

*Leave of Absence*

*Tuesday April 02, 2013*

**SENATE**

*Tuesday, April 02, 2013*

The Senate met at 1.30 p.m.

**PRAYERS**

[MADAM VICE-PRESIDENT *in the Chair*]

**LEAVE OF ABSENCE**

**Madam Vice-President:** Hon. Senators, I wish to inform you that the President of the Senate, Sen. The Hon. Timothy Hamel-Smith, is currently out of the country.

**SENATOR'S APPOINTMENT**

**Madam Vice-President:** Hon. Senators, I have received the following correspondence from His Excellency the President, Mr. Anthony Thomas Aquinas Carmona SC:

“THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO

By His Excellency ANTHONY THOMAS AQUINAS  
CARMONA S.C., President and Commander-  
in-Chief of the Republic of Trinidad and  
Tobago.

/s/ Anthony Thomas Aquinas Carmona SC  
President.

TO: MR. ARNOLD RAM

WHEREAS the President of the Senate, Sen. The Honourable Timothy Hamel-Smith, is incapable of performing his duties as a Senator by reason of his absence from Trinidad and Tobago:

NOW, THEREFORE, I, ANTHONY THOMAS AQUINAS CARMONA, President as aforesaid, in exercise of the power vested in me by section 44 of the Constitution of the Republic of Trinidad and Tobago, do hereby appoint you, ARNOLD RAM, to be temporarily a member of the Senate, with effect from 2<sup>nd</sup> April, 2013 and continuing during the absence from Trinidad and Tobago of the said Senator Timothy Hamel-Smith.

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 28<sup>th</sup> day of March, 2013.”

*Oath of Allegiance*

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**OATH OF ALLEGIANCE**

*Sen. Arnold Ram took and subscribed the Oath of Allegiance as required by law.*

**PAPERS LAID**

1. Annual Administrative Report of the National Information and Communication Technology Company Limited (iGovTT) for the fiscal year 2011. [*The Minister of Communication (Sen. The Hon. Jamal Mohammed)*]
2. Trinidad and Tobago 2011 Population and Housing Census Demographic Report. [*The Minister of Planning and Sustainable Development (Sen. The Hon. Dr. Bhoendradatt Tewarie)*]
3. National Performance Framework 2012 to 2015. [*The Minister of Planning and Sustainable Development (Sen. The Hon. Dr. B. Tewarie)*]
4. Audited Financial Statements of CWC World Cup 2007 (T&T) Limited for the financial year ended September 30, 2007. [*The Minister of the Environment and Water Resources (Sen. The Hon. Ganga Singh)*]
5. Executive Report of the Committee on Young Males and Crime in Trinidad and Tobago: “No Time to Quit: Engaging Youth at Risk”. [*Sen. The Hon. G. Singh*]
6. Ministerial Response to the Seventh Report of the Joint Select Committee appointed to enquire into and report to Parliament on Municipal Corporations and Service Commissions with the exception of the Judicial and Legal Service Commission on an evaluation of the Chaguanas Borough Corporation. [*Sen. The Hon. G. Singh*]

**Sen. Al-Rawi:** Madam Vice-President, if I may just seek clarification, through you?

**Madam Vice-President:** “Um-hum.”

**Sen. Al-Rawi:** Relative to reports laid and, in particular, that on behalf of the hon. Prime Minister, “Youth at Risk”, I have not seen it on the desk, Madam Vice-President; is it that it is in fact laid, and, if so, may we have a copy?

**Madam Vice-President:** Hon. Senators, I have been advised that it is on the Rotunda, as well as on email, and it is available through the clerks. So it is on your website.

**Sen. Al-Rawi:** Much obliged.

**Madam Vice-President:** Minister of Planning and Sustainable Development. [*Desk thumping*]

## STATEMENTS BY MINISTERS

**National Performance Framework 2012—2015 and  
National Performance Report Fiscal 2011—2012**

**The Minister of Planning and Sustainable Development (Sen. The Hon. Dr. Bhoendradatt Tewarie):** Thank you very much, Madam Vice-President. I stand to make a statement on the *National Performance Framework 2012—2015* and the *National Performance Report for fiscal year 2011—2012*, both of which have been laid on the Table in the House and which are also available on the website.

What is the National Performance Framework? The *National Performance Framework 2012—2015* identifies results expected from Government interventions through initiatives and programmes, and it focuses on outcomes and impacts. The National Performance Framework is aligned to Government's five priorities as outlined in the *Medium-Term Policy Framework 2011—2014*. For each priority it sets out indicators and targets against which performance can be assessed. The *National Performance Framework* represents a measurement tool which will be used by Government to entrench a culture of monitoring, evaluation and performance reporting in the public sector, and forms an integral part of institutionalizing results-based management in the government service.

The *National Performance Framework 2012—2015* was developed by the Ministry of Planning and Sustainable Development through the National Transformation Unit. However, it should be noted that the process in arriving at this performance framework involved extensive consultations and collaboration with all Ministries, departments and agencies. In this regard, the *National Performance Framework* represents the culmination of a year of dedicated work, not only by the Ministry of Planning and Sustainable Development, but with active support from government Ministries and agencies across the system.

In the development of this framework Ministries were clustered to support shared national outputs and outcomes, since a single outcome often depends on the work of more than one Ministry. The *National Performance Framework* guided the annual report on performance for the fiscal year, 2012, which is also laid on the Table. These documents were officially launched on February 26, 2013, and will provide the framework and baseline, respectively, for assessment of performance in 2013, and after. The Parliament and citizens of Trinidad and Tobago will therefore be informed every year on government performance.

*Statements by Ministers*  
[SEN. THE HON. DR. B. TEWARIE]

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All Ministries and their various departments and agencies report to the Ministry of Planning and Sustainable Development on a biannual basis, using standardized reporting templates. These submissions will be based on the progress of key projects outlined in the *National Performance Framework 2012—2015*, which are aligned to the *Medium-Term Policy Framework*.

Ministries have now been asked to report on outputs at ministerial level, and provide data on national outcomes to which they contribute. Additionally, Ministries have also been asked to report on other significant programmes and projects being implemented in accordance with their individual strategic plans. The data on projects and programmes will be collated at the end of each fiscal year and published as an annual report on performance.

With the publication of this first *Annual Report on Performance 2012*, the Ministry of Planning and Sustainable Development has signalled the transformation in reporting on performance of the public sector. This is the first time in the history of Government, and of governance in Trinidad and Tobago, that such a thing has ever been done. The process of successfully implementing the *National Performance Framework* is reflective of a spirit of dialogue, and will involve continuous engagement between the Ministry of Planning and Sustainable Development and other Ministries, departments and agencies through cluster meetings and workshops.

Why is the framework important? The *National Performance Framework* is the first of its kind for Trinidad and Tobago, and provides an important foundation for results-based management of development initiatives. It is a powerful management tool to promote and assess development results based on national outcomes and impacts, as it clearly outlines and defines outcomes, targets, indicators and baselines. It facilitates policy development, project planning, monitoring of implementation and revision of strategic plans.

What are the critical impacts of the performance framework? This framework supports good governance as it engages all stakeholders, fosters the clustering approach and calls for ownership. It facilitates learning from experience, encourages greater transparency and accountability, and it provides a basis for planning and budgeting, a guide on deliverables to attain results against the five priorities identified in the *Medium-Term Policy Framework*. It provides a framework for reporting on progress, annually, and a basis to evaluate Government's performance against agreed-upon key result areas, outcomes and outputs.

In the case of Trinidad and Tobago, the *National Performance Framework 2012—2015* sets out eight key result areas, 23 national outcomes and 51 national indicators as follows: for instance, crime and law and order; the key result area is a safe and secure nation. There are three outcomes that are looked for and there are six indicators that are measured.

**Sen. Hinds:** “We get dat book?”

**Sen. The Hon. Dr. B. Tewarie:** For agriculture and food security—*[Interruption]*—It is on your desk.

**Sen. Hinds:** “Uh?”

**Sen. The Hon. Dr. B. Tewarie:** It is on your desk.

**Sen. Hinds:** Would the Minister give way?

**Sen. Singh:** No, you do not interrupt the speaker—*[Inaudible]*

**Sen. The Hon. Dr. B. Tewarie:** It is on your desk.

**Sen. Ramlogan SC:** “Sit dong!”

**Sen. Hinds:** We can read it.

**Sen. Singh:** “Gosh man, Hinds!”

**Sen. The Hon. Dr. B. Tewarie:**—agriculture and food security, a food secure nation: two outcomes, four indicators; health services and hospitals: first-class health care, a fit and healthy nation as key results areas, five outcomes, 16 indicators; economic growth, job creation, diversification, competitiveness and innovation, a resilient, competitive, stable and sustainable economy with three outcomes and eight measurement areas.

For poverty reduction and human capital development, there are 10 outcomes and 17 measured areas. The result areas being: a society free from poverty, a quality education system that caters to the diverse needs of 21<sup>st</sup> Century learners and a knowledge-driven and skilled population.

**1.45 p.m.**

The approach this Government is adopting is one of accountability, transparency and good governance. It is common to develop extensive policies and plans, but translating these into action that achieves results is a new experience for our country. It is about making the public sector accountable by setting up performance indicators that drive progress and results that would redound to the benefit of the population.

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Our mandate is to achieve a partnership between Government and the population whereby we deliver on their expectations through a responsive public sector that is timely, efficient and effective. This will result in a higher quality of life for the people of Trinidad and Tobago.

Government has embarked on a systematic and strategic approach to planning in which everything articulated in Government's policy is tied to performance. What exist now are seven strategic and interconnected developmental pillars, as outlined in the manifesto of Government, which continue to guide the design and execution of policy measures which are geared towards achieving the economic and social transformation required to move Trinidad and Tobago.

The seven pillars provide the broad strategy towards the achievement of sustainable development, and reinforce the fundamental principle of Government of prosperity for all. Essentially, they provide greater coherence, integration and coordination of Government's interventions to achieving specific targets and objectives over the medium term. It is in this context that the *Medium-Term Policy Framework*, the *National Performance Framework* and the *Annual Report on Performance* provide coherence on government policy and action.

This shift in thinking and orientation has now positioned Trinidad and Tobago to benefit from unprecedented levels of development that would be meaningful to the lives of all citizens. Any interventions made by Government can now be monitored and tracked to determine, in a systematic fashion, if objectives of such interventions are in fact being realized. By institutionalizing a results-based approach, Government continues to emphasize performance and delivery in achievement of critical targets in every priority area or sector identified.

There are several countries with monitoring units aligned to planning or budgeting, but there are very few countries in the world with monitoring systems premised on a national performance framework which routinely assess national indicators to show how progress on achievement of national outcomes and results are achieved. Three countries that have distinguished themselves by establishing monitoring and evaluation systems, based on a framework similar to Trinidad and Tobago, are Malaysia, Botswana and Scotland. Malaysia has distinguished itself in monitoring and evaluation globally, and is a leader in this. Botswana articulates seven pillars of development and tracks 100 indicators. Scotland details seven purpose targets, five strategic objectives and has identified 16 national outcomes.

In Latin America and the Caribbean, only Chile, Colombia and Mexico have monitoring systems that are developed enough to contribute to monitoring for development results. Jamaica and Guyana in the immediate Caricom region are

also seeking to establish and strengthen monitoring and evaluation systems. In Jamaica, 44 outcomes have been proposed for tracking performance, but these have not been finalized. In Guyana, the indicators have been identified for tracking, but monitoring has been weak.

In less than two years, Trinidad and Tobago has been able to establish its monitoring and evaluation system, and this is contained in the *National Performance Framework 2012—2015*. This framework is groundbreaking in our region and allows Trinidad and Tobago to become a pioneer and exemplar for the region. Moreover, the People's Partnership Government took office in May 2010, and we are today able to lay a performance report for fiscal 2011—2012 before this honourable House, and we are working on 2012—2013.

The hon. Prime Minister, Mrs. Kamla Persad-Bissessar, has taken time to express her thoughts on the significance of both documents at the beginning of each one. As a Government we are all collectively proud of this achievement, which illustrates not only that we are working to plan as a government, but that we are working to plan in each Ministry and that because the People's Partnership is performing and delivering, we have something to measure.

On the basis of each measurement, it becomes transparently clear where as a country Trinidad and Tobago is headed, because the performance report deals only in facts. We recommend this document for the reading of all citizens. Our focus is on the people of Trinidad and Tobago and our emphasis is on results.

Thank you very much, Madam Vice-President.

### **Nationwide Blackout and Eventual Resumption of Power**

**The Ministry of Energy and Energy Affairs (Sen. The Hon. Kevin Ramnarine):** Madam Vice-President, I rise to make a statement concerning the nationwide blackout of Friday, March 29, 2013 and the eventual resumption of power to the country on that day. The facts surrounding the origins of this incident take us to 12.22 a.m. on the morning of March 29, 2013 at the Phoenix Park Gas Processors Limited facility at Point Lisas, which had an emergency shutdown.

All natural gas coming into the Point Lisas Industrial Estate for use in that estate, and also for power generation purposes, passes through Phoenix Park Gas Processors Limited facility for processing and then for distribution to many downstream users.

The bypass system, in the event the PPGPL plant is down, comprises three lines with associated valves. Two of these lines are operated by the NGC and have a combined flow capacity of 1,100 million standard cubic feet of gas per day. These

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two NGC lines are supplemented by a third line that is within the PPGPL facility which has a capacity of 600 million standard cubic feet of gas per day. The combined capacity of all three bypass lines is therefore 1,700 million standard cubic feet of gas per day.

At 12.22 a.m. on March 29, the PPGPL Emergency Shutdown System was activated. At that time the flow of gas through PPGPL was approximately 1,555 million standard cubic feet of gas per day. This activation of the emergency shutdown system resulted in the cessation of gas flow through the PPGPL plant. In addition, the bypass valve at PPGPL and both bypass valves at NGC opened. However, unusually high pressures caused a bypass valve at PPGPL to shut in, thus stopping the flow of 600 million standard cubic feet of gas per day through the PPGPL bypass line.

This meant therefore that the system flow was now limited to the 1,100 million standard cubic feet of gas per day through the NGC bypass system. This caused a reduction in the supply to downstream users.

Madam Vice-President, our investigations have revealed that this NGC automatic bypass system consists of four bypass valves. There are valves A, B, C and D. Valves A and B were installed with the first phase of Phoenix Park PPGPL in 1991. Valves C and D were installed with the second phase of PPGPL in 1998; that was the second expansion of Phoenix Park. In 2009, the company Phoenix Park Gas Processors Limited completed its third expansion. However, this time there was no concomitant expansion of the NGC automatic bypass facility. That was the root of the problem we experienced on Good Friday; it was simply waiting to happen. I can now tell this Senate and the public that this deficiency in the design of the NGC bypass system will be rectified.

With the sudden loss of this flow, the supply pressure to downstream users at Point Lisas plummeted within minutes. The low pressure then caused the PowerGen plant at Point Lisas to trip out of service. PowerGen Point Lisas requires gas to be supplied to it at 250 psig, or pounds per square inch gauge. That is the pressure required for gas to enter its turbines.

The drop in pressure resulted in PowerGen Penal, PowerGen Wrightson Road and Trinity Power all tripping. It should be noted that at no time however was there a cessation of natural gas supply to TGU at Union Estate, as this facility is supplied with natural gas from the 56-inch cross island pipeline. TGU however did suffer the loss of its auxiliaries and experienced a total shutdown.



With regard to Tobago, the sister isle is supplied via a submarine cable which has a capacity of 15 megawatts, and on the island there is also the T&TEC plant at Cove Industrial Estate which is capable of generating 64 megawatts of power. The loss of power in Trinidad caused the loss of four megawatts of power which was at the time being supplied by the submarine cable.

In an attempt to pick up this loss of supply, the three generating units at Cove Power Station were shut down due to operator error. This resulted in a total loss of power in Tobago at 1.29 a.m. At this time, that is 1.29 a.m., we were in a state of nationwide blackout—that is Tobago and Trinidad. The operator error at Cove Power Station is currently under investigation by T&TEC.

The natural gas system at NGC was normalized an all-clear was given to restart power generation facilities at 1.15 a.m.; that is, in Trinidad. Following this, the PowerGen Penal Power Station at Syne Village was able to restart its unit No. 7. Consequently, there was recovery of power throughout the country.

At 12.05 p.m. on the same day, March 29, 2013, T&TEC's largest customer, Arcelor Mittal, was permitted to draw 50 megawatts, and had all demand restrictions lifted by 5.15 p.m. All requests to industrial customers to limit their demand were completed lifted by 7.15 p.m. of that day.

It should be noted that while the Point Lisas Industrial Estate was disrupted for some 24 hours, at this time, with the exception of one plant, all plants are back on line. [*Desk thumping*]

The blackout, as was reported, also impacted the operations of the Petrotrin refinery. At this time I wish to report that the refinery is in the process of getting back up to its maximum throughput of 160,000 barrels of oil per day.

Madam Vice-President, on the instruction of the hon. Prime Minister a report is being prepared for the consideration of Cabinet. A preliminary version of this report will be submitted to Cabinet on Thursday April 04, 2013. Already the various companies involved have prepared their own individual reports and these reports are being collated by the Ministry of Energy and Energy Affairs and the Ministry of Public Utilities.

What is therefore emerging in our discussions, post this blackout, is a set of recommendations that when implemented will strengthen the Trinidad and Tobago natural gas power electricity system. There are many recommendations, but the key recommendations are as follows:

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1. Installation of dual fuel capacity at selected stations. At present the PowerGen Wrightson Road Power Plant has this facility, but it is not operational. By dual fuel we mean having a liquid such as diesel, bunker C or jet A1 distillate in storage at the power plant, in the event the natural gas supply is compromised.

So we will not only be relying on natural gas to generate power.

2. Installation of the requisite infrastructure to evacuate all the power that can be generated by TGU and to bring that power to the national grid.

TGU has a capacity of 720 megawatts and it is currently only supplying below 300 megawatts of power to T&TEC. That is because of infrastructural constraints. The infrastructure required entails two 220 kilovolt lines from La Brea, to take the power out of La Brea, and a new substation at Gandhi Village.

The third recommendation is that we ensure that every power plant in Trinidad and Tobago has a black start capability and that this is reliable. Black start refers to the system which allows a power plant to self-start.

The fourth recommendation is that the NGC will install additional bypass capacity so that the NGC will now become fully independent of the Phoenix Park Gas Processors Limited bypass system.

In closing, I want to place on record my thanks and that of the Government for the efforts of the persons at the leadership and operational levels of T&TEC, NGC, Phoenix Park Gas Processors Limited, TGU and PowerGen, who worked to ensure that the country's supply of electricity was restored in as quick a time as possible.

**2.00 p.m.**

Madam Vice-President, mention must be made of the leadership role played by the hon. Prime Minister—[*Desk thumping*]

**Hon. Senator:** Yeah, yeah.

**Sen. The Hon. K. Ramnarine:**—in this situation as it relates to mobilizing the national security apparatus to protect the country, and coordinating with the Minister of Energy and Energy Affairs related agencies to ensure that power was restored to the people of Trinidad and Tobago. Thank you very much, Madam Vice-President.

**Madam Vice-President:** Attorney General.

## ANSWERS TO QUESTIONS

**Sen. Al-Rawi:** Sorry, Madam Vice-President, just a matter of procedure. We have omitted the issue of questions again.

**Sen. Singh:** No, no, no. It was not omitted.

**Sen. Al-Rawi:** I did not hear it at all, and if so, may I have some explanation in relation to that item. There are several questions on the Order Paper as well as those for written answer, some of which were promised by the Leader of Government Business on the last occasion to be delivered today.

**Madam Vice-President:** There is no question on the Order Paper except for written and—[*Crosstalk*]

**Sen. Singh:** Perhaps if you came in earlier and spoke to your acting Leader of Business, you would have been told that there are two questions, and they will be circulated. They are fairly bulky, and they will in fact be circulated by tomorrow, [*Interruption*]

**Sen. Ramlogan SC:** They have more than one.

**Sen. Singh:**—but today—[*Interruption*]

**Sen. Ramlogan SC:** They have several leaders there you see.

## WRITTEN ANSWER TO QUESTION

**Board of Directors Appointed by Government  
(Details of)**

**4. Sen. Penelope Beckles** asked the hon. Minister of Finance and the Economy:

Could the Minister provide the Senate with:

- (i) A detailed listing of the names of all Chairmen and members of all Boards of Directors appointed by this Government from June 2010;
- (ii) Their qualifications and gender; and
- (iii) The honorarium, together with all benefits and entitlement for the above-mentioned board members?

*Written answer lodged in Parliament library.*

## MISCELLANEOUS PROVISIONS

**(DEFENCE AND POLICE COMPLAINTS) BILL, 2013**

*Order for second reading read.*

**The Attorney General (Sen. The Hon. Anand Ramlogan SC):** Madam Vice-President, I beg to move:

That a Bill to amend the Defence Act, Chap. 14:01 and the Police Complaints Authority Act, Chap. 15:05, be now read a second time.

Madam Vice-President, this Bill is one that has received quite a great amount of criticism, ill-informed comment and there has been a lot of hype about it, but when one blows away the smoke and the hype, the Bill is a very simple Bill that is meant really to treat with a particular problem that exists and that has existed for quite some time in Trinidad and Tobago.

Permit me to start by delving into the history of the use of the defence force personnel outside of a state of emergency and outside of a period when the country is under attack by hostile elements or at war, because those are the two classical bases upon which the involvement of the defence force is predicated under the Constitution and the Defence Act.

Madam Vice-President, not just in Trinidad and Tobago, but perhaps many other countries, particularly so in the Commonwealth Caribbean, the role of the defence force evolved, particularly so, after independence and more so in light of the post-world war era; particularly the post-World War II era. Coming out of the world wars, the concept of an army to defend the State from attacks from external forces and hostile forces was a very prevalent kind of thinking.

You had the First World War from 1914—1918, and then you had the Second World War 1939—1945. But after 1945 for a period of almost two decades there was a relative period of harmony, and the defence force that was established in many countries to protect and defend the country when it goes to war—countries began to review the expenditure and the utilization of the defence force to see well, to what better use can it be put, how can we get better value for money, and how can we tap into and make use of this important resource that is the state funds, and that is sworn to protect and uphold law and order.

Madam Vice-President, it is in that context that you will see that, in Trinidad and Tobago a partnership emerged between the defence force and the police service in the fight against crime. That in itself was prefaced by a more civilian involvement for the defence force in many areas of community and national life that has absolutely nothing to do with war and a state of emergency.

But in that evolution and development of the role of the defence force, as it gradually occurred on a piecemeal basis, no one bothered to think about the legislative framework that was there in 1962 when we attained independence. The Defence Act was passed in 1962, but since that time when the Act was passed by Parliament, and Parliament had within its contemplation the establishment of a

defence force for the purpose of defending the State of the Republic of Trinidad and Tobago when it comes under attack or we are in a period of emergency, that was the thinking that informed the legislation. And no one bothered to revisit the legislation, so that the ebb and flow of activism on the part of the State that led to a variation in the scope of work for the defence force was, in fact, taken care of by legislation.

Madam Vice-President, let us take, for example, the practical problems that emerged out of that: the coast guard for example. The coast guard was always given powers in the Defence Act to make an arrest, search, detain, but on the high seas. So that a coast guard vessel could pursue a vessel if they suspect it is a drug trafficker, illegal arms being smuggled in; they can pursue them on the high seas.

But I was astonished to know that the legislation was drafted in a way that the coast guard themselves interpreted it, that when the vessel that they are in pursuit of reaches land, they felt that their jurisdiction and their legal protection ended. I asked about the doctrine of “hot pursuit” to see whether or not they could pursue them on land. They said it was a twilight area. They were in grave doubt about it, and when one looks at the legislation one can see that, in fact, it really was predicated on, you know, a high-speed chase on the high seas; but that is just a practical problem.

Let us take the air guard because the defence force comprises three units. We have the soldiers—the army—we have the air guard and we have the coast guard. The air guard, for example, now provides tactical and strategic support in the air with the helicopters. So when we have programmes where we engage the air guard to assist the police service to track down a vehicle that kidnapped someone, or to look for illegal drugs that are being grown and so on, marijuana plantations and so on, the air guard personnel, if they are fired upon, what legal protection and status do they have? If they are on their routine business and they are engaged, what is their position? What are they to do, Madam Vice-President?

So, this really is a simple but necessary and critical revision to the Defence Act, to take into account the mushrooming role for the defence force that has taken place as our society has grown and developed, and as we have catered for a better utilization for the defence force in our society.

Now, I want to make it abundantly clear, it is not that this is about precepting soldiers. That is something that I saw in the media a lot. This is not about precepting soldiers. Soldiers, as you can see from every single roadblock and so on, they already carry guns. They have the right to carry guns. So it is not about precepting soldiers, and the involvement of soldiers in the fight against crime is not a new phenomenon. This is nothing new.

*Miscellaneous Provisions Bill, 2013*  
[SEN. THE HON. A. RAMLOGAN SC]

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Madam Vice-President, permit me to quote from the *Trinidad Guardian* of Tuesday, August 09, 2005. This is what the then commanding officer of the regiment, Col. Edmund Dillon had to say. He said and I quote:

“Soldiers have been participating in what was originally supposed to be temporary joint patrols with the police since they were first reintroduced in 1994.

If you check, in fact, in our history, you will see that we have been involved”—and the “we” that he is talking about is the army—“in working the with the police from since the 70s all the way up.”

So he is saying that 10 years after independence, 10 years after the Defence Act was passed, which is predicated on a legal template about the establishment of a defence force to defend the country against hostile attack, if it is invaded or going to war, or if there is a period of a state of emergency, and 10 years after the Parliament passed that law we have the commanding officer telling us that since the 1970s the defence force was operating with the police in joint patrol exercises.

“We’ve always done joint army/police patrols from ever since.”

That “ever since” is since 1970.

So let me debunk immediately the myth that the Government is introducing anything new. It has been with us since 1970. Col. Dillon continues.

“He said the national security environment had changed drastically since the 70s, and the Regiment and Coast Guard could no longer solely concentrate on defending the nation from external enemies.”

Here is not a government spokesperson; here is not a politician, but in fact, the commanding officer of the regiment, and he himself is saying to the nation that since the 1970s the regiment and the coast guard could no longer solely concentrate on defending the nation from external enemies.

I think that is an important and powerful statement because it is a recognition by the defence force that they themselves would want to become more involved to make use of their own skill, expertise and talent, recognizing that the practicality of the country being invaded or going to war or a state of emergency being called, well really does not lend—is not conducive to the kind of justification that they would want for their own existence.

Madam Vice-President, but if we are to ask the soldiers, the members of the air guard and the coast guard to perform outside of a state of emergency or outside when the country is at war, how are we going to ask these good men and women to do

that, when the law we passed in 1962 only had within its contemplation that these persons could operate and exercise their legal powers and duties when the country is at war or when there is a state of emergency? “Dat is the only two times.” The only two times that the defence force could have been called into action was during war or state of emergency.

That is what the legislation itself had within its contemplation, it was the intention of the law. It was the policy of the legislation, and indeed, it was the ideology and political philosophy that was prevailing at the time, 17 years after the end of World War II, from 1939 to 1945. That is the context and the environment that we must locate the debate in.

Madam Vice-President, it is in those circumstances that we come to the Parliament with this Bill to say that it is unfair to ask the good men and women of the defence force to go forth with the police, stand neck—shoulder to shoulder, and to fight criminals who are well armed, who are dangerous and evil, and to ask that they stand side by side, but not be given any legal protection for their own life, limb and property, and for their own selves.

It is only natural that they are bound to harbour some degree of reluctance and inhibition, and it is patently unfair, indeed some may say discriminatory, to ask that two persons perform similar duties on a joint police and army exercise where the law discriminates between the two to give full legal protection to one, and the other we leave with a reduced citizen’s power of arrest which I will come to.

Madam Vice-President, the Inter-agency Task Force was established in 2004, and that Inter-agency Task Force was established to again administratively deal with the reality of the police and the army fighting crime together. That is what it was. However we choose to dress it up, however you cut it, however you dissect it, however you analyze it, at the end of the day soldiers and the army have been involved in the fight against crime in this country for a very long time. [*Desk thumping*] It is just that we have not—[*Desk thumping*] and that was not what was intended. It was not what the law had in mind, and therefore, the time has come to revise the law to take that hard, harsh, raw, unvarnished reality into legislative account, and that is what the Government is doing.

### **2.15 p.m.**

Madam Vice-President, one cannot forget—I heard in the other place persons said we tried to make this out into something that it is not; to say this is entirely without precedent, that this is some revolution, people talking about a military state. Under the former regime they too used the army in the fight against crime.

*Miscellaneous Provisions Bill, 2013*  
[SEN. THE HON. A. RAMLOGAN SC]

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Who can forget Operation Baghdad, Operation Anaconda, the lockdown of Richplain? Even then there were voices of concern that the use of the army in the fight against crime without any revision to the legislation was wrong.

Madam Vice-President, permit me to cite the *Newsday* front page story of June 25—yes, this is June 25, 2008. “Richplain lockdown illegal”. That is June 25, 2008, not under the People’s Partnership, but the headline reads “Defence Force out of order, Richplain lockdown illegal”. I believe my learned friend Sen. Hinds was serving at that time in the Ministry of National Security. [*Interruption*]

Now, Madam Vice-President, permit me to quote from another *Newsday* article of May 06, 2003. This is former Assistant Commissioner of Police, Mr. Oswyn Allard, speaking and he says:

“The police and army”—and I want to stress this. Here are the police themselves saying, “The police and army will soon launch a ‘Baghdad’ invasion of the Laventille area to deal with gang related murders”—and crime.

“It will be like Baghdad said”—Mr.—“Allard who said that Government has also been asked to implement a limited state of emergency to facilitate the police/army action...75 per cent of the murders in the country have taken place”—in Laventille, Sea Lots and Beetham—“The operation is intended to flush them out.”

That is not the People’s Partnership: this is May 06, 2003.

Then we come to the *Newsday* December 13, 2002: “Curfew in Laventille”.

The National Security Council chaired by former Prime Minister Patrick Manning is considering putting a curfew in Laventille to deal with the spate of murders in the area. So far for this year there have been 34 murders including two on Wednesday night. There have been four killings in the last 24 hours. Soldiers and police will be deployed round the clock in Laventille in an effort to stem the flow of blood, he said yesterday.

Madam Vice-President, soldiers have been functioning outside of their legal capacity, at the behest of the State—[*Desk thumping*—with the encouragement and support, instruction and direction of the State without legal protection for far too long in this country—[*Desk thumping*—and that speaks to a violation of the rule of law itself. It speaks to a violation of the rule of law, and this is a demonstration of this Government’s commitment to the rule of law to bring this legislation and have the courage to say to the Parliament the time has come to fix it. [*Continuous desk thumping*] We have a legal problem and we need to fix it.



Madam Vice-President, what will this Bill do? The Bill will provide for the defence force to be relied upon to provide assistance to the police service in the fight against crime. It will now be clearly provided for that there is a role for the defence force in the fight against crime so that it can operate alongside the police outside of a period of war and outside of a state of emergency. There will be no ambiguity and no doubt.

Secondly, it will give soldiers, coast guard and air guardsmen the necessary legal protection and authority so that they can meaningfully assist the police, when they are called upon to do, by vesting in them the same powers, duties, privileges and immunities as enjoyed by police officers with certain exceptions—which I will come to—when they are engaged in actively providing support to the police. This is not the concept you have heard bandied about in the media—soldier police. This is not about creating soldier police, it is about giving soldiers, coast guardsmen and the air guardsmen—it is about giving them limited powers in certain defined circumstances when they are actually and actively accompanying police officers in joint police and army exercises and operations.

Outside of that there is no such legal protection and authority. The trigger for this will be the police saying, “We need you and we are going on a joint exercise.” Until you are on that joint exercise you are not clothed with the legal protection, privileges and powers of police officers, with a few exceptions. So, when you “boil it down like bhaaji, what it come down to, really, after all de fluff and froth”, is that we are simply seeking to give legal protection and status to soldiers, coast guardsmen and air guardsmen and women, when they are accompanying police officers during joint police operations and exercises with the army and defence force personnel.

The third thing is that this will necessarily remove the element of unfairness and inherent discrimination that exist in asking them to go forward as we have been doing without giving them this kind of legal cover and protection. We have been asking the State—the State has been asking members of the defence force to function outside of their legal capacity, with impunity, whilst we blindfold ourselves and ask them to perform duties that the Defence Act itself did not have within its contemplation, and the State itself is sworn to uphold the rule of law. We live in a constitutional democracy, and what has been happening here is simply something that ought not to be tolerated because it is not acceptable in a civilized, functioning, democratic society.

Madam Vice-President, by so doing we will also take care of some of the problems that have cropped up in terms of the practical operations when you have defence force personnel accompanying police officers. There have been cases before the court where the strength of the prosecution’s case has been compromised because of this legal problem we are trying to fix. A soldier knows that he does not have the

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powers of a police officer, so when they go on a joint police and army exercise, and the police go to execute the search warrant to search for high-powered rifles and drugs, and the police tell the soldiers, “Well, you station yourself at the back of the warehouse, we going in at the front”, when the police go knocking on the door or they kick down the door if you refuse to open it, and they go inside the house, when the soldiers at the back see two young “fellas” coming out with their jerseys bulging and walking and whistling, the soldiers have no power to stop them “fellas”, you know. [*Interruption*]

The soldiers think that those “fellas” hiding something. [*Interruption*] The soldiers may suspect, but in law the soldiers have no power to stop them, because in law soldiers have no power to act on reasonable suspicion. None! Only police officers have that power. So the soldiers may reasonably suspect that “dem fellas toting out de drugs and toting out de guns”, but in law they have no power to stop them. Now, that is in law, but I will come to Sen. Beckles’ point. In reality, I have no doubt that they may stop them, but what happens then?

When the soldiers “stop dem two fellas and dey find them with de guns and so forth, and dey hold them and dey call the police and so on”, when the case goes to court, the soldiers knowing that they had no power to stop “dem fellas”, they are reluctant to give that evidence to say and to speak to the role that they played. So what happens is, you find now the police officers themselves are put in such an unenviable position, the predicament is that they now have to come and say, “Well, you know, is we, is the police whey hold the fellas.”

When the defence counsel gets up in court to defend his client and he starts to question them, “Wha was de length of de warehouse? De length of de warehouse? Wha time yuh reach? How long it will take to get from one end to the other?”, at the end of the day, to cut a long story short, the prosecution’s case is seriously compromised because police officers are being forced to give evidence about matters that occurred on the joint police and army exercise that really and truly did not happen in front of their eyes and they cannot give the evidence for. But we are putting them in that position because the soldiers who assisted did not have the legal power, perhaps, to do that. And these are actual cases that have actually come up, and we are seeing them in particular with cases where there were joint police and army exercises involving the Special Anti-Crime Unit of Trinidad and Tobago (SAUTT). So this is a reality and this amendment will take care of that.

The other benefit to it, Madam Vice-President, is that we are all aware of the fact that there is a manpower shortage in the police service and this will immediately give a boost to the police service by providing strong, well-trained,

disciplined, professional men and women with strong arms and legs to help the police in the fight against crime. This country spends over \$1 billion per annum; over \$1 billion per annum for a small country like Trinidad and Tobago on the defence force, and we are spending that \$1 billion on the contingency, on the happenstance that one day somebody would come to invade Trinidad and Tobago; another country will come to go to war with Trinidad and Tobago or alternatively, there will be a prolonged state of emergency.

All the countries in the Commonwealth Caribbean have been looking at reviewing the role of the defence force with a view to making it more practical and relevant to their own unique and particular social circumstances. This is not Siberia; this is not the United States of America; this is not Iran and Iraq. This is Trinidad and Tobago as part of the Commonwealth Caribbean, and let us be factual about it: if Venezuela or any other country wants to invade Trinidad and Tobago, the fact of the matter is our army, small, loyal, powerful and committed as it is, will have to seek external help. We will be calling Uncle Sam or somebody else. So that is the reality. [*Interruption*]

Madam Vice-President, it is simply not practical in today's day and age to have an army on standby, standing idle, waiting for something to happen that may never happen. That is the reality. And that, while the country is under siege, being terrorized on a daily basis by gun-toting bandits, while law-abiding, decent citizens, who pay taxes in this country, are forced to retreat into the privacy of their own homes, barricade themselves into their own homes, and gingerly walk outside as though they are walking on eggshells; they peer from behind these burglar-proof bars, looking out, watching, and after seven o'clock in the night, the land belongs to the bandits who roam and walk freely at large. The liberty of the subject, the citizen of this country, is an issue.

