

*Leave of Absence**Tuesday, February 22, 2011***SENATE***Tuesday, February 22, 2011*

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. Brigadier John C. E. Sandy, Sen. The Hon. Therese Baptiste-Cornelis who are both out of the country and Sen. Corinne Baptise-Mc Knight and Sen. Shamfa Cudjoe who are both ill.

SENATORS' APPOINTMENT

Mr. President: Hon. Senators, I have received the following correspondence from His Excellency the President, Professor 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. RABINDRA MOONAN

WHEREAS Senator the Honourable Brigadier John C. E. Sandy is incapable of performing his duties as a Senator by reason of his absence from Trinidad and Tobago:

NOW, THEREFORE, I, GEORGE MAXWELL RICHARDS, President as aforesaid, in exercise of the power vested in me by section 40(2)(c) and section 44 of the Constitution of the Republic of Trinidad and Tobago, do hereby appoint you, RABINDRA MOONAN, to be temporarily a member of the Senate, with effect from 21st February, 2011 and continuing during the absence from Trinidad and Tobago of the said Senator the Honourable Brigadier John C. E. Sandy.

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 21st day of February, 2011.”

Senators' Appointment
[MR. PRESIDENT]

Tuesday, February 22, 2011

TO: DR. VIDHYA GYAN TOTA-MAHARAJ

WHEREAS Senator the Honourable Therese Baptiste-Cornelis 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 and section 44 of the Constitution of the Republic of Trinidad and Tobago, do hereby appoint you, VIDHYA GYAN TOTA-MAHARAJ, to be temporarily a member of the Senate, with effect from 21st February, 2011 and continuing during the absence from Trinidad and Tobago of the said Senator the Honourable Therese Baptiste-Cornelis.

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 17th day of February, 2011."

“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 Corinne Baptiste-Mc Knight is incapable of performing her 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, PARVATEE ANMOLSINGH-MAHABIR, to be temporarily a member of the Senate, with effect from 22nd February, 2011 and continuing during the absence by reason of illness of the said Senator Corinne Baptiste-Mc Knight.

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 21st day of February, 2011."

Oath of Allegiance

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OATH OF ALLEGIANCE

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

Rabindra Moonan, Dr. Vidhya Gyan Tota-Maharaj and Parvatee Anmolsingh-Mahabir.

1.40 p.m.

PAPER LAID

Privileges and Immunities [Caricom Implementation Agency for Crime and Security (IMPACS)] Order, 2011. [*The Minister of State in the Ministry of National Security (Sen. The Hon. Subhas Panday)*]

ORAL ANSWERS TO QUESTIONS

The Minister of State in the Ministry of National Security (Sen. The Hon. Subhas Panday): Mr. President, we wish to announce that there are no questions on the Order Paper. The People's Partnership has answered all questions, and there are no questions on the Order Paper to be answered.

Thank you very much. [*Desk thumping*]

PROCESS OF CONSTITUTIONAL REFORM

Sen. Subhas Ramkhelawan: Thank you, Mr. President, for giving me the opportunity to introduce this Motion, which I consider to be a most significant and important Motion. The Motion reads:

Whereas successive governments/administrations have alluded to the need for constitutional reform;

And whereas the previous People's National Movement administration tabled in Parliament and circulated for public comment, a blueprint for constitutional reform;

And whereas the current People's Partnership administration had indicated during the election campaign that certain constitutional reform measures are to be pursued;

And whereas the repeal and replacement of the entire Constitution may not be the necessary, desirable or effective approach to better align the overall requirements of the nation for a more just and equitable society and enhanced governance;

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Be it resolved that the process of constitutional reform be pursued through a series of amendments addressing specific areas of concerns;

And be it further resolved that the rationale for, as well as the scheduling and sequencing of each series of proposed amendments to the Constitution, be effectively communicated to the citizens of Trinidad and Tobago prior to the debate in the Parliament.

Mr. President, let me start by saying, that I am humbled by the opportunity—that I could stand today in these hallowed halls, the highest court of the land, is testimony to the foresight and the vision of those who have gone before us. Some of them very recently, and some still here with us who have shaped the Constitution, at least the current Constitution, 1976.

I am humbled because, we in Trinidad and Tobago enjoy a number of freedoms and rights as a matter of course, and sometimes we may even take those freedoms and rights for granted. Today, what I intend to do, is to lay on the table a number of issues arising from the Constitution, arising in the sense that we have had commentary and deep concerns about the Constitution from many quarters, and those concerns if they are not addressed would lead to dissension and dissatisfaction amongst the citizens of our country, and, of course, we cannot and must not allow that to happen.

So the purpose of the Motion was to pull together issues raised by the People's Partnership, issues raised by the PNM administration and issues raised in general by the populace about the Constitution and some of its perceived shortcomings, and measures that have been proposed to correct and adjust the Constitution to align it more to the aspirations of all our people.

Mr. President, I would like to make an argument first of all for what qualifies me as a citizen to speak on this Constitution, and the reform that I would suggest. I do not have any legal background and, therefore, if a legal background were required I would not qualify. I do not have any particular constitutional expertise, so if expertise in that area were required I would not qualify. But, I am a citizen of Trinidad and Tobago and because of the fundamental rights and freedoms accorded to all of us, ordinary citizens of Trinidad and Tobago, I therefore qualify to speak on this matter on equal rank with any constitutional expert, and on equal rank with any attorney-at-law because the Constitution establishes the framework in which we all are guided in our daily lives. The fundamental rights which we treasure so much have to be maintained and, I dare say, even enhanced as we continue to strive to build a better society, a society of which we can become even more and more proud.

Some of our citizens ask me, why does the Constitution matter at all? Our concern is to put bread on the table and to make sure that we can pay our grocery bills. Some ordinary citizens raised that as a matter of issue. The answer is that without a properly functioning Constitution and without the pursuit of these enshrined rights and freedoms, we would not be able to go about our daily lives. Whether it be earning a living, whether it be the ability to speak on any matter, whether it is to be protected from various courses of action, and whether to protect our freedoms, all of these are required and needed. So I say to our citizens, all of them, that it is right for all of us to be able to consider and comment on the Constitution, and to be able to make proposals to enhance the benefits and the freedoms to which we aspire and which we currently enjoy.

Just to reiterate what these freedoms are; in section 4 of the Constitution, the rights enshrined:

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

(a) the right of the individual to life, liberty, security of the person and enjoyment of property and the right not to be deprived thereof except by due process of law;”

There are about 11 of these rights.

(b) the right of the individual to equality before the law and the protection of the law;

(c) the right of the individual to respect for his private and family life;

(d) the right of the individual to equality of treatment from any public authority in the exercise of any functions;

(e) the right to join political parties and to express political views;

(f) the right of a parent or guardian to provide a school of his own choice for the education of his child or ward;

(g) freedom of movement;

(h) freedom of conscience and religious belief and observance;

(i) freedom of thought and expression;

(j) freedom of association and assembly; and

(k) freedom of the press.”

Some have commented that—and it is quite so that these rights, even before they were reduced to writing in our Constitution, were rights which we had by dint of the common law—these rights being reduced into writing were borrowed, in a sense, from the Canadian Bill of Rights. Whatever the case may be, these rights are enshrined and they must be preserved for the benefit of all of our citizens.

So I take great pride, as I have said, Mr. President, that because of these rights, many of us sitting in this Senate today have been able to benefit from freedom and we have had the freedom of opportunity, the many opportunities that we enjoy, that persons in other jurisdictions have not and will not enjoy because they are not embedded and entrenched in their Constitution. We enjoy those rights. Many of us inside here and outside will tell you, it is because of these enshrined freedoms and rights that we have been able to take a place in society that many others in other countries would not have had the opportunity to do, because entrenched in those Constitutions were institutional biases and prejudices.

I am proud to say that in our country if there are biases and if there are prejudices, they are not institutionalized, they do not belong to this Constitution, and they are a figment and practice of persons who are not abiding by the Constitution which we so dearly hold on to and adhere to. So it is people that like ourselves, young people, could aspire to become anything in this country; that a lady selling bodi in the Penal market as a young lady could rise to become the Prime Minister of Trinidad and Tobago; [*Desk thumping*] that a gentleman who by his own admission used to have to wear shirts made from flour bag cloth could rise to become the Prime Minister of this country. What better place to live in, than Trinidad and Tobago? What better place?

1.55 p.m.

And so, even for myself, Mr. President, a country boy whose navel string is buried under an immortelle tree in the Oropouche Lagoon, that I can receive and be afforded the opportunity to come to this Senate and join in a debate with everyone here who are my equals, not superior.

I want to stress this. I want to stress this because sometimes when we go out—well those on that side and here—when they go out on the hustings—if they are in Opposition not when they are in government—when they go out onto the hustings, they make this place out to be the worst place in the world or amongst the worst places in the world when they are in Opposition and when they are in government, of course, the story changes.

I want to put on record that the freedom and rights of our citizens, from whatever and wherever they come, they can rise to the top and they have risen to the top and the evidence is there, it is here, it is everywhere. Take advantage, is what I would say to citizens. Take advantage of the opportunities accorded to all of us. Free education, up to tertiary level, which we have been nursing to get to this position for a long time and we are here. We can boast of it—and very few countries can boast—that we have free education from kindergarten to primary to secondary to university levels. And my learned colleague, the Minister of Science, Technology and Tertiary Education, says even vocational and I will add that to it. [*Desk thumping*]

So I am here and I have made my case why I can speak on the Constitution and raise this Motion, because I am a citizen of Trinidad and Tobago. If you were to quote from the lips of our citizens, the current language, the current Soca, “I’m ah Trini, ah Trini, ah Trini”. And maybe whether I could cook is irrelevant, whether I could “cook, cook, cook, cook, cook” is irrelevant and whatever way I look is irrelevant. And whether I “make good company” or not is irrelevant just because I am a “Trini”, I can speak.

I want to move to the heart of my contribution today, Mr. President. And simply start from the position, before I get into the specific areas, as to what is a Constitution and I would quote from one of those websites that we very often go to, Wikipedia.

“A constitution is a set of fundamental principles or established precedents according to which a state...is governed. These rules together make up, i.e. constitute, what the entity is. When these principles are written down into a single or set of legal documents, those documents may be said to comprise a written constitution.”

And, of course, we all know that there are written constitutions and there are unwritten constitutions. The UK set of rules and constitutions may not be written, but it is well set. And there are other definitions but I do not want to go too much into those definitions.

