SENATE

Thursday, September 14, 2017

The Senate met at 2.00 p.m.

PRAYERS

[MADAM PRESIDENT *in the Chair*]

REVOCATION OF 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 of the Republic of Trinidad and Tobago.

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

TO: MR. WALEDE MICHAEL COPPIN

WHEREAS by the provisions of paragraph (e) of subsection (2) of section 43 of the Constitution of the Republic of Trinidad and Tobago, the President, acting in accordance with the advice of the Prime Minister, is empowered to declare the seat of a Senator to be vacant:

NOW, THEREFORE, I, ANTHONY THOMAS AQUINAS CARMONA, President as aforesaid, acting in accordance with the advice of

the Prime Minister, in exercise of the power vested in me by the said paragraph (e) of subsection (2) of section 43 of the Constitution of the Republic of Trinidad and Tobago, do hereby declare the seat of you, WALEDE MICHAEL COPPIN, to be vacant, with effect from 24th August, 2017.

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 24th day of August, 2017."

SENATOR'S APPOINTMENT

Madam President:

"THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO

APPOINTMENT OF A SENATOR

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 of the Republic of Trinidad and Tobago.

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

TO: MR. ROBERT LE HUNTE

In exercise of the power vested in me by section 40(2)(a) of the Constitution of the Republic of Trinidad and Tobago, I, ANTHONY

THOMAS AQUINAS CARMONA, President as aforesaid, acting in accordance with the advice of the Prime Minister, do hereby appoint you, ROBERT LE HUNTE, a Senator, with effect from 31st August, 2017.

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 31st day of August, 2017."

LEAVE OF ABSENCE

Madam President: Hon. Senators, I have granted leave of absence to Sen. The Hon. Jennifer Baptiste-Primus and Mr. Daniel Solomon, both of whom are out of the country.

SENATOR'S 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. RONALD HUGGINS

WHEREAS Senator JENNIFER BAPTISTE-PRIMUS 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, RONALD HUGGINS, to be temporarily a member of the Senate, with effect from 14th September, 2017 and continuing during the absence from Trinidad and Tobago of the said Senator JENNIFER BAPTISTE-PRIMUS.

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 13th day of September, 2017."

Madam President: Hon. Senators, I am awaiting one final instrument of appointment and when that is delivered we will do a separate swearing in.

OATH OF ALLEGIANCE

Senators Robert Le Hunte and Ronald Huggins took and subscribed the Oath of Allegiance as required by law.

JOINT SELECT COMMITTEE

Energy Affairs

(Change of Membership)

Madam President: Hon. Senators, I have received the following correspondence from the Speaker of the House of Representatives:

"September 14, 2017.

Dear President of the Senate,

Establishment of Joint Select Committee

At a sitting held on Wednesday, June 14, 2017, the House of Representatives agreed to the following resolution:

Resolved:

> That Mr. Stuart Young be appointed to serve on the Joint Select Committee on Energy Affairs in lieu of Mrs. Ayanna Webster-Roy.

I respectfully request that the Senate be informed of this decision at the earliest convenience please.

Respectfully,

Bridgid Mary Annisette-George

Speaker"

PAPERS LAID

1. Consolidated Audited Financial Statements of Evolving TecKnologies and Enterprise Development Company Limited (eTeck) for the year ended September 30, 2015. [*The Minister in the Ministry of Finance (Sen. The Hon. Allyson West)*]
2. Consolidated Audited Financial Statements of Evolving TecKnologies and Enterprise Development Company Limited (eTeck) for the year ended September 30, 2016. [*Sen. The Hon. A. West*]
3. Report of the Auditor General of the Republic of Trinidad and Tobago on the Financial Statements of the Telecommunications Authority of Trinidad and Tobago for the year ended September 30, 2009. [*Sen. The Hon. A. West*]
4. Report of the Auditor General of the Republic of Trinidad and Tobago on the Financial Statements of the Chaguanas Borough Corporation for the year ended September 30, 2011. [*Sen. The Hon. A. West*]

5. Report of the Auditor General of the Republic of Trinidad and Tobago on the Financial Statements of the Mayor's Fund of the San Fernando City Corporation for the year ended September 30, 2015. [*Sen. The Hon. A. West*]
6. Annual Report of the Trinidad and Tobago Securities and Exchange Commission for the year ended September 30, 2016. [*Sen. The Hon. A. West*]
7. Report of the Auditor General of the Republic of Trinidad and Tobago on the Financial Statements of the Fair Trading Commission for the three month period ended September 30, 2014. [*Sen. The Hon. A. West*]
8. Report of the Auditor General of the Republic of Trinidad and Tobago on the Financial Statements of the Fair Trading Commission for the year ended September 30, 2015. [*Sen. The Hon. A. West*]
9. Report of the Auditor General of the Republic of Trinidad and Tobago on the Financial Statements of the Fair Trading Commission for the year ended September 30, 2016. [*Sen. The Hon. A. West*]
10. Report of the Auditor General of the Republic of Trinidad and Tobago on the Financial Statements of the South-West Regional Health Authority for the year ended September 30, 2008. [*Sen. The Hon. A. West*]
11. Report of the Auditor General of the Republic of Trinidad and Tobago on the Financial Statements of the South-West Regional Health Authority for the year ended September 30, 2009. [*Sen. The Hon. A. West*]
12. Report of the Auditor General of the Republic of Trinidad and Tobago on the Financial Statements of the Sangre Grande Regional Corporation for the year ended September 30, 2010. [*Sen. The Hon. A. West*]

13. Report of the Auditor General of the Republic of Trinidad and Tobago on the Financial Statements of the Sangre Grande Regional Corporation for the year ended September 30, 2011. [*Sen. The Hon. A. West*]
14. Second Report of the Auditor General of the Republic of Trinidad and Tobago on the Financial Statements of the North-Central Regional Health Authority for the fourteen month period ended September 30, 2005. [*Sen. The Hon. A. West*]
15. Second Report of the Auditor General of the Republic of Trinidad and Tobago on the Financial Statements of the North-Central Regional Health Authority for the year ended September 30, 2006. [*Sen. The Hon. A. West*]
16. Second Report of the Auditor General of the Republic of Trinidad and Tobago on the Financial Statements of the North-Central Regional Health Authority for the year ended September 30, 2007. [*Sen. The Hon. A. West*]
17. Second Report of the Auditor General of the Republic of Trinidad and Tobago on the Financial Statements of the North-Central Regional Health Authority for the year ended September 30, 2008. [*Sen. The Hon. A. West*]
18. Report of the Auditor General of the Republic of Trinidad and Tobago on the Financial Statements of the Mayaro Civic Centre for the year ended September 30, 2013. [*Sen. The Hon. A. West*]
19. Report of the Auditor General of the Republic of Trinidad and Tobago on the Financial Statement of the Mayaro Civic Centre for the year ended September 30, 2014. [*Sen. The Hon. A. West*]
20. Report of the Auditor General of the Republic of Trinidad and Tobago on the Financial Statements of the Mayaro Civic Centre for the year ended September 30, 2015. [*Sen. The Hon. A. West*]

21. Report of the Auditor General of the Republic of Trinidad and Tobago on the Financial Statements of the College of Science, Technology and Applied Arts of Trinidad and Tobago for the year ended September 30, 2006. [*Sen. The Hon. A. West*]
22. Annual Audited Financial Statements of Community Improvement Services Limited for the financial year ended September 30, 2013. [*Sen. The Hon. A. West*]
23. Annual Audited Financial Statements of Community Improvement Services Limited for the financial year ended September 30, 2014. [*Sen. The Hon. A. West*]
24. Annual Administrative Report of Caribbean Airlines Limited (CAL) for the year 2010. [*Sen. The Hon. A. West*]
25. Annual Administrative Report of Caribbean Airlines Limited (CAL) for the year 2011. [*Sen. The Hon. A. West*]
26. Annual Administrative Report of Caribbean Airlines Limited (CAL) for the year 2012. [*Sen. The Hon. A. West*]
27. Annual Administrative Report of Caribbean Airlines Limited (CAL) for the year 2013. [*Sen. The Hon. A. West*]
28. Annual Audited Financial Statements of Trinidad and Tobago Free Zones Company Limited for the financial year ended December 31, 2014. [*Sen. The Hon. A. West*]
29. Annual Audited Financial Statements of Trinidad and Tobago Free Zones Company Limited for the financial year ended December 31, 2016. [*Sen. The Hon. A. West*]

30. Report of the Auditor General of the Republic of Trinidad and Tobago on the Financial Statements of the Princes Town Regional Corporation for year ended September 30, 2009. [*Sen. The Hon. A. West*]
31. Report of the Auditor General of the Republic of Trinidad and Tobago on the Financial Statements of the Princes Town Regional Corporation for year ended September 30, 2010. [*Sen. The Hon. A. West*]
32. Annual Audited Financial Statements of Caribbean New Media Group Limited for the year ended December 31, 2015. [*Sen. The Hon. A. West*]
33. Annual Audited Financial Statements of Caribbean New Media Group Limited for the year ended December 31, 2016. [*Sen. The Hon. A. West*]
34. Ministerial Response of the Ministry of Finance to the Ninth Report of the Public Accounts Committee on the Examination of the Report of the Auditor General on the Public accounts of the Republic of Trinidad and Tobago for the financial years 2014 and 2015 with specific reference to the Ministry of Health. [*Sen. The Hon. A. West*]
35. Consolidated Audited Financial Statements of First Citizens Bank Limited for the financial year ended September 30, 2016. [*Sen. The Hon. A. West*]
36. Annual Report of Taurus Services Limited for the financial year ended September 30, 2016. [*Sen. The Hon. A. West*]
37. Ministerial Response of the Ministry of Finance to the Seventh Report of the Public Accounts Committee, Second Session (2016/2017), Eleventh Parliament on the examination of the Report of the Auditor General on the Public Accounts of the Republic of Trinidad and Tobago for the financial years 2014 and 2015 with specific reference to the Ministry of Education. [*Sen. The Hon. A. West*]

38. Ministerial Response of the Ministry of Finance to the Seventh Report of the Public Accounts Enterprises Committee, Second Session (2016/2017), Eleventh Parliament on the Examination of the Audited Accounts, Balance Sheets and other Financial Statements of the Estate Management and Business Development Company Limited (EMBD) for the financial years 2008 – 2010. [*Sen. The Hon. A. West*]
39. Report of the Auditor General of the Republic of Trinidad and Tobago on the Financial Statements of the Mayaro/Rio Claro Regional Corporation Chairman's Fund for the year ended September 30, 2013. [*Sen. The Hon. A. West*]
40. Report of the Auditor General of the Republic of Trinidad and Tobago on the Financial Statements of the Mayaro/Rio Claro Regional Corporation Chairman's Fund for the year ended September 30, 2014. [*Sen. The Hon. A. West*]
41. Report of the Auditor General of the Republic of Trinidad and Tobago on the Financial Statements of the Mayaro/Rio Claro Regional Corporation Chairman's Fund for the year ended September 30, 2015. [*Sen. The Hon. A. West*]
42. Report of the Auditor General of the Republic of Trinidad and Tobago on the Financial Statements of the Mayaro/Rio Claro Regional Corporation Chairman's Fund for the year ended September 30, 2016. [*Sen. The Hon. A. West*]
43. Report of the Auditor General of the Republic of Trinidad and Tobago on the Financial Statements of the Eastern Regional Health Authority for the year ended September 30, 2014. [*Sen. The Hon. A. West*]

44. Report of the Auditor General of the Republic of Trinidad and Tobago on the Financial Statements of the Eastern Regional Health Authority for the year ended September 30, 2015. [*Sen. The Hon. A. West*]

45. Annual Administrative Report of the Palo Seco Agricultural Enterprises Limited (PSAEL) for the period October 01, 2011 to September 30, 2012. [*The Minister of Rural Development and Local Government (Sen. The Hon. Kazim Hosein)*]

46. Annual Administrative Report of the Palo Seco Agricultural Enterprises Limited (PSAEL) for the period October 01, 2014 to September 30, 2015. [*Sen. The Hon. K. Hosein*]

47. Ministerial Response of the Ministry of Rural Development and Local Government to the Third Report of the Joint Select Committee on Social Services and Public Administration, Second Session (2016/2017), Eleventh Parliament on an of Existing Arrangements and Possible Options for Regulating Geriatric Care Facilities/Old Age Homes. [*Sen. The Hon. K. Hosein*]

48. Ministerial Response of the Ministry of Rural Development and Local Government to the First Report of the Joint Select Committee on Land and Physical Infrastructure on an Inquiry into Land Tenure Issues in Trinidad and Tobago. [*Sen. The Hon. K. Hosein*]

49. Ministerial Response of the Ministry of Rural Development and Local Government to the Fourth Report of the Public Accounts (Enterprises) Committee, Second Session (2016/2017), Eleventh Parliament on the Examination of the Audited Accounts, Balance Sheets and other Financial Statements of the Community Based Environmental Protection and

Enhancement Programme (CEPEP) Company Limited for the financial years 2009—2014. [*Sen. The Hon. K. Hosein*]

50. Ministerial Response of the Ministry of the Attorney General and Legal Affairs to the First Report of the Joint Select Committee on National Security, Second Session (2016/2017), Eleventh Parliament on the follow-up into the status of the investigation of the PCA and TTPS into the events surrounding the day of "Total Policing" on March 23, 2015. [*The Attorney General (Hon. Faris Al-Rawi)*]

51. Ministerial Response of the Ministry of the Attorney General and Legal Affairs to the First Report of the Joint Select Committee on Land and Physical Infrastructure, First Session (2015/2016), Eleventh Parliament on an Inquiry into Land Tenure Issues in Trinidad and Tobago. [*Hon. F. Al-Rawi*]

52. Ministerial Response of the Ministry of the Attorney General and Legal Affairs to the Third Report of the Joint Select Committee on National Security, Second Session (2016/2017), Eleventh Parliament on an inquiry into the Operations of the Trinidad and Tobago Forensic Science Centre and the issue of DNA Sampling in Trinidad and Tobago. [*Hon. F. Al-Rawi*]

53. Ministerial Response of the Attorney General and Legal Affairs to the Second Report of the Joint Select Committee on Human Rights, Equality and Diversity on the Challenges Faced by Persons with Disabilities with specific focus on Access to Services and Employment. [*Hon. F. Al-Rawi*]

54. Ministerial Response of the Ministry of the Attorney General and Legal Affairs to the Eight Report of the Public Accounts Committee, Second Session of the Eleventh Parliament on an Examination of the Report of the

Auditor General of the Republic of Trinidad and Tobago on a Special Audit of the Public Transport Service Corporation (PTSC). [*Hon. F. Al-Rawi*]

55. Ministerial Response of the Ministry of Foreign and Caricom Affairs to the First Report of the Joint Select Committee on Land and Physical Infrastructure, on an Inquiry into Land Tenure Issues in Trinidad and Tobago. [*The Minister of Foreign and Caricom Affairs and Minister of State in National Security (Sen. The Hon. Dennis Moses)*]

56. Ministerial Response of the Ministry of Foreign and Caricom Affairs on the Public Examination of the Draft Summary of the Recommendations and Conclusions of the Forty-First Meeting of the Council for Trade and Economic Development. [*Sen The Hon. D. Moses*]

57. Ministerial Response of the Ministry of National Security to the Second Report of the Joint Select Committee on National Security, Second Session (2016/2017), Eleventh Parliament on the inquiry into the Practice whereby Prisoners are Granted Access to Services outside of the Prison Facilities. [*Sen The Hon. D. Moses*]

58. Response of the Trinidad and Tobago Police Service to the Third Report of the Joint Select Committee on National Security, Second Session (2016/2017), Eleventh Parliament on an inquiry into the Operations of the Trinidad and Tobago Forensic Science Centre and the Issue of DNA Sampling in Trinidad and Tobago. [*Sen The Hon. D. Moses*]

59. Response of the Trinidad and Tobago Police Service to the Fourth Report of the Joint Select Committee on Human Rights, Equality and Diversity, Second Session (2016/2017), Eleventh Parliament on an inquiry into the Systems in Place to Protect Children from Abuse. [*Sen The Hon. D. Moses*]

60. Response of the Trinidad and Tobago Police Service to the First Report of the Joint Select Committee on National Security, Second Session (2016/2017), Eleventh Parliament on the follow-up into the status of the investigation of the PCA and TTPS into the events surrounding the day of "Total Policing" on March 23, 2015. [*Sen The Hon. D. Moses*]
61. Ministerial Response of the Ministry of Works and Transport to the Second Report of the Joint Select Committee on Human Rights, Equality and Diversity on the Challenges Faced by Persons with Disabilities with specific focus on Access to Services and Employment. [*The Minister of Works and Transport (Sen. The Hon. Rohan Sinanan)*]
62. Ministerial Response of the Ministry of Trade and Industry to the First Report of the Joint Select Committee on Foreign Affairs on a public examination of the Draft Summary of Recommendations and Conclusions of the Forty-First Meeting of the Council for Trade and Economic Development. [*The Minister of Trade and Industry (Sen. The Hon. Paula Gopee-Scoon)*]
63. Thirty-Ninth Annual Report of the Ombudsman for the year 2016. [*The Vice-President (Sen. Nigel De Freitas)*]
64. Response of the Personnel Department to the Seventh Report of the Public Accounts Committee Second Session (2016/2017), Eleventh Parliament on the examination of the Report of the Auditor General on the Public Accounts of the Republic of Trinidad and Tobago for the financial years 2014 and 2015 with specific reference to the Ministry of Education. [*Sen. N. De Freitas*]
65. Response of the Service Commissions Department to the Seventh Report of the Public Accounts Committee, Second Session (2016/2017), Eleventh

Parliament on the examination of the Report of the Auditor General on the Public Accounts of the Republic of Trinidad and Tobago for the financial years 2014 and 2015 with specific reference to the Ministry of Education. [*Sen. N. De Freitas*]

66. Delegation Report on the 42nd Conference of the Caribbean, the Americas and the Atlantic Region of the Commonwealth Parliamentary Association (CPA) held in Basseterre, St. Kitts and Nevis from June 16 to 24, 2017. [*Sen. N. De Freitas*]

67. Ministerial Response of the Ministry of Public Utilities to the Sixth Report of the Public Accounts (Enterprises) Committee Second Session (2016/2017), Eleventh Parliament on the Examination of the Audited Accounts, Balance Sheets and other Financial Statements of the Trinidad & Tobago Solid Waste Management Company Limited (SWMCOL) for the financial years 2008 - 2013. [*The Minister of Public Utilities (Sen. The Hon. Robert Le Hunte)*]

68. Ministerial Response of the Ministry of Agriculture, Land and Fisheries to the First Report of the Joint Select Committee on Foreign Affairs, Second Session (2016/2017), Eleventh Parliament on the Public Examination of the Draft Summary of the Recommendations and Conclusions of the Forty-First Meeting of the Council for Trade and Economic Development. [*The Minister of Agriculture, Land and Fisheries (Sen. The Hon. Clarence Rambharat)*]

69. Ministerial Response of the Ministry of Agriculture, Land and Fisheries to the First Report of the Joint Select Committee on Land and Physical Infrastructure, First Session (2016/2017), Eleventh Parliament on an inquiry

into Land Tenure Issues in Trinidad and Tobago. [*Sen. The Hon. C. Rambharat*]

70. Annual Administrative Report of the Ministry of Community Development for the fiscal year 2011/2012. [*The Minister of Energy and Energy Industries (Sen. The Hon. F. Khan)*]

71. Annual Administrative Report of the Ministry of the Arts and Multiculturalism for the fiscal year 2014/2015. [*Sen. The Hon. F. Khan*]

72. Annual Report of the National Association of Village/Community Councils for the period 2009/2011. [*Sen. The Hon. F. Khan*]

73. Ministerial Response of the Ministry of Social Development and Family Services to the Third Report of the Joint Select Committee on Social Services and Public Administration, Second Session (2016/2017), Eleventh Parliament on an examination of Existing Arrangements and Possible Options for Regulating Geriatric Care Facilities/Old Age Homes. [*Sen. The Hon. F. Khan*]

74. A Green Paper on the Draft National Parenting Policy of Trinidad and Tobago. [*Sen. The Hon. F. Khan*]

75. Annual Administrative Report of the Ministry of the People and Social Development for the fiscal year 2011/2012. [*Sen. The Hon. F. Khan*]

76. Annual Administrative Report of the National Institute of Higher Education (Research, Science and Technology) for fiscal year 2014. [*Sen. The Hon. F. Khan*]

77. Ministerial Response of the Ministry of Education to the Fourth Report of the Joint Select Committee on Human Rights, Equality and Diversity, Second Session (2016/2017) Eleventh Parliament on an inquiry into the Systems in place to Protect Children from Abuse. [*Sen. The Hon. F. Khan*]

78. Ministerial Response of the Ministry of Health to the Second Report of the Joint Select Committee on Finance and Legal Affairs, Second Session (2016/2017), Eleventh Parliament on the inquiry into Food Fraud in Trinidad and Tobago. [*Sen. The Hon. F. Khan*]
79. Ministerial Response of the Ministry of Health to the Third Report of the Joint Select Committee on Social Services and Public Administration, Second Session (2016/2017), Eleventh Parliament on an examination of Existing Arrangements and Possible Options for Regulating Geriatric Care Facilities/Old Age Homes. [*Sen. The Hon. F. Khan*]
80. Ministerial Response of the Ministry of Health to the First Report of the Joint Select Committee on Foreign Affairs on the Public Examination of the Draft Summary of the Recommendations and Conclusions of the Forty-First Meeting of the Council for Trade and Economic Development. [*Sen. The Hon. F. Khan*]
81. Ministerial Response of the Office of the Prime Minister to the Fourth Report of the Joint Select Committee on Human Rights, Equality and Diversity into the Systems in place to Protect Children from Abuse. [*Sen. The Hon. F. Khan*]
82. Annual Administrative Report of the Telecommunications Authority of Trinidad and Tobago (TATT) for the period October 2015 to September 2016. [*Sen. The Hon. F. Khan*]
83. Ministerial Response of the Ministry of Public Administration and Communications to the Ninth Report of the Public Accounts Committee on the Examination of the Report of the Auditor General on the Public Accounts of the Republic of Trinidad and Tobago for the Financial Years

2014 and 2015 with specific reference to the Ministry of Health. [*Sen. The Hon. F. Khan*]

84. Ministerial Response of the Ministry of Tourism on the First Report of the Joint Select Committee on Land and Physical Infrastructure, Second Session (2016/2017), Eleventh Parliament on an inquiry into Land Tenure Issues in Trinidad and Tobago. [*Sen. The Hon. F. Khan*]

2.30 p.m.

JOINT SELECT COMMITTEE REPORTS

(Presentation)

Insurance Bill, 2016

The Minister of Agriculture, Land and Fisheries (Sen. The Hon. Clarence Rambharat): Madam President, I have the honour to present the following report as listed on the Supplemental Order Paper in my name:

The Report of the Joint Select Committee appointed to consider and report on the Insurance Bill, 2016. Thank you.

Public Administration and Appropriations Committee

(System of Internal Audit within the Public Service)

Sen. Wade Mark: Thank you, Madam President. Madam President, I have the honour to present the following report as listed on the Supplemental Order Paper in my name:

Fourth Report of the Public Administration and Appropriations Committee, Second Session (2016/2017), Eleventh Parliament, on an Examination of the System of Internal Audit within the Public Service.

URGENT QUESTIONS

Petrotrin and A&V Oil and Gas Limited

(Official Report re Alleged Discrepancies)

Sen. Wade Mark: To the hon. Minister of Minister of Energy and Energy Industries: Can the Minister state whether he has received an official report from Petrotrin on the alleged discrepancies in production data involving Petrotrin and A&V Oil and Gas Limited?

The Minister of Energy and Energy Industries (Sen. The Hon. Franklin Khan): Thank you very much, Madam President. Madam President, Petrotrin submitted an initial report to me, or an update to the Ministry and the Minister of Energy on August4th, 2017 indicating that there have been recorded discrepancies in the volumes of oil shipped from the Exploration and Production Department to the volumes of oil received at the refinery, and that an internal audit was commissioned and the probe was continuing. I have been advised that the final report based on the internal audit investigation into this volume discrepancy has been finalized and will be forwarded to the Minister of Energy and Energy Industries for my attention this afternoon.

The report was originally submitted from the Internal Audit Department to the President of Petrotrin. Procedurally what happens after then, it goes to the audit committee of the board for its review and then to the full board for its consideration, deliberation and what course of action should be taken thereafter. That is procedurally how these matters are handled. What happened on the weekend was that this report was leaked and it is now in the public domain, so the Board met urgently yesterday and the day before to consider the findings of the report and I would be advised on that this afternoon, to my understanding.

Sen. Mark: Madam President, could the hon. Minister indicate when this report was completed and why he is yet to receive an official copy?

Sen. The Hon. F. Khan: My understanding, Madam President, is that due process was taking place at Petrotrin because these are some serious allegations that are

being made and procedurally it has to go through these steps. What has brought this matter to the fore is the leak that occurred on the weekend and it has gotten the whole population anxious as to what will be the outcome of it. So what I am saying is that I cannot breach due process, and due process has occurred and the report will be submitted to me with a covering letter from Petrotrin.

Petrotrin and A&V Oil and Gas Limited

(Steps Taken re Alleged Discrepancies)

Sen. Wade Mark: To the hon. Minister of Energy and Energy Industries: Can the Minister state what steps he intends to take given the reports of alleged discrepancies in production data involving Petrotrin and A&V Oil and Gas Limited?

The Minister of Energy and Energy Industries (Sen. The Hon. Franklin Khan): Madam President, the steps I intend to take at present is to let due process take place. As we speak, the audit committee of the board and the board of Petrotrin has considered the report, and they, in their own judgment, will determine what further actions or investigations are needed. At this point in time I cannot intervene, and will not intervene, and I want to be very particular that due process takes place in a matter like this.

Madam President: Sen. Ramdeen.

Sen. Ramdeen: Thank you, Madam President. Madam President, through you to the hon. Minister of Energy and Energy Industries: Minister, are you aware that Petrotrin has stopped the payments for the months of June and July, totalling a sum of US $6million to A & V Oil and Gas Limited?

Sen. The Hon. F. Khan: I am aware when the audit was being conducted that they had stopped the payment for June and July pending the outcome of the investigation.

Madam President: Sen. Mark?

Petrotrin and A&V Oil and Gas Limited
(Referral of Matter to Fraud Squad)

Sen. Wade Mark: To the hon. Minister of Energy and Energy Industries: Can the Minister inform the Senate whether the Board of Petrotrin has referred the matter involving A&V Oil and Gas Limited to the Fraud Squad?

Madam President: Minister of Energy and Energy Industries.

The Minister of Energy and Energy Industries (Sen. The Hon. Franklin Khan): Madam President, at this point in time, it is my information that no such decision has been taken by the board of Petrotrin.

Sen. Mark: Madam President, having regard to the seriousness of this development, would the Minister indicate whether, as line Minister, he intends to intervene to direct the board of Petrotrin to have this matter immediately and forthwith referred to the Fraud Squad? [*Desk thumping*]

Sen. The Hon. F. Khan: As I said earlier, my position is to let due process take its course. When the board makes its official recommendation to the Minister, I will deliberate on it and consider what our options are and I will so decide.

Madam President: Sen. Sturge?

Sen. Sturge: Hon. Minister, in light of what has been revealed, do you intend to take any steps to refer this matter to the Office of the Attorney General, that being the line Ministry for the Anti-Corruption Bureau?

Sen. The Hon. F. Khan: Sen. Sturge, due process—and you are an attorney, you should know that. I am following this thing step by step, and in the process, as I indicated, the report was leaked, by whom we do not know, and it does not really matter at this point in time. The process, as I outlined, is in progress and let due process take its course and we will determine that in the shortest possible time.

[*Desk thumping*]

Recent Violent Attacks
(Measures to Curb)

Sen. Wade Mark: To the hon. Minister of National Security: In light of recent violent attacks and open defiance by residents of several communities against law enforcement, what measures are being taken to curb this threat to law enforcement officers?

The Minister of National Security (Hon. Maj. Gen. Edmund Dillon): Thank you very much, Madam President. [*Desk thumping*] Madam President, I am a bit disappointed with Sen. Mark, because I thought he would have prefaced his question by at least condemning the actions of those citizens who have defied and showed open defiance to the Trinidad and Tobago Police Service. [*Desk thumping*] But as someone who has come from a very disciplined environment, having served in the Defence Force for 36 years, I want to strongly condemn the actions of those citizens of Trinidad and Tobago who showed open defiance to the Trinidad and Tobago Police Service, who showed that they did not respect the rule of law and the authority.

Madam President, I want to warn them also that they can be charged under the Trinidad and Tobago Police Service Act, section 46(1)(c) which is the obstruction of the police in the execution of their duties. The Trinidad and Tobago Police Service are hard-working men and women, who dedicate their life and their service to this country, and therefore they require the support of all of us in the execution of their duties.