The Constitution of this country speaks to a guarantee from the State, and the primary guarantee of the State to its citizens in the Republic of Trinidad and Tobago is, we guarantee you life, liberty, security of the person and enjoyment of property—life, liberty, security of the person and enjoyment of property. That is our sacred pact, as a republic and a State, with our citizens. Which of those rights can we confidently say today we are guaranteeing, when bandits and criminals are eroding and eating away at the very inside of and rupturing the very soul of our nation?

**2.30 p.m.**

Madam Vice-President, this Government is not about, under the leadership of the distinguished hon. Prime Minister, Kamla Persad-Bissessar, to do like administrations gone by and bury our heads in the sand and say, “We musn’ talk de truth because it go sound bad, it go make we look bad”. Right now this is the raw, unvarnished reality, and the Prime Minister as her leadership is wont to do, has decided to take the bull by the horns and do what no other Government has done and bring this Bill to the Parliament. [*Desk thumping*]

Permit me now to turn to the law. Section 5 of the Defence Act passed in 1962, speaks to the establishment of a unit of land forces called the regiment, the coast guard and such other units that the President may prescribe. Section 5(2) of the Defence Act states as follows:

“Every unit shall be charged...”

And this is important:

“Every unit”—of the Defence Force—“shall be charged with the defence of Trinidad and Tobago and with such other duties as may from time to time be defined by the”—Defence—“Council.”

Now that other part, “with such other duties as may from time to time be defined by the”—Defence—“Council”, that is qualified in law by the first part which says that:

“Every unit shall be charged with the defence of Trinidad and Tobago...”

It means that any duties in law that the Defence Council shall assign to any unit of the defence force, it must be in relation to and in connection with the defence of Trinidad and Tobago, understood in its traditional and classical meaning, which means to defend the nation and the State from hostile attack. That is what it means.

In law, the Latin phrase is *eiusdem generis*. That is the legal expression and the rule of statutory interpretation we use to interpret this. My learned friend Sen. Deyalsingh is an LLB student who will understand that.

Section 8 of the Defence Act gives the Defence Council of Trinidad and Tobago of which I am a member, the responsibility for the general authority, command, administration and discipline and all other matters relating to the force.

Madam Vice-President, the only duties which can lawfully be imposed on a unit under the existing Act are those arising in connection with matters of defence. That much is clear, because although the Act does not limit in express terms the type of commands the Defence Council can give to a unit, the Act’s entire purpose—its

raison d'être, its entire legal template and philosophy, its policy as stated in its preamble—is to provide for the defence of Trinidad and Tobago. Therefore, on a proper construction, the Defence Council's commands can relate only to the defence of Trinidad and Tobago and matters incidental thereto. This is, in fact, supported by the words at the end of section 8(1) of the Act, which confirm that the Defence Council's own responsibilities, and hence, consequentially, the duties it can impose are limited to and I quote:

“...matters relating to the”—Defence—“Force.”

—and does not extend any wider than that.

Madam Vice-President, this may sound startling and might be somewhat astonishing, but the role that we have allowed for the defence force in this country since 1970 Black Power uprising has not been catered for and provided for in the Defence Act itself. That is the reality. And that was my opinion when I was drafting this Bill, but I sought to have it confirmed—I sent this matter to our Privy Council agents for the State who have been representing the State of Trinidad and Tobago since 1962, Charles Russell and Company. They got legal advice from Mr. Peter Knox, Queen's Counsel, and he sent an opinion which shared and endorsed my own view on the matter and that is, that the legislative linchpin of the Defence Act really has to do with the defence of the State and no more.

I turn now against that backdrop to the illegality of SAUTT, because whilst we have recognized the use of soldiers and whilst we have recognized that they have a vital role to play in the fight against crime, we must now turn to how that illegality has been perpetuated by the State in a way that would remain a blot on the rule of law.

SAUTT existed for seven years without legislation. SAUTT was soldiers fighting crime no matter what anybody says. They were investigating crime which is a police function and they were fighting crime and it was headed not by a police officer but by a Brigadier General. Permit me to quote from former Independent Senator and former President of the Law Association, Dana Seetahal SC, from the *Sunday Guardian*, August 07, 2005. She says:

“The power to create the SAUTT does not exist in any of the acts which govern the bodies from whom the members of the unit are drawn.”

Let me repeat that:

“The power to create the SAUTT does not exist in any of the acts which govern the bodies from whom the members of the unit are drawn.”

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She continues:

“Since the SAUTT is not accountable to any law enforcement organization, as it fails to report to either the heads of the Police Service or the Defence Force, it may in some ways be considered a law unto itself.”

Now, I dare say that legal opinion by itself would not be something that I would hold as a sword of Damocles over the head of the former administration. But what I do fault them for is the fact that there was a recognition that this legal position, wholly and entirely untenable as it was, needed immediate rectification and they promised to do so but never had the political courage to do so.

Madam Vice-President, I refer and quote from the *Hansard* in the Parliament in the other place the contribution of the then Minister of National Security, Mr. Martin Joseph, on September 26, 2008. He said and I quote:

“We have promised SAUTT legislation and that legislation is going to be coming before the end of 2009. It has given us an opportunity to deal with all of the challenges, et cetera... We have to make sure that in clothing SAUTT in its legal framework, that we take into consideration some of the various challenges for which it is. We have proceeded sufficiently so that the question of SAUTT legislation will be coming to the Parliament in 2009.”

—2009! The former Minister of National Security under the former regime promised to the Parliament that in 2009, legislation to regularize and legalize SAUTT would be coming. They knew it was illegal, it had to be illegal, “it bound to be illegal”, it was illegal and they did nothing about it. [*Desk thumping*] Madam Vice-President, that is why you saw headlines like this—[*Shows a newspaper clipping*]—“Richplain lockdown illegal”.

Madam Vice-President, I turn now to another important milestone event in the ebb and flow of the development of this issue in our country’s short history. It was in 2006 the well-known former Justice, Justice Ulric Cross, was engaged by the former administration to conduct a review of the role of the defence force in Trinidad and Tobago—2006. It was on the basis of that review commissioned by the former regime, the PNM, on July 03, 2007, Justice Cross submitted his report. And permit me to quote from that report. On page 2, “Policy Objective”, he says:

“Developed country status requires a well regulated Defence Sector. The turn of the millennium has brought with it new challenges and responsibilities of a nature which the 1962 legislators could never have foreseen.”

Justice Cross is saying, look, you passed the law in 1962, everybody had on their mind, war, state of emergency. So he is saying, look:

“The turn of the millennium has brought with it new challenges and responsibilities of a nature which in 1962 legislators could never have foreseen.”—He said—“Some of these challenges were alluded to by the Prime Minister in his address to the CARICOM Heads...in Port of Spain in 2004. These challenges articulated in the form of clear objectives for which the Defence Force is responsible.

They include a greater need for the Defence Force to provide assistance to national civil authority in the areas of law enforcement...”

So here is Justice Cross saying that the former Prime Minister, Patrick Manning, when he addressed the Caricom Heads, articulated certain objectives for which the defence force should be responsible and, included among them, according to Justice Cross, was the need for the defence force to provide assistance to national civil authority in the areas of law enforcement. Here is a Prime Minister recognizing that there was a need for the defence force to play a role in law enforcement.

He says—Justice Cross—and I continue quoting:

“...it has been accepted that to fulfil these commitments both nationally and regionally that Trinidad and Tobago Defence Force must undergo a radical transformation that in turn must be supported by adequate legislation.”

Justice Cross, since 2006, was saying that you need to have some amendment to the law to cater for the fact that the soldiers need to play a greater role in law enforcement; otherwise, “weh yuh having dem dere for?”. In substance and effect, that is what he is saying in local parlance. He then goes on to say:

“The fundamental aim of this policy document is to articulate government’s policy as it relates to the changes in the Defence Sector and national security environment which requires a corresponding change in the structure, administration and operations of the Defence Force”. And it...“will inform the amendments required”—to—the Defence Act...”

This is not the Partnership speaking, this is Justice Cross speaking and he is saying that this policy document articulates Government’s policy and the Government’s policy he is talking about is not the Partnership, it was the PNM.

So, their own policy was to involve and include the defence force personnel in the fight against crime, as they were doing. Their own policy had an inherent recognition of the fact that the law did not cater for this and that there was a need to amend the law to cater for this expanded role, and Justice Cross was saying well look, it is accepted now by the Government and therefore we need to get on to do it.

He says in concluding that the committee appointed specifically recommends that the Defence Act be amended to ensure that military power could be applied to aid civil power in order to secure and eliminate threats to national security, but also to manage and defuse national issues and combat serious crimes. That is Justice Cross, 2006, in a report commissioned by the PNM.

Madam Vice-President, I now turn to countries in the Commonwealth Caribbean that have, in fact, leapfrogged and gone ahead, and we are playing catch-up with them. Permit me to cite Jamaica, the Jamaican example.

Section 9(2) of the Defence Act of Jamaica gives the Prime Minister of Jamaica, the Rt. Hon. Portia Simpson Miller, as Prime Minister the power to:

“...give to the Chief of Defence Staff directions with respect to the operational use of the Jamaica Defence Force...for the purpose of maintaining and securing public safety and public order...”—And even if the directions of Cabinet had not been obtained it is said that—“the Chief of Defence”—must —“comply with those directions...”—of the Prime Minister.

We have not gone that route in Trinidad. This amendment is not taking us down that road. But this is right in our backyard. Section 9 (3) says:

“Where any member of the Jamaica Defence Force is acting pursuant to”—such—“directions...such member shall, while so acting, enjoy all the immunities, privileges and protection as are enjoyed by a member of the Jamaica Constabulary Force.”

Police lockdowns and curfews in Jamaica have also been legislated. The police in Jamaica have the power to establish a cordon or lockdown, impose a curfew. The Commissioner of Police in Jamaica with the approval of the Minister of National Security could impose a curfew outside of a state of emergency. That is how far they have gone, and the crime rate and murder rate have actually declined. And we are not saying let us go that far, we are simply saying let us recognize that which already exists and legalize it, regularize it and rationalize it.

#### **2.45 p.m.**

I take you now to Antigua and Barbuda, Madam Vice-President. Section 6 of the Defence Act, 2006 of the Antigua and Barbuda legislation; it says not only defence, but also an aid to the civil power, the civilian authorities as well as securing and maintaining public order and public safety.



That section was amended in 2007. In other words, in Antigua they recognized that the expanded role of the defence force required legislation to house that, so in 2007 they did what we are doing here now, and this is the amendment. The amendment in section 8 now reads:

“Where a member of the Force is acting pursuant to directions given... that member...while so acting”—enjoys—“all the immunity, privileges and protection enjoyed by members of the Royal Police Force of Antigua and Barbuda.”

Now, to make sure, I called my counterpart, the hon. Mr. Justin Simon, Queen’s Counsel, the Attorney General for Antigua. I called him and I spoke with him, just to clarify and put my mind to rest that this thing is as I understand it, and he confirmed, yes, that the soldiers are involved in the fight against crime with the police in Antigua outside of a period of a state of emergency, and that has been the case for some time since this amendment took place in 2007.

In Guyana, the legislation—the Defence Act, says that the force shall be charged with the defence and maintenance of order in Guyana. They have not amended theirs as yet, but even in Guyana the police and the army are working together.

The Bahamas, however, in section 4, they have the provision. Section 4 of the Bahamian Defence Act provides as follows:

The Defence Force is for the protection of territorial integrity; the patrol of waters; maintenance of law and order in conjunction with law enforcement authorities.

You see those words, “maintenance of law and order in conjunction with law enforcement authorities”?—that is precisely the role that has been envisaged and the role that has been assumed without the legislation being amended.

Madam Vice-President, the alarm bells that have been rung—*[Interruption]*—Madam Vice-President, when you look at the whole concept of giving police powers to non-police officers, that, by itself, alarm bells have been rung about it, and, you know, maybe it is because it has not been properly understood. But permit me to cite some examples. There are non-police officers who enjoy police powers for the purpose of enforcing law as it relates to their official duties in many instances, and there have not been any qualms about that.

We, for example, have customs officers, immigration officers, litter wardens, municipal police officers, transport officers, and even forest officers. They all have similar powers to police officers in relation to the performance of their duties. And likewise, the soldiers will only have police powers in relation to the performance of their duties when they are accompanying police officers. So it is limited in scope. The scope and ambit are severely restricted and circumscribed by law.

We have demarcated this in a way that allows for it to only happen when the soldiers or the coast guardsmen—when they are actually accompanying police officers on joint police and army operations, or joint police and defence force operations. But section 3 of the Customs Act, section 5(1) of the Motor Vehicles and Road Traffic Act, the Supplemental Police Act, section 14(1), Special Reserve Police Act, Chap. 15:03, the Municipal Corporations Act, all of these laws, they give police powers. And mind you, they give police powers to persons who are not under the control of the Commissioner of Police, and that has been the case with us—I mean, this is old law. They have been around for decades in this country.

But permit me to come to the Supplemental Police Act. All this hoo-ha about, you know, if they will carry guns and the police powers of arrest; why “yuh” giving it to soldiers and all of that. You know, Madam Vice-President, in this country the Supplemental Police Act states that:

Every rural constable, every estate constable and every estate constable employed by a protective service agency...

That means an ordinary security guard. “Ah talkin’ here ’bout the Amalgamated security guard, the IMJIN or anybody else—ah regular security guard in this country. Ah talking about de WASA police, de Caroni police, de Port Authority police, the estate constables”—

**Hon. Senator:** Ranger squad.

**Sen. The Hon. A. Ramlogan SC:**—the forest ranger squad. These officers, in law, shall have all such rights, powers, authorities, privileges and immunities as any member of the police service.

None of these public officers—and, indeed, the private security officers—are not public officers—have sworn or taken an oath of allegiance to protect and defend this country and the State of Trinidad and Tobago, yet still we have no problems with a private security guard being precepted and enjoying all the police powers of immunity and privileges. We have no problem with that! Nobody has asked when there is absolutely no legislation to regulate a private security guard, “How much training he does get? Why he getting a gun?” Nobody asks how dangerous he could be!

We all know—let us face the reality. We all know that the security firms—you know, sometimes in trying to attract the best manpower—it may not be the best or the sharpest pencil in the pack, but they are doing their best, but the reality

is, it is rather easy to become a security guard. The training and discipline, however, are a lot more rigorous to enter the defence force and the police service. But the point I am making is that this cataclysmic legal revolution that has been alluded to in the newspapers and by public commentators, it is really—it is nonsense! It simply does not exist.

Madam Vice-President, we are going to give to defence force personnel, powers that are enjoyed already in this country by private security guards, WASA police, T&TEC police, Petrotrin police, all “dem” regular estate constables. They already have it. And they have it, not just when they are on duty—well, they have it when they are in the performance of their active duties just like the soldiers. But they have the full protection of the law.

So, Madam Vice-President, speaking for myself, as far as this Government is concerned, we repose our confidence in the good men and women who serve in the police service. [*Desk thumping*] We want to give them enhanced protection from the defence force personnel and we say that we will salute the efforts of the defence force personnel in providing the kind of tactical support that they have been giving to the police service thus far.

Madam Vice-President, just by way of illustration, I heard the term “killing machines” to brand the soldiers. Madam Vice-President, really! I mean, how ludicrous! You know, if the army—the talk is that the soldiers are trained to kill. “Yuh cyar put dem there to deal wit ordinary citizens, otherwise dey might go on a rampage and shoot up de place!”

Madam Vice-President, those very same so-called killing machines have been running the Civilian Conservation Corps—[*Desk thumping*—those very killing machines have been running the specialized youth services programmes: the MILAT programme, the MYPART programme and the National Youth Service. Those very so-called killing machines! So they have been involved in the civilian way of life. I mean, the Trinbagonian brand has its own unique stamp on the identity of anything in this world, and so, too, for a soldier. So let us not make it out what it is not.

Madam Vice-President, furthermore, during the three states of emergency in this country, we have not had the kind of abuse and complaints that one would expect. Soldiers, during a state of emergency, have full police powers. They are converted in law into real actual police officers and we have not had, during those states of emergency, the avalanche of complaints that one would expect. Madam Vice-President, and even if we do, I want to say that nothing is perfect. “Yuh

think we doh get complaints from the police service?" The Attorney General is sued every single day because of some citizen whose rights have been aggrieved by police officers. Do we shut down the police service? No!

So that even if you will say that, look, there is a possibility some soldiers could abuse rights, that is all fine, but we have dealt with that. We have made soldiers come under the scope, ambit and jurisdiction of the Police Complaints Authority. We have removed the possibility of ministerial control and special direction vis-à-vis soldiers when they are given police powers. So there can be no political control or direct or indirect interest because the Chief of Defence Staff will be in operational command and he will not be subject to the special direction of the Minister or the Defence Council when they are engaged in police duties.

Operational command: this has been working well for the past four decades. I asked the question to the Inter-agency Task Force person. I said: "Well, listen, who does take instructions? Who in charge?" They said, "Well, chief, listen, we eh doing dis today, yuh know. De way de thing works is that the commanding officer from the army remains in charge of his troops, but whoever the commanding officer is, he liaises with the senior police officer in charge of the operation and he will then take his instructions from that person, and they collaborate."

That has been going on without any problems or hiccups since 1970. No problems! No problems whatsoever! So let us not create a problem where none exists. There has been a culture of trust and partnership between the police and the defence force that has been working and working well. The soldiers will remain soldiers. They will remain soldiers and members of the defence force. They will be vested with extra legal authorities, privileges and immunities whilst they are engaging in providing support for the police service. That is all. It is about a synergy; it is about creating a symbiotic relationship and enhancing the partnership in the fight against crime that already exists.

The code of conduct: Madam Vice-President, the Chief of Defence Staff has the power in law to make standing orders. They make them during the state of emergency when soldiers are police officers, and we have put a provision in the law that within three months of this Bill being passed, that the Chief of Defence Staff will make standing orders to govern soldiers when they are exercising police duties. Not only will he make them, but he will publish them—they will be gazetted and they will be published twice in the daily newspapers.

Not even police standing orders are published in the newspapers, and if you ask the average citizen, they “eh” sure what the powers are. But right now, when this is done, the average citizen will know when he is engaged by the soldiers—he will know what his rights are; the soldiers will know what their code of conduct is, and that is a heightened form of protection. And the standing orders exist. They exist, and they will, of course, where necessary, incorporate the relevant ones from the police service.

Madam Vice-President, permit me to make the point that the role of the defence force is ancillary and subsidiary to the police service. The predominant role, the person in charge, the primary organ, remains the police service. Now, in delineating these powers, we have said that when a member of the defence force has arrested a person, he shall, without delay, and in any event as soon as is reasonably practicable, hand that person and any items seized, over to the senior police officer whom he is assisting or to the nearest police station, and cause a record of the circumstances occasioning an arrest to be made.

Why? Suppose you are in a shoot-out and the police officer is shot, you may not be able to hand him over. But, ideally speaking, when you effect the arrest as a soldier, because this is on a joint exercise and that is when you have the power of arrest, you will always be able to take that person and hand him to the police officer who is in charge of the operation.

But in so doing, assuming that person is shot or whatever the case is—God forbid—the soldiers will not have the power to interrogate the suspect, to charge him, to prosecute him or to carry out any police investigations. And these are four important points. The soldiers will hand over the person. Any items that they have seized, they will hand over to the police with a report, but the police will then fingerprint and process the person. They will then interrogate the suspect or interview him. They will then proceed to lay the charge. The prosecution will be—the virtual complainant will be the police officer, and they will then carry out police investigations as they are charged to do under the Police Service Act.

Madam Vice-President, the system of military discipline is stronger in the army than it is in the police service. We have a backlog there. We know what the situation is. So if we go to put the soldiers to be disciplined under the existing regime, for police officers that is a recipe for disaster. The more potent deterrent is to leave them where it is right now because the army’s justice and discipline system is swift and very, very severe and that is perhaps the better deterrent.

**3.00 p.m.**

Madam Vice-President, I have no doubt that this Bill—there is a lot more that could be said which I will deal with when I come to the winding-up, but I have no doubt—you saw in today’s newspaper the Commissioner of Police on the front page of one of our newspapers lauding the efforts of the army and the police officers, the lowest murder rate for the month of March in six years—the lowest murder rate for the month of March. [*Desk thumping*]

Madam Vice-President, DOMA and the Chamber of Commerce have come out in support of it. I want to make a plea to all Senators, let us join hands, let us reflect the collective wisdom and conscience of the nation and let us join hands to support this Bill in the public interest and in the wider safety of citizens. Thank you.

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

**Madam Vice-President:** Hon. Members, before I propose the question and in anticipation of a long and lively debate on this Miscellaneous Provisions (Defence and Police Complaints) Bill, 2013, I wish to remind you before the debate starts, that the Standing Orders do provide the parameters within which debate should take place. I wish to draw particular attention to Standing Order 32(6); it advises Senators not to read their speeches but they may read extracts from written documents in support of arguments raised or to refer to notes used. It is advisable that Senators refrain from reciting extensive extracts and maintain reasonableness in such an exercise.

Standing Order 35(1) and (2) advises Senators to be as relevant as possible to the subject matter of the Motion, Bill or amendment under discussion, and prohibits reference to matters that are pending judicial review, the outcome of which in any way may be influenced by discussion in the Senate.

Standing Order 35(4) warns against the use of offensive and insulting language about any Member of either Chamber. The Bill, not a Member, is the subject of the debate. Standing Order 35(5) warns against the imputation of improper motives to any Member, again, of any Chamber.

Standing Order 35(8), hon. Senators, requires that the conduct of His Excellency the President, Members of the House or Senate, judges or those involved in the administration of justice can only be discussed by way of a substantive Motion for that purpose and any such remark shall be out of order, and 43(1) discourages persistent irrelevance and tedious repetition either of your

own arguments or the arguments used by other Senators in the debate. In the interest of all Senators wanting to speak, kindly reflect on this particular Standing Order before speaking to avoid such a breach.

I do ask for your conscious, deliberate and consistent adherence to these provisions which will ensure a smooth and productive flow of deliberations on this important piece of legislation. [*Desk thumping*] Hon. Senators, I shall now propose the question for debate. The question is—Sen. Hinds?

**Sen. Hinds:** Just applauding you, Madam Vice-President.

*Question proposed.*

**Sen. Fitzgerald Hinds:** Thank you, Madam Vice-President, for your intonation. I just thought, Madam Vice-President, it may have been delivered before the last speaker's contribution but we will take it even at this stage.

Madam Vice-President, in my humble view the position of the Government on this matter, on the measures before us, could only be properly described as bunkum and balderdash, if I may use good old English. [*Desk thumping*]

Madam Vice-President, before I get into too much or the details, the Attorney General in his opening presentation referenced the law of Antigua and Barbuda, the law of Jamaica, the law of Guyana and in all three cases prevailed upon us— [*Interruption*]

**Sen. Ramlogan SC:** And the Bahamas.

**Sen. F. Hinds:**—and the Bahamas, that they have gone this new way recognizing the changing role of the army in a modern-day circumstance. Madam Vice-President, I noted very carefully that from the provisions of those respective bits of legislation that the Attorney General read, he did not tell us specifically about whether the soldiers in those contexts have powers of arrest.

**Sen. Beckles:** The answer is no.

**Sen. F. Hinds:** And the answer appears no. In other words, Madam Vice-President, the Attorney General, the Prime Minister and other spokespersons for the Government on this measure over the last two weeks in this country, have been misleading wholesale the people of Trinidad and Tobago. [*Desk thumping*]

Let me, Madam Vice-President, make reference to the same section 6 of the Antigua and Barbuda Defence Force legislation to which the Attorney General referred and I quote in subsection (2):

“In the event of public emergency the Governor-General may, on the advice of the Prime Minister by proclamation direct that the Antigua and Barbuda Defence Force or part thereof be employed in aid of the civil”—power.

No mention of power of arrest.

Madam Vice-President, in section 10(3) it says:

“Where any member of the Antigua and Barbuda Defence Force is acting pursuant to directions under subsection (2) such members shall, while so acting, enjoy all such immunity, privileges and protection as are enjoyed by members of the Royal Antigua and Barbuda Police Force.”

Madam Vice-President, no mention of powers of arrest.

**Sen. Ramlogan SC:** What about immunity?

**Sen. F. Hinds:** Well, you find out, Mr. Attorney General. You have Silk. “I doh have. I only reading this”.

**Sen. Ramlogan SC:** “It showing.”

**Sen. F. Hinds:** And I am demonstrating to you, no question of powers of arrest. [*Desk thumping*] Madam Vice-President, I go now, if you would permit me to the Jamaica Defence legislation. I am quoting now from section 9(2) and it says inter alia:

“Provided that the Prime Minister may give to the Chief of Staff such directions with respect to the operational use of the Jamaican Defence Force in Jamaica for the purpose of maintaining and securing public safety and public order, notwithstanding that the directions of the Cabinet have not been obtained, and the Chief of Staff shall comply with those directions or cause them to be complied with.”

Subsection (3) again says and I quote:

“Where any member of the Jamaica Defence Force is acting pursuant to directions referred to in the proviso to subsection (2), such member shall, while so acting, enjoy all...immunities, privileges, and protection as are enjoyed by a member of the Jamaica Constabulary Force.”

Madam Vice-President, no mention of powers of arrest. None! [*Desk thumping*]

Madam Vice-President, let me show you immediately the formulation that this Government has brought for our consideration in this debate. In the old formulation, the one that they presented in the other place, which was assailed by



astute thinkers of the PNM on the Opposition Bench and brought light where there was darkness for the benefit of the Government, [*Desk thumping*] the formulation they came with said and I quote:

“The Bill seeks to amend...”

This is the Explanatory Note, not part of the law but I am reading the Explanatory Note.

“The Bill seeks to amend section 5 of the Defence Act, Chap.14:01 to confer on any member of the Defence Force who is engaged in assisting any member of the Police Service in the maintenance of law and order, with the same powers, authorities, privileges and immunities as are given by law to members of the Police Service.”

There we see the word “powers” entering our legislation and discussion for the first time. The actual amendment that they had proposed in the Lower House, in clause 2 of the Bill, section 5 of the Defence Act is amended by inserting after subsection (2) the following subsection (3)—and this is the Government’s formulation.

When any member of the Defence Force having been charged under subsection (2) with the duty of assisting any member of the police service in the maintenance of law and order and is engaged in so doing, he shall—have the same powers, authorities, privileges and immunities as are given by law to members of the police service.

Madam Vice-President, I have just demonstrated to you, all the sound and fury that the Attorney General regaled us with, nothing in those bits of legislation speaks about powers and it is the one that we are contemplating now that introduced the question of powers.

Madam Vice-President, we have been misled by the Government, we have been misled by the Attorney General. I have already demonstrated to you what the original formulation brought by the Government with the usual “voops, vaps and vaille-que-vaille,” well known now to us from the Attorney General. He speaks with such verve, if you are not careful you will be misled. But not the PNM, we are guardians of the public interest and we will not be. [*Desk thumping*]

Madam Vice-President, there were nine changes made to the formulation that was presented in the other place and what is in front of us here today. I know the Attorney General, as he could be, will claim that this is a listening Government. So they listened nine times, but if we did not stand in defence of the people of this

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country they would not have listened once. [*Desk thumping*] I want the public to know it was the PNM in the Lower House who protected them nine times and brought a little improvement on the measures that are before us, still flawed, as I will demonstrate going forward.

Let me highlight these nine differences. Let me highlight them. One, the name of the Bill; when they came it was an amendment to the Defence Act and today it is now called the Miscellaneous Provisions (Defence and Police Complaints) Bill because somebody taught them downstairs that they did not contemplate the role of the Police Complaints Authority in their wild deliberations. They did not.

Another change: when they came to the Lower House there was no recognition of the people's constitutional rights. They had to be told in the other place that these provisions were inconsistent with the constitutional rights enshrined to protect the people of Trinidad and Tobago and those who are at the behest of the State while in this space. That too was corrected.

Item three: the Bill had spoken of any unit—[*Interruption*]

**Sen. George:** That is what it is about, coming to fix it.

**Sen. F. Hinds:** This Bill before us speaks of “any unit of the Defence Force”. In the other place they had spoken about “any member”, an individual, and the relevance of that would be demonstrated shortly.

Item four: The measure is subject to subsection (2C). What is (2C)? Subsection (2C) says:

“Where a member of the Defence Force has arrested any person pursuant to subsection (2A) he shall, without delay and in any event as soon as is reasonably practicable, hand that person and any items seized over to the senior police officer whom he is assisting or to the nearest police station and record or cause to be recorded the circumstances occasioning the arrest.”

That is a big problem by itself because we saw during the state of emergency, contrary to what the AG told us, there were many reports of out-and-out brutality by the soldiers on people of this country. I am not condemning them. [*Crosstalk*] They are trained in a certain way, and when you introduce men who are trained the way soldiers are into the theatre of conflict that is civilian life you have an issue.

**Sen. Ramlogan SC:** “Killin machines, man. Killin machines.”

**Sen. George:** Thirty-one.

**Sen. F. Hinds:** And I will come back to that. So what happens is that when the soldiers went out there and arrested people and in some cases, unfortunately, without instructions from their seniors no doubt, beat people—I have particular knowledge of a case where they left a man for dead somewhere in Guapo. This is reality and I can prove that. This is truth. Okay?

**Sen. Ramlogan SC:** “And police doh do dat?”

**Sen. F. Hinds:** When they bring these matters—they arrest people without the police and they bring them—the police say, “we doh know what yuh do, we doh know how you arrive at dat, we not taking dat.” That is a problem.

I want the AG to understand that.

**3.15 p.m.**

Madam Vice-President, item five: they introduced in this Bill, the one before us, under the command and control of the Chief of Defence Staff and not the Minister, when they went to the other place, they had where the Minister, especially the current Minister of National Security, that frightened me, because we saw what this Government did with the defence force under similar authority against the re-route marchers—the re-routers in Penal and Debe—[*Interruption*]

**Sen. Ramlogan SC:** That matter is before the court.

**Sen. F. Hinds:**—one morning after he became the Minister of National Security, we would not forget, and that this Government defended it. So, Madam Vice-President, when that was raised in the Lower House, they made another change, change number five, and they said we will move the control from the Minister and put it in the hands of the Chief of Defence Staff for operational purposes, as though that brings some comfort to us—semantics—and my colleagues here will demonstrate why that offers no comfort to us and no comfort to the people of Trinidad and Tobago quite easily.

Madam Vice-President, item number six: that the CDS has to draft a code of conduct. A code of conduct? We have a code of conduct that governs the lives and the behaviour of Members of Parliament and Ministers of Government and we still have plenty problems with them. Code of conduct? The Integrity Commission has code of conduct; that restrains them and their friends? That does not give us too much comfort. Let me say in passing that in—[*Sen. Ramlogan SC stands*]

**Sen. Ramlogan SC:** Madam Vice-President—

**Sen. F. Hinds:** Why am I being—[*Sen. Hinds sits*]

**Sen. Beckles:** “Doh let him distract you.”

**Sen. Ramlogan SC:** Madam Vice-President, Standing Order 35(5). I think the Senator is imputing improper motives time and again, and it is on a number of occasions. For example, just a little while ago, he said that the soldiers would have been instructed to beat people and so on.

**Sen. F. Hinds:** I did not say that!

**Sen. Cudjoe:** He did not say that!

**Sen. F. Hinds:** I did not say that! I was clear.

**Sen. Ramlogan SC:** Well, we could look at the *Hansard*, but I think it is irrelevance and also imputing improper motives.

**Sen. F. Hinds:** Madam Vice-President, I want to make it—[*Interruption*]

**Madam Vice-President:** Sen. Hinds, there was a Standing Order called, 35(5), imputation of improper motives. I am just going to ask you to tread carefully. I know you are emotional and very passionate about what you are going to say, but bear in mind the Standing Order please.

**Sen. Ramlogan SC:** More like hysterical!

**Sen. F. Hinds:** Madam Vice-President, I am far from emotional, it is just that this Government is dark, shady, untrustworthy and frightening. [*Desk thumping*] Unemotionally!

Madam Vice-President, in Northern Ireland where soldiers have been introduced into the theatre of conflict in that place because of the extreme circumstances of Northern Ireland in the context of the democracy of the United Kingdom, I want the Attorney General to know—and I lived through some of it. I was in London studying at the time when we had to be careful standing next to a dustbin on the train. The IRA was busy in Ireland and in England to fight their political battles. I lived through some of that. I want him to know that there are strict protocols—no code of conduct—in relation to the management of the army, the handover of the troops and powers of arrest and other policies. There was a time there was a so-called shoot-to-kill policy in Northern Ireland that caused no end of trouble in that democracy in terms of the use of force and detention. We could elucidate on that but I want to press on, time is short.

Item number seven: the question of (2C), I dealt with that a while ago, where they must hand over persons and items seized as soon as practicable. That is in this Bill before us and it was not there in the other place, and that the senior police or police—yes, so they must hand over these things.

Item number eight: an amendment to the Police Complaints Authority. When they came in the other place, they had no regard for the impact of what they brought on the Police Complaints Authority. The director of the Police Complaints Authority is out there saying, “You did not consult me.” “Voops! Vaps! Wild! Vaille-que-vaille!” [*Desk thumping*] So they brought this and now we have a change in the measure and a change in the name to accommodate what was pointed out to them in relation to the Police Complaints Authority. Finally, Madam Vice-President, they now said—it is so unpalatable to the society, they tried to give us a palliative by introducing a sunset clause for two years.

So we saw nine significant changes in what was presented elsewhere and what is now before us. Policy on the hoof! [*Desk thumping*] Thinking it as you run, but you started off from nowhere, and “dey say when ah man does not know where he is going, any road will take him there!” This Government is taking us down a dark and shady road. [*Desk thumping*]

Madam Vice-President, clause 5 of what is in front of us says and I quote:

“Section 4 of the Police Complaints Authority Act is amended in the definition of ‘police officer’ ...”

So they amend the Police Complaints Authority Act which spoke of police officer to include members of the defence force. Let me demonstrate to you something else. I have in my possession here, as we all do, the Criminal Law Act, Chap. 10:04 of the laws of Trinidad and Tobago. In section 3 of that law, Madam Vice-President, section 3(2), (3), (4), (5), (6), it deals with arrest without warrant. Let me just run 3(2) for you:

“Any person may arrest without warrant anyone who is, or whom he, with reasonable cause, suspects to be, in the act of committing an arrestable offence.”

Anyone, any person, including a member of the defence force! [*Desk thumping*]

**Sen. Al-Rawi:** “Yep!”

**Sen. F. Hinds:** This is in the laws of Trinidad and Tobago.

**Sen. Al-Rawi:** Read that again!

**Sen. F. Hinds:** Subsection (3) says:

“Where an arrestable offence has been committed, any person may arrest without warrant anyone who is, or whom he, with reasonable cause, suspects to be, guilty of the offence.”

**Sen. Beckles:** Photocopy that and pass it around.

**Sen. Al-Rawi:** The law!

**Sen. F. Hinds:** The law!

**Sen. Al-Rawi:** As it is and has always been.

**Sen. F. Hinds:** Subsection (4) says:

“Where a police officer, with reasonable”—and this is a police officer in particular—“cause, suspects that an arrestable offence has been committed, he may arrest without warrant anyone whom he, with reasonable cause, suspects to be guilty of the offence.”

Subsection (5) speaks of a police officer may arrest without warrant any person who is about to commit—who he has reasonable cause to feel is about to commit an offence.

Subsection (6):

“For the purposes of arresting a person under any power conferred by this section a police officer may enter (if need be, by force) and search any place where that person is or where the police officer, with reasonable cause, suspects him to be.”

And subsection (7) says:

“This section shall not affect the operation of any written law restricting the institution of proceedings for an offence, nor prejudice any power of arrest conferred by law apart from this section.”

Madam Vice-President, this Criminal Law Act goes on to list penalties for assisting offenders. I am saying to you, the Attorney General told us about a situation where—“I doh know where he got that”. I, myself, as a former police officer, was on several operations with soldiers through the 1970s and 1980s, many of them, from Mayaro to Guanapo to Tucker—one of the toughest I have had was down in La Horquette one morning about five o’clock. I have been through it. I told you all last—in another debate, I was the only police officer with a platoon of soldiers for three days and three nights in the heights of Guanapo on a particular operation. I know what I am talking about.