I want to set the format of my contribution today in the context of the current Constitution and how it is laid out—the Constitution of the Republic of Trinidad and Tobago. And it is laid out in a framework which speaks to the fundamental rights and freedoms of which I have already recited some. It speaks to the question of citizenship as a separate matter. It speaks to the question of the President, the Parliament, the Executive powers enshrined and embedded in the

Cabinet. It speaks to matters of the Director of Public Prosecutions, the Judicature, Finance, Service Commissions and the Integrity Commission, the Salaries Review Commission and other special subjects.

I propose to deal with just a few to get this Motion going because I am sure that many of my colleagues would like to contribute, some would like to contribute and may not be permitted so to do, but I think we will have sufficient commentary and I will be able to come back and wind up and speak to some of their comments at a later stage.

Even before I go into these specific sections, I want to turn to a matter which the 1974 Commission, the Wooding Commission, spoke to at length, that is the question of balloting and the question of representation. Mr. President, one of the most intractable issues that we have not been able to properly grapple with in our Constitution is the matter of representation of our citizens by the votes which they cast. And by that I mean, that the first-past-the-post system which is embedded in our Constitution is a system that seems to be no longer fully applicable in terms of the proper representation of voters in this country.

The 1974 Commission, the Wooding Commission, raised this matter in the context of proportional representation in a plural society as ours is. And then thereafter, while the discussion took place outside of these Chambers, the question of proportional representation has fallen silent and fallen on deaf ears. Because thereafter, when we look at the 1986 Commission—the Hyatali Commission I would call it—no real commentary was made on this matter which was the next official commission to discuss the matter of the Constitution.

And then, we had tabled here very recently, in January 2009, a position paper of the then PNM administration on proposed adjustments to the Constitution, amendments to the Constitution or towards a new Constitution. Mr. President, not one really delved—after the Wooding Commission of 74—not one delved into the matter of proportional representation. That is 74. And since then, what have we had, what have we seen, what have we experienced as a society? `

Well, first of all, just after the Hyatali Commission of 1986, around that time we had an election and the result, I believe, was 33/3—we had 36 constituencies. Prior to that, in 1981, there was a political party, the ONR—I believe the acronym was Organization for National Reconstruction—winning a significant number of votes, but having absolutely no representation or presence in this Parliament because the first-past-the-post system did not necessarily allow, or did not allow, for representation of a wide grouping of people; a large part of the population without a voice in the Parliament even though as a group, they constituted a significant number of votes.

2.05 p.m.

Let me put this in context. In 1974, the Wooding Commission suggested that if a political party were able to garner 5 per cent of the vote, it would then be able, even if it did not win a constituency on the first-past-the-post system, it would be represented in the Parliament by dint of proportional representation, meaning that you have gotten a certain proportion of the votes cast and that would then allow you to have certain seats and representation in the Parliament.

In 1981, a large group of people were unrepresented in the Parliament; the party won significant votes, but did not win a seat in the Parliament. In 1986, there was a coalition masquerading as a single party, which won handsomely at the polls, 33/3. I come back to that point.

Then, in 1991, with the fragmentation of that grouping that had won the 1986 election so handsomely, the fragmentation into its constituent parts led to a defeat of the fragmented group and the return of the People's National Movement.

The NAR, which then stood alone, divested off what was a grouping called Club 88, I believe, and then subsequently formed into now, the major component of the coalition, the UNC, that grouping would come to the fore once again.

My point is, that the whole idea of having a grouping, which is really a third party, melt itself into something that, for purposes of election, would do very well at the polls, and then what you would find is the separation of possibly oil and water as it goes forward.

The history continues because, in 2007, the election showed that there was a grouping, a political party, which is now part of the Government, the Congress of the People, which won over 20 per cent of the votes but could not win a seat in the Parliament. So, you now have a new amalgamation. It may even be a reincarnation of the NAR, of sorts. You have this reincarnation that has taken place. But what if there is a split? What if there is a break-up? You come back to the same place where a third party with a significant number of votes, does not have a voice in the Parliament. I believe that after that 1986 commission, the experiences since then, where we have had frequent changes of administration, would suggest to us that we need to look again, look very closely at this matter of proportional representation.

I would leave that for the time being and go to some of the issues that have been raised by the PNM administration, as well as by the People's Partnership and what we need to do going forward.

In the 2009 proposal or working paper, there was suggested in the first part, the question of President, there was suggested the institution of what I would call an Executive President, and that institution of an Executive President, as far as the proposal was concerned, took a particular form. The form was that we would continue with the existing electoral system, first past the post, and that someone who was essentially the leader of the party winning the most seats, would then be elevated to the position of President. There would be the removal of any notion of a Prime Minister, so that what happens in the same way that those elected representatives would select from amongst themselves—if select is the correct word—the Prime Minister, that person would be elevated to the position of President. But, that person, as I understand it, would then leave the Legislature and become that Executive President, and a nominee of the political party would then sit in the Legislature, on behalf of the person, or replace that person who had then become President.

But the challenge of it, in terms of what has been proposed, is that we still are neither fish nor fowl in the separation of the Executive from the Legislature from the Judiciary. Right now, what we have is a system which clearly separates the Judiciary from the Legislature, but we have a commingling of the Legislature and the Executive in a way that some people say that the Parliament is essentially held hostage to the Executive of the day; the Cabinet of the day.

I raise this matter of the Executive President first, because I am a supporter of the notion of an Executive President, but I will be a supporter of that notion of Executive President when there is a clear separation of the Legislature from the Executive. I would tell you why I hold to that view.

I hold to that view, because when you look at the situation that exists today in Trinidad and Tobago, we have a system that could hardly, even with its greatest strivings, be effective. A day in the life of the Executive, the Cabinet, the Ministers of this country, the Prime Minister, is one in which three functions have to be performed at the same time. The first is that of Executive: Cabinet, ministerial positions, committee meetings of the Cabinet and the Executive. The second is that of the Legislature, because they have to come to Parliament to pass laws, apart from being Executive, and the third is that of the constituency. These three functions taken together; it is a most weighty function, and because of the fact that our Parliament is small and we do not have Backbenchers to serve on the parliamentary committees to provide oversight, to provide scrutinization, and to provide the workings for legislation, we find ourselves being overburdened and overstressed in this situation. In the context of organizational effectiveness, that is

the basis on which I support the notion of an Executive President but, of course, I do not support the notion of an Executive President in the way that it is constructed in the working paper placed before this honourable Senate by the People's National Movement administration.

Let me move away from the question of the President and speak now to the question of the Executive powers. I would leave Parliament aside for the time being, because I believe the last Motion we had, spoke to the question of parliamentary effectiveness and efficiency and we spoke to the question of the challenges in having effective parliamentary committees and of the commingling of the functions causing ineffectiveness in our own situation.

I want to turn to just one aspect of the next section, which speaks to Executive powers, and it is a matter that has been raised—whether it was the Wooding Commission, whether it was in the 1986 Hyatali Commission, or otherwise—here over time and even very recently by our own hon. Attorney General. It is the role of the Attorney General, vis-à-vis that of the DPP and how those functions are to be reconciled.

As you know, Mr. President—maybe I should go back a bit and say—in the PNM working paper on the Constitution, there was the suggestion of the establishment of a Minister of Justice, and that was in fact taken on board, whether arising from the study of that working paper or otherwise. That was implemented by the current administration; the role of the Minister of Justice. But we have about three or four roles in that related to the Attorney General, taking place at the same time, the Minister of Justice, the Minister of Legal Affairs, DPP and the Attorney General, and I bring it to his Senate because the Attorney General has suggested that he is of certain views, in terms of prosecution of certain persons that there is sufficient evidence for prosecution to take place by the DPP, but he does not have the, shall we say, authority to give the DPP any instructions in such regard.

You may recall, Mr. President, or you may not, that prior to 1961, the Attorney General's role, I believe, was that of a public officer, not a political officer, and then became a political officer. Then in 1974, the Constitution Commission raised this matter and suggested that the Attorney General be again a public officer. That had been raised again in the 1986 commission.

The question really is not where the position of the Attorney General should be, the question really comes down to: how effective are we, in terms of the whole question of prosecution and taking action? That really is the question, and

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whether, at the end of the day—if you are on the Titanic, no matter how you rearrange the deck chairs on the Titanic, there is only one result; you could sink first, sink second, fall into the water third or fourth, you are sinking.

I want to raise this, only for the purpose of suggesting that, in terms of constitutional reform, as we look at it, we need to find a proper rationalization of the role of the Attorney General, the DPP, the Minister of Legal Affairs and the Minister of Justice to make sure that there is clear and proper separation, but more importantly, there is effectiveness in the role of the Executive in the system of justice. Not so much in interpreting the law, or determination of how the law should be applied but in the terms of the whole system of prosecution in order to have a more effective system when it gets down to the other aspects of the Executive, the effectiveness of the police commissioner, the effectiveness from detection, prevention, prosecution and conviction, to have a society that is more effective and more ordered.

2.20 p.m.

So I raised that point in terms of constitutional reform for which I do not claim to have the answer, being as I am, Mr. President, just a layman not an attorney-at-law nor a constitutional expert.

Mr. President, I want to turn to another area and I will focus in this context on the question of the judicature. Our Judiciary, it appears from all of the reports, has remained independent and the one question that crops up in the system of justice—and it comes up in various quarters again and again—we have matters being heard in the High Court, in the Court of Appeal, but the last port of appeal remains in this country the Privy Council.

And the question is, in terms of constitutional reform, whether we need at all to retain the Privy Council or whether we can have some elegant, proper and effective replacement to the Privy Council.

I read the notes as far back as the 1974 Constitution Commission, and it is in that commission that the recommendation was made, back in '74, that we do away with the final Court of Appeal being the Privy Council. And the rationale was given that we are independent, that when we look at some of our fellow Commonwealth countries, that most, at that time, had moved away from the Privy Council and had their own final Court of Appeal. Yet still, if my recollection is

correct, there are only about two or three of the Commonwealth countries that still utilize the services of the Privy Council. That was in 1974 the recommendation was made to move to something akin to a Caribbean Court of Justice.

Many years have gone and we are still at that position trying to determine what we should do in this final appellate court. And so in terms—while the argument and the conversation keep going, I would want to suggest, Mr. President, that we give consideration to finalizing this matter as to the final Court of Appeal in our land, because others have moved on to being able to deal with their own matters. I am sure that some mistakes will be made, we do not live in a perfect world, but we need to start that journey to get to the point where we will take command and control of our own affairs, rather than having these matters of jurisprudence decided by what is essentially a foreign entity.