To answer the question, Madam President, the Trinidad and Tobago Police Service has advised that the following measures have been put in place. To start, they have, in fact, continued their investigation and have arrested and charged

several persons who have been involved in those incidents. Based on what has happened over the last couple of weeks they have revised their use of force policy. The use of force policy is actually the principle by which there is escalation to react to the minimum necessary force to treat with any situation. So they have revised that and in that revision they are considering the following: the reintroduction of the use of the baton in addition to their side arms—

Madam President: Minister, your time is up.

Hon. Maj. Gen. E. Dillon: Thank you.

Madam President: Sen. Sturge?

Sen. Sturge: Hon. Minister, have you been able to ascertain the cause for this behaviour which was directed towards the law enforcement officers?

Hon. Maj. Gen. E. Dillon: Could you please repeat the question?

Sen. Sturge: Have you been able to ascertain the cause of the behaviour which was directed towards these law enforcement officers?

Hon. Maj. Gen. E. Dillon: I have not, but it certainly is a case of in disciplined actions to law enforcement, a failure to recognize authority and law enforcement in Trinidad and Tobago.

Sen. Sturge: Since you have not, do you have any intention of trying to ascertain the cause of what transpired?

Hon. Maj. Gen. E. Dillon: That is a job for the Trinidad and Tobago Police Service and Police Commissioner. I can also add that the Commissioner of Police and the Trinidad and Tobago Police Service, in looking at measures, they are, in fact, as I said, considering the use of non-lethal weapons in terms of, as I said before, the use of the baton together with their side arms in those kinds of situations; the use of taser, the use of pepper spray and so on—non-lethal weapons in addition to their equipment that they use at this point in time.

Madam President: Hon. Members, the time for Urgent Questions has expired.

ORAL ANSWERS TO QUESTIONS

The Minister of Energy and Energy Industries (Sen. the Hon. Franklin Khan): Madam President, the Government plans to answer all questions as listed this afternoon. [*Desk thumping*]

WRITTEN ANSWER TO QUESTION

Private Security Firms

(Details of)

118. Sen. Paul Richards asked the hon. Minister of National Security:

Could the Minister provide information on the following:

a) the number of private security firms operating in Trinidad and Tobago;

b) the system, if any, that the Ministry of National Security employs in order to monitor the operations of private security firms;

c) the involvement, if any, of the TTPS in setting or approving the criteria for recruitment of persons into private security firms;

d) the number of firearms reported missing by private security firms in the years - 2012, 2013, 2014, 2015 and 2016?

Vide end of sitting for written answer.

ORAL ANSWERS TO QUESTIONS

Massy Communications by TSTT

(Details of Acquisition)

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?

The Minister of Energy and Energy Industries (Sen. the Hon. Franklin Khan): Madam President, in response to question 95 (a), TSTT has advised the Ministry of Finance that it conducted appropriate due diligence prior to the acquisition of Massy Communications Limited. And the answer to section (b) of the question is, no.

Sen. Mark: Madam President, can I ask the Minister what were the elements of the due diligence that was conducted by TSTT in its acquisition of Massy Communications?

Sen. The Hon. F. Khan: Madam President, I am not seized of all the details but I am making a commitment to revert to Sen. Mark at a later date.

Sen. Mark: Madam President, could the hon. Minister indicate whether any valuation reports were done by TSTT before they acquired the assets of Massy Communications?

Sen. The Hon. F. Khan: My understanding to the answer to that is, yes.

Sen. Mark: Madam President, could the hon. Minister indicate whether those reports, due diligence as well as the valuation reports, in the interest of transparency and accountability would be tabled in this hon. Senate for public consumption?

Sen. The Hon. F. Khan: Madam President, I cannot give that undertaking. As we speak there is an issue which is being looked at as to whether TSTT should have submitted due diligence and valuation reports to the Ministry of Finance prior to the acquisition and related matters, such as whether agreement of the Minister of

Finance was required before the acquisition took place. That is currently under review by the Investments Division of the Ministry of Finance.

Sen. Mark: Madam President, is the Minister aware that the equipment that would have been purchased would have been five years and over, and whether it would not have been more profitable for TSTT, in a fast-paced technological world, to have purchased its own equipment to upgrade its operations?

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

Sen. Mark: May I ask him whether he has any idea—

Madam President: No, next question.

Sen. Mark: Yes, I am asking—

Madam President: No, next question.

Sen. Mark: Oh, you mean I have exhausted?

Madam President: Yes.

Sen. Mark: Oh my God. I was not aware. Thank you very much, Madam President.

Preysal Government Primary School
(Sewer Odour)

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

Can the Minister advise as to when the issue of the strong odour emanating from the sewer at the Preysal Government Primary School will be addressed?

The Minister of Education (Hon. Anthony Garcia): [*Desk thumping*] Thank you very much, Madam President. Madam President, students and staff of the Preysal Government Primary School complained of noxious odours emanating from the sewer system. The Education Facilities Company Limited (EFCL) engaged their

in-house engineers and technicians to troubleshoot and conduct an assessment to remedy the issue.

EFCL determined that the plumbing system consisted of aged and deteriorated cast iron plumbing that had become porous and may have contributed to the escape of inorganic gases, such inorganic gases that contain compounds such as hydrogen sulphide and ammonia. This would have contributed significantly to the noxious odours. Additionally, EFCL determined that the gridding of the discharge piping and the inadequate venting was a contributor to the foul odours.

The repair works commenced on the 30th of August 2017 and were completed on September 2nd, 2017. The repairs conducted will negate the effects of noxious odours and discharge of untreated effluent in the environment. Thank you.

Sen. Mark: Madam President, through you, could the hon. Minister indicate whether he is satisfied with the repairs conducted and therefore there should not be a repetition of the noxious odours emanating from that particular area of that school?

Hon. A. Garcia: Madam President, the information that is before me from EFCL engineers would indicate that they were satisfied with the work that was done, and as a result of that, I also am satisfied. Thank you. [*Desk thumping*]

Sen. Mark: Madam President, through you to the hon. Minister of Education: Could you provide this honourable Senate with the final cost of the repairs that were conducted to this particular system? Could you provide us with that?

Madam President: Sen. Mark, that question does not arise from the question that was asked. You have two more supplementary questions.

Sen. Mark: Could I ask the hon. Minister whether he can provide us with the contractors that were involved in this repair exercise?

Madam President: That also does not arise, Sen. Mark.

Sen. Mark: And Madam President, can the Minister give this Parliament, this Senate, the assurance that given the reports that were submitted, that that school would not be subject to further dislocation because of that situation you have just outlined?

Hon. A. Garcia: Madam President, I just indicated to this House that the report I received from EFCL's engineers would indicate that they were satisfied that the work was done satisfactorily. Thank you.

Madam President: Next question. Sen. Mark?

Resolving Environmental Issues
(Guaracara River and Williamsville Area)

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

Given reports of the continued clogging of the Guaracara River as well as the huge garbage pile up in the Williamsville area, can the Minister indicate when these issues will be resolved?

The Minister of Rural Development and Local Government (Sen. The Hon. Kazim Hosein): Madam President, I thank hon. Sen. Mark for his question. During the recent national clean-up campaign initiated by the Ministry of Rural Development and Local Government, the Couva/Tabaquite/Talparo and the Princes Town Regional Corporations assisted with clearing and cleaning parts of Guaracara River, the Williamsville River, which is a tributary to the Guaracara River, and other rivers linked to the Guaracara River.

This is a main watercourse and, as such, it is not within the purview of the Ministry of Rural Development and Local Government, but we continue to collaborate with the Ministry of Works and Transport, Drainage Division to address all issues faced by the burgesses of the country.

The Princes Town Regional Corporation assisted the Ministry of Works and

Transport's efforts upon a request from the Drainage Division by providing labour to clean the riverbanks. Thank you. [*Desk thumping*]

Sen. Mark: I do not know if the hon. Minister could advise us as to the huge garbage pile-up that was left after this so-called clean-up campaign in Williamsville—whether that matter has been addressed by your Ministry or the regional corporation, or a combination of both.

Sen. The Hon. K. Hosein: I thank you again, Madam President, and Sen. Mark. With respect to the garbage pile up in the community of Williamsville area, much of it resulted from debris being washed down in the aftermath of Tropical Storm Bret. To address this issue, the Princes Town Regional Corporation deployed resources to the community and during the period June20th, 2017 to July5th. , 2017, the corporation carted, loaded and disposed of 20 truckloads of spoil, which were separate and apart from the routine scavenging service. I am pleased to inform that in August all areas in the Williamsville district have been addressed, resolving the pile-up of debris and garbage.

All corporations have bulk waste pickups along with their regular garbage pickup that occurs on Mondays, Wednesdays and Fridays. Citizens can contact the public health department of the respective corporation for bulk waste removal. This is a proactive approach taken by all corporations to manage waste collection and speaks to the individual level of responsibility and management that makes up the spirit of local government.

Sen. Mark: Madam President, through you to the hon. Minister: Would you want to share with this Senate the cost of this clean-up exercise in removing what you have just identified, and which contractor might have been involved?

Madam President: Sen. Mark, that does not arise. That is a completely different question. Can you ask another supplementary question?

Sen. Mark: I think I will have to do it in writing. May I go on?

Madam President: Yes.

Regional Corporations Responsibility

(Repairs to Primary and Secondary Schools)

103. **Sen. Wade Mark** asked the hon. Minister of Education:

In light of reports that the Government intends to have the fourteen (14) Regional Corporations assume responsibility for repairs to Primary and Secondary schools during the school vacation, can the Minister advise of the rationale for such a decision?

The Minister of Education (Hon. Anthony Garcia): Thank you very much, Madam President. Madam President, the 2017 July/August vacation school repair programme was implemented by the Education Facilities Company Limited. Thank you.

Sen. Mark: Madam President, through you to the hon. Minister: Is the Minister aware that a meeting called by him and the local government Minister at his Ministry in which several corporation leaders were summoned, a decision was taken to ask local government to deal with the repairs of school during the school vacation period? Are you aware of this, Mr. Minister?

Hon. A. Garcia: Madam President, I am aware that a meeting was called. I am not aware that a decision was taken. That meeting was called to discuss the possibility of the regional corporations effecting those repairs. The regional corporations indicated to us that they were not ready at this time to effect those repairs. Thank you. [*Desk thumping*]

Sen. Mark: Could I ask the hon. Minister again, through you, whether it is the intention of his Ministry, and maybe the Government, to utilize the services of local government in the not-too-distant future, to conduct those repairs of schools

that are currently done by the Education Facilities Company Limited? Could you share with the Senate whether that is the intention?

Hon. A. Garcia: Thank you very much, Madam Speaker. It is the intention of this Government to engage the local government authorities in all aspects of work that will involve the local communities. Thank you. [*Desk thumping*]

Sen. Mark: Madam President, do I have one more?

Madam President: You have two more.

Sen. Mark: Two more. Could I ask the hon. Minister whether the Ministry is contemplating effecting the measure that you have outlined in the next period, meaning the next year between the months of June to September when school vacation would normally take place? Is it the intention of your Ministry to effect the measure utilizing local government services for the repairs of schools?

Hon. A. Garcia: Madam President, Sen. Mark always confuses me with his questions. On the one hand he asked one question and in the same breath he asks another question. His first question was whether we are contemplating; then he said whether we have taken a decision; two different questions. I can answer the first one. Madam President, yes, we are contemplating to involve local government bodies as part of our local government reform. This is an initiative of this Government and it is part of our official Government programme and policies. Thank you.

Sen. Mark: And, therefore, Madam President, it logically follows—

Hon. A. Garcia: That is four questions.

Sen. Mark: No, no, no. The President is in charge here. You take instructions from the President. So may I ask the final question? Whether the Government is, in fact, going to replace the Education Facilities Company Limited in fiscal 2018 by the utilization of the local regional bodies to effect repairs of schools? May I ask that

question of you?

Madam President: Sen. Mark, I will not allow that question because it has been asked in different ways prior. Sen. Richards.

Sen. Richards: Madam President, through you, if I could just request a status update on the deferred Question 118 to the Minister of National Security, which a written response was due by the 8th of August?

Madam President: Sen. Richards, as I understand it, that question is not deferred and it is going to be circulated. The Minister has indicated they are in a position to answer all the questions, oral and written.

3.00p.m.

DEFINITE URGENT MATTER

(LEAVE)

A &V Oil and Gas Limited

Sen. Gerard Ramdeen: Thank you, Madam President. Madam President, I hereby seek leave to move the adjournment of the Senate today, under Standing Order 16, for the purpose of discussing a definite matter urgent public importance, that is the failure of the Government, and more particularly the Ministry of Energy and Energy Industries and the board of Petrotrin to take steps to address the discrepancies in production data involving Petrotrin and A & V Oil and Gas Limited.

The matter is definite because it pertains specifically to the actions of one operator, A & V Oil and Gas Limited, and one particular production field, the Catskill production field. This has resulted in Petrotrin paying royalties to the Government of approximately US $1.86 million for crude oil not received during the period January2017 to June 2017.

The matter is urgent because the operator, A & V Oil and Gas Limited,

continues to operate the Catskill field and continues to receive payments from Petrotrin. Despite the completion of an audit report since the 17th of August, 2017, no steps have been taken by the Government or the board of Petrotrin to implement the recommendations set out therein.

The matter is of public importance because as a country at this time we cannot afford to continue to lose tens of millions of dollars in foreign exchange. If this matter is not addressed forthwith by the Government in a transparent and open manner, the ability of our country to attract foreign investment will be adversely affected. I thank you.**Madam President:** Hon. Senators, I am not satisfied that this matter qualifies under this Standing Order.

SENATOR'S APPOINTMENT

Madam President: Hon. Senators, as I indicated earlier, I want to revert to the earlier business on the Order Paper. I am now in receipt of the Instrument of Appointment.

"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: SHARLA ALEXANDER-DOLABAILLE

WHEREAS Senator DANIEL SOLOMON 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)(b) of the Constitution of the Republic of Trinidad and Tobago, acting in accordance with the advice of the Leader of the Opposition, do hereby appoint you, SHARLA ALEXANDER-DOLABAILLE, to be temporarily a member of the Senate, with effect from 14th September, 2017 and continuing during the absence from Trinidad and Tobago of the said Senator DANIEL SOLOMON.

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 14th day of September, 2017."

OATH OF ALLEGIANCE

Senator Sharla Alexander-Dolabaille took and subscribed the Oath of Allegiance as required by law.

INDICTABLE OFFENCES
(PRE-TRIAL PROCEDURE) BILL 2017

Order for second reading read.

The Attorney General (Hon. Faris Al-Rawi): Thank you, Madam President. Madam President, I beg to move:

That a Bill to abolish preliminary enquiries and to provide for the pre-trial procedure in respect of indictable offences and for ancillary matters, be now read a second time.

Madam President, it is good to be back in the Senate. We have the pleasure of resuming the business of the country in this august Chamber, after having had

the mandatory recess.

Prior to the going off on recess, we certainly engaged in a considerable amount of heavy work, which I wish to thank all Senators opposite, Independent Bench, and those on our side for. Certainly, it was a very enjoyable experience to participate in the very fulsome work that we did together as a Senate.

Today we propose to start and listen carefully to the proposal for the replacing of a system of law which has stood upon the books of Trinidad and Tobago now for 100 years. The law dealing with preliminarily enquiries is to be found in Chap. 12:01. The substantive law, which is the original law standing in place, is the Indictable Offences (Preliminary Enquiry) Act, Chap. 12:01. That was started by an Act of Parliament, Act No. 12 of 1917. That law has been amended 21 times to date, last amendment being in 2014.

But we have had in the experience of pre-trial procedures, in making sure that there is an adequacy and fairness of process, we have had several experiments with law. It is time for us now to take stock of where we are, what the systemic roadblocks are, and what solutions ought to be applied to deal with the number one issue in this country, and the number one issue for all of us, for all Parliaments, this now being the Eleventh Republican Parliament, for all of us citizens, has been grappling with the issue and scourge of crime and criminality. The work which we did in the session prior to the mandatory recess just had in July and August, centred around the criminal justice system in large part. We sought to de-bottle, we sought to decant, and we sought to improve the criminal justice system in a number of ways. We looked to removing the near 100,000 cases in backlog to deal with trafficking offences under the Motor Vehicles and Road Traffic Act, we have looked to deal with the situation of persons who are remanded into custody, who

cannot access bail, the vast majority of whom have stood there for a very long time and who are arguably being introduced and indoctrinated into a system of criminality in a rather unconstitutional setting, which many of our prisons' reports have acknowledged, and judges, if we look at Justice Gobin in the Edgehill case.

We sought to deal with the introduction and improvement of an improved system for plea bargaining. We have sought to deal with the introduction of trial by judge only in certain circumstances, and we did so because we did an analytical appreciation of where we are as a country. So perhaps I ought to start immediately, with the statistical position of where we are.

Let me start by saying that there are three laws on the books of Trinidad and Tobago to deal with preliminary enquiries. The first one is, of course, Chap. 12:01, which I have just referred us to. The second one is the Administration of Justice (Indictable Proceedings) Act, Chap.—I am sorry—2011, which was partially proclaimed as we are well aware. And the third one was the pre-trial procedures, 2014 legislation, which we dealt with as a Parliament in a replacement model for the 2011. That is officially the Indictable Offences (Committal Proceedings) Act, 2014. Statistically, it is important to start with what our country is facing.

I asked for and obtained some of the statistics passing through our courts. Let us start with what our courts are comprised of. As we know, we have recanted some of these before, but it is important to put it on to this particular point when we looked to proportionate aim. We have 50 magistrates sitting, currently in Trinidad and Tobago. There are 12 magisterial districts, the Supreme Court Bench is comprised of the Chief Justice, 10 Justices of Appeal, 31 puisne judges, and three masters.

When we look to the throughput in the Magistracy, in particular, where the

Magistracy is the body charged with the administration and implementation of pre-trial procedures in the form of Chap. 12:01, the preliminary enquiry route, the case throughput is very interesting.

In the last annual report, which reported on the 2014/15, the following magisterial districts had the following annual case load: Arima, 75,796 cases; Chaguanas, 41,809 cases; Couva, 19,729; Mayaro, 10,872; Point Fortin, 17,173; Princes Town, 33,291; Rio Claro, 8,277; San Fernando, referred to as the old court, 24,180; San Fernando, the Medina Building, 24,667; Sangre Grande, 30,964; Siparia, 29,951; St. George West, 151,812; Tobago, 23,227; Tunapuna, 35,293. That is a total of 527,043. These figures coming from the annual report for 2014/2015 reporting year. Now, that obviously includes the whole array of cases that come, petty civil, traffic cases, indictable offences, et cetera, which are to be dealt with by preliminary enquiry.

When we look specifically to the matters that are standing in the Magistracy at the preliminary enquiry stage, we noticed that of the criminal matters pending at the Magistrates' Court as at July31, 2015, and we did that because these are reported figures, there is a total of 29,090 cases standing as at that date. The opening of the law term will be next week. We expect to get renewed figures on these points but suffice it to say, we are at 29,090 matters. The number of matters pending per category type: murder, 417; attempted murder, 300; kidnapping, 439; arms and ammunition, 5,788; sexual offences, 3,597; narcotics, 5,758; fraud, 5,407, et cetera.

What is important to note, when we deal with crime and criminality and trying to eradicate that scourge, is that there appears to be in our country, a perception appreciated as a reality for the vast majority of citizens, that if there is a

crime committed, yes you may go into the judicial process, but you are taken into a process where the delay is so significant, because of the design of our criminal justice system, that justice is definitely going to be delayed, and therefore there is no consequence to crime.

We had a horrible murder, for example, committed on a true patriot of Trinidad and Tobago, Dr. Claire Broadbridge. The police went to work. I understand that this morning two persons were brought before the court. That may be one event. We congratulate the Trinidad and Tobago Police Service for acting swiftly in a particular matter or for bringing home a child who was kidnapped, or for charging persons involved in a well-known kidnapping in San Fernando.

But what happens next is the subject of this debate. The statistics, now that we know that the 29,000-odd that is in a particular year, continue in this regard, Madam President. When we look to the number of first hearings for the same category of matters that I have just described: murder, number of first hearings in the particular year, let us take 2014: 2012, 2013, 2014, I just described the figures in the hundreds. Number of first hearings for murder, four in 2012; for 2013, three; for 2014, four; January to July, 2015, five. So a total of 16 first hearings. Attempted murder, 2012 to January and- July2015. Attempted murder first hearings, five for 2012; four for 2013; four for 2014.

Let us look to sexual offences. Of the thousands that I just referred to, number of first hearings for sexual offences, 112 for 2012; in 2013, 41; in 2014, 104; January to July, 2015, 39.

Let us look now to the time that these matters stand in the particular disposition matter. Let us look at the disposition of matters across the number of years that they stand. When we look to the figures, we can see that the disposition

of matters is one which causes great concern. When we look to the number of matters that are beyond—let us look at the full schedule and permit me just to pull it up, Madam President. When we look at the category of offences, sexual offences, for those under three years, there are 131. But for those over 10 years, there are 120. That is of the 355 reported. For murder there are 160 under three years. But for those beyond 10 years, there are 126.

For offences against a person, over 10 years, 213. For manslaughter, over 10 years in the court system, 13; attempted murder, 50; firearms, 113; dangerous drugs, 49; other offences, 496.

When we look to the number of offences in the Magistrates' Court, which are beyond 14 years, for example, there is a statistical occurrence of at least one matter beyond 14 years in the Magistrates' Court for murder. For arms and ammunition, 20 beyond 14 years; sexual offences, two beyond 20 years. When we get down to the period nine to 10 years in sexual offences, there are 12 outstanding; above five years, there are 114 outstanding.

Now let us translate some of these statistics into the human incident. For every sexual offence there is a perpetrator, alleged so to be. There is a virtual complainant in that category. There is a complainant who is the police officer coming to court. There is a prosecutor at the DPP'S Office or at the Trinidad and Tobago Police Service. There is forensics which feeds in. But there is a victim, and the victim of a sexual offence, going to court in the Magistrates' Court for over 14 years, is in and of itself a tragedy.

We are dealing with the phenomenon of witness intimidation, witness tampering, death of witnesses, death of the prosecutor, loss of files, loss of interest, loss of hope. And when we come to these kinds of statistics and we start to talk

about preliminary enquiries and proposals for a new system for pre-trial procedures, the Government has now approached this Parliament on the 22nd occasion of proposed amendments to this now 100-year-old law to say that we have tinkered with pre-trial procedures, preliminary enquiries, in particular, in a significant way in the year 2005 and 2008, when we sought to introduce written statements, et cetera. That door was opened wide because cross-examination was permitted and therefore the entire system of pre-trial analysis fell into the arrears that we now see in the statistics.

In 2011, the then Government now Opposition came to the Parliament and proffered a system of pre-trial procedure which involved initial hearings and sufficiency hearings based upon the St. Lucian model, where they said let us appoint masters of the court to consider these committal proceedings, see if there is a sufficiency of evidence and if there is a sufficiency of evidence then have it referred to the High Court for disposal or to the Summary Court or entirely off the case.

In 2014, due to inefficiencies in the 2011 Bill, an entirely new model was proposed by then Government now Opposition which was offered on the back of the Antiguan model where instead of using masters of the High Court, magistrates were then employed to have a view of the sufficiency of evidence coming before them in a similar system of doing the two purposes that committal proceedings where designed to do, and that is of course to allow for the disclosure of evidence and then the probing as to the sufficiency of evidence. Those are the two purposes of pre-trial proceedings.

But in dealing with that, we found ourselves in a position where the operationalization of that law was not built upon the back of the statistical

appreciation of where we are or not. This Bill which we have on offer before the Parliament is specifically intended to treat with elimination of a step of procedure, which is not grounded in constitutional right at all, which is not grounded in any finding of guilt or innocence at all, but which is instead grounded in the Director of Public Prosecutions having the responsibility to consider whether a charge ought to be dealt with indictably, and if so proceed to the High Court, or summarily, and if so proceed the Magistrates' Court.

In dealing with that process, the Bill sets out 43 clauses, four parts. The first part is the preliminary part, clauses 1 to 5. The second part deals with search warrants and summonses and warrants in general; clauses 6 to 13. The third part deals with pre-trial procedure, which is the nuts and bolts of this, which is clauses 14—38. And then the last part has some important reflections as to miscellaneous matters including important amendments to coordinating laws with this.

The Government proposes in the legislation that the best part of the preliminary enquiries existing law obtains. The existing preliminary enquiries law has been in effect since 1917. We say maintain the provisions which treat with warrants, summonses, the operationality of justices of the peace, of magistrates with concurrent jurisdiction, et cetera. In fact, if we do a cross-reference between the existing Chap. 12:01, and we deal with this Bill, one can easily note that clause 4 of the Bill, dealing with justices of the peace, et cetera, is very similar to section 2 of the original Act, that is the preliminary enquiry Act, Chap. 12:01.

Clause 5 is in similar provisions to section 3 of the existing law. Clause 6 is similar to section 5 of the existing law. Clause 7 is similar to section 6 of the existing law. When we go down to clause 8, we are looking to a similar section, to section 8 of the existing law. Clause 9 which deals with the issuing of summonses

deals in similar terms to section 7 of the existing law. The provisions for warrants in clause 10 of this Bill deals with the similarity of provisions in section 9 of the Act. In clause 11, where we make a first departure, which I will explain in a moment, we are dealing in similar terms for warrant matters brought before a magistrate as is contained in section 10 of the preliminary enquiries existing law. Clause 12 is similar to section 11 of the parent Act.

When we deal with the processes, of course we have some deviation because we are not proposing that the magistrate engage in any form of preliminary enquiry investigation; instead, it is anchored to the DPP's purpose and I will come to that in a moment, as to constitutional grounding for that.

When we deal with the admissibility of statements we are looking at section 16C of the existing law and that would be clause 17, compared to section 16C.

When we look to clause 18 of the Bill, we are in similar terms to section 19 of the preliminary enquiries Act. When we deal with notice of alibi in clause 19, we are dealing with similarities between sections 16A and 16B of the existing law. And, when we deal with the preferral of, indictment in clause 22, which is an important section, which I will come to, we are looking at similarities in section 25 of the existing law.

Similarly, clause 23 again finds rooting in section 23 of the existing law. When we look to clause 24, which is lost or destroyed documents, we are looking at section 26(2) of the Act. When we are looking at fresh evidence, which is clause 25, we are in similarity to section 17(7) and section 24C of the existing law. When we look to clause 26 with the DPP's referral for matters to be dealt with summarily, we are looking at the existing law, section 27(2).

The committal for sentence in clause 27 is similar to sections 27A, 27B and

27C of the existing law. The recording of the answer of the accused person in clause 28 is similar to 17(2) of the existing law. Bail and committal for sentencing in clause 29 is similar to section 30 of the Act. Clause 30, which deals with conveying the accused person to prison, is similar to section 31 of the existing law. Clause 31, bailing the accused person for committal, is similar to section 32 of the law. Clause 32, where a judge grants bail, is similar to section 33 of the Act. Clause 33, apprehension of an accused person on bail about to abscond, is similar to section 34 of the Act. Clause 34, the power to revoke or require higher bail is similar to section 37 of the Act. Clause 35, place of committal is similar to section 38 of the Act. Clause 36 pre-trial requirements, the DPP to give registrar notice et cetera is similar to section 21(7) of the Act. Clause 37, reading of statements at trial, similar to section 39 of the Act. Clause 38, restrictions on publication and report, is similar to section 41 of the existing law.

Part six of the Summary Courts Act to apply, where we refer to Chap. 4:20, of course, is similar to section 23F of the Act. And the rules of Court provisions in clause 24 are similar to section 16B(6) of the existing law. And then we deal with the matters of transitional and consequential amendments.

Now I have taken time to refer to the similarities between the Bill and the existing law upon the premise just stated, that we are seeking to hold and keep alive the provisions of the preliminary enquiry law, Chap. 12:01, which have worked well.

Let me now translate what we are dealing with when we look to the Office of Director of Public Prosecutions having this responsibility for looking at whether a matter should be dealt with indictably and if so, his power to refer the matter to the High Court as the pre-trial procedures beginning at clause 11, really starting in

heart at clause 14, continuing on in Part Three really prescribed.

Madam President, I wish to refer firstly to the importance of the supremacy of the Constitution of the Republic of Trinidad and Tobago. Section 2 of the Constitution describes the Constitution as the supreme law of the land, and the Constitution in particular sets out certain enshrined rights as we are well aware, in sections 4 and 5 of the Constitution, in particular, the right to fair trial and the right to essentially due process of the law and procedural fairness. These are concepts and flavours without going into the particular language of sections 4 and 5 guarantee that that is trite, in terms of the translation I have just given.