This Attorney General told us about this scenario where “police go in to raid ah house and police coming in de front and soldiers coming in de back”. “Is ah stu”—look! [*Desk thumping*] Bunkum and balderdash! [*Desk thumping*]

**Sen. Al-Rawi:** Explain why!

**Sen. F. Hinds:** Because, Madam Vice-President, “it doh work so”; it simply does not work so. In any event, if two men are walking out the house with their bosoms stuffed and what appears to be firearms, you think the soldiers—the Attorney General foolishly—sorry, I am not saying he is foolish, but as he told us foolishly. [*Laughter*] You think, Madam Vice-President, the soldiers standing up and watch “de” man? [*Interruption*]

**Sen. Beckles:** And the police. “Where de police?”

**Sen. F. Hinds:** After the police enter the front door, “dey stay in the kitchen—[*Interruption*]

**Hon. Senator:** “Dey put down their handcuff.” [*Laughter*]

**Sen. F. Hinds:**—dey doh bother to come out de back and de men walking out”. [*Desk thumping*] I mean it is just not making sense. That is what the Attorney General came to tell us here today to give us the encouragement, the motivation, to make a fundamental change, different from all the regions in the Caribbean that he spoke about because I have already demonstrated no question of powers of arrest. That is what he came here with?

**Sen. Ramlogan SC:** “You for real, boy?”

**Sen. F. Hinds:** So, Madam Vice-President, notwithstanding the nine improvements to what was offered to this country in the other place, I submit to you that what is now before us is still philosophically, constitutionally, pragmatically, conceptually and legally flawed. It is typically UNC. [*Desk thumping*] Typically UNC!

Madam Vice-President, we are here today because the Minister of National Security jumped up one morning—and I heard the Attorney General tell us a while ago that it is not about precepting. I want to remind you, Mr. Attorney General, that it was your Prime Minister who repeatedly told this country about precepting soldiers. [*Desk thumping*] I want to tell you, it is your Minister of National Security who told this country about precepting. All the media and all the commentators who used the word “precepting”, it is because they got it from, presumably, an authoritative source in the Prime Minister and the Minister of National Security. Now they know. [*Desk thumping*] Now they know!

**Sen. Ramlogan SC:** “Read the Bill before yuh!”

**Sen. F. Hinds:** Now they know that they cannot trust this Government as far as their hands could throw them. It was a hare-brained scheme. It was the Minister of National Security who told this country that he was going to precept a thousand soldiers. When this measure came, we did not see anything about “thousand” in it, we saw defence force which—let me correct the Attorney General; he said it comprises of three units. There are four formations of the Trinidad and Tobago Defence Force—the regiment, the coast guard, the air guard and the reserves when they are called out for duty. [*Desk thumping*] Four formations!

This measure is not about precepting them. He is right on that but for the wrong reason. [*Laughter*]

**Sen. Ramlogan SC:** “Spoken like ah true junior Minister of National Security!”

**Sen. F. Hinds:** He is right but for the wrong reason.

**Sen. Beckles:** We know that!

**Sen. F. Hinds:** He does not tell the country that they are amending the general law, and it affects not just the regiment, not just 1,000 people in the regiment or personnel, but it affects the entire defence force. [*Desk thumping*] The coast guard already had those powers on the high seas for obvious reasons. Now, it will extend to them on land “so de coast guard could lock yuh up too”.

**Sen. Lambert:** So, what is wrong with that?

**Sen. Ramlogan SC:** Not the coast guard!

**Sen. F. Hinds:** And hear the unionist, Sen. Lambert, asking “What is wrong with that?” Well, if you listen, I will tell you. [*Crosstalk*] If you listen! When I was in the police service and we worked together with soldiers, we used to call them “poldiers”. Well, “ah rastaman told me yesterday, he said, ‘buh Brother Hinds, dey want to bring solice’”. [*Laughter*] He calls them “solice”.

**Sen. Ramlogan SC:** He takes solace in that!

**Sen. F. Hinds:** Yes. Madam Vice-President, the measures before us have obviously caused a stir because it is fundamental. You know, it is a radical shift from where we were. There are some who support these measures: Daphne Bartlett and the South Chamber; the Chamber of Commerce—[*Interruption*]

**Sen. Ramlogan SC:** DOMA.



**Sen. F. Hinds:** But, remember the Chamber of Commerce supported the state of emergency until Christmas.

**Sen. Cudjoe:** Yes. [*Desk thumping*]

**Sen. F. Hinds:** And when Christmas came and it began to hurt their pockets—[*Interruption*]

**Sen. Beckles:** Pressure!

**Sen. F. Hinds:**—and they realized that we were not getting any guns to stop crime in a meaningful way, they started to call on the very Government to pull back. [*Desk thumping*] The Commissioner of Police—and the Attorney General referenced a while ago the *Newsday* headline where he said “Soldiers help”. Well, of course, the Commissioner of Police is in a very precarious position. [*Desk thumping and laughter*] But the *Mirror* highlighted something over the weekend, and we know, we know, the gentleman, Mr. Persad, who wrote the Prime Minister. We know! The Commissioner of Police is at risk. [*Laughter*] We understand that! He too, and a few other stragglers supported this.

The Government itself, why it resorted—I have never seen that; I have been in this Parliament for near 15 years in the other place and here. The Government resorted in this to a very silly ad campaign. I would open my papers and see “ah grinnin’ Prime Minister” full page ad, telling us about some of the things she said in the other place about this frightening and dark Bill, so-called amendment to the defence force. Full page ads, costing \$15,000 and \$20,000 at a time.

**Sen. Beckles:** Desperation!

**Sen. F. Hinds:** I sat here last week in the Parliament and opened an envelope and my blood crawled, Madam Vice-President, and I had to ask my God forgiveness and protection as I pulled out from an envelope a letter from the UNC signed by one Stacy Roopnarine representing the UNC Women’s Arm asking me, as a Senator, to support this. “She could support it if she want, not me!” [*Desk thumping*] She thinks because she is sitting on the back of the tiger it cannot bite her. Sent that to all of us. I asked God forgiveness, I touched it, I read it and I put it down again.

**3.30 p.m.**

Madam Vice-President, this is not about precepting but this is worse, because under a precepting programme, the Commissioner of Police can grant a precept, which is nothing more than a sworn oath giving certain powers under the Supplemental Police Act. And, again, when I was a police officer, I worked in the Supplemental

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Police Department in the commissioner's office so I issued precepts myself. I know what I am talking about. If you misconduct yourself, the commissioner can easily revoke it. This is worse, because here we are amending the law and all members of the defence force will be given this power, according to the Attorney General, when they are assisting the police.

**Sen. Ramlogan SC:** Yes.

**Sen. F. Hinds:** And the commissioner “cyah” revoke nothing”, and to revoke that we will have to come back to the Parliament to revoke it by—as we did with section 34. “We hah tuh come back”. This is about a whole new regime granting powers, a dangerous concoction of men who are trained to kill and to wipe out, and introducing them into the civilian population.

Let me say immediately, they have been working in the system now for about 40 years, since 1970—[*Interruption*] Just now, I am coming to that. I am coming to that. “It eh no contradiction.” I am coming to that. They have been here all along and I will demonstrate what I mean.

There are those who have demonstrated objection to these measures. That includes, very proudly, the People's National Movement. We object to this, without apology. DOMA, as far as I am aware, objected to this. Sergeant Ramesar who heads and speaks for the Police Social and Welfare Association objects to this; Transparency Institute objects to this; the Law Association; NATUC; OWTU; MSJ; FITUN; only James Lambert from the trade union supports this; the voices from the ghetto—[*Desk thumping*] I have been on the ground in Sea Lots, in Beetham, in Laventille. They are objecting to this. The rank and file of the regiment, objecting to this. The Police Complaints Authority, objecting to this, the Criminal Bar Association, objecting, and Fixin' T&T signed a petition of about 10,000, I am told, objecting to this. I am told. [*Desk thumping and laughter*]

**Sen. Ramlogan SC:** “Dat like de petition all yuh present to de President.”

**Sen. F. Hinds:** This is a serious matter you know. Madam Vice-President—[*Interruption*]

**Sen. Beckles:** Do not get distracted.

**Sen. F. Hinds:**—the organizations that I have just mentioned represent thousands—[*Interruption*]

**Sen. Ramlogan SC:** “Yuh here tuh represent.”

**Sen. F. Hinds:**—and thousands of people across Trinidad and Tobago. I identified a few individuals you know. Derek Smith, writing in the papers; Eugene Bass; my brother Muhammad Shabazz; Attorney Jason Jackson, expressing serious concerns and reservation and many other voiceless people on whose behalf we speak in this Senate today.

Madam Vice-President, Daphne Bartlett—and I have nothing personally against her, I do not even know her, I have never met her, but she represents a feeling. We have a crime problem in the country, a serious problem, and people want a relief, so she, like so many other people, throws caution to the wind and says since we have a crime problem and we want relief, anything is better than this. So they run and agree with the Government on something that they do not even fully understand. They did it with the SOE. I heard people, the same kind of national debate: should we or should we not have an SOE? It eventually hurt the economy. It has shown no dent in crime; “no set ah guns was recovered.” It breached people’s constitutional rights.

**Sen. George:** It saved many lives.

**Sen. F. Hinds:** All of that. More—and you know, as soon as it was lifted, the situation plummeted again. Most persons want a relief from crime and that is understandable. The question is, they must ask themselves coldly: does giving police or soldiers powers of arrest, does that improve the crime problem in Trinidad and Tobago? That is the big question that they have to ask themselves. [*Desk thumping*] And I will demonstrate to you why the answer is no.

I want to tell the Daphne Bartletts of this world that the SOE appeared to be a very good thing, but what became of it? The conventional wisdom is now it did not serve its purpose, it hurt the economy, it trampled on people’s rights and it took us nowhere. Madam Vice-President, they used it to suppress the figures. This Government is all about a facade.

Section 34, big debate in the society, that too appeared to be very noble and good law. It took in many of us in this very Senate, even as parliamentarians, lawmakers—  
[*Interruption*]

**Sen. Ramlogan SC:** “But you vote for it!”

**Sen. F. Hinds:**—and we voted for it—[*Interruption*]

**Sen. Ramlogan SC:** Yes!

**Sen. F. Hinds:**—but what did it do? It led to the release of two of their friends and financiers. They revoked it and nothing else.

**Sen. Ramlogan SC:** Madam Vice-President—

**Sen. F. Hinds:** It led to that.

**Sen. Ramlogan SC:** Madam Vice-President, that is a matter, as my learned friend knows, Standing Order 35(2), that is before the court and I ask him to withdraw those comments. He knows better. He is a lawyer. He should know better.

**Madam Vice-President:** Certainly, I agree. I am going to ask that you withdraw those comments concerning that matter on section 34 and also to advise you again, stick to the Motion in front of us, please.

**Sen. F. Hinds:** Is my friend saying that it is sub judice? On what basis am I to withdraw it, Madam Vice-President, is it sub judice?

**Madam Vice-President:** It is a matter before the courts.

**Sen. F. Hinds:** All right, I withdraw. You do not know the meaning of “sub judice”. You need to get another Silk. It does not constitute—but for your sake, Madam Vice-President, not his, I will withdraw it, for your sake and to get on with my debate, but it is not sub judice.

**Sen. Ramlogan SC:** Yeah.

**Sen. F. Hinds:** It is not and I would debate that with him any time.

**Sen. Ramlogan SC:** Sure!

**Sen. F. Hinds:** Good!

**Sen. Cudjoe:** That is what happens when “yuh give yuhself” Silk.

**Sen. F. Hinds:** When we spoke about the hiring of the Minister of National Security, there was debate, but where has it taken us? Where has it taken us? When we debated and discussed over and over, the dismantling of SAUTT, that appeared to be a good thing. Acting Commissioner Williams supported it, Julie Brown supported it, Surajdean Persad and others supported, but what has it led to? We now have 100 murders in the first three months and a mini state of emergency in Morvant, Beetham, Sea Lots and Laventille, to suppress it again. “Peeeeep”, go ahead, if you feel that is the solution to it and you are not bringing in any guns, because once the weapons of war are still in the atmosphere you will have the problem over and over again.

But what about our border security which you dismantled with your own hands, playing your silly political games: selling the blimp and selling the OPVs? Brazil has seen a reduction in crime. One of them said so. Selling the blimp and selling the

OPVs—[*Interruption and crosstalk*] It seemed to be a good thing too, just like giving powers of arrest to soldiers. But what has become of it? It has left our borders with big gaps and big holes, when we were trying and we had already paid money to fix it. Hiring Resmi seemed like, to them to be a very good thing. She was bright, according to them; she was young; she was a woman and where did it take us?

**Sen. Ramlogan SC:** Having you as Minister of National Security did not help you.

**Sen. F. Hinds:** Madam Vice-President, all of those I have just given you, in the words of Clarence Rambharat, reflect a failure in judgment and due diligence on the part of the Prime Minister and her Government. [*Desk thumping*]

The Attorney General told us a while ago, and I am responding to him, Madam Vice-President, that the role of the army has to change to meet with modern-day realities, because if Trinidad and Tobago came under attack from some foreign country we may have to call Uncle Sam. They called Uncle Sam over the last 48 hours. He shut the door on them, either because he does not trust them or because the Government is suspect. So, “doh” call Uncle Sam; he will not answer you Attorney General. He does not trust you. What a shame! [*Desk thumping*] Because he knows—Uncle Sam does not trust you and I will leave the rest for another place, outside of this House.

According to the Attorney General, the only time, and I am quoting him, he said it a while ago: the only time the defence force could function legally is during the state of emergency or during war.

So, is he saying that since 1962, when we had, by virtue of our independence, to have a defence force, notional or nominal as it was, they were operating illegally since then? Is it that what the Attorney General is saying? I want to know, just like with section 34, just like the state of emergency, just like the hiring of Resmi, just like the retention of Minister Jack Warner in the Cabinet, I want to know what is the real reason why this Government wants to make soldiers police. [*Desk thumping*] I want to know that.

**Sen. Singh:** Why did you all do it?

**Sen. Ramlogan SC:** Why did you all do it?

**Sen. F. Hinds:** Well I—you see, I am going to answer that very quickly. Soldiers have been in the atmosphere helping and—

**Sen. Ramlogan SC:** “Aaah.”

**Hon. Senators:** “Aaah.”

**Sen. F. Hinds:**—as an aid to the—[*Interruption*]

**Sen. Ramlogan SC:** “Now yuh talking.”

**Sen. F. Hinds:** It is true. And we were also—it was recommended to us, it was recommended to our Government by the then Chief of Defence Staff—[*Interruption*]

**Sen. Ramlogan SC:** And Justice Cross.

**Sen. F. Hinds:**—and, no, no, he—Justice Cross never recommended giving police powers to soldiers. Justice Cross recommended that the role of the army should change to meet with current—how you do it is your issue.

**Sen. Ramlogan SC:** To what, to what?

**Sen. F. Hinds:** We were told—[*Interruption*]

**Sen. Ramlogan SC:** No, no to what? Change to what?

**Sen. F. Hinds:** Madam Vice-President, your protection.

**Madam Vice-President:** Members, allow Sen. Hinds to make his contribution in peace, please? [*Desk thumping and crosstalk*]

**Sen. F. Hinds:** Please, please, Attorney General, please, please. Madam Vice-President, we considered it and rejected it because we saw that there were some problems, serious problems, some I will allude to very shortly.

The Attorney General said, in the other place, the purpose of the amendment before us was to expand the role and function of the defence force and to give it different “protections” because they are now acting outside of a period of a state of emergency. So, suddenly, this Attorney General converts this about protecting the poor soldiers. What protection? What protection? This is not about protecting any soldiers. This is about more work for soldiers. This is about more exposure. When we put soldiers out there, the idea was that they would go, do the work and go back to barracks. The army was supposed to be a camouflage, faceless machine, come into the theatre of conflict, deal with the situation and go back to barracks. Sadly, it did not work that way; because of shortages and inefficiency in the police service, they stayed out there until then.

This Government is now going to institutionalize it and I will demonstrate to you very quickly how that is dangerous because right now, in the prison, prison officers are complaining that when they try to discipline inmates, inmates with cell phone and all “kinda thing threatening dey wife and children” outside and stymieing their work inside the prison. Police officers have been reporting for years, “people

bombing dey house, threatening dey family because dey doing dey work in some community or the other across Trinidad.” What they are just doing is introducing the soldiers to the same thing. They will no longer be faceless. They will be here civilianized, mixing with the population, and their families will come under attack too. That is all they are doing and they are creating instability. So this is not about protecting “no” soldiers, this is about more litigation and liability.

The Attorney General as Attorney General knows full well, every single day he has to deal with a number of constitutional motions against the State for infringements of people’s constitutional rights.

**Sen. Ramlogan SC:** By who?

**Sen. F. Hinds:** All this would lead to—by soldiers, police—

**Sen. Ramlogan SC:** Or.

**Sen. F. Hinds:**—coast guard, everybody and this will lead to only more of that. This is nothing about protection. This has to do with more work for them, more exposure and the law already, as I demonstrated, permits the soldier to act under the Criminal Law Act without necessarily having the police powers.

Now Madam Vice-President, in an attempt to explain the concept of assisting, the Attorney General said, and I am quoting him in the other place:

When any unit of the defence force is charged with the duty of assisting any member of the police service, and that is the first point, it is when they are on exercise with the police and they are assisting.

If the Deputy Commissioner of Police, Richardson, calls a warrant officer or a captain in the army and says: “I need your help in Carenage now”, he “doh” have to be there. He could do it by email. He could do it by fax. He could do it by telephone. He could do it by wireless. And as far as the captain getting the instructions—or he calls, sorry, the Chief of Defence Staff who instructs his captain because soldiers move on command.

This is another problem with this, police powers. When a man joins the police service and you swear and you become a member you have the same powers under law as the commissioner, immediately. He is the chief constable. You may be last joined but you have the same powers of arrest under law. Soldiers “doh work so”, soldiers work on command. Soldiers work on command. And when you see a platoon of soldiers, take it from me, a platoon consists of 30 men and women, every single file, it is 10 files of three to make 30, every one of those three is a section and in a conflict everybody knows what they have to do. “Police does work as” individuals, soldiers work under command, they train differently.

**3.45 p.m.**

Let me tell you quickly. One day I am driving across Knox Street, some incident took place in the Square in the area of the public toilet there, and I saw some soldiers and police emerge from a vehicle to approach that scene. I am in my car as another citizen just watching this. The police ran towards the situation down by the toilet, ran, weapons in their holsters, weapons hanging low, because in their understanding of this society, whatever it was, their mere presence could quell it. I am not saying somebody could not open fire on them running coming, but they did not anticipate that because they have a feel of the society, the culture, what is likely to happen, at that time of the day, the circumstance.

I watched the soldiers from the same patrol approach that toilet. I was amazed and I saw therein the distinction between the training of police and soldiers. I saw the soldiers up with their firearms, in the ready, right arms parallel to the ground, looking through their sights and moving towards, Madam Vice-President, that toilet, “ah say, Jesus Christ”; therein is the difference. [*Crosstalk*]

I went one Saturday morning when we just introduced the “Jack patrols” in Beverly Hills and in other parts. I went to see for myself what this patrol with soldiers was about. I saw soldiers literally back to back going through the community on patrol, and I said if they had to open fire here today, “is ah different kettle ah fish”. [*Crosstalk*]

Madam Vice-President, this question of assisting, the Attorney General and my friends here and others, the Attorney General will do well to listen, and to understand that his formulation of assisting is far too wide. Raffique Shah gave an example, one that I was giving before he wrote it, so I can repeat because more people might have read what he had to say. He said what if this platoon of soldiers is going up the Lady Young Road to some situation in say, Tunapuna, and they run into a massive shoot-out in the Croisee, what are they going to do? As a former army officer himself—are they going to say we will wait until we get to Tunapuna, start to assist the police and come back? They will emerge from the vehicle and they will treat with the situation.

So this question of assisting, I am telling the Attorney General, the way this is formulated so unwieldily, it leaves the opportunity for assisting to be interpreted in any number of ways not necessarily in the presence of police officers. So this question of assisting, and they are not going to be prosecuting, and they could arrest, but they would not be dealing with evidence and all of that, it is unwieldy, it is wild, and while the Attorney General says it, it does not take us very far in law.



So he goes on to say: you must not be just called out by the police to assist, you must be engaged in so doing. The example I gave you, they could be very well engaged in assisting the police but no police around. What if—soldiers tend to be fitter than officers, soldiers love the bush, I must tell you as a policeman I liked it too—Madam Vice-President, they encounter a scenario and three assailants, three insurgents or three bandits—*[Interruption]*

**Sen. Ramlogan SC:** “Careful wha yuh saying.”

**Sen. F. Hinds:**—they run off and the soldiers get 200 yards in the bush ahead of the police; you call that assisting or you call that hot pursuit?

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

*Motion made:* That the hon. Senator’s speaking time be extended by 15 minutes. *[Sen. P. Beckles]*

**Madam Vice-President:** Hon. Members, before I do propose that question, I would like to recognize former Member of Parliament, Joan Yuille-Williams who is here today with us. Welcome! *[Desk thumping]*

*Question put and agreed to.*

**Sen. F. Hinds:** *[Desk thumping]* I simply want to say to the Attorney General and our colleagues on the other side, this thing about case being prejudiced is a non-starter. The biggest drug find we had in this country—about \$800 million worth of cocaine was taken from Monos Island about three or four years ago, or a little longer than that, I have some personal knowledge of some of that. I will tell you something, Madam Vice-President, it was not discovered on the high seas. It was discovered on the island and it was coast guardsmen who went and retrieved it and brought it into Stables, and it was coast guardsmen who arrested the men on the island, not on the high seas and seized the items on the island, and brought them to Trinidad, and these men went to court, first instance Court of Appeal, I think Privy Council too, they lost their appeals and many of them are now serving life and other sentences. The coast guard never gave evidence. *[Desk thumping]* Bunkum and balderdash! Bunkum and balderdash!

Madam Vice-President, this measure raises big and yet unanswered questions, and I have just demonstrated how the Attorney General very glibly runs over these matters hoping to impress the unwary souls, but we in this Senate on this side, we are made of sterner stuff. *[Desk thumping]* Who will be in charge? Would an army sergeant major—and a sergeant major in the army I would say is

the equivalent of an inspector of police. Would an army sergeant major who wears a wreath and the coat of arms with a wreath, would an army sergeant major with powers of arrest, would he be senior to the police sergeant on the exercise, assuming they work together? If there is a discrepancy between whether a certain action should be taken or not in the theatre of conflict, who is in charge? Would an army officer, a private or a corporal be senior to a captain who does not have powers of arrest? Will any situation arise where an army private could arrest an army captain or a lieutenant colonel, because he, the private has powers of arrest?

**Sen. Ramlogan SC:** If he breaking the law, yes.

**Sen. F. Hinds:** If he is breaking the law, yes. You see, you have no sensitivity and regard for army and the regime of military operations. There are regulations in the defence force which permit against that.

**Sen. Ramlogan SC:** No. Not when—[*Inaudible*]

**Sen. F. Hinds:** So you are saying—well, you see what the Government is encouraging, they are destabilizing the regiment and the harmonious relationship that now subsists between police and soldier, it was not always so. There was a time when army and police had conflict and over the years that has healed, they work together. What you are now threatening to do is to interfere with that balance [*Desk thumping*] and create problems where none ought to exist.

Madam Vice-President, there are some other serious questions. Pursuant to section 5 of the Police Act, Chap. 15:01, you see in section 5 of the Police Act where the police are authorized by the President to carry arms. There is no such provision in the Defence Act. “AG, ah wah yuh hear dis.” There is no provision in the Defence Act giving the army permission, as exists in section 5 of the Defence Act, to bear arms. [*Interruption*] That has to be addressed.

What are these privileges and immunities? You know, we talk about privileges and immunities in the Visiting Forces Act. I was in the Parliament when we spoke and passed in that debate in 2007. We said the Visiting Forces Act, section 5(1):

Members of a visiting force shall enjoy immunity from the civil and criminal jurisdiction of Trinidad and Tobago in respect of actions taken in the course...”

This was with the World Cup—we got a report today—so we had troops from all over the region coming in and we did an amendment to the Visiting Forces Act to permit that. Can a member of the Trinidad and Tobago Defence Force with police powers arrest another member? Could the Trinidad and Tobago Defence Force carry explosives?

The Geneva Conventions Act, No. 25 of 2008, speaks to armed conflict of a non-intentional character and provides for the protection of victims under non-intentional armed conflict. Assisting the police service in the maintenance of law and order may fall under one of the following categories: you may either have insurgency, belligerency, a war of national liberation and the ordinary gang warfare and criminal activities. Would the provisions of immunity conferred on the Trinidad and Tobago Defence Force personnel, under this amendment, conflict with the requirements under the Geneva Conventions Act, No. 25 of 2008? I am sure this is not a question that even arose in the Attorney General's mind, just like the Police Complaints Authority and they just ran quickly and made an adjustment to that—right?—once they see these kinds of issues arising, these are serious matters, serious matters.

In the US as a principle, there is the principle or the law, what they call *posse comitatus*. It simply says, that the American—the United States—has a policy, a principle, a law that says we will not use our armed forces against our civilian population. We brought our soldiers out, it has caused trouble. The first battalion of the defence force is no longer what it used to be, because their whole training routine—they are the ones who provide the soldiers out here—their whole training routine broke down because of the call the society made on them. We should be increasing the strength of the police service, providing more training for police officers to deal with this. [*Desk thumping*]

Because if the problem is crime—[*Interruption*] Attorney General, I tell you, you are wasting time. [*Interruption*] If the problem is crime, then crime detection is the issue, more soldiers with police powers or soldiers with police powers will not make our detection capacity any better. [*Desk thumping*] So if you discover that there is a problem, what is the problem? And I submit to you, Mr. Attorney General and your Government, that more soldiers will not solve that problem. I was told by Minister George that I had contradicted myself when I said the soldiers were already out there, and giving them police powers is a different scenario altogether. This is also a human rights issue.

The United Nations has recently condemned the Indian Government for a similar law giving its military police powers—[*Desk thumping*]*—that is before the UN as we speak. You mean, we want to distinguish ourselves in the Caribbean that did not give police powers of arrest to their people under the different legislation he quoted, and we want to go and get ourselves discussed at the level of the United Nations as we are now being discussed by the IRS and the FBI?* [*Desk thumping*]

**Sen. Al-Rawi:** FATF.

**Sen. F. Hinds:** And FATF. India, Israel and Argentina, these are countries where their soldiers have military powers, but if you look at those circumstances, especially Israel, since 1947 they have been made by the British to occupy Palestinian lands and war has reigned ever since; a different scenario. That is not Trinidad and Tobago; even Jamaica is not like Trinidad and Tobago.

I went to Jamaica some time ago, went to do a little visit on the prison just to satisfy my curiosity because I was, of course, involved in managing the prisons here, Madam Vice-President, and when they pressed the buzzer “ah see ah shutter, and when ah look, ah see ah soldier, ah helmet with camouflage through barbed wire looking at me from in ah jail.” We are not like that. Is it there they want to carry us? What are their reasons?

It is said by the United Nations in its report on this Indian question that when you give these soldiers the immunity that this Government is wanting to give, and police powers of arrest, it urges them—and I am quoting—to greater abuses. Greater abuses!

I will say as we approach our conclusion, training is something else. In the 1980s there was a complaint from I think Pan Trinbago or the NCC, some Carnival commission, that they were spending too much money in Panorama and Carnival shows on police with extra duty and overtime. So they decided to solve that by bringing soldiers to manage the population in Queen’s Park Savannah that year. “Well it was ah horse of ah different colour. Dem soldier was taking people and throwing them bodily off de stage,” the way soldiers know how to do it. They never came back. It was police all over again, because the police understand how to deal with elements. The police philosophy is the use of reasonable force. The police are trained—I was a police instructor—to use reasonable force. If the man has a penknife, and you go and you take your gun and kill him, you have a problem. Was that reasonable? That is how lawyers are trained. That is how the police are trained.

The soldier has no such concept of reasonable force; he is about wipe out, kill; his philosophy is advantage. So if the soldiers know there are 100 men waiting for them in Cumaca, they send 300 men. If the men have pistols, they send them with machine gun. If the men have machine gun, they send them with—in the old days we used to have Bren gun—GPMG—“is to wipe it out”.

**4.00 p.m.**

**Sen. Ramlogan SC:** How about the security guards?

**Sen. F. Hinds:** I am not speaking to you, you know. And I am saying to you, Madam Vice-President, that in a crisis situation the soldiers are going to revert to their basic training and instincts. As they said in the United Nations, when you give them immunity, that might give rise to further abuses.

So, Madam Vice-President, yes, as I wind to my conclusion, the Attorney General tells us about protection and these poor soldiers and the need to help them. Well, there was a soldier by the name of Curtis Marshall. He lost his life in strange circumstances in an army barracks. He is dead. I feel condolences for his family. Up to now we do not know who did it and what was the real cause. Are we going to give possible powers of arrest to those who perpetrated it? “We doh even know who do it.” And I will tell you something, Madam Vice-President, I have information, as a fact, that all that is due and owing under the Defence Act to the Marshall family—I would not call the number, but it is a pittance in terms of what the Act and the computation for a death benefit provide him.

If the Attorney General and this Government want to protect soldiers, they do not want police powers of arrest, they want improved pay. [*Desk thumping*] They want better terms and conditions. [*Desk thumping*] That is how they want to be treated fairly. They want group life insurance. They do not want your bogus help and protection. They want better terms and conditions because right now all you are doing is giving them more work, more exposure, more trouble, more liability and nothing more in their pockets and there is a problem.

One of the reasons why we did not go ahead to give them the powers that were recommended by a former Chief of Defence Staff, we realized there are cultural differences. Police get overtime and when the police and the soldiers work together for the same period—soldiers right now in Laventille “working” 24 on 48 off or 24/24—it is affecting their family lives and they are out there 24. You heard the commissioner and the Attorney General boasting about “crime gone down in Laventille because there is a mini state of emergency and it is the soldiers and police presence that doin it”. Given!

**Sen. Ramlogan SC:** “And that is a bad ting?”

**Sen. F. Hinds:** I never said that. What I am saying is, when the end of the month or the end of the quarter comes and “the police” getting his \$60,000 overtime and his \$50,000 overtime, the soldier gets nothing. So on behalf of the

soldiers, if you want to give them any protection, improve their terms and conditions and their pay packet. That we will support! That we will support!  
[*Desk thumping*]

**Sen. Ramlogan SC:** “Why allyuh din do it? Why allyuh din do it? When you were Minister at national security, why you din do it?”

**Sen. F. Hinds:** Madam Vice-President, as I come to my conclusion, I would like to say that these measures that are now proposed will not in any way improve the lot of the Trinidad and Tobago Defence Force. It will not improve the capacity to investigate and solve crime by the Trinidad and Tobago Police Service. The detection rate will not be improved. In fact, it has been declining over the last seven years. Undercover operations need to improve if we have to solve crime. The witness protection programme is what we need to improve. We need to improve the investigative powers of the Police Complaints Authority, perhaps. We need, most of all, to lead by example.

And I will conclude to tell you—[*Interruption*] Frightening—yes, just to conclude. Madam Vice-President, I think I understand the sinister plot behind this Government’s plan. The people of Laventille, the people of Sea Lots, the people on the corridor believe, since the soldiers will not be given powers to investigate any crime and so, what they will be doing is just applying—this Government intends to apply more force.

So, Madam Vice-President, my time has run and I hope that the Government will take heed of the points that we have made thus far and rethink its position and consider that this is not necessary. I thank you.

**Sen. Elton Prescott SC:** Thank you very much, Madam Vice-President, for this opportunity to speak on the Miscellaneous Provisions (Defence and Police Complaints) Bill, 2013. Madam Vice-President, may I firstly seek your permission because I would wish to refer to some refresher notes from time to time—not my usual style, but this one requires caution.

From the outset, may I say that successive Governments in Trinidad and Tobago have maintained sustained efforts to contain crime. And they have all done it, in my view, with the best intentions in the world because it is our country, and presumably they all know that there comes a time when they will no longer be in office and would like to reflect on the good that they have done; the way they have altered the society and, in particular, by the way they have treated with crime.

So, in that regard, I congratulate the Government of Trinidad and Tobago today, for their continued efforts to address the problems that we face with crime. They have come up with many, many, many approaches and the kind of democracy we have permits all of us to critique the many options that they have put forward.

This is no different from the rest. Whether it is likely to succeed or not, I imagine that there are experts who can comment on that more sensibly than I can. But the truth is, it is an element of our democracy that permits us to come here and say of it, it is either good law or it is bad law; and to seek to improve on it if it is possible to improve on it, and where it does not allow for improvement to simply disregard it and try another step. So that I wish to join the chorus of those who say congratulations to the Government for having tried yet again to resolve the problem. [*Desk thumping*]

The Bill before us, as I have pointed out before in relation to others, is written in so few words that one may be inclined to overlook the very pointed effects it may have on the society, but we are going to spend some time looking at it. I want to start by doing a sort of legislative sweep with a view to putting into context what is happening. In so doing, I would look at the Defence Act and the Police Service Act. Much of what I say would have been touched on by Sen. Hinds and by the hon. Attorney General because they all revolve around the same issue really.

So let me start with the Defence Act, Chap, 14:01, on the matters of the command and the precedence. In section 5, there is established a body of military forces styled the Trinidad and Tobago Defence Force and they consist, as you have heard, of the armed forces, the coast guard, the air guard and more recently I learned, the reserves are sometimes regarded, when they are on call, as being one of those units within the defence force. The President, as you may know, may from time to time himself, if he thinks fit, form or style another unit as may become necessary; every unit charged with the defence of Trinidad and Tobago and with such other duties as may from time to time be defined by the Defence Council.

We have heard an interpretation of “defence” and I would want to spend some time on it because the Attorney General has limited it in such a way that I think more and more we ought to be very careful how we interpret what has been said there.

In section 8 and section 191 of the Defence Act, we know that the responsibility for the operational use of the force vests in the Chief of Defence Staff, and operational use is the instructive term there. It is the operational use. How things are to be done army style, military style, are completely under the control of the Chief of Defence Staff. And, until now, the Chief of Defence Staff responds—he

is required by law to do so—to the general or special directions of the Minister; and for “Minister” there, read Cabinet, the Government. If the Government says that he is to behave in a certain way when operations are being carried out, the Chief of Defence Staff is expected to do so. This Bill addresses it and I shall come back to it very shortly.

But there is no gainsaying that if you require the Chief of Defence Staff to conform, he must do so, and he must do so even if it was his view that the defence of Trinidad and Tobago demanded another kind of action on his part.

This is so because—well, even greater powers are given to the Minister. The Minister may make regulations as to who has command over units within the defence force or any part of a unit, or any member of a unit, and as to the circumstances in which such command is to be exercised. So we know that our defence force was established, but it was not given *carte blanche*. It was expected to respond to certain directions coming from elsewhere.

Who charges the defence force with duties? The Defence Council. Now members of the public may have guessed it, but it is stated in the law that the Defence Council comprises the Minister, as its chairman, two other members of Cabinet appointed by the Prime Minister, one of whom is the vice-chairman; the Chief of Defence Staff and the Permanent Secretary; and a quorum, for the purposes of the Defence Council, is three, of whom no more than two shall be Cabinet members.

So there must be a Cabinet member present, presumably the chairman, and then you may have the CDS and the Permanent Secretary; but the point remains that when we framed the legislation, we anticipated that a group of political appointees—and I do not use it in the vulgar sense—shall be three of the five persons required—let me put it as gently as that—three of the five persons required to give direction and control to the defence force; persons who are appointed by the governing authority. Under the hand of an irresponsible Government such powers cannot be contained. It is the council who defines how they must act.

Now the Police Service Act speaks differently of that institution. In section 45, it says all police officers shall preserve the peace and detect crime and other infractions of the law: “preserve the peace”, “repress internal disturbances”.

So as has been pointed out here to us today, the two institutions turn their eyes into different directions—one externally, the other internally. One behaves in a military fashion towards defending the State; one imagines that you could say “by



any means necessary”; the other seeks to preserve the peace. So police are trained to react differently towards members of the society because infractions are what we do; we all do. I do not have to point a finger at anybody in here to tell you that all of us broke the law at some point in time. You might run a traffic light. The point is that we also have provisions for the supplemental police, the Special Reserve Police; all having the same guide, if you like, legislative guide, to preserve the peace.

And so the motto “To protect and serve” reflects clearly on who we are dealing with when we talk of the police. Their business is to protect me and you, Madam Vice-President, and almost everybody in this building. I say “almost” only to be light.

