SENATE

Thursday, June 22, 2017

The Senate met at 2.30 p.m.

PRAYERS

[MADAM PRESIDENT *in the Chair*]

LEAVE OF ABSENCE

Madam President: Hon. Senators, I have granted leave of absence to Sen. Allyson Baksh and Sen. Dr. Dhanayshar Mahabir, both of whom are out of the country, and to Sen. H.R. Ian Roach who is ill.

SENATORS' APPOINTMENT

Madam President: Hon. Senators, I have received the following correspondence from His Excellency the President, Anthony Thomas Aquinas Carmona, O.R.T.T., S.C.:

"THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO

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

/s/ Anthony Thomas Aquinas Carmona O.R.T.T., S.C.

President.

TO: MR. NIKOLI EDWARDS

WHEREAS Senator Dhanayshar Mahabir 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(1)(a) and section 44(4)(c) of the Constitution of the Republic of Trinidad and Tobago, do hereby appoint you, NIKOLI EDWARDS, to be temporarily a member of the Senate with effect from 22nd June, 2017 and continuing during the absence from Trinidad and Tobago of the said Senator Dhanayshar Mahabir.

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 22nd day of June, 2017."

"THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO

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

/s/ Anthony Thomas Aquinas Carmona O.R.T.T., S.C.

President.

TO: MR. ALBERT WILLIAM BENEDICT SYDNEY

WHEREAS Senator Hugh Russell Ian Roach is incapable of performing his duties as a Senator by reason of his illness:

NOW, THEREFORE, I, ANTHONY THOMAS AQUINAS CARMONA, President as aforesaid, in exercise of the power vested in me by section 44(1)(b) and section 44(4)(c) of the Constitution of the

Republic of Trinidad and Tobago, do hereby appoint you, ALBERT WILLIAM BENEDICT SYDNEY, to be temporarily a member of the Senate with effect from 22nd June, 2017 and continuing during the absence of Senator Hugh Russell Ian Roach by reason of his illness.

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 22nd day of June, 2017."

"THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO

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

/s/ Anthony Thomas Aquinas Carmona O.R.T.T., S.C.

President.

TO: MS. ALISHA ROMANO

WHEREAS Senator Allyson Baksh is incapable of performing her duties as a Senator by reason of her 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(1)(a) and section 44(4)(a) of the Constitution of the Republic of Trinidad and Tobago, do hereby appoint you, Alisha Romano, to be temporarily a member of the Senate with effect from 22nd June, 2017

and continuing during the absence from Trinidad and Tobago of the said Senator Baksh.

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 22nd day of June, 2017."

OATH OF ALLEGIANCE

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

Alisha Romano, Nikoli Edwards and Albert William Benedict Sydney.

URGENT QUESTIONS

Tropical Storm Bret

(Lack of Relief for Residents)

Sen. Paul Richards: Thank you, Madam President. Good afternoon everyone. To the Minister of Rural Development and Local Government: In light of the complaints from residents of Oropune Gardens, St. Helena, Penal, Fyzabad and Barrackpore on the lack of relief in the aftermath of the passage of Tropical Storm Bret, can the Minister give reasons for this delay on the part of the relevant corporations?

The Minister of Energy and Energy Industries (Sen. The Hon. Franklin Khan): Madam President, the Minister of Rural Development and Local Government will be here shortly—

Hon. Senator: He just came in.

Sen. The Hon. F. Khan: Oh he just came in. Okay.

Madam President: Minister of Rural Development and Local Government.

The Minister of Rural Development and Local Government (**Sen. The Hon.**

Kazim Hosein): Thank you very much, Madam President, and thanks, Sen. Richards, for the question. It is a long answer because it is a storm and it has a lot to do. I have two minutes and I have five pages, so I will try to be brief.

First, I want to say that special commendation must be given to all the corporations—14 corporations throughout Trinidad and Tobago, [*Desk thumping*] the aldermen, the councillors, the administrative staff and also to the volunteers that took part and shared in this storm.

The reasons for the delay, the respective Disaster Management Units in all 14 corporations have been preparing their staff, not just recently but over a period of time, and I want to commend them as an integral part of being the first responder along with T&TEC, WASA, fire service, police, defence force and the disaster unit in each corporation.

Disaster coordinators from Tunapuna, Piarco and Arima manned the east EOC at the ODPM in Tacarigua.

Madam President: Minister, your time is up.

Sen. Richards: Thank you, Madam President. Minister, I know your answer was incomplete unfortunately. I hope you can answer possibly the rest of it in the next question, because they are related.

Is the Ministry aware of a matrix for assessment and prioritization of relief efforts, given the fact that there are 14 corporations and the damage and the impact have been so widespread, that can be communicated to residents and burgesses so that they know they may not be priority in terms of the severity of their affliction, but the authorities are coming to them?

Sen. The Hon. K. Hosein: Thank you very much, Madam President. I was out on the field so I understand the pain of the people and so on. In the 14 corporations the councillors have been assessing, the Chairmen have been assessing the

residents and citizens who have been affected. They have an onus now. Recently, I do not know if you heard that the Government just approved $25million for emergency funding. So we are going take that into consideration, and the requests that come from the mayors and chairmen and the councillors and aldermen, and prioritize what they need, whether it is fridges, stoves, food stuff, clothing, house grants, because a lot of people were affected. Roofs were blown off and so on, farmers were affected, all these people were affected.

I had a one on one with each corporation, I have been constantly, before the storm and after the storm, and I will continue to have it, and I hope that will bring some relief to you, Senator.

Sen. Richards: Thank you, Madam President. Minister, how much emphasis is also being placed on collaboration with the Ministry of Health, given that now the other aspect of this is sewer systems have been flooded out and there are health concerns in terms of that, in addition to possibly mosquitoes breeding and the impact of those sorts of afflictions?

Sen. The Hon. K. Hosein: Madam President, very good question, and we observed that while visiting the citizens. Once the water subsides, there is where the assessment will come in, and the public health department in each corporation has the onus to check. Spraying has to be done. The building inspectors, I spoke to a couple of them this morning, and they have to go around to make sure and inform the citizens what we intend to do, each local government body, what we intend to do for them.

Madam President: Next question, Sen. Richards. [*Interruption*] No, there are only two supplementary questions.

Ministry of Works and Transport

(Action to Address Drainage Problems)

Sen. Paul Richards: Thank you, Madam President. To the Minister of Works and Transport: Given that the Ministry of Works and Transport is responsible for dredging of water courses, what immediate action is being taken to address the drainage problems highlighted by the passage of tropical storm Bret?

The Minister of Works and Transport (Sen. The Hon. Rohan Sinanan): Thank you, Madam President. The Ministry of Works and Transport, through its Drainage Division has an ongoing programme of cleaning and desilting water courses throughout Trinidad. Measures undertaken to deal with the effects of the tropical storm Bret are: river control gangs are presently deployed across the country cleaning debris in blocked water courses; cleaning of major blockage of the Tacarigua River and the Freeman Road with heavy equipment is currently in process; desilting of the Cipero River from Cross Crossing to Gulf City Link Road is in progress.

We are awaiting water levels to drop in the Oropouche Lagoon to assess the work to be done; awaiting water levels to drop in the Caroni basin to assess work to be done; awaiting water levels to drop in the North Oropouche river basin to assess the work to be done, and awaiting the water levels to recede at the Caparo water basin to assess the work to be done. Thank you, Madam President.

Sen. Richards: Minister, could you indicate to this honourable House, if there has been an identification beforehand or now of the waterways or the water courses that are most vulnerable to this type of affliction in the passage of tropical storms or even heavy rains?

Sen. The Hon. R. Sinanan: Thank you, Madam President. The answer for that is yes, and that assessment is what influenced the river cleaning and the dredging that have been going on for the past two months. Thank you.

Madam President: Sen. Richards.

Sen. Richards: I will give way.

Madam President: Sen. Ameen.

Sen. Ameen: Thank you, Madam President. To go along with the dredging of the rivers, can the Minister indicate if the Ministry has done an assessment of the irrigation systems? We have reports that some of these systems failed, the sluice gate and pump systems, that caused flooding, if you have done an assessment of those that were compromised?

Sen. The Hon. R. Sinanan: Thank you, Madam President. As far as I am aware, the sluice gate system actually protects water from coming into the land once the tide is high in the ocean. So unless the water recedes, I cannot confirm what the Senator is saying, that the sluice gates failed. It might be deliberate not to open them to have the salt water flooding the fresh water areas, but we are in the process, and again, everything has to happen once the water is receded.

Madam President: Sen. Mark, next question.

Disaster Relief Assistance

(Emergency Fund for)

Sen. Wade Mark: Thank you, Madam President. To the hon. Prime Minister: Can the Prime Minister state whether an emergency fund will be established for the purpose of assisting in disaster relief post tropical storm Bret?

The Minister in the Ministry of the Attorney General and Legal Affairs and Minister in the Office of the Prime Minister (Hon. Stuart Young): Thank you very much, Madam President. As my colleague a short while ago alluded to, this morning at Cabinet the hon. Prime Minister came to Cabinet and asked us, he put forward a proposal, and it was accepted by Cabinet. The Minister of Finance is going to make available a fund of $25million for distribution through existing means to assist all of those who have been affected by the adverse effects of

tropical storm Bret. That would be the Ministry of Works and Transport, the Ministry of Social Development, the Ministry of Rural Development and Local Government, as well as the Ministry of Agriculture, Land and Fisheries, and through the utilization of the existing processes and procedures in the various Ministries, grants and other funds would be made available to those who are deserving.

Sen. Mark: Madam President, could the hon. Minister indicate to us, given the severity and the gravity of the dislocation caused by this tropical storm, whether the Government would be considering increasing the quantum of funds allocated to the emergency fund, maybe up to $100 million as an example?

Hon. S. Young: Madam President, the Government has allocated as a Cabinet and taken a decision of the amount of $25 million. It appears as though the Opposition is not aware of what is going on with the country financially right now, and we would obviously prioritize any sums of money that are needed and necessary. At this stage, that allocation is $25 million. My friends on the other side had a propensity to work in hundreds of millions.

Madam President: Hon. Senators, the time for urgent questions has expired.

Sen. The Hon. F. Khan: We will extend the time because of the situation with Bret.

Madam President: Sure. Sen. Mark.

Sen. Mark: Thank you very much, Madam President, and thank my colleague as well. May I also ask the hon. Minister whether it is the intention of the Government to review this sum having regard to unfolding circumstances and events, whether the Government is prepared to review that quantum?

Hon. S. Young: Madam President, as I alluded to, in response to the last supplemental question, this Government is always reviewing its position. At this

stage, the allocation is $25 million. [*Desk thumping*]

Tropical Storm Bret

(Measures to Assist Farmers)

Sen. Wade Mark: Thank you, Madam President. To the hon. Minister of Agriculture, Land and Fisheries: Given the losses experienced by farmers as a result of tropical storm Bret, can the Minister state what measures are being implemented to assist said farmers?

The Minister of Agriculture, Land and Fisheries (**Sen. The Hon. Clarence Rambharat):** Madam President, I thank Sen. Mark for his question. The Ministry took note of the possibility of bad weather since last week Wednesday. In fact, last week Thursday the Minister of Works and Transport and I went on the east coast, recognizing the vulnerability to bad weather of that coast. We also did further pre-emptive measures through the issue of bulletins and warnings to stakeholders, in particular, fisherfolk, given the historic damage to vessels when we have bad weather.

Since the passing of Bret, the Ministry has done three things in particular. The first is, in accordance with the well-established policy within the ADB, we have asked the Agricultural Development Bank to work with farmers who are likely affected by the floods in order to deal with their monthly payments that they would make.

The second is that we have asked all divisions of the Ministry to support the recovery efforts, whether or not they are linked to farmers, whatever is required in the communities. In fact, yesterday, officers of the Ministry's staff were out in the fields assisting people in schools and in communities.

And the third thing is, in the normal way we deal with claims for assistance following a flood, we have already received a few hundred applications. We have a

well-established process. Farmers understand what they have to do, and the Ministry of course is committed to deal with all bona fide claims for assistance in this.

I could say, Madam President, there is no doubt, based on the fact that I have been across the country having a first-hand look at it, there has been damage to some of our better farmers across the country in places like Tabaquite, Orange Grove and, in deep south, Penal and Woodland and those areas. Thank you.

Sen. Mark: Madam President, can I ask the hon. Minister what are the likely consequences arising to business and consumers, given the extent of the dislocation to crops and livestock in the Republic of Trinidad and Tobago?

Sen. The Hon. C. Rambharat: Madam President, it is difficult to give an exact figure, but I can say based on what I have seen, in some categories, for example, when you look at the Tabaquite area which is the major supplier of crops like cabbage and tomatoes, there has been significant damage. Some of the fields are in the final cycle of production and those fields would have been replanted. So what we would have is we would have crops which should have been ready for the market by this weekend, now being unavailable. Then we may have some delays in the replanting effort as the farmers clean up the fields and so on. In relation to livestock, I know about one loss in Debe which is essentially contract farmers.

So that, by the weekend we would be able to—NAMDEVCO is out in the field today trying to gauge the impact. But based on what I have seen, I could say with some certainty we will have some issues on the supply side. The extent to which it will affect prices is something we would still see. In relation to livestock, I am not in a position to gauge the impact. Of course, the private processors control a significant part of the market, and they would try to manage and recoup.

Sen. Mark: May I ask the hon. Minister, from his own assessment, what is the

extent of the damage to access roads as it relates to the farming community?

Sen. The Hon. C. Rambharat: Well, I am happy to say so far, with the exception of the Tableland area where the Ministry is currently engaged in developing access roads—and Tableland is particularly vulnerable to bad weather—I have seen no damage to access roads as I have been across the country.

Ministry of Education

(Resumption of Classes after Bret)

S**en. Wade Mark:** Thank you, Madam President. To the hon. Minister of Education: Can the Minister provide specific dates for the resumption of classes in schools that have been closed as a result of Bret?

The Minister of Education (Hon. Anthony Garcia): Thank you very much, Madam President. The following schools were closed because of the effects of tropical storm Bret. However, most of these schools have reopened today. They are Todd's Road RC, St. Helena Hindu, North Oropouche Government, Fishing Pond Presbyterian, San Raphael RC, Mundo Nuevo RC, Fyzabad Anglican, Fyzabad Secondary, Debe Hindu and Kanhai Road Presbyterian.

There are five schools that are still closed. They are, the North Oropouche RC, Mayo RC, Rousillac Hindu, Warrenville TIA and Warrenville Presbyterian. These schools that have been closed, the main reason is the access roads to those schools, those roads have been closed off because of rising flood waters. Thank you very much.

Sen. Mark: Madam President, could the hon. Minister indicate whether any schools, primary and/or secondary, remain closed as a result of those facilities being used as shelters as a result of the tropical storm Bret?

Hon. A. Garcia: Thank you very much, Madam President. There are three schools that were used as shelters. My information is that one of those schools have been

returned to the school population, and that is the Valencia Government School. The other two schools, I cannot remember the names right now. But there are two other schools—the names of those schools just evade me. If I remember I will let him know, I will provide him with that information.

Sen. Mark: Could the hon. Minister indicate when would he expect those schools that have been made impassable because of the rising flood waters—do you have an estimated time as to when those schools should be ready for occupation by students?

Hon. A. Garcia: Madam President, we have no control over nature and therefore it is impossible for me to state when those schools would be able to resume operations. Only today two schools were closed, the Warrenville TIA and the Warrenville Presbyterian, which were not closed previously, because today the banks of the Caroni River overflowed, preventing these schools from being opened. Therefore, I am unable to answer that question.

Tropical Storm Bret

(Restoration of Electricity)

Sen. Wade Mark: Madam President, to the hon. Minister of Public Utilities: Based on T&TEC's statement that there are currently some 25 areas without electrical power as a result of Tropical Storm Bret, can the Minister inform the Senate of the timeframe within which a supply of electricity will be returned to the effected communities?

The Minister of Energy and Energy Industries (Sen. The Hon. Franklin Khan): Madam President, there were around the country some 375 disruptive events as a result of Bret. The large majority have already been restored. There are, however, six areas in the north, seven areas in the south and nine areas in the east yet to be restored. These are expected to be restored by 11.00p.m. tonight.

ORAL ANSWERS TO QUESTIONS

The Minister of Energy and Energy Industries (Sen. The Hon. Franklin Khan): Madam President, through you, we will be answering questions Nos. 96, 97 and 100, and we ask for a deferral of two weeks for question No. 95.

Madam President: Question No. 95 is deferred for two weeks.

The following question stood on the Order Paper in the name of Sen. Wade Mark:

Massy Communications Acquisition
(Due Diligence and Valuation Reports)

95. Sen. Wade Mark asked the hon. Minister of Finance:

On the recent acquisition of Massy Communications by TSTT, can the Minister inform the Senate of the following:

a) Whether any due diligence and valuation reports were commissioned by TSTT prior to its acquisition of Massy Communications; and

b) If so, whether the Minister had prior knowledge of these reports and their contents?

Question, by leave, deferred.

Ministry of Education
(Delivery of Cheques to EFCL)

96. Sen. Wade Mark asked the hon. Minister of Education:

In light of reports that an advisor to the Minister accompanied a contractor to the offices of the EFCL with a cheque to facilitate a $2 million dollar payment to Sunboom Contractors, can the Minister inform the Senate of the Ministry's practice in respect of the delivery of cheques to contractors?

The Minister of Education (Hon. Anthony Garcia): Madam President, the first point I wish to make is the sum that is referred to, is not $2 million, it is $510,000.

Madam President, the Education Facilities Company Limited is the special purpose company charged with the responsibility to provide project management services for the Government's school construction programme which includes construction, repair, upgrade and outfitting of public schools. Contracts are therefore awarded by the EFCL for the conduct of these activities on behalf of the Ministry of Education.

Invoices submitted by contractors undergo a verification process by the EFCL and the Ministry of Education, after which, once funds are available, the Ministry issues a cheque to EFCL for the contract sum plus its project management fee of 7.5 per cent. The EFCL then pays the sum owing to the contractor.

Thank you.

3.00 p.m.

Sen. Mark: Madam President, could the hon. Minister indicate whether he is aware that the EFCL owes contractors approximately $800million? And, therefore, could the hon. Minister indicate whether this activity could be seen by the public as favouring one contractor over hundreds of others who are currently owed by the EFCL?

Madam President: Sen. Mark, you asked two questions there. You asked whether—you asked two questions. I will allow the second question.

Hon. A. Garcia: Madam President, the simple answer to the second question is no. The Ministry of Education, nor the EFCL does not favour any contractor. In this particular case, the payment was made to a contractor who was engaged in the Morvant/Laventille project which is a special project and, therefore, we had contractors from the area effecting works in those schools. Thank you very much.

Sen. Mark: Madam President, could the hon. Minister indicate to us how many contractors are involved in this project that you have mentioned in the Morvant/Laventille community? How many contractors are involved?

Madam President: Sen. Mark, that question does not arise.

Sen. Mark: Could I ask the hon. Minister, therefore, whether it is the normal practice for his advisor to provide a cheque to a contractor whenever work has been completed? Is that a normal practice for the Minister's advisor to provide a cheque to a contractor for work commissioned or completed? Is that a normal practice?

Hon. A. Garcia: Madam President, Sen. Mark reminds me of a school teacher, repeating a question two and three and four times.

Sen. Ameen: That is what Parliament is for. [*Crosstalk*]

Hon. A. Garcia: Madam President, I crave your protection. It is not the practice, and my advisor never provided any contractor with any cheque. [*Desk thumping*]

Sen. Mark: Madam President, the contractor, Sunboom Contractors, could the hon. Minister indicate to us whether this was the only cheque issued to this contractor under your stewardship? Could you advise this honourable Senate whether this contractor, Sunboom Contractors, is the only contractor by name who has received a cheque under your stewardship during your term of office?

Hon. A. Garcia: Madam President, again Sen. Mark has asked two different questions. His first question was whether Sunboom received only one cheque. And then he went on to say whether there are other contractors who received one cheque. I would like clarification first before I can answer.

Madam President: Well there can be no—you have asked—

Sen. Mark: Well, could he answer the question because—

Hon. Senator: Which one?

Hon. A. Garcia: Which question to answer?

Sen. Mark: I want clarification of both.

Madam President: Well, asking for clarification of both means you have gone

over. You are allowed four supplementary questions. [*Interruption*] None. Yeah.

Sen. Mark: Well, could I ask him? I want to clarify.

Madam President: All right, I will allow it for you to clarify very briefly, if the Minister can respond.

Sen. Mark: Madam President, could the hon. Minister indicate to this House whether Sunboom Contractors received only one cheque under yourstewardship thus far?

Madam President: Sen. Mark, that question does not arise. No. Let us go to the next question.

Energy Drinks

(Importation Ban)

97. Sen. Paul Richards asked the hon. Minister of Health:

In light of the adverse health effects resulting from the use of energy drinks, can the Minister indicate whether the Government intends to place a ban on the importation of said drinks?

The Minister of Health (Hon. Terrence Deyalsingh): Thank you, Madam President, and good afternoon to all. And I thank Sen. Richards for the question because this has engaged my attention as Minister of Health and the Cabinet of Trinidad and Tobago, because as part of its NCD programme—oh, I should tell the population the question is, are we going to ban the importation of energy drinks.

The Government of Trinidad and Tobago has already taken a policy decision to ban the availability of energy drinks in all primary and secondary schools as part of its NCD programme. At this time there are no plans to ban its importation, but the focus will continue to be with a public education programme into healthy lifestyles and to have the population avoid all products that put the population's health at risk. Example, the excessive intake of sugar, refined flour, smoking,

alcohol, high fat, and high calorie foods.

We, the Government, the Ministry, are confident that a well-educated public, as we are seeing already with the NCD programme, can then make better life choices, including the use of energy drink. Thank you, MadamPresident.

Sen. Richards: Madam President, with that said and with your articulation that the Government has no plans to ban, given what we have seen in other jurisdictions, inclusive of some US states, Uruguay, Germany, where there have been deaths attributed to some of the energy drink usage, does the Government have plans to regulate the caffeine level in some of the drinks, because that is the next possible step?

Hon. T. Deyalsingh: Thank you very much. That is a very interesting question. And Canada has actually capped its caffeine level in energy drinks to 180 milligrams per serving. But to alert the population and Sen. Richards how difficult this is, do you know that a brand of coffee served in Trinidad and Tobago, the grande size, 16 ounce, has 330 milligrams of caffeine, much more than the caffeine levels in energy drinks? So we have to be careful how we go about banning these things. Very often, caffeine is a problem, but very often the caffeine level in energy drinks is actually lower than the caffeine levels in large servings of coffee. So, on what basis are we going to ban energy drinks if we are looking at caffeine?

What I think we need, Sen. Richards, what we have done, the most vulnerable groups for energy drinks are teenagers and young adults. That is what all the research shows. The countries that you mentioned that have banned these energy drinks, did not ban it for caffeine, they banned it for high level of taurine which is a stimulant that kick-starts your metabolism. It was not banned for caffeine. So we have to be careful how we interpret the data coming from abroad.

But your concern is shared with us and we have to change the hearts and

minds of our young people into using these drinks and not to abuse them. And we feel confident, as part of the NCD programme, which we have launched and which is gaining traction, that people are actually avoiding all these foods and drinks that are not for good for them. And I will tell you something, the backlash has already started, because we are impacting on the sales of many of these products which are not good for the population, Senator.

So I share your concern, but an outright ban is not on the cards right now. We will continue, and I hope you support us in this, with a very vigorous education drive on the use of all products: tobacco, alcohol, sugar, refined flour and energy drinks. I thank you, Madam President.

Sen. Richards: Thank you, Madam President. With that said, is the Ministry also looking at, and you indicated that the issue is the taurine and not the caffeine, but, in the jurisdictions that have regulated and/or banned the energy drinks, the concern is not only the caffeine but the regular mixing of the caffeine with alcohol and sometimes in packaging, that is what ends up dangerous.

Hon. T. Deyalsingh: That is an excellent question, because I myself at Carnival time, warned the population not to use energy drinks as a chaser for alcohol. So yes, the cocktail of alcohol and energy drinks is bad, but then, if we want to ban it because it is used as a chaser, then how far down the road do we go? Because do we ban club soda? Do we ban coconut water? The banning of a product entails a lot of research, a lot of thought and a lot of evidence.

The evidence so far tells us that the vulnerable age group are those teenagers and early and young adults, 15, 25. And as I said, banning it in schools already is impacting on the minds of our young people that they need to change their habits. The countries that—not many countries have actually banned the importation of these drinks. Kuwait has banned its sale to under 16s. Latvia has banned it to

minors. And as I said Germany, you mentioned Germany in 2009, did not ban it for caffeine. They banned it because one product had traces of cocaine in it. So those are the reasons why it was banned. So we have to be very careful because we live in a free society. We have to decide what type of society we want. And we feel in an open society like this with free trade, the best approach—and it has been backed up in research by the *West Indian Medical Journal* and WHO, on whose writings I am guided, but the best approach now is public education to our young adults into the judicious use of these drinks. I thank you, Madam President.

Sen. Mark: Madam President, could I ask my hon. colleague what mechanisms are being established to enforce the Ministry's decision in an effort to avoid consumption of these energy drinks, and consequently the creation of a black market in the very school system that utilize—or you are banning utilization totally?

Hon. T. Deyalsingh: Thank you, Madam President. Madam President, we are hoping and we are confident that as we educate the public more and more that children and families and parents—and the evidence is starting to come into us—are now making better life choices. We cannot ban everything otherwise we will be banning every chicken and chips outlet. We would be banning every roti shop. Because I will tell you something. The effect of flour and sugar is much more dangerous to this society than energy drinks. So we have to be careful what we ban. What we feel at this time is a serious public education programme.

Smoking and alcohol, there is much more evidence that those products contribute directly to death. Do we ban them? What type of society do we want? And we feel society will make better choices of these products which are not good for them, but let us educate them and decrease their usage, whether it is excessive sugar, whether it is excessive refined flour, smoking, alcohol and energy drinks.

Student Sexual Activity in Schools

(Action Taken)

100. Sen. Paul Richards asked the hon. Minister of Education:

With regard to reports that photographs of minors engaging in sex acts, while at school, are being posted on a local website, can the Minister inform the Senate of the following:

a) What is being done to ensure that minors do not engage in sex acts, while at school;

b) What action has been taken against students who have been found to have participated in such acts while at school; and

c) What action has been taken against students who have photographed other students engaging in such acts?

The Minister of Education (Hon. Anthony Garcia): Thank you very much, Madam President. Madam President, the Ministry of Education has a number of measures in place to mitigate minors engaging in sex acts while at school. These include:

1. Reinforcement of the school code of conduct, highlighting the consequences of such action to students.

2. Strengthening the system of supervision of students.

3. Universal intervention and information sessions from primary to secondary level co-ordinated by the Student Support Services Division in several critical areas such as:

- respect for self and others;
- understanding the Sexual Offences Act and the legal implications;
- decision-making, in which negating skills are reinforced and different ways to say no;

- child rights and protection;
- self-development and self-esteem enhancement and values education.

4. A health and family life education programme, which addresses sexuality and sexual health, starting from infant one, where concepts such as good touch, appropriate touch, are introduced.

With respect to (b), students who are found guilty are suspended in conjunction with the appropriate psycho-social counselling and intervention by Student Support Services Division of the Ministry of Education. For severe cases, social workers, behavioural specialists and clinical psychologists are required.

And the third question, schools are guided by the National School Code of Conduct which promotes responsible and ethical use of social media and requires that all interactions under social media be respectful, age-appropriate, non-abusive, and free from ignominious content.

The school discipline matrix, which is guided by the National School Code of Conduct, determines consequences for breaches of the code. Consequences for such acts of indiscipline range from student and the parent conferencing to extend the suspension and referral to the learning enhancement centres. Thank you.**Sen. Richards:** Thank you, Madam President. Can the Minister indicate if the outlined student support services presently has a manager on board?

Hon. A. Garcia: No. At present there is no manager, but there is someone who is holding on and discharging the responsibilities of leadership of that department.

Sen. Richards: Can the Minister indicate if the Ministry of Education has a student cell phone use policy in place, given the fact that it seems that unfortunately we are seeing more and more of these videos and photographs of students, unfortunately engaged in sex acts, coming through the use of cell phones?

Hon. A. Garcia: Madam President, yes, the Ministry of Education has a cell phone policy and the policy states that while a cell phone is allowed in schools, those cell phones should not be camera cell phones. However, one can hardly find now a cell phone without the camera facilities and that is one of the challenges that we face.

Sen. Richards: Thank you, Madam President. With that said, and because of the obvious concerns one would have with that—yes, most cell phones come with a camera—has the Ministry plans to update this policy to deal with this evolving situation because of the threat it poses to students?

Hon. A. Garcia: Thank you very much, Madam President. At present, the Ministry of Education is having discussions with various arms of the Ministry of Education, in particular the Student Support Services Division, in an effort to update its policy. Thank you.

Sen. Ameen: Madam President, arising out of an answer earlier from the Minister, is it that the Ministry of Education is considering having sex ed in schools?

Madam President: Sen. Ameen, that question does not arise.

Sen. Ameen: Madam President, if I may clarify?

Madam President: Well, you have asked one question already.

Sen. Ameen: It is not a new question. Earlier the Minister indicated that they plan to do programmes in sharing with children good touch and bad touch and so on, in schools. So that is an element of sex ed. So I am asking if the Ministry has any plans to introduce sex ed in schools?

Hon. A. Garcia: Madam President, the question that was posed by the good Senator, I am confused, because she dropped her voice during the last word, so I am not sure whether she is asking whether the Ministry of Education is going to encourage sex in schools or whether it would encourage sex education.