But when we get to the heart of the Constitution in dealing with Chapter 6 of the Constitution, it is important to note that the Director of Public Prosecutions is a constitutional office so described pellucidly clear in its language at section 90 of the Constitution, in particular, section 90(2):

"There shall be a Director of Public Prosecutions for Trinidad and Tobago whose office shall be a public office."

Section 90(3):

"(3) The Director of Public Prosecutions shall have power in any case in which he considers it proper to do so—

(a) to institute and undertake criminal proceedings against any person before any Court in respect of any offence against the law of Trinidad and Tobago;

(b) to take over and continue any such criminal proceedings that may have been instituted by any other person or authority;

(c) to discontinue at any stage before judgment is delivered any such criminal proceedings instituted or undertaken by himself or any other

person or authority."

4; that is 90(4):

"(4) The powers conferred upon the Director of Public Prosecutions by subsection (3)(b) and (c) shall be vested in him to the exclusion of the person or authority who instituted or undertook the criminal proceedings, except that a person or authority that has instituted criminal proceedings may withdraw them at any stage before the person against whom the proceedings have been instituted has been charged before the Court.

(5) For the purposes of this section a reference to criminal proceedings includes an appeal from the determination of any Court in criminal proceedings or a case stated or a question of law reserved in respect of those proceedings.

(6) The functions of the Director of Public Prosecutions under subsection (3) may be exercised by him in person or through other persons acting under and in accordance with his general or special instructions."

Now, I have taken time to put on the record the specific provisions of the supreme law, section 90 of the Constitution, to demonstrate that the Office of the Director of Public Prosecutions is the constitutionally described office to deal with the matters, which this law proposes he ought to deal with.

Secondly, the Office of the Director of Public Prosecutions is one which is constitutionally protected. The Office of the DPP is one in which there can be no political interference. Notwithstanding the ability of a Prime Minister to be involved by way of input into that process, it is certainly not the case that a Director of Public Prosecutions is a political appointee. And dare I say that the history of Directors of Public Prosecution in this country have demonstrated with

certainty that it is one of those offices that has withstood the test of time and has not been the subject of scandal in this country.

Madam President, it is also important to note that the Office of the DPP is one which is protected by section 111 of the Constitution, where the Judicial and Legal Service Commission, of course, is the entity to make the appointment, but it is the salaries and allowances of the DPP's office that is a charge on the Consolidated Fund and that is sections 136(4) to (6) of the Constitution. The office holder mechanism of appointment is one which is insulated and its terms and conditions are insulated from interference. Anchored in the Constitution in section 90, anchored in the purpose of his powers as so described in subsection (3) onward of section 90.

And then we come to the existing law. Chap. 12:01, the preliminary enquiries law, is one which started in 1917. I have heard some of the debate, which revolves around whether this is pre-1962 law and therefore saved law and, therefore whether it requires a three-fifths majority and whether, for some reason there is an infringement of sections 4 and 5 rights, or whether there is an infringement of the separation of powers or rule of law doctrine.

I wish to say that this matter has had the benefit of very careful scrutiny by the Privy Council. In particular, the Court of Appeal of Antigua and Barbuda was the entity which considered a matter in a well-known case referred to as the *Hilroy Humphreys* case *v the Attorney General of Antigua and Barbuda*. It was a Privy Council Appeal, No. 8 of 2008, and Lord Hoffman considered a judicial review proceeding brought then by Hilroy Humphrey which alleged that there was a breach of constitutional rights on essentially two grounds, that there was a breach of the process of protection of the law. And secondly, that there was a deprivation

to the right of a fair trial.

And Lord Hoffman was very careful in the analysis of the law which did include a certain amount of argument on retrospectivity, but which the honourable Lord felt did not apply and with which the entire Privy Council agreed. Lord Hoffman was very careful to say, and I wish to put this on the record:

"Prospective litigants…"

—and this is at page 2 of the judgment at paragraph 4:

> "Prospective litigants or defendants in criminal proceedings do not have a vested right to any particular procedure and there will generally be nothing unfair in applying whatever procedure is enforced when the case comes to court."

That is the Privy Council, which is the final court of appeal in our jurisdiction considering entrenched rights, which are similar to our constitutional rights in section 4 of our Constitution.

The hon. judge when further to say, and this is at paragraph six of his judgment. He said this that Mr. Fitzgerald QC who was urging the board to come to a conclusion to the contrary that they did, argued that there was purposive construction to be applied, and he had alleged, that is Mr. Fitzgerald, that section 3 of the Constitution would be breached. But the board said this, the board does not accept either of these arguments. It considers that the plain purpose of this section was to prohibit two specific types of retrospective legislation. And here is the material bit.

> There is no justification for giving it a wider meaning. As for the protection of law, the argument appears for the board to involve a circularity.

The court then went on to look to the right to a fair hearing as a guaranteed

right and the court said, in particular that there certainly was procedural fairness involved in the process. And paragraph eight says in particular that the board, if it were to accept Mr. Fitzgerald's view, the conclusion starts from the premise that the preliminary enquiry is a part of the trial for an indictable offence, et cetera, and they referred to the relevant section, therefore, requires it to be conducted fairly within a reasonable time. From this it would be said to follow that the abolition of the preliminary enquiry would deprive the accused of the right to fair trial.

I am raising this to identify the familiarity of the kind of argument which addresses the constitutionality of this kind of law to say that the Privy Council has considered the very same arguments now being discussed in our jurisdiction, in relation to this matter.

But the Privy Council was absolutely clear that the committal proceedings are not determinative of guilt, but act as a filter to enable the magistrate to screen out those cases in which there appears insufficient evidence to justify a trial. That is at paragraph 11.

And in essence this case of Hilroy Humphrey is one which sets out very clearly the fact that we are not looking to disturb any entrenched rights. Antigua and Barbuda had a similar situation. In 2008, the Privy Council considered that position and did not agree with the perspective offered then. The courts in our jurisdiction have been utilizing the preliminary enquiry legislation since 1917. The preliminary enquiry Act does provide for certain methods and approaches, the strength of which we have sought to maintain by the clauses, which we have identified to be kept in the Bill.

We have also recognized that yes, there are provisions which one could argue are statutory procedural provisions, which could be attached to this particular

argument of constitutional grounding. But the fact is that those provisions, in particular section 22, section 23, section 24, section 25 and section 26 of the existing law, the preliminary enquiries Act, those particular procedures are merely guides to procedural conduct, which are not entrenched in any supreme law.

The law, as it is phrased, does not deal with any transfer of rights from the original or inherent jurisdiction of the courts such that we would be breaching the separation of powers principle identified by section 99 of the Constitution. That was in fact the case of the arguments in the *R v Hinds* case, where there was a prohibition against transferal of original or inherent jurisdiction in whole or in part and interference in the separation of powers principle. But it is clear that we are not dealing with that as the case in our section.

But when we look to the procedural aspects of the law, we really have now the opportunity to say to the Director of Public Prosecutions, subject to capacity, and that is an obvious point in this Bill. Is there a capacity for the Director of Public Prosecutions to do that which the Magistracy was doing? And that is a genuine question which we have, in summary, addressed by improvements to the Office of the DPP, and I will speak to that in detail as I propose to wrap up the debate, but in summary I can say bodies have been provided, promotions are in gear, three brand new offices have been implemented, new case management structural provisions are done. But prosecutions, which are handled 95 per cent of them by the Trinidad and Tobago Police, are also now going to be clothed by having to pass through the DPP's office.

The existing law requires, if someone is to face an indictment, it requires a process. You must appear in a preliminary enquiry for an indictable matter. That preliminary enquiry evidence is led, cross-examination, fresh evidence, new cross-

examination. The magistrate then decides whether there is going to be a committal. The magistrate transfers that to the Director of Public Prosecutions. The Director of Public Prosecutions must then decide whether to indict or not. So the magistrate goes through this filtration, passes it to the DPP and the DPP must decide. That is the existing law.

What the DPP decides, within the constitution remit in section 90, whether he would proceed, he would enter no prosecution, a nolle prosequi or in fact whether he would just simply let someone go or in respect of someone who has been discharged and he disagrees, the DPP has the power to take them to the High Court. The DPP has the power make sure, under the existing law in Chap. 12:01, that he can intervene at any point in time. The DPP has the power whether a preliminary enquiry has started or not, to indict and take straight to the High Court.

So what we are doing is we are simply anchoring this entire Bill in the constitutional power of the DPP and in the expressed and recognized function, which the DPP had in the existing law, in particular in sections 22 onward in particular section 23, of the existing law, where the DPP's power to involve himself is very expressly stated and later on in section 25 and section 26 of the same law.

The question now arises as to a very key point that many people have raised and that is: What is to be had with respect to hybrid offences? For those non-practising lawyers, hybrid offences are offences which could be tried either way, either indictably or either summarily. The Summary Courts Act comes into operation here, Chap. 4:20 of the Laws of Trinidad and Tobago, in particular when we deal with part 6 of the Summary Courts Act, we start off by looking at section 94 of the Summary Courts Act, and we take ourselves to section 101 of the Summary Courts Act.

Section 94 of the Summary Courts Act is proposed to be treated with. In Schedule 5 of the Bill you will see in the miscellaneous provisions in Part IV of the Bill that we are looking to treat specifically with section 94 of the Summary Courts Act. And in the Summary Courts Act, we are proposing to delete, to repeal the positions on section 94. If I just find the copy of the Bill and I look to Schedule 5. We see in Schedule 5 in No. 2, the consequential amendments to the Summary Courts Act, we look to big "E", we are repealing section 94 and then we are in big "F", amending section 100(2) of the Summary Courts Act, Chap. 4:20.

Let me explain what that means. Section 94, which deals with summary trial of indictable offences, part six of that law still stays. We are eliminating, by way of repeal, the references to section 94. And section 94 is the power to reduce a charge from indictable to summary offences, and it reads:

> "Where, upon the holding of any preliminary enquiry on a charge of an indictable offence, the Magistrate is of the opinion that the evidence establishes, or appears likely to establish, the commission of summary offence of a like kind to the offence charged, the Magistrate may, if he thinks fit and unless the"—DPP—"otherwise directs, inform the accused person accordingly, and all further proceedings in the case thereafter shall be the same as if a complaint had been made against such person for such latter offence."

So we are taking away the ability of the magistrate to convert the matter down. This is going to be a function of the Director of Public Prosecutions and the Bill specifically provides for that to be, in fact, a matter for consideration by him, where he can consider an indictable matter taken to the High Court to in fact be one for summary treatment, and he refers it to the Magistracy.

The important correlation to that is in the amendments to section 100(2) and section 100 of the Summary Courts Act is the summary trial of a complaint against an adult for certain indictable offences. The certain indictable offences are referred to in the second Schedule to the Summary Courts Act and they list out all of the scheduled offences that are described there.

Section 100(1) says:

> "The following provisions of this section shall have effect when an adult person appears or is brought before a Court on a compliant charging him with any of the indictable offences specified in the Second Schedule."

We are deleting the reference to the preliminary enquiry contained in subsection (2). So, in essence we are proposing to treat with the scheduled offences in the Summary Courts Act, Chap. 4:20, referred to by section 100(1) and treated by section 100(2), we are proposing that those scheduled offences, the matters that the DPP will consider and we are proposing that the section 94 ability of a magistrate to convert the matter down to summary offence, be eliminated entirely. So the DPP now takes ownership of the entire matter, which respectfully we submit is the purview of the DPP under section 90 of the Constitution in any event, as specifically stated in the expressed language of section 90(3), subsections (2) and (3) in particular.

That is the mechanism to try to translate this Bill. Because the average person on the street wants to know well what is this Bill all about? How does this affect me? What are these lawyers talking about? Very often it is hard to explain the law to the common and relevant person, the ordinary man in the street. But it is the ordinary man and each and every one of us that are the victims of crime or participants in the process. And it is true to say that not every solution is to be

found in one-off venture.

The hon. Members of the Senate will know—[*Interruption*]

Madam President: Hon. Minister, you have five minutes.

Hon. F. Al-Rawi: Thank you, Madam President. Time in the House is a little bit longer, so thank you for the reminder. Hon. Senators will note that we have taken a very dedicated approach to dealing with the criminal justice system. We have not sought to treat with one cog of the wheel. We have sought to deal with multiple areas. Some of them are legislative, as we have seen in the period before the recess, which hon. Senators are well aware of. Some of them are operational. For instance, in ensuring that the Director of Public Prosecutions has the staff, has the capacity, has the ability to operate. That is an operational aspect. One of the pseudo-operational but subsidiary legislation aspects is the implementation of the Criminal Proceedings Rules came into effect on the 18th April, 2016, which we have talked about for many, many years, but which is now in the system and being worked out in similar fashion, not in the perfect sense of the word but as the civil proceedings rules calls a radical transformation of the civil backlog, so too will the criminal procedure rules have similar effects as we begin to comply with the obligations. And as judges and magistrates become more familiar with the extent of their powers and apply the unspecified sanctions in the process. But the fact is we know that preliminary enquiries take far too long. I do not want to go into any sub judice rule but suffice it to say there is well-known case before the courts dealing with allegations of serious corruption. I am referring to the Piarco Airport enquiry, and all that I would say about that is that it has been in the Magistracy since the year 2002. We are in 2017. We are in the preliminary enquiry stage to decide if we have a case that should go to the High Court to then start trial, and

after High Court, Court of Appeal, Privy Council and then we find our way.

I make no submission as to guilt or innocence, I am looking at the time frame factor there. Because there are positions on both sides. Persons accused want the benefit of being held to be innocent, because allegations are a terrible thing in our country. We write a letter to the Integrity Commission and that means it is true, whatever you write. The Integrity Commission is bound by hands and legs and cannot say a word about it but the letter speaks for itself, whatever it is. I do not, not understand this. As a person in public life, you subject yourself to criticism and ridicule and a very healthy amount of it, but that is our process and we put ourselves into this mix and we stand by it.

But my point is that persons want vindication and also persons want justice, which way it is can only depend upon due process, as the Leader of the House was saying a little bit earlier. Due process is that critical thing, which takes our society into discipline, cause, consequence, and effect.

Can law make this better? Perhaps. Can law change morality of society? Perhaps it can influence with it, as we saw with the speed limit. But the fact is that we have been tinkering with the system for far too long, and the Government's submission to the hon. Members of the Senate is, there are multiple views as to how this ought to be done.

Do we take the St. Lucia model like 2011? Do we take the Antigua model like 2014? Do we take the Bermuda model as is now being offered as a solution? Do we go to the English model where the magistrate still have some involvement, particularly for triable either way or hybrid offences? Our submission, having the responsibility for governance for the time frame that we have, and it is 36 months and counting. We count in months. How fast 60 months have turned into 36. So,

Madam President, as I know my time has properly run out, there is a lot that we wish to hear. There is a lot that we wish to consider. We consider the views of hon. Senators as important and I beg to move. [*Desk thumping*]

Question proposed.

Sen. Wayne Sturge: Thank you, Madam President. I listened to the Attorney General intently for the last 45 minutes and I am still waiting to hear the exact reason being proffered as to why certain sections of the existing preliminary enquiry model are being removed. You see, we keep making reference to cases being stuck, preliminary enquiry in preliminary enquiry mode in the Magistrates' Court and the Attorney General made reference to the airport case, and when we make mention of this, it seems as though we are not offering anyone an explanation as to why these cases are taking so long.

You see, I would be the first to admit that something needs to change with respect to the existing model of preliminary enquiries. We have had it for 100 years and I will say immediately when things started to go wrong. From 1917 until 2008, you had what still exist to some extent which is referred to loosely as the old school preliminary enquiry, where witnesses are called to give viva voce evidence in chief and thereafter, they are subjected to cross-examination. In 2008, a new system was ushered in which deals with paper committals and it still exists and that is exactly where the problem started because paper committals were introduced with a view to shortening preliminary enquiries. And how would a committal proceeding shorten the old school preliminary enquiry? It was felt that what you did, instead of leading evidence in chief orally or viva voce from the witness, what you did was you simply file the witness statement so that he does not have to come and give evidence in chief orally which would take perhaps an hour or two per witness and

thereby the cross-examiner, counsel appearing for the accused, will then say you have filed 50 statements, I am interested in cross-examining two or three of your witnesses only. So you no longer need to call 50 witnesses to give evidence in chief orally. That was the reason why preliminary enquiries started being protracted and measures were put in place trying to reduce the time.

That system ironically lengthened the process and it lengthened the process because prosecutors are required to file witness statements and have them sworn before the Justice of the Peace. But what happens now? With the existing preliminary enquiry, it is the prosecutor who has to in essence link with the police officer, link with the witness and link with the Justice of the Peace so that their timetables are all synced so that the statements are filed, and only after the statements are filed, are then taken before the magistrate and admitted into evidence, thereafter you have an opportunity for cross-examination.

Well, I will tell you, Madam President, I was in the Magistrates' Court yesterday and it was not my clients but I saw two cases. One, four and a half years now and the prosecution had not filed their witness statements. The other, close to five years, and the prosecution has not filed their witness statements. In spite of lawyers being present representing the accused, the accused chose to speak for themselves to say, "Look, Ma'am, I in here four and a half years, I in here five years, this is unfair, the prosecution is never ready". And you know what the magistrate says? "Well, we will adjourn for one last time", and when you check the record, one last time—it has been adjourned for one last time about 15 or 20 times so there really is no one last time, it is one last time ad infinitum. So you are at the whim of the prosecutor.

But what we heard today, we did not hear that. We did not hear the reasons

why the existing models, be it old school committals or paper committals, why they are more protracted than they were in the past. We heard about what is being removed and what is being removed is cross-examination. So you would swear that cross-examination is that which causes preliminary enquiries to be protracted and it is not, because let me tell you why, Madam President. At a preliminary enquiry, the prosecution really has to make out a prima facie case; that is it. The magistrate cannot discharge the accused, the accused cannot be committed if cross-examination impugns the integrity of the material witness. That cannot happen because a magistrate is not there to judge credibility.

The cases of Jermaine Bowen and David Abdullah make it clear that you can only be acquitted on a no-case submission if an element of the offence is not made out or if there is evidence such as videotape evidence which makes the allegations impossible or if there is scientific evidence which shows that what the witnesses are saying could not have occurred. That is the only way. So cross-examination in the Magistrates' Court does not take years. In fact, yesterday in that same court, I cross-examined five witnesses in one hour and there are 28 or so witnesses in that case. So cross-examination is not the cause of the preliminary enquiries being protracted.

And let me just say, I heard what the Attorney General has said with respect to Hilroy Humphreys and the thing is cross-examination, whilst Lord Hoffmann is saying you do not have a right to cross-examination pre-trial because you get to cross-examine anyway at the trial. When you read Hilroy Humphreys, it is clear that it can be distinguished from what we are debating here. Because what was raised in Hilroy Humphreys, the accused was saying what is being taken away from me is a protectional safeguard, an opportunity to test the case against me and

with that opportunity, an opportunity where I can be discharged at the Magistrates' Court without having the burden of these charges hanging over my head for a few more years, without the expense of a trial and so on. So cross-examination, it is not a right but it is a protectional safeguard.

But the Attorney General made mention, when he was saying there is a twin purpose for preliminary enquiries was very careful to mention disclosure. Now disclosure is another protectional safeguard and cross-examination allows a cross-examiner to unearth material that is within the bosom of the prosecutor or the police and being secreted away from the accused. So when you remove the right of cross-examination, you remove the right and the ability of the accused to unearth or to get things disclosed than if you remove it, he would not have that opportunity.

Now, in 2011, there was an attempt to do away with preliminary enquiries, the Attorney General mentioned that. What the Attorney General did not mention or failed to mention is this, in 2011, there was still a procedure, although you no longer had the right to cross-examine, there was still a procedure whereby your lawyer had the opportunity to look at the depositions or the papers disclosed and to make submissions and to say that no case is disclosed with respect to one or more of the offences charged against the accused.

In 2014, when there was another attempt to do away with preliminary enquiries and I think the 2011 model had something called a sufficiency hearing. So although there was no cross-examination, you still had an opportunity at a sufficiency hearing to make legal submissions and therefore, avoid a trial, if your case is thoroughly bad. Avoid the expense and all that goes with it. So that is the 2011 and the 2014 model.

4.00 p.m.

What the Attorney General must tell this Senate is this. In all of the jurisdictions where preliminary enquiries and such procedures have been abolished, it has been abolished but the substitute was that protectional safeguards were put in place. So let us go to the United Kingdom. The United Kingdom operates under a regime of full disclosure and they operate under a regime of full disclosure because you can no longer cross-examine, in most cases, at the committal proceedings. So how do you get disclosure? They give it to you; they give you all of the material. It is no longer at the discretion of the prosecutor who is a party to the proceedings. And that came about because of cases like the Birmingham Six, the Guildford Four and Maguire Seven and so on and a host of other cases which shown that although we trust the police and we trust the prosecutors, they are human, and sometimes either by error of judgment or deliberately, would secret away evidence that may assist you in your defence; evidence that may undermine their own case.

But here we are, abolishing that part of the preliminary enquiry, removing the jurisdiction of the magistrate or at least the judicial function of the magistrate, and the magistrate, in this new model, is merely an administrator who deals with adjournments and giving directions as to filing witness statements and so on. [*Interruption*] A case manager, as my colleague, Sen. Ramdeen is saying. And what is—well, there is so much that is bizarre about all of this but I will go to a few clauses to make my point and then I will speak generally.

If you look at clause 14 under the rubric Pre-Trial Procedure, it says in essence the police shall submit to the Director of Public Prosecutions. Let us deal with (b):

"any statements of witnesses in support of the charge;"

Well, what does that mean? It means the police officer has a discretion where he can decide not to submit to the Director of Public Prosecutions, statements that do not support his case, statements that may undermine his own case and I pause here to make reference to a case called Jovan Maxwell because I would have thought that in dealing with this case, you would have looked at issues like this. Because in Jovan Maxwell, there was a witness who basically contradicted, materially contradicted, the main witness who said Jovan Maxwell was the man who did the shooting. That witness was a witness who was independent, had no interest to serve. The complainant, the police officer decided "this does not help my case; in fact, it undermines my case", and he decided, he admitted in cross-examination, it was his decision not to give it to the DPP. Jovan Maxwell had to go through a preliminary enquiry and three trials, three trials, where he could have been convicted and sentenced to hang for murder.

And when—at every stage, first, second, third trial, you make an attempt to call this witness, because cross-examination at the Magistrates' Court is that which unearthed the existence of this witness. [*Desk thumping*] But when it came to the trial, the witness cannot be found. That is the first trial; second trial, witness cannot be found; third trial, witness cannot be found. [*Desk thumping*] Is that fair? Madam President? It cannot be and I can give so many cases where that is the case.

So here we are, clause 14, you are giving the police officer the power to withhold evidence because it does not support his case. That is something that the DPP should decide upon and I shudder to think that we should remove that opportunity from him, because the DPP himself is a protectional safeguard against the excesses of the police. [*Desk thumping*] So, evidence that might show you are innocent, the DPP never sees it, you go to the gallows; that cannot be right.

You see the thing is—let me move on, there is so much I can say about this check and balance but I only have 40 minutes. I have another problem with clause 15. Clause 15 tries to say, in essence, that directions will be given as to filing of statements and service of statements and exhibits and so on which the prosecutor intends to produce at the trial. That is what the police gives to him. But there are no sanctions in clause 15. I thought we would have had at clause 15 which would make impossible what I spoke about yesterday, which is, prosecutors, for four and five years, not yet filing statements. That is the problem that needs to be corrected.

I am saying yes you need to fix the system of preliminary enquiries but you cannot fix it by leaving gaping holes like this to continue. Because if there is no sanction, then the DPP would go on, his officers would go on ad infinitum with a legitimate excuse: we cannot allow this case to be dismissed because there is a victim, someone was murdered, he has family and so on and so on. But the other thing is you have "ah man languishing in prison four or five years". He presumed innocent. But you know something? What if he is actually innocent because there are those cases? That is four or five years that he will never get back, so clause 15 is something that must be looked at carefully and fixed.

The Attorney General, in moving this Bill, again, he made reference to clauses 14, 15, 22, 26. I have dealt with 14 and 15. There is a clause 22. Clause 22 is the PNM's version of section 34. Now, there are two parts to clause 22. Clause 22, in essence, it removes the power of the magistrate. Clause 22 is an ouster of the jurisdiction of the court because as it is in the existing system, the magistrate has to make a determination as to whether a prima facie case is made out. In the 2011 version, which was never operationalized, you still had a judicial officer at a sufficiency hearing. There is no sufficiency hearing here before a judicial officer.

So you are removing the ability to cross-examine, you have not fixed issues of disclosure and you are removing the Judiciary from the process.

And what is bizarre is this, the DPP, in cases of serious offences—indictable offences are serious offences—the DPP is the one who would be liaising with the police in the first place and giving instructions to charge. So if he gives instructions to charge and 12 months after, the magistrate says you are formally committed to stand trial and he DPP has to look at the docket again and decide whether to prefer an indictment, "he looking at the same material that he used to charge yuh in the first place". Nothing has changed because you had no opportunity to cross-examine and you had no opportunity to cross-examine, the old common law rules of disclosure still remains, so that is the second safeguard gone and then the third safeguard which is the court is now gone and you are left with a DPP who is saying—in what circumstances would he hold himself to be wrong if when he first gave instructions to charge, he said there was enough, because nothing will change in the interim. So this 22(1) is a farce and it is a dangerous development.

So I would ask the Attorney General to go back and look at the 2011 and 2014 models and bring back into this mix the court, because the Attorney General said it is twofold: disclosure and the other thing is filtration because the preliminary enquiry is a process designed to filter out cases that are bad and should not go before the Assizes.

But there is a 22(2); 22(2) is the PNM section 34. Clause 22(2) is where the DPP has within 12 months of receiving the documents from the magistrate, he has to prefer an indictment and if he does not, the accused can make an application before a judge to be discharged, to go home, "to win he case". That was section 34 that they made a big song and dance over, they had a big problem with and they

are bringing back section 34 but "they name it" clause 22. Now what is wrong with this? Let me tell you what is wrong with this, Madam President. Firstly, right now, I outlined the DPP takes, in most cases, four or five years at the Magistrates' Court to complete that process. Then, as it stands, when you are committed to stand trial, whether it is old school committal or committal proceedings new style, the DPP, on average, takes between three and in some cases as much as seven years before he files an indictment based on what—on the committal bundles sent to him by the magistrate. He takes three to seven years because he is short-staffed; he cannot handle that volume.

So even if you triple the staff complement at the DPP's office, even if you quadruple it, you still have clause 15 where you can make applications for extension and go on ad infinitum and the matter stays at the magistrate's level for three, four, five years because the magistrate "ent" throwing it out and if he throw it out, there is a provision to bring it back. Magistrates hardly ever throw out. In fact, recently "they throw out ah case" and the Attorney General made reference to it sometime ago but when they threw it out, "yuh know what happen?" They threw it out because the prosecutor was tardy, was not doing her work, dilatory, contumelious delay, they threw it out and then they re-arrest the man, so "he back inside, so waste ah time throwing it out". So you have this new procedure coming here where you do not fix anything at the magistrate's level, you can go on ad infinitum and then when you send it to the DPP, he has 12 months to prefer an indictment, which is good but impossible, impracticable with his existing complement of staff. He cannot do it with three times the staff he has and he cannot do it with four times, so you are not going to—[*Interruption*] Yes, he cannot make, he cannot satisfy 22(2).

But the interesting thing is what if there is a case, somebody who has powerful friends, he might be able to get it thrown out after 12 months. It might be a financier of a political party, not ours; somebody with oil and so on. And the whole point is, he could get justice before everybody else. And you see the difference is, in section 34 which they had a problem with—

Sen. Ameen: "They voted fuh that too."

Sen. W. Sturge: Yes. No, they had a problem with it. In section 34, which they had a problem with, section 34 said that that application is 10 years, so it must be 10 years of doing nothing before the case is dismissed, here we have 12 months. "So if yuh cyah fix yuh business in 10 years, how yuh fixing it in 12 months?" [*Desk thumping*]

But you know what "troubling meh and what worse than that"? With section 34 that they complained so bitterly about, section 34 said that that clause does not apply to blood crimes, "it doh apply to murder, it doh apply to white-collar crime" and so on. This makes no distinction. So you could have "ah man"—[*Interruption*] Sorry? [*Crosstalk*] Right, right. So the short point is they make no distinction, so that you could get away if the DPP "ent" file in 12 months, that cannot be right. So this is section 34 brought back and now we have the other section referred to by the Attorney General, clause 26 and the Attorney General, in referring to clause 26, made reference to hybrid offences. Now, what is a hybrid offence, Madam President? A hybrid offence is referred to as an indictable offence which is triable either way. So it is by nature an indictable offence. Not all indictable offences are hybrid offences but there are categories of indictable offences where the court would say, "Listen, you want to go to ah judge and jury 15 years down the road or yuh want yuh case done before this court where yuh could actually plead guilty

and get it over with or yuh could get ah trial before the magistrate?". And when that happens, it is a marrying between section 94 and section 100.