**4.15 p.m.**

Section 43 of the Police Service Act is the one that many people have spoken about and we ought to focus on it. Section 43 reads as follows:

“Every police officer shall have all such rights, powers, authority, privileges and immunities, and is liable to all such duties and responsibilities, as any constable...now has or is subject or liable to, or may have or be subject or liable to under any written or unwritten law.”

He has “protections”, we know that; he has powers, we know that; he has duties and responsibilities, and those duties and responsibilities may be found in the written law as well as in the unwritten law, so that police officers know that if they hold someone wrongly, they may be guilty of false imprisonment. The State has to address that. They might be guilty of battery or assault—those are written of course—but the police know what their responsibilities are, and those responsibilities are stated in the statute that guides them, which says you are liable to all the duties and responsibilities as any constable ever had, whether it is written or unwritten. So police are trained in that milieu, they know what is expected of them.

Section 46 of the Police Service Act, if I may move on, says the police have power to call on any person to assist, and such person may arrest without warrant where an offence is seen to have been committed by another person, a person who is unknown to him or whose address, or whose name he cannot ascertain. The police already have the power to call on each of us, each citizen in this country, able-bodied or not, to assist the police when we are faced with a situation that an offence is being committed.

I think the point has been addressed here that there are other powers for which you need to have reasonable suspicion that an offence has been committed, et cetera. So that if the police call upon you and say, “Arrest that man”, or “Assist me to bring about an arrest”, to effect an arrest, then you are entitled to do so, whether or not you are wearing any military uniform.

The Criminal Law Act, as we were reminded today by Sen. Hinds, speaks to arrestable offences and says that, yes, just about anybody can do it. You may well feel that you cannot put yourself out in a situation where you might be injured or where it might be unwise to do so, but there are times when citizens rise up and defend their country [*Desk thumping*] without much force, without any demand being made upon them.

The commentators would say, “Boy, you crazy”, but sometimes you have to make a decision. [*Laughter*] You have to make a decision; am I going to stand by and allow this offence to go unpunished? So that the one that gets everybody’s passion—if you thought a rape was being committed, the chances are that you are going to jump out of your car and do something about it, and the law protects you in those circumstances even without the law saying that you have duties and responsibilities, so that we do not need to trouble ourselves.

We were reminded today that there are many other people who have similar powers to the police: the customs, licensing, the immigration people all have. I did not even remember forest rangers. I do not know where that came from but somebody—[*Interruption*]

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

**Sen. E. Prescott SC:**—and WASA police. [*Laughter*] The point is that almost every Trinidadian has police powers already, and I imagine the same goes for Tobago. We all have police powers. We all are required by law to assist the police, and I keep referring to “assist” because that is the word that is used in the Bill before us, and I will come to it.

So, one asks, what therefore are the strategic aims of this policy, this legislation? What are the strategic objectives? What has prompted us to say, in spite of, notwithstanding all this penumbra of powers of arrest and “protections” and so, what have we set out to do in this Miscellaneous Provisions (Defence and Police Complaints) Bill? How is success to be measured? Is it going to be that we will say, “If there is an immediate decrease in criminal events then this Bill has been successfully enforced”, or will we, because we have plucked two years out

of—"I doh know what"—if in two years' time the numbers of serious offences have been reduced, the number has been reduced, would we have been successful in terms of what this piece of legislation has set out to do?

Is it really only to reduce the number of arrestable offences or crimes that have been committed? You see, it could not be because it would be a redundant exercise if that is all we hope to achieve. Today, I was fortunate enough to buy the *Newsday* because I understand my photograph was in it—[*Laughter*]*—and here is this headline on page 3. May I read from it please?*

**Hon. Senator:** You did not buy two?

**Sen. Hinds:** [*Inaudible*]

**Sen. E. Prescott SC:** I have got quite a few, actually. Not my best photo. [*Laughter*] This is a piece by Sean Douglas; he says:

“MARCH saw the fewest murders in any month for the past six years...”

Remember the point I am making is if the strategic objective of this piece of legislation is to reduce serious crimes or murders, in particular, this tells us, well, maybe we could hold our hand for a little longer because like we are getting there.

“Moreso”—Stephen Williams, commissioner—“he attributed this success to the use of soldiers with police officers in joint patrols.”

That is to say, police officers and military who are acting today—not under the guise of, the protection, rather, of this Bill—have been seeing changes. He quotes:

“You will have recognized that for the month of March we had the opposite to what we had in February in terms of violent crime,”

“Opposite” is a bit of a loose term.

“We have had a major reduction in murders and shootings and other violent crime incidents, so that is what we achieved.”

So, therefore, it does not seem to me that we need new legislation.

“*Newsday* asked”—quite properly—“why this drop in crime had occurred.

Williams...‘Well it’s almost obvious. The police and the soldiers at the beginning of March went into a very high activity mode of policing,’...”

I think Sen. Hinds suggested that at the end of the day, using different words; get into your high activity mode.

“with our dominance by the area of Laventille where we were facing the highest number of murders for 2013. We dominated that area with the presence of police officers and soldiers patrolling, mobile and on foot. We have in fact increased the presence across the entire nation—all nine police divisions—with a clear, targeted strategy to reduce violent crime and it has worked up to now.”

So I return to my initial question about strategic aim: is it to reduce violent crime and if we are already doing so why add this to our coterie of legislation?

**Sen. Ramlogan SC:** Because of the [*Inaudible*]

**Sen. E. Prescott SC:**

“Given the news reports that the number of murders this year exceeds those of last year, Newsday asked if more effort is still needed?

Williams replied, ‘Well that is obvious, because we had an extremely bad month in February when there were 45 murders. But the fantastic thing is that the month of March had 17 murders, a figure which we have not beat in Trinidad and Tobago—as low as 17 in any month—except for the three months when we had the State of Emergency when we had 15, 13 and 16 murders for September, October and November.’”

**Sen. George:** Many lives were saved.

**Sen. E. Prescott SC:**

“Newsday asked if the past month’s success in using soldiers to fight crime would boost the chances of the bill to precept soldiers being debated in the Senate today...

Williams replied, ‘Well for me the issue around the passage of that bill is really a political issue, and one which will be determined by the various political parties. Based on the outcome of the decision, I will carry out whatever is the legal mandate and that is my role.’”

Coincidentally, about an hour later on the news, it was reported that a senior officer in some Northern Division was saying, he was crediting increased focus on intelligence in the hotspots for the apparent reduction in crime. So we know that we are already excelling at what we have set out to do. We are using what we have: joint patrols, increased intelligence, and we are seeing results.

**Sen. Al-Rawi:** “Dats right.”

**Sen. E. Prescott SC:** I know over the years we have had the days when from the time a Minister of National Security says the numbers are down, somebody proved him wrong; but it happens, it is human nature. I do not think anybody sets out to say, “Well, let us wait until the Minister say, de numbers gone dong”, and then shoot somebody, but it happens. The point is through intelligence, through—what you call it?—domination of the area with our patrols—yes, our dominance in the area, we are achieving the successes that, it seems to me, underlying what we have been told today, are guiding this Bill.

Secondly, what tests were used to place confidence in achieving these objectives within a two-year period? Should the Government not tell us? We have used these graphs, modules, what have you, and we are certain that come March 2015, all will be well, or close to. I do not think anybody expects crime to be eradicated from our society; it would not be Trinidad and Tobago if it happens. But if you tell me that I have scientific evidence, research done which demonstrates that I shall be in a place of confidence in two years’ time, then we can understand what is the purpose of this sunset legislation that we have. Then we can understand why we need this piece of legislation at all.

I forgot to say at the beginning, some of what I have had prepared is the result of some interactions that I have had with people whose judgment I trust, so I would not call names, but if I should quote from them I trust they will understand that I am not plagiarizing; I am giving credit without calling names. So here is a quote:

Is the introduction of the military meant to produce operational effects that would contribute to creating a change in the overall strategic security environment?

Are we going to be more secure because of this piece of legislation?

All you have to do is to contrast what is happening today, April 2, with what will happen after this Bill if it were passed and tell me, can it bring about overall strategic security? Is the environment going to be any better off? It appears to me that we need to be told by the Government these are the outcomes that we expect, and they are based on scientific researches, analyses, psychological testing, whatever it may be, things that people can rely on and say our Government knows what they are about. And I leave that to the hon. Attorney General to tell us: what intelligent research informs the conclusions that you have come to, that makes this the instrument that you wish to use to clean the stables?

Next question: will these soldiers, the members of the defence force, be on active service? And “active service” is an esoteric term, it is used in the Defence Force Act as meaning units engaged in operations against an enemy. All defence force people are in active service. When you introduce them into the community to assist the police, are they taken off active service, so that their mind is not now focused on operations against an enemy? [*Desk thumping*] And I imagine that “enemy” used in the legislation means precisely that. It means an external force that threatens the security of the State.

Now, granted that there are many people in the society who think when they see the headlines the integrity of the State is at risk, I doubt that that is what the Defence Force Act was looking at. It was not looking inwardly, it was looking externally, and the chances are that somebody needs to address this with a legislative mind, a mind to create legislation, that there is active service and there is non-active service. What is a military man assisting the police if he is not on active service? Tell him these people are not the enemy—[*Desk thumping*—or if you wish tell him they are. Hon. Attorney General, tell us: what have your researches unearthed? What is the relationship like between the military forces and the police, the law enforcement officers? Has the Office of Law Enforcement Policy—we have one of those here—has that office informed the process of your thinking?

**Sen. Hinds:** No!

**Sen. E. Prescott SC:** Can we not say that we have seen the statistics and they clearly point to methods we can use to ensure that there is a comfortable relationship between the military and the law enforcement officials? I have not heard it, and I thought that that would have been the way to present this piece of legislation today, against that background. What are the protocols in the charge room for processing persons suspected of offences? This piece of legislation says—may I just read it? I am reading from what will now be section 5(2C):

“Where a member of the Defence Force has arrested any person pursuant to subsection (2A) he shall, without delay and in any event as soon as is reasonably practicable, hand that person and any items seized over to the senior police officer whom he is assisting or to the nearest police station and record or cause to be recorded the circumstances occasioning the arrest.”

**Madam Vice-President:** Sen. Prescott, hon. Senators, it is 4.30 p.m., and I propose to take a 45-minute tea break. This sitting is now suspended until 5.15 p.m.

**4.30 p.m.:** *Sitting suspended.*

**5.15 p.m.:** *Sitting resumed.*

**Madam Vice-President:** Hon. Senators, before we left for the tea break, Sen. Prescott SC was on his legs. Senator, by my calculation you have 20 minutes of your original time remaining.

**Sen. E. Prescott SC:** Thank you very much, Madam Vice-President. I think that I would have been looking at the proposed section 5(2C) when we took the break, and I was questioning the protocols that would apply in the charge room. Section 5(2C), as you would remember, speaks of a member of the defence force having carried out an arrest, he shall, without delay and in any event as soon as is reasonably practicable, hand the person arrested and any items seized over to the senior police officer whom he is assisting or to the nearest police station, and he must record or cause to be recorded the circumstances occasioning the arrest.

I was asking what the protocols are in the charge room when he gets there. What if the senior police officer is not satisfied that an arrest is warranted? Do we release the arrested person, without more? The complications that that leads to are well known to lawyers; false imprisonment commences immediately and assaults and all these other associated ills that the civil law knows about.

In any event, can you imagine what attitude the military man will adopt if the senior police officer was inclined to apply his police mind to this thing and say, "Boy, yuh mad; you should not arrest this man"? Can the senior police officer, to whom the arrested person is delivered, lay a charge if the arresting military man has not brought with him evidence? And by that I mean prosecutable evidence. You may hold him because he looks like a thief, but that is not enough for a police officer who is trained in police work. He needs to know that I have something I can take to the DPP or to my senior. So he may well say, "I cannot lay a charge." Remember, the military officer does not have the power to lay charges, so he cannot say, "Well, you go out there and stand your bounce, defend your case." Will such an arrest be lawful in the circumstances? If it is not, I think the Attorney General must tell us how he proposes to deal with that.

Has any agreement been reached with the representative association of the police service? Have they been approached on this? Has their view been sought on whether these new powers can sit well with what they do? Do we know what is the strength of the proposed units that are going to be placed in this position of executing this law? How does that strength compare with the strength of the police generally?

Somebody made the observation here, and one is tempted to ask: is it that we need more human personnel on the ground, whose business it is to manage crime? That can be achieved probably in a short time, especially if you already have people who are inclined towards military training: the same reserves, the Cadet Force adults, whomsoever. It might be trivializing it to call all the names, but there are people out there who have had some training and they can be used.

Should we not ask ourselves: what are the skills really that we need on the ground today to make police work effective? Are we inviting those skills in by this piece of legislation? This legislation does not say that we need mechanics or engineers or—I cannot remember the word—mentalists is the name that was suggested to me. They have a word for it, but I do not remember it—people who use their minds to determine what other people are thinking. Maybe that is what the police need. Maybe when we speak of intelligence gathering, we also mean applying that kind of intelligence to what we are doing. Maybe that is what we need to do. Maybe we need to look at the entire legislative package and say, “Let us do something about the institutions we have.” Introduce a new unit of militarized police officers if you wish, or an elite unit with all the skills you may require, both manual and temporal.

Do we not have people out there who are willing to help? We used to have REACT, I do not know if they still exist. I cannot remember how the term is used—people who have walkie-talkies and they tell you what is happening in different places. What is the name of that group? Citizen reaction unit or something like that.

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

**Sen. E. Prescott SC:** What?

**Sen. Deyalsingh:** They do work for Carnival

**Sen. Dr. Tewarie:** They still exist.

**Sen. E. Prescott SC:** Anyway, REACT, TEAM. We have new social media now so that word gets around in no time. Should we not be using those kinds of skills instead? Is that what the defence force promises to give us? One doubts that.

In fact, I was thinking, maybe I could say it now: I am prepared to volunteer four hours a week to answer the phone in the police station. Do you want to put policemen on the beat? There are two of us in here who will do it. Faris Al-Rawi is not as busy as he appears. [*Laughter*]



**Sen. Al-Rawi:** In your company, my pleasure.

**Sen. E. Prescott SC:** It appears to be a small point, but the point is that there are people out there who are quite prepared to give of their service to achieve the ends that we are all seeking to achieve. We all need to know that crime is being managed by someone who has the time and the knowledge and the know-how. It does not appear to me to be simply because you have been trained in the military that you can easily mutate into this other thing.

For that reason I ask: why do we have to wait three months for the standing orders to be written by the Chief of Defence Staff? He must know already what he needs to do. He does not have to do it by trial and error.

And then, Madam Vice-President, may I look at something else. The Prime Minister of this country is alleged to have said that the members of the Trinidad and Tobago Defence Force are underutilized. Again I ask the question: what are the strategic aims and objectives of this piece of legislation? Is it intended to deal with the fact that there are soldiers down in Chaguaramas doing nothing, not being utilized? It does not appear so on the surface, but here is the question allegedly asked by the Prime Minister—or not the question, the assertion that they are underutilized.

We all know that in peace time armies appear to be doing nothing, but one would imagine that they are always alert against external aggression. Somebody said: so what if Venezuela attacks us? It has been said, I take no credit for it, that a former Prime Minister, the first one, said “So what if we win?” [*Laughter*] And he was serious; he was a serious man. He said, “So what if we win?” Somebody said, “Suppose Venezuela attacks?” He said, “We might win.” We have to be on the alert at all times. We might be better prepared than some other armies around us.

So let us ask ourselves another question: if these soldiers are being enwrapped in all this police work, would they not be required to attend court to give evidence at some time? I heard it being suggested, even from the Attorney General, and he must be reflecting on it now, that these “fellas” hide the truth to get a prosecution. The coast guard man did not say anything. Some policeman went out there and made it appear that it was he who held the man first; but defence counsels are sometimes very, very perceptive, very invasive, and they will find out the truth. [*Desk thumping*] Are we going to have soldiers lining up in the Port of Spain Magistrates’ Court day after day sitting on the benches waiting for their name to be called? Maybe.

Criminal law has advanced to the point now where the arrested man can call the soldier, have him summoned or subpoenaed. I do not know, I do not practise criminal law, but these are the things we have to be careful of. When he should be sitting in Chaguaramas preparing himself to repel external aggression, he might be sitting in the Magistrates' Court in Port of Spain watching people pass up and down. [*Desk thumping*] So there are some imperatives that the Government must address if they are to get our support here.

There are experiences in many countries of people who have used the military, whether totally or from time to time, sporadically, as the case may be. I have been told that countries such as Chile, India, Spain—I have a long list—Portugal, Sweden have all done it. In case we want to look to Europe as the best examples. Then if you look closer home: Colombia, Mexico; I know I said Chile already. In the Netherlands it has been done, in Italy. If you want to go to Africa, “nothing wrong with there”: Algeria, Benin, Cameroon, Senegal, all of these have tried various methods to treat with their burgeoning crime problems, and they included using the military. We are not on new ground.

I do not think anybody who gets up and resists this on the basis that you should not use the military is being sensible. It happens. It is a practical way, pragmatic way of approaching an issue, but my concern is: what are the underlying currents? What are the protocols you are going to put in place? How is it going to work? What makes you think it is going to work? Tell us; persuade us.

So, I say, let us set clear, distinct and complementary roles for each of these institutions; the areas of jurisdiction for the law enforcement people and, on the other hand, for the military people. They must be complementary roles. Government should analyze the available institutional capacity on both sides, so that we do not have a duplication of effort, and that one complements the other.

Secondly, have the military officer trained in reporting crime. Section 5(2C) says he must record or cause to be recorded the circumstances occasioning the arrest. That means he must write it down. He must write it in language that the DPP can understand and he must put in there every material incident, because it is those facts that are going to determine whether we have a successful prosecution or not. It is not enough to say, “I saw him coming out of de house and I hold him;” or “held”, if you prefer. So that we must train these very military people in making a report on a criminal event, and he must bear in mind that every fact is material.

Police officers, you see, are trained to pursue law enforcement with an eye on the plethora of legal minefields that they would have to deal with. They are trained to do that. [*Desk thumping*]

**Sen. Hinds:** Well put.

**Sen. E. Prescott SC:** You are walking through Woodford Square and a man is using obscene language, they do not just walk across there and hold him. They have to remember that it has to be to the annoyance of passersby, and you cannot be the passerby and the policeman at the same time. So his focus is from the initial engagement through the arrest, through the charge, through the prosecution. Can I prosecute this case successfully? That is unlikely to be found in the military mind.

The police operate—and I took this from somewhere—among a largely friendly population, and their job is to solve problems. You do not go into a home where you hear a shout and beat everybody. Domestic violence has its own culture; policemen have to learn to deal with that. We hear all the famed American interventions: the American police come and they took one out and they hold “de next one and ting”, they are trained a certain way. We are trained another way.

Trinidad and Tobago police really are good people, you know. A lot of people look here for examples of police behaviour, because we train them. Community policing came naturally to our police officers. It came naturally. Policemen who ride horseback and look over your wall are part of your society; they understand things, and they will know if it is the gardener in the yard or “if is a tief”. It does not matter how he is dressed. So please, Attorney General, in responding, tell me if you have focused on these things, so that we can know for certain that this piece of legislation has teeth, makes sense, adds value.

What is the command structure? Let me move there now. What is the command structure within the unit of military police and police who are engaged in law enforcement? Who tells who what to do? Who takes orders from whom? We know that within the military there is a hierarchy of command which no soldier ever forgets, because he is going to end up being court-martialled. No soldier is permitted to even think for a moment that he can move against an officer, two, or even one rank above him in a certain way. He must be very, very cautious. [*Interruption*] And I am reminded that it is the number that makes the difference. If your regimental number is higher than mine, you are my senior.

**5.30 p.m.**

But we know that since our former police force became a police service, and there was significance in the difference, these were public servants. This was not a militarized body anymore. So the police officer sitting down in the charge room when the commissioner comes in, does not get up and salute. So what? “But a military man cyar try that. Cyar try that. Long time they would send yuh Matelot if yuh was a police officer.” But now you can get judicial review. “You doh get judicial review in the army, you get discharge”, and I am going to come to something that has developed recently.

The section 5(2A)(b) says: while under the—while engaged, rather, in assisting in the maintenance of law and order—maybe I should just read mine: the member of the military unit shall be under the command and control of the chief—yes—under the command and control of the Chief of Defence Staff, not the Commissioner of Police. And we need to be told, how that is going to work. What are the public security expectations of our citizens? We are not all of the same mind. There are some people who favour militarization and violent or aggressive force, and there are some people who say no, your police must not approach matters in that fashion.

I am satisfied and I am sanguine that this Government does not intend to put a force of military men out there who will go wild and beat people. Those who say that are just stoking the fires of confusion and so. But it is something that can get out of their control because the regulatory mechanisms are not yet in place.

**Hon. Senator:** That is right.

**Sen. E. Prescott SC:** So we need to be cautious about that. There is fertile ground out there; and do not miss out on this point, you will note an evolution in the mentality of the police officer from being a peace officer to a soldier. Why? Because he is out on patrol with a military man; people are like that. He begins to take example from this military person. He begins to see how that person works, and he may well feel that this is his new role model. You see? And when the military officer has gone back to his barracks, he puts on his new persona. He is no longer plain cop, he is now “robocop”. Let us not forget that. It is something that occurs within the human—and you know, and I may say this again about men—men have this hierarchy in their minds. They find role models amongst the most aggressive of other men—[*Interruption*]

**Sen. Al-Rawi:** True.

**Sen. E. Prescott SC:**—and that is what is going to happen in your police service. So we need to be cautious. So what does the public say? May I just cite some examples of what we have been hearing recently because people are looking at this. People of all walks of life are looking at it and saying; what are we going to do?

In a newspaper I read where Jacquie Burgess of Working Women—I do not know who she is—says that this would improve the detection rate. But, hon. Attorney General, you have not told us that you are getting detectives out of the military. So are we really improving the detection rate?

Merle Hodge—well everybody knows Dr. Hodge—she says precepting soldiers—described it as “bad-john, and strong-armed testosterone solutions”.

**Hon. Senator:** “Wooo!”

**Sen. E. Prescott SC:** “Ah fine da was good.” [*Laughter*] I think she was questioning whether it would improve the detection rate also, but you saw where the line was? And this is a thinker within our society. This was not just anybody, this is Dr. Merle Hodge. On the other side you had Daphne Bartlett of the San Fernando Business Association, and one can understand what might have prompted that kind of support for it.

FITUN, the trade union body: “Have the joint patrols led to a reduction in criminal activities or more arrests”? Well, we have heard from the Acting Commissioner of Police today that we are well on the way there. Why is there a need to precept military on joint patrol? Precepting, according to the Attorney General, is not the main point of this; and I think I agree with him. Can the military lay charges? If they do not have that power; if they do not have investigative powers; if they do not have interrogative powers; what other police work are they doing? Serving warrants? What do police do? Control traffic? We have traffic wardens now. Stop cars on the road? We have licensing officers. If you cannot interrogate, imprison, lay a charge; what are you doing? You cannot prosecute.

**Sen. Hinds:** The Government.

**Sen. E. Prescott SC:** Long time you used to laugh at policemen, they used to go on bicycles and have summonses in their hands, “and they go looking for people who not paying maintenance and ting”. You could not possibly expect our soldiers to do that? So, have you thought through what they are doing when they are out there?

**Sen. Beckles:** Assisting.

**Sen. E. Prescott SC:** Raffique—no, those are comments—

**Madam Vice-President:** Sen. Prescott? Hon. Senators, the speaking time of the hon. Senator has expired.

*Motion made:* That the hon. Senator's speaking time be extended by 15 minutes. [*Sen. F. Al-Rawi*]

*Question put and agreed to.*

**Madam Vice-President:** Sen. Prescott, please continue.

**Sen. E. Prescott SC:** Madam Vice-President, I trust that your permitting me to read will continue. If I am going to finish I will just have to read this. Thank you very much.

So there was a commentary in the newspaper in an advertisement which was alluded to today, where the Prime Minister once again is alleged to have said, the Bill will defend women who as “mothers are affected in a special way. The loss of a child is one of the most painful experiences someone could feel.” Now that is so, but how is this Bill intended to defend women?—I ask the Attorney General.

**Sen. Hinds:** He lie!

**Sen. E. Prescott SC:** And I am not the only one. Hazel Brown—of one of these non-governmental bodies—I am sorry, Hazel Brown, I do not remember right now the correct name—was not convinced that increased military powers is the solution to gender-based violence; and I could attest to that. What does it matter?

The authorities must address the root of violence she says, a learned behaviour. It could not be more police or soldiers. All that leads to is more arrests, more jails and more prison officers, and we know that the prison is another weak arm of our protective services. So, that we are not creating a new situation that is resolving our problems.

Raffique Shah, *Sunday Express* March 24, 2013; quote:

“Outside of the commission of crimes the rates of arrests and successful prosecutions are the main obstacles to bringing some order to the lawlessness that pervades the country. Responsibility for correcting this deficiency lies with the police and judicial officers. No amount of soldiers will have any impact here.”

**Sen. Al-Rawi:** That is right.

**Sen. E. Prescott SC:** “The judicial system is another contributor to runaway crime.”

A major defect in dealing with crime; undoubtedly.

The final flawed link in the crime chain—the prison system—even more rusty than dysfunctional. In short, what are we addressing when we introduce this Bill called the Miscellaneous Provisions (Defence and Police Complaints) Bill?

The Law Association and all became involved. They were concerned that there would be need to provide training in such things as arresting, searching, the judges’ rules, how they operate; I think they still apply to criminal law. [*Crosstalk*] And then somebody said it was—the purpose of the Bill was to give comfort and protect soldiers in the execution of their duties when assisting the police.

I think the hon. Attorney General commenced with that today. And hon. Attorney General, I do not agree that there is any good sense in that suggestion. It could not be for the protection and the comfort of the soldier.

**Hon. Senator:** Balderdash.

**Sen. E. Prescott SC:** I would not use any other term to describe it, but it could not be. We heard the Attorney General with that this morning. I think I even heard him say it was to provide—yes, to deal with reluctance and inhibition exhibited by the police; that there was a discriminatory element in this because you are protecting the police and not protecting the soldier because he is functioning outside of his legal capacity. I think I have that correct. And it requires some more thought. It requires some more thought. [*Crosstalk*]

So, I was dealing with the Law Association. They enquired, well who would regulate the police? And a question to me that is of value is: who determines the ratio of law enforcement officers to military officers in a raid or on an exercise?

Somebody spoke today of commissioner X getting on the phone or sending email or text or what have you to the CDS and saying, “send me some men.” And I imagine the CDS would apply his military mind to it. “Some men? To do what? Say, we have a street protest up here. He say, well how many people? What are they doing? They are burning some tyres.” I imagine the CDS would say; “Well, boy, I doh see no need to send my men out there for that. You accustom dealing with that.” “Hmm!” The CDS would have to apply his military mind to these things before he embarks on any activity. He is sending men out there to risk their lives. We need a protocol, Attorney General, before we commence any of this exercise. [*Desk thumping*]

In March 2013, Saturday *Guardian*, the Prime Minister again is alleged to have said there is:

“...no point in having a defence force to defend us from external hostile attacks when internal hostile criminal elements threaten to devour our life.”

Is this an expression of the national strategic aim? Are we seeking to change the culture of the army, the purpose of the military, so that they focus on internal hostile criminal elements? [*Crosstalk*] They will always be with us. They will always be with us. We can declare war against them, we can have states of emergency; those must only be used sporadically. They must be used with specific objectives in mind, and retreat. We must be able to count the value of it when it is all over. A government must try to persuade us that these are achievable, measurable outcomes that they expect.

What do the learned thinkers say of this use of military force? Well—I better leave some of this out because they all point to the same thing: have we concerned ourselves with, when we have preemptive interventions by the military or by the military on joint exercises, is the purpose to bring about peace and security, or to secure prime or vital national interests? If that it is, then it is a good idea, but we are going to have to make up our minds. Are the soldiers engaged in active service against an enemy or are they occupying themselves with private activity, and therefore they are susceptible to be treated in the civil court for their behaviour?

I am told that the military goes into a situation either to create chaos or to manage chaos. Sometimes it is necessary to create chaos to bring about a situation. If you look on TV—“I doh look at it very often, but when the police run into a room and make a lot of noise, and they get on and ting”, the idea behind that is to take charge of the situation; you create chaos, and out of that you are able to select the infiltrators or the leaders and remove them before anybody knows what has happened.

**Sen. Hinds:** That is what this Government is doing now, creating chaos.

**Sen. E. Prescott SC:** You have been in and out. The Israelis seem to have understood that very well. So that by the time they have left the scene—what one calls the theatre of conflict, as one of our colleagues said—they would have taken the situation away from the infiltrators, from the instigators, pardon me, and managed the crisis. But crises are not all amenable to management. Some are likely to mutate, and they can mutate in ways that we do not envisage, and we need to be told, these have been taken into account, and these are the ways we are going to deal with them.



If the military goes into a situation and applies its theory of creating chaos to bring about a management of the chaos, these are the palliatives we are going to use. Tell us what the rules of engagement are. Tell us what principles are going to be applied; humane treatment; legal and ethical principles; medical intervention principles. Are they under consideration?

May I just ask for a moment that we look at what the law lords have said. In the case of *Endell Thomas* which is many, many years old now, Lord Diplock said the following: [*Crosstalk*] He says:

“In the case of an armed police force with the potentiality for harassment that such a force possesses, the power of summary dismissal opens up the prospect of converting it into what in effect might function as a private army of the political party that had obtained a majority of seats in Parliament at the last election.”

Not a far-fetched suggestion. What was being—what was occupying my mind when I read this is: in the hands of the wrong Cabinet or the wrong Minister, these powers can be used to our disadvantage. How can we eliminate that risk by this piece of legislation?

#### **5.45 p.m.**

The ordinary soldier can be removed from office, the Chief of Defence Staff, according to this Act, this Bill, pardon me, is not going to be required to submit himself to conform to the general or special directions of the Minister, thankfully. But in the hands of a pliable compliant Chief of Defence Staff, what is the value of this provision? [*Interruption and laughter*] What is the value of this provision? What if he is not compliant? What if he is not compliant and he says both to the Minister and the Commissioner of Police, “I am not doing that. I am not permitting my man to go into that situation.”? Or, “Whatever my man did I would condone his behaviour.” We know about the principle of condonation? It applies here if he is in military service and I suspect that is what he is. If the superior officer has condoned his behaviour, no court will find him guilty. And why should he not protect his men in that way? Why should the Chief of Defence Staff not do that?

Ma’am, I read recently that on January 21, 2013 the Chief of Defence Staff, acting pursuant to section 191(2) of the Defence Act, promulgated what is called a “zero tolerance discharge policy for serious criminal offences”. It provides that upon being charged with any of a number of schedule offences, a member of the Trinidad and Tobago Defence Force could be discharged from the service. I think

it happened—we were told that it happened a few weeks ago, somebody became involved in a kidnapping or otherwise. And all this person has is the opportunity to be considered for re-enlistment upon the successful completion and/or dismissal of the matter.

In other words, you have gone out there on your joint military patrol, you have found yourself in some difficulty, you have reacted too quickly or worse, very unreasonably, and a police officer has charged you. From the moment you are charged with one of these scheduled offences, the Chief of Defence Staff has said to all of his men, “I have zero tolerance for this. I will discharge you from the army and you will not get back in here—well, sorry, you will only have an opportunity to be considered for re-enlistment when the case is finished, not finished on some technical grounds, but the case having been heard. So, if the policeman does not turn up or the virtual complainant does not want to say anything, I am not going to be persuaded by that. You have to win the case hands down before I consider you for returning to the service.”

You think our soldiers should calmly go into that situation knowing that there are risks? The offences include shooting or wounding. [*Desk thumping*] The offences include shooting or wounding with intent, unlawful wounding, assault occasioning actual bodily harm, anybody jump through a window when the soldier is out there is likely to be assaulted with bodily harm, because that is the way they do it. That is the way they have been trained to do it.

**Hon. Senator:** Even attempts.

**Sen. E. Prescott SC:** And even attempts to commit the above. The Chief of Defence Staff is saying to you since January, “Careful, do not allow any wrongdoing to even be thrown at you”, and therefore such persons have to be cautious. [*Interruption*] The coast guard—thank you—are similarly at risk.

I think finally what I ought to deal with is this. For some reason the Police Complaints Authority has been dragged into this piece of legislation—the Government was persuaded by some intervention—and they are charged with the duty of assisting—may I just read it? It is in section 5, I think. “Aaah, I cyar find it right away.”

**Sen. Al-Rawi:** 5(2C).

**Sen. E. Prescott SC:** 5(2C), thank you. “Nah.”

**Sen. Al-Rawi:** No.

**Sen. E. Prescott SC:** However, it says that the PCA may now investigate the behaviour of the military. But I need to remind the Attorney General that what the PCA Act says is that the authority may investigate serious police misconduct. That is the term used, and that term is defined as limited to disciplinary offences under the Police Service Regulations, 2006.

**Sen. Al-Rawi:** That is right.

**Sen. E. Prescott SC:** The PCA is limited in that respect. Nothing makes the military man a policeman in any of the situations we have discussed today. Apart from that ambiguity, does the Police Complaints Authority get concurrent jurisdiction with the Chief of Defence Staff in this situation?

**Hon. Senator:** “Aaah.”

**Sen. E. Prescott SC:** Thank you, I am going to wrap up immediately, less than a minute. I took this quote from a US Chargé d’Affaires, it is in a newspaper, something he said at a graduation ceremony for police officers in training in basic criminal investigation, interrogation techniques. He says:

“...changing the behaviours of individuals, institutions and communities is never fast, rarely easy, but essential...”

The causes of crime are complex.

And me now: the solutions to fighting crime are complex. There is no magic bullet; no pill to cure a crime epidemic, but with the right treatment all communities can recover. Politicians, police officers, prosecutors, prisons officials and persons from all walks of life must gather together to listen to one another and develop action plans to address the common problem.

Madam Vice-President, that is where I am at this time. I need to know that we are all together working on this with clear and defined objectives and a means for getting there.

Thank you very much. [*Desk thumping*]

**The Minister of Justice (Sen. The Hon. Christlyn Moore):** [*Desk thumping*]  
Thank you to colleagues and to the Chair. It was an honour and a pleasure as always to listen to my colleague Sen. Prescott SC, and some of his concerns I feel confident that given an opportunity, and knowing his marked tolerance for common sense, I feel he may well be persuaded.

I want to start off by something that was commended to me recently, and it caused me to ponder. Sen. Prescott SC, I must say his contribution reminded me of it, and it is a quote; I pose it, however, as a question. “Is it better to be governed by good

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laws or good men?” And Sen. Prescott had a concern about whether the men who administered the law may be bad. He had questions about, perhaps, an intolerant CDS or a cantankerous Commissioner of Police—what would happen to this piece of legislation? The answer to that question must be, it has to be that it is much better to be governed by good law than good men—[*Desk thumping*]—because, of course, the vagaries of men change with time. The essence of a man could change over the course of time, and the essence of what is a man has changed over time. [*Laughter*]

**Hon. Senator:** I like that. [*Desk thumping*]

**Sen. The Hon. C. Moore:** So that we are only left with, at the end of the day, good law.

**Sen. Ramlogan SC:** Good law.

**Sen. The Hon. C. Moore:** Now the question then is what are the concerns that surround this piece of legislation and what is in my mind, good law?

One of the questions raised by colleagues is, what is the reason for this legislation? Why do we have it? We seem to have a status quo that has been working well for 10 years, why are we bothering to tinker with it? It certainly works, and as the hon. Senator reminded us, from very recent accounts and results, the gains from this accommodation have been considerable. But as attorneys charged with representing not only accommodations, but certainties, one has to be concerned with an accommodation that has no basis in law.

**Sen. Ramlogan SC:** That is right.

**Sen. The Hon. C. Moore:** And we have been here before, under the previous administration, where there tended to be a favour towards accommodations rather than cementing those accommodations in a legislative framework.

The time for that has certainly passed. And at this point I want to say that the hon. Senator’s concerns have been echoed in another jurisdiction. Indeed, when the Jamaican Government considered this legislation, the exact same questions were raised, and with your leave, I would like to refer to an article printed in the *Jamaica Gleaner* of Saturday, December 03, I believe, and I do have the citation. It is an article—oh, December 14, I am sorry, 2002, entitled, “Still no consensus on Defence Act amendments” authored by Vernon Daley. And quoting from the article, I wish to point out that the author has recorded that Dr. Phillips, a member of the Opposition, pointed out that the intention of the Bill—rather, a member of the Government pointed out that the intention of the Bill—was not to give soldiers full police powers.

Rather, he said, “the amendments would only allow soldiers powers to ‘search, apprehend and arrest.’”