Sen. Ameen: Sex ed. Sex ed is the shortened version of sexual education. Does the

Ministry plan to have sex education in schools? [*Crosstalk*]

Madam President: Two Members cannot be on their feet at the same time. And no need for us to be—let us just. Minister, have you gotten the supplementary question now that has been posed?

Hon. A. Garcia: Yes. Thank you very much, Madam President. Again, the Ministry of Education is engaging the assistance, not only of our various departments, but of our parents and of the church. We have a programme that is referred to as parenting in education, in which we seek the support and the involvement of parents. Also since this is a very touchy subject, especially where certain religions are concerned, we are engaging the religious bodies in discussions. We have not yet come out with a definite policy, but it is on the basis of discussions that we are having at present.

Sen. Mark: Can I ask the hon. Minister, having regard to the various measures outlined earlier in your presentation, could you indicate to us whether you have discerned any tangible reduction in the activities of students as outlined in the question? In other words, given your measures, has there been a reduction or tangible reduction in sexual acts committed by students?

Hon. A. Garcia: Madam President, to answer that question, I can only base it on the request for extended suspensions that come before me. As all of us know, it is only the Minister who has the authority to extend a suspension. What I have found, over the last few weeks and months is that there is a drastic reduction in the number of requests for extended suspensions, which sometimes include students having sex in the classrooms.

SPECIAL SELECT COMMITTEE REPORT

(Adoption)

Miscellaneous Provisions (Trial by Judge Alone) Bill, 2017

The Minister of Agriculture, Land and Fisheries (Sen. The Hon. Clarence Rambharat): Madam President, I beg to move the following Motion standing in my name:

> *Be it resolved* that the Senate adopt the Report of the Special Select Committee appointed to consider and report on a Bill entitled "An Act to amend the Offences Against the Person Act, Chap. 11:08 and the Criminal Procedure Act, Chap.12:02 and for related matters".

Madam President, you would recall that on Tuesday, June13, 2017, a Special Select Committee was appointed to consider and report on a Bill to amend the Offences Against the Persons Act, Chap. 11:08 and the Criminal Procedure Act, Chap 12:02 and for related matters.

Madam President, you would also recall that the Senate agreed to the appointment of the following persons to serve on this select committee:Clarence Rambharat, Sen. Michael Coppin, Sen. Daniel Dookie, Sen. Gerald Ramdeen and Sen. Sophia Chote, Senior Counsel.

Madam President, this select committee met on two occasions and on both occasions we had full participation from the members who were appointed to the committee.

Madam President, on the first meeting, the committee agreed in accordance with the General Rules, Appendix III, No. 9 of the Senate Standing Orders, to a request by Sen. Jennifer Raffoul, to participate in the meetings of the committee without the power to vote. Madam President, you would also know that in accordance with General Rules, Appendix III, No. 10 of the Senate Standing Orders, the Mover of the Bill, the person in whose name the Bill stands, is able to

participate in the proceedings without the right to vote. In accordance with that rule, the hon. Attorney General and Minister of Legal Affairs, Faris Al-Rawi, participated in both meetings of the select committee.

Madam President, by way of reference, the committee was mandated to consider the details of the Bill and also report to this House by Tuesday, June20, 2017. And you may recall, Madam President, that on Tuesday, June20, 2017, I duly laid the report of the committee in this House.

Madam President, the core work of the committee was to conduct a clause-by-clause analysis of the Bill, and to make the appropriate recommendations to the House. Madam President, I must say that in the clause-by-clause analysis, the committee was very grateful to have, in order to provide assistance and guidance, Prof. Gerard Hutchinson, a forensic psychiatrist, the committee having determined that some of the matters contained in the Bill required that level of professional guidance.

Madam President, I believe and I am sure the other members of the committee will agree with me that having Prof. Gerard Hutchinson to assist us allowed us to reach consensus in matters contained in the Bill.

I must also say, Madam President, before I go into the clause-by-clause analysis, I must also say that we were very grateful to have the support of the CPC and his staff during that period and they were enormously helpful to all of us.

Madam President, the committee examined the Bill, and in particular the following clauses in the Bill. The committee examined clause 3(a)(ii), which deals with the aggravating factors, which must be taken into consideration upon the fixing of a period of detention to someone who has been determined to be suffering

from an abnormality of the mind. And in those aggravating factors, the committee considered in particular two areas; one relating to the factor of evidence of a plan and premeditation and agreed to the amendment of that section of the Bill.

The committee also considered, as an aggravating section, an amendment to clause 3(a), section 4A, (9)(g) and agreed to an amendment of that part of the Bill, so that it now reads:

> The killing of any person doing his public duty including a judicial officer, member of the Defence Force or protective services, Customs Officer, Immigration Officer or postal worker.

Madam President, the committee also looked at clause 3(a)(ii), section (a), (10)(b), in relation to consideration of a definition of the issue of sub normality or mental abnormality and agreed to the adoption of a definition from the Mental Health Act, as amended to delete references to age.

The committee looked at clause (a)(ii), section 4A, (13)(b), in relation to the reports which have to be submitted on an annual basis on someone who has been determined to be suffering from an abnormality of the mind. The committee agreed to an amendment to include a reference to an up-to-date mental assessment report from a psychiatrist, including an independent psychiatrist. And that amendment, Madam President, was meant to replace the reference in the Bill to a medical doctor.

The committee also agreed to include a new subsection, clause (a)(ii), section 4A(14), and that is to provide—on the basis of advice and guidance received from Prof. Hutchinson—that after three years there shall be an independent review of the mental assessment report, and the independent reviewer

should have access to the person's history. And that is based, Madam President, on advice we received from Prof. Hutchinson in relation to, in some cases the difficulties in having access to professional advice relevant to the particular case, and the committee felt that every three years there should be an independent review and that reviewer should have access to the previous records of the person being assessed.

In clause 4(d), section 42B(1), the committee addressed its mind, Madam President, to the time frames within which a decision-maker has to deliver a judgment and also the reasons, and agreed to recommend that clause 4(d) be amended to replace the word currently existing "judgment" with the word "verdict" and replace the wording "for the conviction" of the accused person with "for his verdict".

Similarly, the committee looked at clause 4(d), section 42B(4) and agreed to recommend the replacement of the words "the acquittal" with the words "his verdict". Again, the committee's aim was to ensure that we have consistency of language, recognizing in the original framing of the Bill the words "written judgment", "judgment" and "acquittal" were used interchangeably and the committee settled upon the standard language of "verdict".

Madam President, the committee looked at clause 4(d), section 42B(4), and again agreed to the replacement of the word "the acquittal" with "his verdict". In relation to clause 4(d), section 42B(6), the committee agreed to replace the word "judgment" with the word "verdict".

And finally, Madam President, the committee looked at clause 4(d), section 42B(7) and agreed to the deletion of that section.

Madam President, I believe that, notwithstanding the short time frame, the committee conducted itself in a very professional and expeditious manner. We resisted the effort to delay, based on the holidays that intervened, and the committee is very happy to produce this report and recommend it for adoption by the Senate. I thank you. [*Desk thumping*]

Madam President, I beg to move.

Question proposed.

Sen. Gerald Ramdeen: Thank you, Madam President. Madam President, I was privileged to be part of the select committee that was given the task toreport back to the Senate to consider the Bill to amend the Offences Against the Person Act, Chap. 11:08 and the Criminal Procedure Act, Chap. 12:02, and for related matters. And I am also happy to have been able, as a member of the committee, to report back to the Senate in the time that was fixed, which was a very short time for us to consider the amendments.

Madam President, in speaking to the report that is now before the Senate, it is important that we acknowledge that this committee was set up pursuant to recommendations that were made by the Opposition for thepurposes of bettering the piece of legislation that was currently before the Senate in the form as presented by the hon. Attorney General. And it was because of the forward-thinking way in which the legislation was presented that we are able today to sit here to debate this report, which I think, Madam President, after the work of the committee, we can all on each Bench, on each side in this Senate, say that we have a better piece of legislation, if this report is adopted.

I can say, Madam President, that the work that was done in the committee, in

terms of putting together this piece of legislation and making the recommendations, for adoption by the Senate, is work that I think that the Government, the Opposition, and the Independent Bench can all be proud as a Parliament that we have been able to accomplish. And I can say that with conviction, because I think this is one of the opportunities that we have grabbed hold of, and the contributions by both the Government, the Opposition and the Independent Bench have been able to allow us, as a jurisdiction, to put into our statute something that no other jurisdiction in the Caribbean has been able to do, and even from the borrowings that we made, with respect to the Practice Directions from the United Kingdom, I think we should be proud as a Parliament to be able to enact this piece of legislation if the committee's report is adopted.

Because what we have been able to accomplish, by making these recommendations through the committee, is we have been able, as a committee, to be able to put into law something that finds its genesis, Madam President, in the Criminal Lunatics Act, which was 1800. So you have over 200 years of jurisprudence that we have now finally been able to settle as to what is the correct approach that a court ought properly to take, in relation to someone who is before a criminal court on an indictment and that person has been found to be suffering from an abnormality of mind and therefore that person is not—the law recognizes that person is to be treated differently from someone who has all of his senses, someone who is compos mentis.

And it is commendable, Madam President, that the Government has taken the opportunity to be able to enact in statute what our Court of Appeal has laid down by virtue of a judgment. And I think it is commendable because the approach

that the Parliament has taken, with respect to this particular piece of legislation, is similar to what we strive to achieve as a Parliament. Because if we borrow from the United Kingdom what the position is when you carry a matter all the way to the European Court and you get a declaration of incompatibility, where the law does not accord with the Human Rights Act, what you have is immediately, Parliament will take steps to fix the law and put into place legislation that puts into effect the judgment of a court.

And as a committee, what we have been able to achieve and as a Parliament, as a Senate, if we adopt this report, what we would be able to achieve is that we have put into statue form what the Court of Appeal has told us. And we have added to that, and I think it is important to recognize that we added to the aggravating and mitigating factors that a court must take into consideration when a court comes to determine what is the minimum term that a person who has been found guilty on an indictment and suffering from an abnormality of mind ought to take into consideration.

And, Madam President, like the hon. Minister of Agriculture, Land and Fisheries who chaired the committee, I too would like to make some comments about the work of the committee that I think is quite important for us to recognize as a Senate.

As I indicated before, Madam President, we have been able to fix the unconstitutionality, with respect to the detention of a person who is suffering from an abnormality of mind. The length of that person's indeterminate detention is now going to be determined by an independent and impartial tribunal, and that is a very important amendment that we have made. It will no longer be determined by the

President, as it was before. It is now going to be determined by a court and that accords with the rights that are given to each and every citizen of this country, both under the fundamental rights provisions, but more importantly under the separation of powers. So that the length of that person's detention is going to be determined initially by a court and it is going to be reviewed by a court and that is put into the law by the amendments that we ask the Senate to adopt.

Madam President, one of the very, very important amendments that the committee has made relates to the way in which a judicial officer, in this case a High Court judge, will exercise his powers if an accused person decides to have a trial by judge alone. And one of the most important provisions that we have been able to agree through this committee is that not only would you have due process by virtue of having an extension of your option to have a trial by judge alone, but very, very importantly this piece of legislation, if it is passed by the Senate, pursuant to the recommendations of the committee, it will be the first piece of legislation that as a Parliament, as a country, as a country governed by a written Constitution, we have been able to put now into domestic legislation a provision that fixes a time frame, for not only a judge to deliver his verdict, but for a judge to deliver his reasons. And that is extremely important. It is a very progressive step, as a Parliament, that we are asking this Parliament to make.

Because, whereas in the Summary Courts Act, a magistrate has 60 days to deliver their reasons, one of the main complaints, or one of the principal complaints about our judicial system is the pace at which the wheels of justice turn. And this piece of legislation, if it is passed, is going to be the first piece of legislation where we are going to fix a time frame for a High Court judge to not

only deliver his verdict but also to deliver his reasons. And that is an extension of not only the due process and protection of law, it is an extension of the right to a fair trial.

We suffer in this country under a Constitution which does not provide for a right to a trial within a reasonable time. It is, perhaps, one of the very few Constitutions that does not provide for a right within a reasonable time. And it is commendable that we have been able to present a piece of legislation that, notwithstanding the absence of that right in sections 4 and 5 of our Constitution, that we have been able to enact that mechanism in this piece of legislation so that someone who chooses to have a trial by judge alone, at the conclusion, they will have their verdict within 14 days, and they will have the reasons. That judicial officer must produce the reasons for his delay within 14 days.

And that is a very, very progressive step that we have made and I would like to see that the Government can bring legislation so that those who are part of the criminal justice system can be equated with those who are part of the civil justice system and we can fix a time for judgments to be delivered in a civil matter, so that people will not be suffering under this pain of having the wheels of justice turn at too slow a pace. So if we can follow that, and the Attorney General can look at the Supreme Court of Judicature Act and perhaps, with his advisors, bring legislation that can do that, I think it is something that all of us as a country can benefit from, Madam President.

Madam President, a very, very important extension that flows from the report of the committee is that when someone is convicted and a minimum term of their detention is set by the judge who presides over that criminal trial,

notwithstanding the decision of the Court of Appeal in Attin, we as a Parliament have recommended, as a committee, have recommended, that the person who is the subject of the order for detention will have a right to appeal the Order from the High Court. The Court of Appeal in the Attin judgment indicated that there was no right of appeal in that matter, but we considered that someone who is going to be incarcerated for a period of time, after a criminal trial, for an indeterminate period of time, and a judge having the power to determine the minimum term for that person to suffer a period of detention, that that person ought properly to have the opportunity to test the correctness of that decision by an Appellate Court. And, therefore, you will see in the recommendations that, by virtue of the proposed amendments, we have given that person a right of appeal.

Madam President, much has been said about this piece of legislation being trial by judge alone, as to whether it intrudes, whether it infringes upon the rights to a fair trial, whether it infringes upon the rights under sections 4 and 5. I think that what we as a committee have been able to present to this Senate and the work that we have done, we have benefited a lot from the Government listening to the Opposition. We have benefited a lot from the Government listening to the recommendations that we propose to this piece of legislation and the piece of legislation that finds itself in the report of the committee is a piece of legislation that, one, provides certain safeguards to the rights of the accused person. It provides certain protections to a person who decides or exercises the option to have a trial by judge alone and even after that trial is concluded, in terms of the evidence and the verdict, it extends the right to the protection of law, the right to due process, and the right to a fair trial to beyond the actual conviction to the verdict

and thereafter.

I think that this piece of legislation, Madam President, that finds itself in the report of the committee is one that ought properly to be supported by both the Government, the Independent Bench and the Opposition. I think we have done very well to make amendments to the legislation as presented by the hon. Attorney General. And I think the report of the committee, Madam President, is an example of what we can achieve when we all work together in the best interest of the people of Trinidad and Tobago.

So I wish to thank the hon. Sen. Rambharat for the way in which he conducted the proceedings of the committee as the chairman. I wish to thank Sen. Chote for the advice that Sen. Chote, being valuable advice that she gave to us as a member of the committee. I wish to also express the gratitude for having Prof. Hutchinson come before the committee and give of his time, give of his wisdom and enlighten us as to the way forward in which we could correct the legislation, and I hope, Madam President, that the example that we can use what have done here in relation to this piece of legislation, as an example of what we can do as a Parliament together, in the best interest of the people of Trinidad and Tobago. And I ask all of us to support the report and to adopt the report of the committee. I thank you, Madam President. [*Desk thumping*]

Sen. Sophia Chote SC: Thank you, Madam President. Madam President, when a Bill is sent to a joint select committee, I imagine we always expect that it will return to the floor with improvements. So I—perhaps, it is becauseI stand in a different place from Sen. Ramdeen that I do not see that it is necessary for us to offer up self-congratulatory plaudits with respect to our work. We were appointed

to a committee and we all worked very hard.

I think that the product, which is now before the Senate, certainly is quite different from the initial piece of proposed legislation. It is the first time that I had the opportunity to work with the other Senators on such a committee and I have to say there was a fundamental thing which occurred during the discussions of this committee, which I think ought to chart a way forward, when we consider criminal legislation in the future.

The fact that the Government was open and willing, and I thank the Chairman and the hon. Attorney General for that, to realize or appreciate that when we speak about this kind of legislation we have to take into account the mental health factor. I think that was a tidal change in thinking, as far as I was concerned, seeing it from a criminal lawyer's perspective. And I think that that should certainly be a course that should be recommended in the future for other pieces of legislation.

But I certainly thank the other Senators for the work that we put in and I think the product is a sound one. And I ask my colleagues certainly to consider it and support it.

The Attorney General (Hon. Faris Al-Rawi): Thank you, Madam President. Madam President, for my own part, if I could just make a very short contribution. Firstly, I do accept the caution offered by my learned colleague, Sen. Chote, that plaudits are not necessary. But in this particular field of parliamentary practice I think it is incumbent to put on to the record credit where credit is due, because far too often very good work goes unnoticed. If I may, firstly, express my extreme gratitude to the very, very, very capable management offered by Sen. Rambharat as

the chair of this committee. Notwithstanding the fact that I have moved this Bill and I am in charge of it I do not stand as a Member of the Senate and therefore could not chair it. Sen. Rambharat certainly managed the content and material and cadence of the committee with an extremely capable measure.

Secondly, Madam President, if I may express a very warm and open congratulations to Sen. Ramdeen and to Sen. Chote, because they both gave very strong—from the practice of court—measure of experience to this Bill, and brought forward, certainly, perspectives of the law, which now find themselves in the report of this committee and in the parent law amendments that we now seek to cause and which I think take us to a significantly better place.

Had it not been for the practitioners in this arena stepping forward to give the measure of input that they did, both Senators Ramdeen and Sen. Chote, I think that the country would not have taken advantage of such a good opportunity, as we have had. And on behalf of the Government I wish to offer my sincere thanks and appreciation to all Members for the manner in which this debate and the special select committee was conducted.

Permit me just, therefore, Madam President, to add a few remarks to some of the content traversed by Sen. Ramdeen, because we are making a significant improvement to certain aspects of the law. It is, of course, in the Offences Against the Person Act, which we sought to amend in the Bill, that we have made a very important improvement by taking into account the Court of Appeal's decisions in Attin No. 1 and Attin No. 2, as improved by the Practice Directions coming out of the United Kingdom, which Sen. Ramdeen had referred us to.

It is important in speaking to the novelty of putting a time frame for the

delivery of reasons upon a verdict. Let me translate that. In the Offences Against the Person Act, we are now saying that the court must deliver a verdict, as soon as is reasonably practicable, but in any event that the court should do so within 14 days of making an order. And specifically, when we come to making this improvement, we allow for the factoring of the issue of liberty, which we are dealing with in this area of law.

I wish to offer a very, again, warm thanks to the hon. Chief Justice, because in an effort to exercise caution I certainly contacted the Judiciary to ask for the perspective from the judicial point of view as to fixing time frames for the delivery of certain matters. And, indeed, the hon. Chief Justice communicated that because we were dealing with a matter of liberty, that it was only appropriate that we actually agree to put in time frames and that the Judiciary itself would be supportive of that.

It is very important to note, therefore, that notwithstanding the fact that we have put in the requirement for the decision coming in a particular time frame, we also do allow the court the ability to tell the parties, at any point in time, that they are running into difficulties and that the difficulties result in the court needing to move the time frame. But in the simplicity of the new law, we invite the court to convene a sitting of the court, invite the parties to the court and then indicate such further time frame as will be necessary to deliver the reasons or the judgment upon the verdict.

We have sought to balance as well, Madam President, the scarcity of judicial resources and we do allow, in this particular Bill, for, on the one hand, a time frame for the delivery of reasons upon a verdict of guilt, and the need for the court

to keep the parties constantly informed of that position. But what we do as well is to recognize that the acquittal is not something which will automatically necessarily generate reasons. And so the Bill does contemplate the fact that the appeal mechanism, where the DPP rolls up or the prosecution rolls up and requests the reasons for acquittal, it is only at that stage that it actually kicks into the mechanism of producing a judgment at that point.

It is useful to bear in mind that judges often start writing judgments as the case is progressing. And, therefore, one can only hope that the Judiciary would develop a practice to improve the jurisprudence of Trinidad and Tobago by giving reasons simultaneously with verdicts. And more particularly to allow the advancing of our common law and the rationale behind sentencing when we deal with both convictions and acquittals.

Madam President, the subject matter, I wish to remind, traverses an aspect of the Children Act, which, again, is an observation that is in need of improvement, in particular section 59 of the Children Act. And I would just like, for the purposes of the record, to certify once again that we certainly do intend to cause an amendment to section 59 of the Children Act, when we come to treat with an omnibus review of that in the month of September. We have actually prepared the draft Bill for that some time now and we will be seeking to carry through our undertaking that we get that particular position right because I think that Act No. 12 of 2012, I think it was a simple omission on that part as to how we treat with juveniles in that context.

I will now close, Madam President, by again, commending all members of the committee and volunteers as well, because Sen. Raffoul certainly took very

useful opportunity of the Standing Orders to attend every single meeting. I wish to, again, underscore that this special select committee went to work in a very quick time frame, notwithstanding the passage of public holidays, and fortunately prior to the passage of the tropical storm Bret.

I should add I have just been reminded across the floor that we did cause some amendments to the forms attached to the Bill where we treat with when persons are represented or unrepresented, how those persons are to indicate their positions. And I ask Members to note that we have done the consequential improvement to the forms as we have sought to treat with the content of the material which both the Senate considered in the debate, in the committee of the whole, and in the special select committee.

May I commend this Bill and all the effort that has gone into it for the approval of all hon. Senators, and I thank you, Madam President.

Sen. Wade Mark: Thank you very much, Madam President. I would not be long. I just want to join my colleagues in recognizing the sterling contributions made by members of the Special Select Committee of the Senate on this very important matter that we had assigned the responsibility to this committee to address.

And having regard to what we have been advised have been literally revolutionary breakthroughs for the first time, as articulated by colleagues who have spoken thus far, I think it is commendable, Madam President, to record the Senate and our appreciation as a Front Bench here, Opposition Bench, to our colleagues who have contributed.

Madam President, I want to indicate to you that the concept of post-legislative scrutiny becomes very critical as we traverse this particular path and

journey that we have taken up today.

I would like, with your leave, Madam President, to suggest to the hon. Attorney General and my good friend the chairman of this committee who has had a long experience in the Canadian jurisdiction, having lived there for a little while, I wanted to proffer to my colleagues the need for us to considering corporating a provision in the legislation—via the adoption of the report before us—of a provision, Madam President, that would bring about an audit of the workings of these provisions contained in the legislation via the report, and have the Attorney General's office present that audit on the workings of this piece of legislation maybe, Madam President, every three years.

4.00 p.m.

I think that one of the weaknesses, Attorney General, that we have had and seeing that we are making revolutionary breakthroughs, it may be useful to consider that if you want to ensure that the legislature that is responsible for giving life and passage ultimately to this report and legislation contained therein, we should look at the possibility of allowing the Office of the Attorney General to monitor through a unit within your Ministry the workings of this legislation, and to provide to the both Houses of Parliament a report every three years or maybe you might say four years, so that at the end of the exercise we as legislators and those to come would have the benefit of looking at the legislation in its real dynamic workings. And maybe through your office, recommendations can come for adjustments, for amendments, and even review of the legislation.

So, Madam President, I am suggesting for the consideration of the Chairman the possibility of considering a special provision that would deal with a review, an

audit via a report every three years so that this ground-breaking piece of legislation is not passed, is not approved and then we do not see that legislation for review in the future. So that is an area I would like to suggest, Madam President, for consideration.

And finally, may I also suggest, Madam President, Standing Order 66(1) has been effected and I believe it tells us that with the leave of the Attorney General and whether it is criminal legislation, civil legislation, but once the legislation is of a controversial nature, I would ask the Leader of Government Business to look very carefully at 66(1), because there is a provision in our Standing Orders under 66(1) where legislation can be referred to a Select Committee, and we are seeing the benefits of the legislation being referred to a Special Select Committee and the outcome of those deliberations.

So, I would ask, Madam President, that that is an area that the Leader of Government Business should pay some attention to, and the hon. Attorney General as it relates to the audit/review should consider so that in moving forward we can really do some monitoring and evaluation of this particular legislation, and it is captured under the concept of post-legislative scrutiny. With those few words, Madam President, I wish to thank you very much.

Sen. John Heath: Madam President, I crave your indulgence just to make a brief contribution which I want the Senate to consider and certainly the mover of this Bill as it goes through the process.

Trial by jury, where the trial goes through to the end and the jury renders a verdict of not guilty is not appealable. If, of course, that verdict is guilty, it is appealable, and therefore, the accused person can exhaust his appeals all up the

way to the apex of our court structure which is the Privy Council.

If in judge-alone trials, on acquittal, it becomes appealable if the judge—if of course there is an acquittal, the State can appeal. What we will be doing we will be creating for that accused person, avenues in which the State can then appeal, whereby the other system of the jury it simply does not now exist. So, I do not know if that is now the intention or it may very well be an oversight that we now need to look into. Because if it is that we certainly want to steer persons into the judge-alone trials, I can see certainly one hindrance whereby the accused person is told that, if it is you are acquitted, there are going to be avenues for appeals. Whereby if you go for trial by jury, if you are acquitted, there is not going to be, and that is something, I think, the Senate should consider. Much obliged. [*Desk thumping*]

The Minister of Agriculture, Land and Fisheries (Sen. The Hon. Clarence Rambharat): Madam President, I want to thank everyone for their contributions. Just to address the point made by Sen. Mark, I myself on the last sitting talked about the importance of not only crafting and implementing legislation, in particular legislation dealing with criminal justice system, but also using the resources that we have available to us as a Parliament to ensure that what we create and set in train is actually implemented. And I used the example of the DNA legislation on that occasion, showing how well-intentioned legislation brought to the Parliament in 1999 still remains unfulfilled in 2017, notwithstanding the replacement of that legislation in 2007.

And may I say, Madam President, there are two areas in which, without doing more on what we presented, there are two areas, opportunities already

available to us as a Senate, and that is first, in relation to our ability to ask questions in this House and in the other place, requiring an oral or written response. And that gives the opportunity for anybody who wishes to hold the Government to account on the progress made in the implementation or the results for the purpose of accountability and measurement to ask a question which could be answered in an oral or written way.

Madam President, there is also the opportunity through, at least, two Joint Select Committees, one on which I served, the Finance and Legal Joint Select Committee, to have the opportunity to call into account the institutions to address any issue, and in particular the progress made on the implementation and the results out of this legislation or any other legislation.

There is also a Joint Select Committee which deals with national security matters and the opportunity arises also for that Joint Select Committee to call the Ministry of National Security or any other related institution to account for progress.

I think, Madam President, Sen. Mark's suggestion is a good one, but I also believe in the current form. The Standing Orders provide for that level of accountability and reporting on legislation, and it is up to us as a Parliament to hold the institutions over which we have only limited level of control, accountable for what we put in train, and to ensure that what we would like to have implemented and what we would like to have done outside of this Parliament actually happens.

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

Question put and agreed to.

Report adopted.

The Attorney General (Hon. Faris Al-Rawi): You caught me slightly unprepared with several matters listed, Madam President. I am just looking for the procedural paper. Thank you.

Madam President, I beg to move that the Bill entitled "An Act to amend the Supreme Court of Judicature Act, Chap. 4:01, the Summary Courts Act, Chap. 4:20, the Offences Against the Person Act, Chap. 11:08 and the Criminal Procedure Act, Chap. 12:02 and for related matters", be forthwith read a third time and passed, pursuant to Standing Order 69(2).

Question put and agreed to.

Bill accordingly read the third time and passed.

CRIMINAL PROCEDURE
(PLEA DISCUSSION AND PLEA AGREEMENT) BILL, 2017

[Third Day]

Order read for resuming adjourned debate on question [June 13, 2017]:

That the Bill be now read a second time.

Question again proposed.

Madam President: Sen. Sturge. [*Desk thumping*]

Sen. Wayne Sturge: Thank you, Madam President, for the opportunity to join this debate. Madam President, I am not satisfied that the Attorney General has provided this Senate with a satisfactory explanation as to what is wrong with the existing Act, that is, the 1999 Act. And I hope in wrapping up he can tell us in detail what exactly is wrong with the 1999 Act. This 1999 Act you would recall, Madam President, was piloted by former Attorney General Mr. Ramesh Lawrence

Maharaj. And Mr. Ramesh Lawrence Maharaj, you would know, up to the time when he was appointed or elevated to the position of Attorney General, up to that time he was perhaps the most decorated attorney at the Criminal Bar. Up to the time of his appointment and before he piloted the existing Act, the 1999 Act, he was also one of the more decorated human rights and constitutional lawyers.

So, we have a man who was decorated in both criminal law and constitutional law, particularly human rights, with an understanding of the system as it relates to plea bargaining and plea discussions and immunities and so on as they existed then and as they continue to exist now, passing a piece of legislation and now we are being asked to repeal it. Now, why?—I have to ask. And what jumps out at me and I am leaning on what I learned from the symposium held at the Radisson with respect to this very issue, and what I read in the *Hansard* in the other place. And what is clear is that from 1990 to present, four consecutive Directors of Public Prosecutions found it necessary to stay as far as possible from that 1999 Act. But what exactly was wrong with it?—I will go into detail after. But what immediately jumps out at me is this. The 1999 Act had sanctions for prosecutors who misconducted themselves when it came to plea discussions and inducements and so on. So that prosecutors could be charged with offences and there were criminal offences which carried sanctions.

This Bill, clause 8, I believe, simply says, that:

"A prosecutor shall not initiate or participate…"—and so on.

And it goes on about entering into plea discussions and inappropriate inducements and so on, and of course, what is an improper inducement is defined earlier in the Act.

