a fortnight's time, which is my sincere hope to see them and to see my good friend, my wonderful friend, Sen. Mark, whom I have known since 2003. I hope to see him here in two weeks' time, but just in case I do not, I wish him God speed and say goodbye tonight, just in case I do not see him. [*Interruption*]

For those on the Independent Benches, who I know I will see in a fortnight's time—[*Crosstalk*] They are cutting into my time, I need to wind up. For those on the Independent Bench who I will see in a fortnight's time, I will speak in detail to their concerns. I will give them the time they have asked for to study the amendments and all that I wish to telegraph is that I will perhaps in the meantime consolidate the two sets of amendments into one set and circulate them to all of the Senators opposite.

Mr. President, at this stage, I now defer my winding up and hand over to the Leader of Government Business.

ADJOURNMENT

The Minister of Energy and Energy Industries (Sen. The Hon. Conrad Enill): Mr. President, I beg to move that this House do now adjourn to Tuesday, February 23, 2010 at 1.30 p.m. That day is Private Members' day, but by agreement with the distinguished Sen. Wade Mark, we have agreed to do Government Business, which is the continuation of this Bill and also the Civil Aviation Bill which we talked about on the last occasion and take that to its completion.

Felicitations

The Minister of Energy and Energy Industries (Sen. The Hon. Conrad Enill): Before I sit, may I on behalf of all of us wish you and my colleagues on the other side a very safe and enjoyable carnival. It celebrates our productivity and ingenuity and I just wish us well during that period.

Thank you, Mr. President.

Sen. Wade Mark: Mr. President, may I also remind my hon. colleague that we would like to advise him that at our next meeting, we would like to make some space for matters on the Motion for the Adjournment. There are several, and I want to put him on notice that we would want to start dealing with them at the next sitting.

Secondly, the Hindu community, celebrates Shivaratri and we would like to extend to them—because it coincides with the Carnival—greetings on this occasion.

Mr. President, like the hon. Minister, I would like to extend to you and your family a very safe and peaceful Carnival period, and all my colleagues on the Independent Bench.

I know my colleagues are going to have some sad moments in the period ahead because I understand from reports tonight that there is a major Cabinet reshuffle and some are to be dismissed. So I know they are going to be in some trouble, but for those who are not going to be here, I wish them farewell myself. [*Laughter*] So we empathize, sympathize and commiserate at the same time with them.

Mr. President, on our behalf, I would like to extend to you, your family, the members of staff and everyone in the Parliament who has worked so hard that they will have a very peaceful, joyous and very happy Carnival.

Thank you very much, Mr. President.

Sorry, Mr. President, may I also remind my colleague, with your leave, that we intend to pursue in spite of what my friend was predicting—do not worry, we will be here—we want to alert the hon. Leader of Government Business that we intend to deal with the Motion focusing on climate change at the next sitting, and we will continue with renewable energy. So I alert all my colleagues; Government and Independent Members, so they will know.

Sen. Prof. Ramesh Deosaran: Mr. President, it is my obligation in following the tradition and the gesture made by the Leader of Government Business and the Leader of the Opposition to express on behalf of the nine of us our best wishes for a safe and happy Carnival.

I hope those of you who are playing mas keep it safe and secure. It is nice to know that the national community can hear its representatives, at least in the Senate, extending best wishes to them. One thing I can assure you, Mr. President, the nine of us will definitely be here, the next time we meet. [*Laughter*]

The other half of my best wishes is related to the context of our multicultural society. It is my respectful duty to extend greetings on behalf of the nine of us—who will definitely be here the next time we meet—to those who are celebrating Shivaratri on Thursday and Friday. It is a very sacred festival, and I think it behoves us well to recognize them, especially coming just after the Carnival season.

Thank you very much.

Mr. President: Hon. Senators, I am not going to say goodbye to anybody, I am not going to be so presumptive. I certainly wish to see you all back here on the next occasion safe and sound, rested and happy after a successful Carnival and a joyous celebration of the Hindu festival.

I certainly send my regards and my family's best wishes to the staff of the Parliament as well, and especially to the protective services who are going to be working very hard over the next few days while the rest of us relax or have fun.