So this indictable offence or serious offence allows the DPP to make a recommendation to the accused and when he makes the recommendation that "Listen, you have a right to trial by jury but you know what, by judge and jury, you can elect summary trial". And the magistrate will read that out to the accused and the accused can decide "I am consenting to be tried. I am giving up my right to be tried before a judge and jury. I would like to be tried before the magistrate". Or he can say, "Magistrate, one person? Case harden? Not me. Lemme take meh luck before the nine or the 12 good and true citizens", because he has that right as the magistrate would now tell him. You know what this clause does? This clause says in essence that it is not the magistrate, you know—they remove the magistrate—the DPP is now the one to make that determination. Is not the DPP a party to the proceedings? So a party to the proceedings who has an interest in sending you to jail can now say, "Look, doh bother with that yuh know, we doh want to try Ramlogan before a judge and jury, we feel he go get away. We going and try him before ah magistrate and tell the magistrate here wah happening, you hata try Ramlogan." And it is a fictitious Ramlogan I am speaking off—Ramjack. "Leh me say Ramjack. Yeah, ah doh wanna say Baksh." But the whole point—[*Interruption*]

Madam President: Senator, continue addressing me, please.

Sen. W. Sturge: I am sorry, I am so sorry. But the short point is, why are you, again, removing a magisterial power and giving it to a party to the proceedings to determine how you ought to be tried because under the existing set up, you consent? So why are you removing the ability of the accused to consent, to say:

"Look, ah go take meh chances before the magistrate" or to not consent? That cannot be right, Madam President.

Now, there are a few more issues that I would like to refer to generally. You see, I know at some point, someone else may point out that I was one of the persons who advocated for the removal of preliminary enquiries. I did so in my Motion on rising crime, this year, earlier this year. But I would like to remind whoever is going to refer to it to look at where I mentioned that because I mentioned it under this rubric medium term. Because you cannot get rid of preliminary enquiries in the short term. [*Interruption and laughter*] Oh God, I see Sen. Rambharat has thrown away part of his speech now. [*Laughter*] Yes I did say it because the truth is preliminary enquiries, as they are now, must be fixed, but before you fix them, you must do like other jurisdictions have done. Before fixing it, there were other systems that were put in place to ensure that when that system was removed that the system would actually work.

You see, let me tell you another thing that happens with preliminary enquiries that has started happening since 2007/2008 thereabout. Before we had the committal proceedings which we now have, witnesses had to come and go into the box and give evidence and be cross-examined at the preliminary enquiry. Now, since 2007, there is 15C of the Evidence Act which says in essence that the prosecutor does not have to call a witness if the witness says he is in fear. Well, we understand if the witness is dead, you cannot call him; we understand if he is very sick and cannot attend, you cannot call him; he is out of jurisdiction, you cannot call him. But witnesses, all of a sudden, since 2007, since that was passed to now, all of a sudden, nobody wants to testify. The police cannot find witnesses. In fact, they came with an application recently: witness cannot be found. And I saw the

witness outside the substation in San Juan, I had to go and tell the magistrate. The witness "turned up yesterday because I find him". And he is standing up outside the substation—he is mentally ill—and dancing, probably "rant of a madman" and I saw him and I had to take my cell phone and videotape him. Had I not done that, it would be my word against the police officer who is saying he cannot be found.

And I understand why he would not want to be found because he is obviously a "coke addict" and he would not support their case. But all of a sudden, you had these plethora of applications in the Magistrates' Court which stretched out the committal proceedings. So you have applications which are separate to the substantive preliminary enquiry, you have to make an application before that statement of that witness is admitted into evidence. So all of a sudden, you cannot find witnesses, everybody in fear. So then, you have applications, you have to call four and five per application so it mushrooms.

Another thing, prosecutors are making bad-character applications at the Magistrates' Court and that came in since 2009. Bad character is not something which the magistrate would use to commit you to stand trial for an offence. Bad character is something which is led before a jury because the credibility of the accused is an issue. The credibility of the accused is not an issue at the preliminary enquiry because that has nothing to do with if your prima facie case is made out, but that is what the prosecutors are doing, so more delay. Because you have to come and prove that he has all these convictions and what he did and bring witnesses to support it and you have to cross-examine and you have to make legal arguments and that is why it has stretched out and that is what we need to fix.

Then, there is disclosure. I begged the Attorney General when we did—what was the name of the? Plea, yes, thank you, I begged and I am begging for this reason.

Whilst we are speaking about Magistrates' Court, it is even more of a problem in High Court because let me tell you why juries are acquitting and let me give you a case again. When the police, when you cross-examine the owner of an establishment and he tells you that the police seized the videotape showing the incident and the police never disclosed that and the jury hears that, and you are making an allegation that what happened is the police was shooting at each other, it was friendly fire and "somebody dead", it was not the accused and the jury hears that, then the jury quite naturally would want to know, why was that not disclosed? Is there any good reason? And that is enough to cause reasonable doubt which leads to an acquittal. So I beg today, I implore, "ah go down on meh knees" and ask the Attorney General—it can be fixed right here in clause 14 by saying: the police must submit all of the material gathered during the course of the investigation of the offence. Let them submit all.

And I am still saying even though they submit all to the DPP and the DPP would have a discretion under common law, I am saying at some point, we need to look at the common law because the common law gives the discretion to the prosecutor to decide—the prosecutor who has an interest in convicting you—whether something he is secreting from you, whether he should give it to you, and he will say, "I can only give it to you if it assists your defence or materially undermines my case". And this is Trinidad and they are humans. So why go through that?

Because you see, the thing is we no longer have cross-examination once this Bill is passed and proclaimed, we no longer have that safeguard of cross-examination at the Magistrates' Court that would unearth and force disclosure. But you know what? When it comes up at trial and you do not have full disclosure,

again, an opportunity to parade in front of the jury and the jury would ask why is the police behaving like this or why is the DPP behaving like this. In the United Kingdom, after Michael Hill QC's behaviour, a distinguished QC, former MI5 member, no one thought he would have behaved the way in which he behaved in the Guildford Four. But that discretion was removed.

So what we need to do—we accept that you do not need to give the names of informants; that is not part of full disclosure. That is a security issue. You do not have to give names and address of witnesses but you need to give the material, the evidence, all of the evidence gathered. If you are removing one safeguard which is cross-examination which assists in disclosure, then replace it with another safeguard because you have already moved a safeguard in the form of cross-examination and in the form of legal submissions before a case master or the sufficiency hearing.

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

Sen. W. Sturge: Guided. Now, one of my colleagues I am sure, would refer to the powerful speech given by the Member of Parliament for Maraval—is Maraval they call it or Diego Martin East?—Mr. Imbert in 2011, because Mr. Imbert said you cannot abolish preliminary enquiries in the short term because you have to build more courts because you are shifting a bottleneck from one place to another. When you remove the preliminary enquiry which holds back all these thousands of cases from the High Court, you remove it using this process and you put all of these cases to the doorstep of the Assizes, what is going to happen? The Assizes which has six courts in Port of Spain and three in San Fernando and one in Tobago.

In fact, I heard the Attorney General, in another debate, make reference to the fact that the High Court in Port of Spain only did 39 trials; 39 trials a year.

There are hundreds of trials waiting and then you are going to remove this and then hundreds more, the minute "yuh charge", within 12 months potentially, you could end up by the door of the court with the possibility of jumping the queue in front of others who have been waiting for 15 years, that cannot be right. So when are these cases going to be heard? Yes, okay, move the preliminary enquiry and then what? Then we have a cause list everyday with hundreds of prisoners and when are they going to be tried by six judges when a trial last two months on average? I know other colleagues would develop that issue but I am thankful that the Member of Parliament, Mr. Imbert, in 2011, recognized the folly of abolishing preliminary enquiries without putting things in place. You have to build more courts. Have you built more courts since 2011? You have not built any so how is this going to work, how is this going to make sense?

And you know the thing is, I heard the Attorney General speak about trying to deal with crime; the preliminary enquiry does not deal with crime. This is not a crime-fighting measure. I listened intently, I heard a lot of statistics. I did not hear reasons for amending the particular sections, what was wrong with them that needed to be amended, I heard a conversation. And these days, we are hearing conservations with the Prime Minister and now today, we heard a conversation with the Attorney General. We have not heard an analysis and I am not suggesting analysis paralysis, I am just suggesting that we pause for a cause before we remove something [*Desk thumping*] without any proper system in place. If you think what is termed the "Marcia 53" are getting on bad—that is what they call it in the newspaper, the 53 who have to have their cases done over—when this happens, you will be having riots every day. That cannot be right. So pause for a cause is word for the day.

And I am reminded that the Member of Parliament Imbert was successful enough with his forceful arguments in that regard, so forceful in his arguments that he was able to extract an undertaking from the then justice Minister not to proclaim the Act until more courts were built. So is this another piece of legislation that we are going to pass and just put on the shelf to say, "Well, we did some work?" I have to ask. Can I ask how much time I have, Madam?

Madam President: You have until 4.30 p.m.

Sen. W. Sturge: Oh oh, that is 30 seconds. Let me see. I think I—I do not believe I can develop these other points in 30 seconds, so Madam President, I thank you for the opportunity to join in this debate and I look forward to meaningful discussions and camaraderie when that time comes in the committee stage.

I thank you. [*Desk thumping*]

4.30 p.m.

Sen. Sophia Chote SC: Thank you, Madam President. I do not know there is something wrong with the audio in the House, but it seems to me as though there is a bit of reverberation and the sound is coming across very loudly. I do not know if it is just my hearing that is going, or if there is something that could be adjusted, but I am wondering if perhaps that could be done.

Now, what I had hope to hear from the hon. Attorney General in presenting this Bill to the Senate, instead of statistics coming from certain reports which have not been identified to us and really which do not help us—because we all know that loads of cases go through the Magistrates' Courts—I would have liked to have heard information about what concrete steps, if any, have been taken to ensure that the Director of Public Prosecutions' Office is now capable of doing, or operationalizing, as the hon. Attorney General likes to say, what he is mandated to

do under this proposed piece of legislation. [*Desk thumping*]

I do not think, with all due respect, Madam President, that it is fair to the Senate to ask us to support a piece of legislation by saying that I will give the justification after the debate or when I wrap up in the debate. I do not think that is fair at all and I wish that a different approach had been taken, and in the future I hope that such an approach will not be repeated. Now, this piece of legislation fits in nowhere in the fabric of legislation which governs criminal procedure and practice in Trinidad and Tobago, and I do not even— In fact, I am disappointed that we should have to start a new term with this piece of legislation because I think everyone would have been much more upbeat if we had had to look at a piece of legislation which was capable of working. [*Desk thumping*]

Now the hon. Attorney General, Madam President, has gone into some detail to say, or to talk about the similarities between the old legislation and the new. Well, I regret that that really does not help us because if you have something new why do we need to spend 10 minutes on hearing about how similar it is to the old. So let us look at the material parts of this piece of proposed legislation. Let us start with pre-trial procedure, and clause 14 says that:

> "Wherever any charge has been brought against any person for an indictable offence, the police shall submit to the Director of Public Prosecutions…"—a list of things: (a), (b), (c), (d).

Now if the police do not do it, what is going to happen? What is going to happen to the case? Is it going to be hanging in mid-air? Is there is time frame within which the police must provide this information? Unfortunately, these things, or the mechanics for this section to work have been entirely removed. So all we have is an assertion, or a mandate to the police, to provide the information to the Director

of Public Prosecutions.

As someone who practices at the criminal bar, I can say that the police take their fine time to provide material to the Director of Public Prosecutions. [*Desk thumping*] In fact, in Rio Claro, in a matter in which I am engaged—I am not going into the merits of it, but this man has been waiting about one year for his file to leave the police. Every time I go to court the file is with another police officer. It has not reached the office of the Director in one year. Now, of course, we can take steps and we can write to the Director, and if he does nothing we can perhaps judicially review and so on, but all of that is adding to the time that my client is going to be spending in custody. So there must be some legislative mechanism put into place to ensure that the police must comply with time frames, and if they do not there will be sanctions.

Now, clause 15 goes on to say that:

> "The Director of Public Prosecutions...within three months of receiving"—these—"documents"—has to serve—"the accused person or his Attorney-at-law…"—with the documents which he has collected.

If he cannot do it in within three months, he makes an application to the magistrate to give him an extension of time. Okay. Well, I would have expected to see here in this kind of legislation as we see in other similar kinds of legislation in criminal law in this country. We will say, "Okay, you have to make your application within a certain period of time". The magistrate is not allowed to grant an extension for more than one month unless there are exceptional cases. If you get your extension and you still do not comply, what is the impact of that? Again it is like having a toy for a child with the engine taken out, or the battery taken out; you just look at it and it looks nice and it is colourful and so on, and there is nothing to make it work.

[*Desk thumping*]

Now, I must say looking at this legislation is depressing. It simply does not make sense. Look at clause 16:

> "An accused person or his legal representative may, within three months of being served...or within such further period as a Magistrate may, on application, permit…serve on the…"—DPP.

What we are talking about now is serving on the DPP his defence, his witness' statement, his documentary exhibits, his alibi notice—well we can exclude that because that is already part of the law. So I will make no big deal about it—and his list of exhibits. This is not a procedural issue.

The hon. Attorney General, Madam President, may seek to suggest that by saying that the accused person may within three months serve on the DPP these documents, all that you are doing is you are facilitating the accused person by allowing him, if he wishes—so he has an election—to hand over his entire defence to the other side. I do not know anyone in their right mind, or any attorney worth his or her salt, who will advise any person to hand over his defence to the police. And the reason for that, is when I look at further down in the Bill I see that when this is handed over, all of this is kept by a prosecuting authority, either the Director of Public Prosecutions or the police.

Now am I, with a modicum of common sense I hope, going to be advising someone to not only hand over all the original material that you have, which would include, for example, if the police shot you and the doctors took out a bullet, that bullet, would you hand that over to the police to keep for you until trial when there is no time fixed for trial, when your trial may be in three years' time, when there is nothing specified in the legislation to say where these items must be kept? What

are the safeguards [*Desk thumping*] in relation to things taken from an accused person or from the defence? What are the penalties if you lose it, if you destroy it, if you come to court and say you cannot find it without an excuse? These are issues which affect fundamental rights and liberties. So let us not pretend that this "may" here in section 16 allows you an option. There is no option when you look at the legislation as a whole.

Now, if I may move on to clause 17, we have a reference to statements being taken by children and so on, and after all that we went through with the legislation at the end of last term, particularly through what I have to say, the tortuous month of June, I thought that we would not find something such as this in clause 17(4). This subclause says:

> "Notwithstanding section 98 of the Children Act, 2012, where a statement is made by a child under ten years of age, such statement shall be supported by a statement from a probation officer, child psychiatrist or any other person qualified to make an assessment of the child to assist the Court to determine whether the child is possessed of sufficient intelligence to justify the reception of his statement as evidence..."

Now, do we not know enough about the world and about law to understand that there are experts in very many fields, but certainly the expert who is most appropriate to do the assessment or the adjudication that you are asking for is not mentioned in this subsection? There is no mention of a child psychologist who is the only person perhaps, or the best person who can apply the forensic standard and approved tests to determine intelligence. What, any other person capable of determining intelligence? We will bring a preschool teacher and say well, the child could not write his name too well in preschool. This is absolute nonsense.

Now I know having regard to the constraints of time I am not going to be able to address all of the issues that I see that we must address in this Senate, but I will try to address the ones which are the most significant. So let us, if we may, move on to clause 18. If says here:

> "(1) The exhibits referred to in sections 14, 15 and 16 shall be duly marked."

Okay. Fine. So we understand now that the exhibits that the legislation is talking about includes the exhibits for the defence which have now been handed over to the other side.

> "(2) All exhibits, other than documentary exhibits, shall be taken charge of by the police or another appropriate body and shall be produced by them or it at trial."

Now, I do not see anything in this legislation which tells me what is an appropriate body. There is no such thing in law. I cannot look to the Standing Orders even because the police Standing Orders, which deal with how the police must treat with property in their custody, they do not talk about "appropriate body". So who is this "appropriate body" that we are talking about here in this legislation, and should that not be defined? And if it finds itself here we have to know what "appropriate body" means. In any event, I have already expressed my concern about handing over matters to the police at the early stage of an investigation.

I pause here to refer to what Sen. Sturge had been speaking about earlier with respect to the issue of disclosure. Now this piece of legislation has created considerable confusion in criminal practice and procedure because there is very little commonality between this piece of legislation and the Criminal Procedure

Rules 2016, which have been gazetted, and which criminal practitioners and accused persons and judicial officers have been using since then. Now the Criminal Procedure Rules—and I respectfully say, Madam President, it is no answer to stand up at some point and say that it is secondary legislation. At the end of the day, these rules were the outcome of considerable work by all the stakeholders in the criminal justice system. So these rules provide for full disclosure. It sets out quite clearly what you must do during the course of a High Court trial or a Summary Court trial, you must give full disclosure.

There is nothing like that in the legislation. So how are the two going to operate in tandem? Obviously, the prosecution is going to say, "Well, if the legislation does not talk about disclosure, then too bad for you because the rules are really subsidiary legislation." But we in this country like to glorify what takes place in other jurisdictions and think that those things are made for us, and I will explain this by referring to two examples.

Over the course of the last month a report has come out in the United Kingdom from the Crown Prosecution Service which says that even there where you have mandates for disclosure the police are not bothering to provide the information to the prosecutors, and the prosecutors for whatever reason, sometimes it may be overworked and I am sure that will apply here—but the prosecutors themselves do not have the time, or they do not have the interest in pulling the police up and saying to them, "Listen, the law mandates under the Police and Criminal Evidence Act as amended multiple times that you must give disclosure". The prosecutors are not doing that. So what are we to expect here? What are we to expect here? We are going to have to expect that we have to fight tooth and nail and sometimes embarrass police officers before we can find the material which

will be useful to our client's case. Now why the provisions of the Criminal Procedure Rules do not find themselves in this piece of legislation? I do not know. There is not even a reference to it. There is not even a reference to disclosure and how it will operate as set out in the gazetted rules. There is a total conflict and I do not know how we could reconcile it.

Now I will continue, clause 21. Clause 21 says the documents will:

"…be kept by the"—DPP—

Now remember somebody might be in custody and they might be unrepresented and their documents are kept by the Director of Public Prosecutions, which up to last year did not even have enough photocopiers much less storage space to keep documents of accused persons, and it is said that these documents will:

> "…be kept by the"—DPP—"until the indictment, if any, to which they relate is filed, and shall then be transmitted to the Registrar, who shall keep them and produce them to the Court at the trail of the accused person."

Okay. So we have the responsibility for custody of the documents at some point moving from the DPP to the registrar, what checks and balances do we find here? When does the DPP have to transmit these documents to the registrar? Because it is all confusing, "until the indictment, if any, to which they relate is filed". So what happens if no indictment is filed? What happens to these very important documents which belong to the suspect, or the accused person, and which he may need to use to sue the State for false imprisonment, malicious prosecution and the usual kinds of cases which are filed in these circumstances? How is the accused person going to get his material back? Why are his things relating to his defence being taken away from him? You are depriving a man of his liberty and of his right to access the courts in both the criminal and civil arenas by

a section like this.

Clause 22 says—now this is the section I think Sen. Sturge had referred to as the section 34. Colleagues—Madam President, through you, I wish to remind my colleagues that it was not one side that voted for section 34. Perhaps people's recollections should be refreshed. But when we look at 22(2) we see that:

> "Where the Director of Public Prosecutions does not prefer an indictment against an accused person within twelve months after the expiration of the period specified in section 16 or within such further period as a Magistrate may, on application, permit…"

Let us pause there and stick a pin in if we may.

So we have the documents already sent to the DPP and the next logical step is for him to indict and have the documents go over to the Registrar of the Supreme Court, but now according to this he can step back and go back to a magistrate who, in my respectful view, has no locus, is finished with the matter if the matter was before him or her at all because I do not see how magistrates will play a role in this legislation. But you go back before a magistrate and you say, "By the way, I am sorry I could not make the 12-month period". Are you able to do that once? What time is the magistrate allowed to give you after that 12-month period? Two years? Are you to go back every 12 months? Are there any checks and balances in the legislation for if you fail to comply?

Now what is being given here is tremendous power to an officer who is a public official, but who is also a party to the proceedings in adversarial matters before the court, [*Desk thumping*] and we have to understand that when we see the words "Director of Public Prosecutions" we are not referring only to Mr. Gaspard Senior Counsel, but we are referring to Mr. Gaspard Senior Counsel and every

state one attorney down the line who started two months ago when we talk about the Director of Public Prosecutions, because anybody who prosecutes from that office prosecutes in his shoes.

Madam President, I see that there is a certain blue colour appearing on your desk and I hope that I have not contravened any of the Standing Orders in trying to make my point? [*Laughter*]

Madam President: Sen. Chote, if I may, you are just seeing lots of blue things on my desk. Nothing with reference to you. Okay? [*Desk thumping*]

Sen. S. Chote SC: Madam President, that is indeed a relief. So we have a huge amount of responsibility being handed over to an official and we are thinking only of the official, but then we ought to be considering all the parties who will exercise his power.

Madam President: Sen. Chote, you may continue.

Sen. S. Chote SC: Thank you. Now clause 23 of the Bill—and I say I am trying to go through this as quickly as I can. Clause 23 of the Bill talks about the Director of Public Prosecutions preferring an indictment where not even a complaint has been filed, for example, where you have a coroner's inquest, a person is charged with an offence involving serious or complex fraud. The problem I have with 23(a) is what provision is there for juveniles; what provision is there for the protection of juveniles to ensure that they are represented, that they understand what the process is and that their rights are protected? I regret I see nothing here which deals with that. It does not even reference another piece of legislation which may address this particular concern, and I do not think it can because this is a new thing entirely.

Now the next one, 23(b) is a beautiful sting in the tail.

"…may prefer an indictment whether or not a complaint has been filed…

(b) where a person is charged with an offence involving serious or complex fraud;"

Does that mean that in any ongoing matter you can pluck it out of the court system and say, "Okay, I now have the power. I can prefer an indictment regardless of whether a complaint has been filed." This is a procedural matter. Retrospectivity has nothing to do with it. Would it not be nice and easy to have that kind of resolution to certain matters which are continuing for a long time before the court? I think that we have to look at the effect, an impact of this subclause and understand the use and abuse which may be made of it.

I certainly—[*Interruption*]

Madam President: Hon. Senators, at this stage we will suspend. We will take the break and we will resume at 5.30 p.m. Sen. Chote, you will have 10 more minutes of your speaking time.

Sen. S. Chote SC: Thank you, Madam President.

5.00 p.m.: *Sitting suspended.*

5.30 p.m.: *Sitting resumed.*

Sen. S. Chote SC: Thank you Madam President, when we left off I was speaking about clause 23(a) and (b) of the proposed legislation. And when I looked back at my notes I saw that I had written down "what about no case submissions". Essentially what we have is, we have the prosecution being entirely in control of the process until the point of indictment. And by prosecution, we include the police. I think that common sense will tell us that our fair trial rights begin with arrest, or arguably charge, so it would mean that for a huge portion of the time that we are under prosecution, our rights would have been taken away—our fundamental rights. And I think it is important to say that.

Now, even in the United Kingdom, where they got rid of preliminary enquiries, I think since the 1960s, there is still the ability of the accused person to make a submission in law, to an adjudicating officer to give a reason for him or her not being sent on to trial. I certainly see no reason why such a thing has been excluded from the legislation which is before us.

Now clause 24, and as I say, I moving very quickly because I have my eye on the clock. Clause 24 which talks about the admissibility of secondary evidence does not solve the problem which we have. We have a situation where—we have situation where exhibits and documents and so on are all going to be given to the police or some other body to be kept until trial, but the legislation only provides for the provision of copies of documentary evidence to be admissible in evidence at trial.

So it means to say that anything else which has been lost from the time it was handed over to the police or this other body, or burnt, or disappeared, or sold or flooded out, or sunk, all of these things will place the accused person in a position where he cannot properly defend himself and will, by necessity affect, or take away from, or have an impact upon, a negative impact upon his right to a fair trial.

Clause 25 talks about the fresh evidence situation. Now, in common law at a trial, the prosecution is entitled to bring fresh evidence during the course of a trial. But when you have to—when you have to jump that hoop as it were. What you have to show the judge is, hang on, why did you not give this to the accused person before? Why are you causing delay at the trial stage to now bring fresh evidence? You have to justify the reason—you have to justify why you are delaying the process to allow this fresh evidence to be produced at this late stage.

Well, under common law the evidence is likely to be admitted, but what the court will say is, okay you have brought this evidence late. I am going to give the other side enough time to deal with it. So in the common law scenario you have—

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

Sen. S. Chote SC: Yes— protections where fresh evidence is lead. We have legislation which purports to deal with something which is already addressed in the law with adequate protections. And we have legislation which creates the ability for the admission of fresh evidence with no sanctions, no controls and no repercussions.

I have to say, Madam President, as I draw to a close. I feel very disappointed by the fact that I find myself unable to support this legislation. Because practitioners have waited for years to finally hear that preliminary enquiries have gone. But we are not going to stand here and say that we will allow it to happen in this manner.

Because when you are talking about the rights of people being affected, the rights of the people who are being affected will be those many thousands at the Magistrates' Courts, who perhaps may be unrepresented, who would be poor, who would not be able to access a high court, to seek redress. Those would be the people who would be first affected, and this is why in all conscience I cannot support the legislation as it stands. I must say I express deep disappointment that we could not find a better product to finally get rid of preliminary enquiries.

It is no fun for lawyers. It is no fun for us to attend court for five and six years waiting for a case to start. It is no fun for us to wait for two years for the State to file witness statements. And no client can pay us for that. No client can pay us for that, otherwise we would have a country of multi-millionaires.

So we do that because of our ethical considerations and because of the fact that we know we have a duty to the court as attorneys, and because we do not want to leave the poor client hanging unrepresented in the middle of proceedings after five years have passed.

So in closing, I will say through you, Madam President, to the hon. Attorney General, that if we have no sanctions in this legislation we have no scrutiny provisions, we have no protection of rights provisions, then regrettably, at least from this Senator, there will be no support. Thank you very much, Madam President.

The Minister of Agriculture, Land and Fisheries (Sen. The Hon. Clarence Rambharat): Thank you very much, Madam President, for allowing me to join in this debate. Support or lack of support for this Bill, will be resolved around two issues: one, the issue of necessity; and two, the issue of trust. Let me say right away to Sen. Sturge, he seem to believe he anticipated me, when he pointed out that at one point in time he was an advocate of the abolition of preliminary enquiries. And I had no intention of going there. I had no intention of engaging the Opposition on the issue of whether or not. They support the abolition of preliminary enquiries.

Their party is on record through their former Attorney General, Sen. Ramlogan as he was then, of setting out a very strong case in 2014 for the abolition of preliminary enquiries in its current form.

And I would not have to go very far, further beyond his contribution to set out reasons to get rid of preliminary enquiries. The necessity has been well established in fact, Madam President, in several previous contributions. I made the point that almost three decades ago, when I embarked on my studies in law, they

said to us that we did not need to pay much attention to the clause that dealt with preliminary enquiries.

And as Sen. Chote has said, I have lived to this day in the hope that PIs would be removed. I think out of Sen. Sturge and out of Sen. Chote, I have heard nothing which suggests that we should not deal with preliminary enquiries in its current form. Sen. Sturge offered nothing as an alternative, not even to say that he continues to support the Ramlogan position on committal proceedings and Sen. Chote as I went through and I listened to her contribution and I always appreciate her contribution. I have said so in the past. She has gone through the provisions and to me, what she has attacked is the issue of trust. And coming from two criminal defence attorneys, I understand their position. I understand their position; I do not agree with it because at some stage we have to decide where we are going to repose the trust.

On the one hand in 2014 that piece of legislation, the Indictable Offences (Committal Proceedings) Bill, repose the trust in the magistracy. In fact leaving PIs in the Magistracy through a different form. This Bill reposes the trust in the Director of Public Prosecutions and the police, the place where reliance and trust has always belonged, in the sphere of criminal justice in this country.

And if we cannot trust the DPP and as Sen. Chote said when we talk about the DPP, we talk about the DPP through the various officers of the DPP. If we cannot place trust in the DPP and we cannot place the trust in the police, where does that leave us? I believe on the issue of necessity, we have long established that the preliminary enquiry system has hampered our proceedings, the DPP has said to this Parliament. The DPP appeared before a Joint Select Committee, of which I am a member—a committee chaired by Sen. Chote, and he explained to us

that an eight-year period passes between the laying of the charge and the preferment of an indictment in this country—an eight-year span. And that is even before the trial starts, and whilst Sen. Chote talks about the potential injustice to the accused and the potential injustices to various people, I cannot think of a greater injustice in a criminal justice system than having to wait eight years, before actually being called upon to make a plea and actually being called upon to face a trial in the criminal justice system.