But when you look section 8, the prohibition against plea discussions in

certain circumstances and when you look at the Act generally, unless I missed it, there is no sanction. Now, how does one—I know legislation can be both facilitative and it may exist to deter certain types of behaviour. But how does one simply say, you shall not engage in improper inducements and so on, and you leave it without punishment? That makes absolutely no sense. [*Desk thumping*]

But you have to wonder why four consecutive Directors of Public Prosecution felt it necessary to stay away and operate outside of the Act, preferring to use persons offering them absolute immunities to testify or conditional immunities to testify. Because if you go that route and you do not go through the Act, then there is no chance of sanction and imprisonment. Because you see the thing is, these Directors of Public Prosecutions must have appreciated that this type of legislation puts you in the way, puts you in a situation where you are dealing with a snitch, where you dealing with the lowest sort of figure in the criminal world, where you are making a deal with the devil.

Because you see the thing is, they would hold the persons up, these persons who are snitching on their friends, hold them up to a jury and say, "Believe him". Where would we get the evidence from? We cannot get it from the Roman Catholic priest because he does not take part in criminal business. So the only person we can rely on is somebody who is part of the criminal enterprise, and they will tell a jury he must be speaking the truth. [*Desk thumping*]

But the same prosecutor who is holding this snitch up to a jury and telling the jury to believe him, would not dare deal with this snitch under the 1999 Act, because he knows this snitch, since he is the type of person who would switch on his own confederates is the type of person who would turn around and level allegations against the prosecutor. [*Desk thumping*] So they are afraid to touch this

man. He is good enough to put before a jury to convict his confederates or who he claims to be his confederates, but he is not good enough for me to deal with, because if he turns around and makes allegations against me, then I might find myself on the business end of a criminal charge.

So this Bill here removes the sanction so that the prosecutor is now free to engage, to initiate plea discussions with this very despicable creature knowing fully well that he can make whatever allegations he wishes that, "You cannot touch me, you cannot do me nothing", because we have repealed the 1999 Act.

So what is there to prevent a prosecutor and we have prosecutors, mind you, I am not going to call names because of where I am, but I can call it outside of Parliament and not be afraid of defamation. But we have prosecutors who are no different to Michael Hill SC. I am quite sure if one throws his mind back to Michael Hill, Michael Hill was the one who prosecuted the Guildford Four. I am sure you remember the movie *In the Name of the Father*, quite a boring movie, but at the end of it, at the end of it these persons were innocent. And it was Michael Hill, the prosecutor, in collusion with the police, who had a file that would have shown that the Guildford Four were innocent, that the Maguire Seven charged with related offences were innocent, and you know what he wrote on the file?—do not disclose to the defence.

So English people look at Irish people in a certain way. So it is okay to send Irish persons to prison because we have a problem with bombing, and we have to show society that we are doing something, pretty much like the situation that we are in, and at the end of the day innocent persons go to jail. That cannot be right. [*Desk thumping*] And that is a real situation.

I will call the name of a case, a local case, it has finished, and Sen. Chote

knows the case well, it is Barry Brown and others, and we made fun of the prosecutor. Because, little did the prosecutor know that the police gave us the statement in advance and we knew that the incident did not last more than a few seconds and the witness had only seen the men when he looked back over his left shoulder and whilst he was running away and receiving gunshots?

By the time the prosecutor came to trial to the PI and was leading evidence, what was six seconds turned into half an hour. What was the story of this man, this witness saying, "I know one of them, I know the other, I do not know the third one, I did not see him." The short point is it turned out, "Ah know dem real good, I used to go home by them and eat". And it did not last six seconds or 10 seconds, it lasted 30 minutes, and "They emptied a machine gun on meh, and they reload, and dey shoot again". And guess what? We called for the station diary to find out if that prosecutor had gone the day before the witness testified to see the witness. And you know what they said? That diary has been destroyed. That case went to three trials, and that diary apparently was destroyed.

And the prosecutor stood up and re-examined the witness to say that he did not visit the witness and they had no conversation before he testified. But when the station diary resurfaced in another murder, luckily I was in it and I was able to say, "Is this the same station diary that was destroyed?" Then it had to be produced before His Lordship Mohammed in the third trial.

And in the third trial we saw clearly the prosecutor had visited the witness the day before he testified, and what was a fleeting glance turned to half an hour, what was an identification case turned to recognition. All the loopholes were cured, and he is not the only one, the investigator was the other one. And you know what happened to both of them? Nothing. Just like Michael Hill, nothing, zilch,

zero. In fact, that is a lie. You know what happened to them? They got promoted. They got promoted. In the case of the police officer, just one rung below Commissioner of Police and he stood a chance of becoming Commissioner of Police. And I want to tell you something about that chap. There is not one, there are not two—[*Interruption*]

Madam President: Sen. Sturge, please have a seat. The Bill is not on—you have to deal with the Bill. The stories that you are giving that tie into the Bill are relevant, but you cannot go on. Okay?

Sen. W. Sturge: Yes. I am not going on. I am going on to make a point, very shortly, which I will show in the Bill. It is necessary, but I take your guidance.

There are three or four judgments against that particular police officer where High Court judges said he should be charged with criminal offences; for misbehaviour in public office; for conspiracy to pervert the course of justice and so on. And he moved from sergeant right up to deputy. And he had Justices of the Peace, because Justices of the Peace featured in this, and he had Justices of the Peace some who held themselves out and were thought of as men of impeccable character, the judges also made findings against them and said they were colluding.

So let us move on to Bill because all of this is necessary. I just mentioned the Central Park jogger to my learned friend who may go into it in detail, because I want to ask two questions which this Bill deals with. Because, you see, you are talking about inducements and you are talking about suspects in the context of plea bargaining, but the jurisprudence regarding suspects and inducements really comes out of what is known as the Judges' Rules which really relate to persons who give statements in custody and which are used against them as confessions and which is very possible in this Bill, and I will say how.

But in going into it I have to ask, and you see, most people do not know. The criminal element in any society is usually part of a single digit percentile of the population, it is a very small class. So whilst most of us would never commit a criminal offence, as F. Lee Bailey says, I cannot guarantee you that you will never be charged, because innocent people have been charged in this country, several innocent people, in fact, high profile.

Let me give you one, Junior Sammy came close to getting a murder charge from a man who I will refer to when I deal with one of the clauses in this Bill, very close, because of plea bargaining, very close to a murder charge—[*Interruption*]

Madam President: Sen. Sturge, I would ask you, you can make reference to the matters, but could we desist from calling names?

Sen. W. Sturge: Yes, please. Guided. Guided. So, what I am saying in essence, you can say with certitude that you will never commit a criminal offence, that does not mean that you will never be charged with one. That is the reality. Which brings me to the second question and I ask rhetorically because I know the answer, but sadly many people do not. If I ask the question: Would you confess to a crime you did not commit? I am sure you will say no. You know what the answer is? You know what the truth is? Yes. You will. And that is the experience of Central Park, the Central Park joggers charged with offences they did not commit, confessed, and only when the DNA came back then and, you know what?—nothing happened to the prosecutors, nothing happened to the police.

So let us go into the Bill, and before I go into the Bill let me regale this Senate with certain rules that have been in existence for more than 50 years in this jurisdiction, it is called the Judges' Rules. And if I may be permitted to quote from it. Because, you see, there is something very dangerous about this Bill that I have

seen only in certain questionable jurisdictions and the United States is a questionable jurisdiction leading the world in wrongful convictions. The United Stated and Japan, they lead the world in wrongful jurisdictions, and that is the jurisdiction that we hold up as the best. And we are thankful to Peter Neufeld and the Innocence Project and these lawyers who basically know how an innocent man can end up 30, 40 years behind bars and so on, and that is the danger of this Bill.

So with all—we might have the best intentions, but as they say, the road to hell is paved with good intentions. So let us go to the Judges' Rules, because the Judges' Rules is safeguard, and the Judges' Rules deal with two concepts that find themselves in this Bill. One, the concept of what is a suspect, and one the concept of inducement. And the concept of inducement in essence is that the judges would not allow into evidence any statement made by a person in custody where it is not voluntary. In the sense that it has not been—that it has been obtained from him by fear of prejudice or hope of advantage, exercised or held out by a person in authority. A prosecutor is a person in authority, a police officer is a person in authority.

But right in Appendix A rule (d) and this becomes very important as a precursor. Appendix A rule (d). When a police officer who is making enquiries of any person about an offence has enough evidence to proffer a charge against that person for the offence, he should without delay cause that person to be charged or informed that he may be prosecuted.

And when Appendix A Rule (d) kicks in then the Judges' Rules, Rule III (a) and (b) kick in. It means if you have enough evidence to charge someone, he is no longer a suspect, he is referred to as an accused. And it says:

"When a person is charged with or informed that he may be prosecuted for

an offence, he shall be cautioned in the following terms—"—which is not necessary.

4.30 p.m.

The (b) part is:

"It is only in exceptional cases that questions relating to the offence should be put to the accused person after he has been charged or informed that he may be prosecuted."

And such questions may be put where they are necessary for the purpose of preventing or minimizing harm or loss to some other person, or to the public, or for clearing up an ambiguity in a previous answer or statement. So, once you have enough evidence to charge a person, he is no longer a suspect, which is the new Bill. And once you have evidence to charge him, you have to tell him that we have evidence to charge you, and we are going to prosecute you. And when you tell him that, or even if you do not tell him, once you have that then you cannot ask him any more questions unless three situations arise. [*Desk thumping*] This Bill has eviscerated and emasculated the Judges' Rules that exist to protect the citizens of this country by inserting into the Bill "suspect".

So let me tell you what is a "suspect" according to the Judges' Rules. According to the Judges' Rules, Rule II:

"As soon as a police officer has evidence which could afford reasonable grounds for suspecting that a person has committed an offence, he shall caution that person…"

—and so on, and so on, and tell him the caution.

But, you see the thing is, it is evidence which causes the police officer reasonable grounds to suspect, not to charge, to suspect. Which means, you have

nothing on the man, all you do is suspect, and you do not have evidence to charge him. If you have evidence to charge him, it is Rule III. But if you do not have evidence to charge him, but you suspect he might have committed an offence, then you hit him a Rule II caution, which in essence, without reading it out, tells you shut your mouth if you know what is the good for you. It means in essence, that if you do not shut your mouth, if you give up your right against self-incrimination, and you choose to talk, whatever you say would be put down in writing and given in evidence. It sounds American. The Americans actually got it from the English.

So, imagine, let us look at the Bill now, you have a suspect. Why are you entering into, or initiating, or engaging a person who you have no evidence against? Why are you seeking to initiate plea discussions with him? Why are you engaging in plea discussions with someone who you have no evidence against? So, you can word the definition section how much you want, you cannot get rid of the Judges' Rules and the case law, and all the protections saved by 1976, and so on, and so on. You cannot get rid of it.

So, let us look at the person in custody who is a suspect, who they have according to the judges' rules, who you have no evidence to charge. You have nothing on him. And look at his mindset, and the case of Shabadine Peart comes to mind, because the Privy Council spoke about the mindset of a person in custody. But what is the mindset of a person in custody? The first thing he is thinking, well I would not be in custody unless the police had something on me. And that may or may not be true. Maybe he did something, but a lot of the times in our jurisdiction, nothing. But you are in custody. So imagine you are in custody, the first thing you are thinking the police have something on "meh", else I would not be here. Then, according to this Bill, in comes to the prosecutor to initiate discussions about a plea

deal with you, asking what do you have to sell, or rather who do you have to sell out? Because I have a deal to offer. And he would be thinking, well, one, I am in custody, something must be wrong, and two, now a prosecutor is coming to talk about plea. You know what he is thinking one time? I am in serious trouble. And what do they say? A drowning man would clutch at a straw.

Shabadine Peart, Privy Council. So, in essence, he is thinking now, "Well, I doh know what dey talking 'bout". They asking all these questions and I am able to piece together from the questions what they are talking about and who they want. "But I doh really know nutten". But you know what? "I in jail. I in custody." What now? And those who cannot afford a lawyer will have a legal aid lawyer sent for them. You know who the legal aid lawyers are, who go to station visits? They are lawyers who are looking to make a dollar. So, you have a green lawyer who has no experience at the Criminal Bar turning up at the police station to get his $1,500 from legal aid, has a conversation with the suspect. He knows no criminal law, he has not been in the practice very long, he is up against a police officer who has 15, 20 years' experience and knows how to run rings around him. If the police officer "open he mouth too hard, he frighten and he ready to run out ah the people police station". They have no mettle, and that is what you send to defend a citizen. And worse yet, when the prosecutor comes in. The prosecutor is somebody, day in day out, in the Magistrates' Court practicing what? Criminal law. He knows this thing inside out. Up against a green man—that is not equality of arms. That is advantage. So, unless you fix the Bill and puts in that the lawyer who comes to the police station has to be somebody who practises criminal law with a certain level of experience, particularly for murders, this would easily be struck down.

Now hear this, if you have nothing on the suspect, and you do the right

thing—the police do the right thing and tell him he has a right to remain silent, and he does, what does that mean for this Bill? If he exercises his right to remain silent, you get nowhere. The entire Bill falls down because you have nothing on him. He is a suspect. And in fact the Judges' Rules, when you look at the cases, you cannot even engage him in any discussion because you have nothing on him. So you define it how much you want in this Bill, when he reaches to court the judge would say, listen, the fact that you approached a man and had a discussion with him when you had nothing on him, that in itself is an improper inducement, and you cannot legislate that. [*Desk thumping*]

But, what if you do have something on him? You know what you are asking him to do? You are asking him to sell a story. Now, you know what this is? This is classic whistle-blower legislation through the back door. So this is a chance, when the Attorney General wraps up, to tell us exactly why whistle-blower is no longer coming to the Parliament. Because, you see, the thing is, just like whistle- blower, this will fail for breach of section 4, so you need a three-fifths. And, I dare say, just like whistle-blower, even if you get the three-fifths it would fail still, because this is not the type of legislation you would pass in a society that has respect for the rights of the individual. [*Desk Thumping*] If you have respect for the rights of an individual, who may very well be innocent, then you would not be engaging him, knowing you have nothing on him. That is dishonest. Twist it how you want, it is dishonest. It is low.

Now, let us move on. Because, you see the things is, and if I can just back-pedal, when I came out years ago almost every other case had a confession. Everybody seemed to be confessing. But when they reach to court they say, I did not give that statement, I only signed it because the police "Tell meh, well, if you

doh sign it yuh go geh charge, so, save yourself." Which is an inducement. And routinely, the judges would let it in and the jury would kick it out. And all you had at the end of the day, most of these cases—I practisede—with confessions, the only evidence you had was what? The confession itself. So, you induce a man to incriminate himself—which is a breach of section 4, his right to silence and so on—when you had nothing on him, and then you go to court and a jury is looking at that and saying, you really feel you could fool me with that? And, not guilty. Routinely. I am sure Sen. Chote can bear me out on this. Routinely. Until at one point Justice Narine lamented that whenever a case depended on the credibility of the police you are sure to get an acquittal.

So, let me join Mr. Gaspard in saying that if you want to raise the rate of conviction in the criminal justice system first thing you have to do, you get scientific evidence. You cannot depend on the police, or the word of the police. Second thing, you have to fix the credibility problem of the police, because people do not trust the police and for very good reason, and I thank Sen. Rambharat for saying so, because I do not trust them either. But, I cannot go into cases, because I had a whole lot I would have wanted to regale the Senate on, so that we would know that Central Park is not an American thing, and Birmingham Six is not an English thing, and that we are better than them. We are far worse. But, you see, this makes no sense to none of us, because we are all connected, and if the family get charged we could go and talk to somebody, and talk to somebody, and get released. But the average man has no connections, he has to go and find liar fee.

You see, this is a reality because somebody might come up and say all that Mr. Sturge is talking about relates to confessions and not plea deals. You see, the thing is, with respect to this, is you may have a situation where a man would say, I

am entering into plea discussions, and then say, you know what, "Ah change meh mind". But they already have a statement from him, and then they use that statement, although the Bill says you are not supposed to. All of a sudden the police officer does say, "We had no plea discussions with him". It was the normal thing where we investigate him and we take a statement. "No prosecutor eh come, nutten like dat happened." Just like in Sebastian Joseph, Andy Brown and others, and before you know it, you talk, talk, talk your way to death row. That is what is wrong with this Bill. But, let me tell you what is also wrong and a travesty, Madam President. How much time I have? Madam President, can I ask how much time I have, please?

Madam President: You have until nine minutes to five; until 4.51.

Sen. W. Sturge: Oh dear. Thank you. There is something else very troubling about this. You see, we use some Americanisms in here. In the United States a prosecutor can get involved at the stage where he is initiating plea discussions and so on, and what you have to take into account is that the prosecutor in the United States is very different to the prosecutor in this jurisdiction.

The prosecutor in the United States works for the District Attorney. The District Attorney is an elected official, and if he wants to be re-elected, he better keep the conviction rates up. So, that is why in the United States you have prosecutors getting involved at the investigative stage and telling the police how to fix things, because they have an interest in getting a conviction, so that their District Attorney can be re-elected to another term. We do not have that here. And those same attorneys in the States are the same ones who are involved in all of these cases which are being overturned, where men are spending 20 and 30 years in jail for crimes they did not commit. So, hear what is the problem here, the Office

of the DPP and his prosecutors, they are not an extension of the police service, they are not part of the gang. The Office of the DPP exists not only to protect persons from political prosecutions, it exists to protect ordinary citizens from police officers generally.

So, the Office of the DPP is a check and balance on the police. [*Desk thumping*] So the Office of the DPP, how is he going to get involved in plea discussions? That prosecutor who gets involved in that, you know what happens to him when someone else is charged? He is a witness. He is a witness who can be cross-examined, allegations can be put to, and when you have him saying something that is different to the snitch who is saying something else, then who do you believe? And you put that prosecutor in the invidious position where his reputation is at stake. So first things first, when he comes to prosecute you, he is a safeguard. Because in our jurisdiction if the police has acted improperly and it comes to the attention of a prosecutor, he has a right, and it has been done several times. I want to call the name in praise, Jeron Joseph, former prosecutor, who stopped cases because police officers admitted to fabricating evidence. [*Desk thumping*] So if a prosecutor like Jeron Joseph is part of initiating plea discussions, he becomes a witness, he "cyar stop nutten", so that safeguard is gone. But then the DPP who is initiating this thing is a party to the proceedings. So, how is he party to the proceedings and then coming before a jury and saying, "I have no interest to serve, I am a minister of justice, I have no interest in the outcome", yadda yadda yadda, like they all say. How can they say that with a straight face? And you are putting them in harm's way for allegations to be made against them by the snitch, and when the accused person—

Madam President: Sen. Sturge, you have five more minutes.

Sen. W. Sturge: Yes—comes to court he has to defend himself, which brings me speedily, because I actually cannot believe I am not even one-tenth through, but—

Sealing of the deal, something must be wrong with that. In the interest of transparency you should not be sealing anything, because you are sealing something which is a statement this snitch has given, which ought to be available in full detail to counsel for the accused who is snitched upon, to use it and say, this is inconsistent with what you are saying now. Why are you also hiding, or sealing convictions, and so on, and so on? They always say you want to know if to believe a message? Then you have to know about the messenger. So we cannot hide these things. If a man comes to you in white robes and says, "Blessed are the children to come unto me", you would believe he is Jesus Christ? When he might very well be a paedophile. Why is he suffering children to come unto him? That is what you will have to ask as a defence lawyer.

So, let me in adding a word of caution, advance something. There is a legal unit in the police service with police officers, instead of having the prosecutor initiate discussions and then have to turn around and prosecute, or be a witness, let the police officer who is a lawyer in the police service get involved. If you "fraid" the police officer—the investigator—you have every right to, and you want somebody independent, he must be independent of the investigation. He is learned in law, a JP is not. I think the JP should be out of this completely. And I do not think any sort of discussion should arise in the absence of an attorney at law. None! Do not initiate, do not encourage, no nothing, because you are dealing with what they say, the scum of the earth, who will turn around and bite you.

Let me see how quickly I can—those sanctions, and lastly, you see the thing is, you have to understand where we live and the context of what happens in the

criminal world. Many people are holding themselves out as witnesses to crime that they themselves committed, and they will know all the details and sound convincing, because they were there committing it. I see Sen. Chote is nodding in approval. That is what is happening. And they are saying, "I was there with X and Y, and we murdered Z." Right? And they are saying "I was just there as a bystander." And then the poor accused has to come and say, "Me? How I could be anywhere with him? We are enemies. He is Rasta City, I am Muslim." And then hope that the jury could believe him and adhere to the judge's warning that he always gives in cases like this, for a special reason. The warning is, "Members of the jury, don't readily or easily rely on the statement of that snitch. It is dangerous to convict on the uncorroborated evidence of that snitch." And that usually is enough for a jury to say, "I have reasonable doubt."

So, you want this to work? Do not offer deals to persons who you are not sure about, they might be principal offenders. You should not offer it to persons who are bargaining for other offences of violence, and you should not offer it at all unless you have scientific evidence to corroborate what they are saying. If you are not doing that, then all of this comes to naught. Brilliant attempt, but at the end of the day it would be zero.

I fear that I probably have about 30 seconds, in which case, I thank you very much, Madam President, for allowing me the opportunity. Thank you. [*Desk thumping*]

Sen. Taurel Shrikissoon: Thank you, Madam President, for recognizing me at this time to contribute to this debate of which a lot has been said.

Madam President, as I begin my contribution this evening, I want to say that I understand the heart of the Government, through the Attorney General, in laying

this piece of legislation, and understanding that there is a challenge before his Government, and even the Judiciary, and that the tabling of legislation, and the suite of legislation that we are seeing coming to this Senate is most certainly guided towards an attempt to resolving or addressing some of the challenges there. So, with respect to the intent of the legislation, I most certainly understand.

However, when I listened to the contributions of others in the House, I would like to say, from my perspective not having a grounding in law and knowledge of it, or practising it, but hearing of the practicalities that occur within the system, I am saying I am somewhat confused. Honestly. I am unable, given my lack of legal experience and knowledge to really make a definitive statement on this piece of legislation, given the experiences that others would have shared. So, in my contribution this afternoon I will briefly comment on the area of the law and then I will just make a few specific comments with respect to the Bill itself. But, I would like to say at this time, especially given the practicalities, and from Sen. Ramdeen's contribution, where he did say that he would like to circulate or he does have 25 amendments to the law, I am saying, from my end, I really, really cannot make a definitive statement on this piece of legislation at this time.

Madam President, when you look at the concept of plea bargaining and you listen to some of the statistics laid by the Attorney General, I understand the challenges that are confronting the legal system in Trinidad and Tobago, and I would like to say at this time as well, with respect to this, if there is a backlog of cases and you are trying to dispose of cases at a faster rate, then why the pieces of legislation to aid the efficiency of this process and not confront the main issue which would be the resources available to the Judiciary at this time? I am just asking that question. Why is it we have to go through multiple routes to ensure that

we get a smooth and efficient flow to the judicial system? Is it in any way possible that we can equip the Judiciary with the resources required so as to allow a smooth transition, an efficient, and a quicker disposal? I am just asking at this time whether or not that is possible.

And if it is possible, then do we need all the other pieces of legislation to try and create arteries that would get us through a system? I am really unsure. With respect to plea bargaining I am also aware that there are some shortcomings to plea bargaining. And as Sen. Sturge would have said in his contribution as well, plea bargaining would involve the police being involved in a bargaining process, and you could have cohesion there. You could have a court in a plea bargaining—the court's reputation in plea bargaining is somewhat impugned, because what you have is a person accepting guilt for which he may have been found not guilty if a plea bargain is given to him, or offered.

And then you have corruption among the forces, which will ultimately lead to a conviction, but that is not substantiated or may not be fair. What about conviction of the innocent? An innocent man pleading guilty to an offence just so that he can have a reduced sentence with the opportunity to get out more quickly. What about inconsistent penalties? Because a plea bargain process is an aspect of negotiation, so one offence may attract a certain sentence with a plea bargain, and for the same offence in another situation may have another. So, there is an inconsistency of—[*Desk thumping*]

And I am saying this, and I would touch this point a little bit later, what about lighter penalties for those who can afford it? And I am a little concerned about that as well, because there are those who may have the capacity to influence a decision, or obtain a plea bargaining, or a plea bargain given the access to

resources that they would have. So, I am saying, with respect to plea bargaining, while I understand the intent of the Government with respect to the system, there are shortcomings that we also need to address, and then weigh the balance to determine whether or not the shortcomings really outweigh the potential benefits that we seek to achieve, which in my view, can also be addressed by directly confronting the issue and providing the resources to the Judiciary. That is my position on that.

However, given that the Bill is before us, I have been asked to look at the Bill, and obviously my contribution is geared towards the Bill at this time. So, I am going to say, with respect to the Bill before us, clause 1 of the Bill deals with a short title and commencement of the Act. And clause 2 of the Bill provides interpretations and definitions. One of the definitions that I would have had a little problem there with is that of the victim impact statement, and the victim impact statement, according to the Bill here, refers to a statement made by a victim which is provided to a prosecutor under Part III. That is in the law. This is in the Bill before us. Victim impact statements means a written statement made by a victim which is provided to a prosecutor under Part III. In my mind it does not tell me what it is. A victim impact statement means a written statement made by a victim. I am not sure of the legal drafting and the terminology, but from my teaching or schooling you do not use the term in the definition when you are trying to define, and I have a "lil" objection with respect to that.

With respect to clause 4(b) of the Bill, the prosecutor agrees to take a particular course of action, and outlines nine points. The prosecutor agrees to take a particular course of action, and this is with respect to a plea agreement. And I am just raising an issue here just for clarity. All of the nine are linked by between (viii)

and (ix), the word, "and". And I have been hearing in the House that the word "and" can mean "and", it can mean "or", and it can mean "and/or". But when you read nine subclauses, and the second to last links the last with the word "and", it gives the general impression that all clauses must be met. So, I just raised it as a flag to say whether or not it is "and" or it should be "or". I am not sure, and I ask that question.

But getting more specifically into the depth of the Bill, clause 4(b), Part VII, speaks of, and this falls under when the plea agreement is being negotiated, and understanding that a conviction pursuant to a plea agreement will not be used as evidence of bad character at the trial for a specified offence, or for any other offence. I am saying first, if it is that we are in a plea agreement and we are negotiating a way out of guilt and a sentence, then how can it not be used as bad character? But more so, the latter words, "or for any other offence". How can a plea agreement, where bad character is not being proposed, how can a plea agreement have a bearing on another unrelated offence? I am really concerned about that, and I do not think that we have the capacity or the wherewithal to negotiate a plea agreement with a condition that exists on another offence. I have a problem with that.

With respect to clause 5 of the Bill, clause 5 of the Bill speaks to a plea discussion, and a plea discussion may be entered into at any time before conviction. And clause 5 outlines the various times at which the plea agreement could be entered into. But if you look at clauses 6, 8, 9, 10(1) and 10(2), it all provides conditions where the prosecutor can actually engage in plea negotiations or the conditions under which. So, here it is we are saying in clause 5 that a plea agreement can be entered into at any time, but the remaining clauses in that section

really pertain to the actions of the prosecutor. And so I ask the question, at what point in time can an accused engage or signal his intent to have this plea discussion? At what point in time?

And I do not get that clearly from the Bill, although clause 5 is saying it may be held or concluded at any time. So I am asking—[*Interruption*]—sorry.

5.00 p.m.

Madam President: Sorry. I should let you finish the sentence. All right, just finish that sentence and then I will take the suspension.

Sen. T. Shrikissoon: Okay. Thank you, Madam President. So, I am just asking the question with respect to this point, that, can we consider, including a specific clause that says:

> An accused person may at any time before judgment and in accordance with the provisions of this Act enter into a plea negotiation for the purpose of reaching an agreement.

That is with respect to that point.

Madam President: My error, Sen. Shrikissoon. We will be taking the suspension at 5.30 p.m. I forgot that we started at 2.30 p.m. My apologies.

Sen. T. Shrikissoon: Thank you, Madam President, and I am so guided. Right, so I should be able to finish just before the tea time. So again, just to recap on that point briefly, it is saying, I am not sure in the plea discussions from clause 5, Part II of the Bill, where it specifically gives the accused the right to actually initiate the plea discussion. And I am asking, if this be the case can a consideration be given for the accused—to word an amendment on inclusion to say:

> An accused person may at any time before judgment and in accordance with the provisions of this Act enter into a plea negotiation with the public

prosecutor for the purpose of reaching an agreement.

In my mind, this would give the accused an explicit option to engage in the plea agreement.

Part III of the Bill, Madam President, pertains to the Victim Impact Statement. Clause 13(1) and 13(2) of the Bill says that:

"13(1) Every victim has the right to provide a victim impact statement…"

Clause 13(2) of the Bill says:

"Before a plea discussion is concluded, the prosecutor shall inform the victim of his right to provide a victim impact statement…"

My interpretation of this is saying, that a victim impact statement is only required when a plea discussion is being engaged or plea bargaining is being engaged into.

Clause 16 of the Bill introduces a timeline under the "Victim Impact Statement". Clause 16(a):

"Where the victim is a child—

(a) under the age of fourteen…"

And 16(b) says, if the child:

"has attained the age of fourteen…"

Then the victim along with the person shall produce the victim impact statement.

What is my point? My point here is saying, if the victim impact statement only comes into effect with respect to the plea bargaining and we are unsure when this plea bargaining process is going to be initiated, then given clause 16 is saying, a victim under the age of 14—I am asking the question, at what point in time is the victim's age relevant? Is it at the time of the offence, is it at the time the victim impact statement is being prepared, what is it? When does the age of 14 years old become relevant to the victim impact statement given that there is no definite time

for the victim impact statement to be given? Because we are unsure when it would be required given the plea agreement can occur at any time. So I am just asking the question here with respect to the age.

With respect to clause 18 of the Bill, and clause 18 of the Bill I have a little concern with. It says here, and it refers specifically to the contents of the victim impact statement. Clause 18(1) says:

> "The prosecutor shall ensure that a victim impact statement complies with the requirements of section 14."