In 1974 and in 1976 these points were raised, and in 1974 many of the arguments that were raised were addressed: well, first of all, would we be able to use the decisions of the Privy Council and the courts of England as a precedent? And the answer that came back from that commission was definitely yes. In fact, what is happening now is you have the situation actually turning on its head where the Privy Council and the courts of England are using the precedents of Australia, Canada, the Commonwealth and other jurisdictions to make determination. Why is it we are still stuck in a time warp? And some would say we are a tiny nation and that there might be the challenges of being able to separate ourselves from the issues. Well that is being done in our courts as we speak today, and being done very well if I might say so. So why is it that there is this great difficulty with a final appellate court being within the Caribbean?

We must recall that it was, I believe the UNC government, that had taken the position that this should be so and for some reason—this is when they were in government—when they went into Opposition there was a change of heart, and I was not quite sure when I listened to the argument what was the rational basis for the change of heart, but change of heart there was. And so we are in the position today where the Caribbean Court of Justice deals with matters of commerce and trade and so on, but does not deal as the final appellate court for constitution, crime and all of those things. And I think it is a matter that we really need to properly reflect on and to determine how we are going to go forward.

I want to turn to some of the issues that were raised recently by the current administration, the People's Partnership. I think there were three or four of them that were well publicized leading up to the last election. And the first was fixed terms or fixed dates for elections. The second was no more than two terms for the

Prime Minister. The third was the right of recall and the fourth was the matter of referenda for matters of significant public importance in receiving the views of the citizens.

And I want to turn first to the question of two terms for a sitting Prime Minister. There have been a number of arguments about this, in fact, those arguments go back, Mr. President, as far back as the 1974 Wooding Commission. And the Wooding Commission opined that there was absolutely no need to have two terms for a Prime Minister, because it would then limit the choice of the party in power as to whom they considered to be the best man for the job, and they took into account—

Sen. King: Or woman, man or woman.

Sen. S. Ramkhelewan: I say man in a generic sense and I hope—

Hon. Senator: No, no!

Sen. Panday: Man or woman, we take offence on this side.

Sen. S. Ramkhelewan: So I will say man or woman, in fact the best woman for the job, let us leave it like that, who is the best woman for the job. Okay? And possibly with significant striving who might be the best man for the job; significant striving. Even way back then in 1974 when that question was raised, we would not have had a situation of a Prime Minister sitting for, well 25 years consecutively, okay we would not have had a Prime Minister sitting for 20 years consecutively. And what we have found in our society—you know that there are animals that kill their own, they eat their own young, they eat their own offspring, and I find that there is a very similar phenomenon in our politics; once there is a rising star, that rising star is shot down because there is the concern of longevity of the Prime Minister.

2.30 p.m.

Longevity is important, because it seems as though, there is the feeling in our small society that once you land the job it is almost a job for life. So, I respectfully, I respectfully take a different position from those honourable men of 1974, that commission that there is need to correct and re-balance this matter in a society that is as small as ours. The reason being that history shows that, in the early PNM administration, there would have been the decimation of potential successors, because we have gotten to the stage where we do not want a successor when you think that you have a job that ought not to be limited to two terms—
[Interruption]

Sen. Deyalsingh: Ask Hulsie Bhaggan about that.

Sen. S. Ramkhelawan: I can ask a lot of people. But in the PNM administration, we remember the travails and trials in that early period of one, Mr. Karl Hudson-Phillips and then, subsequently, Mr. Robinson. And this is not peculiar, I want to make the point. I want to make the point because it is a phenomenon. It is not peculiar at all, to any particular administration, lest it be thought that way. That was the same situation which resulted in internecine warfare within the UNC itself. It was the same situation, because longevity and lifelong positioning appeared to be the objective. So the whole idea of successor or succession planning, which is a critical part of the life of corporations and organizations seemed to be set aside and what we had were situations where organizations ran aground because of no new leadership, and probably no new thinking, and we have seen it. We have seen that to be the case in the PNM and we have seen that to be the case in the UNC.

I see some issues also arising in the COP, but I do not know how serious and how deep-rooted that might be. But in any event, they are not in power. The COP is not in power. They are partly in power, but they are not, shall I say, the leading light in the administration. The point is, this question of two terms for a Prime Minister is something that we ought to consider most seriously and I think it has great merit. Two terms for a Prime Minister must be set in train with certain caveats. As you know, Mr. President, we have had terms of office for Prime Ministers, sometimes running as little as a year and a half. And we have had that happening from the year 2000 until now. How many elections have we had from 2000 until now?

So, while we talk about two terms, I would say, two terms subject to—I would say ten years of service maximum. So, if you want to have seven terms, six terms, four terms, depending on whether you by whim and fancy decide to call election and go back to the electorate, that is fine, but I think the two terms need to be properly codified, it is two, shall we say, full terms or a period of 10 years. That will allow for succession. In fact, it will cause the leader's mind to be concentrated in the second term on this age old question raised by the populace of Trinidad and Tobago which is, "who we go put?" "who we go put for the next person?" But it also raises in the minds of those political aspirants, that there is the opportunity to rise to the top and to rise to the top with proper grooming. And that is essential in the leadership in our country and in the continuity and the succession for our country. It is a most important point and it is rooted in other traditions. Probably, the most notable of which is the United States, where you have a political leader, whose term is limited to eight years at max. And as we speak of the United States, I would like to raise the matter of fixed date for election, and move to that next point of fixed date for an election.

We have had the situation—I would not say comical situation, I would say a situation of great gravity, where you have leaders in our country, who set the next election date and put it in their back pocket. Now I do not know in—I think it was written on the handkerchief, but wherever it was written the point is, that the notion of a fixed election date is one that is appealing.

Mr. President: Senator, just to remind you, you have another five minutes, by my calculation.

Sen. S. Ramkhelawan: Thank you, I am so guided. So I think that this matter of fixed election date is important, we can make it the third Monday in November, we can make it whenever we want, that is convenient to the society, but I think fixed election dates make sense. But once you do that, you have to talk about, if something happens to the Prime Minister, or if something happens to the Executive President. What would be the form of replacement? I am a supporter of an elected Vice-President or an elected Deputy Prime Minister, so that you can have that continuity.

Since I have four more minutes, Mr. President, I want to quickly move to some of the other areas: the question of the right of recall and then the question of referenda. The right of recall is a particularly challenging aspect—a Member of Parliament is voted in, what would be the threshold for recall, and what would be the rationale for recall, and who would institute recall? A Member of Parliament who is not the Prime Minister, in our jurisdiction, is a creature of the Prime Minister: a willing creature of the Prime Minister I must add. [*Interruption*]

Sen. Panday: Could there be anything else?

Sen. S. Ramkhelawan: And as a willing creature of the Prime Minister if that person falls afoul, the way the pecking order is, and the way the structure is currently set, well you are not doing your job as an MP properly, you get demoted from the position of Minister, and that has certain pecuniary benefits and losses, because if you are an MP, you might be getting one third of the salary that a Minister gets. So, that is a significant sanction. But, if that MP has to be moved by the citizenry, the electorate, there are some greater challenges. Greater challenges would be the threshold.

2.40 p.m.

So that if a person won 40 per cent of the votes and he needs to be removed, what would be the trigger? I will propose certain triggers, and it might be 40 per cent of the electorate, but it has to be a high threshold so that it is clear that there would be disaffected persons over periods of time. What you do not want is a comical

situation where you have petitions for recall and you engage the Elections and Boundaries Commission to pursue these exercises over and over with 2 per cent, 3 per cent or 5 per cent, because you are going to have disaffected persons. No MP can see all of his constituents, and no government can satisfy all the needs of its constituents. So the right of recall has to be treated very carefully in terms of how it is configured.

I, myself, do not feel that this is something that needs to be clearly supported. I think there are sufficient other sanctions in there, and apart from the sanctions, there is the issue of re-election. It is the political leader who will determine, however masked, who is the person going to represent a particular constituency, and it is the political party.

The question of referenda and referendum, I think it was raised in terms of very critical issues for the society, whether it be hanging; whether it be the question of same-sex marriage or same-sex union; or things that might be very controversial that the Government of the day does not want to raise. We have had political leaders who are particularly bent in terms of their beliefs, and do not allow some of these issues to come to the fore or be brought for a decision, but that may run against the grain of our Constitution, the fundamental rights enshrined; the fundamental rights which I have already recited about freedom of treatment, freedom to practise certain family values. So, therefore, there could be momentum as far as this matter is concerned, and we have to deal with how we structure it. I support referendum. I think it is in a way preceded by petition.

Mr. President, you would recall that there was a matter of crime led by a current Minister where a petition with over 100,000 signatures—

Sen. Panday: One hundred and thirty-six thousand!

Sen. S. Ramkhelawan: —136,000 signatures put together, and there was no response to it, because it was not embedded in the law as to how to take the matter forward and, I think, that has to be addressed.

Mr. President, as I wind up and as my time comes to an end—it seems to run so quickly—I want to conclude that I support certain areas, but I feel certain areas need some greater thought, and I look forward to the debate on this particular Motion.

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

Seconded by Sen. Basharat Ali.

Tuesday, February 22, 2011

**COMMONWEALTH PARLIAMENTARY ASSOCIATION
(CANADIAN DELEGATION)**

Mr. President: Before proposing the question for debate, I would like to recognize in the Senate, our friends from the Commonwealth Parliamentary Association, the Canadian delegation who are here with us, and to welcome them to this debate. [*Desk thumping*]

PROCESS OF CONSTITUTIONAL REFORM

Question proposed.

Sen. Lyndira Oudit: I would like to take the opportunity to welcome members from the Canadian Parliament. [*Desk thumping*] I also wish to thank Sen. Ramkhelawan for bringing before this honourable Senate, a Motion that has significant implications for the future of Trinidad and Tobago. This Motion is, in fact, disarmingly simple, and it seeks to spell out certain points that are laid out in the wording of the Motion. I would ask Senators to pay particular attention to the language used and the style.

There are several points in this Motion, the first one is that the People's National Movement tabled a blueprint for constitutional reform; the second point is that the People's Partnership Government during its campaign used certain measures that were highlighted; and the third point is that it may not be necessary to replace or repeal the entire Constitution. The Motion further suggests that a series of amendments be pursued, but prior to the debate in the Parliament these proposed amendments should be communicated to the citizens.

Now, the reason I say that this is disarmingly simple is that there are several things, and I would like to deal with the first matter. The Motion speaks of a blueprint for constitutional reform. I would like to indicate, however, that I believe this may be a bit misleading to the public, not to the Senate, but to the public. By no means was the document that was tabled a blueprint. It was, in fact, a working document on constitutional reform. So it is not a blueprint. [*Holds up document*] A blueprint gives the impression that it is a grand design; a complete and final design or a document. So this is really a working document and it says this. There are a number of factors that are very good. First of all, I would like to urge Senators in this Senate to get a copy of the working document. There is no blueprint, but there is a draft document, a working document. [*Desk thumping*]

I have a concern with the sequencing of events as referred to in the Motion. This Motion calls for a series of amendments to be communicated to the national community prior to the debate in this Senate. I would like to humbly suggest to

Senators that we do it in another direction. I propose a series of consultations out of which will arise a number of proposed measures, which may then be documented as amendments to be brought to this Senate. [*Desk thumping*] I believe that is the sequencing we must take.