And this is what we set out to do in this Bill. This is what Attorney General proposes, and we can think about all the other factors—and I have spoken about it some many times in this House—that would work against the operationalization of this piece of legislation. We can talk about all the other resources that we have to put in place. We can talk about all the other changes we have to make to other pieces of legislation and to the criminal proceeding rules. But what we cannot resile from, Madam President, today, is our responsibility, one hundred years after this legislation was enacted, to make the sort of changes that we have advocated for a long time and to put in place the Bill that is now before this House. [*Desk thumping*]

Madam President, Mr. Ramlogan in proposing that indictable offences committal proceedings Bill on 9th July, 2014, used these words to describe preliminary enquiries. He said it was largely procedural. He said it does not contain or confer any substantive rights on the defendant or prisoner. He said it has been rendered largely superfluous. He went on to say that preliminary enquiries have proven itself to be costly and onerous and burdensome in the dispensation of justice rather than to assist in any small way and none of us could disagree.

5.45 p.m.

Wherever we sit in this House, none of us could disagree with that based on our experience, and Sen. Chote was right. There is very little need to offer the statistics. We live in this country, and we hear it every year from the Chief Justice and we see it unfolding before us—the system is clogged, the system is backlogged and it is manifestly unworkable. When you take for example, Madam President, the numbers that the AG has presented today, talks about close to half a million cases currently in the 50 Magistrates' Courts in the country. If you break it down you will see on average each magistrate sitting in this country on a daily basis sits with a list of 50 matters.

We came to this House with legislation dealing with motor vehicle road traffic offences, recognizing that those offences represent a significant number of what is before the Magistracy, and we proposed replacing those offences with a system of fixed tickets where somebody could pay a fine and not have to go to court in order to deal with a road traffic offence, and the idea of that was to reduce the burden on the Magistracy, while also allowing someone who has been charged to access the Magistracy if they wish to do so.

We came again before this House, Madam President, with a piece of legislation dealing with plea bargaining, to again, allow the system to resolve some of the matters without having to go through a full trial and give the opportunity for some cases to be removed from the system. We came with legislation dealing with bail, again, trying to strike the balance on the other side this time to allow persons who are on Remand Yard and could not access bail in the way in which the law allowed bail to be granted in the past and to allow additional mechanisms for bail to be accessed. But this, Madam President, represents the most important step we could take in dealing with unburdening the Magistracy and moving cases along in

the criminal justice system.

However, Madam President, one of greatest risks of what we are doing today—and using the language already used in these proceedings and used previously—we run the risk, of course, of moving the bottleneck from the Magistracy to the Office of the Director of Public Prosecutions and placing the burden there. I am sure in his winding up, the Attorney General will address the issue of the resourcing of the changes that would be made in relation to the Office of the DPP to allow the DPP to be able to function given this increase workload.

Let me just say, Madam President, also as I move away from the 2014 debate, there was a statement made by Mr. Ramlogan as he proposed that piece of legislation, which when you look at it in the context of a criminal defence attorney—and we have heard two of them today—it is something that would seem very appalling to a defence attorney, and Mr. Ramlogan said on that occasion what is being abolished is a preliminary procedure that allowed the defence two bites of the cherry, and that is the reality.

He went on to expose it and explain it, saying what happens in a preliminary enquiry, is that the prosecution exposes everything that is available to the prosecution, and it gives the defence an opportunity to succeed either at the level of a PI, or prepare themselves for the level of a trial, and that may seem as something that is completely unacceptable to criminal defence attorney but the fact is, we are here.

We are here as politicians with a responsibility. We are here as legislators, not as criminal defence attorneys. [*Desk thumping*] We are here to balance the interest, and when we talk about the man in the street as the Attorney General spoke about, we have to always keep in mind that our responsibility here is not to

the criminal defence accused. None of us have clients. I do not have a criminal defence accused client to represent. I have the right-thinking people outside of this House, I have the right-thinking people in this House sitting on these benches, I have that interest to look after, and 100 years after this piece of legislation and this archaic system has been put in place, I believe I have a responsibility tonight, as a legislator, to ensure that it is removed and replaced by something that is likely to work. [*Desk thumping*]

I will emphasize, not one of the six Opposition Senators, not even our new Senator today, can resile from that position from 2014 and long before that, that position in which we have long established that out of necessity preliminary enquiries ought to be abolished. Not one of them could stand seriously and advocate for the retention of the preliminary enquiry system.

I have one more thing to say in relation to Sen. Sturge, and that is, in the usual flare, he has made the point that clause 22 is almost like, or close akin to, or worse than section 34 and, of course, I do not blame him for doing that. His party would love to remove the stain of section 34 from their record. Let me just remind this House, Madam President, when you consider section 34 in relation to preliminary enquiries, it is not merely the passage of that piece of legislation, because I have heard it over and over being said that both Houses voted for section 34. It is not merely the passage of the piece of legislation.

There are two other factors that continue to miss a lot of attention, and let me just remind you, because the Attorney General has placed it on the record. One is that a deliberate decision was taken by Cabinet to proclaim section 34 in advance of the rest of the legislation. That is one thing that did not involve both sides of the House. But, secondly, Madam President, up until today—and I am on

record as writing on several occasions on section 34—we still do not know how section 34 entered this House, the Bill having passed through the Lower House. Section 34 was not in the Bill in the Lower House and it entered in the Senate and there is still no explanation of how that came into the House. So, I would not accept anybody trying to bind the PNM, to bind the persons who were in the Parliament at that time with the burden of section 34. That belongs rightfully amongst that bench sitting over there. [*Desk thumping*]

But I understand clause 22, as Sen. Sturge referred to it, clause 22 is very clear. It is not merely the passage of 12 months that will allow someone to be relieved of an indictment if it has not been preferred in the 12-month period. Clause 22(2) is very clear. An application has to be made to extend the time. If on the other hand an accused wishes to avail himself or herself of clause 22, an application has to be made to the court and the court will determine whether the time could be extended or whether the time should not be extended and the accused is allowed to avail himself or herself of the 12 months. So, it is not a provision that is meant to operate in a capricious manner. It is not an administrative position that automatically operates. There is clause 22(2) to which Sen. Sturge did not pay much attention and that deals with the safeguard and that deals with balancing the interest, and that allows clause 22 to operate in a way that is nowhere close to section 34.

Let me refer to some of the points made, Madam President, by Sen. Chote. One of the clauses that Sen. Chote referred to—I am not sure, Madam President, if I misunderstood, but Sen. Chote referred to clause 17 and that clause deals with admissibility of statements, and in relation to the admissibility of a statement made by a child, Sen. Chote suggested that it may have been in, you know, the best

interest and proper drafting to have included the involvement of someone with a professional background to deal with children. I am not sure if I misunderstood what she was saying. I doubt I did, but I just wanted to say that clause 17(4) in relation to that issue allows for such:

> "a statement is made by a child under ten years of age…be supported by a statement from a probation officer, child psychiatrist or any other person qualified to make an assessment of the child to assist the Court to determine whether the child is possessed of sufficient intelligence to justify the reception of his statement as evidence and understands the duty of speaking the truth and the consequences of not speaking the truth."

I do not want to belabour the point, but the fact is clause 17(4) provides for the involvement of the appropriate professional including a child psychiatrist if one is available to support the statement that is given by the child.

Madam President, in relation to Sen. Chote's references to the Criminal Procedure Rules, I have no doubt in my mind that with such a fundamental change to the process, a process that has existed for 100 years, I have no doubt that in relation to changes that are advocated here, changes that are contained in the Bill, that by necessity changes would have to be made to the Criminal Procedure Rules. I think in answer to a question, I think the foundation is sufficiently laid in the legislation to allow for the rules to take up and deal with some of the issues set out in the legislation, and I have no doubt that it is the intention of the hon. Attorney General to advocate for such changes to the rules.

I accept her point that there is no reference in the Bill to those rules, except the reference down at the end—the reference in clause 40 to rules committee established by the Supreme Court to make rules for the purposes of the Act, but I

have no doubt that the Attorney General will work with the Criminal Bar Association and all the other interest groups to ensure that the Criminal Procedure Rules are in sync with this piece of legislation.

Madam President, let me also make the point that this piece of legislation, this Bill did not fall out of the sky. It is not being sprung by surprise and it is not something that is out of context with what the Government has been advocating. Let me say that the Government has long advocated bringing an end to the preliminary enquiries—to bring an end to it—and to replace it by exactly what is before us.

In fact, Madam President, as I said earlier, I sat on the Joint Select Committee on Finance and Legal Affairs to examine along with the members of the committee the criminal case flow management system and one of the recommendations—having regard to what came out in that enquiry—of the committee—and it is contained in the report which was laid in this House on page 11—is a request that the Ministry of the Attorney General and Legal Affairs must provide the Government's proposal to abolish preliminary enquiries along with the necessary measures to ensure that this does not become another clog in the system.

And in response to that, Madam President, the Ministry of the Attorney General and Legal Affairs also laid in this House a response to that report of the JSC on Finance and Legal Affairs, and in that record the hon. Attorney General covered every recommendation of the Joint Select Committee addressing the jury system, the public defender system, the introduction of the ticketing system that I referred to earlier, plea bargaining, reform of the preliminary enquiries, electronic monitoring and all of that. I would just refer to the section where the Attorney General responded on this question or this recommendation of preliminary

enquiries and the Attorney General says to the committee:

> "It is proposed that there should be the abolition of preliminary enquiries by legislatively changing the way in which criminal cases proceed from the initial charging of a person by the Police to the filing of an indictment by the Director of Public Prosecutions before the High Court."

And he goes on to say:

> "It is further proposed that the…(DPP) should make the decision whether to indict a person, and if so, upon what charges, in respect of all criminal offences that are indictable, inclusive of indictable criminal offences that can be tried pursuant to the preferring and filing of an indictment or summarily."

And then he goes on to say:

> "A draft Bill that proposes to abolish preliminary enquiries, repeal the existing law and provide for a new pre-trial procedure in respect of indictable offences…was prepared in 2016."

And then the Attorney General in his response laid in this House, sets out some of the contents of the Bill that is now before us.

Madam President, in my mind, there are six important things that happen in this Bill. The first is that it abolishes preliminary enquiries. It does not just abolish it and leave a vacuum. What it has done, what the Bill does, is the Bill has taken some parts of that committal proceedings Bill that was passed in 2014 and brought it back in here. But the critical change is that the responsibility for dealing with an indictment now rests completely with the Director of Public Prosecutions. That is not capricious. It is not something that is strange. In fact, Madam President, it is part of the functions which currently reside in the Director of Public Prosecutions under the Constitution and it has been there since we have had that Constitution.

You know, anybody is entitled to distrust the office and anybody is entitled to distrust the officeholders. I do not have that luxury, Madam President. I have to respond and respond to and respect the needs of the majority of the right-thinking people in this country. I believe that if we go out there and we poll people or we ask the question, the people of this country have a greater interest in narrowing that eight-year period from the time you are charged to the time that an indictment is preferred against you. So the first thing is that it eliminates, but it also makes it clear that that power fits into what currently exists in the operation of the Office of Director of Public Prosecutions.

The second thing, Madam President, is that the Bill seeks to repeal three pieces of legislation. Of course, this legislation has been around for 100 years—the Administration of Justice (Indictable Proceedings) Act, 2011 and the Indictable Offences (Committal Proceedings) Act, 2014. It is very important to note that those pieces of legislation being removed are now completely replaced by this one and it is upon this we have to rely.

Madam President, the Bill provides, as I said before, in the case of matters under the Summary Courts Act that Part VI—and that is very important—of the Summary Courts Act shall continue to apply to the summary trial of certain indictable offences and the Attorney General has referred to that.

The Bill provides at clause 40 for the rules committee to make rules for the purposes of the Act—and I have spoken about that already—and, most importantly, clause 42, the Bill makes provision for transition of matters which are already before the court. It says—the Bill at clause 42(a) says that:

"(a) the Indictable Offences (Preliminary Enquiry) Act shall continue to apply to preliminary enquiries where proceedings have begun before

the Magistrates' Court prior to the coming into force of this Act; and

(b) section 39 of the Indictable Offences (Preliminary Enquiry) Act shall continue to apply to any trial where the preliminary enquiry was conducted under the Indictable Offences (Preliminary Enquiry) Act prior to the commencement of this Act."

Madam President, I go back to my opening point to say that there are two issues before us today: necessity and trust. On the first issue, none of us can argue that it is necessary. In fact, I will go so far to say it is absolutely necessary that tonight in this Senate we resolve this long, historic issue of the abolition of preliminary enquiries and we have the power as a House to do that tonight, and it is absolutely necessary that we do that—[*Interruption*]

Madam President: Sen. Mark, please.

Sen. The Hon. C. Rambharat: The second thing, this Bill relies on trust and it does not matter where you shift the bottleneck—if you call it that—where you shift the responsibility—if you go back or if you retain the 2014 legislation for committal proceedings and you leave the responsibility with the Magistrate, if you follow what we propose in this Bill and you give the responsibility to the DPP, wherever it goes, our system of criminal justice will continue to rely on magistrates, on judges, on Directors of Public Prosecutions and their staff and the police. And on the issue of trust, where ever we go, whatever form we come with, we will always continue to rely on both the offices and the officeholders. I thank you very much. [*Desk thumping*]

Sen. Khadijah Ameen: Thank you very much, Madam President. If the last speaker is right about one thing that this Bill relies on trust, I want to start by putting on record that we do not trust this Government. [*Desk thumping*]

Madam President, I thank you for this opportunity to contribute to this debate entitled "an Act to abolish preliminary enquiries and to provide for the pre-trial procedure in respect of indictable offences and for ancillary matters". Madam President, this Government, through the Attorney General, has indicated that this Bill aims to treat with the delays in the criminal justice system by abolishing preliminary enquiries and providing a pre-trial mechanism in respect of indictable offences however, Madam President, with all that is going on, I really see it is in my view that this Bill really is one more admission that the Government has no solution to bring forward to reducing crime, to preventing criminal activity [*Desk thumping*] and to protect our citizens from increasing murder, robberies, manslaughter, shooting, assaults, kidnapping, rape and sexual assault, the drug trafficking and the trafficking of illegal guns.

Today, Madam President, the murder rate is approximately 336 and there are about 34 unclassified deaths. The Government also appears not to have the political will to deal with the under-resourcing of the institutions that help in conviction, help in preventing crime—the Forensic Science Centre, the strengthening of the police service to improve conviction and detection of criminal activities—but we will leave that for another time because there will be more opportunities as crime continues to be one of the things that is on the forefront of people's minds.

Madam President, all the measures proposed by this Government so far deal with crime after it has been committed, and our institutions, including our courts, are already overburdened, and so this Bill, Madam President, one of the things that I feel is sorely lacking is that there is no proposal for institutional strengthening by the Attorney General. In his contribution, he did not give any indication that there

would be that strengthening to go along with the recommendations made in this Bill.

Madam President, Trinidad and Tobago is a democratic republic. We operate under the principles of the separation of powers—the Executive which is the Cabinet, the Parliament, the Judiciary—and our justice system must be fair to every citizen [*Desk thumping*] regardless of their race, creed, social bracket or political affiliation. I heard the last speaker indicate that he is here to represent the view of the majority of citizens. I want to tell you that this Parliament and, in fact, any elected Government has a duty to serve every single citizen of Trinidad and Tobago, not a selected few or any majority.

The justice in our country, Madam President, must be free of political influence and political interference. And, of course, while the Office of the DPP as we were reminded by the Attorney General operates independently, let us not forget that the office is not free of political influence. He must have forgotten, Madam President, when he said that the Office of the DPP was without any controversy in our country and it had been preserved and so on.

In 2009, there was a situation that could only be described as controversial that came out of that section 111 of our Constitution's provision for the Prime Minister to have a veto to the nominee for DPP. The nominees were put forward by the Judicial and Legal Service Commission which is chaired by the Chief Justice, and that veto effectively means that the Prime Minister chooses the DPP out of the choices put forward by the Judicial and Legal Service Commission. So, the Office of DPP is not without indirect political influence. We must not forget Carla Brown-Antoine in 2009 whose—[*Interruption*]

Madam President: Sen. Ameen, I just want you to be careful. Sen. Ameen, the

person of whom you just made a reference to is now a member of Judiciary, so I just want you to be careful. I am listening to what you are saying and I may have to stop you, but just by careful.

Sen. K. Ameen: Thank you, Madam Chairman. Madam President, sorry. I do want to ensure that I am very careful not to offend the Standing Orders, and so I look forward to your guidance.

Madam President, in 2009, there was a woman who was Deputy DPP. She spent her entire career from 1989 with the Office of the Director of Public Prosecutions. She was a State Counsel. She was Deputy Director in 2001. She acted as Director on several occasions. She represented the State in every court in Trinidad and Tobago litigating matters, advising the DPP, the police, state agencies, training attorneys, police officers, prison officers and others involved in the criminal justice system. Yet, in 2009, when she was recommended to fill the vacancy of DPP while she was acting DPP, the then Prime Minister, Patrick Manning, with no explanation, vetoed the appointment for her to be the next DPP. Madam President, that is in the public domain. And that, at the time, prompted a lot of concerns in the judicial and legal circles. It was described by one article in the *Express* on February 15th of that year as:

> "yet another possible move by the PNM to interfere with the independent judicial system." [*Desk thumping*]

But, Madam President, I come back to the Bill because it is important for us to remember what has taken place and what could possibly take place.

Clause 15 of the Bill provides that the DPP:

> "shall, within three months of receiving documents pursuant to section 14 or within such further period as a Magistrate may, on application, permit, cause

a copy of the complaint and of the statements...which he intends to produce in evidence at trial to be served on the accused person…"

Madam President, this limited time frame on the surface may speed things up. Right? And, of course, Members on the other side would have mentioned that as well. Madam President, we have numerous situations where files have been known to be languishing before the DPP while others appear to be expedited. Let us not forget that there are situations that include people who are involved in public life or involved in political parties.

6.15p.m.

I remember recently, when the former Attorney General was arrested, the question came up on a discussion on a talk show as to what was the situation where a file concerning the Clico matter with the former Minister of Finance, Karen Nunez-Tesheira, that was sent from the Integrity Commission's office to the DPP, and the question was being asked by the talk show host. What is happening with that? And so the question of expediting certain matters and not dealing with other matters really is a big question for us to consider when we look at this proposal. However, Madam President, this same clause 15, while it gives a time frame also has a loophole. So that when you said, on such further period as a magistrate may, on application, permit, the question is how long would you go on. You would allow it to go on, does that mean the problem is solved? And, again, you come right back to square one. And when you had, recently, Madam President—what worries me is that recently we had the Prime Minister of this country publicly naming one of his political opponents, somebody in another political party, and saying, they are coming for you, they are going to charge you next. How will he know that, or how will he believe that he could influence who is going to be

charged?

Madam President: Sen. Ameen, at this stage I have to caution you, you are dealing with clause—I think you are dealing with clause 15 of the Bill, deal with clause 15. I am not going to allow you to go down that path, okay.

Sen. K. Ameen: Thank you very much, Madam President. Madam President, this Parliament must ensure that no political creature is given power within our justice system. We see in this 2017 Bill, clause 22, and previous speakers spoke to other aspects of it where the DPP has the power, after receiving statements made by the police and the accused persons, the power to discharge. So while there is a time frame with the 12 months, and so on, if the DPP does not refer an indictment, so, essentially, Madam President, where the DPP does not bring an indictment against the accused person upon the expiration of the time, and the accused could apply for a judge for a discharge, again, with that power resting with the DPP, and the history we have so far of a number of instances where incidents take place, matters are referred, and some matters take way, way longer, although they have a similar nature, take way, way longer than others, but that was explored previously, and I would not go any more into that.

Madam President, the role of the DPP is a position, and I want to put it on record, Madam President, that I am in no way attacking the officeholder. The structure and the rules that provide for the DPP and provide for the veto power of the Prime Minister, they are the laws of our country, and so my criticism of those things is not meant to be a criticism of the officeholder, Office of the DPP. Madam President, the role, the position DPP is created by our Constitution. The main role and function is very well set out in section 90, Chapter 6, Part I, and for the record I just want to read a couple of them because I want to speak to some of them:

"The Director of Public Prosecutions shall have power in any case in which he considers it proper to do so—

(a) to institute and undertake criminal proceedings against any person before any court in respect of any offence against the law of Trinidad and Tobago;

(b) to take over and continue any such criminal proceedings that may have been instituted by any other person or authority;

(c) to discontinue at any stage before judgment is delivered any such criminal proceedings instituted or undertaken by himself or any other person or authority."

Madam President, the justice system comprises the prosecution, the defence and an impartial arbiter, which is the Judiciary, which should be protected from interference from intimidation, and so on. The Judiciary is represented by a judicial officer, a magistrate, a master of the court, or a judge. This Bill, this section, essentially, replaces the arbiter with the DPP, so you now have the prosecution, the DPP, versus the defence, and the arbiter is the DPP; himself to himself. [*Desk thumping*]

Previous speakers mentioned the fact that if the DPP's office is convinced that it has a case, and it then sends it forward—of course, you send to the accused, and so on, it is very unlikely that as its own arbiter it will come forward and then say, no, we do not have a case. So to me it is out of the question, and I want to mention that while, yes, the whole issue of eliminating preliminary enquiries was dealt with by the previous Government. The conditions were very different, and the Attorney General, I think, neglected to mention that, and even the previous speaker, the hon. Minister of Agriculture, Lands and Fisheries, would have

mentioned some of the things that the former Attorney General advocated for, but he completely neglected to mention the fact that both the 2011 and the 2014 versions, the arbiter was a creature of the court, of the Judiciary; it was never himself unto himself. So this makes a huge difference in my opinion, Madam President. It breaches the principles of separation of powers.

We must not allow the fundamental concepts of our Westminster system, our democratic sovereign Constitution to be demolished, to be shoved aside, or to be sacrificed on the altar of expediency, and this expediency, Madam President, is a very shallow one. I think my colleague, Sen. Sturge, did quite a bit to explain that the time for preliminary enquiries versus the time for trials, you really wonder how much time you are saving. I recall, Madam President, there was a young man in his thirties who lives, incidentally, close to where I live, and I have known him from passing as an exemplary young man. He would have started his own business, and always involved in community activities, giving on charitable occasions, Christmas, doing treats for the children, and so on, and during the local government election I was happy to see him come forward for screening as a UNC candidate. Now, our screening process includes asking to ensure that our candidate is qualified to be elected, so in terms of your citizenship, and so on, in terms of criminal record, and he mentioned to us—and it really touched me—that when he was 19 years old his stepfather, his mother's boyfriend at the time, was an abuser, and he walked in on a situation, a domestic violence situation, and in defending his mother he and his cousin put a "cut tail" on the gentleman.

The police became involved, he was charged, and the case had been going on since that, 17 years, and it kept being postponed, and because of that he wondered if it was okay for him to offer himself as a candidate, and that is a

situation that would have hampered him from being a representative and doing good work and serving his community. But, of course, it may also affect other—for instance, if he is applying for a job, applying for a visa, travelling, and so on, and that is one example where one good young person's life is negatively affected in a significant way from the inefficiencies of the court, and that was past the preliminary enquiry stage. That was a trail stage that had been going on for 17 years and not concluded. So while the preliminary enquiry is one thing, I want to remind the Parliament that trials also take a significant amount of time, and the efficiencies of the justice system of the courts have to be addressed in order to really make justice more efficient. So just taking out preliminary enquiries does not fix the inefficiencies in the justice system.

Madam President, I mentioned the separation of power, the power of the magistrate is clearly set out in the Summary Courts Act. It is set out in the Indictable Offences (Preliminary Enquiry) Act, which is existing law, and my question, Madam President, to all of us, can the Parliament, can the Attorney General really take away that authority and vest it in the Office of the DPP? It is my respectful view that based on the separation of powers you simply cannot, and you should not. The Attorney General also mentioned other jurisdictions where they have similar systems to our Westminster system of governance, and they have eliminated preliminary enquiry, but in every such jurisdiction, every single one that have removed preliminary enquiries the judicial officer is retained. He mentioned Antigua, Barbuda, St. Lucia, there is also Jamaica, and every one of them retained the judicial officer to do this function. [*Desk thumping*]

So, Madam President, the magistrate, in some cases, I do not really want to go into the details of each one, but in some case it is the magistrate, in some cases

another officer of the court, and they do the paper committal, and so they have eliminated preliminary enquiry without eliminating the Judiciary from making the decision. The 2011 and the 2014 Bills, which were brought by the People's Partnership, kept a judicial officer, which was a master of the court to oversee the process, and, even so, those Bills required a special majority. The Bill before us at this time does not ask for a special majority, in this 2017 Bill, but I must say that that provision of having or requiring a special majority allowed the Opposition to make input. And the Government, who was the Opposition at the time, I would have expected that their own recommendations would have been taken into consideration. So, for example, the capacity of the Office of the DPP to carry out these functions, that has been an issue, Madam President, that, I think, has been in the public domain for a long time.

The DPP has spoken of severe staff shortages, and we have heard a number of other previous speakers mention it. There was a Joint Select Committee report in 2016, and the DPP at the time indicated that out of 106 lawyers for the Office of the DPP only 24 positions were filled. There was an article, in fact, the previous year, I think it was out of another Joint Select Committee, but where it quoted the DPP at the time speaking about resources, issues where it was being under-resourced. He spoke about lack of paper, ink shortages at the office, the fact that they do not control their own budget, and that prevented them from training the staff in the department. They spoke about not being able, at the time—I cannot remember if it was in the 2016 or 2017 Joint Select Committee, but they spoke about photocopiers being down and that prevented them from doing their work. So while the Permanent Secretary and the Ministries would have done different things to supplement the DPP in terms of staff, I remember the year before, 2016, the PS

was indicating that the Ministry had hired about 15 state attorneys to supplement the DPP's staff, but they did not have space to put them. And the issue of the offices also came up, and at the time it was discussed having a new office in Tobago, a new office in San Fernando.

The Attorney General mentioned but he did not indicate whether those new offices were established. It was a bit controversial at the last public hearing where the DPP indicated that there is an office, in fact, at Gulf City Mall in San Fernando, and that it was not ideal, that he did not think it was the best situation or place to have an Office of the DPP. It was still not adequate, but even now there still is no proper Tobago Office of the DPP. So while the Attorney General would have mentioned these things the fact is they have not yet been done, and this has been outstanding since the 2016 discussion at the Joint Select Committee. So we are talking of more than two years, and we did not hear any recommendations from the Attorney General as to what would be done to fix the present shortcomings, and to, in fact, allow the Office of the DPP to have its full capacity in terms of staff, in terms of office space, and in terms of whether there is a need now to expand in terms of the human resource requirement.

Madam President, I mentioned some of the issues that came out of the Joint Select Committee where the DPP was identifying issues such as the photocopy machines and the lack of office space, and the need for them to have their own budget, but, Madam President, I also want to remind the Parliament that the whole issue of more room and more space, and more courts has been spoken about for quite some time. And when in Opposition, in fact, the present Minister of Finance, I mean, he spoke very passionately, and, in fact, he insisted that the Opposition will only support the removal of preliminary enquiry if the Government at that

time agreed to certain things including the construction of courts. There was a proposal to have a court, I recall, when I was chairman of Tunapuna/Piarco Corporation in the Trincity area. There were consultations, and so on, ongoing, and we have heard nothing about that. Yet the situation with the number of courts and its ability to hear and deal with all matters before it, is just swept under the carpet.

Madam President, in 2013, around the time that Bill was being debated, the then Attorney General had indicated that in order to implement the Bill, to abolish preliminary enquiries the logistical and capacity issues in the justice system must be addressed, and there were consultations with the two stakeholders, the Office of the DPP and the Judiciary. There was a new organisational structure for the DPP's office which was approved and which was formalized to include an additional 100 legal offices and 107 civil offices in terms of support staff. I would like if the Attorney General could indicate whether, this having been approved, from what I understand, if this is going to be operationalized. One of the things also at that time was one of the proposals was that while there would remain to be one DPP, the deputy DPPs would be increased from two to three, and the assistant DPPs from three to six. That was part of the structure that was proposed to meet the human resource requirements. And I understand, Madam President, that these posts were to take effect from the 1st of June, 2013, and, of course, the Judicial and Legal Service Commission had the responsibility to fill those positions.