Clause 18(2) of the Bill says:

> "If a victim impact statement contains material that is not permitted under section 14, the prosecutor shall redact"—if my pronunciation is correct—"that material from the victim impact statement before it is filed with the Court."

And that word "redact" means edit, revise or remove.

I am asking the question, why should a prosecutor have the capacity or the power to alter the statement of a victim? I am not too sure if that makes sense in my mind. However, if we look at clause 24(4) and 24(6) of the same Bill, it says here:

> "If a victim impact statement is filed with the Court, the Court shall consider the views expressed in the victim impact statement before accepting or rejecting a plea agreement and the Court may accept or reject all or any part of a victim impact statement."

And 24(6) says:

> "Where a victim impact statement contains information that—
>
> (a) is not permitted under section 14;…

(b) in the discretion of the Court should not be included in a victim impact statement…"

So if the court is ruling on a victim impact statement, then why is the prosecutor getting involved? One, in my mind he should not be and 24(4) and 24(6) already deal with the content of the victim impact statement. So I am not seeing or gathering the benefit of having 18(2), where the prosecutor has the power to edit or redact. I am not seeing that at all. So I really propose that with respect to 18(2) that it should be removed because in my mind it is adequately addressed in 24(4) and 24(6) of the legislation.

With respect to clause 24(5) of the Bill, and here it says, the procedure at the plea agreement hearing. There was a particular point that Sen. Rambharat alluded to that occurred in the other place and he was saying that there was some requirement or an interest expressed for the victim to be cross-examined, if I am correct. And clause 24(5) says:

"An accused person may, with leave of the court cross-examine the victim…"

I am asking, if the accused is represented by an attorney, would the attorney also have the opportunity to cross-examine the victim?—because 24(5) is saying:

"An accused person may, with leave of the Court, cross-examine the victim…"

Should it also consider or give consideration to those represented by an attorney?

Madam President, clauses 24, 25, 26, they all deal with the plea bargaining process. Clause 24 deals with the procedure at the plea bargaining. Clause 25 deals with the plea agreement not binding on the court. And while clause 24 talks about all of the conditions that must be met for the plea bargaining agreement to be

engaged into, clause 25 is saying that the court may reject a plea agreement and clause 26 says:

"If the Court accepts the plea agreement…"

Where am I going with this? I am not seeing where the court adequately addresses the information in front of it or available to it and pronounces that all conditions of the plea bargaining process has been met. I do not think so. And therefore, with respect to the court pronouncing specifically on the conditions, I am asking that some consideration be given to a clause that just may state, a court shall before accepting a plea agreement make a determination in the open court that:

1. No inducement was offered;
2. There is a factual basis upon which the plea agreement has been made; and
3. Acceptance of the plea agreement would not be contrary to the interest of justice.

I am saying, if the court has to deliberate on whether or not a plea bargaining agreement should be accepted or not, it should also be explicit in the facts that are before it and explicitly state why or explicitly state that the conditions for the plea bargaining process were met.

Clause 25(1) of the Bill also talks about the court rejecting a plea agreement. And it says here:

"The Court may reject a plea agreement entered into between the prosecutor and the accused…"

Clause 25(2) of the Bill says:

"Notwithstanding subsection (1), where the Court makes a determination that there was an improper inducement offered to the suspect or accused

person, the Court shall reject the plea agreement."

Now, 25(3)—this is my concern:

"Where a Judge or Magistrate rejects a plea agreement"—the Bill is saying—"under subsection (1), the Judge or Magistrate shall—

(a) in open court, inform the accused person of his right to be tried…before another Judge or Magistrate;"—and—

"(b) within seven days of the rejection of the plea agreement, provide written notification to the Director of Public Prosecutions and the accused person of the reasons for rejecting the plea…"

I am saying, if a plea is rejected and reasons are being provided both to the prosecution and to the accused and that person now has to go before a court to be tried, are we not prejudicing the accused by providing reasons why his plea agreement was not met and then have him go to trial and this information is now made public. I am asking the question, is the interest of the accused well secured or represented in disclosing facts why a plea agreement was not agreed to by the court or accepted by the court and then submit him to trial? I do not think in my mind it is fair. And I am just asking.

Clause 3 of the Bill talks about, this Bill shall be applicable to all offences, summary and indictable. And I have a concern with that as well, because there are certain activities or criminal offences in this country that carry significant penalties. Murder, for example, is death by hanging and I just looked at the offences and penalties by the FIU for the anti-money laundering laws. And it I says here, that money laundering as an offence carries $25 million as a penalty and 15 years imprisonment on indictment.

I am saying, someone committing an offence like this, or charged with an

offence like this, should they really be subjected to plea bargaining? And I have a concern about that as well, because these are grievous offences that need the attention of the court. And a plea bargaining is just an easy way out of a significant offence. And the thing about it is, if you are committing an offence such as money laundering, it means that you have access to resources. So in my mind, it kind of compromises the entire justice system with respect to grievous offences. [*Desk thumping*]

And so I am asking, if it is that plea bargaining wants to be engaged, can we look at the fines of offences, the term of imprisonment and limit the cases for which or the offences for which plea bargaining is made available. And so, whether it is by a nominal value, in terms of fines, or a time for imprisonment, meaning five or six or seven years, no offences beyond the certain nominal value of a fine or beyond or that would require a certain sentence beyond a certain number of years should not be eligible for plea bargaining. That is with respect to those clauses.

With respect to clause 7 of the Bill:

> "No improper inducement shall be used to encourage an accused person or suspect to participate in a plea discussion…"

But if we go to the original Bill, which is being repealed, Chap. 13:07, there was a fine for inducement by the prosecutor and the police. And I am asking, where is the fine in this Bill? [*Desk thumping*] If there is improper inducement, should there not be a penalty for those, especially when the court is ruling on a situation and has to make a deliberation that the plea bargaining that is before the court is one that was not subjected to inducement. And if it was, then, those who are responsible should face the full brunt of the law. And given that plea

bargaining may be an area that would be highly utilized in the court, it should carry a hefty penalty. [*Desk thumping*] Because if you want to use it to increase the flow of cases through the court system and there are members or participants who are up for it, misuse of it should carry a hefty penalty and in my mind it is absent from the legislation. So I am asking, can that be looked at and included in the Bill before it is passed.

And just to make a few comments, Madam President, with respect to the Forms that are before us. Form 3 and Form 7 of the Bill that form part of the Schedule at the end of the Bill, speaks of the plea agreement whether—Form 3—a person is represented by an attorney and Form 7, where the person is represented by himself.

I am saying key pieces of information that I would have liked to see is not here and this would include, one, the name and jurisdiction of the court in which the matter is held or is currently before, the case file number or reference number for which the plea agreement is being made. I would like to see the details of the prosecutor, because we would like to know who initiated this deal. I would like to see details of the attorney who is representing the accused or details of the accused if he is representing himself.

However, given that it is an agreement and the accused may be viewing this and not aware of the law or his rights, I would like to see that the plea agreement is specific to the offences listed and has no bearing on other offences. A specific note on the Bill indicating that the agreement does not bind the court to accept it. The accused has to know that whether or not when the plea agreement is being engaged that the court has the ultimate say and that there are grounds for withdrawal, the consequences of breaching the agreement and the right to appeal. This is like an

agreement which informs the accused of his rights and it cannot be taken in the context of an agreement only. It has to have the clauses and all matters that pertain to the accused that he is entitled to, because it is something that he is going to be bound by.

And just a note, that on Form 4, I think, with respect to Form 4, the accused or the defendant's signature needs to be attached to the form. And my last point as I get ready to close, is with respect to the victim impact statement with respect to the business, Form 2.

With respect to Form 2, I think the name of the business needs to be included; the registered address of the business needs to be included; the address or location where the offence was committed needs to be included because there can be companies with several branches and I also believe that with respect to the victim impact statement, it speaks of someone who can be authorized to create this, so I believe that details of the authorized person also need to be included. The letter of authorization should be included into this as well as the name and address of the owners or directors of the company need to be included in the victim impact statement. And with respect to where they would have to submit their claim, supporting documents should also be attached.

So, Madam President, as I conclude at this time, just to wrap up and reflect on my brief contribution here, I spoke this evening of what I would like to see and one would most certainly be a better definition of the victim impact statement in the Bill.

The second one would be, to give consideration to whether bad character should or should not be removed in a plea bargaining [*Desk thumping*] and it shall have no bearing on any other offence, because it cannot be the removal of bad

character has a bearing on a subsequent offence or charge; that a specific clause that gives the accused the right to initiate plea discussions. With respect to victim impact statements, at what point in time does age 14 become an issue? Whether it is the time of the offence or a time of the statement. I also ask that the content of the victim impact statement should not be able to be altered by the prosecutor especially given the fact that there is direction for the court in 24(4) and 24(6). [*Desk thumping*]

With respect to clause 25(5), I do ask that if the accused has the opportunity to cross-examine the victim, his attorney if he chooses to be represented by one, should have the equal right. I would like to see that consideration be given to the court for the court to specifically state that it has considered all the information in front of it in accepting the plea bargaining and that there was no inducement, there was a factual basis and there is acceptance of the plea or acceptance of the plea would not be contrary to the interest of justice.

Coming to the end, Madam President, I would like to see the last three recommendations, where—I am uncomfortable with the plea bargaining being made available for all offences and I believe that there should be a limit or a classification of offences for which plea bargaining should be eligible, those accused should be. There should be a penalty for inducement, whether by fine and terms of imprisonment. [*Desk thumping*] And I have made several recommendations with respect to what I would like to see with the forms attached to the Bill.

So with those few words, Madam President, I would like to say that I understand the intent of the Bill. I think it is good. I would love to support the Bill, but there are some issues that were raised on the floor here that I have concerns

with and I too had some issues with respect to some clauses of the Bill which I would have mentioned here. Whether or not it can all be worked out during the committee stage, I have my questions, but I remain open to its occurrences in this Senate. Madam President, I thank you. [*Desk thumping*]

Sen. W. Michael Coppin: Thank you, Madam President, for the opportunity to contribute to this debate. This debate deals with an Act to establish a system of plea discussions and plea agreements and for matters incidental thereto.

Madam President, I would like to start off by commending this honourable Senate, persons on both sides, for the camaraderie and progressive tone that this debate has taken on since its inception. And I think having Sen. Chote commence with the batting, that we like to say, on the last occasion, was able to set the stage for the tone which we have seen developed. And I perhaps would recommend that she open the batting and we take that responsibility away from Sen. Mark who often opens the debate up [*Laughter and desk thumping*] in such a way.

But, Madam President, I would like to also say that the word "debate" is in fact a misnomer because I think on both sides of the Senate and we saw it in the other place, there is a resounding consensus that this is a good piece of legislation, Madam President. And Sen. Ramdeen would have, in his contribution, commenced by also agreeing that this is a good piece of legislation and he would have in a very progressive manner brought to this Senate a list of, I think, 25 recommendations that will engage this Senate when we do in fact go into committee.

Unfortunately, Sen. Sturge came to this Senate, today—

Hon. Senator: He cannot help himself.

Sen. W. M. Coppin: He cannot help himself and he proceeded to "ramajay", Madam President. But, Madam President, I am a jazz trumpeter and one of the first

things in "ramajaying" is that one must be on the same key with your fellow band members. So, lo and behold he came to this honourable Senate today and he somehow found all sorts or all manner of criticisms. But I would like to deal with those criticisms as I continue in my contribution.

But, Madam President, this Bill repeals and replaces the old Act with its 17 previous sections, with I think 27 clauses and 11 Schedules. The previous Act would have had three Schedules, so it is an upgrade and it builds in the same way that the Motor Vehicles and Road Traffic Act built on the previous piece of legislation, it builds on a previous legislation that has been on our books since 1999.

Madam President, Sen. Sobers would have echoed a certain sentiment that this piece of legislation alone would not be sufficient to achieve some of the aims, and I would come to the aims a bit later, of this legislation. But if he understands this Government's approach to crime and criminality he would realize that in this session, I think over 90 per cent of the Bills that have come to this Senate are meant to deal with crime and criminality in Trinidad and Tobago. So it is not that we have come to this Senate only with this piece of legislation and think it is a panacea to solve the problems of this country, but, Madam President, I want to remind this honourable Senate of some of the legislation that the hon. Attorney General has brought to this Senate to deal with crime and criminality. And it is called the Indictable Offences (Pre-Trial Procedure) Bill, Motor Vehicles and Road Traffic (Amdt.), Bill, the Miscellaneous Provisions (Trial By Judge Alone) Bill— [*Desk thumping*]

Sen. Sturge: Madam President, 46(1)—

Hon. Senator: Sit down.

Sen. W. M. Coppin: Cybercrime Bill, 2017, Madam President.

Sen. Sturge: 46(1).

Hon. Senator: Continue.

Sen. W. M. Coppin: The Bail (Access To Bail) (Amdt.) Bill—[*Desk thumping*] SSA Bill.

Madam President, it is not only at the legislative side that this Government seeks to deal frontally with the problem of crime and criminality, but we have and it has been said, because Sen. Sturge raised in this Senate a Motion asking for the Government to do all in its power to deal with the rising crime and criminality. And we have done it. We are in the process, on the Legislative arm and on the Executive arm, and in the other place, the Minister of National Security would have indicated, we are currently providing manpower audits for those national security agencies. We are currently increasing the funding for national security and, Madam President, in the variation of appropriation Bill we would have seen that the Ministry of National Security was one of those agencies that benefited from an increase in allocation. And as it relates to DNA, because in this debate it was raised that without increasing the level or the rate of conviction and detection, then the whistle-blowing legislation would be seriously hampered.

Madam President, we have for the first time in this country a DNA Custodian that is going to be appointed.

Hon. Al-Rawi: Has been.

Sen. W. M. Coppin: Has been appointed. And that is going to lead—[*Interruption*]

Sen. Sturge: DNA custodian is not in the Bill.

Hon. Senator: You were not here when Sen. Ramdeen spoke about it.

Madam President: Senator, continue please.

Hon. Senator: "Ahhh." Keep quiet.

Sen. W. M. Coppin: And, Madam President, Sen. Sturge, he must appreciate that this Government is a Government that is truly working for the people of Trinidad and Tobago. [*Desk thumping*] And they "doh" like to hear it, you know, Madam President. They expect that—they repeat the same thing over and over and expect that people would just take them at their word, but we have a duty and a responsibility to educate this population on the actual workings and performance of this Government.

Now, Madam President, I wanted to deal with that. I want to deal with the mischief of this Bill. And on the last occasion it was read into the *Hansard* that this Bill, the previous 1999 Bill was brought to the honourable House by the former Attorney General, Ramesh Lawrence Maharaj. And in that presentation, in that debate he would have cited two key objectives for bringing this Bill to the House. And those were and I quote:

> To assist in reducing cost and time spent in trial;
>
> To create a situation whereby an accused would be more willing to divulge information which could assist in investigation and prosecution of other criminal elements and to reduce the cost and time spent in trials.

So those were two of the key objectives. One to deal with the criminal justice system and the other one really to deal with the rate of detection and conviction, so allowing those persons with the relevant information to feel comfortable to bring such information to the fore.

And, Madam President, the mischief of that legislation is in fact the mischief of today. We have added, however, a further objective, in my estimation, which is

to deal with the number of persons and the length of time persons spend in Remand Yard. So these are the three major objectives or mischiefs that this particular Bill, in my estimation, seeks to frontally address.

Now, Madam President, on the last occasion the hon. Attorney General would have given a number of statistics as it deals with the rate of disposition and matters filed. And he would have told us that the rate of dispositions for criminal indictment is 0.4 or 5, which means that every year almost half the cases that are filed are put back into the system for the following year which leads to a cascading backlog of cases in the criminal justice system. And, Madam President, in the Joint Select Committee on Finance and Legal Affairs we were able to get a number of statistics, as well as the Joint Select Committee on National Security, and some statistics that stuck out to me was in the average—for the last six years the total murders filed, 219, but only 98 matters disposed. And of those 46 capital murders filed and only 15 of those were disposed.

So, Madam President, we can see as it deals with serious criminal conduct in this country the case flow management system simply is not adequate. As we deal with Remand Yard—Madam President, is it time?

Hon. Senator: Yes, it is time.

Madam President: Hon. Senators, at this stage we will suspend and we will return at 10 minutes past six and Sen. Coppin you have used up 11 minutes of your speaking time. So we have suspended until 10 past six.

5.30 p.m.: *Sitting suspended.*

6.10 p.m.: *Sitting resumed*.

Madam President: Sen. Coppin.

Sen. W. M. Coppin: Thank you, Madam President. Before the break, I would

have given a number of statistics as it relates to the backlog in the criminal justice system and I would have also mentioned that not only does this Bill seek to deal with the criminal backlog but it also seeks to deal with the issues of prisoners or detainees on Remand Yard, and it has to deal with, not only the numbers of which there are just 2,289 as at November 2016, but also the length of stay of persons remanded at that detention centre.

And Madam President, I would like to give some statistics on that for the benefit of the House and as it deals with the male remandees: five persons with an average length of stay between the period of 15 to 20 years; 148 persons with an average length of stay, 10 to 14 years; and a total of 515 persons with an average length of stay, five to nine years. So we see that not only is the number pretty large but the average length of stay for a lot of those detainees is quite remarkable.

Madam President, if we look at what this Bill seeks to do and the persons most likely affected, those persons who are on multiple charges, I believe are those individuals who are likely to avail themselves of plea bargaining as is contemplated in this piece of legislation. And of those detainees, 858 of those detainees are on multiple charges. So those are the persons, I believe, on Remand Yard, likely to benefit from this plea bargaining Bill.

And if we drill down into the statistics, Madam President, of those detained, what we find is that murder—persons accused of murder, there are 976 matters in the criminal justice system for persons for murder, five for manslaughter, one for unlawful death. Now, we cannot disaggregate to know whether or not those individuals are the same persons but we can deduct, or deduce, that those individuals are likely to be able to plea or cop a plea downward and to take advantage of this piece of legislation.

Another similar category of offences—of matters in the criminal justice system, we have attempted murder, 28; those accused of grievous bodily harm, 8; assault, 46; wounding 42. As it deals with robbery and attempted robbery, 85 matters for robbery and 100 for armed robbery; and as it relates to trafficking in drugs, we have 113 matters in the High Court and 68 for possession of drugs, and that comes from the Judiciary Annual Report 2014 to 2015. So we know that persons who have multiple charges are most likely to take advantage and we know that persons who are charged with similar-type offences are most likely to take advantage, logically, are from copping a plea as they like to call it.

So, Madam President, Sen. Sturge would have asked what was wrong with the former Act that necessitates an amendment or a repeal and it is clear that 12 or 14—depending on who you ask—matters from 1999 to present, 14 plea bargaining agreements simply are insufficient to deal with the criminal backlog. A number of speakers would have pointed to DPP Gaspard as being an opponent, I think, of this plea bargaining Bill. But from my recollection, when he appeared before us in Joint Select Committee for National Security, he, in fact, appeared to support it. Although he said there was an informal system currently operating, he believed, and he has believed since 2014, that plea bargaining can assist with reducing the criminal backlog.

And I have an article here in the *Trinidad Express*, January 04, 2014, which is entitled:

"Plea bargaining legislation can help"

And in that article, the DPP says:

"…he remains surprised that more defence attorneys do not avail themselves of the opportunity to enter into plea discussions under the Act."

And, Madam President, if I may continue, Gaspard said:

> "…I do not see sufficiently compelling reasons why more attorneys do not attempt to enter into these discussions."

He said:

> "…he hoped that defence attorneys 'will avail themselves of the opportunity under the Act, since it might help expedite…matters and …clear up the backlog of cases at the Magistrates' and the High Court'."

So it is not true to say that the DPP Roger Gaspard is not in support of plea bargaining agreements as a solution or one possible solution to clearing up the criminal backlog.

Madam President, I want to turn also, in addressing frontally, Sen. Sturge's question, as to what was wrong with the former Act, what was the matter; and we have no other than the opinion of the Chief Justice in September 2013, at the opening of 2013/2014 Law Term in which he—and with your leave, I would like to read an excerpt from this article. He said plea bargaining discussion and plea agreement act:

> "With proper training, the employment of existing or amended legislation will go a long way in reducing the backlog."

He said there are three reasons why the legislation was rarely used:

> "Uncertainty or perceived inconsistency in sentencing…"

—and I think Sen. Shrikissoon raised that point.

> "…concern by prosecutors…regarding improper influence…"

And a number of speakers would have also raised that point and:

> "…statutory mandatory minimum sentences for"—some—"offences."

And the Chief Justice went on to say, however, that:

> "The first two concerns have…been alleviated…by the Judiciary's publication of sentencing guidelines…of a code…guidance of prosecutors…"

—which has been adopted by the Director of Public Prosecutions.

So, Madam President, and since then, we know that there has been a number of developments in the criminal justice system as it relates to sentencing—the publication of sentencing guidelines, for example.

So, the issue of mandatory minimum sentences was also dealt with in a number of cases. I think the case of *Miguel v The State* 2011 UKPC 2014 which deemed that the imposition of the mandatory death sentence was unconstitutional, as well as more recently, the case of, I think, *Barry Francis and Roger Hinds v The State*, which I believe Sen. Heath was representing one of the defendants and that was in 2010, and that dealt with the dangerous drugs legislation which was also deemed to be unconstitutional. That is to say, the imposition of mandatory minimum sentencing was deemed to be unconstitutional. So there has been a lot of development in the law since 2013 when the Chief Justice would have raised issue with why persons were not availing themselves of the plea bargaining legislation.

So, Madam President, those are some of the reasons why, but if we look at practical examples from two reported cases, we would see how the judicial approach, we would see the judicial approach to plea bargaining and plea discussion in full glare. I had the opportunity to sit with Keith Scotland on a break in court in the civil High Court and I asked him about plea agreements and—actually, he pointed me to the case of Erica Williams which was the first ever plea bargaining case in the history of Trinidad and Tobago, and it involved a young lady by the name of Erica Williams who had been charged for murder—for

attempting to murder her newborn by throwing him into the sea. She was 24 years old at that time, the baby was two and a half months old, and following a dispute with, I think, her common-law husband, she, in a fit of rage, decided to throw the baby into the sea. Luckily, a bystander was able to see the events as they were unfolding and to rescue the child.

And in that case, which is 2004, the prosecution and the defence were able to enter into plea discussions and it was put before the judge that the sentence or the count be reduced to manslaughter because of the lack of intent to kill the child. And, Madam President, Justice Moosai in the Fifth Criminal Court would have considered the plea bargaining agreement, in the same way that this legislation contemplates and does not remove, and he would have agreed to impose a non-custodial sentence after deliberating on the factors mitigating and aggravating in this particular circumstance.

And Sen. Ramdeen would have asked the question as it relates to Shawn Parris, why—or he would have raised the issue of the dangers of the sentence not matching the culpability of the individual. He mentioned the case of Shawn Parris. But, Madam President, when I asked Keith Scotland as to his own experience with this particular individual, he informed me that, in fact, Erica Williams, notwithstanding the fact that a non-custodial sentence was imposed upon her by Justice Moosai, has now become a respectable pillar in her community. She has now returned to her southern base where she was brought up and the child is doing very well.

So, Madam President, it is not in every single circumstance that the punishment does not match the crime and public policy tells that one of the goals of sentencing is rehabilitation and deterrence. And notwithstanding the case of

Shawn Parris, we have a case, a successful case, of plea bargaining being a serious catalyst for the reformation of an individual and I think, Madam President, we need to look at the successes and not necessarily at those instances where it may not work in addressing or satisfying the aims of sentencing.

And Madam President, we must also remember that as per clause 25 of this Bill, sentencing remains the remit of the judge. So no plea bargaining agreement is binding upon the judge and there are a number of safeguards. Newton hearings could still be implemented; that is to say the judge has the discretion to look at whether or not the charge and the agreement fits the evidence before her or him and to determine whether or not the plea bargaining agreement is, in fact, a just one and accords with the proper administration of justice. And, Madam President, that is one successful case.

Another case which we see the development of the law as it relates to sentencing was the case of Jason Williams in 2014, and in that case, for the very first time, the Chief Justice was able to combine, not only plea bargaining and plea discussions, but also the minimum sentencing, the ability to sentence—to give indication of minimum sentencing. And in that particular case, the gentleman was charged also with killing. This time, he actually killed an infant, his son, and he asked to be removed from Remand Yard and to be given an indication as to what his likely sentence would be if he pleaded to manslaughter versus pleading or going to trial for murder. And, Madam President, after the Chief Justice, who incidentally took the opportunity to sit and to render a sentencing direction, the gentleman took the opportunity to accept a plea agreement with the State and because he was so fed up being in Remand Yard. The conditions were horrendous. And I know a number of individuals in this honourable House would have gone to

visit Remand Yard, and I think Sen. Mahabir, he is not here, but he even took the opportunity to taste the soup, I am told. And the persons came back traumatized as to the conditions that currently exist in Remand Yard.

So we have a situation whereby persons of Remand Yard would avail themselves knowing the evidence before the court because disclosure is built into this legislation and to say to the court, I am willing to accept, if the prosecution agrees, to plead guilty in exchange for knowing my faith in quick order. Because, you know, Madam President, I would have recently recited that a number of individuals remained in Remand Yard for 15 to 20 years, 14 years, lengths of time which, at face value, is cruel and unusual punishment. So, Madam President, those are two cases that I wanted to bring to the attention of this honourable House as to successful plea bargaining and to the developments in the law which address a number of concerns that were raised by the Chief Justice in his 2013/2014 speech. So this legislation is a step, I believe, in the right direction and the statistics, as they are, necessitate or support the imposition or the reformation of the existing law and the implementation of a new law.

Madam President, I would like to turn my attention to a number of concerns that were raised as it relates to improper inducement and this Bill broadens the concept of improper inducement and expands it such that improper inducement now includes:

"(a) …laying of a charge not believed to be supported by provable facts;

(b) …laying of a charge…not usually laid"—in—"respect"—of—"an act or omission…

(e) an offer or promise, the fulfilment of which is not the function of the office of the…"—DPP and

"(f) an attempt to persuade the accused person or suspect to plead guilty notwithstanding the accused person's or suspect's continued denial of guilt;"

And, Madam President, those are the additions. There were other factors or categories which would qualify for improper inducement which is present in the 1999 legislation and are also present and included in this present legislation. So, Sen. Sturge and a number of speakers would have raised the issue as to why it is not an offence but I think that when we look at the reasons why it is not, the arguments for and against, we see that the arguments for, for it not being an offence, I think squarely outnumber those for it not being an offence.

And Madam President, video recording, the Attorney General, in his opening, would have said that a number of witnesses and I want to quote from his *Hansard*:

"…I am pleased to say that the Government has operationalized and is further operationalizing the video recording suites for all statements. We have installed them already in several places and we are rolling them out such that the ultimate goal is that no statement is recorded without a video recording of a statement."

So there is going to be eyes on those entering into plea discussions and plea agreements. So that the probability of a person being abused or coerced or improperly influenced is going to be minimized because of this added video evidence that is going to be installed in all police stations.

Also, Madam President, there exist on the law books a number of offences which can be applied to improper inducement. And for instance, if one is being coerced, you can take that person up for—and it is a physical coercion, there is still

the charge of assault. It is a criminal charge as well as a civil charge. And not only is that, but in clause 30 of this Bill speaks to the ability of a person to withdraw—a defendant to withdraw his plea agreement because he was improperly induced. So there are a number of safeguards in this Bill, as well as there are a number of offences currently on the books which would allow persons guilty of improper inducement to be held accountable for their actions.

Another point Sen. Sturge raised was the issue of a suspect. Now, that is a whole lot of legal speak but I think also that the ability to withdraw a statement if a person is improperly induced, it will go back to the whole concept of inducement, to withdraw that particular plea or agreement and it also mitigates against the mischief that he is trying to prevent that he speaks about a suspect being given the opportunity to enter into a plea agreement.

And, Madam President, this Bill, there are a number of new provisions. The definition of "relative" is broadened. I think that is a laudable improvement in the Bill. It affects clause 15 of the Bill, victim impact statements, and I know Sen. Chote, Senior Counsel, would have spoken about her issue with victim impact statements, that it being a right is too much of an imposition or it gives too much power—I hope I do not misquote you—to, I guess, the victims to influence the sentence. And I hope I am not misquoting you, but I believe that she has a point—the Senator has a good point as it relates to this, but I know the Attorney General, in his winding-up or at committee stage, would deal with that particular point.

But the law on victim impact statements has been evolving and I think there is the case of O's case 1992 and the case of the Attorney General reference number 2 1995 in which the court sanctioned the use of victim impact statements and in O's case, it went so far as to say there would be no inference as to the impact on

the victim without a victim impact statement, so the law recognizes the importance of victim impact statements. Whether or not it should be a right as opposed to a discretion to allow the judge to take evidence from a particular witness, I think is a matter of opinion, but it is, in my estimation, any potential mischief is also mitigated by the fact that there is a possibility with the leave of the court to cross-examine a particular victim on his victim impact statement. So maybe, in committee stage, the Attorney General would deal with that particular point and deal with any lingering concerns, as Sen. Chote may have.

As it relates to the question of whether unrepresented individuals should have the right to enter into plea agreements, Madam President, I think that giving an individual a right to be unrepresented is better than forcing a person to be represented by an attorney. It is better to have the right and to refuse it than to impose upon an individual an attorney that he does not want. It is like having freedom of speech. We have the freedom of speech but nobody is going to say, you must speak today or you must speak tomorrow, the right is you can either exercise it or you can choose not to exercise. So once a person is competent and I think that matter, in our deliberations in the Senate Committee in the judge alone, we all agreed that once a person is competent, so he is not suffering from an abnormality of the mind, he should be able—[*Interruption*]

Madam President: Sen. Coppin, you have five more minutes.