In fact, I would like to publicly say at this time—I heard the hon. Minister of Planning, Economic and Social Restructuring and Gender Affairs, Sen. The Hon. Mary King, and I would say that the panchayats have been extremely effective. I have been following the blogs, and I think they are extremely effective. I would like to say congratulation to the Minister for that initiative. [*Desk thumping*]

Mr. President, I do have a concern with the sequencing that is laid out in the Motion. I do have a concern with the word “blueprint” rather than a “working document”.

2.50 p.m.

I believe, Mr. President, if we follow the sequencing as laid out in the Motion then the very essence of citizen participation may be lost. Any attempt that will negate fullest amount of citizens’ participation and societal involvement, really would preclude the purpose of the involvement that is so necessary. Mr. President, our Constitution is after all born out of the will of the people and truly, as the Senator indicated, it enshrines the principles upon which our very actions should be based: the idea of democracy, the idea of dignity, social justice, freedoms, rights and the rule of law. Mr. President, those are enshrined in our Constitution because they reflect the collective will of the people and so any review of our Constitution must reflect, must reflect, a social consciousness that shows and highlights a political maturing of us as a people.

Beyond that initial concern, however, or those concerns I wish to say that this Motion is indeed welcome. It is welcome because for me it indicates and adds to the sense of urgency that I see right now in our socio-political psyche, that we have a sense of urgency that the national community is anxious to dialogue and we are anxious—I do not know if it is as a result of technology, I do not know if it is as a result of what we have seen transpired over the last couple of years. Certainly, last year was a significant year in the political landscape of Trinidad and Tobago not just with a dissolution of Parliament or even a new election—this has nothing to do with the results of the election—but merely the events that unfolded last year and I think citizens in this country are very, very politically conscious and so this Motion speaks to the need for citizens to have concerted and overwhelming dialogue and debate. So this Motion is very welcome.

As we prepare, Mr. President, for the 21st Century, I believe that any re-examination of our Constitution will be both symbolic, as well as, institutional or tangible versus intangible but it is significantly a more symbolic measure simply because this existing Constitution sought to encapsulate what was at the time the visionary aspirations of a fledgling nation coming out of the 50s and the 60s into new governance. In fact, there are one or two references to the Governor General, which we do not even have still, and there are pieces of legislation that still refer to a Governor General, even in reference or in some way by association. So we do have a Constitution that was framed to put together the aspirations of a people and I believe that it is long overdue, although I also believe that nothing happens before its time, but I believe that the time is certainly right. And of the initiative, I must say that the former administration did initiate a series of consultations to come up with this same working document and that by itself must be commended.

Mr. President, our Commonwealth system of government is really fashioned after a British model of governance but even in the fashioning of the British model, there are inherent differences. According to Dr. Alys Thomas—he is a lecturer at the University of Glamorgan and this was reported through the BBC News on September 25, 2003. Dr. Thomas says that even though the UK's Constitution is often referred to as unwritten, there is argument to that, as while there is no single document the UK Constitution is actually found in Acts of Parliament (statute law), judgments that are handed down over time and referred to as common law, the emerging body of European law and what we refer to as constitutional convention.

Mr. President, contrary to what pertains in the UK through which we are fashioned, the UK Parliament can actually amend constitutional law as it would any other law, and that is an inherent difference although we are fashioned behind it in that image, so any revisiting and a refashioning of our own Constitution, I believe, has to have some grounding on that understanding.

Mr. President, this Motion calls today for an examination and a realignment or better alignment of constitutional laws so as to enhance governance. I believe, Mr. President, that good governance should have been the cornerstone of our original Constitution and will persist as the cornerstone of any revised document to frame a new or revised constitution. So I want so say here that this Motion speaks volumes. It speaks volumes to us as a nation, when in 2011, we have from the Independent Bench reference for a constitutional review as the Motion says: “to better align the overall requirements of the nation for a more just and equitable society and enhanced governance.” Mr. President, to me, that begs the question

that was there in the past a non-alignment. Was there a non-alignment for the overall requirements of the nation? And is this Motion alluding to the fact that there was a less just or less equitable society based on that poor alignment? Now I am just asking the question as it relates to the language of the Motion.

Mr. President, I would like to say that this is indeed to me a unique perspective that I have not quite heard in the other discussions that took place, both here as well as in the national community; this is quite a unique perspective and again I think it has to do with the wording of the Motion. I am not making any judgment on it; I am simply asking if that was possibly the understanding before. I would like to say, however, that any examination of this Constitution must be looked at with sincerity and an absence of malice, a pure absence of malice. You see, moving forward to review our Constitution, Mr. President, must be very respectful of the original framers of the Constitution. This particular Constitution has seen our fledgling nation move from babyhood to one that very proudly can stand in this century as a nation that has stood by the rule of law and we have abided, consistently, decade after decade with a democratic system of governance. I do not believe that in any way the Constitution—far from working against it, in fact guided this country in the way in which we operated as a democratic country. So, I believe, Mr. President, that we must be very careful. In fact, it is quite ironic that today there is a letter to the editor in the *Newsday* and it is written by Shyankaran Lalla and if you would allow me to quote, Mr. President, in it he says:

“Though they tried, the framers of our constitution created a system that left loopholes which politicians abused to arrogate onto themselves absolute power. We can show respect to the framers by helping perfect the structures they designed. By calling on our citizens to participate in Constitutional Reform if we are really interested in participatory governance.”

So, Mr. President, while we do have the call for a better alignment, for a just and enhanced and equitable society, I know that there are citizens out there, whether real or perceived, who may have actually used the idea of injustice and inequity in many of the claims against the State, but it must be recognized that that is the interpretation of the law.

Mr. President, it must be recognized that the world is becoming more and more interconnected, not only in the area of fashion, food or clothing but more significantly and in more far-reaching manners, through legislative trends and jurisprudence. In fact, our very association with the United Nations and other international agencies forces us to align our laws to international benchmarks and

best practices. So it is in keeping with this, as the Motion infers that we do try to keep pace with international and global requirements as far as jurisdiction and transborder legislation pertains.

Mr. President, this Motion calls on us to look at the idea of constitutional reform and before a full national debate takes place—and even before a debate in this House takes place, a full debate that is, I would like to engage the national community in some areas. Sen. Ramkhelawan spoke of one or two and I would like to add as well that he did speak of proportional representation. I too was very concerned that this idea of proportional representation in this draft document was not referred to. There was no mention really of proportional representation which according to Peter Jamadar in his book *The Mechanics of Democracy*—Mr. President, he indicated that since the early 1920s, the call for proportional representation of some sort was made and certainly as outlined by Sen. Ramkhelawan, the Wooding Constitution Commission which presented its report in January of 1974, also dealt with this whole idea of proportional representation. In fact, without going into the arguments for and against, and certainly any debate in constitutional reform would take into consideration the arguments for and against, but certainly it should be noted that out of the 33 contributions made to the Wooding Commission on the Constitution, 27 out of those were calls for proportional representation.

Mr. President, in all, to summarize—again to add to what Sen. Ramkhelawan stated that the Wooding Commission had made a final recommendation that there should be in Trinidad and Tobago for our electoral system, a mixed system which incorporated elements of first-past-the-post, as well as, proportional representation and there was major consensus on the idea of a mixed system. However the method of implementation and the method of applying that system was under question at that time.

I bid farewell to the members of the Canadian delegation as they make their way out of the Chamber. [*Desk thumping*]

Mr. President, in addition to the proportional representation I would like to draw reference to what Sen. Ramkhelawan spoke of as the term limits for the Prime Minister and again it was proposed in the People's Partnership manifesto. However, there is to date no precedent for a term limit for a Prime Minister. In fact, this is only found in the presidential model of governance and this clearly points to or turns the national community's attention to what was and what has been a crucial point in the whole idea or underlying the entire idea of the need for constitutional reform as it was done to produce this document and certainly in time to come, it will again engage the attention of the population.

3.05 p.m.

Mr. President, I am referring to the idea of changing our prime ministerial system, where you can generally have no term limit, to one where you have a presidential system to which you can then apply a term limit. This may ultimately be the question that would be of greatest significance when we do have such a debate. In fact, on page 35 of that particular draft document it talks about the establishment of a president and commander-in-chief, the new President who shall be the Head of State and, would be coming out of the general election, serving as a Member in the House of Representatives. It goes on to talk about, “There shall also a be a Vice-President of the Republic of Trinidad and Tobago” as well as the qualifications and conditions of office for the person chosen for both the election of the president as well as the vice-president, coming after a general election. The party that does secure the majority of seats does submit a name to be elected as the president elect.

So we have that which was brought forward in the last draft Constitution. It must be noted, however, that unique to our Constitution, and which precludes such motion right now, is that the Prime Minister currently has the right to dissolve Parliament. Only in 2010 we saw the Prime Minister exercise his right to dissolve the Parliament before time. [*Interruption*]

Sen. Panday: Thank you! Thank you! [*Laughter*]

Sen. L. Oudit: Our system as well sees the Prime Minister as currently being able to be appointed by the current President through guidelines already laid down in our Constitution; so there are arguments for and against. Certainly there is precedent for term limits for presidents, but no precedent for a prime ministerial term. That is something that will certainly have to engage the national community in serious reflection when that time comes.

I would also like to touch very quickly on this idea of fixed dates for an election. Currently, there are some eight territories in Canada and the US that do have fixed terms for elections. In fact, in the US, it is the first Tuesday after the first Monday of November, every four years. There has been some discussion on this initially, and I know, as well, that this was brought to the forefront during the last general election as part of one of the proposals in the People’s Partnership manifesto.

I think, just for the record, I hear sometimes in this honourable Chamber, reference to the “UNC Government”; I hear reference to the “UNC in Government” or the “UNC in power”. The people of this nation voted for a coalition, or a

partnership. I do not believe that anyone who is seriously concerned about governance in this country, can actually look and see credibility in the term “UNC Government”. Even a cursory examination of the positions held in the Senate or the House of Representatives as ministers and key office holders, are all Members, possibly not even from the UNC. So I feel it is a bit of mischief when we hear people referring to “a UNC Government”. [*Interruption*]

Sen. Panday: Wickedness!