It is a great time of the year, it is a time when it really describes or gets to the very essence of who we are as citizens of Trinidad and Tobago. It is a great time we can all be proud of, let us be proud of ourselves, and have fun, return here in two weeks' time and do battle in the way we do in this place.

I look forward to seeing you all here again, safe and sound, healthy and happy.

Question put and agreed to.

Senate adjourned accordingly.

Adjourned at 8.12 p.m.

WRITTEN ANSWER TO QUESTION

The following question was asked by Senator Dr. Adesh Nanan:

Emission Reduction
(Record to Date)

8. Could the hon. Minister of Planning, Housing and The Environment indicate the record to date of emission reduction credits from 2002 to present on Government projects for either electricity savings or natural gas savings?

The following reply was circulated to Members of the Senate:

The Minister of Planning, Housing and the Environment (Sen. The Hon. Dr. Emily Dick-Forde):

Emission reduction credits can be accrued either through:

(i) a domestic carbon trading system designed to limit carbon emissions domestically in order to meet domestic requirements and/or to satisfy international obligations of carbon reduction under the Kyoto Protocol, which obligations apply only to developed countries; or

(ii) the internationally established carbon trading schemes under the Kyoto Protocol of which only the Clean Development Mechanism (CDM) can be utilised by developing countries such as Trinidad and Tobago.

The Kyoto Protocol includes three market based mechanisms; Emissions Trading only by developed countries, Clean Development Mechanism by developing and developed countries and Joint Implementation only by developed countries. Trinidad and Tobago as a developing country, can only participate in the CDM under the Kyoto Protocol to which it is a ratified signatory.

Under the CDM, emission reductions are expressed and measured as Certified Emission Reduction (CER) units. The CDM allows emission-reduction (or emission removal) projects in developing countries to earn certified emission reduction (CER) credits, each equivalent to one tonne of CO_2. The credits generated under a CDM project can be traded through an international broker for purchase by a developed country and can then be used to offset its domestic targets in further fulfilment of its international obligations. The mechanism stimulates sustainable development and emission reductions, while giving industrialized countries some flexibility in how they meet their emission reduction limitation targets.

Under the CDM, projects must qualify through a rigorous public registration and issuance process designed to ensure real, measurable and verifiable emission reductions that are additional to what would have occurred without the project. The mechanism is overseen by the CDM Executive Board, answerable ultimately to the countries that have ratified the Kyoto Protocol. In order to be considered for registration, a project must first be approved by the Designated National Authority (DNA). Trinidad and Tobago's DNA is the Permanent Secretary of the Ministry of Planning, Housing and the Environment, although it is envisaged that the Multilateral Environmental Agreements Unit will assume full responsibility for this function. CDM projects are normally funded by the international private sector and the quantum of the scale of reduction is often a criteria in determining project feasibility. Small island developing states generally do not offer the economies of scale to attract major CDM investments.

Trinidad and Tobago already generates electricity utilising natural gas, the most carbon lean and cleanest fossil fuel. The next step in carbon emission reduction would be the employment of renewable energy such as solar but this technology is not yet fully developed. In this regard, the Government of Trinidad and Tobago has established a Cabinet appointed committee to develop a renewable energy policy and is exploring the feasibility of the CDM potential for renewable energy projects as well as the capturing of natural gas using non-flare technology. At present there have been no reduction credits on government projects for either electricity savings or natural gas savings.

The Government of Trinidad and Tobago is implementing a project in collaboration with the World Bank, to restore the Nariva Swamp through, inter alia, the afforestation and reforestation of degraded areas caused by illegal rice farming. The project is expected to generate a minimum of 193,952 tonnes of carbon dioxide equivalent in emission reductions by 2017 under the Clean Development Mechanism (CDM). This would be done through the afforestation of 1,160 hectares and will be implemented by the Environmental Management Authority (EMA) with the technical assistance of the Trinidad and Tobago Forestry Division of the Ministry of Agriculture, Land and Marine Resources. The necessary documentation for registration of the project with the CDM Executive Board has been completed and endorsed by the Designated National Authority (DNA). Before any carbon credits can be sold it must undergo an internationally approved rigorous independent audit to be certified.