Sen. W. M. Coppin:—that individual should be able to exercise their right to an attorney or not, and I think it is applicable also in this legislation. If we agreed on that principle in the Senate Committee, then technically speaking and logically speaking, we should agree on that principle in this legislation.

So, Madam President, this Bill gives grounds for the withdrawal of plea

agreements so it maintains those safeguards. The sealing of records is another issue that has arisen but I think that—and the redaction of persons' names, I think that accords well with, I think, other legislation that we have recently enacted that relates to children, for example, and protecting their rights, and that is ex post facto; that is not before. I think Sen. Shrikissoon raised this issue as to whether or not the prosecution should be able to change a plea or redact but I think that happens after the fact so that the public is not aware of the details or the individuals who enter into that particular agreement.

So, Madam President, I think all in all, this piece of legislation is a good piece of legislation. It improves the criminal justice system and the case flow. It is going to be effective. It is not that we are forcing persons to plead guilty for pleading sake but it is an effective way to ensure that justice is served. It will assist with the numbers and the length of time persons spend on Remand Yard which, as I said, in my estimation, is a cruel and unusual punishment to have persons suffering and languishing for so long and it maintains the sentencing principles espoused by Wooding in *Benjamin v The State* 1964, 7WIR79, and the power remains in the hands of the judge. So the sentencing remains in the hand of the judge and there are requisite safeguards to preventing against improper inducements and for ensuring that justice is served.

Madam President, this Bill protects the vulnerable, it protects the right to a fair trial, the right to attorney is maintained and it does so in a very transparent manner and accords with the interest of the administration of justice. And on that basis, this Bill is a good Bill and I call on each and every Senator in this honourable House to support this Bill. In fact, in the other place, the Opposition was so happy that the hon. Leader of the Opposition said pass it on or before the

30th or the 31st of August, 2017, and the Attorney General had to say, no, let us wait, let us hold off on it and ensure that we have the right systems in place to ensure that this Bill is successful. So I think all parties, both Opposition and the Government, are in support of this Bill. I wait now to hear the Independents' view on this particular legislation but I think in all, the intention is good and we should support it.

And, Madam President, with those few words, I thank you. [*Desk thumping*]

6.40 p.m.

Sen. Khadijah Ameen: Thank you very much, Madam President. Madam President, I want to thank you for this opportunity to join in this debate on the Criminal Procedure (Plea Discussion and Plea Agreement) Bill, 2017, and as we speak, Madam President, the Parliament website has an ongoing poll. I do not know if Members are aware, but at this time, 20 per cent of those voters on the online poll are in favour of plea bargain and an overwhelming 80 per cent are against.

Madam President, I want to begin by pointing out that the speaker before me, Sen. Toppin, is often—[*Interruption*]—Coppin, sorry—is often anticipating in terms of what is to come, in terms of what the Opposition's view is, and I want to advise him that he should continue to engage and articulate the view of his own party and leave the views of the Opposition to the Opposition. [*Desk thumping*]

Madam President, he was very misleading in his contribution when he indicated, or seemed to be giving the impression that the Opposition in the other place or in this place is in support of plea bargain and plea agreement. I want to put on the record that, contrary to what he was suggesting, that in the other place there was no vote. The Opposition did not have the opportunity to vote on this matter. So

please do not mislead the public, do not mislead this Senate to indicate a view of the Opposition that suits your position.

Madam President, I want to indicate that some of the points in my contribution were made by the more eloquent Sen. Wayne Sturge, and so there are some other—those that I agree with, I will simply indicate without going into explaining again. Plea bargain basically—for the listener and for the citizen and for the viewing public—is an arrangement between the prosecutor and a defendant whereby the defendant gets the opportunity to plead guilty, often to a lesser charge, in the expectation of leniency.

Madam President, the plea bargain is very common in the American legal system, and it accounts for roughly 90 per cent of all their criminal cases. However, in many countries, plea bargain is considered as being very immoral or very unethical. It compromises the sense of justice, and the whole system of justice is not only about the perpetrator or the suspect or the criminal, as we tend to think of the criminal justice system, but also that sense of justice for the victims, the sense of judgment for the witnesses—people who become part of this whole foray because they have to give evidence. I want to talk about the impact this Bill, if it becomes law, will have on those other players in the criminal justice system.

While I hear the Attorney General's reasons that he would have given in his opening, and Members from the other side as well, with regard to the purpose and reason why we should support—yes, Madam President, the courts are overcrowded. If you do not allow plea bargains, the courts could be overwhelmed and virtually forced to shut down, and that is what the Attorney General was saying to us basically. He was saying that the prosecutors' caseloads are so overloaded that fewer trials would mean that the prosecutor in this case, the DPP,

could more effectively prosecute the more serious cases. Defendants, of course, would save time and money by not having to defend themselves on trial where they wish to take the option and bargain.

There are different types of plea bargains. There is the charge bargaining which is most popular and well known where the defendant agrees to plead guilty to a lesser charge provided that the greater charges will be dismissed, such as manslaughter for murder. There is also the sentence bargaining where the defendant agrees to plead guilty to the stated charge in return for a lighter sentence. There is fact bargain, which is perhaps the least common form of plea bargain, where the defendant agrees to stipulate to certain facts in order to prevent other facts from being introduced into evidence. This is often the case where one would want to protect a loved one, particularly protect a minor and so on, and these situations have not been alluded to or suggested thus far.

A plea bargain is an arrangement, it is a deal, it is a contract and it could be broken if either side fails to live up to its end of the bargain. And, of course, the most likely remedy is to go to the court to enforce that agreement. So the DPP or the prosecutor can in fact ask for the arrangement to be revoked—the offer to be revoked. My question where this is concerned, Madam President—one was mentioned by Sen. Sturge, and that is, to the competence of the attorney. It is important for the accused to be fully aware of what they are getting into.

We have had many instances of forced confession or where the accused may not know better in terms of what he or she is admitting to. But when it comes to entering an agreement—entering and negotiating a plea agreement—it is important for the accused to have a fair opportunity in terms of the competence of a lawyer. This Bill does not, in any way, make provisions for the accused to be properly

represented or for guarantees to be in place, for safeguards to be in place, to ensure that they are not disadvantaged. Sen. Sturge spoke about the disadvantage of having a Legal Aid lawyer, so I would not go into that, but those are points that I endorse.

But Madam President, one of the strongest reasons, I believe, that the public in the poll I mentioned in my opening is so much against plea bargain, has to do with the public trust in the police, the public trust in the prosecution—that is, the Office of the DPP—and how they look at witness protection in Trinidad and Tobago. How much do we as citizens of Trinidad and Tobago trust our police? A couple years ago, the Commissioner of Police—the Acting Commissioner of Police—had cause to defend the police service because there were some discussions concerning a report, the Youth at Risk Report from Prof. Selwyn Ryan, that indicated that the participants in the study, in the report, believed that 30 to 40 per cent of the police service was corrupt. Many of the participants believed that policemen are "invisible" and I quote:

> "…policemen…were…invisible members or associates of gangs…"—and they control gang and criminal activities.

This is also in line with a MORI Caribbean poll that indicated that 59 per cent of those polled had little to no confidence in the police, and that 43 per cent used the term "corrupt" to describe the police.

The police trust is important. The police are the ones who would take statements, who would do the investigations and who would build a case. The police could basically use the word of this informant, this snitch, against, to build an entire case. In that case, Madam President, it is important for us to ensure that rather than convictions resting on the word of the police and on the word of these

witnesses, based on plea agreements, that the support is given to the proper agencies to provide scientific evidence to construct these cases, and they should collaborate with the evidence being given.

Madam President, the time has come for an increase in staff in the facilities and in the technology at the national Forensic Science Centre. Madam President, apart from simply running ballistics for guns, it is important to have a database so that comparisons can be readily made. There is a whole science behind ballistics and tool mark identification, and we are nowhere close to that. We must also look at our DNA testing and DNA records. Even at this time the Forensic Science Centre is challenged to even do autopsies in a timely manner. So while the issue with regard to the police trust is important, to combat that, we must also have that support in terms of forensic science, hard evidence and data.

Madam President, the police service itself, there are a number of improvements that could be made without legislation even coming to Parliament. The members of the police service ought to be subjected to integrity checks. The issue of polygraph testing of police officers when they are giving evidence; the issue of explaining your wealth. The Attorney General was quoted in the newspaper as indicating that legislation is coming for people who walk around with big gold chains to explain their wealth when they do not have a job that could buy them.

Well, I can tell you that there are many officers who live way beyond what their existing salaries permit, and this must be carefully scrutinized. [*Desk thumping*] The public must be guaranteed that police officers are beyond reproach, and that lack of public trust in our police and our police service as an institution is very legitimate. It remains a pressing matter that the Ministry of National Security,

the National Security Council and the Ministers themselves must consult on before bringing to Parliament new constitutional arrangements for the management and operation of a trustworthy police service.

Madam President, there must be new efforts to target the corruption within the police service. The existence of rogue elements within the Trinidad and Tobago Police Service is well documented. We have had a number of enquiries, we have had a number—[*Interruption*]

Madam President: Sen. Ameen, the Bill at hand, while there are issues about other agencies that will arise, it is not entirely about the police service. So you need to sort of put your comments in the context of the Bill. Okay? You spent a long time on the police service thus far.

Sen. K. Ameen: Thank you, Madam President. My intention now is, of course, to come back to the impact this would have on plea bargain and the importance of the police and the corrupt element within the police service. Madam President, if you would permit me, the point that I was coming to is that because corruption can be seen as being so institutionalized in the police service—and the police would be the ones responsible for gathering evidence that could be used to bargain, for plea bargains—the perception that the police have been giving dishonest assistance and protection to the criminal elements, that they are wilfully blinded—they turn a blind eye to a lot of criminal activity, that the police is sucking on the juicy fruit of—[*Interruption*]

Madam President: Sen. Ameen, please. Again, there is freedom of speech and freedom of expression in this Chamber, but at some point we must hold back a little bit. A lot has been said about the police service in this debate already. There is no need to give such—whatever. Just try and get back to the Bill please. Okay?

This Bill is not about the police service. Okay?

Sen. K. Ameen: Madam President, I respect your ruling, but I—[*Crosstalk*] Madam President, I want to move on to another point which has to do with witness protection, and I hope that you will see the relevance of witness protection to the—[*Interruption*]

Madam President: Sen. Ameen, it is not to please me, it is to abide by the Standing Orders and relevance. I just want to caution you, there have been numerous speakers before you who have touched on several of the issues that you are touching on now. I have given you the leeway, but I want you to be very careful with tedious repetition at this stage. Okay?

Sen. K. Ameen: Right. Madam President, thank you for your guidance. I move now to the issue of witness protection and the confidence that the public has in witness protection in Trinidad and Tobago. Madam President, there is no secret that trials in our judicial system are rather lengthy. There have been a number of instances where the integrity of the witness protection service has come under question. The capacity of the court to shorten those trials is an issue that we also have to treat with.

Madam President, I remember sometime in the newspaper, it was widely reported about a witness who was in witness protection and was selling drugs. It came out during the trial as to his illegal activities while in witness protection. [*Desk thumping*] Madam President, there have been a number of witnesses, key witnesses, who were killed while in witness protection. The Witness Protection Programme must be strengthened. And, at this time, even the present—many witnesses decide to leave the Witness Protection Programme because they do not feel safe. The Witness Protection Programme does not cater, is not designed for

families of the witnesses so that people are really removed from their family and they suffer. They are the ones being punished in many cases.

Madam President, one of the things that has a negative impact on the Witness Protection Programme is the length of trials. There is need for us to have more courts. At present, there are six at the Port of Spain Assizes and there are three in San Fernando. I think Members on both sides would have agreed that with 700 people awaiting trial for murder, it would take quite a number of years, decades, to clear that backlog.

We must, Madam President, be able to increase the capacity of the courts. There have been a number of suggestions and at this time I want to reiterate on a suggestion made by the Opposition previously, and that is to double the capacity of the courts in terms of having a morning shift and an evening shift. [*Desk thumping*] There were also discussions about having the night court, so that you can deal with matters that require less security and so in the evenings and the night. It would require doubling up on the judicial staff.

Madam President, another point that I feel that the Government missed the opportunity recently—with, in terms of improving the State's ability as a prosecutor, in terms of having scientific evidence apart from the Forensic Science Centre—was with the motor vehicle—well, the changes made to the Motor Vehicles and Road Traffic Act recently where—I almost said the Motor Vehicle Authority. But, Madam President, I think it is important for us to speedily work on having one legal entity to issue licence plates.

In that debate even the Attorney General at the time spoke about the fact that almost all crimes are committed with a vehicle, which I do not agree with, but the fact is that the ease at which licence plates can be purchased privately, without

regulations, allows the criminal to simply use different number plates when committing an offence. And, of course, it gives rise to people who can very easily commit those offences, if they are arrested, could decide to bargain and then, Madam President, it comes back to the other issues in terms of the credibility of the police and the fact that there is suspicion of a lot of collusion.

I must say that while I have heard the Attorney General indicating about this being one in a series of pieces of legislation to deal with crime, I do recall those on the other side indicating that there was a 10-point plan that the Government had to deal with crime. It included—and I just want to mention some of them and how I feel that this fails to fit in with those measures. The first one was to appoint a Commissioner of Police, they have failed to do that. They have indicated they would do a manpower audit, they have failed to do that. They indicated that they would establish municipal police in all 14 local government bodies, they have failed to do that. They indicated that they would give power to the Police Complaints Authority to prosecute, they have failed to do that; that they would give parliamentary oversight to matters of national security, they have not done that; to make witness tampering an offence, they have failed to do that; and that, Madam President, has an impact on the trustworthiness of any plea bargain that you enter into, the issue of protecting witnesses. [*Desk thumping*]

They indicated that they would make—well, I did not see the relevance of that point in terms of making unlawful eviction an offence. I do not know that unlawful eviction is one of those major crime issues in our country, but that was in the 10-point plan, so I must mention it. No. 8 was to review gang legislation, they have failed to do that. They spoke about an urban renewal plan, they have failed to do that, and item 10 was to make the Caribbean Court of Justice the final court of

appeal, they have failed to take any steps to do.

So, Madam President, I really question, in terms of bringing this Bill to have plea bargain, to have plea discussion in the current situation. As it is, the circumstances and the institutional support to make plea discussions a trustworthy process simply do not exist. And, again, I must come back to the three major things, Madam President that can be improved without legislative change.

I want to implore the Government to begin the process, to begin the process to improve the integrity of the police service, to prevent witness tampering, to improve the Witness Protection Programme and, of course, the speeding-up of matters within the court and allowing the police to have the support of scientific evidence, hard evidence and the forensic information and so on.

So, Madam President, with that being said, I really feel that the Government is rushing to bring a number of these pieces of legislation that they would have brought. Issues have also come up in terms of the fact that you recently had conclusion—well, still continuing discussions on the trial by judge alone; the impact of having plea agreements going into a trial without a jury and the credibility of the decision that will come out of that, the credibility of the sense of justice and, Madam President, that brings me to my other point, where I indicated earlier that the justice system includes the victims and the witnesses as well as the accused.

Most people think about the sense of justice to the victims. We must ask ourselves where we allow plea agreements and plea discussions to take place—and an accused person negotiates, gets a short term, comes out or gives evidence and somebody else takes the fall and they are back out on streets—the fact is that a number of murders are often reprisal killings. A lot of times because people feel

that they do not have confidence that the police will in fact find the killers, in many gang-related killings, it is an instance where it is revenge, and I fear that having plea agreement and plea discussion in the midst of the present conditions could lead to an increase in revenge killings where people do not feel that sense of justice or they feel that they were denied.

There was one other point, Madam President, with regard to the persons who were party to a plea discussion. When they give evidence and they have to serve a term, my question—this is a question—when they have to serve a reduced sentence, do they serve this sentence in the regular prison? Do they go into the prison amongst all the criminals who know each other and who know them and will consider them a snitch? Is this how people end up committing suicide by hanging from a bed sheet that is four feet off the ground? I am asking this question because—my suggestion to you is that if you put people who are party to plea agreements who are considered snitch, who would be looked down on their follow criminals, when they go into the general prison population they are at risk. I feel that we will see a further increase in the number of prison "suicides", because there are a number of instances where persons who committed heinous crimes, especially against children, they somehow become so remorseful—and I hope you could detect my sarcasm—that they commit suicide overnight, mysteriously in prison.

So these are issues that I am very concerned about and where a person who is accused can in fact be innocent or who might be making a deal to protect themselves even though they are innocent, they might end up in the same rut and end up being an innocent victim of the circumstances and of the broken institutions that we have. So must we must fix those systems, Madam President, before we

could go into a trustworthy system of plea agreement. With those few words, I thank you. [*Desk thumping*]

Sen. John Heath: Madam President, I thank you for the opportunity to contribute to this Bill, "An act to establish a system of plea discussions and plea agreements and for matters incidental thereto".

Madam President, in April of 2014, I had the privilege of attending a workshop on plea discussion and plea bargaining. That workshop was held in conjunction with personnel from the US State Department, as well as the US Public Defenders Office and the moderator was the late Dana Seetahal, Senior Counsel. May her soul rest in eternal peace. That workshop was attended by all, or if not most of the major stakeholders in the criminal justice system and, by general unanimous consensus, we came away with the view that the present legislation with respect to plea discussion and plea agreement was not working, mainly because it did not attract its end users, its intended end users, which are accused persons as well as the State, because if there is not a coming together of those two stakeholders then it simply cannot happen. And so that what you found was legislation which was highly underutilized.

I, myself, have had some plea discussions which manifested later on into plea agreements, a lot less than I would have liked. I could count it on one hand. But for whatever reason—and I would get to what I think are some of the main reasons—the intention was never realized. It has to be, if not the main intention, certainly one of the most significant intentions is that this intended legislation has to be designed to steer accused persons away from engaging in a full-blown trial. The effect of that would be an ease-up on the criminal justice system.

7.10 p.m.

Madam President, let me say plea bargaining is happening on a daily basis without use of the legislation. Every day there is correspondence going between attorneys for accused persons and the Office of the Director of Public Prosecutions seeking to have a deal, whether it is to have a reduction or to plead to a lesser charge, and the most significant is since the decision in Nimrod Miguel for persons who are charged with capital matters to plead guilty on the basis of the murder felony rule.

Now, unfortunately, this has come about because of something which is endemic in our system and that is, as has been alluded to by Sen. Ramdeen, we do not in our Constitution have a right to a speedy trial. So those accused persons who enter the system saying, "I did not do it. It was not me", by year nine and by year 10 they are the same ones who are saying, "I have been here so long, I do not know when my trial day will come, I am going to take this deal". So there is an ulterior reason for them taking it, because when they do the calculation—and it could be brought down to an almost mathematical certainty. So that we know murder felony, you are likely to start at 30 years, the fact that you plead guilty gives you a third discount and brings it down to 20. The years that you have spent inside is taken into account, so that is taken away. So let us say, you start at 30, you minus 10, you are down to 20, and you have spent 10 years, you are down to a next 10. You take into regard remission and that person is looking at seven years again, so he can see the light at the end of the proverbial tunnel. But that is why they take it.

Now in principle, I have no difficulty with legislation which proposes plea discussions and plea agreement, and certainly if this Bill seeks to improve, and in my view it does, the current legislation, well I have no difficulty with it. What I would sound off though is that there are certain things which need to change and

which we must be mindful of, and if we fail to do that, then this Bill may end up just as the last one, highly underutilized and really of no effect.

Madam President, let me just, so as to avoid tedious repetition, and I hope to be brief, I will just point through the certain parts of the proposed Bill which I think are commendable, where I see the different salient changes from this proposed Bill and the current legislation, and then to make certain observations/recommendations.

I note for instance in the first part of the Bill there are some—in the interpretation section of it—certain interpretations which seek to give me expansive meanings to words. So, for instance, the "plea agreement", there is an expansion to discharge certain obligations for an accused person, and I will touch on that briefly, the same with "plea discussion". I note that the definition for "prosecutor", unlike the current legislation, does not include the police. That is a difficulty I had, because it is not uncommon when an attorney gets to an accused person, the first thing he says is, "The police told me to go ahead and plead guilty and all I would do is get a fine." So that police who is the first contact with the accused being— and I see no indivisibility between police officers who arrest a suspect and a police officer who may be legally trained and in the legal department. I know my colleague, Sen. Sturge, suggested that perhaps police officers in the legal department can be the persons making this initial plea discussion suggestion to an accused. I have a difficulty with police officers engaging in that role, no matter what department they sit in. So that I am glad the proposed Bill does not include as a prosecutor the police officers who, by the way, conduct the most amount of prosecutions in our criminal justice system.

I know that one of the salient differences now is that you can, while you are

a suspect, benefit from a plea arrangement. Now, I have no difficulty with this, but this is hardly likely to succeed if we do not, commensurate with this Act, have a substantial improvement in the evidence gathering, and my colleagues have touched on it with respect to the scientific data which is required. And I will give a simple example. The suspect who does not think there is anything against him, if he is shown for instance the basic CC television footage with him on it, all of a sudden he is starting to think differently because he is alive to the evidence.

Now before, that suspect, no matter what amount of evidence the police may have against him, there is often, particularly if it involves him having to be identified by the person making the allegation; that is the last step before he can be charged. So a police can have name of the suspect, matching description, the last thing that would happen is there has to be an identification parade, and it is only after then, that you can charge, and sometimes that takes a little while to get that going. So I have no difficulty if at that stage, but it must be that the evidence has to be disclosed to the suspect and his attorney at that stage.

If your case has good evidence, there is no need to hold it back. So I am seeing in this proposed Bill that you can disclose a summary. I think you should disclose as much as you think, to bring the bargain to the table. The suspect now, and which I think the Bill is somewhat deficient, must have a benefit derived to him at this early period. If, for instance, an accused person is likely to get a third off his sentence, and that is the going rate just for pleading guilty, or at the very least you are not going to attract the same sentence if you take the court through the trial. So you are going to get a discount. I think there must be an incentive for a suspect who is not yet charged to take the deal. The benefit to him is he will get a reduction, more than that from which he would have simply pleaded guilty and the

benefit to the State is they get to scratch it off the books, and the benefit to the society at large is that we have this potential case which is not going to add to our already clogged system.

I find the Bill to be lacking in terms of how it addresses specific sentences. It does not speak to, for instance—and perhaps this is less a concern for the judges who have an inherent jurisdiction and perhaps have the leeway to be a little more creative, but certainly the magistrate.

So, for instance, Madam President, a suspended sentence. If you were to give, by way of a plea discussion/plea agreement, a suspended sentence, that person who knows that he has a suspended sentence hanging over his head is more likely than not, for a period, to engage in behaviour so as not to attract or make that suspended sentence come to fruition. I am saying that is how we need to now start looking at it.

But together with that, one of the problems that we have in the system is this, it is not uncommon for accused persons, certainly some that I represent, to have had, prior to engaging my services, multiple matters before the court, only to find out that they were dismissed. I ask, "But how were they dismissed?" "Police did not turn up." These persons are not likely to engage into any plea agreement when they know the culture of police officers is that, "Ah going to run meh case for a little while, see if de officer coming, and when he doh turn up, ah going to hire an attorney and get it thrown out." That is another way which we avoid a trial, but notwithstanding, that throwing out process takes years. So it is still a clog in the system, so that behaviour has to be discouraged, and until such time that police officers are made to account when they do not come to court and their matters are thrown out, and they do not face disciplinary actions, then it is going to keep on

happening. So with this has to come a change in how we go about, certainly the police officers prosecuting their matters for which they have brought to court. Because, if that does not happen, you are going to find the end user, meaning the accused, who knows the system is not going to be as attracted to this at all. So that is something that I think, Madam President, simply has to be addressed.

I know the Act focuses on victim impact statements and, in principle, I have no problem with that. Victims need to be heard, but more importantly they need to be made aware of any plea discussion or plea agreement made in matters in which they have a vested interest; and they are victims. I like the fact that, as they put it, their rights are tempered by a curtailing of the type of statement that they could give, because it is common practice to give the victim impact statement even now, and inevitably you would see somewhere in it, "He should get life. He should get this, he should get that." So that could form no part of the victim impact statement according to this Bill.

I am not sure that I agree that there should be cross-examination of the victim. It seems to me that it could put them through an ordeal which this process can very well avoid. But more than that, if there is one victim that is all right, but what about a crime which has multiple victims and they are all entitled to give victim impact statements? What you could have is the very clog you are trying to avoid is going to happen if cross-examination is allowed. I think, in my respectful view, it is not necessary, for the simple fact that there is a curtailing of the contents of the statement for which the judicial officer has the final say. So that there is no usurping of his function, because this statement can only contain a certain type of material and has to stay away from other types of material.

It has been touched on, Madam President, the use of the scientific tools that

we have available to us. There has been over the years over successive governments a lot of legislation which in my view is very pro prosecution, in that, it helps the State a lot. I will give you an example. Certainly the DNA legislation in its first incarnation it was, you could not take DNA from a suspect, it had to be an accused. That has been remedied. Had to get the consent. That has been remedied; cannot be taken by force. What you have, and I have experienced it myself, is an accused person who is maintaining his innocence, but with the enforcement of the Act now has to give his DNA, and when that DNA comes back, his tune is no longer of innocence, his tune is, "Can I take a maximum sentence indication from the judge, how much do you think I would get?" Because he is now faced with the reality, if I do not plead guilty, the weight of evidence from this scientific data is likely to send me down, and I am not going to get the discount. So that I am saying there is supposed to be a DNA bank. Is that filling up? We need to utilize that.

There is the ability now for wiretap. I do not know, but do we have sufficient undercover police officers? And when I say undercover, I do not mean the ones that you see in the station today and they are on the road tomorrow. The ones who live undercover. These are the type of things that we need to start thinking about differently, because if we do not, the evidence that we bring forward, not only the accused is going to feel confident about it, but his lawyer as well. So that if it is your word against the accused word, it is 50:50. And then in a DPP's department, which is bleeding human resource, so there are young prosecutors who have to face Mr. Sturge and he is going to back himself each time, because as they train up they leave. So the DPP's office needs to get the human resource and also the salary to retain the human resource that they get. [*Desk thumping*] So this thing has to be looked at in a holistic manner.

The Bill in my view is commendable, in that it does address a lot of the concerns which I had in the present legislation, but working in isolation, it may very well find itself meeting the same failure. There has to be a rethink to get all the players on board. I certainly will seek to—because if it goes through its processes, I will seek to make use of it. I will seek to make use of it. We need to think—Sen. Ramdeen raised it, the categorization of murders.

If you want to see people writing in to the DPP's office asking for a plea discussion or plea agreement, you categorize murders and you see what will happen. The simple point is this, just to make an example, murder has one of the largest—murder and manslaughter, well manslaughter first, has a large disparity in sentencing just by the mere fact that there are different bases upon which one can get a manslaughter. But some of the most heinous manslaughter is no different from the murder under the murder felony yet, just the fact that it is manslaughter you get a lower starting point, and something has to be wrong with that.

So that in those circumstances if there is a category of murder which you can bargain for, which you can cite authority for, which similar facts are for, it would seem that it would work and you would have all these persons who are incarcerated for murder seeking to use this piece of legislation in droves. Particularly—particularly—if a benefit of a further sentence reduction—and I am not talking about getting away with a slap on the wrist you know, Madam President. I am saying that, for instance, it is murder felony and at the stage of the preliminary enquiry which we have now, you are willing to get into these discussions, then you might look at a 15-year period, a 12-year, whatever it is. So by that time now it seems long, but what you have happening are these people serving out these virtual sentences without even a trial, and because of that fact

they resign themselves to take the deal. So that is somewhat unfair, because what is happening in our system now, makes them a victim of the system, and they have to take a deal and try to come out. I am saying that can be arrested. We can arrest that situation but make it a benefit which they can see, and the first person who makes that benefit, he would see how it would be trumped and follow suit.

As I promised to be brief and not to engage in tedious repetition, Madam President, that is the extent of my contribution. I am much obliged. [*Desk thumping*]

Sen. Rodger Samuel: Madam President, I am always thankful for the opportunity to speak in this House and in this instance on the Bill, an Act to establish a system of plea discussions and plea agreements and for matters incidental thereto.

As has been reiterated, the Bill has some 36 clauses and while that may be so, we have reached at this point in our society not without many different reasons and causes and that in some instances we may be trying to find quick fixes to a real bad situation that has continued to deteriorate for many, many, many years in our country. In the quest to come up with solutions, we must be very careful that we contravene the ideas and the understanding of the word "justice", as we attempt to uphold the law but not ignore the rights of individuals, and find ourselves punishing the innocent and giving way to the guilty.

It is important, Madam President, that we take heed to this. One writer, John H. Langbein says that:

> "As the death grip of adversary procedure has tightened around the common law criminal trial, trial has ceased to be workable as a routine dispositive proceeding. Our criminal justice system has become ever more dependent on processing cases of serious crime through the nontrial procedure of plea

bargaining."

He went on to say:

> Being—"Unable to adjudicate, we now engage in condemnation without adjudication. Because our constitutions guarantee adjudication, we threaten the criminal defendant with a markedly greater sanction if he insists on adjudication and is"—eventually—"convicted."

That says a lot, because from a government's perspective, plea bargaining has two advantages. It is less expensive, and we hear the issues today being one of economics. It will cost less, less time, less money, and as a result of that, we determine that it would be more effective based upon how much less of time and money it will cost. But at the end of the day there is a possibility that there could be less justice. [*Desk thumping*]

Madam President, it is very important for us to take that into consideration. But not only that, by also cutting out jury, cutting the jury system almost out of the picture, prosecutors and judges acquire more influence over the outcome of cases, more so prosecutors. In plea bargaining, the prosecutors are the ones that have the big guns. As a matter of fact, from a defendant's perspective, plea bargains are geared to extort a guilty plea. Plea bargains are not there to help the accused, but they are there to possibly tell the world that there is a deficiency in the justice system. To tell the world that in a time where there is a lack of confidence in the systems in Trinidad and Tobago, a lack of confidence because in the public there is a play for power in a system that I will not name. There is a problem with a backlog because of deficiencies, and deficiencies I will not even enter into beginning to discuss, lest I be pulled up for discussing another system.