**Sen. Ramlogan SC:** Yes.

**Sen. The Hon. C. Moore:** So again, we had a jurisdiction that contemplated not full powers but limited powers.

**Sen. Ramlogan SC:** Yes.

**Sen. The Hon. C. Moore:** Continuing:

“Opposition members of the committee...Chuck and...Dabdoub...would not be mollified. Both argued that these powers were already enjoyed by soldiers under the Defence Act and, therefore, it was unnecessary...”

Again, echoes of what we heard today, and the response is very much the same as the response that we have today. The response is, you cannot leave such an accommodation open to interpretation. You must clearly set out the powers of the military. You cannot allow it to be misinterpreted.

And I wish to segue at this point to commentary by Dana Seetahal SC, published on March 15, 2013, captioned, “Wild remarks—fallout on Defence Bill”. And Senior Seetahal remarks that in the current situation where there are joint operations with the police this is untenable.

“There is uncertain legal basis for that kind of activity that has been part of our culture for some time. The obvious answer to that is to make them more effective by regulating their status. The Government’s plan to restrict their powers”—their meaning, of course, military officers—“while they are engaged in ‘assisting’ the police is not to be sneezed at.” [*Desk thumping*]

And I point out that Dana Seetahal SC is a former Independent Senator, former President of the Law Association. Now I pause here, Madam Vice-President, to say this: a working irregularity is as bad as a non-working irregularity is as bad as an illegality. [*Desk thumping*] And we cannot applaud an illegality.

**Sen. Ramlogan SC:** Yes.

**Sen. The Hon. C. Moore:** We have to either depart from it completely, gains or no gains, or we must regularize it. [*Desk thumping*]

So I wish to say that notwithstanding apparent gains, we sit astride a clear irregularity in law. And the fact that it has not bitten us where it hurts in a very obvious way does not mean it is not biting. It is time for us to make hard decisions

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and to fix something that is clearly broken even though it appears to work. We are a law-abiding society. Therefore, let us ground this 10-year-old situation in a legislative construct. [*Desk thumping*]

Now, I want to segue a bit into some observations made by Sen. Hinds. Some observations that, if I am honest, I must say caused me a bit of concern, and that was his very erudite commentary on existing powers already found in current legislation, and that would be ostensible powers of arrest devolved on private citizens that are contained in the Criminal Law Act, and this would be Criminal Law Act, Chap. 10:04. Senator?

**Sen. Al-Rawi:** Yes.

**Sen. The Hon. C. Moore:** Now, I must say on the face of this Act and having listened intently to my friend, I had more than a moment of pause, but then I considered what some of the terms meant.

**6.00 p.m.**

You see, on the face of it, this Act appears to confer powers to any Tom, Dick and Harry, really—powers of arrest. It says in section 3(2):

“Any person may arrest without warrant anyone who is, or whom he, with reasonable cause, suspects to be, in the act of committing an arrestable offence.”

Now, where is the “rub”? On a proper analysis we have to ask what this really means. What is an arrestable offence? Let us start there. Is an arrestable offence any offence? If that were to be so, it would mean that any member of the public had the power to arrest without warrant anyone in the act of committing any offence. But an arrestable offence is a special type of offence. An arrestable offence is an offence for which the penalty is five years or more, or, an offence for which there is a fixed penalty. For example, murder, there is a fixed penalty of hanging. Those are arrestable offences. Arrestable offences are serious offences, but more than that, in order for this civilian to arrest without warrant someone for this serious offence, this person must be in the act—[*Interruption*]

**Sen. Ramlogan SC:** Yes, red-handed.

**Sen. The Hon. C. Moore:**—of committing the serious offence, in the act of. Now if we go to section 3(3), it goes on. It says:

“Where an arrestable offence...”

And you will remember, Madam Vice-President, an arrestable offence is a serious offence, one carrying a penalty of five years or more or a fixed penalty—  
[*Interruption*]

**Sen. Ramlogan SC:** That is right.

**Sen. The Hon. C. Moore:**—“Where an arrestable offence has been committed...”

So, it has already been committed; a person may arrest without warrant, one, who he reasonably suspects to be guilty. So we have two instances where we can commend ourselves to this Act as civilians: One, where the serious offence is being committed in our presence; or two, where the serious offence has already been committed.

Now, I cannot as a citizen arrest somebody who I think is about to commit an arrestable offence.

**Sen. Ramlogan SC:** Reasonable suspicion does not apply.

**Sen. The Hon. C. Moore:** Let us take that information and let me repeat it. As a private citizen, I cannot arrest somebody who I believe is about to commit a serious offence, an arrestable offence.

**Sen. Ramlogan SC:** And neither can the soldier.

**Sen. The Hon. C. Moore:** I have no power, and guess what, neither does the soldier.

**Sen. Ramlogan SC:** That is right. [*Desk thumping*]

**Sen. The Hon. C. Moore:** Neither does the soldier. But not only that, in the course of a general exercise, several offences may or may not be committed. Not all of them may be arrestable. Not all of them may be arrestable. The police powers go beyond this. They go beyond an arrestable offence. As a police officer or someone enured with police powers, I can arrest for offences that are not arrestable offences, that is, offences that carry a penalty of less than five years, I have that authority. As a police officer I can arrest someone who I reasonably believe to be about to commit an arrestable offence.

So that there is a very real loophole, and you know, I want to commend for an exposition on these powers—again I want to commend to this Senate the text *Commonwealth Caribbean Criminal Practice and Procedure*, by Dana Seetahal SC. And she has a very, very interesting paragraph on these particular powers commencing at chap. 3, page 31 of that text. She goes through it very, very

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deliberately and assesses these powers and their length and their breadth. So that, with the greatest of the respect, the Criminal Law Act does not give the powers that my friend perhaps—and it may be me, it may have been my poor listening, but it does not commend these powers to the general citizen. The problem that we face with the illegality that we all embrace and seem to be all satisfied with, is not cured by the operation of the Criminal Law Act. [*Desk thumping*] I keep forgetting—I am sorry, Madam Vice-President, I cannot see without the glasses, so I keep taking them off.

Now, Miss Seetahal reminds us that in the Commonwealth Caribbean, legislation in various jurisdictions governs citizens' power of arrest without warrant and that these have been amplified over time. And if I may be permitted to quote, she says, the author says:

“In general, statute now enables a citizen to arrest anyone who has committed an indictable or arrestable...offence in his presence or whom he...suspects is the offender”—after the—“offence has...been committed.”

And she goes on to remind us that these powers vary, but they are a lesser power than police powers. Police powers, she reminds us, at page 32:

“Police officers”—rather—“have all the powers of summary arrest...granted to private citizens and more.”

It is a superior power of this police power. It is not equated to the powers given to citizens, otherwise why bother to have police officers when everybody has these powers anyway.

**Sen. Ramlogan SC:** Every citizen is “ah” police.

**Sen. The Hon. C. Moore:** We could all go in and volunteer and be police officers for the four hours of spare time that we have. [*Desk thumping*] And Senator, let me say, I am right behind you in volunteering. [*Desk thumping*]

“Police officers have all the powers of summary arrest...granted to private citizens and more. These powers may be granted 1. in respect of arrestable offences; 2. in respect of summary offences; 3.”—different offences—“under the relevant Police Act; and 4. under”—various—“statutory provisions”.

In general a police officer has the power to arrest without warrant anyone whom he suspects, with reasonable cause, is about to commit an...arrestable offence or whom he suspects”. This of course will include somebody “whom he sees committing such an offence.”



Now, the question of the ambit of these powers must be clear. It must be clear to any reasonable person that the power that a citizen has with regard to arrest is different from the powers that the police have. It must be self-evident that those powers are different. And it must also be self-evident that it is these different higher powers that are sought to be devolved on the defence force.

I want to segue somewhat once more into a comment that my friend, Sen. Hinds, made, and though he leaves the Senate once again—[*Laughter and desk thumping*]

**Sen. Ramlogan SC:** “Yeah, yeah, yeah. He run. Run boy run!”

**Sen. The Hon. C. Moore:**—I know that someone will deliver the corrective message. Now my friend mentioned the question of the Monos Island trial. And again it was quite interesting and unusual information—ahhh—[*Interruption*]

**Hon. Senator:** He is back.

**Sen. The Hon. C. Moore:** “Aaah” quite an interesting and unusual information. He pointed out to the honourable Senate that in fact, no coast guard personnel attended court to give evidence and that this was a very—this was a highly successful prosecution where people were sentenced to significant jail time and that this was a matter that occurred at sea. And this example of course, was given, I imagine, to bolster the argument that these powers were unnecessary, because here was this highly successful prosecution, largest drug bust in our history, and no coast guard attended court, and it was at sea. How then was it accomplished?

**Sen. Ramlogan SC:** How the prosecution were—[*Inaudible*]

**Sen. The Hon. C. Moore:** But you see I happened to have more than intimate knowledge—[*Interruption*]

**Sen. Ramlogan SC:** Yes.

**Sen. The Hon. C. Moore:**—in this particular prosecution. [*Laughter and desk thumping*]

**Sen. Ramlogan SC:** I want you to hear this—misleading the Senate.

**Sen. The Hon. C. Moore:** Not in the least bit because my husband was a defence attorney in this particular case.

**Sen. Ramlogan SC:** “Yeah, yeah, yeah.” [*Desk thumping*]

**Sen. The Hon. C. Moore:** So I did some very quick research, and I want to commend to this honourable Senate the *Trinidad Guardian* January 15, 2008, titled, “Monos drug trial. Officer tells of finding drugs, guns”, by Jada Loutoo. And if I am permitted, Jada Loutoo reports:

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“SEVEN men accused of smuggling cocaine into T&T were yesterday identified in court by the coastguardsman in charge of sea operation which led to the Monos Island drug bust in 2005.

Chief petty officer Lennox Best continued his testimony yesterday against the seven.”

**Sen. Ramlogan SC:** “Ohhh, mislead the Senate man, mislead the Senate. [*Desk thumping*] “Privileges committee for yuh. Shame, shame on yuh.”

**Sen. Abp. Burke:** “Yuh misguide de House!”

**Sen. The Hon. C. Moore:** My colleague, Sen. Hinds may not have been aware as to how this particular drug bust came about. What really happened is that the coast guard noticed a boat offshore acting suspiciously. They intercepted it and they surveiled the area and they waited for the police. They gave evidence, contrary to what my friend said—[*Interruption*]

**Sen. Ramlogan SC:** Yes.

**Sen. The Hon. C. Moore:**—they gave evidence but they waited on the police because they had no choice. They had no power. [*Desk thumping*]

**Sen. Ramlogan SC:** Yes, make the point.

**Sen. The Hon. C. Moore:** And Miss Loutoo—[*Interruption*]

**Sen. Ramlogan SC:** I find you were laughing when you were talking, you know.

**Sen. The Hon. C. Moore:**—continues in the article I quoted earlier. She says:

“The Coast Guards chased and intercepted a pirogue on the seas close to...north...coast...on August 22, 2005.”

And the article goes on to quote Seaman Best, Chief Petty Officer Best, where he recounts elements of the chase and the interception and so on, and he recounted how the pirogue was pointed out by someone, caretaker of the beach house, et cetera, et cetera. But the point is this, and again I forgive my friend—[*Interruption*]

**Sen. Ramlogan SC:** You forgive him just so?

**Sen. The Hon. C. Moore:**—he may have been in another place at that time and not really privy to the goings-on in our criminal courts.

**Sen. Ramlogan SC:** He speaks about facts but always misleading the Senate.

**Sen. The Hon. C. Moore:** He is not to be blamed. He is not to be blamed.

**Sen. Ramlogan SC:** Ignorance!

**Sen. The Hon. C. Moore:** However, I am happy to point out that he was incorrect on this one only; this is an isolated incident of error. [*Desk thumping*]

**Sen. Ramlogan SC:** Isolated for today's sitting.

**Sen. The Hon. C. Moore:** Now, it was important to point out that unfortunate error so as to reinforce the need for this legislation.

**Sen. Ramlogan SC:** Absolutely!

**Sen. The Hon. C. Moore:** There is a need for this legislation to allow, it would have allowed in that circumstance the coast guard men rather than waiting there twiddling their thumbs with their arms folded, hoping that the other boat that came out to Monos Island bringing the police did not break down, that the police officers were not thrown overboard by a wave, that there was not another boat on the other side of Monos Island waiting to take the drugs off from the back, it would have given them some real powers of arrest.

**Sen. Ramlogan SC:** That is right. [*Desk thumping*]

**Sen. The Hon. C. Moore:** Now, this cannot be understated. It cannot be understated. It is—[*Interruption*]

**Sen. Abp. Burke:** “Ah hope the media writes this story.”

**Sen. The Hon. C. Moore:** It is cute to consider what happens when you station police officers at the front of a house and soldiers at the back and anecdotal evidence would suggest to us, that if the man runs from the police and he runs into the soldiers well he “eh running no more”. That is what the anecdotal evidence suggests, and my friend Sen. Hinds alluded to this in the references of, you know, the training of the soldiers and you know, he did not use these words, and I am not putting words in his mouth, but amounting to the fact that this is a war machine and there are abuses meted out by soldiers to members of the public.

**Sen. Ramlogan SC:** “They train to kill.”

**6.15 p.m.**

**Sen. The Hon. C. Moore:** Now, I took the liberty to contact the Commissioner of Prisons and I made an enquiry based on these allegations that soldiers were apparently automatons with no control, with no sense of the community in which they acted, notwithstanding the fact that they have acted in

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these communities for over 10 years, with great success, which is a matter we will come to. But I was very concerned about this image of this automaton-type soldier who was a blind shooting machine, beating machine, killing machine, and I thought, well, if this were true, and they have been operating like this for at least 10 years prior, certainly, they would have come to the attention of the prison commissioner. So I enquired, how many of our soldiers, as against our police officers, are currently being held in our nation's prisons for capital offences?

I did a sample. Let us just look at capital offences because it is being commended to this Senate and to the public, that soldiers are killing machines, we have to be careful. We are a peace-time nation. We have never been involved in a war—[*Interruption*]

**Sen. Ramlogan SC:** No. [*Inaudible*] look at the enemy.

**Sen. The Hon. C. Moore:**—but apparently we have several hundreds, if not several thousands, of killing machines. I was not surprised to learn that four defence force officers were currently housed at our penal institutions for capital offences—[*Interruption*]

**Hon. Senator:** Four?

**Sen. The Hon. C. Moore:**—four, but there were 14 police officers. [*Desk thumping*] Now, the ratio, I admit, is a sampling, but it is, to my mind, a reasonable sampling because we are talking about killing machines. Killing machines kill.

**Sen. Ramlogan SC:** And focus on the enemy.

**Sen. The Hon. C. Moore:** So we must find out how many of these machines we have. The numbers do not support the analogy. It ought to have been higher or equal, or it ought to have been more than the police who, my friends on the other side have hastened to point out, are trained differently. They are not trained to kill. They are trained to interact softly with the community, but 14 of them are in our institutions having been accused of a capital crime.

That is something to be considered when we brandish an entire professional force—police and soldiers. The point being that, one, the anecdotal evidence is farcical, with the greatest of respect. It is not supported by the numbers, but we run the risk of alienating all our men—our policemen and our defence force officers—with this horrible taint of being killers. [*Desk thumping*]

**Sen. Ramlogan SC:** Indeed! Indeed! There is good and bad in everything.

**Hon. Senator:** It is a non-point, but you have to answer it.

**Sen. The Hon. C. Moore:** You know, I would want to—

**PROCEDURAL MOTION**

**The Minister of the Environment and Water Resources (Sen. The Hon. Ganga Singh):** Thank you, hon. Minister. Madam Vice-President, in accordance with Standing Order 9(8), I beg to move that the Senate continue to sit until 11.00 p.m.

*Question put and agreed to.*

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**Sen. The Hon. C. Moore:** [*Desk thumping*] So, I really want to caution that we tread that ground carefully, if at all. It is unnecessary, in my view.

**Sen. Ramlogan SC:** Indeed.

**Sen. The Hon. C. Moore:** Now, I want to move, if I am permitted, to some questions posed by the hon. Sen. Prescott. One is the matter of proportionality: how many soldiers versus how many police. The other one was: can we not use other people—REACT, cadets, members of the Senate? Why not use us?

I want to say this with regard to the matter of proportionality. I think it is an excellent question. Sen. Prescott certainly does not need me to endorse his argument, and I mean no disrespect by it. It is an excellent question, but it is a question that is 10 years too late in the coming, with the greatest of respect.

**Sen. Ramlogan SC:** Yes, quite so. [*Desk thumping*]

**Sen. The Hon. C. Moore:** No one has ever been concerned for the illegality that we all support. What was the proportionality of the illegality? Have we ever asked? We have never been concerned. So then my question is this, with the greatest of respect: is it a real concern?

**Hon. Senator:** No.

**Sen. The Hon. C. Moore:** Is it a real concern? I say so with the deepest of respect. How can we argue that a matter that did not engage our attention, illegal and improper as it was, without any legislative parameters, did not engage our attention for 10 years, now we are concerned when it is going to be put on a rational footing? It is an attractive question, but I do not know that answering it provides a solution because, quite frankly, we were happy in our ignorance of this matter, and that suggests, not that it is not important, but that it was never important. [*Desk thumping*]

**Sen. Ramlogan SC:** It was an operational matter. It was an operational issue.

**Sen. The Hon. C. Moore:** But I want to say, with the greatest of respect, that matters of proportionality are going to have to be operational matters for the heads of these two services. Let us not forget these men are professionals.

**Sen. Ramlogan SC:** “And for 10 years they doing it!”

**Sen. The Hon. C. Moore:** They are career policemen, career soldiers. They did not simply drop onto the landscape. They have found a way over 10 years to not be squabbling with each other in the middle of Woodford Square.

**Sen. Ramlogan SC:** And we want to squabble here.

**Sen. The Hon. C. Moore:** So that let us give credit to the professional mettle of these two forces, of their heads and of their fighting forces, for want of a broader term. [*Desk thumping*]

**Sen. Hinds:** “Is the Government we afraid.”

**Sen. The Hon. C. Moore:** That may be so, but it may well be for a nonsensical reason. [*Desk thumping*]

**Sen. Ramlogan SC:** “Yeah! Yeah! He run! He run!”

**Sen. Grey-Burke:** Get serious.

**Sen. The Hon. C. Moore:** As for using other entities, Senator, as I said before, I am willing to volunteer my four hours right at the same time that you volunteer yours. [*Laughter*] And I am serious; I am serious. But let us assess our value to this process. With the greatest of respect, I do not know that the community of John John will feel much safer if I were to join the police service for four hours.

**Sen. Ramlogan SC:** Yes.

**Sen. The Hon. C. Moore:** I mean, I would like to think so. I think I have a lot to offer, but I think I would spend a long time persuading them that that is true. [*Desk thumping*] And with the greatest of respect, Sen. Prescott, I fear you and I may be in the same situation.

**Sen. Ramlogan SC:** Same boat! Same boat! [*Desk thumping*]

**Sen. The Hon. C. Moore:** So that inasmuch as it sounds plausible to suggest REACT, to suggest the cadets, to suggest the firemen, the fact is that the communities that greatly appreciate the presence of the soldiers, appreciate the presence of the soldiers. They do not want you and me. They do not want us. [*Desk thumping*]

**Sen. Ramlogan SC:** “Dey doh want ordinary citizens, man.”

**Sen. The Hon. C. Moore:** You know, I do not say that idly. Let me demonstrate to you that they really do not want us.

Quoting from the Trinidad and Tobago Government News of October 14, 2008, quoting Minister in the Ministry of National Security, the then hon. Donna Cox, in response to certain parliamentary questions, in the general nature of an enquiry about criminal gangs and the numbers and the steps that the Ministry was taking to deal with these gangs, her answer, in part, indicated that in order to deal with the gangs, what the National Security Ministry was doing at that time was establishing four police/army posts in the Morvant/Laventille areas. She was not establishing a joint police/REACT post—[*Interruption*]

**Sen. Ramlogan SC:** No.

**Sen. The Hon. C. Moore:**—or a joint police/cadet post. It was a joint police/army post.

**Sen. Ramlogan SC:** Nobody asked about the interaction and the proportion then.

**Sen. The Hon. C. Moore:** They did not want us, Senator. They wanted the soldiers. The Government, in 2008, wanted the soldiers.

What is the public saying? Is the public asking to send in REACT? No, they are not. In a Jyoti Communication publication dated Tuesday, April 02, 2013, letter to the editor—and if I may be allowed:

“For the past week, having had a conversation with a friend who lives in the Morvant area—and in his words, ‘in the belly of the gangs and criminal activities’—I have begun to question my reasons for not giving soldiers the authority to make arrests...

The point raised by this individual was that when living in a crime-saturated community, one will take any positive action to be relieved of the crime fear which has overtaken some of these communities...

In comparison to those who live in their gated communities...”

Sen. Hinds? Gated communities.

**Sen. Ramlogan SC:** Yes. “He run again!”

**Sen. George:** Absent again.

**Sen. The Hon. C. Moore:** “having the privilege of guards and dogs, surveillance systems and with the influence to have a police presence and round-the-clock patrols, they are the ones who argue against amendment of the Defence Act to give soldiers powers of arrest...”

**Sen. Ramlogan SC:** “Yeah!” Well said. [*Desk thumping*] A kind of elitist objection.

**Sen. The Hon. C. Moore:** Now, again, we do not live in communities who appreciate soldiers. We do not live in communities who, for whatever reason, valid or invalid, rational or irrational, are distrustful of the police and are completely trustful of the soldiers. I hazard a guess that that is not our reality, but it is a reality that we cannot ignore, and I go on to suggest, Senator, that again, they do not want us, nor do they want REACT or the cadets, but they want soldiers.

Page 12 of the *Newsday*, March 29, 2013, by G. Martin from Gasparillo—letter to the editor, if I may:

“People are asking how could the police have failed to capture the man on whose premises they carried out a major drug bust.

I can hear people saying if the police had with them a soldier or two with powers of arrest, there is no way the man could have escaped. The police would have been (in) the front...and the soldier”—would have been (in) the back...”

And the man would not have escaped. [*Desk thumping*] They do not want us! They do not want REACT.

The *Express*, page 19, March 29, 2013 states:

“Unions split on Defence Amendment Bill”, by Renuka Singh, paragraph two:

“In a media release, Natuc’s general secretary, former People’s National Movement senator...Annisette, said while the debate was polarising, no one could deny that the country was ‘in a state of siege’...”

He said:

“...fixing the current crime (scouge) will require strong...”—[*Interruption*]

**Hon. Senator:** “Scourge.”

**Sen. The Hon. C. Moore:** “Scourge.” Please forgive me.

“mature, secure and risk-taking leadership across the political, racial, ethnic and religious divides...”



Honourable Senate, I suggest that this is the strong medicine. You will never have a perfect law, but it does not have to be good to be perfect. It does not have to be perfect, rather, to be good. You will never have a perfect law, but it does not have to be perfect to be good, which is not to say we should aim for imperfection. I am not suggesting that. I am suggesting that we try to get good law; that we not wait on good men and that we not get blinded by the headlights of ambiguity; that we not get blinded by the headlights of, “what if”, “maybe”, some vague possibility, some probability that may evolve when every star in the universe lines up. Let us consider where we are today. [*Desk thumping*]

**Sen. George:** “Yuh cannot legislate for everything. Yuh cyar have perfect law.”

**Sen. The Hon. C. Moore:** Now, I was concerned, as well, by the example cited that men are quite different and that men would tend to pattern their behaviour on whoever was the strongest man in the room. If that is so, then all the men in this room may be patterning after a particular man and may not be willing to confess. [*Laughter*] Attorney General? So that I do not know if that is something we want to commend ourselves to. And it was said in particular reference that the police may suddenly decide that they are soldiers. They may suddenly decide, “Oh my gosh, the soldier is the—[*Interruption*]

**Sen. Ramlogan SC:** Stronger and better man.

**Sen. The Hon. C. Moore:**—bigger man in the room. He has the bigger gun; the broader shoulders; he “does train harder.” I do not know what would persuade men in these circumstances. I am just imagining. [*Laughter*] But if that were so, surely, it would have happened already.

**Sen. Ramlogan SC:** Yes. [*Desk thumping*]

**6.30 p.m.**

**Sen. The Hon. C. Moore:** We have had 10 years of this. Let us not forget that we have had 10 years of this and we have managed not to develop a cadre of police officers with a serious military identity problem.

**Sen. George:** Identity crisis, man!

**Sen. The Hon. C. Moore:** No, we have had no reports of policemen dressing up like soldiers and wandering around town. It has not happened. [*Desk thumping and laughter*]

**Sen. George:** There is no identity crisis.

**Sen. The Hon. C. Moore:** No, there is no identity crisis. Again, in the realm of possibility, I am certain there is a nanopercentage of this happening but we cannot legislate for these nanopercentages. We ought not to. [*Desk thumping*]

**Hon. Senator:** Rambo.

**Sen. The Hon. C. Moore:** And in similar vein, we were asked to consider “how the military officer go feel when he geh arrested by the police or when his men get arrested by the police”? Look, these are professionals, as are all of us. We are all professionals. Why are we holding a different professional to a different standard than the ones that we want to be held to, than the ones that we observe and the ones we hold our colleagues to? These are professional men and women proud of their professions. [*Desk thumping*] They want to do the right thing. They have had years of experience being forced to do the wrong thing. They are asking us as the legislators to regularize this because nobody wants to do right in a quagmire of wrong. It cannot be. We are the persons charged with the responsibility to make sure that their good intentions, that their good heart, that their years of service are bolstered by proper legislative legs. Let us not lose the opportunity by wondering about if the policeman would feel like a soldier. Let us not lose sight of the objective.

**Sen. Cudjoe:** What is the objective?

**Sen. The Hon. C. Moore:** Well Senator, if you missed it, I am happy to go over the objectives.

**Hon. Senator:** That is right.

**Sen. The Hon. C. Moore:** The objective is primarily to, one: allow for the powers of arrest for a force that is already trained, a force that continues and has worked with the police service for over 10 years, in by all accounts harmony, a force that the population trusts in large measure, a force that by accounts from the prison is not marauding and killing innocent citizens, a force by all accounts is a professional force who is happy to work with the police and who the police are happy to work with, a force whose combined efforts with the police by recent accounts, works and a force whose combined account, though working, has no legislative framework; a situation we are familiar with because we have lived SAUTT and we are not going there again.

This is an opportunity to correct—it may have been an oversight. I am not in a position to say. Oftentimes good governments make bad mistakes. It is not my place to judge; really, it is not. But I am here now, and we can say now that we

are in a legislative morass, we are just waiting for a bomb to go off, where somebody goes to court and this thing erupts that there is no framework, this is illegal and that is illegal.

The lawyers among us rather suspect, rather suspect, that a version of that is already transpiring. We rather suspect that we are hearing versions of the truth in order to conform to the legislative status that does not recognize this marriage. We rather suspect it. What are we to do? How are we to turn—

**Madam Vice-President:** Hon. Senators, the speaking time of Minister Moore has expired.

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

*Question put and agreed to.*

**Sen. The Hon. C. Moore:** And a special thanks to my sister Sen. Cudjoe. Now we cannot turn a blind eye. None of us will turn a blind eye to an incest. None of us will turn a blind eye to a rape. Senator, we may not as you suspect be very rash to intervene in a proactive way; we may call 911. But similarly, we cannot turn a blind eye to this impropriety. We cannot and we ought not to. We must fix it.

Now, I wish to segue into the question of the protocols. The question of the protocols, again, I would suggest is an administrative issue best left to the leaders of these two organizations. The question of training which was something that my friend, Sen. Prescott, really look a lot of time on and which is clearly a burning issue, it is a matter I would leave to the hon. Sen. Karim. He would be able to speak to that matter and assuage the concerns, I trust, of Sen. Prescott.

Now, I want to remind again, about, you know, really where was the genesis of the police force—the police service; first force, then service. The very fact that we started out as a police force and we evolved into a service suggests change. We know the poet admonishes us that the only certainty in life is change. So here we are again on the cusp of another change. We went from force to service and we are moving from service to a proper recognition of these two agencies acting in unison in a very limited sense. But, even before we were “force”, you know, it is interesting when you explore the history of the police service—now police service, then force.

The service really was an agent of social control. So an agent of social control imposed on citizenry to ensure that British capitalism was devolved on us to ensure that Blacks were controlled, that Indians were controlled and so the service started out as a colonial agent, basically. Of course, we have moved. We have moved.

Our reluctance to move again is not something that we should dwell on. We always talk, Madam Vice-President, of wanting change but we are very slow to effect change. [*Desk thumping*]

**Sen. Ramlogan SC:** We want it to work perfect.

**Sen. The Hon. C. Moore:** And we ought not—it is okay, it is quite understandable to be hesitant, because I suppose one can argue it is better the devil you know. But having recognized it is a devil, one really ought to step back and make a different choice. This Bill is our opportunity to make a choice for regularization, to make a choice for rationalization, to make a choice for legitimacy. In other words, why are we having a situation where our defence force soldiers are improperly armed? They are improperly protected by the Legislature. They do not have enough tools and a carpenter is nothing without his tools. So why are we asking them to build a house but refusing to provide a hammer? [*Desk thumping*]

I want to again remind that the support for this move does not reside only in this Senate or in the other place. Very forcefully, it resides outside of these walls. I do not say so lightly. I refer to *Sunday Express* March 24, 2013; Dillon Gibson speaks about the crime situation, urges support for this Bill. A plea by Pierre Gladstone of Marabella, Saturday, March 23, 2013. Support again:

“How much longer must we wait to see criminals brought to justice?... The time is now...the people have shown support from the various spheres...We want to live and we want our families to be safe.”

We cannot escape it, soldiers provide a sense of safety to any community in which they are posted. We cannot take that away from them, they have earned that. They have provided us comfort time and time again. So how now are they a source of fear? How now are we to say to the population they are a source of fear?

Our Caricom neighbours, Jamaica, took measures to diversify military functions to include law enforcement powers, in response to what, a rise in crime. This is a response to a rise in crime and there is no shame in that. The Government is charged with the responsibility of meeting challenges like this.

I take Senators’ point that the governments are well intentioned and sometimes things work and sometimes they do not. But Government must not be faulted and Government must not apologize for saying this is a step in response to a rise in crime. In fact, Government is to be applauded for taking a step. [*Desk thumping*]

**Sen. Cudjoe:** [*Inaudible*]

**Sen. The Hon. C. Moore:** I must say I did not catch that. But, I will hear it later no doubt. [*Crosstalk*] Well again, how do we contextualize that?

**Sen. Ramlogan SC:** One month is what we said.

**Sen. The Hon. C. Moore:** You use an illegal mechanism to suppress crime and then say crime has gone down. So do not use the illegal mechanism or leave it illegal. That is illogical. If we admit that the measure works, then let us put it on a proper footing. [*Desk thumping*]

Let us not hide behind the numbers when it appears to be convenient, in which case, what are we doing here? Is it that everybody accepts that there is no need for an increased police presence, better detection, better prisons, reduction in recidivism? Is it that all of that has gone out the window? Because I suspect not.

So let us admit what has happened. What has happened is that we have benefited from an illegality. But we are the legislators, let us make it legal. That is our responsibility.

**Sen. Ramlogan SC:** Do the right thing because it is the right thing to do. [*Desk thumping*]

**Sen. The Hon. C. Moore:** Do the right thing, as my friend says, because it is the right thing to do.

**Sen. Ramlogan SC:** “Yeahhh!” [*Desk thumping*]

**Sen. The Hon. C. Moore:** So that in the final analysis, there may well be lingering concerns but I have no doubt that these concerns are outweighed by the obvious benefit. No legislature can willingly, knowingly and on advice be participants to an illegality and maintain their dignity. [*Desk thumping*] We cannot do it. If that is what we elect to do, then we really have to question what is our role here—to preside over illegality, to endorse illegality or to correct illegality?—because nobody here is prepared to argue that joint army patrols are on a legal footing. It is an accommodation that has been fought for by professionals. But that is all it is. It has no basis in law. Let us—[*Interruption*]

**Sen. Ramlogan SC:** It is an administrative arrangement.

**Sen. The Hon. C. Moore:** A mere administrative arrangement. Let us have the courage of our convictions, let us move past the partisanism of all of this and really consider that we are here to do the best by 1.3 million people, not the least of which are the 55,000 who live in Tobago. Let us do right by our entire population. Make the wrong right. Make it right. Do not fold our arms and do nothing and benefit from the wrong, because you know, benefiting from a wrong is an illegality as well. I thank you. [*Desk thumping*]

**6.45 p.m.**

**Sen. Terrence Deyalsingh:** Thank you, Madam Vice-President, for recognizing me and giving me the opportunity to make a contribution on an Act to amend the Defence Act, Chap. 14:01 and the Police Complaints Authority Act, Chap. 15:05. I also take this opportunity following on your footsteps by welcoming former Senator, David Abdulah, to the debate.

Madam Vice-President, this is probably the most important piece of legislation that we will be passing in this session, the Tenth Session of this Parliament of the Republic of Trinidad and Tobago. I do not think anyone can fault us for wanting to pass good law and wanting us to pass law which can stand legal challenges. As my debate develops, we will be asking whether what we are passing here will serve the test of time, especially when it comes before the courts.

Madam Vice-President, I am reminded of a saying by a very erudite Senator, Sen. Penelope Beckles-Robinson, who, very early in my stint in the Parliament, in response to another piece of crime legislation, made the point that when we are passing legislation, we never appreciate the seriousness of the legislation until it affects us personally. I would like to refer briefly to the state of emergency and if you would remember, Madam Vice-President, out of the state of emergency, the then Minister of National Security alluded to the fact that out of the state of emergency would have come some sort of comprehensive crime plan, which never really came. If you remember, leading up to the state of emergency, many of the organizations—DOMA, Chamber of Commerce, individuals—were clamouring for a state of emergency, but once they got the state of emergency and people began to be affected individually, where their sons were held without charge under the state of emergency, then they began to see the folly in a state of emergency.

I remember distinctly on news one night where there was a grieving mother whose son was detained during the state of emergency and thrown in jail. She was saying, “Yuh know, I voted for the Government, we were promised a crime plan within 120 days, that was in their manifesto, it never came to pass, but here it is now my

son has been taken and thrown in jail, and I now understand that a state of emergency is not the panacea". These draconian measures which are short term at best, they are not the panaceas for dealing with crime.

I remember that distinctly, Madam Vice-President, and I reflect on Sen. Penelope Beckles' words, that until one of our sons or daughters is arrested or detained—[*Interruption*]

**Sen. Ramlogan SC:** Or murdered.

**Sen. T. Deyalsingh:**—or murdered under these things—but I am talking about arrested or detained—we do not appreciate [*Crosstalk*] what it is we are doing. "Give me ah chance."

This Bill, if I go to clause 4, it talks about new subsection (2A), assisting any member of the police service in the maintenance of law and order. Sen. Anand Ramlogan spoke about the warehouse scenario, and you know, Senator, where land is cheap, like in certain parts of St. Augustine in the rural areas, the back of St. Augustine, south of the highway, central, where land is cheap, deep south, you have some warehouses and about three and four blocks long, I mean really big warehouses.

**Sen. Singh:** That is not cheap there at all.

**Sen. T. Deyalsingh:** Well, it is used to be cheap. [*Laughter*] It used to be cheap. The point is, you have this spatial and temporal extension and he is right. You could have the police officers at the front of the warehouse, you could have the soldiers at the back of the warehouse and they are spatially and temporally separate in space and time and he is right. Because, you see, what I have a difficulty with is the word "assisting", because the word "assisting", and in your wrap-up if you could address it, you could be assisting from afar. You could be assisting via a telephone, by text, and it goes on to say in this amendment, you must turn over the person.

So it does envisage some sort of lag between the soldier arresting and turning over. That will give rise to some problems under the police standing orders, especially I believe standing order 16 which deals with a police officer having to keep a pocket diary to record all his little investigations and what he is doing step by step and then when he goes into the police station, he might have to transfer that to the big ledger. But anyhow, clause 4, new subsection (2A)(b) now, and if I may read it, Madam Vice-President, because this is where a bifurcation is going to come which may, in fact, give rise to legal challenges:

“be under the command and control of the Chief of Defence Staff and in these circumstances the Chief of Defence Staff shall not be subject to the general or special directions of the Minister...”

So what we are seeing now here: to whom is this person responsible? I will come to that a little later on. So I have dealt with what is the definition of assisting; I am now introducing this bifurcation of responsibility.