Sen. L. Oudit: I think that it does border on mischief and tries to create dissension among Members of the Government. I can see sometimes that is the role of the Opposition, who may wish to—[*Interruption*—some Members, not all; we have some very responsible persons in the Opposition—but I can see that. But I feel in a debate such as this, the idea that this is a UNC Government is a bit of mischief and I ask that the nation move on. We need to move on with serious debate and serious dialogue, and I do not think that those things help. I do not think that it even lends credibility to what is being said.

Mr. President, my last point, one which I hope would engage the population in terms of any matters of constitutional reform, has to do with the idea of the institutionalized separation of powers. I believe that this ultimately is what secures the preservation of order and the rule of law in our country. Our Constitution should continue and, by all means, where necessary, strengthen the checks and balances among the three branches of governmental responsibility. This, of course, as you would know, is to ensure that no one organ of the Government has the centre of power, but rather it is diffused through the branches on behalf of the sovereign will of the people.

I quote from the same article from the *Newsday* of today, a letter to the editor by Mr. Lalla:

“We have witnessed in the past the abuse of power and interference in the independence of the Judiciary by the holders of political office.”

This is something that is not new in the national community and it is certainly one that calls for a serious examination.

We believe that any review of the Constitution must take into consideration the future of our politically democratic society which depends on the safeguarding of all our institutions involved in the democratic procedures. We also believe that any review must apply unfailing and persistent application of the fundamental democratic doctrines in all spheres of administration. Finally, we believe that the

consistent education of all our citizens must be to the realization that rights and freedoms can only be fulfilled through extreme vigilance and continued faith in our democratic ideals.

I certainly look forward to the contributions of all Members in this House. This is, indeed, a fluid and very persistent topic of the need for constitutional reform, and I look forward as well to the public engagement and dialogue, as this country seeks to move forward to the next stage of good governance.

I thank you.

**CANADIAN AND BRITISH VIRGIN ISLANDS
(DELEGATES)**

Mr. President: Before we move to the next speaker, hon. Senators, there was an oversight on my part in the indication on the last occasion of the Canadian delegation being here. We also had a delegate from the British Virgin Islands with us; he has left now, Dr. Orlando Smith was here a while back. So I would like for the record to indicate his presence in this House by invitation.

PROCESS OF CONSTITUTIONAL REFORM

Sen. Helen Drayton: Mr. President, I commend Sen. Ramkhelawan for bringing this Motion, as it provides an opportunity for Senators to add their views to the body of information that already exists through the consultations that took place over the past couple of years. Apart from that, I think it is very timely, because of significant developments that are taking place as we speak, developments which I think will render current paradigms in democratic governance to the archives.

What has happened in Tunisia, what is happening in Egypt and the Middle East as a whole, has far-reaching consequences for leaders and governments everywhere. It is not only despotic and repressive regimes that would face the consequences of the people power that we are seeing. The reason for this is because the very nature of society and the nature of society's communication has radically changed, and this has been facilitated by improvements in universal education. It has been facilitated by information technology, the social networks, the media platforms and the change in lifestyles for convenience and quick fixes.

We have a very restless society, a better educated society and a better connected society. We have been talking a lot about information societies and knowledge-based societies without understanding its very profound and prolific nature. So we are in an environment that is characterized by the mass production

of information. On the part of governments everywhere—especially governments—this requires constant awareness; it requires constant learning and deployment of efficient processes of democracy.

I believe, quite frankly, that a new model of democracy is needed; something that is hybrid—I think my colleague, Sen. Ramkhelawan, made reference to this—and something that breaks the stagnation of, what I would call, “the moribund, big two-party system”. What we have has served us well, thanks for the noble and honourable Sir Ellis Clarke, a man who also recognized that his own instrument needed to be changed, because we live in a society that is distinctly different from when the Constitution was written.

So with the proper knowledge, sensitivity, skills and values among governments, if they do not have these, they will be removed by the people, not necessarily through the ballot box and certainly the gun is no long necessary. We are seeing that there are other effective and decisive means.

In all this, as never before in history, has the word “democracy” had such a significant meaning. That old Greek word “demos” meaning “people, “kratos” meaning “people power”, is being adequately demonstrated. Today’s leaders everywhere are being urged to, “Please, listen”, not to just hear. Governments do not like to take criticism; they see criticism as opposition. They see criticism as being against. They do not listen, they merely hear, and it is true that communication at the leadership is abysmally poor. I am not just speaking about Trinidad and Tobago. If it was not so poor, then we would know that they understand what we mean, not by merely paraphrasing our words, but we would know by what they do.

So people all over the world are saying, “Listen, do not just understand my words; understand the meaning of my words. If you are a competent leader, then you would have a real understanding of my environment and you would have the ability to sense my feelings. Therefore, you will respond fairly, you will respond ethically, you will respond equitably, you will respond justly.”

So I have heard my colleague here mention our pride; yes, we are proud of the fact that we have a Constitution in which rights are—I am no longer going to use the word “enshrined”—written, because I do not believe that we have those rights that are written in there, because they are removed willy-nilly every day by this very Parliament, to deal with deficiencies in administration, and sometimes I think the hubris of politicians.

3.20 p.m.

So we speak of the Constitution, what are we seeking to correct? What do we want to achieve? Are we saying that we want more efficient systems and more effective governance? Are we saying that we want greater civil participation? Are we saying that we want greater justice, equity and equality of opportunity?

I think that these are questions that are necessary, to be answered before we can consider whether we will deal with the Constitution in a holistic manner or what I will term, a serialized manner. I would not use the word *ad hoc* or piecemeal because I think that would belittle this Motion that has been brought here, and I do not think that is the intent of this Motion.

So that it is reasonable to say, that although we have a Constitution, the Constitution has been under the pressure of politicians. Yes, I am a “Trini”, yes, we have a beautiful country; yes, we are a beautiful vibrant people, we are resilient people, we are talented people, I agree with all these things. We have to deal also with the realities of our life.

In addressing this Motion, I would like to focus a bit on institutions of democracy. Because one thing we are learning from the events that are unfolding in the Middle East, is that you can bring down a government but if the institutions of democracy are not there to support democracy, then the mayhem and the blood probably are yet to come. This is why institutional intellectual capacity and institutional strengthening are so important. Going to the polls is one thing but if our institutions are not working then the entire system collapses. There has to be integrity, there has to be ethical decision-making. So what is the point of constitutional reform if institutions that are there to protect us, fail us and fail us every single day?

I will be frank, as I am always frank, and I think that is the essence of independence. Quite frankly, I am fed up, like most citizens, with politicians who vow to do better after another child is found dead. They go back to business and another one is dead and they vow to do better.

Where is the Children Bill? Where is the strengthening of the Children’s Authority? I am aware that with the best systems in the world, there are criminals out there who would still commit heinous crimes. So one has to be practical about that. But we need an institution that will begin to do work to develop and help our children. And I would cite a few examples, in the context of how institutions are failing us. So this is why I say, you can have rights in a constitution but they are not enshrined; it is a piece of paper, if we are not giving substance to that constitution.

As I speak, Mr. President, there is a child in a home in upper Laventille who was born to a 13 year old, without full brains. The child is malnourished, the child has scales all over his shrinking body. He was referred to the Social Services Division. They sent a social worker who reported that the condition of the child is bad. The Coalition Against Domestic Violence at this point in time is trying to get the Director of Family Services to sign off, to remove that child; the doctor said that the child would die. How is this Constitution protecting that child?

So that when we knock governments, listen to what we say; we know it is only nine months, and we know you are doing the world, that does not remove the fact that there is a child who would die as I speak. When I hear the Hon. Prime Minister rush to her side, laudable, and says, “We will leave no stone unturned, even if we have to bring in an international expert”, I say “but wait, what going on? We have a foreign Commissioner of Police; we have a foreign Deputy Police Commissioner; we have a set of foreigners in SAUTT.”

So when I say, we do not listen, I am not criticizing, and I am not against, it is like thousands of people like myself out there where it is merely a cry for help. That child needs help, and I hope the Director of Family Services heard me and is signing off the document and is finding somewhere to put that child.

Another example, Mr. President, when we talk about institutions that are not working for us—

Sen. Panday: Hon. Senator, would you kindly give way? I want to give you the undertaking that if I get further information, I shall contact the relevant Minister today to ensure that that tragedy does not occur.

Sen. H. Drayton: Okay, I hope they are listening, I think that that is great. At this moment, as I speak, anyone of your Members can call, ask for Diana Mahabir, ask for Dr. David Bratt and they would lead you on to the situation. I will also give you a number in a while.

Another situation, Mr. President: it has so much to do with the behaviour of leadership. And this is why I ask how much constitutional change do we really need? Or do we need change in mindset? The public has been left to believe that the Chairman of the Police Service Commission has failed to comply with the directive of a police officer. I am not getting into whether, who was wrong or who was right. The point I am trying to make is that the communication is so poor. You have your Commissioner of Police who literally dismissed the matter to the public but the public is still saying, “Hey, give me an answer” in this situation. It is my money paying him, it is my money paying the Commissioner of Police.

Because you see, if an ordinary citizen tomorrow parked his car outside this honourable place—now, whether he is parked correctly or not, is beside the point, whether the police is right or wrong that is beside the point. But if the police come and say, “move the car”, and you refuse to obey that order, you would either be given a ticket, or you would be taken down to the police station and charged, or you get a summons.

I repeat, I am not saying that anybody has done wrong, but a lot of offices are being brought into disrepute because the communication is so abysmally poor. So why should the average citizen if they are left with those perceptions, feel that there is equity, there is fairness, and there is justice? Constitution what!

So, Mr. President, to what extent does the Constitution facilitate effective and efficient governance, meaning the principles of justice, equity, fairness, equality before the law, and to be treated equally by government authorities, regardless of who you are, with transparency and accountability? And if certain things are not working, what are the contributors? To what extent is the solution to be found in Constitution reform? Or to what extent it is to be found in behaviours and immaturity and incompetence, or to what extent it is a combination of all that?

In addressing the Motion every aspect of the Constitution governs an aspect of our democratic way of life. Every aspect is supported by substantive legislative policies and change in any one, any one interlocking system or these hierarchal laws has far-reaching consequences if not properly thought out.

3.30 p.m.