But not only are there deficiencies, and plea bargaining would suggest that

we are probably attempting to cover up inefficiencies, the inefficiencies of the police service to effectively investigate and detect, and because there are inefficiencies there are prosecutorial deficiencies. In other words, things cannot happen in the normal process of court, and history proves there are more cases that are being lost, so we have found a shortcut to commit people to prison. [*Desk thumping*] We have found a shortcut to ensure that we put notches on the belts of prosecutors. We have found a shortcut so that at the end of the day, prosecutors can say we have convicted so much and so much. We have had so much before us, and we can sit and say I deserve my pay because I have done that, and if they had gone to court they would have lost. Madam President, this is serious business—this is very, very serious business. [*Interruption*]

Not only that, but because of where we are in our country, where we are 100 per cent certain that everything is never across the board and clean. As a matter of fact, I know of a person who called a particular police station to make a report on drugs being sold in his district, and within 10 minutes his house was burned down in the same community. So when you think about things of that nature, the set-up mechanism is dangerous, where people can be set up for things that are not true. [*Interruption*]

Madam President: Have a seat, Sen. Samuel. Sen. Sturge, I think you have spoken already in this debate. Sen. Sturge and Sen. Ramdeen, you both have contributed to this debate already, let Sen. Samuel have his say please. Sen. Samuel, continue. [*Desk thumping*]

Sen. R. Samuel: Thank you, Ma'am. I almost said I appreciate your protection, but they are my colleagues. [*Laughter*]

Madam President, one chief judge, Mr. William Young, a US district court

judge of Massachusetts, said that:

> "'The focus of our entire criminal justice trial has shifted away from trials and juries and adjudication to a massive system of sentence bargaining that is heavily rigged against the accused…'"

So we must not overlook the fact that plea bargaining, though it may appear to be good, may not always be good for all and sundry. We will need to find systems to scrutinize the work of the police service as they investigate, and the work of the prosecutors as they enter into plea bargaining, because the judge or the court is not around when the plea is happening. [*Desk thumping*] The judge is not there to determine if arms were twisted, and there are different approaches to twisting arms. A simple way to twist an arm is really to give a person the facts and say to them, "Well, if you plead I will give you four months, but if you do not plead you can spend 25 years."

7.40 p.m.

Madam President: Sen. Samuel, could you just let us do the procedural Motion, please.

Sen. R. Samuel: Sure.

Madam President: Minister of Trade and Industry.

PROCEDURAL MOTION

The Minister of Trade and Industry (Sen. The Hon. Paula Gopee-Scoon): Thank you. Madam President, in accordance with Standing Order 14(5), I beg to move that this Senate continue to sit until the conclusion of the actual debate including the wrap up by the hon. AG, but except for the committee stage which will be done at another sitting. In other words, Madam President, until the AG has completed his wrap up and the committee stage would be done at another sitting.

Madam President: So let me try to interpret that, Senators. Hon. Senators, the question is that this Senate continue to sit until the completion of the debate of this matter which will end by the Attorney General wrapping up.

Question put and agreed to.

CRIMINAL PROCEDURE

(PLEA DISCUSSION AND PLEA AGREEMENT) BILL, 2017

Madam President: Continue, Sen. Samuel.

Sen. R. Samuel: Thank you, Ma'am. Madam President, we are living in hard times in Trinidad and Tobago. When people go to the store they are hoping that they can talk to the owner for a discount. When a person goes to buy something in the market, it is hopeful that they can talk to the vender and get a discount. And the Government is now in the discount mechanism, because the Government is now saying to the criminal "We will give you a sentence discount. We will discount your sentence if you plead guilty." So the discount attitude is something that is across the board in Trinidad. And not only that, Madam President, but listen to the kind of discounts that can happen in the plea bargaining system. A person is arrested and charged for drug trafficking and distribution, and if he pleads guilty he could be offered a chance to plead guilty to drug possession, a discount, which is usually a much less serious crime than trafficking and distribution. Or they will offer him a discount to say well they can drop the trafficking charge for marijuana in exchange for a guilty plea for cocaine, for the use of cocaine, another discount, Madam President. And the idea of the discount is that it has an arm twist to it. Why?—because if he agrees he is all right, but if he decides to go to court, then what they want to do is give him the full brunt of the law in prosecution. So in other words, really, such pleas are not voluntary because there are arm twisters that

are aligned to it, Madam President. [*Desk thumping*] It is important for us to see that.

As a matter of fact, Madam President, to tell you of how plea bargaining has sometimes its pros and its cons and a lot of more cons than pros, there is a case of Erma Faye Stewart and Regina Kelly in Texas. [*Desk thumping*] Madam President, on November05, 2000, Erna Faye Stewart then 30, a single mother of two was arrested; Regina Kelly, a waitress who was 24 at the time and a single mother of four was also arrested. The arrests were part of a big drug sweep based on the word of a confidential informant, a whistle-blower, who later would been proved unreliable.

So, Madam President, this informant implicated 25 people in a housing residence. Eventually, Madam President, out of the 25 persons arrested, seven of them were forced to take a plea. When the case went to court for the other 20, the other 20 won their case. [*Desk thumping*] Years after, Madam President, this reliable witness was proven to be unreliable in many other cases and it turned out that what he had been doing is fabricating evidence against people.

So what happened?—is the seven persons who pleaded guilty because of force, because one person was a single-mother—who would mind their children?—you know, things of that nature was taking place, Madam President. And they pleaded because wanted to get back to their children, they wanted to get back to their situations, and they pleaded. They were advised to plea and they will get home. But these people spent some years in prison, and even though they spent years in prison, they were robbed of a lot of stuff. Why? When they came out, the mother lost her job. The families were distorted. As a matter of fact, eventually child welfare took the children into a home. Why? Because they pleaded guilty to

something that they did not commit. Why? Because they were advised that if they plead, they will get a lesser charge.

Madam President, so who is going to protect people of that nature? What is this system in place to ensure, because we are talking about there should be no inducements and no arm twisting, but who will be there? Are these things being done and recorded? Is it clear across the board so that judges can see the process clear that there was nothing, there were no offers, there was nothing, this person voluntarily admitted to the crime? There is nothing of that nature, and as a result, people find themselves in tremendous difficulty.

And another case to mind that I read in my research was one of a lady and her boyfriend and they went on a trip and while she remained in the hotel, she did not know that he had gone to a gas station, committed a crime and somebody died. Three years after they arrested her. They offered her a plea and she said, "Well I do not know anything about this". And they offered her the different things, and when she chose not to, they shifted the case not from her boyfriend to her and they got an informant to say that he saw her in the gas station, because she refused. And it seems to be noticeable from those things that I have researched that when you refuse plea bargains, you feel the full brunt of the law. In other words, judges seem to be angry that you are giving them work. Judges seem to be upset that you are now having them to sit there for hours, [*Desk thumping*] and as a result of that, now they give you the full thing and they let you know that you should have taken a plea. How are we to protect citizens?

Madam President, in so many instances, it sounds good, but it has its flaws because the innocent also finds itself surrendering to the pressure, surrendering. And, Madam President, it is no strange thing because the bargaining table is not

necessarily levelled. Because here is an individual who is arrested or he is the accused and he sits there, not having the kind of financial backings and he is offered as someone as already iterated, something from the Government services, to some legal aid, and it was said before, but the prosecutor has everything to his advantage. He has what it takes: leverage; he has support mechanisms; he can call on expert witnesses, whether they are strong or not is not the issue. Madam President, but the poor little guy who can barely live finds himself faced with all of these things and which can also be fabricated and is scared to hell that if he does not take this plea, "crapaud smoke he pipe". And when situations of that nature happen, the average individual will plead guilty.

Madam President, another thing that is important is that nowhere in the Bill does it refer to the victim's understanding when a plea bargain is being arranged, nowhere. As a matter of fact, in Canada, in Ontario, in Manitoba, the victims have a say. Madam President, in Ontario the victims have the right to submit a victim impact statement at the sentencing stage. The outcome of a particular case may not really be deterred by that statement, but in other cases in other districts, the victims must have access to the information about any pre-trial arrangement that relates to a plea that may be entered by the accused on trial. So there must be information given to the victims if the State decides we are going to enter into a plea, the victim has a right to know.

This Bill does not suggest that until it reaches the court, but in Canada they have put that in there because it is important for us to understand that the person that was the recipient of the crime, the one who suffered continues to suffer, while the one who committed the crime is now being offered a deal. Madam President, how come the person who suffered was not offered a deal also? Why is the victim

not also offered a deal? How come it is always the criminal offered the deal, but the victim is not offered a deal? The victim is not offered a deal to have all his medical bills paid; the victim is not offered a deal to be treated a certain way and have access to certain treatment; the victim is never offered that. The criminal justice system plea bargaining is always to the benefit of the snitch, of the ones who may have committed the crime [*Desk thumping*]

Madam President, one writer said that plea bargaining and my colleague Wayne Sturge made mention of it in passing and I "doh" want to make mention of it in passing, that plea bargaining is making a deal with the devil. But the big question is: Who is the devil in the case? Because there are people may feel that the person who is accused is the devil, and it may not be so. Because in so many instances, Madam President, the devil in real life sometimes has an upper hand, has more backings.

I always, Madam President, remember cases of temptation in the scripture and the devil would say, if you bow down I will give you this and if you do this I will give you this. And maybe now prosecutors have the same power. It was Michael Sprat who said that plea bargain is a deal with the devil, and he went on to talk about the system of the plea bargaining. I do not want to pronounce the language wrong, but he said it is a quid pro quo. That is it? I am not a lawyer. Is that it? So the quid is that the accused gives up his constitutional right to be presumed innocent and waives their right to a trial. In other words, he says the accused relieves the State of the heavy obligation of proving guilt beyond a reasonable doubt. And then he says the quo is that the accused receives the benefit of reduced charges or less jail time or some measure of certainty about the ultimate sentence. But, Madam President, there is something that is so deep, because the

power no longer lies in the hands of the judge, it really lies in the hands of the prosecutor.

As a matter of fact, Madam President, in my research I found out, very rarely would a judge go against what arrangements are made in a plea bargain by a prosecutor. Very rare, very rare. So really the person who is determining the sentence is really the prosecutor; the judge is just a stamp. [*Interruption*]

Sen. Sturge: He is the devil. The prosecutor is the devil.

Madam President: Sen. Sturge, please.

Sen. Sturge: Sorry.

Sen. R. Samuel: The prosecutor is the boss, the prosecutor is a boss, is the boss in the situation, Madam President, and we have got to be careful as to the kind of power that we are putting in the hands of our prosecutors in plea bargaining, very important—[*Interruption*]

Madam President: Sen. Samuel, have a seat. The points that you are making, can I ask you, please, to move on to some other points, because you have spent quite a bit of your contribution on some of the same points. Yes, you have. And I am asking you now as you wrap up, because your time is almost over to just move on to some other points, please.

Sen. R. Samuel: In plea bargaining, there is a great deal of imbalance and I must say that, and where there is imbalance, justice cannot be served. In plea bargaining, the accused does not have the strength necessary to counter the prosecution. As a matter of fact, Madam President, people will not admit that there is an imbalance until you sit and you talk with folks who have sat in the situation and they recognize how vulnerable they have become through the process, and how dangerous the process can be.

Madam President, at the end of the day, it is the person with the upper hand that wins. At the end of day, it is the people with the support mechanism that wins, and we call that plea bargaining. We call that justice. We say to our citizens that we are offering you something, but really what we are doing is finding a shortcut for a clogged system unfortunately, Madam President, unfortunately, I see no bargain. Unfortunately, I see no justice; unfortunately, I see people being taken advantage of; unfortunately, when we do things of this nature, we find that there are quite a bit of innocent people that have found themselves imprisoned, their life being affected permanently while the persons who may have committed the crime sometimes are so robust in their system and they are so strong in their resolve that they prefer to face the courts, because they know through their experiences that it is easier to go to court when a system is skewed, when a system is flawed, but the innocent are unable to think like that when you have lawyers who cannot win a case in court, when you have practitioners who know nothing about defence and it is easy for them, Madam President, to accept a plea and tell their clients "It is better yuh take a plea because this is what you are going to face".

Madam President, as I wrap up, it is important for us to understand that there is what is called, and I hear it, representation by mathematics and representation by mathematics is that lawyers begin to calculate, and not calculate money, they begin to calculate for their clients what the possibilities are in the sentencing, and they frighten their clients to take a plea, representation by mathematics. [*Desk thumping*] Madam President, it is so important that a lot of representation by mathematics is taking place already and will escalate when this comes into full existence in this country and I "doh" know what will happen to the innocent. I know what will happen to those who are guilty, they will take a plea and as I close,

they will get a sentencing discount. [*Desk thumping*] Thank you, Madam President.

Sen. Nikoli Edwards: [*Desk thumping*] Madam President, it gives me great pleasure to join in any debate that we have here in the Senate, but it gives me greater pleasure to join in this particular debate, because I stand here with a lot of mixed emotions especially coming into this. Because as Senators would Know, my story has been one that has been very tumultuous, but it has led me to this place where I can contribute to national development and to change in Trinidad and Tobago.

And as you all would know that upon my father's demise, I made a promise to myself and to those around me that one of the things that I would fight for is reformation of the criminal justice system. And that is why it really, for me, is an emotional contribution because I am actually getting to do what I set out to do, and I do hope that this can be testimony to the young people looking on and persons across Trinidad and Tobago that [*Desk thumping*] the sky is indeed the limit, and once you set your mind to something you can, in fact, achieve it.

Now, this whole debate, many of the contributions have surrounded whether or not this piece of legislation will deal with the backlog that currently exists in the judicial system as it stands. And for me the question should not be whether or not that the passage of legislation will immediately reduce crime and the backlog of cases at the Judiciary, the question we should be asking is if, in fact, the passage of this legislation and other legislation that is linked or similar would, in fact, be the right thing to do by way of its passage. And the right thing is that justice is provided not only for the primary victim and offender, but also the secondary victim and offender, and the wider community.

In Trinidad and Tobago, our perception of justice troubles me. We are a very

highly litigious society and we see justice in a fixed way. We see justice as being mainly an eye for an eye and a tooth for a tooth. But for me, Madam President, that is not how I see justice. Trinidad and Tobago is a country in search of true justice, and that does not mean vindication, but rather peace of mind, justice that one can witness from beginning to end and applaud the transparency in process and justice that does not simply mean having the best court clothes, but rather means fairness in every sphere of life, especially when it comes to human interaction, in our schools, in our public institutions and governance structures and our communities.

As one of the features of restorative justice notes, crime should not be seen as an offence being committed against the State, but rather an offence being committed against a victim, be it a primary victim or a secondary victim as well, and with that whole thinking comes the understanding that the actors involved have roles and responsibilities. And therefore, these roles and responsibilities involved in the process of justice are being the most important one of that is with regard to the primary offender seeking to make right the wrong that was meted out, and subsequently, the role of the victim or victims in being willing to allow a process of repair to take place.

Two to the biggest challenges facing any kind of change in this country that I personally see is fear and lack of confidence. Fear that the decision to be taken may be wrong or one that may not produce the desired outcome, and trust in that we do not trust our institutions to do what they have been put in place to do, and that is as a result of our understanding that in Trinidad and Tobago corruption and collusion are prevalent. I believe it is primarily for this reason that we have not established the Caribbean Court of Justice as yet as our final court of appeal

because of that thinking. As well as on the point, I feel as though if we are to adopt this court as our final court of appeal, we will inspire confidence necessary for other Caribbean countries to follow suit. Because it is troubling to imagine that we have the CCJ right here nestled in Trinidad and Tobago and yet we have not sought that as our final court of appeal. So therefore, if we head down that road, imagine the kind of confidence that other Caribbean countries will have knowing that Trinidad and Tobago made that bold step.

As well as I would also want to briefly make reference to the controversial section 34 which, in my humble view, was a good clause to provide justice for persons whose matters were unfairly prolonged because of a judicial sector that has not fully been supported by the kinds of substantive law that has and continues to be long overdue. We must accept responsibility for not being as responsive to the needs of the population, and while accepting that responsibility, ensure that when an opportunity arises we take full and complete advantage of it.

According to Sen. Ameen, the main reason persons in the poll that she mentioned were against plea bargaining was because of the lack of public trust in the police, the DPP and witness protection in Trinidad and Tobago. And that is always something in my time looking on, be it in politics and hearing some of the discussions that persons would have on the ground, we are always saying that we have these problems and as such we cannot really bring any kind of legislation to the fore because there is always a problem somewhere else in some other sector that would have an effect on this.

But my thing is that we need to start somewhere. We need to make the first step in some stead to bring about change in this country. Yes, there would be many facets that we need to fix and to implement, but I do see one step in the right

direction as being necessary regardless of the fact that we need to fix other sectors.

And I would also want to encourage that we address the other problems that currently exist, because as we all know, plea barraging as it stands right now, once brought into law, this will not be able to stand on its own, because we still have the issues with a culture in Trinidad and Tobago which is one of our biggest problems, a culture of corruption; a culture of collusion; a culture that does not ensure that justice is received in this country. And the question is: How then do we treat with that culture? Because you can have how many pieces of legislation in place, but if the persons who are there to implement and to enforce and to benefit from the legislation, if they have not had a change of heart and a change of mind, then this will amount to nothing. So, we need to look at that, but at the same time, I am not saying that we should not be putting forward legislation that will make an impact on the judicial sector in Trinidad and Tobago.

We have a very retributive system of justice in this country and it needs to move to one that is more restorative and rehabilitative. I believe that the option of plea bargaining allows the process of rehabilitation and restoration to begin in one's stead because the offender admits to his or her wrongdoings and is willing to accept a sentence which even the prosecutor believes at bare minimum is commensurate to the crime being committed. Because I am very much confident that no prosecutor, especially if the crime is a heinous one, would slap the offender on their wrist and pardon them in that stead. I do not think that we are so mad as a people in Trinidad and Tobago, despite how many other persons may look at that very same situation.

So, what I think, moving forward in all of this, is that we do have to give things a chance in this country. We do have to give certain changes an opportunity

to do what they are supposed to do. We have no confidence and as you were alluding to earlier, Madam President, in terms of in the debate the police has been mentioned time and time again, if we continue to always point fingers and not address issues head on and do the things that are required to bring about change in this country, then we will never reach anywhere. We have to admit that we have problems across Trinidad and Tobago in many sectors especially as it relates to the judicial sector in this country, but we have to and we must start somewhere.

8.10 p.m.

I do anticipate that other pieces of legislation will come forward to address similar issues in the Judiciary, but at no point in time must we in one stead see any single piece of legislation as being the blanket, or the fix to every single issue in the judicial sector. This is what, one piece of legislation that is going to make an impact.

Now, through you, Madam President, I would say to the hon. Attorney General that suggestions have been made from persons or Senators moving forward, and I trust that these suggestions would be taken into consideration, because as it stands right now, the legislation would need to be strengthened in order to serve its true purpose. And as the hon. Attorney General also says, that this is a democracy and as such the input from all would be welcomed. So, with that understanding, I do think that at the end of this process we would have a plea bargaining system that we can all be proud of. But, even looking beyond that, Trinidad and Tobago, it is high time that we start to be innovative in our thinking and in our ways that we treat governance in this country. When we look at the judicial system, we need to allow the opportunity for innovation to really reign.

We need to stop carbon copying a lot of the things that we see on the outside

from other countries, and that is really because of our colonial past. We feel as though what is done outside by the metropole might be what we need to adopt in this country, and I think we need to understand more than ever that in Trinidad and Tobago the talent that we have here, the mindset of our people, despite a lot of the times we see it as being very laissez-faire, we have some very, very talented people in this country who can bring ideas and suggestions to the fore. Why not Trinidad and Tobago be the lead when it comes to justice in the world? We have the potential for it. So, I do think that we need to allow the Judiciary to experiment in certain ways, to produce systems, and practices and procedures that others can be looking to Trinidad and Tobago for in terms of adopting our ways of doing things.

So, we do have right before us the Criminal Procedure (Plea Discussion and Plea Agreement) Bill, an Act to establish a system of plea discussions and plea agreements and for matters incidental thereto. With this, I think more than anything, it would reach out to families across this country who have loved ones behind prison bars, whether innocent or guilty, they do not have the opportunity at this very moment to state or plead their case because of our flawed judicial system. I think this provides an opportunity in some stead of comfort to them knowing that our judicial system is making the kinds of moves necessary to ensure that there is justice for all. Because, the fact is, according to Dr. Martin Luther King Jr.:

"Injustice anywhere is a threat to justice everywhere."

—and as such, we need to start thinking how we can ensure that the injustices, while they may be many, are dealt with, and right now there are persons behind bars in Trinidad and Tobago's jails who have been there for years, upon years, upon years and have lost faith in the criminal justice system in this country, and we need to do what we can do to restore faith in it.

So, as much as we would want to continue to point fingers as citizens to many of the deficiencies that exist, let us also at the same time look at the progress that has been made in Trinidad and Tobago. Mediation: I am a strong advocate for mediation in this country because I do think that it will be the alternative that we require to really begin the process of healing as a nation. We are too adversarial. We are highly litigious as a society. Let us sit down with one another, and treat, and deal with the issues that are affecting us. We do not need necessarily a judge, or a jury, or a prosecutor to determine what course of action we should take when a matter arises, or conflict arises. Why can we not equip our population, our citizenry, with the skills they require to deal with their own problems? We need to bring back family life. We need to bring back a sense of community in this country. And, yes, no plea bargaining and no trial by judge alone, and all these things would deal with those issues. That would be treating with things on one end. We need to look at how we are going to deal with crime and criminality from a holistic standpoint in this country, and I think that every single Member of this Senate, every single Member of the Parliament altogether, we have suggestions and we want to ensure that crime and criminality has come to an end in this country, but it will require baby steps, and it will require big thinking at times, and we need to provide that kind of space for that to take place

So, Madam President, I would like to make reference to a quote from the *Trinidad Express*, this would have been published on January 04, 2014, entitled:

> "'Plea bargaining legislation can help'", and Senior Counsel Dana Seetahal— may she rest in peace—is quoted as saying:
>
> "If we continue as we are going now in five years or so an accused person who is to be tried in the High Court may not obtain a trial for 15 years. Then

chances are the jury will acquit with their own ingrained system of justice. This cannot be right. It is time to activate plea-bargaining and enable swifter justice."

And, no words could be truer.

We need to put systems and mechanisms in place, and we do have that opportunity now. So, I will not go into the technicalities of the Bill, because that is not my expertise, but I would say that we need different modes of allowing justice to reign in this country, and plea bargaining is an option, it is a tool, it is a mechanism that we can use to ensure and to assist with bringing about justice in this country.

So, with those few words, I want to encourage, at the committee stage, that we truly drill down and make the amendments as necessary, but plea bargaining is something that we should allow as an option in our judicial system. I thank you. [*Desk thumping*]

Sen. Wade Mark: Thank you very much. Madam President, I want to thank you for allowing me to rise at this time to make my contribution to this very important matter. This important Bill before this honourable Senate.

Madam President, the Bill before this honourable Senate is seeking to repeal the existing law governing plea discussions and plea agreement which was passed sometime in 1999 under the administration of the then Prime Minister Basdeo Panday, piloted by the then Attorney General Ramesh Lawrence Maharaj. It is now approximately 18 years after, and from the reports that we have been able to garner thus far, the legislation has not produced the kind of results that would have been anticipated back then.

I read in an article dated June 2014, that both in the years 2011 and 2012,

less than 12 accused/defendants made use of the provisions contained in the current legislation. We do not have an up-to-date position on how many others since then would have utilized this particular tool or process in order to plea—well, first of all, engage in plea discussions and later plea agreement with a view to having their sentences, first of all their charges may be reduced or altered, and/or their sentences later reduced.

But, Madam President, I must say that when we are talking about law in the context of what we are dealing with, we cannot isolate law from the reality of the real society in which we live. And this society as you know is based on a system of exploitation of man by man. That is what capitalism is about. It is a system of exploitation. And, Madam President, we also have to focus on a very fundamental matter that occurs in this society that generates a lot of criminality, violence, delinquency and deviant behaviour, and that has to do with the continued maldistribution of income and wealth in this land.

As I said to you some time ago, Madam President, the last research data we came upon was that the Gini coefficient revealed that 43 per cent—the Gini coefficient represented some 43 per cent. That is a very highly unequal distribution of income in this country. Whilst wealth was concentrated on less than 1 per cent of this society. Less than 1 per cent of this society enjoyed 69 per cent of the total wealth of this nation.

Sen. Coppin: What is the source?

Sen. W. Mark: Research this was conducted by the United States research department revealed that. That was sometime in 2008.

So, Madam President, I make these introductory remarks to let you know that there is a basis for the explosion in criminality and crime, where the haves are

growing, and the have-nots—well, the haves are becoming richer and the have-nots are becoming poorer. [*Desk thumping*] And, what we are dealing with is another attempt by the administration within this oppressive society to try to bring some degree of reduction, I should say, to what is called the backlog in the criminal justice system. The criminal justice system is very, very overloaded at this time, and as one of my colleagues said earlier on, you have thousands of citizens languishing in prisons across this land for 10, 15 years without a trial. How can that be justice? How can that be fair? And we sit idly by and not address this question.

But, Madam President, the Bill in its present form, I want to submit to you, has a lot of loopholes, and weaknesses, flaws and deficiencies, and we have circulated over 40 amendments for the consideration of the Attorney General, and the Government, because we do not want to participate—and I want to make it very clear, we will not be participating in giving support to bad law. [*Desk thumping*] We will not be doing that. So we, like my colleague on the Independent Bench, Sen. Nikoli, would like to be in a system in which there is greater cooperation, and agreement, and consensus. But, as you know Sen. Nikoli, one hand does not clap. Two hands clap. [*Desk thumping*]

So, it means to say, Madam President, that it is important for us to appreciate that there are provisions or clauses, terms in this Bill that are quite obnoxious, oppressive, and should not find their way in modern legislation in a civilized nation. [*Desk thumping*] And that is why, Madam President, if we are not careful this Bill—and we have to be careful, Madam President, remember, laws are not made for one political party. Laws are made for a nation. And if you bring laws that you believe can give you a political edge or an advantage, Madam President, it

may boomerang on you later on, and that is why we always have to be making good laws because we want justice, humanity, and fair play, and equality for all of the citizens of T&T. [*Desk thumping*] We do not want laws to be skewed in a way that it would benefit one group of people at the expense of another group. And, therefore, I would argue that in this particular legislation that we are looking at, if we are not careful it can be used by this administration that is piloting it, as a political weapon or instrument, targeting its political opponents or enemies, as they would want to classify those that they do not see eye to eye with.

And, Madam President, I would explain to you the misnomer, the actual weakness in the context of the argument advanced by many that this legislation will help to reduce the backlog in the courts of this country. Because, Madam President, we are seeing, from the evidence I have been able to research thus far, that not many persons have used the current legislation to get out of prison, or to have their sentences reduced. My understanding is that there is a term called MSI, Maximum Sentence Indication, and I understand that is being used more frequently and more regularly than this very legislation that we are dealing with, and what is currently on the books. So, as I proceed I will develop the point that whilst the system is very overloaded at this time, we have to ensure that under our Constitution we seek to uphold the rights of citizens to a fair trial, and that is enshrined in our Constitution, and this is something that we would want to ensure that continues, Madam President.

Madam President, there are many challenges that we are faced with in this society and, as I said, the Government is seeking through this piece of legislation called plea discussion and plea agreement, to try to see what they can do to reduce the backlog. And, of course, as I said, as a very responsible Opposition, as the

alternative Government in this republic, we would want to do whatever we can to assist in promoting good legislation [*Desk thumping*] and to ensure that legislation is advanced in the interest of the people of this country.

Now, Madam President, we know that there are many advantages to be derived from this legislation called plea discussions and plea agreements, but one I have already indicated to you exists, that the hope, or it is hoped that it would reduce the backlog. Another one, Madam President, in terms of an advantage, is that it can be used as a tool to address complex prosecution matters. And we know for a fact, Madam President, that in the area of complex crimes, that is a tool that can be employed to address that. I think in the United Kingdom complex and serious fraud matters are in fact used to address difficult cases in the United Kingdom using the very tool that we are debating, and discussing in this honourable House.

But, Madam President, there must be safeguards, there must be checks and balances to ensure that the system is not abused, to ensure that the system is not misused by anyone. And therefore, it is against this background that I want to indicate to you that we have circulated another list of amendments, in my name, and that list seeks to deal with the elimination of the inclusion of the term "suspect". [*Desk thumping*] We do not know where that term came from. It was not in the original legislation that was circulated to us. It came as a result of changes later on, I suspect, in the other place. But, Madam President, if I may ask you to join me by turning to page 5 of the definition and the interpretation section. You would see the concept or this term "suspect", and it states, Madam President, that:

A—"'suspect' means a person whom a police officer, with reasonable

cause, suspects has committed an offence, but who is not charged;"

Now, Madam President, this was nowhere in the original legislation, and that is why I am hoping that when the Attorney General winds up this debate he would answer the question that Sen. Sturge placed in this Senate earlier. Has the Attorney General abandoned the whistle-blower legislation that he had brought last year, and has he now introduced whistle-blower legislation through the back door? [*Desk thumping*] And this term that he has now parachuted into the legislation, is that a method, a means by which certain elements in this society would be induced, improperly induced? And that is why we are making an amendment to reintroduce clause 5 as is in the current legislation which has been conveniently removed.