I go on clause 4, new subsection (2C):

“Where a member of the Defence Force has arrested any person pursuant to subsection (2A) he shall, without delay”—which I spoke about earlier—“and in any event as soon as is reasonably practicable, hand that person”—or—“any items seized...”

So right away, we are envisaging a soldier with these powers seizing items, detaining a person and now the Bill says he will hand him over to a senior police officer.

Now, a senior police officer, if the hon. Attorney General could probably clarify for me, are we going to specify any rank here like a First Division officer, or a senior officer simply means somebody senior to the soldier with these powers? So, in your wrap-up, hon. AG, if you could attend to that plea.

**Sen. Ramlogan SC:** All right, but whatever happens now will continue. “Whatever happening for the past 10 years will continue.”

**Sen. T. Deyalsingh:** So therefore, my information is many of the criminal bar attorneys would like to see a provision made in this, where he is handed over to a First Division officer. So I am just throwing that out for the hon. Attorney General to consider.

But my problem, coming back to standing order 16 of the police Act is this: hand them over to the nearest police station and record or cause to be recorded the circumstances occasioning arrest. That is going to give rise to what I am calling now a duality of recording because under police standing order 16, they will record in their pocket diaries, now we are saying the soldier also has to record. So you are going to have two records of the same event. That is what the Act is saying. [*Crosstalk*] They will record or cause to be recorded the circumstances occasioning the arrest. What does record mean? As far as I know, record means a written record. This is where I think we are going to have problems, Madam Vice-President. What are some of the problems we are going to come up with?



If I turn briefly to the Criminal Law Act, which has been quoted extensively here today by Sen. Hinds, Sen. Prescott and Sen. Christlyn Moore, some of the problematic sections, as they relate to the Criminal Law Act, Chap. 10:04, are found in section 3(4) and (5) where we talk about where a police officer with reasonable cause suspects an arrestable offence, which the hon. Minister of Justice explained; subsection (5), a police officer may arrest without warrant.

If it is by bringing the soldiers with the powers of arrest and giving them the title office of a police officer and they are now under the purview of the Police Complaints Authority, my question is, and again, the hon. Attorney General may address it, do we now need to amend the Criminal Law Act to either accommodate that or take them out of this? It is a grey area which I think needs to be addressed, because if the soldier, with these powers, is now a police officer, it speaks to the Criminal Law Act. So I am just alerting the Attorney General that he may need to look at the Criminal Law Act and determine whether, in fact, we need to have an amendment there, because we are going to run into problems later on, as I will demonstrate, Madam Vice-President.

Madam Vice-President, Sen. Christlyn Moore, in an effort to explain and defend the Bill, said she got figures from the prisons where there are four defence force personnel for capital offence in jail, and 14—in an effort to justify the fact that these defence force personnel are not “killing machines”. I personally do not like the term. But, what these figures speak to and what the hon. Minister did not say, [*Interruption*] of the 14 police officers, the number which she used to bolster her case, how many of those 14 are incarcerated for criminal capital offences in the pursuance of their duty, because that is an important consideration?

**Sen. Ramlogan SC:** Well, they have six of them in Moruga right now.

**Sen. T. Deyalsingh:** How many of the 14 are there in pursuance of their duty as opposed to the four defence force personnel who do not have such a duty? That is where the figures could be a little bit misleading. When the hon. Minister of Justice spoke about these figures, I think she really needs to tell us of the 14 police officers—disaggregate the figures. How many of those 14 cases are in pursuance of their legitimate police duties? [*Crosstalk*]

Madam Vice-President, in listening to the hon. Attorney General piloting the Bill, and I must say I had a couple of meetings with senior police officers about this, because it is an area I am not familiar with, having never been arrested, never been in jail, never been incarcerated—[*Interruption*]

**Sen. George:** Never arrested anybody either!

**Sen. T. Deyalsingh:** [*Laughter*]—and never been through the process.

**Sen. Ramlogan SC:** “Yuh never make ah citizen’s arrest, Senator?”

**Sen. T. Deyalsingh:** I have been to a police station couple of times over the years for little, what we might call fender benders. [*Laughter*] I think we have all been there for fender benders. [*Crosstalk*] So in trying to understand the process and in trying to understand what goes through a person’s mind, I have to ask: is the power of arrest to be so divorced from other powers of investigation and interrogation and so on, or is it a stand-alone power? Because, as a stand-alone power, the power of arrest may not be the solution that we are making out to be in this Act, and I will show you why. We have to be careful when we give additional people additional powers of arrest because we are assaulting their constitutional rights—rights to liberty, rights to freedom.

**Sen. Ramlogan SC:** Right now, the criminals taking that away, “yuh know”.

**Sen. T. Deyalsingh:** This is where I come to the operational bifurcation I spoke about earlier. A stand-alone power of arrest may not be as useful a tool without concurrent powers of enquiry, powers of interrogation. What this Act may do is lead to a certain degree of confusion and ambiguity between the unit, which is under the control of the chief of defence, and the police, which is under the control of the Commissioner of Police.

**Sen. Ramlogan SC:** “So wha goin on now?”

**7.00 p.m.**

**Sen. T. Deyalsingh:** Because now, the soldiers do not have the power of arrest. I am dealing with the power of arrest.

**Sen. Ramlogan SC:** They do, according to Sen. Prescott. They have citizens’ powers of arrest.

**Sen. T. Deyalsingh:** I am not talking about citizens’ power of arrest but if you will sip your porridge, cool a little bit.

**Sen. Ramlogan SC:** Most certainly.

**Sen. T. Deyalsingh:** Right? So, there is going to be a certain degree of ambiguity. There is going to be a certain degree of confusion, blurred lines of responsibility and there is going to be the problem, as somebody raised, which superior officer to obey. Do I obey the command coming down from the Commissioner of Police or do I obey the command coming down from the Chief of Defence Staff?

Again, it comes back to the standing orders. The police have their standing orders and I am hearing we are going to develop standing orders for the army personnel. If that is the case, why not simply use the standing orders that the police have? Because if we develop separate standing orders, you are going to have two different units working on the same field operation, operating under two different sets of standing orders, and I have already spoken about standing order 16—the pocket diary recording—and the fact that this Act compels the soldier with powers of arrest to record events. So, the ancillary powers have to go around and revolve around the powers of arrest, which have to do with obtaining warrants, interrogation and surveillance. And, again, as Sen. Prescott said, what about the attendance in courts?

I also raise the issue, if—to use the hon. Attorney General’s analogy of the long warehouse—the police are in front, the suspects are running through a warehouse two blocks long, five minutes later and exiting at the back? What happens in cases of strict liability, gun possession, drug possession where the chain of command, the chain of custody, now becomes important? I grab the drugs, I grab the guns at the entrance of the warehouse; the police officer sees that, he runs out the back of the warehouse, he is arrested by the soldier with arrest powers; they seize the drugs, they seize the ammunition. They now have custody of the physical evidence. What happens now with the chain of custody of the physical evidence from the soldier to the police, to the forensic lab, and so on? It adds another layer and I am just asking if the Attorney General appreciates, that by the adding of an additional layer it may make prosecution more difficult?

**Sen. Ramlogan SC:** If a citizen makes an arrest what happens?

**Sen. T. Deyalsingh:** That is a citizen. How many citizens do that?

**Sen. Ramlogan SC:** An additional layer.

**Sen. T. Deyalsingh:** How many citizens do that? That is in the minimum.

**Sen. Ramlogan SC:** Ask Sen. Prescott, he will tell you.

**Sen. T. Deyalsingh:** Madam Vice-President, as I said, the powers of arrest lead to certain questions about the powers of obtaining a warrant, and even though the hon. Attorney General alluded to the fact that this may not happen, the fact is I am now imbuing, I am now clothing a soldier with the powers of arrest.

I want to just refer you to a very unfortunate case that happened in Valsayn some years ago, where an innocent citizen’s home, his doors were smashed down by the police, his house ransacked, they were looking for drugs, and it turned out

that the surveillance, which led to a warrant, which led to the execution of a warrant, was totally wrong and this person was wrongly—his home was wrongly violated. And this is with the police with their investigative powers and their institutional learning.

My concern is, by imbuing a soldier with the powers of arrest, without that institutional learning of a police officer, are we creating another problem which we cannot solve? Because in executing a warrant, even with a soldier there, you have to do your surveillance, you have to list and record your enquiries in your pocketbook, which I spoke about, and the standing orders to be developed for the soldiers, are they going to have such pocketbooks? I am seeing a very serious problem in prosecuting cases successfully, where you have the police with one version in their pocket diary, understanding order 16, and a soldier with another version, because this Act contemplates the soldier recording material before he hands over to the police.

Madam Vice-President, and this is what I call the judicial conundrum we are going to get into with this piece of legislation. However, we are here now debating this particular piece of legislation and Sen. Christlyn Moore was talking about illegality and so on, but I am trying to alert the population that what we are doing here is considering a very opaque piece of legislation, which in fact may give rise to confusion and which in fact may give rise to the same illegality that the hon. Minister of Justice was trying to avoid.

I will explain to you what I mean, Madam Vice-President. Many people have quoted Dana Seetahal here this afternoon and I would advise Dana Seetahal QC, that she should probably charge us copyright because I am also going to quote her. So, if she is looking on, I owe her \$5.

**Sen. Ramlogan SC:** “Her price higher than that, you know.” [*Laughter*]

**Sen. T. Deyalsingh:** Her price is higher than that? All right. I do quote Dana Seetahal QC, from Wednesday, January 09, 2013 in *Guardian Media* and the headline was:

“Dana: Full police powers for soldiers a ‘dangerous’ move”.

She is speaking here about the Government pursuing a dangerous path. Those are her words. She is saying that she strongly objects to the measure. She is saying, as I am now trying to connect the dots, it will lead to millions of dollars in lawsuits. One of the cases I will refer to later speaks to this issue of lawsuits.

In the same article, it speaks about the police association secretary, he called the idea:

“‘ill conceived’, ‘retrograde’ and ‘nonsensical’.”

These are the words of people in the know. “Dangerous” path, Dana Seetahal. She strongly objects. She speaks about millions of dollars in lawsuits. Sergeant Michael Seales of the police association, as I said, branded the idea as “‘ill conceived’, ‘retrograde’ and ‘nonsensical’.”

“Two former heads of the Police Service Commission... Mr. Kenneth Lalla”—you can get no better authority than that—said:

“There are a lot of legal implication [*sic*] to this matter...” It needs “to be carefully considered,”

**Sen. George:** It was.

**Sen. T. Deyalsingh:** And he says:

“The population now seems... confused...”

“‘This will be a serious challenge’,”—he says, Mr. Lalla—“‘because soldiers have not been trained in law-enforcement techniques and as such there is always the (risk of) infringement of the rights of citizens.’”

These are not my words. These are the warnings from stellar citizens.

**Sen. George:** They could be trained easily.

**Sen. T. Deyalsingh:** Stellar citizens.

The fears alluded to by Dana Seetahal and Ken Lalla were starkly put before this country very early in the tenure of the new Minister of National Security, the hon. Jack Warner.

I refer to an article by retired Major General Ralph Brown of July 03, 2012. This was in the immediate aftermath, we will remember, of taking soldiers who did not yet have powers of arrest, under the command of the Minister of National Security as the hon. Prescott explained to us the structure. And, here we had soldiers, under the command of their commanding officer, manhandling citizens, and Major Brown took serious offence with that. He asked, in this case, why were the police taking a back step, a back seat, to the army? And this is the point Sen. Prescott was making, which Sen. Moore tried to rebut; that the police in this exercise took a back seat and let the soldiers take the front. This is the point that Sen. Prescott was trying to make.

And Major Ralph Brown went on to say:

What I found strange was the presence of the Chief of Defence Staff and the commanding officer.

Major Brown saw this as a routine movement that did not require the presence of the Chief of Defence Staff, and he took serious umbrage at Mr. Wayne Kublalsingh, a civilian, being manhandled and roughed up by members of the defence force with no powers of arrest. Those were his concerns.

Madam Vice-President, if we give the soldiers these powers that we want to—and I have already shown, via the Criminal Law Act, where what a police officer can do and cannot do, which was put in there to bring this new soldier with arrest powers under the purview of the Police Complaints Authority. It was put in there at the behest of the Opposition Bench in the Lower House.

When one looks at the Police Service Act and you look at section 45, under the general duties of the police officer, it talks about preserving the peace and so on and so on. A police officer—it is not in the contemplation of the police Act that a soldier will be given the powers of arrest and so on.

I now turn to my first case, to lend some authority to what I am saying, and I refer to the case *Shabadine Peart v The Queen*, from the Court of Appeal in Jamaica. This case is a seminal case, in that it has been used in our jurisdiction in Trinidad and Tobago as authority on the use of Judges' Rules, as it applies to police procedure.

Madam Vice-President, if you will allow me. In this case, you had a suspect who was asked a series of 63 questions, which was witnessed by a detective and it was put to the witnessing detective on cross-examination that the appellant asked for an attorney but was refused, and there were other allegations made, and when the interviewing officers repeated the evidence before the jury, the question of Judges' Rules came into very sharp focus.

If you will allow me, Madam Vice-President, to briefly talk about how Judges' Rules and their application—even in the police service, with its institutional learning, with years of experience—how these Judges' Rules are sometimes difficult to be applied by experienced police officers in the exercise of their duties when they arrest somebody or not arrest somebody. And I quote:

“Lord Devlin in *The Criminal Prosecution in England*...pointed to the reason underlying the prohibition of rule III(b) of the Judges' Rules of questioning after a suspect has been charged:”

Now we are giving a soldier certain powers.

“The inquiry that is conducted by the police divides itself naturally into two parts which are recognizably different, although it is difficult to say at just what point the first part ends and the second—part— ‘begins’ .”

**7.15 p.m.**

Madam Vice-President, what we should be learning from this is that even experienced police officers have trouble making distinctions in the various phases of an investigation, whether it is for arrest, interrogation or whatever. In the earlier part, the object of the enquiry is to ascertain the guilty party and in the latter part, to prove the case against him.

When a police officer arrests someone—and now we are giving that same power to a soldier. As I said, I have never been arrested, “ah doh” think any of us here have been arrested, even people in the public gallery, but when you read this case, it talks to how certain suspects who are very innocent, but under the pressure of being a suspect, having been arrested, incriminate themselves, and say, “Yes, I did it”, because of that pressure. It goes on to say:

“The danger is that an innocent person, suddenly arrested—”

In this case by a police officer, but we are giving soldiers now that power:

“and questioned by one having the power to detain or set free, will (when subject to interrogatories, which *may* be administered in the mildest, or *may* be administered in the harshest way, and to persons...”

It goes on to talk about even though I may interrogate you mildly or harshly, a person under the suspicion or having been arrested may be perfectly innocent, but even with the police who are trained to use minimum or reasonable force, even innocent people may self-incriminate. And now we are giving arrest powers to persons trained not in minimum force, not in reasonable force. It goes on:

“...the basic fundamental reason for the prohibition is the principle that to interrogate the prisoner at this stage tends to be unfair as requiring him possibly to incriminate himself.”

What is this going to do? When you have a soldier with the powers of arrest, and the suspect runs out of the warehouse, as the hon. Attorney General says, and he is faced with two soldiers at the back of the warehouse, soldiers who are temporally and spatially separated from the police officers at the entrance to the warehouse, as the hon. Attorney General says, what is to prevent this person from self-incriminating when he runs into the arms of the soldiers with powers of arrest who are not trained to apply the Judges’ Rules?

Madam Vice-President, the Judges' Rules play a very significant part, a significant part in educating and informing police procedure leading to an arrest. In this case it just says here:

The Lordships agree that the Judges' Rules are administrative directions. They are directions to the police who have been trained in a certain way about the rules of law. They do not carry the force of law, but they carry significant weight and if the prisoner has been charged, the Judges' Rules require that he should not be questioned in the absence of very exceptional circumstances.

I am posing it to this honourable Chamber, and to all those who support this piece of legislation, like DOMA, like the Trinidad and Tobago Chamber of Commerce, everyone who supports this, please reflect on the example that I gave earlier: state of emergency, mother has her child detained for no good reason, she only becomes aware of it because a state of emergency exists, she is now personally affected.

We here are not personally affected but we have a duty. We have a duty to bring to the debate the pitfalls of the legislation, and some of the pitfalls are going to be the misapplication of the Judges' Rules which will lead to cases collapsing, and the same millions of dollars that Dana Seetahal spoke about.

Madam Vice-President, the other case I turn to is a court of appeal case in Trinidad and Tobago, *Ancil Edmond, Bruce Henry and Irene Ragbir v the State*. It was a very popular case which again revolved around how police officers use and interpret Judges' Rules, and how it gives rise to appeals because even the police with their years of institutional learning, years of institutional application of these Judges' Rules, make mistakes.

If we took out all 31 of us in this Chamber tomorrow and brought in 31 persons of equal intellect, I guarantee you, you will get bad law being passed. Not because the 31 replacements are of inferior intellect, but because they do not have the institutional memory and the institutional learning. That is the point I am making here.

We are now going to give soldiers the powers of arrest. They will have to apply the Judges' Rules which even the current police force with its years of training, workshops, seminars, still make mistakes, still make errors in the application of the Judges' Rules when it comes to arrest, and cases are appealed and won. I am saying that, by putting this other layer of soldiers having this power of arrest without that institutional learning, without that institutional memory, is going to give rise to even more cases being thrown out of the courts. We will be training them yes, I agree, but you are discounting the value of institutional learning.



It is like taking all of the professors out of a university, training a new batch for a year, putting them in and expecting that university to achieve the same high academic standards. It just does not work. That is the power of institutional learning, and I am really encouraging my colleagues opposite not to discount the value of that institutional learning, [*Desk thumping*] that the army personnel will not have. I am bringing cases to show where the police with it, sometimes misapply it.

Madam Vice-President, in this case, commonly called the Irene Ragbir case, if you will permit me. This case is presently under consideration where the accused denies authorship of the statement, but admits signing it under duress, the overlap of functions is more complex, how the courts deal with witness statements. And as I said before, these army personnel with powers of arrest now have to record their interactions with civilians, they now have to do it. Concurrently, the police officers are doing it on the same matter.

The treatment of a police officer to a witness, with the institutional learning, is totally different to how a newly recruited army personnel with a few months training, their interaction with a civilian is going to be totally and totally different. In this it is said:

“It is apparent from the transcript of the proceedings that upon examination by his counsel the appellant stated that he did not give a statement but he signed a document which document he later said he signed because he did not want to get licks again and that one Mr. Philip had burnt him on his back.”

Now, this is an allegation but it goes to how the Judiciary applies the Judges’ Rules to the cases before them. It gets even better than this, because there is even more confusion where we have written statements but more confusion where we have oral statements.

Written statements—there is at least a source document that we can go to, but how is the army recruit being given the powers of arrest, going to understand the fine distinction between a written statement and an oral statement? Because, remember, when he arrests the person and he takes him to the nearest police station and hands him over, in that handing-over, he has to literally hand over notes, evidence and so on. I am saying that these new recruits are simply not going to have the institutional learning that a police officer of years of experience is going to have.

Let us look at another matter, Madam Vice-President, that the Judges’ Rules speak to, because Sen. Prescott says, what happens now when they charge a person, will these soldiers be now going to the courts to give evidence? Will these soldiers

now be called as witnesses? One of the burning questions that came out of the Irene Ragbir case again with the application of Judges' Rules, if you would permit me:

“Where a person is charged with or informed that he may be prosecuted for an offence he shall be cautioned in the following terms:-

Do you wish to say anything?”

**Madam Vice-President:** Senator, Sen. Deyalsingh, your first 45 minutes end at 7.30 and thus far you have made one point on Judges' Rules. Can you kindly move on to the next point because you are going to reflect again on the next case. It is the repetition of the same point that you are making and you are using the case references to support your argument. All I am suggesting is that in the interest of time, if you can move on to a new point. At least you can support your arguments better.

**Sen. T. Deyalsingh:** Madam Vice-President, I will respect your ruling. [*Interruption*] No, no. Leave it. Leave it. Leave it. [*Crosstalk*] I spoke about the problems earlier about the duality of recordings, and I am putting it to this honourable Chamber that that duality of recordings is a major shortcoming of this piece of legislation; major shortcoming. We are adding another layer on to a process where cases have collapsed in the past. Standing order 10, again, talks about the importance of recording, and the Irene Ragbir case when you read it, it raises serious questions as to the workability of these soldiers having the powers of arrest, and how they are going to record or not record what they do.

Madam Vice-President, one of the reasons I looked at this is that speaking about the right to counsel, and this is a new point here I am raising, now, so I hope I do not offend you—the right to counsel. Even the right to counsel is sometimes not fully appreciated by police officers, and in this case a suspect's right to communicate and consult privately with an attorney has the force of a constitutional right. This is what this case is saying. Would a soldier with the powers of arrest appreciate this constitutional right? Because many cases collapse when the police say, well, I offered you counsel and you said, no. Even police cases collapse. Even that denial or wish not to have counsel is not an absolute.

**7.30 p.m.**

I am just alerting all of us that these soldiers, with powers of arrest, need to be seriously trained, not only in police procedure, but also in matters of constitutional rights. Because it says here, Madam Vice President—[*Interruption*]

**Madam Vice-President:** Hon. Senators, the speaking time of Sen. Deyalsingh has expired.

*Motion made:* That the hon. Senator's speaking time be extended by 15 minutes. [*Hon. E. George*]

*Question put and agreed to.*

**Sen. T. Deyalsingh:** Thank you, Madam Vice-President. So, Madam Vice-President, I leave the issue of the Judges' Rules there. I came to the end of that there.

We want to pass legislation to deal with crime. Every time the Government brings a crime package, I always remember the passion with which the Attorney General will normally pilot such Bills: and this will be the solution; we need this; the anti-gang legislation and so on.

Madam Vice-President, the Government, via the Minister of National Security outlined 23 initiatives to deal with crime. I do not have time to talk about all 23—coastal patrols, advisory council, aerial surveillance, police service to be strengthened, dedicated highway patrol unit, regulation of private security industry, robust legislative agenda on security planned, continued collaboration with state agencies, maritime security wall to be established.

Madam Vice-President, almost none of these things have been done. None! But we keep on passing laws. I think even from the last administration to this one, we should realize by now that passing laws tackles crime at what I call the retail end. The little boys with the gun and the rock of cocaine are not the importers. Until we get serious about protecting our borders, which the Government has failed miserably on by rejecting the OPVs, putting nothing in place and, even in the *Medium-Term Policy Framework*, put out by Sen. The Hon. Bhoendradatt Tewarie in 2011, it spoke about resurrecting such a plan to protect the borders. The question is: why did we scrap the OPVs in the first place under the pretext that the war on crime is not to be fought on the seas, but to be fought on land?

We continue to fight the war on land by passing legislation, but the Government has been soft on the wholesale side of crime, which are the importers of the drugs, the importers of the women human trafficking, the importers of the ammunition. We continue to be soft on that and, if you notice, Madam Vice-President, even international agencies now refuse to cooperate with us on issues of crime.

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

**Madam Vice-President:** I will allow Sen. Deyalsingh to continue. I do not think that is irrelevant.

**Sen. T. Deyalsingh:** Thank you, Madam Vice-President. Madam Vice-President, if we are serious about crime—I have raised the issue in this Parliament once and I will raise it again. Under the state of emergency, I think soldiers have the powers of arrest? When we had the last state of emergency in 2011, there was a container of chicken in the Point Lisas port, seasoned with marijuana, allegedly assigned to someone associated with a state board, a chairman of a state board, and we did nothing. We did nothing. We did not arrest the person. We did not follow the container. We opened the container prematurely on the docks and gave that person a “get-out-of-free-jail-card”. He got out of jail free. That is why I am saying that we need to be serious about legislation.

Madam Vice-President, I spoke earlier about opening up the State—whichever Government this was, the State—to millions of dollars in lawsuits and I want to use a case in point, the case of *Rajesh Ramsarran v The State*, a Privy Council decision.

Madam Vice-President, I am using this case to illustrate that even police can make mistakes. This is a very sad case. This is a case of a young man who was arrested. He was supposed to pay a fine. He paid the fine, but was subsequently arrested and detained and incarcerated for three days because the police were negligent, after they had arrested him, in not looking at this man’s claim that he had paid a fine, and the Privy Council was very scathing in how it is you have people with powers of arrest who did not do due diligence. They have access to all the records. Now we are giving soldiers the same powers of arrest but without access records. In this case, the State had to pay out over \$800,000.

This is what, I think, Dana Seetahal was referring to, that when we pass this legislation, with this bifurcation of responsibility between the soldier with powers of arrest, between the police officers—even in this case, where the police could have checked to see whether this person was telling the truth or not, they did not. It was a serious miscarriage of justice and there are going to be more miscarriages of justice if we continue with this path of passing legislation to deal with an issue when we are not dealing with the issue at the root cause, which is stopping the guns, stopping the drugs, stopping the human trafficking.

We have done precious little; we have done precious little along those lines. The 23 recommendations speak about border patrols; nothing done. Our boats are patrolling Brazilian waters and helping in their fight against crime. There was a promise to fix the 360 degree radar, not done! Not done! There was a promise for highway patrols. Not done!

Madam Vice-President, we will not, in this country, really come to grips with the issue of crime until we go back to the basic premise as explained by the last administration, which was done with the OPVs that have long range, could stay out at sea for months, see everything coming in, with their helicopters and with their fast-patrol boats which gave you the link between the shore, a few miles out to sea; then the helicopters took over and then the helicopters would liaise with the offshore patrol vessels. We are not going to solve the problem until we get back to that understanding.

**Sen. Dr. Tewarie:** The PNM has all the answers.

**Sen. T. Deyalsingh:** The PNM did have the answer and we gave you a national security apparatus on a plate. [*Desk thumping*]

**Sen. George:** And crime rising.

**Sen. T. Deyalsingh:** We gave you a national security apparatus on a plate and the boats are now in Brazil. The helicopters are being used for personal transport.

**Sen. George:** And crime rising.

**Sen. T. Deyalsingh:** The SAUTT office in Wallerfield was described by Gillian Lucky as being up to CSI standard. Gillian Lucky said that the SAUTT offices in Wallerfield were up to CSI standard. [*Crosstalk*] We gave you an apparatus which would have been based on intelligence, on science. We gave it to you on a silver platter and you did nothing with it.

**Sen. George:** Crime was rising still.

**Sen. T. Deyalsingh:** If it is SAUTT was illegal, why did you not bring the legislation early in your term to legalize it instead of leaving it like that? Why did you say the war will be fought on the seas and not on land? We gave you it on a silver platter. Use it!

Madam Vice-President, this piece of legislation is going to be very difficult for us to support. I have, hopefully, put out some comments for the national community to chew over, to consider, to contemplate. It is going to be a logistical nightmare. It will lead to a bifurcation of responsibility between the army and the police. It may even lead to a demoralization of the police as they are already saying—as Mr. Seales has already said.

Madam Vice-President, I urge the Government to listen to the other voices and, Madam Vice-President, I thank you.

**Sen. Corinne Baptiste-Mc Knight:** I thank you, Madam Vice-President, for the opportunity to intervene in this debate and I want to say that I rise to get involved here in an effort to avert what I think could be a terrible injustice—an injustice to the soldiers, to the police and most of all to the citizenry of this country.

I have been following this debate ever since it started in the House and I have been struck by the fact that every aspect of the stakeholders has been involved in it in some fashion, except for the soldiers, and I want to take this opportunity to place on record my appreciation for their professionalism in handling their situation in this matter.

Indeed, Madam Vice-President, over the years, I have come to think that successive administrations have not sought to understand the peculiar circumstances of our defence force, and my mind goes back to 1992, when Trinidad and Tobago appointed our first representative to the Inter-American Defence Board in Washington and the person who was appointed was, I think at the time, virtually the second-in-command in the defence force and was sent up to Washington with no staff, not even a “batman” and our representative in the Inter-American Defence Board was singularly the only representative there who had no staff; I repeat, not even a “batman”.

This was a source of pain to me because no one could get the authorities to understand that there are certain basics that are a given in the defence force. And I come and I see now, a situation that reminds me very much of my youth. I must have been in about second standard or third standard when I learnt the poem, *The Charge of the Light Brigade* by Alfred, Lord Tennyson and I think it is in the second verse, where it says:

“...tho’ the soldier knew  
Some one had blunder’d:  
Theirs”—was—“not to make reply,  
Theirs”—was—“not to reason why,  
Theirs”—was—“...to do”—or—“die,”

The result:

“Into the valley of Death  
Rode the six hundred.”

**7.45 p.m.**

Madam Vice-President, I find our defence force, right now, very much in that position, and I am forced to applaud their professionalism. The media has been full of the comments of every stakeholder, including the police service and their representatives. The silence of our defence force has been inspiring. They as a body have stuck to their promise to serve this country and not comment on what I personally think can affect them very adversely.

Let me go on now to the Bill itself and explain why I react in this manner to it. I am not sure whether the purpose of the Bill, the unstated purpose, is to reconstruct the Inter-Agency Task Force, which we all admit has existed for quite a while. But when I look at clause 4, which is the meat of the matter—I assume what has been said explicitly in the House and here, that, basically, our defence force is overmanned and underemployed. Hence, any unit can be identified to provide these law and order forces.

I consider this a little abusive, one; and, two, I think that it betrays a lack of understanding of what the defence force is supposed to be about. Because nobody can tell me that, in one breath, Members of the Government Bench can talk about the fact that the army is involved in MILAT, MYPART, Conservation Corps, assisting in disasters, getting involved in the state of emergency, et cetera, and tell me that you do not know what they are doing.

I have difficulty with that, but to say that “any unit”—now I gather from today’s discussion that most people recognize that there are four units: army, coast guard, air guard, reservists.

The coast guard already has certain authority to arrest people; so is it that the coast guard is now going to be assigned these duties since it is already part of their functions?

**Sen. Ramlogan SC:** They already are.

**Sen. C. Baptiste-Mc Knight:** Madam Vice-President, can I plead with you to ask the hon. AG just to listen, because he has the authority to wind up the debate. Now, a unit has been described by people here; is it that the unit known as the regiment will be assigned these functions? If not, it means that another unit in civilian terms has to be constructed from some of these underemployed soldiers who will be assigned, specifically, to these functions.

It says that this unit is to be charged with the maintenance of law and order. I want to know: will this unit have any other functions as normal soldiers? And if this is to be done in addition to their normal functions, are they going to be paid overtime? Because we cannot continue to take advantage of our nationals under the guise of saying that they are doing their jobs as soldiers. I cannot be a part of that.

According to the Bill, this unit, once identified, shall be assigned to, I quote, “a member of the police service”, and I am a little disturbed that there is no mention here of a senior member of the service, because seniority comes in later on in the Bill. And this broad category of “a member of the police service” provides me with a little problem because it strikes me as giving the police service a great deal of latitude in circumstances where we are well aware that there is a well-publicized shortage of manpower in that service.

I understand this here to mean that only soldiers who belong to this particular unit will enjoy these powers and privileges of the police service, and only when they are operating with the particular member of the police service to whom they are assigned, which means that if that constable, sergeant or inspector is ill or off duty, they cannot function. That does not make a lot of sense to me, if what you are doing is providing additional manpower.

The problem has reached crisis proportions—we agree crime is at a point of crisis, but this is a crisis to my mind that is brought about by mismanagement and it can only be resolved by correcting the work environment and the management systems in the police service, and at the same time by adopting a more serious approach to the social support programmes that are being introduced to alleviate the problem.

What am I talking about? Is it enough to insert morals and ethics education in the school system when it is not practised in the Executive, in the Parliament or in the wider society? Ethics and morals are not taught on television or in programmes in school. They are inculcated by seeing and experiencing them as part of your life. Unless we, some of whom would like to think of ourselves as exemplars, start mirroring these behaviours, it is a waste of the time to spend \$2 million on a project to put morals and ethics in the schoolroom.

When we go to offer \$69-a-day jobs to populations in areas that the Government identifies as hotspots, without realizing the demoralizing effect of telling the residents of these areas that this is all they are entitled to, completely ignoring the number of residents in those areas who have full certificates and degrees, and who find it impossible to get jobs commensurate with their qualifications, once they put their correct addresses on the application forms—no!

It is time to think in terms of affirmative action programmes addressed to those youth so that their siblings, other youth in the area can be encouraged to stay in school, to get qualifications, to benefit from training programmes that exist. These are things not rocket science. It is all well and good to have family



days, et cetera. These are passing days, and you irritate people by telling them that because they live in John John or Sea Lots, all they can qualify for is a \$69-a-day URP job. Think about it again. We have got to change the message that we are sending.

It is for this reason that I am wondering to what extent this particular programme fits well into the remit of our defence force. Of course there are national security functions that the defence force is adequately equipped to be engaged in, for example, monitoring the entry points along the coastline for illegal goods and substances. The police have not been able to cope with this, and, I think, from what I have been hearing, that the defence force training equips them more adequately to deal with that sort of interdiction.

Of course you will say that the Inter-Agency Task Force has operated for decades. I do not consider the fact that because it has existed for decades it has to continue in its current incarnation. Why? Because if it had been that successful, we would not be here today talking about this Bill. It would have made a significant difference already. In fact, I wonder to what extent the fact of its existence has not contributed to the problem. And what I am thinking of is that because it was invented to correct a problem, the core problem, which is re-engineering the police service, has not been given the attention that it deserves. Unless and until we correct the faulty engineering in the police service we will be facilitating the spread of crime.

Madame Vice-President, I want to press on to my next point. I feel that this amendment, as it stands, places the members of the defence force that could possibly be assigned to such a unit in double jeopardy. Why? They will have two masters, both of whom they will be answerable to in law, but each of whom is driven by a different specific mandate. Now throughout this Bill they are recognized as soldiers. Once they are soldiers they are under their own code of conduct, punishment, et cetera. Their sanction is court martial. Then to satisfy, God knows who or what, the Chief of Defence Staff is to enunciate a new code of conduct that is going to cover them, specifically, when doing these police duties. What is the sanction there? The Chief of Defence Staff can have no other sanction but court martial. That is his box.

But now the Police Complaints Authority is brought into it; they also have to be answerable to them. I cannot understand why. Of course, not being a lawyer, I cannot say with any sense of certainty that section 78 of the Defence Act covers instances where soldiers misbehave in the civilian society. I would like the Attorney General to mention that in his winding-up.

**8.00 p.m.**

In addition to that, the Police Complaints Authority in that Act at section 21(1)(e), 21(2) and 21(3)—do the powers there not cover non-members of the police service who are getting involved anyway in irregularities in policing? I think that is a situation which needs to be clarified, at least for me.

Let me come to the duties, which many of those who have spoken before me have mentioned. I want to know if I understand them properly. I understand that the duties in 2(c) involve what I term arrest/transfer/report. If the idea is that these soldiers merely apprehend and hand over to the accompanying officer, which means that the officer has to be in the vicinity, why is the soldier apprehending if the policeman is there? [*Interruption*] “Yeah, but if he in de back, he not accompanying him.” This is what I want to know. If they are separated, does he still have the powers?

**Sen. Ramlogan SC:** But they cannot be like Siamese twins on a joint operation.

**Sen. C. Baptiste-Mc Knight:** No, they do not say conjoined, they say accompanying. Siamese twins do not accompany each other. [*Crosstalk and desk thumping*]

**Sen. Ramlogan SC:** [*Inaudible*]

**Sen. C. Baptiste-Mc Knight:** That is legalese, but the thing about it is that you are dealing with ordinary citizens who need to understand. I do not consider myself that ordinary, “but I not that bright and I doh understand”. So what you leave for the people in Sea Lots and who you want to give \$69 a day, who you obviously feel “doh” understand?

**Sen. Ramlogan SC:** That is a rather uncharitable and very Opposition-like statement. Why do you keep referring to that? [*Crosstalk*]

**Sen. C. Baptiste-Mc Knight:** “You see what ah mean?” Because I read the papers.

If the sum total of the soldiers’ job is to apprehend the person, make a record and hand it in, I have to assume that this record has to be in some certain format that the police can accept, can work with. So it means that they have to be schooled in this, they have to be taught this. This is not part of their normal training. When they hand everything over to the police, this is the end of it. But I think it has been mentioned before that arresting—I think that it was the Minister

of Justice who made the point that there is more to an arrest than just laying hands on somebody and apprehending them. In order to make an arrest, the arresting officer should understand all that she spoke about, arrestable offences and the whole manner of making an arrest.

The soldiers who are currently on the Inter-Agency Task Force—correct me if I am wrong—I have the impression that they have not been given this type of training.

**Sen. Hinds:** That is correct.

**Sen. C. Baptiste-Mc Knight:** I ask: how long does it take for a normal non-lawyer human being to understand the laws and be able to enforce them? I ask. [*Interruption*] “Ah coming to dat later.”