So I think it would be very useful for all of us if the Attorney General could indicate the progress with that, for us to determine whether we really are in a situation to agree for the DPP's office to take on any more work. Also, there was additional funding, and so on, at that time approved, but I know that since the last budget you would have had different allocations. There was, Madam President,

also, in the Judiciary at the time there were proposals to have the new courts constructed, the infrastructural upgrades to the existing courts, the outfitting requirements, and part of it was something as simple as their backlog of notes that required transcribing in order for appeals to be heard, and there were some 10,000 pages at that time, of notes for over 700 cases that needed to be transcribed. So at that time Parliament had agreed to hire a qualified part-time court transcriptionist who would have been identified and would have been offered a short-term contract. So these were the types of things I was looking forward to hear the Attorney General speak in terms of improving the efficiency of the justice system.

We have not heard this present Government—you have not built any courts. There were plans before, I have not heard anything about the plans being revised. Of course, you are our new Government and it is your prerogative to not continue with the existing plans, but, of course, if you wish to review, but I do not think you are doing to nation any justice or any service by just shutting it down completely. We cannot count the Family and Children Division Court in Fyzabad, which is a building that the Judiciary is renting and not a building constructed by the State. So, Madam President, because of the whole issue of the judicial officer being removed, I have great hesitation. I cannot support that aspect, certainly. While I will support the Government's attempts to make the judicial services and the administration of justice in Trinidad and Tobago more efficient we cannot, we cannot sacrifice the independence of the Judiciary for expediency. And I dare say, as I said when I started in response to Sen. Rambharat, that I do not trust this Government, and we have seen a number of persons become victims of political persecution, and so I am even more hesitant to make any such approval.

I want to also ask this Government, please stop giving the country the

impression, or trying to give the impression that preliminary enquiry is something that the previous Government advocated for, and that you are bringing the exact thing that we dealt with in 2011 and 2013, and 2014 back to the Parliament. This Bill, 2017 Bill, is very different, and while in principle some of us—and Sen. Sturge also spoke about, in principle, supporting the removal of preliminary enquiries, you cannot interfere so much in the role of the Judiciary and expect to get support. And do not try to make it as though if we do not support your proposal it is your way or the highway; that is not the purpose of the Parliament.

So for you to come and say, I am just here to support this, and anybody who loves Trinidad and Tobago will support this, that is wrong. The purpose of this Parliament is to allow the different views to be heard, and you cannot, you cannot, Madam President, expect that the Opposition will come and just vote in favour of what you proposed because you leave out the requirement for a special majority. Leaving it out does not mean that you are not offending the things that a special majority usually is required for. And this is not the first attempt by the Attorney General to do that, it was done in the Marriage Bill, and, again, Madam President, I feel that is being done here. I do not think that is the way to go in the interest of protecting all, all the citizens of Trinidad and Tobago. So with those few words, Madam President, I thank you for the opportunity to contribute. [*Desk thumping*]

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

Sen. Dr. Dhanayshar Mahabir: Thank you very much, Madam President, for giving me the opportunity to join in the debate. Coming after so many distinguished legal luminaries I was wondering whether I had anything of substance to say, but, notwithstanding, Madam President, when I read the title of the Bill—[*Interruption*] I do not know why it is generating smiles—when I read

the title of the Bill, an Act to abolish preliminary enquiries, I think there is consensus that preliminary enquiries happen to be a time-consuming exercise, and as far as it is practicable we need to remove this aspect of our judicial process so that we could expedite trial time. But, you see, the Bill continues, an Act to abolish preliminary enquiries and to provide for the pre-trial procedure; it is the pre-trial procedure that seems to be causing the concern so very well-articulated by the non-lawyer, Sen. Ameen, who just spoke prior. But, Madam President, before I go on to be substantive matters, I would like to speak to the Bill itself, and I will refer to a few clauses which I suspect can be addressed in the committee stage, but clause 4, 4(1)—no one has mentioned clause 4 yet, it seems to be a rather innocuous clause:

> "For the purposes of this Act, Justices shall have and exercise concurrent jurisdiction with Magistrates to—
>
> > receive complaints;
> >
> > remand an accused person…
> >
> > administer oaths"—et cetera—

But what concerned me is a marginal note. There is a marginal note in the document given to me which says that, Minister authorized to execute or sign loan agreement and to accept amendments to the agreement. This is in the document that I have. It seems to be misplaced that I have here forwarded to me by the Parliament, so I do not know if the Attorney General has the same document given to me, but it says in a marginal note something about a loan agreement that has absolutely nothing in my mind to do with the matter at hand. I do not know if, Sen. Ramdeen, you have the same document as I have. Right. So there is a marginal note, I am sure the Attorney General will indicate whether it is an error or whether

there is something missing. So that I would just like, as a matter of housekeeping, for that to be addressed. [*Crosstalk*] It is the old professorial quality, right.

Sen. Sturge: "Nobody ever geh ah hundred from you, boy."

Sen. Dr. D. Mahabir: No, no one ever gets a hundred, some came close at 85. [*Laughter*]

Madam President, let us look at clause 6. I am dealing with the housekeeping matters before I move on to that which is really substantive, and as part of clause 6 I want to refer, Madam President, through you, this honourable Chamber to clause 6(3). Clause 6(3) says, and I am dealing purely with the rudiments of the Bill, nothing substantive, but I consider it an important point:

> "Anything seized or detained in the execution of a warrant whether specified in the warrant or not, shall be brought before any Magistrate."

Okay. And it goes on in subclause (4):

> "When a thing is seized and brought before any Magistrate, the Magistrate may detain it or cause it to be detained, taking reasonable care that it is preserved for the purpose of evidence on the trial."

6.45 p.m.

The concern I have, Madam President, is this. What 6(3) says is that:

> "Anything seized or detained in the execution of a warrant…shall be brought before any Magistrate."—without saying when.

It does not say it shall be brought before a magistrate forthwith. It does not say it shall be brought before a magistrate within a week. It says, it shall be brought before a magistrate.

The mischief I see here is that if there is any warrant, any search, and items are seized by the police, these items can include currency, both local and foreign, it

can include narcotics, and these things have a way of disappearing. And they have disappeared in the past. So that if I am to approve this piece or give my support to the legislation, I would like to know that as soon as the police officers who have executed this warrant, have obtained certain items, they will inventory the items. I would imagine, I do not know what police procedure is, but a superior officer together with two or three will say we have gotten so many hundreds of thousands of foreign currency, we have gotten so much ounces of what appears to be narcotics, and they shall be kept temporarily in a station lock house before they are presented to the magistrate as early as the next day.

Because, Madam President, if we do not do that, what we are doing in this Bill is giving the police a wide window, and the Minister of Agriculture, Lands and Fisheries did indicate that there is a matter of trust. We have known that items have gone missing. I understand at one time cocaine was said to be eaten by rodents, currency got lost before they actually made it to the magistrate. Things no doubt would have happened along the way, so I am just raising it with the hon. Attorney General that he should put a timeline. The reason is, Madam President, in viewing the Bill it was indicated that these warrants can be executed on any day of the week; a Saturday morning, a Sunday, a time when the court is not—so if there is a warrant on a Saturday morning, search and seizure, what we have is Saturday and Sunday would be days when the court is not in session, the magistrate is not available to receive the things.

So for a weekend—if I were the police and I am up to no good—I will arrange my raids on a Saturday morning and, for two days, there is the trust that the Minister of Agriculture, Lands and Fisheries spoke about, Sen. Rambharat, the trust is under question, especially when you are dealing with currency and movable

items. And so, I think I would raise for the consideration of the hon. Attorney General, that the item be brought before the magistrate as soon as it is practicable, and that as far as it is practicable, the searches and seizures not be held on a Saturday morning. Yes, I give way to the hon. AG.

Hon. Al-Rawi: Thank you, hon. Senator, for giving way. Just so that we are literally on the same page. The reference to the marginal note, and therefore out of caution, the Bill itself which is the circulated Bill does not have those references. Perhaps you may have a different copy. I do not know if you printed it off of Rotunda or somewhere else, but the Bill as circulated is certainly not the one that you referred to, with the marginal note as an incorrect part. Thank you.

Sen. Dr. D. Mahabir: Thank you very much, hon. Attorney General. This was given to me this morning by Parliament staff, so I do not know how it appeared there. I am happy to hear that it is not in the Bill as circulated.

But the more important point of course is that we are saying that the seized items should be brought before any magistrate without giving a timeline and I am concerned about the trust issue and we need to address that, and we need to address it so that individuals who have their items seized know that it is a magistrate who will have sight of the property as early as possible, and it will not be under the custody of the police for a two day or three day period where things can happen. [*Interruptio*n] Yes.

Madam President: Members! Senators, please, there seems to be a little noise coming up now. Can we listen to Sen. Mahabir in silence. Continue Senator.

Sen. Dr. D. Mahabir: Thank you again, Madam President. I want to focus on clause 12, and on clause 12(2).

Clause 12(2) says:

> "Where an accused person is before a Magistrate…or after being apprehended with or without warrant or while in custody for the same or any other offence, proceedings may be held notwithstanding any—
>
> (a) irregularity..."

But the second word that bothers me is "illegality". Madam President, I have a Bill before me which says, 12(2), that:

> "…proceedings may be held notwithstanding any—
>
> (a) irregularity…"

I understand that.

> "…defect or error…"

—in the summons.

So, you could have a defect, you could have an error, these are genuine mistakes. But here it is a Bill is presented to me in the Parliament which says that there is something illegal. Someone who served the summons has broken the law that was passed by this Parliament at a previous time, and I must say it is okay. Well, it is not okay by me. I would like the word "illegality" to be removed. [*Desk thumping*] It is the first time I am seeing a Bill which says it is okay to approve of something which has broken the law. So, the practitioners of the criminal Bar would no doubt know that a warrant can be served legally or illegally, as I give way to the AG again.

Hon. Al-Rawi: Thank you, hon. Senator. I will read from Chap. 12:01 of the existing laws of Trinidad and Tobago, section 11(2)(a):

> "any irregularity, illegality, defect or error..."

It is something which has been in practice for a 100 years with ample judicial precedence over it.

Sen. Dr. D. Mahabir: Thank you very much, AG. It has been in precedence—something that has been in existence for a 100 years does not make it right. [*Laughter*] It has been around for a 100 years. [*Desk thumping*]

I am of the view, Madam President, you see we have—and I will come back later on when we look at some of the forms. We should take every opportunity to make sure that the laws—it is because someone saw this in 1918, it was okay. They say it in 1928, '38 and so on, and we did not correct the fact that—in my opinion anything that is illegal should not be approved by the Parliament. It is illegal. The role of the Parliament is to pass laws which everybody will adhere to; individual citizens, officers of the State. So, if you are executing a warrant I would imagine an illegal execution of a warrant would be giving the warrant to somebody, you ask them, how old are you, the person says, I am 10 years old, the officer says, well, give this to your parent when he comes. You are supposed to give it to an adult. I do not know, the criminal lawyers here will know exactly what other instances occur. But, I am unhappy with it in the law. If it was in existence for a 100 years, I am hoping the Attorney General will look at it and not invite the police officers to continue with an illegality. Let us just strike this off and let us do things by the law. Other people can break the law. We in the Parliament should not condone it.

Madam President, let me focus on clause 17. And on clause 17 there is something here—17(7). Clause 17(7) deals with:

"…a statement is made by a person who does not speak English..."

We in this country can have individuals accused who are not English speakers, they could be Spanish speakers, Chinese speakers, and what 17(a) says is that:

"…his statement shall be taken through an interpreter and shall be—

> recorded on his behalf,"—I would imagine this is a court appointed and approved interpreter—"read aloud and translated to him in English..."

So, here we have—maybe it is acceptable in law—someone who speaks only Mandarin, Cantonese or Spanish, and he gives his statement in his language, are we going to read the English statement to him? He does not understand it. He gives his statement in his native language, and from my reading of the Bill, before he signs it or makes his mark. So, here we are asking someone to give a statement in his native language, it is read to him in English, which he does not understand, and he makes his mark and he signs on an English version of his statement.

I would prefer for there to be a bit more safety and security for the accused, take two statements. Take the statement in his native language. Let him sign that. That is the statement he understands, because things get lost in translation. There is no such thing as a perfect translation. Let him sign his statement in his native language. Let the translator then translate that particular statement, and let the translator put his signature on the translated document stating that "I certify that this is a true and correct replica of translation of the statement". But, we cannot translate to somebody something in English. We can translate it for him. Again, for the AG to consider, but I think it would only be fair for the non-English speakers who will find themselves in some kind of legal difficulties with our jurisdiction.

Madam President, clause 38, again in the Bill, 38(3), that is on page 22 of the Bill that I have. It says in clause 38:

> "No person shall print, publish, cause or procure to be printed or published, in relation to any charge for an indictable offence, any particulars other than the following—

(a) the name, address…"

And:

"A person who acts in contravention of this section is liable on summary conviction in respect of each offence to a fine of a hundred and fifty thousand dollars and imprisonment for two years."

So 38 says, "No one shall print, publish", and do whatever it is. But what 38(3) says is:

"A person who acts in contravention..."

Suppose he makes an error? Suppose he does not do it wilfully? Suppose it is done without—it is just sloppily. I think people should be penalized for being sloppy by losing their job, but to face a fine of $150,000, should we not put "a person who wilfully acts in contravention of this section".

So, there has to be some intent to do harm, and not something that is inadvertent. So that again for the AG to consider whether he will put in "wilfully acts in contravention of this section". Because, this is a very heavy fine. This is not considered to be a minor offence. And let us make sure we know that the person just did not make an error. He just did not happen to publish this thing, and he was not aware. He did it out of some kind of ill-will or some kind of malice, and then he is going to face the charge of $150,000.

Madam President, again, the opportunity to look at some of the laws which have been in existence. I see on Schedule I Form A, it says that this is Schedule I Form A:

"The complaint of A.B. of……………………………………………… Who said…"—and so on that—"…the said A.B. prays that the said C.D. may be summoned to answer..."

I am sure this form has been in existence for quite a while. But why should someone pray for someone to be summoned? Are we not going to say this person requests or this person requires? It is an opportunity for us to get a "little bit" up-to-date with the language in legal drafting. [*Cell phone rings*] That is okay, Madam President, it happens all the time. There is no ill-will intended. There is no malice intended.

But when I look at some of the legal documents which come before us, I think we ought to take the opportunity to simplify them and remove maybe some of the archaic language. In legal drafting, we no longer use words like mutatis mutandis and so on. We use simple, plain English. And again when we look at the forms that the said A.B. requires that the said A.B. to be summoned. Because if you pray, it means immediately you are a believer. Suppose Mr. A.B. is an atheist.

Sen. Ramdeen: Like me.

Sen. Dr. D. Mahabir: Yes. He is an atheist, and you are saying, well, of course, if you do not pray you cannot get this person to be summoned, it is a little bit misplaced. And also when you look at the form Schedule B, these are all preliminary matters, Madam President. We still say "our Lord 2017". Why can we not just say in the year 2017? Why do we have to say still "our lord 2017"? We could remove religion from the laws. We could in fact make the law as secular as possible and we can just say—and everyone understands 2017 is 2017 because it says, "In the year of our Lord 2000" and so on. Those are stylistic matters.

Madam President, the issue before us is deeper than the matters [*Interruption*] that I have raised—and now the crosstalk, Madam President. You could look at them cut-eyed, because I am about to deal with really substantive matter.

Sen. Roach: You have 10 minutes.

Sen. Dr. D. Mahabir: Sen. Roach—I have 14 minutes Sen. Roach, not 10. [*Laughs*] The substantive matter before us, Madam President, is this. The committal proceedings, we do need to abolish preliminary enquiries, and what we had in the past is that a judicial officer, it was a magistrate who was a member of the judicial arm of the State.

This magistrate was given the responsibility to engage in an action, to make a final determination on whether a case can proceed to the higher courts. There is unanimity that this particular procedure has been inefficient because these enquiries can take a long period of time, and it can really consume the time of a number of individuals; the accused, the lawyers representing the prosecutor, the police. So it is time consuming. There is a need to remove this from our judicial system. The question is, should a judicial officer now be removed by an officer who is employed in the Executive arm of the State. Should the Executive now be making decisions which are normally judicial functions? And the mischief I see—and this is really the crux of the matter—here is the problem, the issue of trust.

We must trust our judicial system. We must trust our judicial system. We must trust that the judicial arm of the State, or we must trust, Madam President, the fact that once an individual is before the courts there should be some impartial body, some independent arbiter who will be making important and critical determination, and the issue which has arisen with respect to the Director of Public Prosecutions is a legitimate one. The police who will collect the evidence have an interest in an outcome. The DPP's office has an interest in an outcome. The Judiciary does not have an interest in the outcome of the particular case. And what is of concern, and what is of importance for public confidence is for the

determination to be made by the officers who normally are charged and who have been given the trust to do it. You see, the trust currently resides with the Judiciary in Trinidad and Tobago. This is where the final determination will rest. And if we are now to take the trust away from the Judiciary and place it in the Executive arm of the State, then the concerns raised by Sen. Chote, the concerns raised by Sen. Ameen, the concerns raised by Sen. Sturge will not be addressed. And the issue of trust raised by Sen. Rambharat is also not going to be addressed. Trust only he who has earned it. The police is yet to earn our trust after the day of total policing [*Desk thumping*] and we are now going to place the DPP in a position where everyone will be looking at that office askance, because we do not know.

Since the Director of Public Prosecutions is going to finally be appointed by the Executive, those who hold Executive power. [*Desk thumping*] And we do need to really ask ourselves, whether as we proceed forward, and given the state of the administration of justice in Trinidad and Tobago, given the fact that we seem to be losing confidence in public institutions, should we subject the DPP to the possibility that individuals in Trinidad and Tobago may begin to look at it is as if it is a tool that is subject to potential manipulation? Because, I can see potential mischief where some individuals who ought to have their cases go forward may not find their cases going forward, because the final determination will be in the DPP's office. And some individuals whose case should be neutralized or quashed at a point, may find for whatever reason their case is moving forward. That is the mischief which exists, and it is the mischief that we need to correct.

I would want to raise—and I have really little to add to what Sen. Chote has said, and Sen. Sturge has said, and Sen. Ameen, because I myself I am not a practitioner. I am just looking at the thing from a public interest perspective, and I

was simply wondering, why the hon. Attorney General did not look at the committal proceedings Act—I am sure he has looked at, but why did he not consider it—of 2013 in Jamaica, where preliminary enquiries were abolished, but the final determination is made by a judge who will take the evidence that is presented to him and he will then make the determination. So that the DPP is still involved, the police is still involved, but the Judiciary is not excluded, and the judge—be it a master in the High Court, whatever judge we want to appoint—is now given the responsibility, at the final determination, should we proceed or should we not proceed.

And I think if we look at the Jamaica model what we will find is—and it has just been implemented in 2016, it was approved by the Parliament there in 2013, from my understanding. I think that will solve a lot of the problems. We will be able to abolish preliminary enquiries, which all of us seem to want. Second, we will preserve the office of the Director of Public Prosecutions from any allegation of misconduct, impropriety or favouritism, because there is a political element in the DPP's office. We cannot get away from that. This is not to cast aspersions on the officers, but there is the involvement of the Executive in there which does not exist in the Judiciary. [*Desk thumping*]

And I think if we continue, but we simply have the judicial officer involved, in the final determination I think the public interest would be served, and I certainly would be prepared to give my support. But failing that, I myself feel very uncomfortable, and I do not think it is in defence of the public interest if a judicial officer who is a magistrate, is now replaced in the administration of justice by a member of the Executive. I think it goes contrary to our practice, and it is in contrast to what we want to do, which is to build institutions [*Desk thumping*] and

to ensure that there are adequate safeguards, checks and balances. We are after all, Madam President, dealing with the rights of people. We are dealing with their basic rights, we are dealing with taking away their rights. And while we may be thinking about people out there faceless, I think we may have to ask ourselves, if we do not protect them what kind of protection is there for me? And if there is any case against me I would like to know that it is ultimately an officer of the Judiciary, a master of the High Court, a High Court judge, a supreme, whoever it is, who will make the final determination to proceed or not to proceed, and not the individual who has an interest in my charge and incarceration.

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

Sen. Rodger Samuel: Madam President, the honour is always mine to be granted yet another opportunity by Almighty God to be alive, and to be here in this Chamber to participate in this particular debate on the Indictable Offences (Pre-Trial Procedure) Bill, an Act to abolish preliminary enquiries and to provide for the pre-trial procedure in respect of indictable offences and for ancillary matters.

Madam President, I listened attentively to the hon. Attorney General, who in his natural manner attempted to, and tried hard to, convince us that the approach that the Government is taking is to the benefit of the citizens of Trinidad and Tobago. And though I am not yet convinced that the approach is correct, I was willing to sit and listen, and take notes, and see if in any way I could make sense out of what was presented.

Madam President, the problem often in life is that we are often unable to determine the cause of problems in our land, and then accept the cause and then turn around and find solutions for it. As a matter of fact we quoted that countries like Jamaica have gone thus far in abolishing preliminary enquiries. But a

Jamaican High Court judge, Carol Lawrence-Beswick was very, very clear, and I just want to quote it, that:

> "The justice system has many component parts that must all come together, one being the preliminary enquiry…"

And this is, Madam President, published in the *Gleaner*, June 10, 2012. Sorry about that:

> "…one being the preliminary enquiry, which is a process that precedes trial…if it is hoped to solve the existing problem"—and that had to do with a tremendous backlog in the cases that appeared in the Jamaican court—"the causes have to be identified"—the causes have to be—"accepted and solutions pursued in the context of correcting the justice system as a whole, not just abolishing the preliminary enquiry."

She went on further to say, Madam President:

> "Dispensing with preliminary enquiry will immediately place an insurmountable burden on the Office of the Director of Public Prosecutions (DPP)"—[*Desk thumping*]—"far greater than it experiences now"—now, this sounds like it is here, but this is Jamaica—"while transferring the problems to the"—High Court, or in their case the—"Circuit Court. Although there is delay in"—the whole—"Magistrate's Courts, the impact is not as great as in the Circuit Courts"—in their situation—"The problem lies not in the preliminary enquiry procedure but in the Circuit Court, which cannot manage the present output of cases that it gets each term, resulting in case backlog."

So, I have not heard from the hon. Attorney General, what is the cause of the backlog. As a matter of fact, in his presentation in this House as well as in the other

place, he was suggesting that the backlog is because of preliminary enquiry. But, I want to, Madam President, refer to a statement made by the hon. Chief Justice which would clearly debunk—and I will give you the date, Ma'am—the reason given to us by the hon. Attorney General as to what is causing the backlog. And I want us to listen carefully. The date of it, it is entitled "New Rules for Criminal Cases", and the date is Friday, September 18, 2015, and I am taking it from the *Guardian*.

7.15 p.m.

> "The inability of the Judiciary to manage its own finances has been identified as a major factor affecting that organisation's ability to manage efficiently its stagnant backlog of criminal cases."
>
> Madam President—"In his annual address at the opening of the 2015-2016 law term…"

So from his standpoint, is the:

> "…Judiciary's"—inability or—"lack of financial autonomy"—he is reiterating and he is pointing out that that is the—"main stumbling block in its drive to implement new measures to address the inefficiencies in the justice system."

So it is not necessarily the problems that the AG says that is caused by preliminary enquiries. [*Desk thumping*] This is the Chief Justice. So he is saying one thing, and the hon. Attorney General is saying something absolutely different. I prefer to hear what the Chief Justice has to say, as to the problem, the cause, and what solutions can be derived so that we can solve the problem with the backlog of cases in the courts as we have it today.

So, Madam President, that says a lot, because the reason for the abolition of

preliminary enquiries was based on the fact that there is a lot of—there needs to be a consequence for crime and the backlog, and all of the cases, and we had a mathematical experience as to the amount of crime in each court around the country, and how many magistrates there are, and how many judges there are, we have had a lot of that. But, it was based on the fact that this preliminary enquiry issue has been causing the backlog, and Sen. Sturge and others would have dealt with that.

But, Madam President, I believe that we have got to deal with things based on its impact, and, we are faced in Trinidad and Tobago with a sort of real-time collapse of a lot of issues in our country, real-time collapse. The health sector has almost collapsed, the education system has problems, the judicial system is collapsed, and there is no trust in the protective services, and that is a fact. As a matter of fact, just, within recent times, Madam President, you had police officers on charges and all kinds of things appearing before the court.

Sen. Ameen: It is still happening.

Sen. R. Samuel: And it is happening. And it says that when a society loses confidence in the protective services, in the Judiciary then we are really in a major crisis and that we need to now do things that would now address the lack of confidence in our society. And this particular Bill to the average citizen does not address the lack of confidence that they have in both systems, one, one is the beginning of a system, the people who are to investigate and lay charges and two, the people that are supposed to sit and listen and pass judgment. And now, we are saying that we must now take the onus of the Judiciary and add another person to the equation; the poor DPP. But I have news for you.

I listened attentively to a Joint Select Committee sitting, a public hearing,

that is, of the National Security. And on that Joint Select Committee public hearing, you had the Director of Public Prosecutions, the Director of Public Administration and quite a number of people. And this is what Mr. Roger Gaspard, Senior Counsel, had to say—[*Interruption*]

Sen. Ramdeen: The DPP.

Sen. R. Samuel:—the DPP, had to say about the abolition of preliminary enquiries. Quote, and I am quoting it:

> "…the legislation dealing with the abolition of preliminary enquiries, which some people seem to be representing to be their panacea with the chronically pedestrian pace of the criminal justice system.
>
> That approach, respectfully, is a bit short-sighted, because even as we speak there are at least 800 murder indictments pending for trial in the High Court."

Now, the date of this Joint Select Committee meeting, public hearing, was March 24, 2017. So that is recently. And he was saying that:

> "…as we speak"—as he was there on air that—"there are at least 800 murder indictments pending for trial in the High Court. They are not dependent upon any preliminary enquiry…"—he said. "They have"—gone—"past that stage and I am only speaking in the context of murder. So what you have with abolition of preliminary enquiries, if I may be somewhat tangential, is a quicker movement of matters from the charge stage to the High Court stage. But when you reach in the High Court, you have to wait in a queue."—[*Desk thumping*]—"How do you get ahead in that queue unless you deal with the issues that have caused that queue to be formed in the first place and which otherwise infect the criminal justice system?"

The DPP, his response to the abolition of preliminary enquiry. That is the DPP. As a matter of a fact, we want to take all of the responsibilities now and place it on the shoulders of the DPP and his office and subsequent to that he was very, very, vocal about the lack of staff that he had at the time to deal with his present job, present responsibilities and if they are to now add further responsibilities then the cadre of staff that he had suffered from which he needed to fulfill the job then will still be insufficient to fulfill anything else.

So, Madam President, Dr. Mahabir, clearly defined a serious problem is a confidence problem. Sen. the Hon. Clarence Rambharat said it is a trust issue, but the problem is that this abolition or this Bill does not deal with the trust issue and if it does not deal with the trust or the confidence issue in our society, then this Bill really solves no problems for us in the future.

So, Madam President, the Bill will not and cannot in its present state deal with the inefficiencies, the ineffectiveness of the judicial system. It cannot and surely will not deal with the escalating crime problems that we have, which adds to the problem. It does not deal with the backlog of cases in the system. It will not bring confidence in the hearts and minds of citizens and, Madam President, we have got—and as I said before, we must go back to the cause of the problem. It will not attend to anything of that manner which is needed and we need to begin to deal with legislation that would address the things that impact our society most and the situation here in Trinidad and Tobago of crime and all of these things, this Bill will not impact it.

Madam President, it is important for us to realize that oftentimes justification for things come across from the Attorney General. He would always say to us in this Senate that he has consulted with the Bar, he had consulted with

certain senior people in the legal fraternity, but I did not hear any aspect of consultation. And I wanted to ask the Attorney General who did he consult with, with regard to the abolition of enquiry and the Bill that is before us and if there were any kind of public consultations with regard to this particular Bill. Not only that, Madam President, but oftentimes the Attorney General will always talk about, I consulted with Senior Counsel Elder and Senior Counsel this and I just wanted to say something to you, I heard nothing of that kind today. Because in passing, I recognized that in the *Guardian* on Sunday March 26, 2017, I realized there was no mention of Senior Counsel Elder because she said that the PI Bill is bad law.

So it is only good when she agrees but he would not come to the House and say that this thing is bad and she disagreed. You see, that is bad, that is real bad. She said it is no good and somebody else will take it up as we go along. But it is no good and may I just interject, she was so deep about this that she was concerned that this thing brought before the Parliament, akins to the controversial health care Bill recently proposed by the United States President, Donald Trump. She said it is as bad as what President Trump brought before the United States, the Bill on health care, which obviously he lost and it was an entire mess. But there is no mention that there was something put out by Senior Counsel Elder which oftentimes is one of the people, they are one of the persons that I use as a mechanism to support any changes in the system. I would really like to hear her speak directly on this particular Bill.