We understand from the Attorney General and others, that at some meeting that was held in 2014 at the Radisson Hotel, there was consensus among certain judges and other lawyers. Well, I want to tell you something, judges and lawyers they have their interest to serve. You see, we, in this Parliament, and we, in the United National Congress, and we, in the People's Partnership, we are serving the interest of the majority of citizens in this country. [*Desk thumping*] And we are concerned of how that legislation is going to impact on the innocent in our country, and that is the danger of this particular provision. We understand that this provision can be found in Jamaica's legislation. But I think Jamaica's culture might be a little different from ours. I think Sen. Nikoli used a term, corruption and—

Madam President: Sen. Edwards.

Sen. W. Mark: Sen. Edwards. Thank you, Madam, I was trying to remember the surname. Thank you very much. Madam President, you are very alert. [*Interruption*] Yes, yes, yes, Sen. Edwards. Yes, thank you very much, Madam

President.

He used this term of collusion and corruption. And it is part of the culture in our nation, we cannot get away from that. We cannot get away from that. And, Madam President, without casting any aspersions on anyone, I am saying all the key players in the system, the dots must be connected, and you can demonstrate that over the years the system has been polluted and contaminated, and innocent persons have been incarcerated in this country, and innocent persons have been accused in this country, innocent persons have been humiliated in this country, innocent persons have been handcuffed and dragged through the streets of Port of Spain in this country because of the corruption and the collusion in the prosecutorial system in this country. [*Desk thumping*]

So, we have to be careful. We have to be careful, Madam President, that we do not fall victim. We do not want any part of the Jamaican experience. We like Jamaica. I like Jamaicans, but you see this "suspect" in the Jamaican legislation, we say delete that. [*Desk thumping*] We want no part of that. And you see this "suspect" is also in the Nigerian legislation. One of the most corrupt nations you could think about in the world is Nigeria. We want no part of that. We want no part of that, and that is why we saying in no uncertain terms to the hon. Attorney General, please delete and remove that from the legislation. [*Desk thumping*] We want no part of it.

Madam President, may I ask you to follow the story? It is a story, but I want to tell you it is a real story, a live story, a true story that took place in our republic dealing with, for instance, suspects, and to show you, Madam President, how the system, as Sen. Edwards described it, is one of corruption and collusion. Madam President, sometime ago a gentleman walked in a police station in this country. He

told the police that he had offered hundreds of thousands of dollars to two high-ranking Government Ministers, and he committed that to pen—to writing rather, and that was sufficient. That was sufficient to walk in a police station claiming that he offered money to two high-ranking Government Ministers at the time. And, Madam President, you know what happened? The police took that statement from that individual, and the next thing you knew, was that these two high-ranking Ministers were arrested, and they were taken before the courts handcuffed, and they were humiliated. Their reputations were damaged in this country for years and years. On what basis? Somebody just walked in and gave to the police a statement, and that was sufficient to handcuff these individuals and send them in a state of humiliation.

8.40 p.m.

One of those individuals is abroad now, the other one is in this Parliament, in the Senate. And, Madam President, it is a living example of the misuse and abuse of provisions in legislation if you do not get it right, because any one of us in this Parliament can become victims as those two Ministers became, Madam President, [*Desk thumping*] if this law is not dealt with properly and if we do not establish the necessary checks and balances and safeguards to ensure that we do not allow this to develop and to go further. So I just wanted to share with you, Madam President, this issue of the concept or the term called "suspect".

So, Madam President, as I said, these advantages that I highlighted—and I also recognize that there is a greater degree of flexibility in sentencing and it allows the prosecution as well as the defence to construct and to organize more individualized sentences through informal negotiations. But, on the other hand, there are severe and serious unintended negative consequences that we also have to

take on board, that can lead to serious and larger governance issues and human rights issues. As my friend Sen. Samuel said earlier in his contribution, that this tool can be used by the rich, wealthy and powerful to bargain their way out of trouble and the innocent and the poor can languish in cells, in prisons, because they do not have the means to deal with this matter.

So, Madam President, we are talking about—if you go to clause 4 of this Bill, it talks about, you know, you are moving from the position of plea discussion and, plea discussion is on page 4. And it tells you, it is really a discussion held between a prosecutor and an accused person or a suspect for the purpose of arriving at a plea agreement. So this is what this is telling you, Madam President, that the prosecutor can meet with an accused—obviously, in the legislation we talked about the attorney being present and if he cannot have his own attorney, they will provide him with some legal aid assistance so he can get his own attorney.

So, Madam President, we have a situation where the prosecutor can meet with this accused person and/or suspect in order to have discussions at arriving at a plea agreement. And there is where we have to now deal with section 4, or clause 4 I should say, of the legislation, which outlines in the context of a plea agreement made between the prosecutor and the accused person or suspect. And it tells you, for instance, how this thing could be worked out in the interest of the accused, or even the suspect in this regard.

Madam President, I do not believe that the nation of the Republic of T & T knows about this legislation. I know that Sen. Ameen talked about a survey or a poll that is being run by the Parliament through its Communications Unit and the Parliament Channel, where 80 per cent of the people who were polled said that

they are not in favour of this legislation and 20 per cent said that they were in favour. But I would have liked to hear the views from the Law Association of this country. But I understand the Attorney General has tried to extract from the Law Association its views and comments on this piece of legislation.

I think Sen. Ramdeen talked about the Legal Profession Act and saying that there is an obligation on the part of the Law Association to provide that kind of assistance, not only to the Attorney General, but to the nation as a whole because this is a very critical piece of legislation. We would have liked to ask the Attorney General to have this legislation as Ramesh Maharaj did. Attorney General, I do not know if you are aware that when Ramesh Lawrence Maharaj was the Attorney General and he was introducing this suite of legislation to deal with the backlog and the criminal justice system, Madam President, these legislation or this piece of legislation among others would have been published in full, in one of the daily newspapers. [*Crosstalk*] No, no, democracy is a very expensive business and you have to ensure that you communicate the information to as many people throughout the nation, including Tobago, so that everybody would have a say in the matter and you give the country an opportunity to comment. [*Crosstalk*]

Madam President, I am being disturbed by my friend. [*Crosstalk*] So, I am saying that if you really want the public's involvement and inclusion in the final product that is going to emerge from this debate, we should have had the privilege of communicating with the population on this matter and I am convinced that the Government, led by the Prime Minister and our Attorney—[*Interruption*]

Hon. Senator: Hon. Prime Minister.

Sen. W. Mark: The hon. Prime Minister.

Hon. Senator: Yes.

Sen. W. Mark: The hon. Prime Minister. Only temporarily, eh, because he is going to be removed shortly. [*Desk thumping*] So, Madam President, we want to ensure and I want to appeal to the Attorney General that, please, the hon. Attorney General exhibited a certain degree of commitment to dialogue and to consensus by having this—the earlier Bill that we passed via the report, being referred, under 66(1), to a select committee of the Senate. And I would have thought that because of the gravity of this piece of legislation and because of the implications of it, this one is a suitable candidate for a special select committee—[*Interruption*]

Sen. Gopee-Scoon: Again.

Sen. W. Mark: Yes, so that, for instance, you can bring in interest groups to deal with it. Madam President, we do not want to have a situation where the Government—the Government has the majority, eh, Madam President, and the Government can pass, they can pass the Bill without our support. They can do that. And some litigant, somebody who feels that this Bill is offensive, can take action at another level and I think that you all said you all are open to these actions, okay. You all have a lot of money to spend in the courts, okay, good. [*Crosstalk*] Yeah, you are disturbing me but you are looking for Standing Orders. [*Laughter*]

Madam President: Sen. Mark.

Sen. W. Mark: You disturbing me but you—[*Interruption*]

Madam President: Sen. Mark.

Sen. W. Mark: Sorry, Madam. I should be looking for the Standing Orders for this lady.

Sen. Sturge: I will do it next time.

Sen. W. Mark: Madam President, [*Laughter*] I just want to ask you to—there is an area of the law that we would like the Attorney General to consider in our second

round of amendment. I saw in the Jamaican legislation which I understand the Attorney General looked at and extracted "suspect" from, as well as the Nigerian legislation, but I saw in the Jamaican legislation, in clause 35 on page 21 where the Jamaican legislation called on the Minister, who by order, subject to an affirmative resolution of Parliament, he could amend the Schedule. But I noticed that the hon. Attorney General, in a kind of convenience, he has left out the "affirmative" that he saw in the Jamaican legislation and he has put in "negative". So I just wanted to remind the Attorney General that there is a provision in the legislation of Jamaica that talks to the issue of an affirmative resolution. And I believe an affirmative is in order, given the gravity of the legislation. So we have therefore proposed—[*Interruption*]

Madam President: Sen. Mark, you have five more minutes.

Sen. W. Mark: Yes, Madam President. Madam President, we are proposing to the hon. Attorney General that he should consider amending the legislation to reflect "affirmative" by deleting "negative". And if you go to clause 36(2), again the Attorney General, I looked at the Jamaican legislation and again through, maybe, inadvertence, I do not know if the Attorney General did not really pay attention to that section of the legislation or he was more concerned with suspect than anything else, but I want to remind the Attorney General that I have looked at the legislation in Jamaica and it says that regulations made—under 36 subclause (2) states, and I read:

> "Regulations made under subsection (1) shall be subject to the negative resolution of Parliament."

That is what the hon. Attorney General has in this legislation.

Madam President, we think that it is in the interest of justice and fair play,

given the gravity again, the severity of this piece of legislation and the kind of manipulation, collusion and corruption that can take place, we are asking that the Government replaces the word "negative" with the word "affirmative". That, we believe would go a long way in providing the nation and providing the people with some degree of comfort as it relates to the ability of the government to simply make regulations and have me and my colleagues come here to try to move a Motion to annul. We do not want to annul, [*Desk thumping*] we want to debate. So we want you to table the regulations through affirmative resolution and we come here and we debate those regulations. That is what we are proposing.

So Madam President, I think the hour is a bit late, 8.54. I know that my time in the last Parliament was truncated, from 60 to 40 minutes, [*Crosstalk*] I was not here yet. I was in another incarnation. So I know, I now have to be guided by the new Standing Orders, and I know I only have a few seconds with your leave to wind up.

I want to appeal to the Attorney General, in closing, Madam President, to have this matter referred to a special select committee. Let us put our heads together and bring out good law and not rush this legislation as I anticipate he may wish to do. If he does that, I want to give him the assurance he will not get a single vote on this side in support of the legislation. If he wants our support, we ask him to refer this matter to a special select committee so we can go through this thing thoroughly and comprehensively.

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

The Attorney General (Hon. Faris Al-Rawi): [*Desk thumping*] Thank you, Madam President. Madam President, it gives me great pleasure to wrap up this debate and to look forward to what is to come in the committee stage. There is so

much to say. It has been very, very, good contribution by all Senators that have spoken today.

Sen. Gopee-Scoon: All?

Hon. F. Al-Rawi: Yes, all, because we actually touched upon a cross between structural issues of consideration, much wider than just the four corners of this debate, and also on some specific terms and conditions as well, and I thank all hon. Senators for lending their minds to this product. I seem to be living in the Senate these days, but it is with great pleasure that I do that, because I genuinely believe that we are of equal mind, all Members, in trying to progress the laws of Trinidad and Tobago.

I have spoken to the statistics already that stand behind this Bill, but I think it important to touch, very, very, in a cursory sort of way, upon where we are. You see, Sen. Mark said a little while ago that democracy is expensive and Sen. Mark is right. Democracy is indeed very expensive. Our democracy right now, sees us running with 11 Court of Appeal judges, 30 High Court judges, nine judges of the Criminal Assizes, 48 sitting magistrates, 38 of whom sit in the Magistrates' Court themselves. We have 14 Magistrates' Court, three out-courts. But here is where our democracy has us. Indictable criminal matters pending at the Magistrate's Court, the last year published for the Judiciary, I will take that figure, July 31, 2015. We have 29,090 matters pending; 470 murder matters; 300 attempted murder; 439 kidnapping matters; arms and ammunition, 5,788; sexual offences 3,597; narcotics, 5,758; fraud, 5,407, robbery, 2,726; larceny 2,737.

The Judiciary at 2016 says, in the High Court criminal matters, we have 2,337 pending. Port of Spain, of course, accounts for nearly 58 per cent of that. The number of indictments filed on average per year over a six-year average is 226

per year, but we are only disposing of 111 on average which is a 49 per cent disposal rate. Of our 226 indictments which are filed on average per year, that correlates to 2,010 people. Of the 2,010 people we deal with roughly, in terms of persons, only 6 per cent, 95 people alone have their matters disposed of.

So the democracy that Sen. Marks speaks about is quite true. That democracy results in us as a nation having in our prisons a position of 3,634 people incarcerated; 1,354 of them there for convicted status; 2,280 of them there roughly for remanded status, that is, they are awaiting their trials; 980 plus of them there for murder. Of the 1,300 plus, 80 per cent of these people are there having been given bail already granted but cannot be accessed. Some of these trials, outstanding as they are, take us to 17 years outstanding, 20 years outstanding, 15 years outstanding.

So we are taking volume against judicial capacity and many members have focused upon that capacity and are asking: What is happening with capacity? We spoke about DPP, we spoke about forensics. From the figures just mentioned clearly, firearms and sexual offences and narcotics are all matters which can be dealt with forensically. If you had forensics up and running quite right, think of the caseload that can be dealt with because your evidence looks as strong as it does because after all, strict evidence is what really drives plea bargaining, which is what this Bill is all about.

So hon. Senators are right, Sen. Ramdeen, Sen. Sturge, Sen. Heath, Sen. Edwards, Sen. Shrikissoon. We have spoken to the need to improvement in our capacity and I thought it was an excellent suggestion by Sen. Ramdeen that we have specific persons identified to deal with forensics across the jurisdictions of the police which is where we are. But look at where we stand as a nation. Without

going into the merits or coming down one way or the other, the case with perhaps the greatest notoriety for length of time and for the potential to abuse the equality of arms position, because the submission made in the Senate tonight is that wealthy people can stretch the system.

We have in our jurisdiction the largest case concerning an allegation of fraud is the Piarco airport enquiry, persons are no doubt anxious to have a decision one way or the other. The accused certainly deserve the right of a trial so that their names can be vindicated if that is the case and certainly the persons who say that there is guilt on the other side or that the system needs to be closed, have another point of view. I come down no way unless there is a due process consideration point.

Trinidad and Tobago has a classic case of United States dealing with plea bargaining. In the *Associated Presses* publication of November 07, 2006 the Miami publication said:

> "Two people pleaded guilty and were convicted Monday to defrauding the government of Trinidad and Tobago and in a scheme to rig bids for work on an international airport in the island."—and they go through the persons who were convicted.

And then they speak to forfeiture of US $22million; forfeiture of $22 million further in jewelry and artwork; $4 million in money to be repatriated to Trinidad and Tobago; US $3.2 million to Wachovia Bank, $2.9million to International Bank of Miami and so they go.

But the point is, in another jurisdiction dealing with a fact matrix in Trinidad and Tobago, in 2006, close to $22million one way, millions of dollars in cash, US on both accounts, already dealt with on a plea bargaining position no doubt

because of the strength of evidence put forward. Where do we stand in our jurisdiction? We have heard Sen. Mark, in particular, in wrap up to the submissions of the hon. Senators on the Opposition Bench, speak to the fact of not knowing where this material comes from. In certain senses, he pointedly spoke to the issue of a suspect and in particular to the offence balance that ought to be had against an improper inducement for a prosecutor. Two things in particular.

Sen. Mark has raised the possibility of a special select committee going to work as we had done in the Bill which we just completed today. Unfortunately, in looking at that position, I would like to speak to the issue of how a special select committee I think on this occasion may not work. It is a good opportunity but I had a chance, thankfully, to Sen. Ramdeen circulating the amendments proposed in the first round, I have not seen the second round yet. I traversed those amendments proposed already and I note that a lot of them are close to if not exactly the amendments proposed in the other place by the hon. Leader of the Opposition.

I would like to remind for the record in this Senate, we not only piloted the Bill, had the debate, but we paused specifically to consider the amendments proposed by the Opposition, written amendments. We circulated responses to those amendments. That is not usually done, but the amendments as proposed by the hon. Leader of the Opposition and the Member for Princes Town, in particular, were very good for consideration and there was merit in stopping the debate and we actually went the step of writing out amendments in response or considerations. We accepted some, we did not accept others and we volunteered reasons why.

In fact, we stopped that debate again, specifically to consider the Jamaican experience as Sen. Mark has reflected upon it. Again, the Jamaican legislation was something that we were looking at but the Opposition raised it in a very particular

context and we stopped the debate, looked at the Jamaican legislation and, in fact, we again circulated our written view on the Jamaican legislation and proposals that were recommended for us by the Opposition to consider to import into our legislation.

I have raised these two because I propose to circulate it to all Members. So that all Members of the honourable Senate can have a view of what the Government's view on the written proposals were, so that we can in fact come to the committee stage forearmed and prepared with positions as to what the policy view is. It is because of policy that I think that we are respectfully in a position where, on a policy position, we are going to have to agree to disagree on a few things. And you see that is because there are a few cornerstones submissions by the hon. Opposition, repeated in terms of a sense of doubt or need for clarification by Sen. Shrikissoon in particular, not knowing which way to go, he having professed, the hon. Senator, of being a layman in the position of considering law. But policy wise, there are two strong points as I just pointed to. The position that the Bill needs to have, a balance for improper inducement by criminalizing the improper inducement, is a strong corner policy point. Secondly, we are looking at policy points to include whether we in fact deal with the concept of a suspect, because the proposal is to remove that.

I would like to remind hon. Senators, in particular on Sen. Mark's position of democracy and how Bills used to be published in the time of Ramesh Lawrence Maharaj under Basdeo Panday, I will remind that Internet penetration then is now what Internet penetration is now and that there is a certain amount of advantage that we have now with the Parliament Channel and the Parliament website and certainly we have been receiving commentary back from many people. But when

we look to what took us to the policy here, I must remind that the workshop report, the National Centre for State Courts and the Attorney General of Trinidad and Tobago, Plea Agreement/Plea Bargaining Workshop, Radisson Hotel, Port of Spain, Trinidad and Tobago, April 24th to 25th, 2014, report compiled by Rea Reyes and Cassandra Seetahal. This report traverses work that actually saw the participation of panelists from the National Centre for State Courts team, Caribbean Court of Justice, Judges of the Trinidad and Tobago High Court, Court of Appeal and the Assizes, in particular, on the criminal division bench, Magistrates of Trinidad and Tobago, the Criminal Bar Association and Law Association of Trinidad and Tobago, Central Authority, Office of the DPP, Hugh Wooding Law School, Law Reform Commission, Legal Aid and Advisory Authority, Police Prosecutors, Ministry of Justice, Police Complaints Authority, British High Commission of Trinidad and Tobago.

I have taken time to repeat those participants because coming out of that workshop was a fulsome discussion in a true democratic way of all of the matters that we have touched on today as in need of further consideration or further discussion. In particular, when we look to the discussion under section 13 of the existing law, we noted that there was a significant point that an accused should be allowed to withdraw from plea agreements. This Bill has that. There was a point that the US does not contain specific recommendations for specific sentences, there was discussion on that. Again, we have reflected to that. There was discussion on section 17 of the existing law and the position that judges and magistrates should give reasons for rejection of plea agreements. That is in this Bill. There was a discussion that procedure should be included for dealing with plea agreements and that the court should indicate recommended sentences, that the court should reject

recommended sentences in plea agreements when it comes to an end. Again, we factored that. There was a position for dealing with the position at preliminary enquiry. That again finds itself here.

But when we look to the DPP's involvement, in particular, we saw that the DPP indicated, specifically, as did every person in relation to the existing clause 5, which section 5 of the Act—section 5 being the provision which criminalizes improper inducement—every single contributor at this event agreed that the offence associated with improper inducement should be removed.

9.10 p.m.

Sen. Mark asked whether the Government found the position of "suspect" and the "improper inducement" removal of criminalization from the Jamaican law. Sen. Mark also referred to the Nigerian law as not a good example for us to follow, but Sen. Mark, I would like to advise or remind you, through the hon. President, that the policy paper on reform of the Criminal Procedure (Plea Discussion and Plea Agreement) Act, Chap. 13:07, went into much further detail through the capable work of both Dana Seetahal, Senior Counsel—may God rest her soul—and also Mrs. Pamela Elder of Senior Counsel. In dealing with that, we had consultation and specific written recommendations coming back from the Judiciary, members of the Criminal Bar, from QCs out of the United Kingdom. We have had from various stakeholders and let me stick a pin for a moment.

Hon. Senators will note, as we stand in June, that a lot of our work has been paused, largely because the Law Association asked for an opportunity to respond to some of the legislation, and this legislation and the preliminary enquiries and the judge only. And I am to tell you that the Government took a decision to pause to allow for that consultation and response to come back. To date, as I stand on the

22nd of June, 2017, I have not had the courtesy of a response from the Law Association. I have written on umpteen occasions. I have called two successive counsels. I do not mean to pour scorn on anyone, I understand that there was a lot of work. We did get very good commentary from the Law Association on the FATCA Bill. But the reason that we gave pause was to facilitate further discussion beyond the policy paper, beyond the 2014 positions, but we have not had that response and so we must press on with our business.

But I would like, specifically, to remind Sen. Mark that when we look to where the concept of a "suspect" came from, Sen. Mark, through you, Madam President, by Cabinet Note of the Attorney General, 2014, No. 99, dated the 15th of July, 2014, the UNC Cabinet, specifically—taking advantage of very good work—approved a policy position for Trinidad and Tobago to consider this law. Specifically, it was recommended that the provisions dealing with prosecution for improper inducement should not be part of the legislation. Victims should be consulted and accorded more rights but they must not be allowed to express any view on the issue of sentences.

Plea agreement should not be more detailed as compared to what currently exists—should be more detailed, sorry. All plea agreement hearings should be in open court unless the court decides that circumstances necessitate an in-camera hearing. There should be greater judicial oversight at the plea agreement hearing. Provision should be made for the admission of written victim impact statements at the discretion of the court and should be served on the accused. The accused should be given the right to withdraw from a plea agreement if it is rejected by the court. The accused should be given the right to change his plea of guilty on the occurrence of certain specified events. All statements made at plea agreement

hearings, or in the course of plea discussions, be inadmissible in any other criminal or civil proceedings against the accused. The suspended sentence of imprisonment, intermittent custody and home detention order should be introduced in the sentencing armoury. Every single one of these measures find themselves into this Bill.

And, specifically, therefore, when hon. Senators seek to make enquiry as to where matters came from, they, in fact, came from the very good work that was purchased by the last Government through the wide consultation that we had, and now finds itself here. But, more particularly, under Cabinet Minute 252 of January 29, 2015, the last Government specifically approved a Bill, which we have modified after further consultation, but in that Bill, I must point out, for Sen. Mark, through you, Madam President, that the concept of a "suspect" at law was a feature approved by the last Cabinet. Specifically, section 4—clause 4 of the Bill, approved by the last Cabinet says:

> A prosecutor and an accused person, or where the accused person is represented—et cetera—may, at any time before conviction, engage in plea discussions. For the avoidance of doubt, a plea discussion may be entered into and a plea agreement concluded before charges are instituted against the accused person.

Before a charge is instituted, you are a suspect at law, and the issue of dividing out "suspect" as we have came about because of the debate in the House of Representatives held in relation to this Bill in this session of Parliament, where no less a person than the Leader of the Opposition made the suggestion that we needed to clean up the Bill by separating out a suspect from someone who was charged, and that is how this Bill, after a long gestation period, after pausing in the

House of Representatives, finds itself with the concept of "suspect" before us now.

So let us forget the fact that a previous Government, now Opposition, agreed. No problems. This is a different House. We are entitled to change our point of view. I do not mean to be pejorative about it. The fact is that there is merit in including suspects into the arena because as Sen. Heath said a while ago, today, in Trinidad and Tobago, there is constant use of informal plea discussion, and that is a feature which is not different from many other jurisdictions: the United Kingdom, Australia, Canada, the United States of America. There are no limitations on suspect or convicted persons—sorry, prior to convicted, accused persons who have been already recipients of charges against them entering into these discussions. You see, the opportunity is also amplified by the practice in Trinidad and Tobago where the Director of Public Prosecutions actually gets involved in consulting with the police in relation to this matter prior to charge. Not plea discussion necessarily but what is an appropriate charge, and there is genuine discussion on that. So we are formalizing into our laws a system which is in practice and unregulated.

But Sen. Mark also asked the question as to—well rather, the Opposition has advanced the position that we ought to have a balance against improper inducement and that we should maintain what is the feature of section 5 of the existing law by criminalizing improper inducement. The policy paper, the 2014 forum, conclusively dealt with the issue that every single stakeholder, wide consultation, wide participation, held the heartfelt view that criminalizing this was one of the reasons why it did not work. And, therefore, the proposal to remove it found itself into favour of the Government by way of policy prescription, but in the 2015 Bill of the United National Congress, specifically, the clause that deals with

improper inducement, clause 8, reads as follows:

> No improper inducement shall be used to encourage an accused person to participate in a plea discussion.

There is no criminal sanction associated with that. Why? Because all of the deep research and policy work which stands on this, which stands behind this, which stands next to it, on either side, any which way you want to look at it, says criminalizing the prospect of improper inducement is something to be frowned upon because it causes the system to grind to a halt.

Let us flip it on its head, what is there otherwise to have us deal with an improper inducement? Well, is it not true that perverting the course of justice is a feature of the common law? Is it not true that that is something which can be pursued under the criminal law against persons who find themselves in that position, for which improper inducement may well constitute that fact? Is it not true as well that section 5 of the existing law which criminalizes improper inducement is at a level similar, if not equal, to perverting the course of justice? Is it not true that in narrowing down the perspective, as we have, by removing police officers from the matrix, by having the Director of Public Prosecutions squarely involved which fits in with the 2014 observations of the current Director of Public Prosecutions that the use of police officers, in this matrix, should be frowned upon because of the allegation of improper inducement? Now, as we seek to narrow that down only to the DPP, is it not true that the Judicial and Legal Service Commission also has disciplinary rights which can act as a second matrix cover in this?

You see, there is adequacy already in the existing law which, albeit not within the four corners of this particular Bill, can be brought in aid to treat with

improper inducement. But that is also to be amplified by the fact that this Bill proposes that you may enter into a plea discussion in Part II, you could consider your victim impact statement in Part III and its operationality. But when you get to Part IV of the Bill and you are talking about the plea agreement itself, you are taking all of the material to a judicial officer of the High Court. The magistrate must send to the High Court. If it is in the High Court, it goes to the High Court. The judicial officer, with full disclosure, considers the propriety under the administration of justice with the safeguards for the accused in place, with the improvements that we have now in the forms which make sure that the certification of rights is had. All of that stands as due process, right of fair hearing, safeguards, to ensure that the Judiciary has the final say, but we do not stop there. It is open to appeal and the highest court of this land is the Privy Council. There is no limitation on the right of appeal. So we are putting into place and which is why we circulated, for hon. Members, a matrix of the process flow of this Bill.

You see, this Bill has been through many years of reflection. This Bill has certainly been through, in terms of dedicated work, 2013, 2014, 2015, 2016, 2017—five years of consultation, five years of input, five years of analysis, but hon. Members are right. We are not looking at this in a vacuum. We are—and hon. Members are aware now—dealing with this thing in a matrix approach where we are dealing with a number of Bills which articulate upon the improvement of the criminal justice system but we are not hanging our hats, most respectfully, on the pegs of legislation. We are dealing with it specifically when we talk about improvements to the creatures that must carry out the law. Ninety-five per cent of prosecutions are dealt with by the Trinidad and Tobago Police Service in the Magistracy; 95 per cent of it. The Trinidad and Tobago Police Service has, in

terms of its strength—its sanctioned strength, of a sanctioned strength of 7,884 persons, there are 5,400 as at March 2017. When we look to the actual number of attorneys in operation, when we look to the number of court prosecutors, as at February 24, 2017, there are 53 court prosecutors in the TTPS, there are only eight lawyers in that pack. When we look to the number of lawyers in the Trinidad and Tobago Police Service, we have 24 lawyers in the Trinidad and Tobago Police Service.

Bearing that in mind, I would like to put onto the record that with the advent of the Criminal Procedure Rules, the Government did not stop there. We executed, and it is now in progress, the decision to conduct a manpower audit in the Trinidad and Tobago Police Service. Why? Because unless you are looking at the efficiency of your Trinidad and Tobago Police Service with 95 per cent prosecution, with charges that come about only after investigation, unless one knows what the progress of charges looks like, what the time frame between an allegation and a charge looks like, what the number and flow looks like, what the process management looks like, then we are, most respectfully, spinning top in mud.

In a six-year period, we have spent $15.1 billion on the Trinidad and Tobago Police Service. In a six-year period, we have spent $27 billion on top of that in dealing with national security and crime. Twenty-seven billion dollars plus $15.1 billion and where are we? Where are we as a country? You see, too many people hide in dark spaces and by that I mean, too many people who are determined to not earn an honest day's pay for effort hide in dark spaces, and they hide because they are not being measured by outputs and deliverables. That is what the manpower involves.

But what we did with the advent of the Criminal Procedure Rules is we went

into the Trinidad and Tobago Police Service and we conducted a prosecutorial audit by the creation of prosecutorial centres and case management centres in the TTPS that handle 95 per cent of the prosecutions. We have drafted, in that regard, file management manual for investigators and prosecutors of Trinidad and Tobago, 2016. We have given case management in Trinidad and Tobago Police Service management committee report. We have dealt with the bringing up to date of the compass tracking case system which has laid in a system of disuse. Sen. Ramdeen raised a very important point about the use of cautionary statements and how witnesses give evidence in this country. I am very pleased to say that the Government has acquired video recording suites that are installed and in operation so that you will not have to rely upon witness statements in front of a JP, if "yuh lucky", in compliance with the Judges' Rules, where you do not know whether the person was beaten, coerced, threatened or otherwise treated with.