**Sen. Ramlogan SC:** But the private security guards get two weeks of training.

**Sen. C. Baptiste-Mc Knight:** Two weeks of training? “How long it took you to do law?”

**Sen. Ramlogan SC:** I said the private security guards—[*Inaudible*]

**Sen. C. Baptiste-Mc Knight:** The private security guards—I happen to have access to the manual that is supposed to be used to train them.

**Sen. Ramlogan SC:** Supposed.

**Sen. C. Baptiste-Mc Knight:** It is half-inch thick. The fact that they may not be trained is a problem for the people who are supposed to enforce, who are supposed to ensure that they are properly trained. You do not be in dereliction of your duty and then try to make up for it by putting additional boots on the street. It does not compute. I want to be sure that, should this pass, the soldiers are not going to be placed at the disadvantage to be accused of wasting government money by arresting people wrongfully, that they will be properly trained. [*Desk thumping*]

Madam Vice-President, I want to come back for a while to the matter of the code of conduct. I understand from this Bill that in doing anything to do with preparing this unit for their policing duties—[*Interruption*] the unit, whatever it is, I am not getting into that. I have asked the question: is it going to be the whole regiment or is it going to be selected people? It says that the Chief of Defence Staff will not be answerable to the Minister. My question: to whom will he be answerable? There must be some authority which should be responsible for vetting or something.

Let me move on now to the police officers. Their grouses have been well articulated in the media and elsewhere. This Bill highlights the inability of the police force, in its current incarnation, to function satisfactorily. This to me is highlighted by some of the utterances of the Acting Commissioner of Police, where he underscores at least two of the grave problems; one of them is lack of manpower. He reiterates the shortfall of some 1,500 bodies, and I think he expects us to assume that an uncertain number of well-trained soldiers to help arrest offenders will help him to operate effectively. Question: is this a reasonable conclusion to draw? I think not. Why? Assuming that these soldiers can arrest this additional number of miscreants, and do nothing more than arrest them and hand them over with an appropriate notation to the police, can the CoP's depleted staff process these additional arrests to bring them to successful court matters?

If, without this additional number of arrests, the current members of the police service are not able to process all of the matters which they have initiated, the arrests that they have made, and bring them to court and have them prosecuted, we have two problems. That immediately highlights the need for doing something about your court system, your justice system because it is no point having a mass of arrests and then nothing else happens. It does not make sense.

One of the problems is that police officers go to court, waste a day in court and then have to go back because the case did not try. There is another problem: there are cases which cannot be tried because the police officers do not go to court on their days off because they are not paid overtime. This is an in-house matter. [Crosstalk] This is an in-house matter. It is a fact. That is all part of a larger problem. I want to ask: does this mean that the CoP wants us to believe that his real problem is a lack of arresting capacity? It is not computing.

Next matter: the CoP has said that the soldiers will not need six months of training, and immediately it says to me that is one of the problems we have with the police force—[Interruption]

**Hon. Senator:** Police service.

**Sen. C. Baptiste-Mc Knight:**—sorry, police service, I stand corrected. [Crosstalk]

**8.15 p.m.**

**Sen. Ramlogan SC:** It is a Freudian slip, but you are correct.

**Sen. C. Baptiste-Mc Knight:** That you take someone with five CXC passes and you expect them, within six months, to be proficient in understanding and

enforcing the laws of the land, with six months' training; I think it takes a lawyer a little longer than that to understand the laws of the land.

**Hon. Senator:** About 25 years. Right?

**Hon. Senator:** About 25—30 years.

**Sen. George:** That is all the laws.

**Sen. C. Baptiste-Mc Knight:** Well—[*Crosstalk*]

**Sen. George:** A segment of the laws.

**Hon. Senator:** You know everything already. [*Crosstalk*]

**Sen. C. Baptiste-Mc Knight:** Madam Vice-President, I declared my position, I am not a lawyer. I do not know how long it takes them to read or understand the law, and I will not be issuing an opinion on that here.

**Sen. Drayton:** But they do interpret the Jamaican law right.

**Sen. C. Baptiste-Mc Knight:** Madam Vice-President, I will not at this stage go into the ways in which this Bill does violence to the Executive, the Parliament and the people that we have sworn to protect, but suffice it to say, to me, it creates the impression that we are seeking soft fixes; settling for the soft option because we are not ready or willing to do the hard work of analyzing and fixing the problem of the police service and the judicial system.

Madam Vice-President, in closing, all I would like to say is this Bill is not moving us in the right direction. I quote the hon. Minister of Justice in my own way, it is not going to make the wrong right. I thank you. [*Desk thumping*]

**Madam Vice-President:** Minister Tewarie. [*Crosstalk*]

**The Minister of Planning and Sustainable Development (Sen. The Hon. Dr. Bhoendradatt Tewarie):** Thank you very much, Madam President—[*Interruption*]

**Hon. Senator:** Vice.

**Sen. The Hon. Dr. B. Tewarie:**—Madam Vice-President. It is late in the evening, but I would like to make a contribution on what everyone in this honourable Senate seems to agree is an important Bill about an important matter, and I have been struck by the restraint of some of the contributions here today, and perhaps this is because of the importance of the Bill and the contents and implications of the Bill itself.

The hon. AG himself was very persuasive and sound in his presentation, but he was very measured in presenting his case and I think that he took the time to present his case, knowing that he would have an opportunity later to wind up and to deal with some of the various comments that have been made on the Bill. But he did make the case for the Bill, and he described it as a simple Bill and a rather straightforward one that sought to address a particular problem or challenge that we have in the society that we need to address.

Sen. Moore in her contribution was a master of understatement, and irony and full of good humour, but she did also make some telling points because she addressed some of the issues that were raised in opposition to the Bill: people pointing out why, what were some of the questions on their minds, and why perhaps they were concerned about the Bill.

Sen. Prescott's contribution I found very lucid and clear, and he took a probing approach in which he basically questioned a number of the assumptions of the Bill. What I would say, having listened to Sen. Moore, is that many of the questions that he raised—that is to say, Sen. Prescott—were answered by Sen. Moore, and she was quite convincing in her argument that this might not be perfect law, but it is indeed good law and it does rectify an anomaly which we have lived with for over a decade, and that when we make law we must make good law, not only for good men.

Sen. Hinds, who spoke as the first Opposition response, I think in Sen. Moore's contribution, if I might say so, she caught him this evening in telling what she described as an isolated—she did not use the word “fairy tale”—but she caught him in an isolated fairy tale, and then it also became clear that Sen. Hinds had woven many fairy tales—[*Interruption*]

**Sen. George:** In the past.

**Sen. The Hon. Dr. B. Tewarie:**—some of them without any connection to any fact [*Laughter*] or to facts at all.

Sen. Baptiste-Mc Knight took the view that we were headed down the wrong road with this Bill and it would not make any wrong right. As usual, she was measured and argued her case, and I want to try in the same spirit of the debate today, this evening, to deal in facts and to make some interpretation of the facts, and I hope that what I have to say will be seen as worthwhile by the Members of this honourable Senate and by the listening public at large. [*Crosstalk*]

I think that the debate so far has really focused on three fundamental things: one, good law, good men or people, and therefore, the issue of governance, and appropriate institutions and mechanisms for the execution of good law.

One of the questions that Sen. Prescott asked was: are we going to be more secure because of this law? I would like to answer that question by saying that it depends on whether we have the collective political will to make our country more secure by dealing with crime in a focused and concentrated way.

I say that because we may have read, all of us, in the newspapers, reports some time ago—it may have been about three or four weeks ago—in which there were some criticisms about the manner in which the country, Trinidad and Tobago, was tackling the issue of crime. One of the issues that came up was the issue of political will. When I read it—I was quite struck by the headline, and when I read it again, and I read it a couple of times, I realized that the political will that was being alluded to was really the collective political will across Parliament, and across the institutions, and across interests in the society to deal with and to tackle the issue of crime head-on.

This is an important thing because this issue of crime has been with us for some time, and we have seen it grow very strongly, intensely, up to 2009, and we have seen it to some extent contained between 2010 and 2012, but we have not seen crime curbed and we have not seen a situation in which we, as a country, have been in control of the crime situation in Trinidad and Tobago.

Therefore, I ask the question: what is this Bill about? A lot of people have mentioned various parts of the Bill, a lot of Senators; and what does the Bill say? I want to go directly to the Bill to read the Explanatory Note:

“The Bill seeks to amend section 5 of the Defence Act, Chap. 14:01 to confer on any member of the Defence Force who is engaged in assisting any member of the Police Service...”

So the focus is on a limited, well-prescribed group within the defence force:

“any member of the Defence Force who is engaged in assisting any member of the Police Service in the maintenance of law and order with the same powers, authorities, privileges and immunities as are given by law to members of the Police Service.”

The Bill itself goes on to say that the Act does in fact violate sections 4 and 5 of the Constitution and because of that, it requires a majority of three-fifths of all the Members of the House, and therefore it requires a special majority because it does interfere with constitutional rights of the citizen.

Now, this Bill came from the House of Representatives here to us with a three-fifths majority, and when we look at clause 4 we begin to see that under clause 4:

“When any unit of the Defence Force”—I am reading from it—“is charged under subsection (2) with the duty of assisting any member of the Police Service in the maintenance of law and order and is engaged in so doing, the members of the unit shall—

- (a) have the same powers, authorities, privileges and immunities as are given by law to members of the Police Service, subject to subsection (2C); and
- (b) be under the command and control of the Chief of Defence Staff and in these circumstances the Chief of Defence Staff shall not be subject to the general or special directions of the Minister, notwithstanding any written law to the contrary.”

What it says really is they will have these powers insofar as they are called upon to assist the police and are engaged in activities with the police and their commanding officer shall in fact be the Chief of Defence Staff.

Then it goes on to say in (2B):

“The Chief of Defence Staff shall, within three months of the commencement of the Miscellaneous Provisions (Defence and Police Complaints) Act, 2013, make standing orders to establish a code of conduct to (conduct)”—sorry—“to govern any member of a unit of the Defence Force referred to in subsection (2A), which shall be published in the *Gazette* and twice in two daily newspapers.”

Issues were raised about the three months. The “three months”, perhaps, was put in as a safety mechanism, but there is no reason as someone said—as one Senator said—why it should take three months to do this.

“(2C) Where a member of the Defence Force has arrested any person pursuant to subsection (2A) he shall, without delay and in any event as soon as is reasonably practicable, hand that person and any items seized over to the senior police officer whom he is assisting or to the nearest police station and record or cause to be recorded the circumstances occasioning the arrest.”

So what it calls for is a collaborative relationship with the police, where the police are clearly in charge and the military officer is, in fact, supporting the work of the police.



Then in 5; I will skip to (d):

“a member of the Defence Force charged under section 5(2) of the Defence Act with the duty of assisting any member of the Police... in the maintenance of law and order and is engaged in so doing,”

This is inserted in the Bill so that it can become clear what, in fact, the military officer is doing in company with the police.

Then in 6 there is this exit clause where it says:

“This Act shall continue in force for a period of two years from the date of its commencement.”

What it means is that after two years Parliament either has the opportunity to review or the Bill becomes defunct, so to speak. In other words, the law we are passing today which brings soldiers in the company of police officers to act together in concert to deal with the execution of acts against criminals and to deal with the containment of crime, that is for a very limited duration of two years.

### **8.30 p.m.**

I think this is also a very important thing. It was put there because it was a response to concerns people had about militarization of the State, about militarization of Trinidad and Tobago, and clearly, the intention of this Bill is not militarization at all, but to find a solution to the crime that is upon us and has given us a great deal of difficulty dealing with it under normal circumstances.

Now, the question needs to be asked even after reading those clauses in the Bill: with the passage of this Bill, will all soldiers and members of the defence force be precepted? Now, I have to ask that question because Sen. Hinds, in fact, gave that impression when he made his contribution. He said that it is not limited, it is all soldiers, and the answer to that is “no”. There will be specially selected soldiers and they will be conferred with police powers as the Bill indicates, and this only after they have undergone rigorous training similar to that undergone by any member of the public wishing to become a member of the Trinidad and Tobago Police Service.

I am sure the hon. Minister of Tertiary Education and Skills Training will deal comprehensively with the issue of how police will be trained, so I will not say a word on that, except to say that they will not move from army into policing just like that.

As has been mentioned before, Trinidad and Tobago is not the only country in the region seeking to enact legislation of this nature; other countries that have done it and they have been mentioned are: Antigua and Barbuda, the Bahamas, Jamaica and Guyana. Now, the authority given to members of the defence force will cease at the point of arrest. They will not be given any authority to interrogate, investigate, lay charges, nor will they have any authority to go to court to be a prosecutor. At the point of arrest it is proposed, as I read from the Bill, that the arresting officer—sorry, the arresting soldier—will then hand over the items seized and the persons detained to the senior police officer, and if no police officer is present, the officer will then proceed to the nearest police station.

I mentioned the item about the code of conduct already and the three-month time, I mentioned the sunset clause of two years and, of course, members of the public can submit complaints if they feel aggrieved with respect to the conduct of members of the defence force, as it relates to this Act, to the Police Complaints Authority. Therefore in the presentation of this Bill and the debate on this Bill, and the Bill, if we were to pass it, what would obtain, in fact, are pretty specific laws that allow soldiers to participate with police for specific purposes under clear terms and conditions for a limited duration, so that we can spend the next two years trying to deal with this issue of crime.

There can be no question that we need to deal strongly with crime. It is a serious problem in this country. Crime has become an industry and the security industry has been growing in this country and it has been growing worldwide. It is a worldwide phenomenon, but it is a peculiar problem in some of our Caribbean countries. Jamaica has had a very rough time with it. They are now bringing it under control. We have had a tough time with it. We want to bring it under control. And what do the numbers tell us? And is it true that the last administration, according to Sen. Deyalsingh, gave us the institutional capacity to address the solution of crime? I do not think the numbers will tell us that that is so.

I do not want to go into a litany of statistical information, but I do want to say something about crime over the last decade or so, from 2002 to the present time. *[Interruption]* What I can tell you as a fact is that over 20,000 people in this country have been affected by crime in this decade. I am talking about affected by crime in three specific areas, not in every form of crime. I am talking about murders, where over 4,000 people have had direct impact by someone murdered in their family.

In other words, you have had 4,000 families I am talking about, because 4,000 people who have been murdered in the decade, 4,066; woundings and shootings were 7,600. Just over 7,600 have felt a bullet or a cutlass or some blunt or sharp instrument on them, traumatizing again 7,600 families; and rapes, incest and other sexual offences, over 7,800 cases; making it a total of 20,000 people who have been directly affected by crime in the form of murder, that is to say, they are dead and their families remain to mourn; woundings and shootings, and therefore their families have had to live with the trauma; and rape, incest and other sexual offences, nearly 8,000—7,800—and their families have also had to live with this experience.

I want to ask the question, what do you think happens to a country of 1.3 million people when you have these numbers of people in your society and these numbers of families traumatized in this way by gang violence, criminal violence, and by the violence of the kind that we are talking about here in this country over the last decade? [*Desk thumping*] Is it any wonder that people are worried about the mental condition of citizens in this country? What does the ripple effect of a murder in a family have on the people in the community in which that person lived, or in the people in the family that are connected to them, whether they live in the resident community or outside? What is the impact of all of this on the people who are sexually molested, by the woundings and the shootings? What is the impact? What do you think happens to the society?

And not dealing with the crime is really creating a situation in which we have to perpetually live with this kind of condition which is really psychiatrically unacceptable for a society as small as Trinidad and Tobago. And I want to draw that to the attention of people, especially to members of this honourable Senate, through you, Madam Vice-President, because this is a very important thing to consider, because dealing with crime means lessening the trauma on people who have been affected like this over the last decade. [*Desk thumping*] I want to say those crimes that I talk to you about, what did I say the crimes were? The murders, the woundings and shootings, the rapes and incest and other sexual offences.

Where are the areas in which those crimes are being perpetrated? And when you hear the crimes, you will see that those places are places of victims and victimizers. They are in Port of Spain; they are in the northern division; they are in the western division. And in terms of woundings and shootings—this is for murders—they are in Port of Spain, northern division and the central division; and for the rapes and incest and other sexual offences, they are in the northern

division, the eastern division and the southern division. So, it is possible to pinpoint where these things are happening, and it is possible to have a targeted, an orchestrated strategy to address both the trauma of the victims and to address the criminality of the victimizers. And we must get to the point where we can take control as a society in which the Government can use the agencies of State to deal with this situation that is traumatizing an entire nation in this country.

And I want to say something to you. I mean, it is not by accident that we have had a situation as the AG outlined, and as many of the Senators admitted, it is not by accident that since 1970 we have had an increasing involvement of police and army together. There is a reason for that. It is because with the evolution of time, but especially within the last decade or so we have had the pace of society, the pace of the world system, the pace of technology moving so fast that many systems around the world have not been able to keep pace and many institutions around the world have not been able to keep pace, and as a result they have become dysfunctional.

In our society, we have had a situation just like that. We have seen it with some of the institutions over which the Constitution has jurisdiction, which is why we are going for Constitution reform; we have seen it in the public service and the structure of the public service which was colonially inherited, and this is true, the dysfunctionality of which I speak, of the police service as well. And it is possible to get a military system such as you have in the army and the navy, the coast guard, et cetera, it is possible to get that to be more responsive because of its authoritarian structure, which is a military structure that it has.

Because of the changes that have gone on in the police service it is much more difficult to take a dysfunctional system like that and get it into the 21st Century at a rapid rate and with the cohesion and the capacity that you require. And this evolution of police and army has really been a means of bolstering and buttressing one another in order to deal more effectively with the situation that is emerging on the criminal front in Trinidad and Tobago.

I want to say something. I said when I began that we have a crime industry in this country, and the security industry in this country has been growing. We have just under 7,000 law enforcement officers in the police service; we have just under 3,000 in the military service; we have about 276 officers who attend to immigration; we have about 488 who are deployed for matters related to customs and excise, and yet you have in this system, problems with the police service; you have problems on the customs front; you have problems on the immigration front; you have problems with all these institutions in the society.

If you did not have problems you would not have the extent of drugs and gunrunning that you have in the society. You would not have the extent of human trafficking that you have in the society, and we passed a Bill on human trafficking only, I think, January of this year, or it may have been late last year—I cannot remember—which means to say that it is an issue. And we could not have all of these things if all of these institutions were functional in the way that they were meant to be functional.

**8.45 p.m.**

The other day I saw something in Trinidad and Tobago: I saw 75 women being carried to court to be charged with, I cannot remember if it was for prostitution or illegal immigration. But the question I have to ask when they go to court, is, how did they get here in the first place, and who brought them here? So, these things could not happen if you had functional systems in the society. You could not have 75 women from foreign countries paraded in the court in one shot, unless you had dysfunctional systems that allowed such numbers to accrue. And therefore, we have a serious problem here and the challenge really has come to us being in charge of the State of how you deal with these matters.

I asked for a list of private security companies, I got 75 companies, but they tell me that only 35 of them are actually functional. I do not know what the other 40 or so do, but the security companies—you have about 35 of them actually functional. So in addition to the state entities that are supposed to guard customs, that are supposed to guard immigration, that are supposed to look after peace and security in the society, you also have this growing phenomenon of private guards including private bodyguards in Trinidad and Tobago because of criminal behaviour and criminal activity in this country.

I want to say that if Sen. Deyalsingh were correct that we had all the right requirements handed to us by the last administration, I do not think that we would have had the escalation of crime that we do have here from 2002 to 2009, and for every year from 2002 to 2009 there is an escalation. Then you have a curbing of it in 2010, you have a lowering of it in 2011 and then it jumps back up again to higher than 2011 levels in 2012, but not as high as 2010 and this is not for all areas. For some it is lower.

Crime has been reduced in some areas but for others when you look at the numbers you see that it is a picture of containment, it is not a picture of control. And the question that needs to be asked—when I talk about customs and so on, all these private bodyguards, when you talk about the immigration and so on, when I talk about the women who have been carried to court in their numbers, is—what

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about white-collar crime? We know that that is an issue. You have what you might call evidence of what is going on in the society without evidence to convict and that is part of the problem in this country.

On February 22, 2011 for instance, there was \$8 million in drugs found in an air condition unit at a home in The Crossings—a gated community off Tumpuna Road. Three men had been charged at that point. I do not know what the situation is now.

In the *Newsday*, August 20, 2011, \$22 million, and the 19-year-old accused was arrested after police officers seized two suitcases at the Piarco International Airport which were checked in on a Caribbean Airlines flight bound for New York. It was this arrest according to a *Newsday* article which led to the state of emergency over the fear of a cocaine war between Colombian and Mexican drug dealers.

In the *Trinidad Express*, September 16, 2011, \$30 million worth of compressed marijuana. On September 09, 2012 a Canadian national was caught with US \$1.6 million of illicit and illegal material. Now, all of this seems to point to something that is happening, and in the report that was done by the Selwyn Ryan Committee, a Member of this Senate, Dr. Lennox Bernard, was part of that. They hint at the connection between the gangs and the white-collar crime, but point out that it is a difficult thing to address. Trinidad and Tobago has been addressing this, not only with legislation; we have passed a series of legislation in this country on money laundering, having to do with the Financial Intelligence Unit, having to do with establishing the financial task force, a whole range of things, a series of legislation in this country over the years.

This administration, coming into office in 2010, has passed again a series of legislation in order to strengthen and bolster our capacity to deal with white-collar crime. And things have been happening because what you find, for instance, is that there is greater compliance by the financial institutions; the numbers say that. There was greater compliance in 2011 than in 2010, and there was greater compliance in 2012 than there was in 2011. And what they also say is that there are more matters referred for further investigation to the authorities than used to exist in 2011 and 2010.

So what it is telling us is that those agencies and the legislative framework established to deal with white-collar crime have been proceeding. But this is a very difficult period. I have information here that says, in excess of TT \$78 million was the suspected monetary value of suspicious transactions in the year

2012. So the work is going on and the connection is being made and people are doing their work to try to make the connection between the crime on the ground and the crime, that is white-collar crime, that really takes place in the financial institutions and in the money-laundering institutions of Trinidad and Tobago.

Now, it is important to point out though that while you are dealing with the issue of white-collar crime on one front and you are dealing with a dysfunctional system on the other, you also have to go beyond containment of crime to deal with what has been described as the dismantling of gangs, because people talk about the state of emergency and the information is clear. Under the state of emergency you may say it was an induced condition in the sense that during that period it was difficult to have the same level of crime. The point is that that was a period in which crime was heavily contained, but the gangs were not dismantled, which is why you had an escalation after the end of the state of emergency.

And there is a difference between the containment of crime and the dismantling of gangs; the containment of the gangs and the dismantling of the gangs. For us to get any measure of peace in this country the gangs in Trinidad and Tobago have to be dismantled. Just like the white-collar criminals need to be caught and contained and to be taken to the courts of law, so that if necessary they can be incarcerated. It is necessary to do that in Trinidad and Tobago. The example needs to be set if we are to have peace and security here, and a dysfunctional system will not allow us to do that.

So this Bill—[*Desk thumping*] is a simple Bill which seeks to bring together police and army to deal with the most critical areas in which criminal networks on the ground exist, in which gang leaders exist, in which gang systems exist, to not just contain, but to be able to dismantle, so that we can begin to address the problem of not only containment of crime for a period, or not only containment of crime in a district, but containment of crime and the reduction of crime because you are always going to have some containment of crime in large measure across the country.

We need to understand how the system works because you may say you have crime in one area of east Port of Spain and you may single out Beetham or you may single out this community or that community, but that is not true. You have networks in this society; anybody who understands Trinidad and Tobago will understand how the networks are formed. I will not call the manner in which they are formed and where the connections are in this society. I can tell you, you could take a line from a community here on the northern side of Port of Spain and head all the way down south, and you can get all the connectors in between, because

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that is how Trinidad and Tobago is organized. That is how the system is organized. There are threads of connections throughout the society. It is possible to make those connections.

Now, crime is not only a problem that you have to attack with the army and the police, I want to make that clear. The police are important in crime. Without a good police system we could not deal with crime in Trinidad and Tobago. And I have every faith in the police service of Trinidad and Tobago. Now do not get me wrong, not all police are good, but the majority of police do their work and they are serious about what they do. [*Desk thumping*] If we did not have a decent group of people in the police service this country would have been dismantled a long time ago.

But so too I have faith in the military officers. I was quite touched when President Carmona was installed. During his inauguration, I was quite touched by the manner in which the military played its role, on two occasions. One, when His Excellency President Richards was being prepared for his exit by the military and the manner in which they addressed that, and I was quite touched by the manner in which they welcome President Carmona as the new President of the country. [*Desk thumping*] You could have seen that at the end of the day, after 50 years, we had built an institution in Trinidad and Tobago.

You cannot talk about the military in the callous way sometimes that it is talked about. There may be bad eggs in the military, just like there might be in the police service, but by and large you have an institution that means something and that can do something, that can make a difference in this country. And the attempt here is not to militarize, but to bring the strength of these institutions together to deal with what is really a bad situation in Trinidad and Tobago. And a bad situation cannot be dealt with by soft measures. It is not possible to do it. [*Desk thumping*]

Now, I said that the solution was not only a solution that had to do with police and army. I took a careful look at the Ryan Report and there are some questions that really had to do with this society and the society in east Port of Spain. For instance, they asked the question: what is it that is leading to the explosion of gangs and what are the factors which lead young males to wage war on each other and on adjacent communities? And they tried to answer that question. They asked the question: why do these young people in the gangs wantonly hurt and even kill each other, and kill one another in adjacent communities, and yet they are of the same ethnic characteristics? That is how they framed it in the report. They asked the question: why do they hurt and kill each other with impunity, abandon and amorality? They asked that. Amorality is a hell of a thing. It is something that, in a sense, cannot be accounted for because the question of conscience is not there.



**9.00 p.m.**

Then: to what extent is the drug trade actively fuelling criminal activity in our inner urban centres and their respective diasporas? And they asked the question: how do the formal and informal structures that comprise our education system serve to either advance or ameliorate the present emergency situation in which we find ourselves?—meaning, the situation that we have in the gang-ridden areas.

So we are aware and very alert—which is why the Government of Trinidad and Tobago commissioned the Ryan Report—that there are social issues, that there are concerns that need to be addressed that go beyond policing, that go beyond bringing military and police together, that go beyond simply addressing the issue of gang violence. One of the things that they said here, which is very important—I want to read from the conclusion.

The report highlighted—that is to say, the Ryan Report—that the propensity to crime and criminality of local youth, especially males, is immersed in a culture of broken and dysfunctional families; failure or disruptive behaviour in schools; affiliation in gangs and juvenile delinquency set against the backdrop of drugs and the opportunities created to earn a living.

So the social situation it outlined, it showed what was happening to the community, what was happening to families, what was happening to the society; and it is important to take those things into account. But while you take those things into account, you cannot act as if there are not criminal elements that you have to deal with in the society as well. So you need to address the social conditions; you need to ameliorate the social—

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

*Motion made:* That the hon. Senator's speaking time be extended by 15 minutes. [*Hon. F. Karim*]

*Question put and agreed to.*

**Sen. The Hon. Dr. B. Tewarie:** [*Desk thumping*] Thank you very much, hon. Senators. Thank you very much, Madam Vice-President. I was just making the point that we see the need to address both, and to take a multifaceted and multipronged approach to this challenge, but that we cannot avoid the reality that

one of the things that you need to do is to be very, very serious and severe about the manner in which you deal with criminal gangs, criminal elements and criminality in the society, wherever it exists.

So we know that there is a social problem, or that there are social problems. We need to admit, all of us, that there is also a crime problem. We also need to admit that legislation is a necessary part of the arsenal to deal with these challenges, but we also need to admit that we have a political challenge among us, and I think that this is where the crux of the matter comes in relation to this Bill.

I would like to make this appeal for support for this Bill because this Bill is not about militarization, this Bill is about getting a functional capability in a dysfunctional system to deal with dysfunctionality in criminal behaviour in this society. That is what we need to do, and we have got to deal with it while we deal with other things in the society.

We are talking about doing something extra, doing something different for a limited period of time in a strategic way to try to make a difference, and I do not think we need worry about soldiers and police working together. I do not think we need to worry about soldiers using excessive powers in the society, and if any do, there is enough of a constraint built into what we have put into the Bill and what exists in the society to be able to do that. Because you will always, in anything, have the aberrant behaviour, or the excessive personality, or the excessive situation, we need to do that.

But we have seen situations in Trinidad and Tobago. I mean, I certainly—well, maybe I should not talk about that. But we have seen situations in which we really have had to put our lives, our faith, our trust, in the hands of both the police and the military and we have seen them come through, not only for individuals or for groups, but for the society as a whole, [*Desk thumping*] and we should appreciate that and understand that that is their first cause; that is their first commitment.

Now, Sen. Prescott was talking about the fact that he needed to see where this would all end, he needed to see where it would end and what would happen. There is no way that we can give you a guarantee that if we do this—I tried to answer that at the beginning. I said it depended a lot on the political will. If we were behind a strategy to deal with crime collectively, I think that we could solve the problem because I think that was what has been missing all along. Not only do you need to have a plan, you need to have the collective will. You do not have the coming together of institutions; you do not have the strategic intent and focus and you do not have the political support. By that I mean, broad political support to engage the criminality in the way that you need to.

But we do have projections for what we are trying to achieve in this society, and I shared with you today the Performance Framework and the Performance Report for 2012, and I want to give you an idea—because it is no secret; it is a public document—what it is that we are aiming at. We know what the baseline figure was for the crime rate in 2010, and what we are hoping to do by the various measures that we introduce is to reduce crime by 25 per cent of what it is today. It is on page 21 of the Performance Framework—to reduce it by 25 per cent by 2014. Now, we may or may not achieve that, but that is the goal that we have set for ourselves and we have put it in black and white. That is the goal that we are aiming after and these things are measures to help us to achieve that.

The recidivism rate, 53.4 per cent is the baseline. We want to reduce that by 10 per cent per annum. What I could tell you is that we were able to reduce that by just about 2 per cent in 2012, but we need to go much further to reduce that in 2013 and in 2014, and the target is 10 per cent per year.

Crime solvency rate—16.8 per cent in 2010. I want to tell you that we did worse than that in 2012. In other words, it was worse than 16.8. But what is the target? The target is to increase the solvency rate by 25 per cent by 2014, and that is what the DNA legislation—all the things that were being put in place—was for, so that you can set up a system that will allow you to more scientifically address this issue of solvency.

The homicide detection rate, we want to increase that by 2014, by 25 per cent. So, again, it is not just that—it is the detection issue which you yourself raised, saying that you do not know how this legislation is going to affect detection. But if you are going to solve crime, these are the important elements. You have got to get people in court; you are going to have to have conviction; you are going to have to detect crimes; you are going to have to solve crimes. All of these things are critical in the process.

Time taken for cases from start to determination—it is seven years. It did not move one bit in 2012. It remained the same. The Minister of Justice and I, for instance, had an aside conversation about that about a month-and-a-half ago. But the idea is to bring it down significantly to about four years because seven years is unacceptable.

The number of backlog cases—we could not even get the statistics. So that is something we have to search for now, and you cannot manage what you cannot measure, and you cannot measure what you are managing if you do not know what you are managing either. That is the problem we have. Here we have a

definition of what those indicators mean. So crime rate is the ratio of crimes in an area of the population, of that area, expressed per 1,000 persons per year. And you have it all the way down. It is on page 21 in the document, if you want to look at it.

So it is not that we do not know where we are heading; it is not that we do not know what we are doing; it is just that we are caught with a dysfunctional system that we did not create, and we are caught with a runaway situation which is very hard to harness, and the tools of the past in the same way will not solve the problem. It just is not possible. This is an additional measure that we are coming with to say, “Give us an opportunity for two years; judge us on the numbers in two years and see whether it has succeeded or failed”.

On the basis of that, I rest my case, Madam Vice-President, and Senators of the House, I hope that what I have said has made some sense to you.

Thank you very much. [*Desk thumping*]

**Sen. Dr. Lester Henry:** [*Desk thumping*] Thank you, Madam Vice-President, for allowing me to join in at this late hour. Before I begin my contribution in earnest, I must comment on the fact that the Attorney General was checking out the view from every seat on this side. It seems like he is preparing for where he will permanently be in a short while from now. [*Desk thumping*] [*Interruption*]

**Sen. Al-Rawi:** I am on this side. That is the difference.

**Sen. Dr. L. Henry:** Yes, I observed that he took a very close look while talking to each Independent Senator, that he was admiring the view from this side.

**Hon. Senator:** [*Inaudible*] with a mandate.

**Sen. Dr. L. Henry:** At the end there, Madam Vice-President, after listening to Minister Tewarie, I am more afraid of this Bill than before he spoke. [*Desk thumping*]

Now, my contribution will not make too much reference to any legal aspects of the Bill. If anything of that comes up, I assure you it will be purely accidental because my colleagues have already adequately dealt with most of that. Even though some of the points may come up, as we know in these debates, it is hard to avoid some minor repetition, at least.

But on a serious note, Madam Vice-President, I have a real problem with any action on the part of any government—not just this one—that smells and reeks of a potential move towards the fascist type of system. And if I sound alarmist, it is

deliberate. I am not pretending to be frightened by this. I am legitimately frightened by the prospects of this Bill. Okay? So it is not a joke. I have a strong aversion to any extension of military powers into civilian life because the history is replete with evidence of what results from this.

So we do not have to be excessive, even political, to understand the consequences of allowing this type of thing and, particularly, in the hands of a government who continuously threatens the media, threatens the public, anybody who does not like what you say. I mean, this is what you do, and this is very frightening. I mean, the Minister himself just recently spoke and said, “Well, we cannot deal with hard situations with soft measures”. That is fascist-type language.

**Sen. George:** “Eh heh?” What! What!

**Sen. Dr. L. Henry:** Yes. That is what—and given the context of your behaviour otherwise, we know that you could deliver on your promises—*[Interruption]*

**Sen. Al-Rawi:** That is right. Tell them that.

**Sen. Dr. L. Henry:**—because the evidence is there—*[Crosstalk and laughter]*

**Sen. Al-Rawi:** They will not see it.

**Sen. Dr. L. Henry:** The evidence is there that you have already demonstrated a tendency towards doing anything you feel you want to do.

**Sen. Al-Rawi:** Inexorable.

**9.15 p.m.**

**Sen. Dr. L. Henry:** That is what the track record of the Government has been so far. So what is it you are trying to come here and pretend that you are some bastion of virtue in terms of, you would not do this and you would not do that, when you have already done it? *[Desk thumping]* Declaring a state of emergency and all kinds of confused statements about whether it is limited or not, and then rounding up 8,000 people—*[Interruption]*

**Sen. George:** *[Inaudible]*

**Sen. Beckles:**—is very relevant.

**Sen. Dr. L. Henry:**—is very relevant for crime. Just like the performance report of the last Minister.

**Sen. Al-Rawi:** Exactly. [*Crosstalk*]

**Sen. Dr. L. Henry:** “Yeah, let me tell you.”

**Hon. Senator:** You want to talk about relevance?

**Sen. Dr. L. Henry:** So the point is despite what you claim as good intentions of trying to solve crime and so on, which of course, many people are frightened in the country, and as my colleague before said, they will support anything, but we know that is how fascism begins, by people being frightened. That is what propaganda and so on is all about. The propaganda is never that we are going to come and take away your rights. It is always that we are going to free you.

**Sen. George:** But that is propaganda that you just talk there, nonsense!

**Sen. Beckles:** Talk to the [*Inaudible*]

**Sen. Dr. L. Henry:** So in no way I could ever support this Bill on principle and especially putting more power in the hands of this Government— [*Interruption*]

**Sen. Lambert:** Well sit down. “Yuh cyar support it.” [*Crosstalk and laughter*]

**Sen. Dr. L. Henry:**—because you have shown a tendency towards abuses and abusing the population. That is your record. [*Crosstalk*] That is your record for the past two to three years.

**Sen. George:** “Yeah, de PNM ha no record.”

**Sen. Lambert:** “PNM was here for so much years and did nothing, way yuh could come and tell we? You can’t.”

**Sen. Dr. L. Henry:** First to begin— [*Interruption*]

**Sen. Beckles:** First to begin—

**Sen. Dr. L. Henry:**—you said you are going to precept officers. Then you said no. The Attorney General comes and says it is not about that. It was never about that. But yet you have quotes all over the place— [*Interruption*]

**Sen. Al-Rawi:** Some of them playing.

**Sen. Dr. L. Henry:**—playing on the radio every day about precepting police officers to solve crime. Then we come and say, “ooh it’s not about that.” So how could we trust you? What is that?