A Constitution provides the overarching rules of governance, the composition of power, the separation of power and sets out relationship between the people and the government. It sets the boundaries of governmental power and it is the supreme instrument to guarantee basic human rights. Separation of powers is specifically to avoid concentration of power in any one hand, and the tyranny of the majority over the others. So in our system there is supposed to be parliamentary sovereignty, judicial independence, Executive, the Government, and superimposed you have the President. Is there parliamentary sovereignty? As long as you have—and I am not just speaking about Trinidad and Tobago because it is one of the flaws of the parliamentary system, our Westminster system. In the UK they have recognized that and they are trying to address it. As long as you have a first-past-the-post system and the likelihood of a government with a strong majority the answer is “no”. The Legislature is not independent of the Executive. We know that is not what the Constitution meant, but it is not so.

Now, of course, there are ways one could assuage or ameliorate that situation. Yes, you could send Bills to a joint select committee, but the problem is that we are very small, so unless you have—if you are going to do that, if you are going to take every Bill and send it to a joint select committee, you need two things: given the size of our Parliament, you need a structure in terms of the parliamentary agenda, people getting together and deciding these are the critical issues in the country, and these are the Bills we need to give great priority to; you need to put the resources behind the drafters after the Government has articulated its policies, so they could draft, and then, of course, a joint select committee could look at them. And the other thing is how you deal with the role of the parliamentarians who are also—their constituencies, they have to look after, and they are also Members of Parliament. I would come back to that.

Of course, we have new to Trinidad and Tobago what you call the pre-legislative screening, which has a lot of merit but such strategies if not used professionally, if used willy-nilly—bring a Bill, JSC; bring a Bill pre-legislative screening—then it could be misinterpreted as manipulation to facilitate Government’s political agenda. I am not saying that is the case. I am saying that if it is handled professionally in the context of an agenda, in the context of well-articulated policies, I think it could go a long way in having what I call that participation with respect to policy.

So that the complexities of democracy have been made far more challenging with the advancement of information technology. Government by its very nature, in the exercise of democratic principles, call for mature, responsible and ethical—coming back to the words “ethical behaviour” of those charged with the responsibilities of governance, no constitution can guarantee that, no constitution could legislate for integrity. It merely provides the form, it is up to the democratic institutions, it is up to us, it is up to the citizens to give it, what I call, substance.

So, Sen. Ramkhelawan’s Motion has a lot of merit. I do not think that anyone believes that the entire Constitution should be scrapped. But some of the areas go to the heart of the democratic process. The Senator has mentioned a number of them, and I would just touch upon them, simply to give another viewpoint. The two terms for a Prime Minister, yes, it is a significant change. There could be ramifications. Meaningful change never comes without pain, but we have a culture of what you call “maximum leadership”. So, yes, it could help force succession planning at the party level which should redound to the benefit of our democracy, but given other serious cultures and traditions of party splintering, particularly at past Opposition systems, and in the context of a coalition, it has its

ramifications, and serious ramifications in the context of our culture, particularly, in the last term of a Prime Minister, what you call the lame-duck term. There is an important consideration which he mentioned, and that is, when you legislate for two terms, you are saying to the members of a political party, you cannot choose the leader who you believe could best unite my party, who is fit and proper and who is the leader I want to lead us into government.

Now, let me say upfront, for me, I certainly desire two terms. I would like to see two terms. But Guyana is now faced with that problem in that it has two terms, and my understanding is, the vast majority of people would like to see the current Prime Minister remain. Not that there is a void, it is not that there are not others. So, when you legislate for that you have removed a fundamental right through legislation, to elect the party official of your choice, and that is not something to trifle with. You have removed a basic right to elect who you want, which is the core of democracy. So, should the desire to restrict leaders to two terms be a feature of constitutional reform or should that be left to the constitution of the political parties, and if so, how through moral suasion and other means you could get them to change their constitution, which would also have a very nice effect because it would also mean that the Opposition leader cannot serve for more than two terms either, which makes sense.

So, of course, that argument would beg the observation, because of the maximum-leader syndrome, who says that they are likely to yield to moral suasion. It is the substantial argument, it is a correct argument. But should we—and I have to be frank again—be legislating for the hubris of dumb politicians? This is the bottom line. If people do not have the common sense to know that we are in a different era, and that if they do not want you today they are going to remove you, and if they do not want you they are not going to re-elect you, which is what democracy is all about, should we be legislating for it? As I said, I certainly would like to see two terms. So, in the context of a debate on constitutional reform it is something to be thought out.

Now, in any situation, one has to weigh whether the advantages outweigh the disadvantages in the context of your own unique culture and situation, and another possible change is the role of parliamentarians. Given what I have said about participation and people power and the need for leaders to really understand the needs, and respond in a timely and efficient manner, such forces may well dictate the role of parliamentarians. Can parliamentarians effectively carry out responsibility to their constituencies and at the same time be Cabinet Members and Ministers of Government—all full-time jobs in their own right—with their

families, their private lives and everything else? Because the quality of life is very important. And given the forces that are driving change, what are the necessary requisites for aligning qualifications and experience necessary to operate as effective parliamentarians? How are the political parties examining that in the people whom they offer for elections?

Very quickly, another consideration is the role of service commissions. Really, can they perform a 21st Century role in manpower development management, which also implies succession planning and recruitment, using policies and concepts that were designed more than half a century ago? Just imagine we are still restricting the method—and I am using the word “method”—I repeat, method, to sourcing key talent like a commissioner of police through advertisements, because the rules say advertisements. These days positions like that you headhunt, but of course you headhunt within a system, you look for the best. And every time I think of these things I have to think of Rudder’s *St. Ann’s*, if not *St. Ann’s* it is Rudder’s *Mad Man’s Rant*, it just does not make sense. We are in the 21st Century. And then, what is the role of the Department of Personnel Administration, and service commissions? Because I understand, that is where you have issues in terms of timeliness in recruitment, in the context of all your manpower planning. It is a serious issue that needs to be addressed. I do not know what all the specific issues are, but it seems to me that between the service commissions and the Department of Personnel Administration and the systems and procedures that they have, which as I said, date back to another era—In the last session I used to use the term “Jurassic era”, because that really is where it belongs.

We really need to look at these things in a very enlightened way. So to what extent must these things be considered in order to achieve efficiency and effectiveness in governance, the improvement of access by citizens to services, improvement in national security, structural adjustment, diversification?

I would touch basically, very quickly on electoral reform. My colleague here spoke about the first-past-the-post system, which is really what you call a plurality system. Yes, he is right; it does not guarantee that a party with the majority of votes forms a government, not if you have a three-way race. In fact, the party with the least votes might form the government, and in another scenario as we saw 30 years ago, you could have 20—25 per cent of the votes of the electorate and still not have representation in Parliament. Emanating from this you could have a very partisan result, where parties in governance then focus on the needs and well-being of selected electoral districts, where their traditional base is, and where they can be sure to win seats in the next election.

And some governments—I am not talking about any government here—in doing the research, in a situation like that, that is gerrymandering in terms of the boundaries, that is another matter that needs to be addressed in terms of the systems that protect from that type of behaviour. And of course, where a coalition is formed—I am careful here to say coalition, “eh”, I am not using the word partnership—whilst that can alleviate the feelings of disenfranchisement, there are always issues with respect to the bigger party. It is always viewed with some measure of mistrust; there is a feeling of discomfort, that it is a subordinate position of the smaller parties, that they lose their independent voice.

Where they had a very independent and vibrant voice, which was very important for the whole democratic process, it is lost. Then, of course, in that coalition, the integrity of good governance becomes compromised, and of course, the smaller ones are eventually submerged in the culture of the larger, and we are back to the status quo of the two-party system. But, I hasten to add that conflict within parties, conflict between government and opposition, that is the heart of democracy. Conflict is a very healthy thing provided it is not allowed to become dysfunctional. You know, there is a saying: the world without peaceful revolution and the world without conflict, is like the seasons without spring. Conflict sometimes bring that cleaning out, that purging that you are looking for.

So, the major advantage of the first-past-the-post system is that it produces a potentially stronger government, if only because the opposition is sometimes nearly wiped out, or severely diminished, and its ability to propose laws or to block legislation that it genuinely feels is not in the interest of the public. So, the democratic process in the first-past-the-post system, there are, yes, issues that need to be addressed, and, of course, with our culture, if you do not have a tradition of dealing with incompetent and corrupt representatives, or voting in competent candidates, then the first-past-the-post system is severely weakened.

3.45 p.m.

I would not touch on recall. I would just say that it is there, and the countries that use it—America has had it there now for 400 years and they have used it twice. You know, there is an argument against it, in that the person who is being replaced, they are not being replaced in a by-election, election against an opposition, they are being replaced by a candidate from the same party and if that candidate had offered themselves in a general election, they probably would not have won. So there are arguments for and against it.

Proportional representation; it certainly says that all voters deserve participation or representation, and it adds to the voters' strength, it adds to greater equity and fairness. It creates the opportunity for participatory governance and it also creates the opportunity to break deadlocks between the two major parties. The problem with proportional representation is that it needs to be carefully thought out, because multiple small parties would result in a similar stagnation, hampering government's stability to get anything done.

I want to touch quickly on the Caribbean Court of Justice. Mr. President, in speaking about institutions, I would have questioned the wisdom of debating the death penalty before debating the Caribbean Court of Justice and the Privy Council, because we know the views of the people, we know where they stand in terms of the death penalty. But we need to decide who we are as an independent people. We need to reflect on the fact that we are independent 49 going on 50 years and really we should be looking ahead as to who we are, and where we want to be in this next 50 years. We should have passed the stage of negotiating our own destiny, because every time we go to the Privy Council we are negotiating our destiny, because depending on their judgment they are making and establishing a policy. We need to reflect on ourselves as a member nation of the Caribbean and what we want to do with the Caribbean Court of Justice. It provides us with a wonderful opportunity to explore its use as a constitutional court for the region. And of course the role of such a court, among other mandates will be to challenge whether the laws being made are unconstitutional, and specifically, whether there is conflict with fundamental human rights, among its other mandates.

So Sen. Ramkhelawan asked, why are we stuck with it? And he mentioned the fact, that when it was the UNC government—and I heard what Sen. Lyndira Oudit said, and I want to say to the Government again, that in a manner of speaking, if you referred to the UNC Government it is not everyone who means mischief, certainly not. When we went to the polls there was no partnership symbol on the ballot paper. Let us forget the symbol and the political platform. When we went into the box we did not see a partnership symbol. So for some of us it is not mischief. It is history.

Sen. Abdulah: Would the Senator give way for a moment?

Sen. H. Drayton: Sure.

Sen. Abdulah: There was not a single symbol either in the May 24 elections. Depending on the constituency, there were different symbols. Okay? So that to suggest as if there was one symbol, the implication of what you are saying is that there was just one symbol, that is what you are suggesting?

Sen. H. Drayton: I am saying the opposite, Senator. I am saying when we went into the ballot box, there was no partnership symbol. What I am saying there were symbols of different political parties. So we are saying, the same thing.