Madam President, this Bill is absolutely different. As a matter of fact, it is a grave concern, it is not that the abolition is wrong or the removal is wrong, it is what it is being replaced with. You see, it is one thing to stop smoking but start drinking. [*Desk thumping*] It is dangerous. So what it is being replaced with is not

necessarily better. But what it is being replaced with and it needs to be replaced, but what is being replaced with is affecting and will affect the smooth approach to justice in Trinidad and Tobago.

As a matter of fact, this Bill is different and I want to say to you that this idea of preliminary enquiries, that it must go, I was reading an article in the *Newsday* by Andre Bagoo, Sunday July 5th, 2009, and at that time the Attorney General was John Jeremie. And John Jeremie was talking about the removal of preliminary enquiries, but what he had to say is absolutely different from what is presented before us today. So even they are not following suit what some of their learned colleagues had to say. And listen to John Jeremie in the *Newsday*, Sunday 05th July, 2009.

> "The Government is to table legislation to abolish the preliminary inquiry procedure, Attorney General John Jeremie has said.
>
> In an interview with Sunday *Newsday* on Thursday, Jeremie revealed that the Office of the Attorney General and the Ministry of National Security are working on legislation to abolish the procedure which is used in the Magistrates' Courts to determine if a prima facie or first instance case is made out against an accused person. Noting that a draft bill has already been prepared…"

And he went on to say, this is how it works:

> "'Instead of having an inquiry amounting to a number of years, the matter will go before a preliminary judge so that will take some time out of the process,' Jeremie said. 'That judge will be a judge in the Assizes who then looks at the evidence and who then decides whether or not the matter will proceed to the High Court.'"

John Jeremie in 2009. [*Desk thumping*]

And I wish the Attorney General will sort of do an investigation based on the history of his learned colleagues, same party and say look, you know, look what John Jeremie was about to do. And then he went on to talk about the different approaches in different jurisdictions and stuff like that.

So even this present Bill is absolutely counter to what John Jeremie had in mind then as Attorney General. And that says a lot, Madam President, because this is like a sting in the tail of what we have today. It is like saying, you know, I am going to move everything and whatever I say is right and it goes that way and it cannot happen, Madam President, it cannot happen and it will not happen.

So, Madam President, it is important for us to understand that the PI system and I heard Dr. Mahabir and Sen. Sturge talk about the checks and balances approach. In other words, it is important for us, because one thing we did not hear is how many cases appear at a preliminarily enquiry level, how many of them the magistrates dismissed for lack of evidence, insufficient evidence. How many? We do not have that kind of data, because if the DPP's office pursue their approach to the Magistracy, with a preliminary enquiry, and they themselves can find themselves at the wrong end of the stick before the magistrate and the magistrate could say to the DPP's office, you have insufficient evidence, it says to us, Madam President, that there is a possibility that the DPP could be wrong. And if he could be wrong and a magistrate could tell the DPP's office and I would love to see the data on cases that are—[*Interruption*]

Sen. Ramdeen: You forget Sat Sharma.

Sen. R. Samuel: Yeah, I mean, Madam President, we have past and present Members of the Houses, Lower and Upper Houses who benefited from preliminary

enquiries and they found themselves, after cross-examination, on the case being thrown out because of insufficient enquiries. We have people here and in the Lower House benefited from it and that tells us a lot. [*Desk thumping*] And it says that if we are to agree to throw it out we must replace it but not remove that judicial oversight, must not remove that judicial oversight, Madam President. It is very, very important for us not to do that. I plead with the Attorney General to move away from the idea of the DPP because the DPP himself says you cannot just do that. He is disagreeing with it to a point that you just do that. It cannot be himself to himself. It must not be himself to himself. That is why we have the Magistracy and we have the High Court and we have the Appeal Court and we have all of these different levels, why, because they cannot be himself to himself, one person being judge, jury and executioner, it cannot be.

The AG attempted to address, in passing words, the shortcomings of the DPP's office with regard to staffing. There has been for years a problem with the staffing at the DPP and accommodation. The DPP has been crying out for years and nothing is being done and even if you bring him up to the complement, with his present responsibilities, that is still insufficient, far more for when he has to deal, he has to become prosecutor, he has to become the person who decides, because his role is to prosecute, is to find you guilty. His role is to do that and his purpose is to work in tandem with the investigating officers and ensure that the evidence is there to find you guilty. That is his purpose. His purpose is not to prove you innocent; his purpose is not to find that there is no case; his purpose is to make sure that you go down the hatch; his purpose is to make sure if you commit murder is to ride the van, "Justice on Time".

Madam President, so it is important for us to look at it. And then the

Attorney General said, and I am quoting him, that there is no consequence for crime, none. Unfortunately, this Bill has nothing to do with. This Bill has nothing to do with any additional consequence that might emerge out of a criminal activity. It does not. It does not add anything to crime-fighting; it does not empower anybody; it does nothing to support a better system, a better judicial system, a freer society, people standing for their rights, Madam President.

And again, I seem to pick up the attitude of rights and the removal of rights of people. I seem to be picking up that for a long while, that you know, look, you know, you people in Trinidad and Tobago have too much rights and you cannot afford to have so much rights.

Madam President, in its present state, in its present condition, it is a no, no, for me to support it. In its present frame it is impossible to support it, and the Attorney General would have to now withdraw and amend the aspects of Bill and plenty amendments have to take place and return the services back to the Magistracy, because they are equipped. There are 50 magistrates, is it 50?

Sen. Ramdeen: It is 56.

Sen. R. Samuel: Fifty-six magistrates, and they can handle it. If the system is right and if there are checks and balances and if there is efficiency from the police and efficiency from the DPP's office then things can run better. The problem is the inefficiencies across the board. It is not just at one level, it is the inefficiencies— you are in charge now.

So, Madam President, I am really, really disturbed as I close of, I am really disturbed that the AG would come to this Senate and ask us to give support to such a Bill that really does not make sense and will not fix the problem and he is yet to tell us what is the real cause of the problem. The Chief Justice, as I said, said what

is the cause of the problem was, the inability to manage their own finances is the cause of the backlog of cases. Do you know what that is saying? I just quoted the Chief Justice. I quoted him, Madam President. I thank you for the time.

Sen. Stephen Creese: Thank you, Madam President. Before I begin I would like to extend my congratulations to the Minister of Public Utilities and incidentally he is my former neighbour in Fyzabad. It looks like that south posse is going to present a problem. But to the substantive matter, I think that the jury is still out on the question of the efficacy of downplaying the preliminary enquiry and replacing it with a greater role for the office of the DPP. And it would appear to me that a lot of it has to do with process and methodology in terms of the Government's overall approach to law making, to policy development. In this instant case, the question of consultation has clearly arisen. I think the last fine example cited by Sen. Samuel about the question of viewpoints, of virtual icons in our society on a matter such as this and the particular example he read for us—[*Interruption*]

Sen. The Hon. Khan: Sen. Creese, it is just procedural.

PROCEDURAL MOTION

The Minister of Energy and Energy Industries (Sen. The Hon. Franklin Khan): Madam President, in accordance with Standing Order 14(5), I beg to move that the Senate continue to sit until 10.00p.m.

Question put and agreed to.

INDICTABLE OFFENCES (PRE-TRIAL PROCEDURE) BILL, 2017

Sen. S. Creese: So that as Bills come before this Senate, a constant issue has been the question as to the consultations, public participation that has led to the particular piece of legal writing that has come for us to give some criticism or some approval so it can be implemented. And it is like a recurring decimal, this

question of consultation, of taking the public into our common trust and that strikes at the heart of our democratic traditions and our ability to build a democracy and caught up in this period between independence celebration and celebration of the Republican Constitution.

It is almost disheartening to realize that the old authoritarian form is still dominant in our body politic that we come here to rush things through and just before we went into recess was a period of rushing things through. And the day of reckoning will come if we keep on rushing legislation. [*Desk thumping*] Especially, critical pieces like this. And with the rush legislation I start to wonder, why the rush legislation? But with it comes the lack of matured deliberation, the lack of scientific research that allows us to scan the horizon and see if the move we are making is really an advance and a well-informed one.

So the issue of consultation has raised its head again and within the Government's political party in power, recent history is an AG who is not on all fours with what is now before us. And that is a sad reflection on our political situation or system as it stands. So that we need to look again at why we would want to reject having a judge in the review system so as to push things along, so as to ensure that there is justice, ensure that there is fair play, ensure that the accused and remember he is only accused until that final day in court when he is found guilty, he or she. That person is only accused and we know that the system is loaded against him.

We know the tales that are spread through this country, how some lawyers may have made their money. You bring your cow, you bring your land, you sign it over and by the time the case done you lost everything and you still "ent sure if the man going to get off". We know that. And if we know that we should be very

careful to leaving people, the lower end of the ladder, exposed to what the legal aid system provides. If all of us know that then why are we so quick to leave children of a lesser god exposed to what takes place to the constant and perennial delays in the lower court. Why we do not invest, as John Jeremie suggested, in a higher quality of intervention at the preliminary level so as to give the poor man, who is paying for all of us to be here, a chance. And lacking in this post-colonial order is a real sense of charity to the underprivileged in our society.

7.45p.m.

But charity would have demanded that kind of approach, an approach that ensures that not only the well-endowed, the well-off, could beat the system. So all of us who were up in arms about clause 34, yes, there is a nexus between 34 and 22 and the nexus is this: are we giving the poorer classes a chance to survive in the judicial system? And when the research is done, we would find it is that the poorer group who fills the courts every day, and it is that poorer group who we are required to serve in this House to ensure that when they stand outside the court, they have a real chance of getting justice, of getting the same treatment as those who are more well-endowed. For too long, "who have more corn, feeding more fowl".

The other issue that I think underlines this whole situation is the issue about bottlenecks. Where exactly in our judicial system is the bottleneck occurring? Is it occurring at the investigative level with the police? Is that what the truth is? And what is the research to back it up? Are we comparing the time it takes in our system with Barbados, or Jamaica, or Canada, or USA, or Australia, or England? What is the length of time it takes to move from when the crime is reported and the investigation starts, and the file moves up from the detective to the corporal, or the

sergeant, or the inspector, to the first time it goes to the DPP's Office as to an advice as to guidance to move along? What is the timeframe? What is the best practice, to use the modern management term? And we are sitting here presiding over that, and if I were to sit and allow any side to give an answer, there is none, because that research has not been done. We just like to compile the statistics about "how much cases here and how much cases there".

That is not the kind of statistical review we need to have. If we are talking modern management and we are trying to bring our crime detection and our criminal prosecutions into the modern era that is the kind of statistical analysis that has to be compiled and gone through. [*Desk thumping*] What is the best practice? What are the time frames that should be the goal at every step of the system? And we have not begun to do that within the context. I do not know if at UWI they have it, if at COSTAATT they have it, but certainly, in the presentations of the various Bills that the AG has come here with, we have never gotten that.

So we are talking here about speeding up the judicial system and nobody can tell me, should it be one week for rape cases? Should it be two weeks for burglaries? What is the best practice in the Commonwealth? And if there is not a ready answer to that, then we are fooling people. We are deceiving the public into thinking that inside of this place they are getting the culmination of scientific and modern approaches. That clearly is not happening.

So whether it is the police who are too slow in investigation, whether there are insufficient officers to assist the DPP so as to provide guidance to the police, whether it is the magistrate who is afraid to dismiss and sets a new date and sends the accused back to the hellhole that is the Remand Yard—and as someone whose job it was to visit there, inclusive of Carrera, I could tell you, that is why I

probably would never want to be a judge because I will have a total bias; I will find a way not to send you there if you have not been found guilty, because it is a hellhole. The only thing that could compare to the Remand Yard and Frederick Street prison—"dem boys jail"—is the black hole of Calcutta. I have been there. I have seen it and I know what takes place there.

So until we find out where the bottleneck is, whether it is in the courts, it is in the police, it is at the DPP's office itself, until we can pronounce on that, we really ought not to be amending anything. It is like a surgeon pulling out the knife and the diagnosis has not come in yet. But he is a surgeon, so he "going and cut". So we have legal draftsmen so they would draft something. But what is it based on? [*Desk thumping*]

And then the other underlying issue in all of this is the question of trust, because, clearly, there is a debate raging: do we trust the police to handle their investigation scientifically, faithfully, honestly? Do we trust the DPP to do the same? And how do we place a balance? So I think my colleague, Sen. Mahabir, seems to want to trust the judicial officers. Well, the thing is—as opposed to putting that trust in the DPP—what is the evidence? How many judicial officers have been charged—I would not say accused, but even accused; brought before the court, but charged and found guilty? I think it is probably only one. There was a senior magistrate. Right?

How many people at the DPP's office have been similarly accused or charged? None. So if that was the metrics we are going to use—and I am not suggesting that is a perfect metric. If that is what we are going to use, then the argument would be that there is a better case for trust in the DPP. Not that I am arguing in favour of the DPP, you know, because I have a concern and it relates to

the question of trust, and it has to do with where the DPP is located in the entire judicial system. And by that I mean, if it is that a DPP can be, in terms of his career path, promoted to a judge, then the question is: is he beyond the reach of those who would want to pervert the system? Because if at the end of the day I am an appointed DPP and "ah" looking for a judgeship that my pay package and my remunerations allow a judgeship to be a promotion, then does that not of itself contaminate the situation?

Have we ever given a thought to what are the implication for that? Because if it is his understanding of a career path that "I am a junior prosecutor, I am a senior prosecutor, you know? I am a DPP, then I am a judge", let us get real, fellas. It is a small island. So I am standing in the court and "ah big, bad and full ah bravado, because I am the only one who could pull back this case; enter—what you call it?—a nolle pros? I am the only one who could do that." But then there are some guys up the road called a Judicial and Legal Service Commission. They appoint judges and I am appearing before judges and a lot of them on that Commission are retired judges before whom I would have appeared somewhere along the way. So tell me now, folks, how watertight you think the system is, and we are all on this little island.

So I am not carrying any sword for the office of the DPP, because in that situation I feel if we want the DPP to be, you know, beyond reproach, beyond contamination, then just like the judge, we should put him there because his function is equal to theirs, because we rely on him to be totally unbiased, and prosecuting when he is satisfied that there is something to prosecute, not because he is playing politics with anybody, because the crowd or the country wants somebody to pay for a particular crime and, well, "Okay, we going with this "cor

this is all we have. This is what de police gimme". And then at the end of the day if I want to go up the ladder, "ah ha tuh impress dem fellas" who comprise the JLSC. So we have to be real and I cannot see if we continue to locate the DPP a rung or two below in that ladder, that we are really thinking things through.

And then we come to, to me, what is an even hotter issue in terms of trust. Are we, after how many years as an independent country, a Republic; how many years since the first Legislature here; how many years since increasingly universal adult suffrage have brought, or have allowed more and more of the indigent, more and more of the less well-endowed members of the society, to come into their own to be able to participate meaningfully in our democracy, at the end of the day what do they think? How well have they been informed about this debate that we are conducting? And what viewpoints are we representing?

And I always feel that as the gap widens between this legislature and the mass of Trinidad and Tobago, that we are doing ourselves a disservice; that we are creating things that people are totally unfamiliar with and that we are just building little silos that we alone operate in, that means precious little to the mass of Trinidadians and Tobagonians.

And that is my greatest fear that they do not, at the end of the day, trust all of us. Not just the police, not just the DPP's Office, not just the court—because people tell you long tales, you know. I have been to the prison where prisoners—it is a standing joke, that they took a particular lawyer because they thought he was a lodge man? Right? And they see him giving a sign. So "ah say, well, wha you doing in here if he was giving de sign"? He say, "Boy, de prosecutor gih de same sign too and is then ah see de judge answer".

Now that is a joke eh, but it is a serious joke, because it says that there is this

guy in the prison who does not believe that the judicial system works, who believe that lodge-ship is where it is at. And to the extent that all these kinds of—for want of a better word—lack of intelligence exists in our vast population—I did not want to say ignorance—to the extent that that exists is an indictment against all of us because it has to be our duty, it has to be what the Parliament Channel is and the radio, you know, is supposed to be about, to increase people's intelligence so that they can more meaningfully participate and our democracy flourish.

You know, the idea of 1,000 flowers blooming in a muddy pond, well, yes, it starts off being muddy but we have to do something to get it clear and to get it to grow, and I am not satisfied that every time we have the opportunity, when we have a piece of legislation, that we take it through the streets, that we allow people at the town hall meetings, and so on, to participate, so that we can clear the air and remove the scepticism because if you travel on the bus—

Madam President: Sen. Creese, you have spent some time working out your context and presenting your presentation in a certain context, but I would ask you at this stage to deal specifically with the Bill, please. Okay? Thank you.

Sen. S. Creese: Yes, Madam President. So that I think this Bill should be withdrawn. [*Desk thumping*] Because I think without the necessary research and evidence which would point which way, where the backlog is, we are really operating in the dark. We are operating uninformed and that is inexcusable. So my position is that I am not getting into the details inside of this Bill, you know. That is to lure me into the dark and I am standing now in an area of light. So I thank you—[*Desk thumping*]

Madam President: Sen. Creese, while I do not want to lure you anywhere, [*Laughter*] I just would like you, though, to deal with the Bill or wrap up your

contribution.

Sen. S. Creese: Like I said, Madam, I think the AG would do himself a great justice if he were to withdraw this and come back first with the research that would point the way forward. We cannot afford to gamble with people's lives and possible long terms in jail on the basis of poor information. I think that is the indictment against the Office of the Attorney General, that they have failed to bring the relevant evidence in support. The DPP would probably have entered what you call it, nolle what?

Hon. Senator: A nolle pros.

Sen. S. Creese: A nolle pros. Thank you. [*Desk thumping*]

Madam President: Sen. Ramdeen.

Sen. Gerald Ramdeen: Madam President, I want to thank you for the opportunity to contribute to this debate on an Act to abolish preliminary enquiries and to provide for the pre-trial procedure in respect to indictable offences and for ancillary matters.

Madam President, allow me before I start the debate, to welcome back all of my fellow Senators on the Government side, on the Independent side and my fellow Senators on the Opposition side, after nine weeks of recess. And I am happy to contribute late in this debate tonight, Madam President, unusually, because I think on what the Attorney General has presented to be a very important piece of legislation for the Government's crime-fighting initiative—and I am so happy that we have the Parliamentary Channel running live, that tonight Trinidad and Tobago could really see how serious this Government is about fighting crime and carrying out the governance of this country.

This is a piece of legislation that the Attorney General has said is very

important. To quote him, he says "the most important issue in our country today is the fight against crime and criminality". And I do not think anyone here can disagree with that. But where you have a piece of legislation, the first piece of legislation that is being debated in the Senate after nine weeks of recess, the Government will field the Attorney General as a speaker, the Minister of Agriculture, Lands and Fisheries, and not one other speaker on the Government Bench. [*Desk thumping*] And that is to tell the people of this country how serious this Government is about governing this country and about carrying out their parliamentary duties to the people of this country.

I wondered at times, Madam President—[*Crosstalk*]

Sen. Ameen: Are you speaking?

Madam President: Sen. Ameen, you have spoken. Please—

Sen. Ameen: Yes, but he is disturbing me.

Madam President: No, you are disturbing me. Sen. Sturge, no finger pointing. [*Interruption*] Sen. Sturge, I can manage this Chamber on my own. Okay? Sen. Ramdeen, continue.

Sen. G. Ramdeen: Thank you, Madam President. Madam President, I wonder at times, if the Attorney General did not perform his duty the way he has done for the past 24 months, where would the PNM really be after 24 months. I wonder—his back must be very broad because at the end of the day [*Desk thumping and laughter*] the kind of dead weight that the Attorney General has carried for the past 24 months, is not easy. [*Desk thumping*] I do not envy him at all.

Sen. Singh: 46(6), Madam President.

Madam President: Sen. Ramdeen, continue your contribution, but let us not be as personal in what you are saying.

Sen. G. Ramdeen: Madam President, much obliged. But you see, Madam President, one theme that has followed through all of the speakers, both on the Government side, the Independent and on this Bench, is that there is a serious issue of trust when one comes to the issue of crime and criminality in our country. It does not matter which piece of legislation you pass, because if the country does not trust you to implement the legislation, if the country does not trust you as an administration, we are getting nowhere fast and that is what has happened for the past 24 months.

This is a piece of legislation, Madam President, where, by section 2 we have another piece of legislation where this Act comes into operation on such date as fixed by the President, by proclamation. When the Cabinet decides to advise the President to proclaim this piece of legislation, it will find effect. And the Attorney General started off his contribution by informing the Senate of all the different pieces of legislation that have been passed: the Motor Vehicles and Road Traffic Act, the Bail (Access to Bail); Trial by Judge Only and Plea Bargaining. Every one of those pieces of legislation has had a proclamation clause in it.

And I took the opportunity today to go onto the parliamentary website and to pull out the progression of all these pieces of legislation. The Bail (Access to Bail), that is not complete. That has to go back to the other place. The Criminal Procedure (Plea Discussion and Plea Agreement), that has to go back to the other place; the Miscellaneous Provisions (Marriage) Bill, that has not been proclaimed; the Miscellaneous Provisions (Trial by Judge Alone) Bill, 2017, that has not been proclaimed; the Motor Vehicles and Road Traffic, that has not been proclaimed. So as a Parliament, where have we really gotten with the passage of all of these pieces of legislation? Nowhere. The SSA, that was so long ago, but that has not been

proclaimed.

So, Madam President, it is all well and good for the Government to bring piece of legislation one after the next, but are we getting any benefit from the work that we are doing here? With respect to one particular piece of legislation, the Criminal Procedure (Plea Discussion and Plea Agreement) Bill, we spent almost 16 hours in committee stage here to fix that piece of legislation. We had invaluable assistance from Sen. Chote; my friend Sen. Sturge, to put that piece of legislation in some form where we could actually have some degree of respect for it when it leaves here. It has not been proclaimed.

But on the issue of trust—I want to go back to the issue of trust, because all of the speakers seem to agree that this is a piece of legislation that requires everyone involved to trust each other in the criminal justice system. The problem is that the population has no trust for this Government and they have a record where they have earned that, because—I have it written here. The Attorney General was very careful in pointing out about the independence of the office of the Director of Public Prosecutions, and I found it a bit strange that the Attorney General did not point out that there is a veto power on the appointment of the Director of Public Prosecutions; a veto power that finds its genesis in the Constitution itself.

And when we come to talk about trust, and when I hear my friend, the Minister of Agriculture, Lands and Fisheries talk about trust, and trust is the most important thing, it is difficult for one to trust this administration because this is an administration that exercised that veto power in two appeals to the Privy Council where it was struck down by the Privy Council, in Feroza Ramjohn and Ganga Persad-Kissoon—the former later Prime Minister Manning. It was struck down in the Privy Council. This is an administration that asked us to trust them, but they

misled the Court of Appeal on two occasions in the Maha Sabha radio licence, and they ask us to trust them. It is difficult to trust this administration. So that they are in no place to talk about trust.

Madam President, the issue of crime and criminality is not going to be solved by the passage of legislation alone. The Attorney General has set out a number of statistics in piloting this piece of legislation. He told us how many magistrates we have; how many judges we have in the High Court; puisne judges; how many judges in the Court of Appeal, how many Masters we have. And then we went on to inform the Senate about how many cases per magisterial jurisdiction there are pending in the system. But we need to a drill a little deeper into those figures to really understand where we are. Because while the Attorney General tells us that we have 31 puisne judges, we only have 10 criminal judges—0 criminal judges—and that should send shock waves through all of us because those 10 criminal judges are going to have to clear the backlog of what the Attorney General has told us is 527,043 cases. And that includes all of the summary matters. So I am sure in his wrapping up, the Attorney General will tell us how many of those are indictable matters because it cannot be 527,043 matters.

Hon. Al-Rawi: Twenty nine thousand.

Sen. G. Ramdeen: Twenty-nine thousand. How are we going to get anywhere when you have 10 judges who are going to now be asked to handle 29,000 matters? That is almost 3,000 matters added to each of their dockets. And I will get to where when this matter was previously debated in 2011, where the now Government, then Opposition, had raised serious concerns about the staffing at the Judiciary to handle a piece of legislation like this. Madam President, the object and the policy, the intent behind this piece of legislation is a very easy sell, because we

all understand what the criminal justice system in the magistrate court is like. But we have to be very careful, Madam President, that we do not wreck the system by trying to fix it.

We have a responsibility, as a Parliament, to ensure that if we are changing it, to use the words of Sen. Samuel, we are changing it to achieve something that is better. And I do not think that any of us could reasonably stand here this afternoon and tell the people of Trinidad and Tobago that we are confident that this piece of legislation is going to provide relief to the criminal justice system. [*Desk thumping*]

Because, Madam President, some things are very simple. Sometimes the law breaking process is a very simple one. The Attorney General has come with a piece of legislation to ask the Senate to pass, to abolish preliminary enquiries. Well, the very first step that ought to have been taken by the Government is to tell us, "I have consulted with the Director of Public Prosecutions before I brought this piece of legislation here", and inform the Senate what the Director of Public Prosecutions has said about this piece of legislation. Because the heart and soul of this piece of legislation, if it is passed, is the Director of Public Prosecutions. [*Desk thumping*]

One would have thought that in his opening salvo, the Attorney General would tell us, "I have spoken to the Director of Public Prosecutions. There are 30,000 matters he is now going to have to deal with, and he has told us that we need 100 more members of staff and I am prepared, as the Attorney General, to tell the Senate and the people that I am prepared to give him that staff so that the system will work."

We are in a position where we do not know what the Director of Public

Prosecutions has said about the implementation and operationalization of this piece of legislation. We are in a vacuum. We are asked to pass this legislation without knowing what the most important person involved in the operationalization of this legislation has said about it, and that cannot be right. At the very least, that is what we are entitled to know. Because as a Parliament, one expects that the Government will come with their cards face up, so that we will all know what the position is.

If it is that the Director of Public Prosecutions is not provided—and it is not good enough for the Attorney General to tell us, "We have given the DPP 30 more staff; some people are going to be promoted; we are going to open three more new offices". We need to understand what the Director himself has said is the complement of staff that he knows he will need in order to carry out what he is required to do under this piece of legislation. And we need to be assured that he is provided with that, and unless we are assured he is provided with that, we cannot reasonably pass this piece of legislation. That is without getting into any of the legal issues about it.

8.15 p.m.

The second most important person in this is that we are taking persons who were formerly going to have their cases tried before the Magistrates' Court in a preliminary enquiry, eliminating that and putting that in the hands of the High Court. Now, the same requirements that I have said we are entitled to know, are we not entitled to know what the Chief Justice has said with respect to his complement of judges, and whether they would be able to carry out what they are required to do under this piece of legislation? Right now, as we stand here, without this piece of legislation being implemented, we have had one High Court occupied for more than two years with one trial. We have had another High Court occupied for a year

and a half with another trial, and while that is going on you have people who are in the queue, who are coming up on a cause list month after month and being told that they will just be adjourned to the next available cause list. Is that what we really want to do? And this is going to not make it better, this is going to make it worse.

How are we going to expect that the task that would have been carried out by 50 magistrates is going to automatically be transferred to 10 High Court judges and they are automatically going to be able to do it? One has to also remember, Madam President, that in the Magistrates' Court, at the preliminary enquiry stage, almost I would say without the guidance or the precedence of experience, that perhaps eight out of 10 cases the defendant does not lead his evidence in the Magistrates' Court. So you are almost going double the time that would have been taken in the Magistrates' Court to deal with these matters in the High Court. Have we taken that into consideration and consulted with the Judiciary to find out, are we going to get any new courts? Are we going to get any new judges? And if we are not, then where are we going?

Madam President, when I was in primary school, before I write Common Entrance, they used to have something called "Junior Sec" where they had shift systems. I wonder if all of us understand here, as we sit to pass this piece of legislation or to consider whether we should pass it, that the Magistrates' Court in San Fernando now is like a "Junior Sec" because it is working on a shift system. You have one magistrate sitting from 8.00 a.m. to 12.00 noon and another magistrate sitting from 1.00 p.m. to 4.00 p.m., and that is going on in 2017 in San Fernando. So I would think that these are some of the things that we need to consider properly as a Parliament before we can act responsibly in the interest of the people of Trinidad and Tobago. And if I were to accept all that the Attorney

General has said and give him the benefit of the doubt that all of this is going to work, Madam President, I want to ask the Attorney General tonight: if we solve all the murders, and we bring all the defendants before the court, and we get all of them convicted, what are we going to do with them? If all of this works, what are we going to do with them?