But after we called the bluff of the TTPS and other persons—and I am sorry to put it that way. After we called the bluff as to where the 14 other video recording systems were because Trinidad and Tobago acquired 14 other video recording suites that were never put into operation. After we bought the other suites, we found the others. And we are insistent that every single interview that is to happen, every statement that is to happen, will be video recorded because we must balance the rights of individuals against the right of the State to protect its society, if I can put it that way. I am, of course, changing the concept a little bit.

With that in mind, we have not stopped there. DNA, I just gave some of the statistics in relation to firearm matters, narcotic matters, sexual offences, in the thousands, which is why we hurried up and brought in the DNA regulator and appointed the DNA regulator, which is why we are completing the procurement of

the entity to provide the services for the DNA bank and the DNA testing. Because we have already earmarked that that is to be finished before September and we have earmarked that it will take a mere six weeks to do the entire prison population in Trinidad and Tobago.

When we start marrying hard facts, incontrovertible percentages of probability against the number of matters outstanding, you will understand why we went into the Judiciary and pulled out the 400 cases longest in backlog and said get them ready for trial. And how do we get them ready for trial? You need a prosecutor, you need a defence attorney, you need evidence, you need courtrooms, you need judges, you need the DPP's office. So we went into action gear by getting the JLSC, through advocacy, to appoint more JLSC officers. The DPP told us "Hold strain, I am now about to go into new accommodation" which the Government has sourced in San Fernando and in Port of Spain and in Tobago for the DPP, and the DPP will then tell us, hopefully this month, "I am ready to promote the following and take the rest in", so we have unstuck that system.

Last year alone, the Office of the Attorney General provided $88 million in external legal fees to the office of the DPP; $88 million. So the DPP's office is not under-resourced and it is not without an anxious Government behind it to provide resources. So we went to the Judiciary and we told the Judiciary, let us operationalize you, and so we have gone for the financial autonomy of the Judiciary. Ministry of Finance, Office of the Attorney General, the Judiciary, we are working out the matrix so that the Judiciary can spend its own money the way it wants to. And in July of this year, we will be able to open the Children and Family Division Courts having only passed the law last year. That is a first for this country. It is a first for this country, but we did not stop there.

We have already created draft advice public prosecution service for Trinidad and Tobago. Why? Nobody is managing the prosecutorial management of Trinidad and Tobago. Policemen arrive at court with long lists to be adjourned, which is why the Criminal Procedure Rules had to come in. Granted there can be more consultation by the Judiciary and the Law Association with respect to the private practitioners at the Criminal Bar on the Criminal Procedure Rules, but you know what? We are no longer talking about them coming into effect, they are in effect. And we have taken the public prosecution service so that we can now manage the cases so that we are ready at court when court starts because that has been one of the reasons why trials do not get off the ground, but we have gone a step further.

We have specifically built out, which is now about to flow into the Legal Aid and Advice Authority, now that we have reconstituted the authority, a public defenders system for Trinidad and Tobago. I went to the United Kingdom, I met with the DPP of the United Kingdom, I met with the head of the public defenders service in the United Kingdom. We have arranged for prosecutorial input and assistance. We have arranged for public defender overseeing by the United Kingdom and we are going to retrofit the Legal Aid Authority into a public defender system on the criminal side. So that when your counsel of choice is not available, the State will provide you with an attorney of competence. So trials, backlog now identified, specialist courts which will be opened, prosecutors, defence attorneys, forensic evidence. Do you see what is happening? We have not been dealing with this thing in a vacuum. We have not been taking this thing in a piecemeal approach, far from that be the case. We have been looking at the operationalization of laws.

Electronic monitoring is right now in progress of final stages for procuring

the bracelets, the anklets, the computer systems which have to manage it, the telecommunication systems, the response systems, but we have gone a step further. We went into the prisons of Trinidad and Tobago and we did a case analysis of every single prisoner—up to a particular point—to look for who had passed maximum sentence. Because what is the point of having someone awaiting a trial for a term of imprisonment which was a maximum amount at 10 years or 15 years and the person was there for 17 years already? What is the point? So common sense was put into the equation. So, hon. Senators, we have not been slow to think about the remedies.

Hon. Minister Stuart Young went to China, as I went to the Jamaica, to deal with the forensic laboratories because we are looking at a turnkey system on the long run for Trinidad and Tobago because we need better services in relation to our pathology, we need better services in relation to forensics, we need reliable space and positioning. They have long since outgrown their capacity. But I am pleased to say that the firearms backlog has gone down, I am pleased to say that other aspects of it are moving forward. We are now hiving off DNA to deal with paternity for the first time in this country as we have assented to that law. And therefore, what we are trying to convey to hon. Senators is, we have spent a lot of time looking at the systemic problems. Whilst we legislate, we are operationalizing; whilst we are contemplating pieces to articulate with each other in terms of law, we are building the institutional capacity. We might not get it—[*Interruption*]

Madam President: Attorney General, you have five more minutes.

Hon. F. Al-Rawi: Thank you, Madam President. We might not get it right in the first instance immediately but nothing clearly has been right. We have a piece of law that we are seeking to repeal that was passed in 1999 and in 2014, 14 people

alone—[*Interruption*] 12 people alone had dealt with it formally. Twelve people in the period 1999 to 2014, and the reason is that the systemic capacity was not improved; the use of evidence on a scientific basis was not dealt with; the use of a public defender system was not tried out; the use of prosecutorial management was not dealt with. Case log analysis telling Trinidad and Tobago what the real cost of democracy is. Because you know what? The real cost of democracy is the savagery on our streets on a daily basis. None of us here are immune from it and I certainly get the feeling that every single one of us here, to a Senator and to a Member of Parliament, in the House of Representatives, has an abhorrence for crime and it shows in the contributions of hon. Senators. I do not for one minute discount the honour behind the statements of intent.

Hon. Senators, we propose to circulate to hon. Members our views on some of the specific clauses recommended by the hon. Members of the Opposition, certainly those recommended by Sen. Chote as I have got them clear for now. As we get the others filled in, we propose to circulate that out. That is not a usual feature of a Parliament, I just wish to remind. I sat in Opposition for five years here in the Senate and never once did I have material of that kind circulated, but I will not take that particular approach. It does not hurt me to say it in advance. I do not mind if you come—it only helps to improve the product if you have considered it and you come reloaded.

I do think that the law is very well thought out. I think that there is no one perfect model to match the positions. I am confident we can analyse the positions in the Senate. I do not, respectfully, believe that we will be able—and I do not mean to pre-empt consideration of proposals. I do not think that we would be, respectfully, able to deviate from the policy of the Government as it relates to

"suspects", dealing with the provisions of putting a sanction against improper inducement or dealing with some of the approaches that we have dealt with. And in those circumstances, I can only ask for careful consideration of hon. Members and I beg to move. [*Desk thumping*]

Question put and agreed to.

Bill accordingly read a second time.

ADJOURNMENT

The Minister of Trade and Industry (Sen. The Hon. Paula Gopee-Scoon): Madam President, I beg to move that this Senate do now adjourn to Tuesday, 27th June at 1.30 in the afternoon and this will be Private Members' Day. Sen. Mark.

Sen. Mark: Thank you very much.

Madam President: Well, Sen. Mark, before—yes.

Sen. Mark: Okay. Thank you.

Madam President: Hon. Senators, before I put the question on the adjournment, leave has been granted for a matter to be raised on the Motion for the adjournment of the Senate. Sen. Mark, you have 10—you are not doing it again?

Sen. Mark: Yes, yes, yes, she just wanted—

Madam President: I know. We will deal with that after at the later stages. You have 10 minutes.

Rounding Off 1 Cent Coins

(Imposition of)

Sen. Wade Mark: Yes, thank you very much, Madam President. The Motion deals with the imposition of a round of new taxes by the Government through Central Bank by rounding off the 1 cent coin. Bank notes and coins are the most important contact points for central banks with the public. They do not only play a

key role in the reputation and public perception of the Central Bank, but it is also tied to the public's faith in the strength of the economy and nation. Widespread public acceptance is therefore an important criterion for evaluating any changes to currency and coinage.

9.40 p.m.

Madam President, on January 20, 2017 the Central Bank of Trinidad and Tobago issued a public notice on its website indicating it would be eliminating the 1 cent coin from circulation. On June 01, 2017, the Central Bank released another notice on its website indicating the following from July 01, 2017.

- "The 5, 10 and 25 cent coins with new metallic composition will be issued.
- No more 1 cent coins will be issued.
- Cash rounding guidelines will apply.
- The Central Bank will be launching a coin redemption drive…"—in the country.

Madam President, there was no prior indication that the Central Bank was contemplating a sensitive national decision on the future of the 1 cent and, even worse, doing so without the benefit of first having consultations with key stakeholders, consumers, businesses, banks, charities and even coin collectors.

The Central Bank put forward only one argument for eliminating the 1 cent—an economic case put forward by many other countries that did away with their low denomination coins—simply put, every 1 cent coin cost more to make than it is worth. The 1 cent now costs 21 cents to make. So every time a 1 cent coin is minted, the Central Bank loses money. By eliminating the penny, the Central

Bank believes it could save some nine and a half million dollars in minting cost per year.

Madam President, a responsible Central Bank should consider the following issues: What impact would this have on charitable organizations that receive 1 cent coins as donations? What is the potential cost to retailers associated with converting their change-making systems? What is the cost to the Central Bank of removing pennies from circulation and liquidating them? And what is the potential impact on firms pricing methods and overall inflation? Madam President, perhaps the Central Bank did carry out a careful economic analysis of the cost and benefits associated with eliminating the 1 cent coins. Perhaps it presented a strong enough case to convince the Minister of Finance, who by law, must approve any changes to our notes and coins to do away with the penny.

What is evident, however, is the Central Bank's failure to communicate to the public that eliminating 1 cent coins will hurt the poor and other low-income groups who are already reeling from higher food and gas prices, higher taxes, a stagnant economy, rising unemployment and an impending property tax. Cash transaction, Madam President, would now be subject to a rounding tax. If each of the 1.4 million citizens in this country experience a penny of net rounding up per day, this would amount to a rounding tax of $5 million per year.

Although the initial inflationary impact of eliminating the 1 cent coin and the rounding tax will probably be small, the effect in dollar terms will accumulate over time to a considerable sum. Conservative estimates put the inflationary effects of the rounding tax on the Government and private sectors at least $100 million over the next 10 years.

Madam President, the resulting rounding tax is likely to be regressive, mainly affecting lower income groups who also use cash more frequently than individuals with higher incomes. This means, Madam President, that the rounding tax will reinforce the existing, regressive nature of the 12½ Value Added Tax on food, and the 7 per cent online sales tax. The poor would be hit especially hard.

The Central Bank cites cost as the driving force behind its move to eliminate the 1 cent coin, but if there were no 1 cent coins, the Central Bank would have had to produce more 5 cent coins. Nickels also cost more to make than their face value, Madam President, so the Central Bank will also be losing money on the 5 cent coin when it produces it. Will the Central Bank soon argue, Madam President that they will have to eliminate the 5 cent coin and to round it to nearest 10 cent? In addition, will the hidden cost associated with eliminating the 1 cent coins over the period ahead, how will that impact on the people?

Over the past 50 years, Madam President, the 1 cent remains the most widely circulated coin, accounting for half of the total value of all coins in circulation. On average, some 45 million 1 cent pieces are minted each year in this country. What are the plans of the Central Bank to deal with the massive outstanding stock of 1 cent coins that will come back?

Madam President, regardless of the strength of its economic argument, the Central Bank should not underestimate the emotional attachment Trinidadians have to the 1 cent. What is the training mechanism in place put by the Central Bank for cashiers at supermarket outlets, at gas station and other retail outlets? This is a cash-based society.

The Central Bank has not produced any guidelines formally to the public of

Trinidad and Tobago. They have not provided any formal training as far as I am aware, and public education insofar as this decision to eliminate the circulation of 1 cent coins from the 1st of July, 2017. Madam President, there are eight more days to go before the 1st of July and before the elimination of the 1 cent coin and the Central Bank has failed miserably to communicate to the public of this country as to what is involved in this exercise.

Madam President, like TTT, like BWIA, the 1 cent coin is very closely associated with the population of this country and, therefore, I would like to ask the hon. Minister of Finance what mechanisms have been put in place to deal with this matter.

Madam President: Sen. Mark, your time is up.

Sen. W. Mark: Thank you very much, Madam President.

The Minister of Agriculture, Land and Fisheries (Sen. The Hon. Clarence Rambharat): Madam President, thank you very much. Madam President, I want to have as much respect for my colleague, Sen. Mark. In 1979, when he graduated from the University of the West Indies with a degree in Economics and Politics, I was still in primary school, and tonight I really expected to hear from him more of the economics and less of the politics.

I must say I was disappointed because just before coming into the Senate, I viewed a video that is posted on the website of the former Governor of the Central Bank, Jwala Rambarran, and I have no issue with Mr. Rambarran. I, myself, looked at the 15-minute video, and in looking at that, I saved myself listening to much of what Sen. Mark has said. [*Desk thumping and laughter*] The little data that has been presented is on the video and the four points in support of the Motion

come from that video, except that I do not know who produced the video except to say that the only place I have seen it is on that particular website, which I do not frequent very often.

I would make a few points, Madam President, in response to this Motion. The first is to say that there are five steps in dealing with this matter,and the first and important point I want to make is that this is not a creation of the People's National Movement Government. In fact, when you look at the 1 cent, the humming bird is shown on one side feeding on a balisier, and we would have been happy to preserve the 1 cent piece if only for that, but the fact is that long before 2015, [*Crosstalk*] the Central Bank—[*Interruption*]

Madam President: Calm down.

Sen. The Hon. C. Rambharat:—had been examining the issue of the 1 cent piece, one; and, two, the composition of all the coins that are in circulation. [*Interruption*]

Madam President: Sen. Ameen. Hon. Minister, just one minute please. Sen. Ameen, you can have your crosstalk, but just not as loudly, when it becomes the talk. Okay? Minister, continue please.

Sen. The Hon. C. Rambharat: Thank you, Madam President. I was quite prepared to continue on. So, Madam President, the consideration not only of the cessation of the circulation of the 1 cent, but also the change in the composition of all the coins was a decision under consideration by the Central Bank long before October 2014.

The second point is that the Board of Central Bank, in January 2016, considered and agreed to recommend to the Minister of Finance two things: a change in the existing metallic composition of the Trinidad and Tobago coins to a

more cost-effective composition, using modern technology of plating; and two, the elimination of the issuance and later the monetization of the 1 cent piece. So the two elements or the three elements are the change in the composition; secondly, the elimination of the issuance. In other words, the bank will cease issuing new coins; and third, ultimately, the removal of the 1 cent piece as a form of legitimate or legal currency in Trinidad and Tobago.

The third step is a legal notice published by the Central Bank in keeping with section 26 of the Central Bank Act, Chap. 79:02 and that is, Legal Notice No. 25, referred to as the Central Bank Coin Standard Weight and Composition Regulations 2017, and that dealt with the issue of the composition of the coins that are currently in circulation.

The fourth step, Madam President, is that effective July 01, 2017, the Central Bank will take steps to introduce, in its new composition, the 5 cent, 10 cent and 25 cent coins and, at the same time, deal with the elimination of the 1 cent coin and it will deal with that in two stages: the first, a period from July 01, 2017 when it would encourage the public to voluntarily stop the use of the 1 cent through rounding up—and the part that Sen. Mark omitted—rounding down. What that means, Madam President—and I just want to answer Sen. Mark on the issue of the lack of work done by the Central Bank to educate the public, and I disagree with that.

The very same website that Sen. Mark went on to the Central Bank website, you would see a lot of information available to the public in relation to this process and, in fact, Madam President, I would read for you the schedule of public education sessions being conducted by the Central Bank. June 21st at the Central

Bank; June 22nd today, at the Auzonville Mall in Tunapuna—it is gone already. Sen. Mark, you would not be able to make it today; June 23rd at the Victor E. Bruce Complex in Scarborough, June 28th at Gaston Court in Chaguanas and June 29th at the Mayaro Resource Centre in Mayaro and Sen. Mark I will be happy to have you there on June 29th with me. [*Crosstalk*]

Sen. Mark: The MP will invite me.

Sen. The Hon. C. Rambharat: The MP and I will invite you.

Sen. Mark: Rushton Paray.

Sen. The Hon. C. Rambharat: Very well.

Sen. Mark: I know you are trying to take away the man "wuk". [*Desk thumping*]

Sen. The Hon. C. Rambharat: Once you come, once you come and educate yourself [*Crosstalk*] because on that day the Central Bank will tell you not only about rounding up but rounding down. I would say in relation to the Motion, Madam President, that those are the steps to be taken, and after this voluntary period there will be a final step, which is the demonetization of the 1 cent—the removal of the 1 cent as legal currency after which it will cease having—you will not be able to use it.

So, Madam President, in relation to the Motion that is before us, I would say that the work of the Central Bank has gone on for a period of time. The Central Bank, after January 2016, provided advice to the Minister of Finance; Cabinet approved the recommendations of the Central Bank and the Central Bank has gone into activity which is to change the composition of the coins, which will remain in circulation, the 5, 10 and 25 cents coins.

We are going to a period, a voluntary period where we will have rounding

up and rounding down and then we will go into a period of demonetization. Most importantly, on the rounding up and rounding down, Madam President, there will be instances in which the rounding up will lead to a few cents more and the rounding down will lead to a few cents less. I would say that absolutely nowhere in Sen. Mark's Motion he has produced evidence to demonstrate that the rounding up, the rounding down will lead to any additional burden on any consumer anywhere.

I accept that everywhere the issue of eliminating small coins has arisen, there has been this discussion on rounding up and rounding down and the expression of it being a tax. I accept that in some economies, the effect, the inflationary effect and the taxation effect, if you could call it that, outweighs the value of the elimination of the coins and in some economies the elimination is much higher in terms of impact than the so-called rounding tax. I have seen and heard nothing to the effect. I think that the Central Bank is on the right road. It would lead to—[*Interruption*]

Madam President: Minister, your time is up.

Sen. The Hon. C. Rambharat: Thank you very much, Madam President. [*Desk thumping*]

Madam President: Hon. Senators, I will now invite Senators to bring greetings for the Eid-ul-Fitr celebrations to be held on Monday, June 26, 2017. Minister of Rural Development and Local Government. [*Desk thumping*]

Greetings

(Eid-ul-Fitr)

The Minister of Rural Development and Local Government (Sen. The Hon. Kazim Hosein): Thank you very much, Madam President. On behalf of Members on this side and on my own behalf, I am delighted to share in this honourable

House, through you, Madam President, my heartfelt Eid-ul-Fitr greetings to the Islamic community, both at home and abroad and to all citizens of our beloved and diverse nation. Throughout the month of Ramadan, Muslims across the world have, once again, deepened their practice of their faith through fasting and reflection on the values of peace, harmony and cooperation that are the heart of Islam.

Preceding this month of Ramadan, which is the ninth month of the Islamic Calendar Year, we observe the month of Shaban in which we prepare for the whole month which is fast approaching. We approach Ramadan withgreat happiness as during this month the blessings of Almighty Allah are magnified 70-fold, making the end of the month of Ramadan and the beginning of the month of Shawwal we observe the Eid-ul-Fitr.

We are delighted to celebrate Eid-ul-Fitr with all citizens. This is a time of the personal, family and social renewal as we pray and gather together. The spirit of peace, brotherhood and harmony are at the heart of the observance of Ramadan and the breaking of the month of fast on Eid-ul-Fitr is something that everyone regardless creed or religion can take away from the observance and apply to their daily lives.

Fasting serves many purposes. During the abstinence from permissible—that is the fasting from eating, drinking and all forms of enticement or temptation—Muslims are reminded of the suffering of the less fortunate, so that we will remember to have compassion to our fellow men. Fasting is also an opportunity to practise self-control and to cleanse the body, mind and spirit.

As Ramadan comes to an end, people pay zakat which is charity and it is annual earnings of 2.5 per cent which is among the fundamental pillars of Islam.

Greetings 2017.06.22
Eid Ul Fitr
Sen. The Hon. F. Karim

Along with observing fast, helping the less fortunate is of great importance, not just at the time of the year but as a part of a devout and complete Islamic way of life. Especially now, given our recent challenges, it is important that we share the profits of our hard work with our brothers and sisters across Trinidad and Tobago. We have a responsibility to give to those who are less fortunate and will truly benefit. We must be our brothers' keepers.

And, Madam President, I want to take this opportunity that our brothers and sisters who have just went through the flood, the storm, that we give charity. I want to encourage the Muslim community to give charity to those less fortunate who have been affected. I have seen first-hand the children suffering—they need clothes, they need foodstuff, they need material, they need housing material and roof material—so whatever they can give back to these less fortunate people, all over in the 14 corporations, especially in the southern area—from Toco, Manzanilla, Mayaro, Princes Town, Penal, Debe and Siparia that whole area. Madam President, I have intention of visiting all these corporations shortly.

It is during the month of Ramadan that Allah revealed the Holy Quran to the Holy Prophet Muhammad upon whom be peace. One night a voice called to him from the sky. It was an angel Gabriel who told Muhammad, peace be upon him that he had been chosen to receive the word of Almighty Allah. In the 23 years that followed, Muhammad, peace be upon him, found himself with a most precious gift and began reciting and transcribing the Holy Quran. In giving the word of Almighty Allah to his fellow men, Prophet Muhammad upon whom be peace, deliver to us the most profound mercy from the Almighty.

At many Mosques during Ramadan a portion of the Quran is recited each night and the prayer is known as Taraweeh. In this way, by the end of the month,

every scripture of the holy book is recited. "Eid" is an Arabic word which means "recurring happiness or festivity"; "ul" is simply the article "the"; "Fitr" means "breaking of the fast". Eid-ul-Fitr, therefore, can be translated to mean the festival of breaking fast.

In Trinidad and Tobago, Eid-ul-Fitr was first declared a holiday in 1967. I was just around eight years old, not yet old enough to participate in the month-long fast, but not without a profound knowledge of the significance of Ramadan. My father would take my brothers and me to the Mosque every evening so that we could feel a part of the brotherhood that builds during the holy month. As we held hands and walked to recite the evening prayers, I certainly felt the sense of togetherness building within the Jamaat.

When Dr. Eric Williams announced to the Islamic community one of the celebrations recognized nationally, he gave to the Muslims across Trinidad and Tobago, a brand-new bond of togetherness which was formed at the national level. This reinforced the diversity of our people and it recognized the contributions of the Islamic community to the political, social and economic fabric of Trinidad and Tobago.

Islam was widespread across the country, long before it was given national recognition by the administration held by the People's National Movement under the leadership of Dr. Eric Williams and an administration in which an Islamic brother, the late Kamaluddin Mohammed, may his soul rest in peace, was very prominent. We must be thankful for the visionary, progressive and inclusive leadership that has always characterized those at the helm of our party.

So on behalf of the Government of Trinidad and Tobago, I extend blessed Eid-ul-Fitr to our beloved nation with firm conviction that the contributions of our

Islamic brothers and sisters is an integral part of what makes us all Trinidadians and Tobagonians.

I want to wish all good health, long life and may Almighty Allah grant us good in this world and good in the hereafter, and may we live to see many more Eid Mubarak. I thank you, Madam President. [*Desk thumping*]

Sen. Khadijah Ameen: As-salamu alaykum, may the peace of God be with you. The Muslim holiday of Eid-ul-Fitr or Eid celebrates the end of Ramadan,the holy month of fasting. The observance traditionally begins with the sighting of the new moon of the tenth month of the Islamic Luna Calendar. This year, Eid falls on Monday, June 26th.

On behalf of the Opposition United National Congress in this Senate, I extend warm greetings to our Muslim brothers and sisters of our beautiful Republic of Trinidad and Tobago on this most auspicious occasion of Eid-ul-Fitr.

May Allah find your fast worthy of reward and may he shower you, your families and our nation with blessings of love, harmony, wisdom and prosperity.

10.10 p.m.

Madam President, in Islam there are five pillars: Shahada, faith; Salat, prayer; Zakat, which is charity; Sawm, which is fasting; and Hajj, or pilgrimage. Over the past holy month of Ramadan, the Muslim community would have demonstrated great discipline and sacrifice in adhering to these pillars. Ramadan marks the anniversary of the Qu'ran being revealed to the Prophet Muhammad, peace be upon him.

It is said that part of Ramadan's purpose is to feel that hunger that the poor person would face every day so that we could appreciate the sorrow of the sick and to review our own lives to get closer to Allah. It is a call for introspection, moving

beyond the shallowness of daily routines to seek inner truth and peace. Whether we are Muslims or not, there is a valuable lesson in Ramadan and Eid-ul-Fitr for all of us, if we allow ourselves the spiritual and emotional space to put aside our differences.

It is my hope that the example of sacrifice, devotion, attention to family values, belief and kindness within the Muslim community, demonstrated during this holy month of fasting, and the celebration of Eid itself, makes a positive impact on all our citizens.

The contribution of the Muslim community to national development has been and continues to be invaluable to the growth of our country in education, in business, culture, social work, media and yes, politics. I commend you, the Muslim community, on the selfless service you perform for all citizens of our beloved nation. Today, as our national community shares the radiant joy of Eid celebration, it is my wish and prayer that the blessings of Allah light your way and lead you to happiness and peace.

There is perhaps no better time that during this, one of our national days of observance, to express as a nation our thanks to God for the blessing of our unique diversity and harmony that we have been bestowed as a nation. The words of our National Anthem indicate a noble objective, “Here every creed and race find an equal place”.

We must, as citizens of this multi-religious nation, always keep our hearts open to understanding that though different, we all stand equally in the sight of God. Religion must seek to unite rather than divide peoples and nations. The celebration of Eid-ul-Fitr comes all the more meaningful as its message of unity, brotherhood, peace and forgiveness becomes a reality to both Muslims and non-

Muslims alike.

At this time there is a phenomenon of the corruption of the Islamic belief from a message of peace to one of terrorism and violence. We are not immune to this in Trinidad and Tobago, and so I urge Muslim citizens to share information on the true beauty of Islam to non-Muslims and for non-Muslims citizens to educate themselves on what Islam truly is, as I do believe that education is the lamp to erase the darkness of ignorance.

Thomas Jefferson said:

"Bigotry is the disease of ignorance, of morbid minds; enthusiasm of the free and buoyant. Education and free discussion are the antidotes of both."

At this time of celebration, let us remember that it is by working together, holding hands in the spirit of unity and building on the firm foundations laid by our ancestors that we will make Trinidad and Tobago a better place, where there is peace and prosperity for all.

May the blessings of Allah fill your life with happiness and open all doors of success now and always. Eid Mubarak.

Sen. Nikoli Edwards: As-salamu alaykum. Eid-ul-Fitr is an important religious holiday celebrated by Muslims worldwide that marks the end of Ramadan, the Islamic holy month of fasting. There are more than 100,000 Muslims making up the population of Trinidad and Tobago. Eid-ul-Fitr is an occasion for prayers, when the Muslims gather in large congregations standing shoulder to shoulder to demonstrate the equality and equity which is the inherent feature of Islamic society all over the world. But the greatest significance of this day of rejoicing lies in the fact that on this day every Muslim is enjoined to give the needy food at the rate of the prescribed weight per every member of his household, including servants and

guests who were sheltered under his roof the preceding evening.

Eid-ul-Fitr then serves a three-fold purpose. It places upon every Muslim the obligation to remember Allah and offer him thanks. It affords him an opportunity of spiritual stocktaking, in that, he can now ponder over the strength of his will or the weakness of his character as the case may be, which manifested itself during the preceding month of Ramadan. It also is the day for the haves to share a portion of what they have with the have-nots.

The first Muslims to arrive in this country arrived from Africa brought as slaves by the colonists. From the 1840s, Muslims came from South Asia as part of the Indian indentured system to work on sugar cane and cocoa plantations. While Muslims today are mostly of South Asian descent, there are coverts from all races. Therefore, on behalf of Members of the Independent Bench, we wish the Muslim community a safe, holy and reflective Eid-ul-Fitr. Let this be a time that we do not see our Muslim brothers and sisters as threats to our safety and peace of mind, but rather as allies, as they have been and continue to be, in contributing to the development of Trinidad and Tobago. Eid Mubarak, as-salamu alaykum.

Madam President: Hon. Senators, it is my privilege to join with those who have spoken before me in bringing greetings to members of the Muslim faith on the occasion of Eid-ul-Fitr.

As we have heard, this Eid marks the end of Ramadan, a holy period of fasting and of prayer. Ramadan is a time of self-discipline and self-restraint, and the fasting is not only of the body but also of the mind, with both serving to guard the person against wrongdoing and evil.

Eid, although it may come after Ramadan, is not the end of holiness but rather serves as an opportunity for renewed commitment to ongoing holiness, and

is a time of stocktaking and self-analysis. It also is a time of charity marked by the giving of alms to the less fortunate as an example of faith in action.

In Trinidad and Tobago, the celebration of Eid as a national holiday underscores this country's diversity and our respect for one another's religion and deepens the spirit of harmony and peace in Trinidad and Tobago.

It is therefore with great pleasure that I join in wishing all Muslims and all of Trinidad and Tobago, Eid Mubarak. [*Desk thumping*]

Arrangement of Business

Madam President: Sen. Mark, I think you wanted to say what you would be dealing with, before I put the question.

Sen. Wade Mark: Thank you very much, Madam President. May I advise the hon. Acting Leader and your good self, Madam President, and my colleagues on the Independent Bench, that we shall be addressing Motion No. 2 in the name of Sen. Wayne Sturge.

Question put and agreed to.

Senate adjourned accordingly.

Adjourned at 10.18p.m.