Sen. Abdulah: [*Inaudible*]

Sen. H. Drayton: Well, you know, I am not going to allow the Government to dictate for me how I choose to view them, or what I choose to call them. I do not think that the Government should try to dictate that to any citizen either. It is not mischief, it is honourable intent. And this is why I say listen, move beyond words and sense meanings and feelings. So Sen. Ramkhelawan was quite right when he said yes, it is the UNC Government who is responsible for the Caribbean Court of Justice in Port of Spain. And he asked, why are we stuck with it, and I will be brave enough to answer it. It was called “Opposition politics”.

The Senator made mention, of the DPP (Director of Public Prosecutions) and the role of the Attorney General, and I have to share that view. An attorney general is an attorney general of the people. And quite frankly an Anti-Corruption Bureau and other institutions like that have no place whatsoever in an attorney general’s office. You see, we choose and pick out things from the Constitution and our laws when it suits our purpose. And what was the intent! I am no attorney. I repeat my good Senator’s words again, but we always hear “what was the intent”. So what was the intent of the Constitution? What was the intent of the role of an attorney general? So it has no place there, because when it is there, it is himself investigating corruption unto himself. So when you tell me about institutions of democracy and institutions that are supposed to work for us, well we could see why it does not work for us. I am not talking about this Government or the last government, or any other. I am talking about the successive governments.

Of course, I want to touch quickly on my pet one which is campaign financing. While I know there is a Motion, I believe strongly that the Constitution should state, in brief principles, as it has done for the Integrity Commission, make a statement on campaign financing so that the necessary laws can then unfold; one of which ought to be transparency and disclosure and the prohibition of certain institutions and foreign institutions from making political donations and some restriction on corporate entities. When we go to the ballot box it is the individual who is voting. And when it is the corporate dollar that is influencing that vote I think, indirectly, you are subverting the process of democracy. That is why there should be a statement on it. It should be mandatory that anybody seeking to offer goods and services to the Government, all those contractors out there, in tendering documents, they ought to disclose their donations, and the public ought to know.

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[SEN. DRAYTON]

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So in closing, Mr. President, I commend the Senator for bringing this Motion. I think it is timely, because of all that is happening. Where I might depart a little bit, is where in the statement, in the Motion it said:

“And Whereas the repeal and replacement of the entire Constitution may not be the necessary, desirable or effective approach to better align the overall requirements of the nation for a more just and equitable society and enhanced governance.”

I would prefer to see a holistic approach rather than a serialized way. I think I have tried to demonstrate that every change, every little change, be it a two-term Prime Minister or be it recall, each and every one; it is an interlocking system which has consequences for the institutions of democracy.

Mr. President, I thank you for the opportunity to share my views.

3.55 p.m.

Sen. Rabindra Moonan: Thank you very much, Mr. President. It gives me great pleasure at my second appearance to make my maiden speech in this august House. [*Desk thumping*]

I want to thank, first of all, the Prime Minister for giving me this opportunity to participate in the people’s business. I want to congratulate Sen. Ramkhelawan on bringing this particular Motion today and I want to frame it in a particular context. I know that we have spoken about definitions of constitution, but K.C. Wheare defines the constitution of a state as where:

“...the whole system of a government of a country, the collection of rules, which establish and regulate or govern the government.”

And Thomas Paine states:

“A constitution is not the act of a government, but of a people constituting a government, and a government without a constitution... without right constitution...a thing antecedent to a government...is only the creature of a constitution.”

It can be asserted from this definition that the constitution is something which is prior to the government, giving legitimacy to the government, defining the power which can be exercised and the manner in which it is.

What this tells you is that there is a legal contract between the Government and the people, but there is also a social contract between the Government and the people, and I say it in the context that not everything could be written into a

constitution. There is nothing which is called the spirit of the constitution; the spirit of the law, and in this country as we approach our 50th year of Independence, we have had a number of papers coming on constitutional reform. We had the 1961 Constitution; we had the current Constitution with all amendments to date; we had the draft Constitution laid as a paper in the House of Representatives on August 18, 2006; we had the Principles of Fairness Draft Constitution, Third Edition, 2006 and we had the Working Paper on Constitutional Reform for public comment which was referred to, and was laid in the House on January 09, 2009.

I say this because for 39 of the close to 50 years, we have been governed by the PNM, and notwithstanding all these papers which were laid, we have had no significant changes in the Constitution. We live in an evolving society, but this happens because of a particular mindset which started in 1955, I think it was, and I want to quote from a paper: “The Challenge of Constitutional Reform-An Examination of Trinidad and Tobago’s Constitution” by Dr. Hamid Ghany, a Senior Lecturer and Dean of the Faculty of Social Sciences. He says:

“Foundations of the Constitution.

In an address to a public meeting about 14 months ago before he became Chief Minister, in Port of Spain, Trinidad on 19th July, 1955, Eric Williams said, ‘The Colonial Office does not need to examine its second hand colonial constitutions. It has a constitution at hand which it can apply immediately to Trinidad and Tobago. That is the British Constitution.’ (Eric Williams, Constitution Reform in Trinidad and Tobago. Public Affairs Pamphlet No. 2, Teachers’ Educational and Cultural Association, Trinidad, 1955, p. 30).

At the same meeting he also said: ‘Ladies and Gentlemen, I suggest to you that the time has come when the British Constitution, suitably modified, can be applied to Trinidad and Tobago. After all, if the British Constitution is good enough for Great Britain, it should be good enough for Trinidad and Tobago.’”

It tells you that for the 39 of the close to 50 years the PNM has operated, that the British Constitution is good enough for Trinidad and Tobago, notwithstanding, as I said before, that we have a society which has been in evolution from 1961 to 2011.

So, again, all these things were put; nothing has ever happened, of significance. The Wooding Commission has been ignored. The major consideration of proportional representation has been totally ignored, that is because the PNM has always been involved in the supremacy of the party and not the supremacy of the people of Trinidad and Tobago. When Sen. Ramkhelawan brought his Motion, it

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was because, I humbly submit, that he had seen that there is some light in this People's Partnership Government which will make meaningful constitutional reform in Trinidad and Tobago, and I congratulate you on what you have said and I do not expect, as I am sure you did not, that any constitutional reform would have taken place under the PNM.

But your Motion, Sir, follows on a Motion in this very Senate which was produced by Sen. Prof. Kenneth Ramchand a couple years ago, and basically, I will just read a part, Mr. President, with your permission:

“Whereas, the now governing People's National Movement in its Election Manifesto 2002 commits the party to the ‘widest possible discussion and participation in the process leading up to the Reform of the Constitution for a modern Trinidad and Tobago’ and to developing a Constitution ‘capable of ensuring the involvement of all its citizens in the running of the country’ and permitting ‘equity in the distribution of the resources’;”

This was the People's National Movement manifesto of 2002. I checked last night when I was informed that I would have been in the Senate—I checked online, the People's National Movement manifesto of 2010 and I saw nothing of constitutional reform. My good friend, Sen. Ramkhelawan, went through the major points which were stated in the People's Partnership manifesto of 2010 and it speaks of the right of recall; term limits; fixed dates for elections and referendum. What this tells you, the right of recall, if I may start with that, the last time it was used in the United States—I think Sen. Drayton mentioned it—was sometime in 2007 in the state of California, where the then Governor was removed by the right of recall and he was replaced by Governor Arnold Schwarzenegger. I think his term is coming to an end.

So we have had precedents and we know how it operates—the right of recall. We have had people sitting in Parliament, elected Members, who, as someone said before, believe it is their divine right once the people elected them that they will sit here and do not have to serve. Our Partnership Government has said—our Prime Minister has said—we must serve the people; serve the people; serve the people, and if there are people who do not want to serve and it is people who empowered them to come here, then the people should have a right to remove them before the end of their term. That is what the right of recall is all about.

Term limit speaks of two terms for a Prime Minister and I think it was mentioned, you know, what happens if somebody does not serve the full five-year term, because we have a five-year term, and it should be 10 years—I think it was

Sen. Ramkhelawan—but we take term limits in context with a fixed date of election. So it means a Prime Minister does not have the option at one madcap moment to decide to call election, and we have seen what has happened to this country. I think it was in 1995 when the then Prime Minister curtailed and truncated his government before the time and he lost. But not only did he lose; the country lost because everything went into disarray. A whole new planning system had to take place. In 2010, the Prime Minister, in a rare moment of some divine intervention, which allowed the People's Partnership to come into power, called an election again. He lost again, but so, too, the country by the disruption of the economic and social life.

Today we have people complaining that they have been removed from offices and their terms are not yet up. I understand that even some members who are at boards at the Central Bank level are saying that their appointment was for a term of two years and it is not up as yet, so they are not going to resign. But there is a certain convention applied to that and that is why I said earlier, there is that social contract when you know what is right and what is wrong and you see what just is not done.

In 2000—I cannot remember the exact date, but I, too, was a victim. Prior to the 18/18 tie, I was appointed a member of the Southwest Regional Health Authority, and I was given a two-year term by the then President ANR Robinson and on that infamous day of December 24, the government changed hands when President Robinson appointed Patrick Manning to be Prime Minister. Two months later I got a letter of revocation from the President removing me from the Southwest Regional Health Authority, notwithstanding that I was appointed for a two-year period.

I am saying similar things have happened and yet you have newspaper headlines screaming that it is discrimination to remove these people. I am saying that there is a certain convention under which we operate, and whilst we reform constitutions, we must take into consideration, as Sen. Drayton said, how people think. In Great Britain there is a saying, "It just is not done". For a constitution to operate, conventions must operate. But I have little faith in the PNM ever attempting to amend or change our Constitution wholesale or piecemeal. When they attempted to change it piecemeal, it was to make the then Prime Minister a stronger man in office by making him an Executive President. It tells you he was more interested in himself than the country. It is frightening to think of what has happened before.

So I spoke of right of recall; term limit and fixed election dates, which I mentioned before; the referendum, if people do not work. These are the pillars on which the People's Partnership Government promised if they came into power what they would do. What we have done, too, is to make the Constitution a living paper and if something happens—and this is not to say that we will jump helter-skelter and change the Constitution at every minute, but there are societal needs, there is crime in this country. And I think it was last week Friday in the other place that the Government introduced a Constitution (Amdt.) Bill in regard to the capital offences; it has to do with hanging. That is because nothing of substance was done by the previous government—nothing! This People's Partnership Government is showing strength and showing resolve to put back law and order in this country.

4.10 p.m.