**Sen. Al-Rawi:** True.

**Sen. Dr. L. Henry:** If you did not know what you were doing last week—  
[*Interruption*]

**Sen. George:** We trust you.

**Sen. Dr. L. Henry:**—you do not know what you are doing now and you still seem like “you lost in space”.

**Sen. George:** “Yuh going round in circles boy.”

**Sen. Dr. L. Henry:** No, but the fact is, Madam Vice-President, we had a national disaster on Friday; a blackout. The Minister of Energy and Energy Affairs spoke to it earlier. Now, it is very likely that the Minister is giving an honest report of what exactly happened.

**Sen. George:** “You doh trust him. Why you don’t trust him?” [*Crosstalk*]

**Sen. Dr. L. Henry:** But you know what, most of the population think something is not right—[*Interruption*]

**Sen. Al-Rawi:** Focus on the time.

**Sen. Moore:** Because if you say it is not so—

**Sen. Dr. L. Henry:**—because the point is nobody trusts what you are saying.  
[*Desk thumping*] You have lost it.

**Sen. Al-Rawi:** Why is there suspicion if they trust you? Why?

**Sen. Deyalsingh:** Writing on the wall.

**Sen. Dr. L. Henry:** I have no doubt that the hon. Minister is giving the best report that was sent to him.

**Sen. George:** “Like yuh eh understand wat goin on or wat?”

**Sen. Dr. L. Henry:** The point is that the people out there do not buy it.

**Sen. Beckles:** They do not want to believe.

**Sen. Dr. L. Henry:** Because everyone—all on the blogs are saying something was amiss.

**Sen. Deyalsingh:** With the clock.

**Sen. Dr. L. Henry:** With reference to the clock and all of that, but that is minor. Even without the clock, people still do not believe you. I am not saying that the population is correct but the point is that you have lost the ground.

**Sen. Beckles:** Yes, perception.

**Sen. Moore:** What is the perception?

**Sen. Dr. L. Henry:** The people have a hard time believing anything you say because you have a big track record of back-peddalling, double-dealing—  
[*Interruption*]

**Sen. Lambert:** They did not believe what PNM said. When you—they did not believe you.

**Sen. Dr. L. Henry:**—not sticking to promises and so on.

**Sen. George:** “You not on the ground outside here.”

**Sen. Dr. L. Henry:** Of course, you have eroded all the goodwill that you came in with on May 24. [*Desk thumping*] You squandered it to the point now where you have to attack anybody who does not agree with you or who does not toe the line, so to speak.

**Sen. George:** “Yeah man.”

**Sen. Dr. L. Henry:** So you talk about rogue elements in the media and all kinds of nonsense.

**Sen. Al-Rawi:** Rogue elements on the Independent Bench.

**Sen. Dr. L. Henry:** So if the Independents oppose to you in any way, shape or form it is because they are PNM and they are just spewing propaganda like me.

**Sen. Beckles:** PNM Independents.

**Sen. Deyalsingh:** PNM plus one.

**Sen. Al-Rawi:** PNM President, PNM Independents.

**Sen. Dr. L. Henry:** Now, the Attorney General made reference to the removal of discrimination between the army and police.

**Sen. Al-Rawi:** You do not hear the picong.

**Sen. George:** “Yuh like picong eh.” [*Laughter*]

**Sen. Dr. L. Henry:** Well I want to ask what is the problem? The Constitution set it up that way so there will be a difference between the police and army and that is what we like. We want that difference to remain.

**Sen. Moore:** What you like? [*Crosstalk*]



**Sen. Dr. L. Henry:** In terms of actually—no, we do not want the blurring of the lines.

**Sen. Al-Rawi:** That is right. [*Desk thumping*]

**Sen. Dr. L. Henry:** There are some cases, instances, where discrimination is the norm and acceptable.

**Sen. George:** “Allyuh have no conscience, yuh know.”

**Sen. Dr. L. Henry:** For example, I mean you have male and female toilets.

**Sen. Moore:** They try out an illegality like you to see if it works.

**Sen. Dr. L. Henry:** Do people—you should have unisex toilets everywhere. So there are some logical situations where discrimination is the norm. [*Crosstalk*]

**Sen. George:** The PNM have—[*Inaudible*—It was the army and the police put together on the road.

**Sen. Dr. L. Henry:** And the whole purpose of the separation of the army and police is well known all over. [*Crosstalk*]

So you have a situation where there is no real significant reason, as many of the previous speakers have pointed out, to have this distinction blurred.

One of the things about the military people because they are trained and, of course, as many people have said before, different, is that once they get a taste of power, the police power, meaning in addition to the power they already know of the army where this will legalize it, so this reinforces their power. This is something that has happened in other countries and the military sometimes get to like it, you know, and the whole behaviour of the army and so on changes; their whole outlook.

**Sen. George:** Not here.

**Sen. Dr. L. Henry:** There is a saying in America and I have said it here in this Senate before, “Do not believe anything until it is officially denied”, and Minister Tewarie insisted on saying, “we won’t do this and this is not about militarization.” “Oh yeah?”. Well what is it about? Because certainly simply copying from abroad and saying well somebody else did it and somebody else did it is not enough. I will get to that in a bit—for example, the hon. Attorney General and several others talked about Jamaica, Antigua—where else in the Caribbean? Guyana or some place.

**Sen. Beckles:** Bahamas.

**Sen. Dr. L. Henry:** Now, I had my points actually even before reading Clarence Rambharat. Today—

**Sen. Moore:** “He come back from Canada yet?”

**Sen. Dr. L. Henry:**—I know you all cannot take him, because he speaks the truth.

**Sen. Moore:** He come out from hiding yet? “Ent he hiding?”

**Sen. Al-Rawi:** He speaks the truth.

**Hon. Senator:** You went “Pres” too?

**Sen. Dr. L. Henry:** I would use some of what he said just to show that I am not the only one thinking along those lines.

**Sen. Moore:** Come home.

**Sen. Al-Rawi:** “He move to Tobago.”

**Sen. Dr. L. Henry:** So he talked the fact that Jamaica—[*Interruption*]

**Sen. Moore:** “He gone and hide in Canada and want to send opinions via email.” Come home.

**Sen. Dr. L. Henry:**—and this is a pet peeve I have had for a long time.

**Sen. Moore:** Mine too.

**Sen. Dr. L. Henry:** So Jamaica is no example to follow. I have been saying this for my many, many years—long—in terms of what the governments have done over the years and the whole way they have handled their economic issues. In fact, the country with the highest murder rate in the world is not a prime example to hold up and say, well Jamaica did it, we should do it too.

In fact, as Clarence Rambharat pointed out, he said, well the Government is pushing—I will paraphrase, I will not read it verbatim—this Bill on the grounds that we wish to follow Jamaica, Guyana, Antigua and provide no comparative data.

I have not heard anybody from the Government say this was introduced in such and such a country and the crime rate went down. Nobody here said that yet. [*Crosstalk*] Okay. And, in the case of Jamaica in particular—about which country?

**Sen. Moore:** Do you want me to get a copy of the *Hansard* for you?

**Sen. Dr. L. Henry:** About which country?

**Sen. Moore:** You want me to get a copy for you?

**Sen. Dr. L. Henry:** What country? In Jamaica when this similar Bill was introduced in 1994 that gave the Prime Minister and whoever the power to bring the army into policing—1994. Let me just go back two years before. That is what the data says. In 1992, the number of murders in Jamaica was 629. [*Crosstalk*] The Bill was passed in 1994. You know what the murder rate was? Six hundred and ninety, it went up. Now, 1995 the following year, the number of murders—780.

**Sen. George:** Talk about Trinidad.

**Sen. Dr. L. Henry:** By 2000 the number of murders in Jamaica was 887. In 2005, that is 11 years after the Bill was passed, it was 1,674 murders.

**Sen. Al-Rawi:** Wow!

**Sen. George:** That is like when you set up SAUTT and the murder rate continued to rise.

**Sen. Dr. L. Henry:** In 2009, 1,008.

**Sen. Al-Rawi:** “Yeah, we cyah research, you see.”

**Sen. Dr. L. Henry:** One thousand six hundred and eighty.

**Sen. George:** Like when they set up SAUTT and the murder rate continued to rise.

**Sen. Dr. L. Henry:** It has gone down somewhat in the last couple of years.

**Sen. Al-Rawi:** What the murder rate was?

**Sen. George:** The murder rate continued to rise.

**Sen. Dr. L. Henry:** So the only lesson you could learn from this is, one—  
[*Interruption*]

**Sen. Al-Rawi:** Your detection rate is 2 per cent.

**Sen. George:** The murder rate continued to rise.

**Sen. Dr. L. Henry:**—that either it did not work at all, and the Jamaican constabulary admitted that they had improvements in intelligence gathering and so on that helped bring down this murder rate in the last couple of years from the high of 2009.

So, if this is any evidence to work by, it took about how many years?—about 20 years, almost 20 years or so. So your two-year sunset clause would not make any difference, because if we go by this you would expect a spike and then a very long time after; 50 years plus.

**Sen. Lambert:** No, but we are speaking about Trinidad. [*Crosstalk*]

**Sen. Dr. L. Henry:** No, but you all are saying that you all are copying from Jamaica and Antigua and so on.

**Hon. Senator:** “We never say that.”

**Sen. Moore:** Do you listen? Really, do you listen?

**Sen. Al-Rawi:** It has been modelled after that and those are success markers.

**Sen. Moore:** Do you listen?

**Sen. Dr. L. Henry:** Antigua.

**Sen. Al-Rawi:** Barbuda, Guyana, Jamaica.

**Sen. Dr. L. Henry:** So what this is saying and Rambharat also talks about the experience in Antigua where the murder rate went up after the passage of a similar Bill. Guyana where crime—[*Interruption*]

**Sen. Moore:** Rambharat provides no quotation at all. And all that is—[*Interruption*]

**Sen. Dr. L. Henry:**—and the perception of insecurity still has increased.

**Sen. Al-Rawi:** Just like the AG.

**Sen. Moore:** All allegations.

**Sen. Dr. L. Henry:** So the moral of the story, Madam Vice-President, is that you could have Roger, you could have Scooby-Doo, Top Cat or the Pink Panther—[*Interruption*]

**Sen. George:** Be careful with names.

**Sen. Dr. L. Henry:**—if you do not get the guns off the street—[*Crosstalk*]

**Sen. Al-Rawi:** I know him from BP.

**Sen. Dr. L. Henry:**—and, you do not increase your detection rate and all the other things that some of the other speakers talked about, it would make no difference. Just copying things that we saw in other countries and pretending that somehow because they did it, it is okay for us to do it as well, is not good enough.

Unless you have concrete data available that shows something works, why copy something if it is not shown conclusively to have worked? That gives the impression that you are just following suit or you have some ulterior motive as the learned Senior Counsel questioned the strategic objective of the Bill. This is what the country is facing right now.

It was not comforting to hear the Attorney General dismiss complaints in the media as nonsense. In fact he said, “a nonsense.” That whole thing about people taking it the wrong way and so on and thinking that we have—that is what he said—legitimate concerns of citizens writing in the press. Just dismissed it! Nonsense! So how are we supposed to be comforted by that?

The next point that we have is this addition about the Chief of Defence Staff not answering to the Minister and all of that. But what Sen. Baptiste-Mc Knight raised: who is he going to answer to? Would he link up with Mr. Big?

**Sen. Lambert:** Manning knows about “Mr. Big”. [*Crosstalk*]

**Sen. Dr. L. Henry:** Is he going to make his own rules as he goes along? If he does not take any direction from the Minister who does he take direction from?

**Sen. Singh:** Your former leader knew “Mr. Big”. He said he was “small”.

**Sen. Dr. L. Henry:** So who tells him what to do? So he would just go on a raid with police? Just wake up one morning and decide well the police going south so I will go down there?

**Sen. Al-Rawi:** “UNC style—voops.”

**Sen. George:** You really believe what you are saying?

**Sen. Moore:** What happens now?

**Sen. Dr. L. Henry:** One of the more alarming things again that the public was told about is the fact that you would have somewhere about 1,000 soldiers being precepted to come and help with police work.

**9.30 p.m.**

Now, one of the things that surprised me when I actually saw the Bill is that it made no mention of the numbers, so therefore, again, the initial perception and in speaking with people, I got the feedback that really people thought it was only a little handful that this Bill was going to affect. Many people spoke to me and said, “Well, no, it is just a couple of soldiers, yuh know, is not the whole schmear, it is just the—didn’ they say is ah thousand?” This is what was put out there in the public.

**Sen. Al-Rawi:** “Yep!”

**Sen. Dr. L. Henry:** So many people who would not have followed all the way through were thinking that you were going to get only a thousand and put them in there to work alongside with the police.

**Sen. Al-Rawi:** A thousand precepted!

**Sen. Dr. L. Henry:** Right. That is what is in the public domain. Once again, how can we trust you? I was telling a very learned person, just a couple of days ago, that the Bill does not mention the word “precept” and he almost fell down and “this is ah serious man”.

**Sen. Lambert:** “He has to be ah PNM.” [Laughter]

**Sen. Al-Rawi:** Just like you. Just like you! He sat in General Council you know!

**Sen. Dr. L. Henry:** I would not be distracted by comrade Lambert. [Laughter]

**Sen. George:** Good one, good one! [Continuous crosstalk]

**Sen. Dr. L. Henry:** “Yeah, doh worry.” So, many people really thought, one, it was about preception; two, it was about limiting the numbers. So now, we find out, again, it is just like the limited state of emergency Sunday, and then by Monday, it is “ah full state of emergency” and so on. Complete kind of ad hoc, “vaille-que-vaille” and so on—[Interruption]

**Sen. George:** Just how you talking there, ad hoc, “vaille-que-vaille”. [Laughter]

**Sen. Dr. L. Henry:**—nothing as though you had no plan, and you get up and you just shout out something and say, “Okay, that sounding good”.

**Sen. George:** “Dai meh partner, I could tell him dat, man.” [Laughter]

**Sen. Dr. L. Henry:** And importantly, the role of the police has to do with maintaining peace and I come back to my personal fears, and this has nothing to do with political affiliation.

**Sen. George:** Or it has? “Doh try that.” No, no! Come on!

**Sen. Lambert:** Be real. You were sent to say that. [Laughter]

**Sen. Dr. L. Henry:** Anybody who believes that military powers, [Crosstalk] expansion of military powers in a democratic society is not cause for concern, something has to be wrong with you. You cannot be a serious person that you have no concerns of such things regardless of the situation. Right? Even if, like many other people out there who claim that they support the Government on this Bill and so on—[Interruption]

**Sen. George:** “Like de drug bust down Monos then?”

**Sen. Dr. L. Henry:**—that if they support this, somehow they will genuinely see some reduction in crime and so on and there are decent people who really think like that, “yuh know”.

**Sen. George:** I think so.

**Sen. Dr. L. Henry:** But, we must seriously be concerned, and as I repeat in this, giving this type of Government any such powers, because what is coming out after all the fancy talk about dealing with crime, and respecting citizens’ rights and all kinds of things, you are hearing an overtone of a draconian approach and it is not subtle. It is not even subtle. After the fancy talk, you are hearing a very, very, blatant kind of “Well, might is right, I will do this”. It must be frightening to any right-thinking person especially, as I said, given your track record.

So the fact that the military has been used in other countries in terms of helping to deal with certain situations and so on—we know that it is not necessarily the problem, but it is potentially a problem regardless of which country it is tried in, and in this case, we do not trust you.

**Sen. George:** “Yeah, man, repeat it, repeat it, man!”

**Sen. Dr. L. Henry:** We do not trust you.

**Sen. Al-Rawi:** “Tell them ah thousand times!”

**Sen. George:** Repeat it! You, Hinds, everybody, say it again.

**Sen. Dr. L. Henry:** The Minister of Justice talked about whether we wanted good law or good men. Notice she did not say women. Strange! [*Crosstalk*] But what we are getting from the UNC Government is neither one. We are not getting either one. [*Crosstalk*] So far you have given us bad law and bad men. [*Laughter*] Okay? [*Crosstalk*]

**Sen. George:** You are grasping at straws. That is what is going on.

**Sen. Moore:** Faris, I am disappointed in you.

**Sen. Dr. L. Henry:** So every time we think that we are getting a good law, something like the abolition of preliminary enquiries, we end up with section 34. You could sit there in a straight face and talk about good law. Right? [*Crosstalk*] That is why we cannot trust you. Who proclaimed it?

**Hon. Senator:** He did not vote to proclaim it. You in Cabinet.

**Sen. Dr. L. Henry:** You did not vote to proclaim it either.

**Hon. Senator:** He is a Cabinet Minister, ask him!

**Sen. Dr. L. Henry:** Now, in terms of the overall objective in terms of dealing with crime, we must understand that simply throwing another set of guns and boots out there is not going to cut it. Now, I have heard Members from the Government side, including, I believe, even the hon. Prime Minister, saying, “Well look, in Laventille, it worked, cause murders down for March” or something. Now, what is the implication of that statement? So we put, as Sunity Maharaj called it, “ah state of emergency junior” into Laventille. [*Laughter*]

**Sen. Al-Rawi:** Nice one!

**Sen. Dr. L. Henry:** And we say, “Okay, well, we reduce crime there” and “you go and you beat yuh chest”. So, what is the implication? You are going to do that to the whole country? This is what the logical implication of that statement means.

**Sen. George:** Yes.

**Sen. Dr. L. Henry:** “Yuh goin to do dat to the whole country?”

**Sen. George:** Yes.

**Sen. Dr. L. Henry:** Right. Now, as I warned about fascistic tendencies and we have seen no reason—[*Interruption*]

**Hon. Senator:** It is not fascistic.

**Sen. Ramkhelawan:** Fascist.

**Sen. Dr. L. Henry:** Yeah, whatever. [*Continuous crosstalk*] Fascist, whatever. Same thing! [*Continuous crosstalk*] You know, this is the most alive I have seen the Government side so far today. [*Crosstalk*] Good, I hope you like the comedy, because, you know, when you cannot deal with truth, one of the ways to deal with it is to laugh.

**Sen. Al-Rawi:** That is right! [*Desk thumping*]

**Sen. George:** “De truth. Wey is de truth?”

**Sen. Dr. L. Henry:** Now, I want to warn the population, as I said, I do not mind if I sound alarmist on this occasion because I think alarm is warranted at this point.

**Sen. Al-Rawi:** That is right! [*Crosstalk*]

**Sen. George:** Faris, you do not believe what you are saying. [*Crosstalk*]



**Sen. Dr. L. Henry:** Even if you take it for granted that somehow this Bill or its policing has anything good in it, the point is it is potentially a disaster for the citizens of this country and many people out there are telling you this and you refuse to listen. “You are still gonna bulldoze your way through with the Bill.” [Crosstalk] And to all those people, like the Chamber of Commerce people and so on, who support this Bill, I want to give the warning that was given by Martin Niemöller, the Protestant writer who was an outspoken critic of the Nazis. He is most famous for this quotation:

“First they came for the Socialists, and I did not speak out—

Because I was not a Socialist.

Then they came for the Trade Unionists,”

Listen, comrade!

**Sen. Lambert:** “Yeah, I am listening.”

**Sen. Dr. L. Henry:** “and I did not speak out—  
Because I was not a Trade Unionist.”

**Sen. Dr. Tewarie:** “Yuh really ah alarmist tonight.” [Laughter]

**Sen. Dr. L. Henry:** “Then they came for the Jews, and I did not speak out—  
Because I was not a Jew.”

**Sen. Maharaj:** I would like to quote here 35(5). He is implying improper motives that the Government is somehow Nazilike in nature.

**Hon. Senator:** “Oh gawd, Devant, come on!”

**Sen. Beckles:** That is a quotation.

**Madam Vice-President:** He is quoting a Standing Order, 35.

**Sen. Maharaj:** He is suggesting that this is Nazilike—[Inaudible]

**Sen. Al-Rawi:** No, no, Standing Order. What is the Standing Order?  
[Crosstalk]

**Madam Vice-President:** Senators, he did say 35(5) to preempt his statement but I think he is quoting to probably wrap up his contribution so he is quoting, so that is fine, go ahead.

**Sen. Dr. L. Henry:** Relax!

**Sen. Beckles:** Everybody knows that quotation. Oh God!

**Sen. George:** No, I do not know it at all.

**Sen. Beckles:** Well, you need to learn it.

**Sen. Dr. L. Henry:** “Yeah, you all should learn it.”

“Then they came for me—and there was no one left to speak for me.”

**Sen. Moore:** Nobody is coming for you!

**Hon. Senator:** “You story, you know it.”

**Sen. Dr. L. Henry:** I said never believe anything until it is officially denied. “Is better you stay quiet.” [*Crosstalk*]

**Sen. George:** “Ah trying to learn something from the speaker, but I doh know.”

**Sen. Dr. L. Henry:** No, the point is that again, people in this country have this same kind of tendency, because, in our context, they will say, “First they came for Laventille and I did not speak out because I was not from Laventille.”

**Sen. Karim:** Then they came for what?

**Sen. Dr. L. Henry:** Arima.

**Sen. Karim:** Right. “Look she right dey. But she duz talk all de time.” [*Laughter*]

**Sen. Dr. L. Henry:** I did not speak out. “Then it reach to Chaguanas, [*Laughter*] and it reach to Penal, and Barrackpore, and San Juan”—[*Interruption*]

**Hon. Senator:** “Yeah, yeah, and Tobago.”

**Sen. Dr. L. Henry:**—and then you would realize the big mess that you are bubbling in. I am not joking, you could laugh as much as you want, you all have displayed fascistic tendencies and you have to face it. [*Crosstalk*]

**Hon. Senator:** Fascist, not fascistic.

**Sen. Dr. L. Henry:** What democratic—[*Crosstalk*] Yes, that is what you are. The point is that you are not giving the public any confidence that you will stop at anything. That is why people do not believe the power outage was an accident even though it might very well be, because people have understood what your intentions are, and keep trying to think it is some kind of joke or whatever. When you arrest 8,000 people and then have to set them free, that is no joke; that is no laughing matter!

**Sen. Al-Rawi:** “Tell dem! Tell dem!” [*Desk thumping*]

**Sen. Dr. L. Henry:** And coming here and talk about democracy and people’s rights and all kinds of—“yeah”.

**Sen. Al-Rawi:** That is a joke for them.

**Sen. Deyalsingh:** Assassination plot! It never was!

**Sen. Dr. L. Henry:** “And then trying to make the man Commissioner of Police.” Shameless!

**Sen. George:** What is that?

**Sen. Dr. L. Henry:** “Yeah.” Anyhow, with those few words, Madam Vice-President, I thank you. [*Desk thumping*]

**Sen. Dr. Victor Wheeler:** Thank you, Madam Vice-President, for allowing me to contribute at this late hour. I hope to be brief. We are here today to debate a Bill “An Act to amend the Defence Act, Chap. 14:01 and the Police Complaints Authority Act, Chap. 15:05”.

Now, the aim of this Bill, according to the Explanatory Note, is that—the aim is to have the defence force assist the police service in the maintenance of law and order. How does the Government plan to go about doing this? It plans to go about doing this by giving the members of the defence force the same powers, authorities, privileges and immunities as members of the police service. The end result of this, Madam Vice-President, is that the defence force personnel will have the same powers as the police.

But, why is this necessary? We all know that crime is a big problem in Trinidad and Tobago, but tonight I have heard that the Attorney General has said that they are trying to correct an illegal arrangement that has been in place for the past 10 years and also to protect the soldiers. Of course, I have heard Members of the Opposition dispute this, but there has been a lot of concern expressed with this defence force Bill and also with giving the members of the defence force powers of the police.

Madam Vice-President, I must confess, this is the first Bill that I have been to debate that I have been lobbied by so many different groups [*Laughter*] even up to tonight, [*Crosstalk*] so many different groups—

**Hon. Senator:** And individuals!

**Sen. Dr. V. Wheeler:**—and individuals. [*Laughter*] What I would like to do is to dispassionately analyze some of the issues involved in this Bill, and I would like to be allowed to quote from an article by Mr. Larry Watts from the Conflict Studies Research Centre and the name of the article is “Whose Professionalism?: Separating the Institutional Roles of the Military & Police, November 2001”.

First, I would like to look at what really is the role of the defence force and what is the role of the police service. The role of the defence force, or the military, in primitive societies was to defend the communities against external aggression, external foes. It has also been said the military has the unique specialty of management of violence. The military is also said to have expertise in war making and the organized use of violence.

**9.45 p.m.**

Whereas the police as an institution is said to have the general right to use coercive force within a domestic territory, the military protects a community from outside foes. The police is said to be responsible for domestic or internal security.

Madam Vice-President, there have been problems in the past with the use of the military for police functions. There have been examples over the past decades and the expansion of the military's role to include internal security in some jurisdictions has corresponded to an increased military role in domestic politics as well. But, the first step in understanding why police functions are problematic for the military, one needs to look at why was policing differentiated from the military in the first place.

If you will permit me, I would just like to give a brief history of how the military and the police started. The military was said to come out of the standing European army in the 15<sup>th</sup> Century and France was one of those first countries that actually formed an army. It was 200 years before police functions or police bodies came about. And in the very early stages, policing was said to lack any specialization; policing was said to lack any training and there was not also any real recruitment.

In the very earliest form, policing just revolved around resisting local disturbances or resistance from the local community from enslavement. It was there to quell resistance from imposition of taxation and also for conscription. In those early times, because the military was used to perform these functions, there were typically bloody and disproportionate consequences of employing the military for crowd dispersal and internal security and the result of that is it fostered bitterness, hostility and mistrust towards the political authority. I have heard repeated examples of some of this mistrust of the political authority today. This is really why separate police organizations came about and they came from the civilian population, not from the military. The police really came out of civilians and it was because of the effects of using the military in law enforcement for internal security.

In those days, it was felt and seen that the domestic engagement of the military in police functions led to massive fatalities. But, what really is the difference between the functioning of the defence force and the police? The police is said to use graduations of coercive force. They place a greater reliance on non-violent persuasion to reproduce social order and they do this in as least a destructive manner as possible. The police are also granted broad discretions when it comes to enforcing the law and against whom this law should be enforced. And the police also developed areas of intelligence and investigation, some of these techniques that they use to prevent crime, rather than dealing with a crime that has occurred. On the other hand, the military, as I have said before, is just trained to use deadly force.

Another difference between the military and the police is in accountability. In our police service and the military, the military reports directly to the Chief of Defence Staff, who reports to the Minister of National Security, who is a politician, whereas, and further to that, soldiers or military personnel are trained to just take instructions and carry out orders without question, but they enjoy special protection and if they transgress these, they are subject to special military courts. The police, on the other hand are subject to the same laws as the citizens that they police.

Madam Vice-President, as I have said, the use of the military for internal security has the potential to politicize it. There have been examples where hybrids of militarization of the police or giving the military these functions, have resulted in these groups being given the role of a political police force defending the ruling regime against internal threats.

There have also been examples where the military has been given police functions and this has created a centralized power base that caused the military to actually seize power: examples here are in Peru in 1946; Brazil in 1964; Chile in 1973 and Argentina in 1976.

Now, it is said there are several factors that would be important to set the stage for the military to be used in internal security. One of these is exclusionary politics whereby, as in our situation, you have the winner take all, the first past the post. If you have certain segments of the community feeling that they are not participating as they should in the running of the country, they may feel as if they have been excluded. That is something to look out for.

The other thing is if there is any tendency to politicize the military. The third factor is if there are any perceived internal threats to the incumbent government,

under those situations there may be the tendency to want to have the military play a greater role in policing.

Now, to prevent the same thing from happening in Trinidad and Tobago, certain measures, I believe, must be taken and certain things must be put in place. First, there must be a clear separation of the police function from the military function, and if there is any attempt to use the military for domestic purposes, this must be under strict control. And the third and most important thing is to have the approval of the Legislature to facilitate full and open debate in what is being intended [*Desk thumping*] and I am actually happy that the Government has allowed this Bill to be debated and this is really why we are here today, to debate what the Government intends.

Now, to come specifically to the Bill: as I said before, the aim of the Bill is to give the defence force personnel the same powers and authorities as the police. My main concern with this Bill is giving the military the powers of arrest. Now, the powers of the police are wide and many and I would just list some of them. Police officers shall preserve the peace and detect crime and other infractions of the law; they shall repress internal disturbances; generally do and perform all duties appertaining to the office of a constable.

These are some of the powers that we want to give the military, but the Act actually says the aim of it is to assist the police service in the maintenance of law and order. But the maintenance of law and order should not be synonymous with giving the military the full spectrum of law enforcement. We already have examples where the military is assisting the police in the maintenance of law and order. Now, I have heard it said that this arrangement is illegal and the aim of this Bill is to actually legalize that. I am not a lawyer, but I am not aware of there being any serious infractions for the past 10 years [*Desk thumping*] from the military being involved with the maintenance of law and order and in assisting the police in the maintenance of law and order.

**Sen. Al-Rawi:** Absolutely.

**Sen. Dr. V. Wheeler:** But suppose you were to give the military these police powers, how will it work? How would the defence force personnel work along with the police with their new legal powers of arrest?

Now, subsection (2A)(b) of the Act says that the defence force personnel would be under the command and control of the Chief of Defence Staff and in these circumstances, the Chief of Defence Staff shall not be subject to the general or specific directions of the Minister. But in practice, how could this be? We have been told that the soldiers or army will be assigned on tasks to work with the

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police. So, suppose they are to engage in a three-hour exercise to go and raid some institution or place, the soldiers who are assigned that task will carry out that function. During the three hours that they are performing their duties, according to this Act, they would be under the command and control of the Chief of Defence Staff. But at the end of that task, they go back to perform their normal duties as a soldier and they will now come under the control of the Minister.

Suppose, during their three-hour activity, their actions did not find favour with the Minister, he will now be in a position to deal with them and he will deal with them—section 7 of the Defence Act, where there is the Defence Council.

“There is established a Defence Council (in this Act, referred to as ‘the Council’) consisting of—

(a) the Minister, who shall be Chairman;”

and others.

Section 8 of that Act says:

“Subject to subsection (2), the Council shall be responsible under the general authority of the Minister for the command, administration and discipline of and all other matters relating to the Force.”

So if that soldier does not—his actions do not find favour with the Minister, there is the potential, when he goes back to his normal duties, for him to be dealt with. He could be denied promotion. He could be denied training. There are many ways in which he can be dealt with and he may be denied the opportunity to go back and perform any police functions with the police. This is one area that I would like the Attorney General to address in the operationalization of it.

There are a couple other areas in which I would like to get clarity. For example, if the Bill is passed, you have policemen and soldiers with powers of arrest going on to an exercise. I presume the soldiers would be given a copy of the laws of the land so that they would know under what conditions they can arrest, what are arrestable offences, and so on. You can have a scenario where a soldier decides that he sees someone committing an offence and decides to arrest that person. And, according to the Act, when this is done, he must hand over to the police. He brings the person to the police and the policeman says: “No, I do not think you should have arrested that person;” who is going to—who is right in that situation? [*Interruption*] But that will be a little problem.

The other scenario could be: a police officer sees someone committing a crime and through, well whoever the senior defence force person is, asks him: “Could you have your man arrest that person?” and he says: “No, ah doh think so.” How is that going to work? Who is the one who is going to take precedence? Because, even though I have heard it said that the policeman is the senior person in the group, the soldier really takes instructions from the Chief of Defence Staff, not the police. So, that is something I would like to hear how that could be dealt with.

The other thing, which is actually my main problem with this arrangement is, you will have two categories of workers, a policeman and a soldier with powers of the police working side by side, presumably performing the same functions, maybe not identical functions but the same functions. They will have two bosses.

**10.00 p.m.**

I would like to liken this to what happened in the health sector under the dual track when the RHA came into being, where you had public servants, who were not RHA employees, performing the same duties as RHA employees. The public servants were being paid less, RHA employees paid more and you had conflicts. You had a situation where two sets of employees reporting to two different bosses were performing the same functions side by side, and that actually contributed to a lot of problems in the health sector which we are still trying to grapple with today. [*Desk thumping*] If this Bill is passed as in its current form, I foresee these problems taking place.

The other thing is, as I was told by a policeman: the soldiers’ salary is less than that of the police. So if you have the soldier now performing police functions and he is out on exercise that might go more than 24 or 48 hours, that is going to be a problem and a challenge for the soldier. He will now become less enthusiastic when he is instructed to go and carry out these duties. The police also get overtime when they are on these exercises. I understand that the soldiers do not get overtime. Policemen have a union that is there to deal with their terms, conditions and grouses; a soldier does not, he takes instructions, if he does not carry out those instructions—military court.

**Sen. Al-Rawi:** That is right.

**Sen. Dr. V. Wheeler:** These issues are some of the operational issues that I see taking place or occurring if the Bill is passed in its current form. So, what really in my view would be the way forward? Before any attempt, before there is



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any real attempt to give the military police powers, there must be stakeholder discussions [*Desk thumping*] to discuss exactly what the Government would like to do. There should also be some bipartisan oversight—[*Interruption*]

**Sen. Al-Rawi:** That is right.

**Sen. Dr. V. Wheeler:**—into what really is required of the military and because of the concerns I have mentioned before, this oversight must have some teeth in it so that if any deviant behaviour or action is noted, there is a grouping which would hopefully involve Government and Opposition, because this problem with crime is something that I think should not—politics should not really get involved in this.

**Sen. Al-Rawi:** Absolutely!

**Sen. Dr. V. Wheeler:** We have a serious problem, [*Desk thumping*] and I think both sides, all sides need to come together to address it.

**Sen. Al-Rawi:** Well said.

**Sen. Dr. V. Wheeler:** The engagement of the military in policing should be strategic. The military's involvement should just be an enabler and it should be part of a wider plan to address the crime situation.

Now, there is another document I will refer to which is the Caribbean Human Development Report 2012, Human Development and the Shift to Better Citizen Security. This report actually lays out a way forward in addressing the crime situation in our small-island state in a very comprehensive manner, and it recommends completing the shift to citizen security in the framework of human development. Some of the contributors to this crime problem are unemployment, underemployment, constraints of political participation, marginality, unequal distribution of wealth and income.

Now, the Government recently ended the Hoop of Life Programme for youths in certain high-risk areas. There has been some criticism for that programme, but that programme actually was a real attempt by the Government to address some of the problems with crime. [*Desk thumping*] It is actually measures like those where you tackle some of the causes of crime by the at-risk youths where we can really make a long-term dent in crime.

I also understand the Government has plans for building various sporting institutions around the country, all of that is welcome, and all of those will help with it.

But to come back to what we are debating today, the military's role in policing should really be part of a wider plan for addressing crime. The Commissioner of Police has said that there is a shortage of policemen, but only yesterday I spoke to one policeman who is actually on 33 months' leave—[*Interruption*]

**Hon. Senator:** “Hmm.”

**Sen. Dr. V. Wheeler:**—and actually offered or asked if some of his leave could be bought out and he was told no. [*Interruption*] I believe there are several hundred policemen like this, experienced policemen who, maybe a one-off payment could be considered, that you can bring these personnel back into the police force. [*Interruption*] Well, I am sure something could be worked out.

The other thing I would like to recommend is identifying the defence force personnel who would actually be interested in assisting the police, and transfer them or second them to the police service. By doing this, you will supplement your police force, you will only have one employer—that would be the Commissioner of Police. There would not be any issues of having to have a Chief of Defence Staff controlling the soldiers, reporting to a Minister. All the issues about the ministerial influence and control will be eliminated, and you will get your police strength improved.

This Bill was supposed to be for two years. You can actually second them for a two-year period during which time you aggressively recruit and train policemen. At the end of the two years you can decide well, you keep them or you send them back. I believe this would be a better way of involving the military [*Desk thumping*] in police functions, than to give them police powers and run the risk of some of the things that I have mentioned.

Madam Vice-President, crime is a serious problem not only in Trinidad and Tobago, but the region as a whole. Serious national consultations need to take place; passing laws, I do not think is enough. This Bill in its current form, I believe, is potentially dangerous and [*Desk thumping*] I would actually have a lot of difficulty supporting it.

I thank you. [*Desk thumping*]

#### ADJOURNMENT

**The Minister of the Environment and Water Resources (Sen. The Hon. Ganga Singh):** Madam Vice-President, I beg to move that this Senate do now adjourn to tomorrow, Wednesday 03 at 1.30 p.m. for the continuation of this debate.

*Question put and agreed to.*

*Senate adjourned accordingly.*

*Adjourned at 10.08 p.m.*