Mr. President, there are a number of questions which came up as far as electoral reform is concerned, and we spoke about the first-past-the-post system, we spoke about proportional representation, but there are a number of other voting systems which are operating in different parts of the world today and in the continuing discussions which we may have, it may be necessary to look at them.

One of them is the supplementary votes, and that system is used right now to elect the Mayor of London, and it is noteworthy that in the UK they operate according to first-past-the-post, yet they have a different system to operate when they elect the Mayor of London. I will not go into the ramifications of the supplementary votes but just to mention it. And then we have another system which is used in Australia, the House of Representatives in Australia, which is known as the alternative vote system. That is something we may have to look at too, when we devise a system which would operate to the needs of our diverse and probably complex or maybe simple, society. We have the single transferrable vote also used in the Australian Senate and in other parts of that part of the world.

Mr. President, as far as electoral reform is concerned when somebody goes to a polling station and they cast their vote, they want to know that they have value and that their votes will not be lost in the whole scheme of things, the majority wins or the person who gets the most votes. The majority votes may not tell they want to have some say into this particular issue. And I am saying that we must look at all these systems as we debate constitutional reform and or constitutional amendments, I do not have a preference. In fact, I want to agree with Sen. Ramkhelawan, change is so imperceptible that people feel comfortable with it,

than making wholesale changes, but then there is wholesale “grand charge” which the PNM gave us in this country, wholesale “grand charge” in presenting paper after paper for 40 years, and nothing has happened. We have given you four ideas from our manifesto which we are going to implement.

We are going to implement too, Mr. President, the inclusion of local government into the Constitution of this country. And I tell you that because it is an abuse of process when a Prime Minister could use local government at his whims and fancies and take away the franchise of people. This is something we intend to put a stop to, in fact, one month after the general election the Prime Minister called local government election which the PNM had put off, I think for seven years or four years or something like that, and that is to show you what a serious government is all about.

I do not know, in fact, I hope, I genuinely hope that the PNM will support to show that they are serious, after having being fossilized in thought, and from a jurassic age they are now seeing new light and they will support what this Government is doing. And probably there is hope, you know, because it is my understanding that when their convention comes around in March of this year that they propose to look at one-man, one-vote instead of the antiquated delegate system. Sen. Beckles-Robinson will know that I know about that because I was a victim of that too, when I was then a member of your honourable party, and it is an honourable party and you are on the right track, Sen. Beckles-Robinson, and I hope that you win, because you know the system, you know what the former leader did.

So we see that there are changes, and I spoke about electoral systems and I feel the best way to illustrate is to give personal examples of how a flawed political system could change the franchise and the intention of an electorate.

In 1999, I fought a local government election in the electoral district of Cocoyea/Torouba for the UNC; I was then a member of the UNC, now a member of the COP, a member of the People’s Partnership, more importantly. And in that election at the first count I lost by seven votes, and I requested a recount—*[Interruption]* by seven votes—and at the recount I won by four votes; the PNM requested a poll check. A poll check is when you take the ballots which were questioned and you go back over those ballots—I think there were fifty ballots which were questioned, and I lost by one vote. So I have the dubious history of having three results in one election.

Mr. President, I tell you this because I saw with my own eyes how a system could have been manipulated. The ballot papers which we had to count, the 3,000 or 4,000 every single ballot paper, Moonan, whenever Moonan, Moonan, and

there were questions about fingerprints, if somebody put their finger into the electoral ink and they smudged the ballot paper, that was considered by the Chief Election Officer at that time, to be a spoiled ballot, because you may be able to identify the voter by a fingerprint.

Now I thought that disturbed the spirit of the voting because I do not think in this country we have the records—we do not even have it of the criminals, would we have it of innocent people? So they had these fingerprints—well there is a fingerprint this vote must be disqualified. I understood the next day, Mr. President, that when the votes were being counted a senior official of the party which I fought against, was calling all the time “let me see that ballot paper” and I would not call the gender, so I will say the senior official held the ballot paper and then said there is a smudge here, and we found out that that person had a stamp pad close by putting their finger in the ink holding it, and I was losing votes because there was a smudge. Nobody knew whose fingerprint it was. Mr. President, in the electoral reform and constitutional reform we must ensure these things do not happen.

When we speak of the two-term limit which operates in the United States since their independence and operated very well, I think they did that because they did not want their leaders to suffer the hubris syndrome. And we live in a small society where from the time somebody “get flashing blue lights”, well that is it, they may even get some “blue flu”, and may need “blue pills” too but Mr. President, the two-term limit really is to prevent any leader from going overboard, that by some divine right they must be there.

4.20 p.m.

Dr. Eric Williams ruled from 1956 until 1976, I think it was, uninterrupted. A man for whom I have the greatest regard for, a man who used to come home by us in Rio Claro where I was born and where I grew up—greatest regard. But when a leader takes his leadership to that level the country suffers, and that is why the two-term limit is most important.

Mr. President, I know “it is coming” late. I am new to the Senate. I just thought that I would make this intervention to attract the attention of the Hansard Reporters—*[Interruption]*

Sen. Al-Rawi: We want to hear more.

Sen. R. Moonan: The more I speak the worse the PNM will look.
[Interruption]

Sen. Deyalsingh: Tell us about all three parts.

Sen. R. Moonan: Mr. President, based on the urgings of my friends next door—because I know they are honourable on the other side. I know they are honourable people, they mean well. [*Interruption*]

Sen. Beckles-Robinson: The Senate is different.

Sen. R. Moonan: I have the greatest regard and respect for Sen. Al-Rawi, because he comes from a good family. [*Desk thumping*] He has political stock. In fact, he may be creating history in this country being the third generation of one family to be in Parliament. [*Desk thumping*] I do not know whether it has ever happened. I know he means well, but he belongs to a party to which I once belonged. I know that he is going up for a post next month. I wish you well, but I want to tell you, with all due respect, you are my friend, I see you as my younger brother—[*Interruption*]

Sen. Al-Rawi: Thank you.

Sen. R. Moonan:—you would not last there. The PNM is imprisoned. They are imprisoned by what I read from 1956 with Dr. Eric Williams. As great a man that he was, he was imprisoned. I know the next leader, Sen. Beckles–Robinson, would want to change that, but you cannot wait that long. You cannot wait that long! On this side I am temporary, I will move anytime for you to come here.

Hon. Senator: Eloquent boy!

Sen. R. Moonan: I do not want to sound discriminatory—to any one of you there.

Mr. President, I spoke of electoral reform, and in the Constitution we must have strengthening of campaign finance reform. There must be accountability for campaign finance, because we have seen in this country where the State has abused State funds and translated them to party funding, and within recent times we have found out that the PNM is indebted at a discounted price to a couple hundred thousand dollars to the PTSC. That is after using State power—[*Interruption*]

Sen. Al -Rawi: Eighty-seven thousand.

Sen. R. Moonan: Eighty-seven thousand. Well, forgive me. It means that you all have paid some, and is Balisier House still encumbered? [*Interruption*]

Sen. Al -Rawi: It is not encumbered; but we pay our debts.

Sen. R. Moonan: Very well. The point is, Mr. President, that a political party strangled other institutions to service the party, and we must make the distinction between a political party and a government. When you sit here or when I stand here, I stand as a member of the People’s Partnership Government. When I leave

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here and I go somewhere else, I may be a member of the Congress of the People or, as my other colleagues, the COP, the TOP, the MSJ, but when we come to government, we have one viewpoint. [*Desk thumping*] No political party must influence a government to use State resources to keep them in power.

Mr. President, it moves away from the PTSC to CNMG, where the past government used their influence over a State entity to get discounts. In fact, at one time, anytime you put on the TV it was, “We going down the road with Manning”, or some kind of thing like that. Thank the Lord for cable TV, we could have turned away. But when there are no checks and balances, this is what could happen to us. We must strengthen campaign finance reform. Something which may not appear to be that open and something which we must frown upon is when political parties use State resources again, to further the party.

In the last election and probably the one prior to that, when the campaigning started, every day you took up the newspapers there was an advertisement from a ministry telling you what they had done and what they had accomplished, followed by a picture of the Minister. These things happened four years ago, but it was structured in a way to promote the party, the supremacy of the party over the supremacy of the State and the people. These are some things which, really, we must take into consideration when we look at campaign finance reform. It is said, and it may go across the board for every political party, that there are others who influence, who use their influence, big business, small business, even the criminals who will now appear as community leaders and that is undue influence too. So people use it, they do the biddings of the political party and then they reap the benefit of that. That is something we must put a stop to.

Mr. President, I think that I have really stretched the inning to the 20th over when this session of the Senate will come to an end, so I want to commend Sen. Ramkhelawan on his Motion and to tell him that I have the greatest admiration that he has recognized that the opportunities are here now for real constitutional change, and we hope that at another place what happened in Gasparillo—
[*Interruption*]

ADJOURNMENT

The Minister of Public Utilities (Sen. The Hon. Emmanuel George): Mr. President, I beg to move that this Senate do now adjourn to March 01, 2011 at 1.30 p.m., when we will conclude debate on the Miscellaneous Provisions (Bail and Kidnapping) Bill, 2010 and commence the debate on the Miscellaneous Provisions (Remand) Bill, 2010.

Sen. Ramkhelawan: Mr. President, we are not sure whether Sen. Moonan will return on March 01, 2011, to complete his contribution. So I crave your indulgence to have him complete his contribution because we are not sure if he is coming back on March 01, 2011.

Mr. President: Sen. Moonan, were you winding up? I am not sure—

Sen. R. Moonan: I was, Mr. President.

Mr. President: So you have completed your contribution?

Sen. R. Moonan: In one minute.

Mr. President: We will allow you to complete your contribution for that minute, and then I will proceed to the adjournment. Proceed, Sen. Moonan. [*Desk thumping*]

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Sen. R. Moonan: Thank you, Mr. President. I really was congratulating Sen. Ramkhelawan and all the speakers who spoke of the need for meaningful constitutional reform. I was mentioning what happened last week in Gasparillo, the murder of this young child, this dastardly act, and to say that as a people we cannot allow this horror to go on any further. I hope that at the other place, that all the parties come together and take the nation's interest at heart.

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

Sen. Al-Rawi: Well said!

ADJOURNMENT

Sen. Penelope Beckles-Robinson: Mr. President, I just want to give notice that the Opposition intends also to make contributions on the Miscellaneous Provisions (Bail and Kidnapping) Bill, 2010 at the next sitting.

Thank you.

Mr. President: Hon. Senators, before I put the question relating to the adjournment, I wish to congratulate Sen. Moonan on his maiden contribution here today. [*Desk thumping*]

Question put and agreed to.

Senate adjourned accordingly.

Adjourned at 4.31 p.m.