This Government has been in power for 24 months. When they were in Opposition they used to say, "If you want to hang people ask Ramesh Lawrence Maharaj how to do it". Well, they have asked Ramesh Maharaj how to do it, and after 24 months, is the aim of this exercise to fill the condemned once more? What are we going to do with the—the Attorney General came with the Bail (Access to Bail) (Amdt.) Bill and do you know what he told this Senate? He said the reason why we must pass this legislation is because we spent $10 billion on national security, and the reason why we must give people access to bail is because it cost $24,000 a month to house a prisoner. Those are his figures. When these people are convicted and you do not hang them—do we understand that in 24 months that this administration has been in power, they have already passed the 18 months in *Pratt & Morgan* for all the people that they met in the condemned when they were appointed to govern the country, and they have not successfully carried out one execution in 24 months, and they have not told the country why that is so. So the aim of the exercise is: we pass all of this legislation, we arrest people, we bring them before the court, they have no PI, we convict them in the High Court, they appeal to the Court of Appeal, they appeal to the Privy Council, and when we are finished—to use colloquial words—we will "mine dem" for the rest of their natural life at $24,000 a month. That is where we are going.

In contributing to one of these same pieces of criminal legislation, I made an

issue about the case of Amy Annamunthodo and it is something that bothers me, Madam President, because that was a four-year-old child that was murdered, and as I stand here today I want to tell the Attorney General to look into the matter of Criminal Appeal No. 2 of 2012, the *State v Marlon King*. Do you know what has happened in that matter? The Attorney General made an issue in his presentation about the victims. The victim in that matter was a four-year-old child—[*Interruption*]

Madam President: Sen. Ramdeen, is this a matter that is before the court?

Sen. G. Ramdeen: It is.

Madam President: It is. So you are going to speak on the matter?

Sen. G. Ramdeen: I am just speaking into the merits.

Madam President: Okay.

Sen. G. Ramdeen:—and the reason why I have alerted the Attorney General to it is simply because of this. That man was convicted in 2012, and as I stand here in 2017, September 14th, his appeal to the local Court of Appeal has not been heard as yet. So the State has been paying $24,000 a month for seven years, sorry for five years. It is more than seven years because he would have spent time on remand and he is going to remain for the State to pay $24,000 a month for the rest of his life because they cannot hang him anymore and he is going to remain there. His sentence is going to be commuted at some point in time and that is going to be the end. Where is the justice for the victim in that? How can we, as a Parliament, expect that the system is going to work when those are the examples, the real examples of what is happening in the system as we speak now?

The Attorney General spoke about one case where someone was incarcerated for 14 years. It is a case ongoing for 14 years in the Magistrates'

Court. Well, Madam President, to borrow from the presentation of the Attorney General and the contribution of Sen. Creese, there are many people who are incarcerated for more than 10 years awaiting a trial in this country and cannot get it, frustrated to the point— There is one particular person, Sharlene Mohammed, 14 years in the remand.

Madam President: But Sen. Ramdeen, please, if this is a matter that is awaiting trial, then you should please make no reference to it. You can just talk about someone on remand for a certain amount of years. Do not name the person or the case, please.

Sen. G. Ramdeen: As you please, Madam President. So that takes me to a very important point. I hope I and the Attorney General can agree on this. When we passed the Criminal Procedure (Plea Discussion and Plea Agreement) Bill, there were many amendments that were proposed by the Opposition. The hon. Attorney General had the advice of Senior Counsel, Pamela Elder, on that Bill. Almost every single amendment that was refused by the Government was refused on the basis that the advice of Senior Counsel Pamela Elder. Perhaps if not the most, one of the most respected members of the Criminal Inner Bar had provided advice to the Government on that matter. I want to give way to the Attorney General and ask him whether Mrs. Elder provided advice in relation to this matter.

Hon. Al-Rawi: I have been in discussion with her and she has been giving me assistance on the Bill. Yes.

Sen. G. Ramdeen: Thanks. That being the position, Madam President, I find it a bit disturbing that this Bill, when I got it in my inbox and I opened it, there were no changes made to this Bill as it was presented in the other place and now presented here. Because when this Bill was before the other place, in an article in the

Trinidad Guardian on Sunday, March 26, 2017, Mrs. Pamela Elder, Senior Counsel, expressed her views on this Bill. She said:

> "'At our Chambers we are extremely concerned...'"

This is an article of March 26, 2017 by Joel Julien.

> "'At our Chambers we are extremely concerned about this bill which the honourable Attorney General (Faris Al Rawi) has stated the object is to abolish preliminary inquiries...
>
> It is our considered opinion, our view, that this bill does nothing to address the issues plaguing the criminal justice system...'"

This is a woman who has vast experience in criminal justice system that is telling us that having looked at this piece of legislation, it will do nothing for the criminal justice system. I think that those are not words that are easy to swallow as a parliamentarian from someone as experienced as Mrs. Elder.

> "'Let me say the intentions behind this bill seem noble but it is bad law'"…

It is bad law.

> "'It is flawed, it disregards the rights of the accused, it is contradictory in certain respects, it contains a cut and paste approach in that certain clauses have been pulled from the existing act (that it is meant to replace) and placed in this bill without an understanding as to the significance of those clauses'"...

I found it as Sen. Samuel spoke, I also found it strange that in the presentation of the Attorney General we heard nothing about consultation. With the renewed enthusiasm of the Law Association I would have thought by now we would have had a full written opinion from them on this Bill so that we would find out what their views are.

Under section 5 of the Legal Profession Act they have a statutory duty to perform a function in the public interest in legal matters. Well, I do not know, as before, if they have not presented anything to the—they have not. You see I was waiting for the day when I would be able to stand in this Senate and hear from my friend, the Attorney General, that again the Law Association, of whom I am a member, has provided no assistance on a Bill that was sent to them, but in other matters, in less than 24 hours, you can hear their views loud and clear in this country. That should say something about the Law Association.

Mrs. Elder goes on and says:

"'The bill, with due respect to whoever drafted it, shows a deep misunderstanding of criminal practice and procedure.'"

And this is what I am getting to, Madam President.

"'This bill is going to wreck the system. It is a wrecking bill…'"

That is not the Opposition saying that, Madam President. This is one of the most celebrated members of the Inner Bar—the Criminal Inner Bar—and if the Attorney General has had discussions with Mrs. Elder and these are the concerns, well I would have thought that whatever is being presented we would have been told how the concerns of Mrs. Elder, in saying this is a wrecking Bill, have been alleviated by the provisions of the Act and we are still here waiting to hear that. All of us, Madam President, contribute in a different way. We all are differently skilled.

Mrs. Elder is one of the leading members of the Criminal Bar, and at the end of the day she has described this Bill as, one, bad law and two, it is a wrecking Bill and those who have drafted it, with no disrespect to my friend the Attorney General, have a total misunderstanding of criminal practise and procedure. Are we

going to act as a responsible Parliament and allow this piece of legislation to pass through? The Opposition has demonstrated in the weeks and months before the last Parliament ended, that we are prepared to work with the Government to pass legislation in the best interest of the people of this country, to sit with them and work with them, and we are presented today with a piece of legislation that clearly does not pass constitutional or legal muster. And how are we expected to approve of that?

Madam President, let me refer to a case that has finished so that I do not have to fall within the four corners of the Standing Orders. Madam President, we have a very short memory in Trinidad, a very, very short memory. And do you know why I say that? We are today being asked to take the judicial function that a magistrate performs and place it into the hands of the DPP and allow the DPP to decide whether persons should go forward to trial.

Recently, Madam President, we had the incident where the Director of Public Prosecutions gave the consent to charge the President of the Trinidad and Tobago Police Service Social and Welfare Association with sedition, and if it was not for the Magistrates' Court he would have been facing a trial; represented by none other than Mrs. Elder. So while we can make a lot of noise about the fact that preliminary enquiries take a long time, one has to understand that a preliminary enquiry has always been, for 100 years, a judicial safeguard to anyone who is engaged in the criminal justice system. And if we are to take away that safeguard, the very least that we owe to the people of this country is that we assure ourselves responsibly that whatever we replace it with is going to be either equal or better than what was there before.

The Attorney General made reference, Madam President, in his presentation

to the sections of the Constitution that the Attorney General says are engaged in this particular piece of legislation. He made reference to section 99, he made reference to enabling section of section 90 where the Director of Public Prosecutions has his powers, and he made reference to sections 4 and 5 which are the fundamental rights provisions, and very little was said after that about the rights that are engaged. Madam President, there is a more important section that I consider will be engaged by this piece of legislation and it is section 1, a section that not much attention is paid to but of which much attention should be emphasized. And section 1, as simple as it might be, says that Trinidad and Tobago is a sovereign democratic State:

"...Trinidad and Tobago shall be a sovereign democratic State."

The Judicial Committee of the Privy Council has held that that is an operative section that places certain guarantees to all of the citizens of Trinidad and Tobago, and one of these guarantees is that the rights of the citizens of this country are to be determined by an independent and impartial Judiciary. It is one of the fundamental tenets of being a sovereign democratic State, and we have judicial precedence from the Privy Council where legislation has been struck down on the basis of section 1.

The Attorney General perhaps will find useful learning in the decision of the Judicial Committee in *The State v Khoyratty (Mauritius)* and that is Privy Council Appeal No. 59 of 2004, citation [2006] UKPC 13. At paragraphs 12 and 13, Lord Johan Steyn expresses what the Privy Council has said are the elements of a sovereign democratic State.

"The idea of a democracy"—he says—"involves a number of different concepts. The first is that the people must decide on who should govern

> them. Secondly, there is the principle that fundamental rights should be protected by an impartial and independent judiciary. Thirdly, in order to achieve a reconciliation between the inevitable tensions between these ideas, a separation of powers between the legislation, the executive, and the judiciary is necessary."

When these sections are engaged, Madam President, one has to understand that we must be assured that the legislation that we pass can pass the constitutional test or the constitutional threshold of these particular sections.

When section 90 was enacted as part of our Constitution in 1976, it was enacted on the premise that you have preliminary enquiries. So that those persons who were responsible for drafting section 90 would have drafted section 90 on the basis that you have a preliminary enquiry and if you have a preliminary enquiry at the time when section 90 was created, the inevitable question that must arise is that was it contemplated at the time that section 90 was enacted, that the Director of Public Prosecutions would be given the power or would be envisaged to have the power that we purport to allow him to exercise, not by virtue of this Act, but by virtue of section 90 itself because it is section 90 in which the Attorney General says that the power to be exercised under clause 22 of this piece of legislation is rooted.

And when you look at subsections (3) and (4), which is:

> "to institute and undertake criminal proceedings against any person before any Court in respect of any offence against the law of the Trinidad and Tobago;
>
> to take over and continue any such criminal proceedings that may have been instituted by any other person or authority;

to discontinue at any stage before judgment is delivered any such criminal proceedings instituted or undertaken by himself or any other person or authority."

One finds it a hard fit, Madam President, to find that the powers that are given by this piece of legislation can find themselves within the four corners of section 90. It is very, very difficult, and if it is that for any reason those powers that the Director of Public Prosecutions is expressly being asked to exercise under clause 22 of this Bill do not find or do not fit within the four corners of section 90, then we are doing absolutely nothing here. Absolutely! All that we are doing here is going to amount to nothing, and all it is going to take is one criminal defendant to challenge this piece of legislation because it is not being passed under section 13 and it will be struck down.

We have already had the precedent in this jurisdiction of legislation, pre-existing legislation, being struck down under section 1. The Attorney General would be aware of the decision of Madam Justice Gobin in *Garvin Sookram v The Attorney General*. And on the point that the Attorney General was on about, about whether this is saved legislation and the fact that sections 4 and 5 are not engaged; sections 4 and 5, Madam President, do not have to be engaged—[*Interruption*]

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

Sen. G. Ramdeen: I am obliged—in order for these pieces of legislation to be struck down, and I refer the Attorney General to a decision of the Judicial Committee in 2009, UKPC 53 at paragraph 22.

Madam President, in the little time that have I left, I want to urge the Attorney General that when considering whether this legislation is good law and when considering more particularly clause 22, as a responsible Parliament, we

cannot give the accused persons the opportunity to walk free for any offence where the Director of Public Prosecutions does not prefer an indictment after one year. [*Desk thumping*] It is absolutely, absolutely irrational and unreasonable. Anyone who understands how the criminal justice system works will find no comfort in a section that says a judicial officer will have the discretion to exercise that power to set someone free if:

> "…he is satisfied that in all the circumstances of the case it would be just to do so."

If we are to act responsibly and in the best interest, or in the public interest as the Attorney General has to do, we must put in what are the factors that must be considered. We must. We must lay down some kind of statutory underpinning, some kind of statutory criteria than to allow a judicial officer to simply set people free after one year, for murder. There is absolutely no murder indictment that is filed within one year. It just does not exist, and anybody who understands the system will understand that. So this is not akin to section 34. This is 10 times worse than section 34. [*Desk thumping*] This section has absolutely no place in a piece of legislation that is supposed to promote the public interest.

So that let me join with Mrs. Elder, I cannot responsibly discharge my function to the people of this country, pursuant to the oath that I took, to pass this piece of legislation, knowing what the consequences of it will be to the criminal justice system. And in those circumstances, Madam President, I again appeal to the hon. Attorney General, we are prepared to work, we are prepared to get it right. This is the third piece of legislation that is trying to achieve this. We will solve no problems if we pass this piece of legislation. Let us as a Parliament discharge our duties responsibly to the people of this country and do what is right. Let us put the

politics out of it and put the people first. The country requires that [*Desk thumping*] and that is the only way that we will move forward.

I thank you, Madam President.

Sen. Wade Mark: Thank you very much. Madam President, we all recognized and we have all realized that the preliminary enquiry process, procedure, or even option, has existed for just about a century. In fact, the preliminary indictable legislation is in fact dated 1917. So this particular procedural safeguard has been in existence in our part of the world for just about 100 years.

[MR. VICE-PRESIDENT *in the Chair*]

And, Mr. Vice-President, if we are going to alter how we do business, how justice is dispensed with, we have to ensure that, as my colleague said, we get it right. We must get it right. I have seen no studies before this Parliament, either from the Law Reform Commission, from the Office of the Attorney General, that can provide me with some guidance as to the model that the Attorney General has employed in order to arrive at this place where we are.

Where is the empirical evaluation for this piece of draconian, obnoxious and reprehensible piece of legislation? [*Desk thumping*] Where? Where? Where? I am looking for it. I cannot see it. Reference is made to the St. Lucian model, the Antigua and Barbuda model, we have also examined the British or the United Kingdom model, but you know, Mr. Vice-President, I want to warn this Government there is something called a plutocracy—[*Interruption*]

Sen. Cummings: What?

Sen. W. Mark: Plutocracy—and there is something called a kleptocracy to, a Government ruled by thieves. Do you know about that? A Government ruled by thieves, that is a kleptocratic state. [*Desk thumping*] You understand?

So, Mr. Vice-President, I want to tell you that we have witnessed over the last 24 months, an attempt by this Government to encroach and erode, on an incremental basis in small degrees, the erosion of the fundamental rights and freedom of the citizens of this country. That is what we have witnessed over the last 24 months, but we know that a hurricane is coming. It is not Irma. That has gone. But there are hurricanes coming that will blow this Government away. We will blow you away. [*Desk thumping*] A political hurricane is developing and it will blow you away. I can see signs of fear beginning to appear on the facial expressions of my colleagues because they know the political hurricane is around the corner. They know it.

8.45 p.m.

So, Mr. Vice-President, here we are seeking to amend and repeal but hear the laws. You would know that you do not give up something that is superior that you have for something for less.

Sen. Sturge: "Buh we did that on September 7th."

Sen. W. Mark: Of course. Well, the masses have a right to be wrong. [*Laughter*] Okay? The masses have a right to be wrong. Okay? That is what democracy is about. We are being asked under clause 41 of the legislation to repeal the Indictable Offences (Preliminary Enquiry) Act, to repeal the Administration of Justice (Indictable Proceedings) Act of 2011 [*Crosstalk*] and the Indictable Offences (Committal Proceedings) Act of 2014. [*Crosstalk*] These three—[*Interruption*]

Mr. Vice-President: Sen. Sturge, I am hearing you over the contribution of the hon. Member.

Sen. Sturge: I am sorry.

Mr. Vice-President: Thank you.

Sen. Ameen: "How yuh nah hearing down so man?"

Sen. W. Mark: Please, please, please. So, Mr. Vice-President, how can we repeal, how can you ask us to repeal these superior pieces of legislation for an inferior piece of legislation that you have brought here today? [*Desk thumping*] And Mr. Vice-President, my colleague, he is not here, Sen. The Hon. Clarence Rambharat. [*Crosstalk*] Where is he? [*Crosstalk*] Or, yeah. [*Crosstalk*] I was looking for him here, I did not expect him to be so close to the Attorney General. But you know, my colleague was making the point in his contribution that he cannot understand why we, in the Opposition, would be in a state of objection or seeking to oppose the measure before this honourable House and quoted extensively from the former Attorney General on previous pieces of legislation particularly 2014, which dealt with Indictable Offences (Committal Proceedings) Act. And as I think someone pointed out to my colleague, there was the presence of a judicial officer. There was the presence of a judicial officer.

So even though we had agreed to the abolition of the PI and you have what is called sufficiency hearings, as my colleague pointed out, Mr. Vice-President, you had to go to a master of the Court. A master of the Court is appointed by the Judicial and Legal Service Commission. That is not the case with what is being proposed here. The Government is seeking to introduce a Bill that will put power into the hands of an officer that is dependent upon the Executive for his existence and for his life, [*Interruption*] as well as funding. How can we support that? How can we be expected to agree to such a measure? I have nothing against the current Director of Public Prosecutions, Mr. Roger Gaspard, nothing.

But, Mr. Vice-President, we have to understand that under the Constitution

of the Republic of Trinidad and Tobago and I want to go to section 111. Section 111(2) states:

> "Before the Judicial and Legal Service Commission makes any appointment to the offices of Solicitor General, Chief Parliamentary Counsel, Director of Public Prosecutions…"

May I repeat? "Director of Public Prosecutions".

> "…Registrar General or Chief State Solicitor it shall consult with the Prime Minister."

I want you to know this. The master does not have to consult with the Prime Minister; the magistrate does not have to consult with the Prime Minister, but the Director of Public Prosecutions, before he is appointed, Mr. Vice-President, must consult, "shall consult with", that is, the Judicial and Legal Service Commission who appoints that officeholder, "shall consult with the Prime Minister". It goes on further:

> "(3) A person shall not…"

Mr. Vice-President, listen to the language.

> "A person shall not be appointed to any such office…"—that I have mentioned—"if the Prime Minister signifies to the Judicial and Legal Service Commission his objection to the appointment of that person to that office."

[*Crosstalk*] Well, you are okay. You have about 10—"ah wouldn't tell yuh way yuh have". No, you are okay. We are dealing with people who are accused—[*Interruption*]

Mr. Vice-President: Sen. Mark, address the Chair, please.

Sen. W. Mark: Yes, I will do that. But you know I have to—my doctor has

advised me I have to go for circulation, [*Laughter*] otherwise if I stay, I will get stiff, I will have to move, so please, forgive me.

So I want to let you know, Mr. Vice-President, that it is important that when we talk about giving this power to the DPP, we have to understand the creature and how that particular officeholder is appointed. If the Prime Minister does not support your appointment as a DPP, you cannot be appointed as a DPP, you have to understand that. I have nothing against the current DPP but the DPP is a creature of the political directorate. [*Crosstalk*] Yes, the DPP.

And there is evidence to show that the former Prime Minister, who has passed on and may his soul rest in peace, he, on two occasions, vetoed two persons who were recommended for the post of DPP by the Judicial and Legal Service Commission: Carla Brown-Antoine and the current DPP, Mr. Roger Gaspard. On two occasions, the former Prime Minister, Patrick Manning, vetoed the DPP's appointment. So, Mr. Vice-President, when we in this piece of legislation, proceed to breach the Constitution, Mr. Vice-President, this Bill before us cannot be amended. This Bill before us cannot be fixed. This Bill before us has to be withdrawn and it has to be brought back [*Desk thumping*] because it is offending the very spirit of the Constitution when you come to the principle of the separation of powers. [*Desk thumping*]

Mr. Vice-President, how can you put or invest into the hands of the DPP these powers of conducting his own preliminary enquiry to determine if a prima facie case is made out to send somebody straight to the Assizes? I would like the Attorney General to point out to me where in section 90 that gentleman derives that power—the office. May I also bring to your attention, the Summary Courts Act? It is Chap. 4:20 and it tells you in section 3, magistrates, how they come into

existence, and it goes on in 3B to tell you and I quote:

> "The Judicial and Legal Service Commission may, on the recommendation of the Chief Justice, appoint Magistrates to hold offices on contract."

So a magistrate is not appointed or is dependent upon his or her appointment on the will or wishes of a Prime Minister. The Chief Justice—[*Interruption*] I am being disturbed by this running commentary led by the Attorney General. Okay.

So, Mr. Vice-President, I would like for the Attorney General to tell us how a Bill could oust these provisions in the Summary Courts Act that invest the power in the magistrate to conduct a PI? If you are going to remove this power, are you going to amend this law? Because there are several provisions in this legislation that clearly spell out the functions of a magistrate in carrying out a PI. But I have not seen in this legislation, under clause 41, that they are going to amend the Summary Courts Act.

So, Mr. Vice-President, the key point that I would like to advance this evening is that the Constitution is being breached once again by the Government led by the Hon. Dr. Keith Christopher Rowley and they are asking us to be willing accomplices in this breach and violation of our Constitution. I want to tell you that you will have no company whatsoever when it comes to breaching the Constitution. So that is an area, Mr. Vice-President. We have heard from the lawyers. Three fundamental issues have been raised by the attorneys here today that have been etched on my consciousness and stencilled literally on my mind.

The first point that was made that the Attorney General has to deal with is the right of an accused through his attorney to cross-examine his accuser. You are removing that in this piece of legislation. There is no cross-examination. The DPP is not a judicial officer. He is a public official appointed by the JLSC but he cannot

be appointed to that post if the Prime Minister says he does not want him. And that is the first element. The second element, as I understand it, is lack of full disclosure. So the DPP, the prosecution, will be able to have everything under their control and you, as the accused, are left in the rain. The third element is the absence of a judicial officer to give that accused some degree of fairness and justice. That officer is no longer there.

The Government has decided through this legislation, without the requisite constitutional majority—it is legislation by tactics according to the Attorney General and we are not being provided with legislation that is going to impact on the rights of accused in this nation, and the Government is telling us, Mr. Vice-President, it simply requires a simple majority. We beg to differ. The Attorney General and his Government—I do not know if stick broke in their ears, I do not know. But I do know when they brought a matter before this House to organize the selection of a police commissioner and we warned them about it, they did not listen to us. We went to the courts and it was literally revised and struck down literally. So we want to warn this Government, this piece of legislation, Mr. Vice-President, is flawed. It is bad law as Senior Counsel, Madam Pamela Elder, said. And I am surprised that the Attorney General would have come here today and he always tell us who he consulted, what they said, what view they expressed; today, he is silent.

Hon. Al-Rawi: Not for long.

Sen. W. Mark: He is silent. I do not want you to ambush us. When you speak as the Attorney General in piloting this Bill, you must put your cards on the table. "Doh wait until after we speak and tell us yuh coming." No.

So, Mr. Vice-President, everybody in this country is very worried about the direction this Government is taking. I think that you got a poll telling you recently

that you are on the wrong road; you are taking the wrong direction. You want to go San Fernando but you are heading towards Carenage. You cannot go to San Fernando if you are going to Carenage. "Yuh on the wrong road." And therefore, you bring a Bill here today that manifests, again, that the Government is on the wrong road and we are asking you to pull back, mash brakes, withdraw, come out the car and let us see to what extent we can work with you to strengthen the legislation and make it more acceptable for the people of this country. But it cannot work, Mr. Vice-President, in its current form. It cannot work.

Mr. Vice-President, from our assessment of the Bill, it tramples upon the Constitution and the rights of the people. May I take you to section 5(2)(h)? Now, we have rights. Every citizen has rights. And I want to remind the Attorney General and the Government that every accused is innocent until proven guilty. [*Desk thumping*] That is enshrined in the Constitution and section 5(2)(h) and I quote. No one should be deprived—

> "…Parliament…"—that is our Parliament—"may not deprive a person of the right to such procedural provisions as are necessary for the purpose of giving effect and protection to the aforesaid rights and freedoms."

One of those rights, Mr. Vice-President, is that you cannot deprive a person of the right to a fair hearing in accordance with the principles of fundamental justice for the determination of his rights and obligations. This is in the Constitution of the Republic of Trinidad and Tobago and if there is a procedural safeguard under the preliminary enquiry option that is available, that would allow an individual to exercise through his attorney certain procedural safeguards.

[MADAM PRESIDENT *in the Chair*]

So that rather than be a subject of malicious prosecution by the State, Madam

President, that person will be able to get a fair hearing, a proper hearing, and you know, Madam President, if there is no case, if your case is weak, the case is thrown out and the person goes free and does not have to go to the Assizes for a trial.

And sometimes I wonder whether this Government is only seeing just its nose and is not on the long horizon. It is not seeing long term, Madam President, because it appears to me—why would an Attorney General want to pass flawed legislation? Is this a political piece of legislation that the Government has formulated to get at its political enemies or opponents? What is it? Because it is so flawed. Why would the AG want to pursue a law that is so flawed? Why would you want to put so much power in the hands of a DPP who is going to be the prosecutor and then he is also going to be the judicial officer at the same time? It cannot work. I have the greatest respect for the officeholder, as I said, but we are dealing with the rights and freedoms of individuals.

And you know the people who appear before courts in this land, whether on summary matters or criminal matters, 99 per cent of them are from the working class, the poor and the vulnerable in our society. So whose interest is this Government promoting? It cannot be the interest of the poor, it cannot be the interest of the ordinary people, it cannot be the interest of the vulnerable. Are you a Government of the wealthy and therefore your laws are designed to promote their interest at the expense of the poor and the weak and the vulnerable?

Madam President, I will tell the masses, time longer than twine, hold on. [*Desk thumping*] Hold on just a little while again. "It has more scandals to break", just hold on and we will get them tattering and with a TKO, they will be flawed and we will go back to the polls and have fresh elections and elect a new Government in this country.

So, Madam President, as I said, when we examine this matter carefully, I have gone to Jamaica and I want to ask the Attorney General if he has studied:

> "An Act to abolish preliminary examinations and to provide for the procedure relating to committal for trial in cases of indictable offences, to be known as committal proceedings, and for matters incidental thereto."

This was passed on the 30th day of October, 2013 in the Jamaican Parliament. But, you know, Madam President, they do not have the DPP determining whether your case should go to the Assizes. They put a magistrate, a judicial officer. There is a judicial officer here, there is a judicial officer in the St. Lucian legislation. There is a judicial officer in Antigua & Barbuda. Why is this Government seeking to put the Director of Public Prosecutions?

Madam President, I want to bring to your attention something that I read somewhere. I read this thing with some degree of concern and alarm. It dealt with a situation in which we are told. We are told—Madam President, I have a document, I will find it in a short while. But that document talks about an issue, it was in the *Guardian* last Sunday and it talks about an issue in which the head of the Special Branch was removed or sent on leave. He was sent on leave and the reason why he was sent on leave is because the Government—well, I would say those persons who are in charge felt that the gentleman in question, did not take action on a particular matter, and it had to do with someone who, it is alleged, went or travelled to the Middle East, Egypt, and it was felt that that gentleman and his family were part of the ISIS group and the SSA was watching them and "hah dem on ah list".

9.15 p.m.

Madam President: Sen. Mark, you have five more minutes and as you use your

five minutes, could you tie what you are doing—the story you are telling with the Bill at hand.

Sen. W. Mark: I am talking about the different elements that make up the criminal justice system and the police is at the base. So I am showing how the police can be manipulated by the political directorate in order to charge their political enemies. [*Desk thumping*] That is what I am trying to develop here, Madam President. And because the police—Madam President you know that the police operationally supposed to be independent of the Executive arm of the State, but this particular Executive in Trinidad and Tobago apparently issued an instruction, according to the article, to this gentleman to arrest this person because he is a terrorist and they refused to arrest that person. He is now history; they move him, he gone on leave.

Madam President, I raised this to let you know that if you put power in the hands of the DPP and the base is the police—and I want to tell you there was a survey that was done—I do have it before me now—by the *Trinidad Express* on national institutions. It is Thursday the 7th of September, 2017, *Daily Express*. Madam President, the population confidence level in national institutions: the Judiciary, 16 per cent. That is the confidence level in that institution call our Judiciary. The police, 14 per cent, as an example.

I raised these matters to let you know that the legislation before us is not going to bring about the results that the Attorney General intend. He may mean well. He may want to get this thing off the ground. The legislation is absolutely flawed and deficient and we are calling on the Attorney General to withdraw this Bill. Let us work together in the Third Session of the Eleventh Parliament, straighten this thing out, get this thing right, Madam President, so we can bring about this desire that we all have for a speedier system of justice in our country

where people do not have to be denied justice because of the long and lengthy delays and the backlog that we have in the system today. That is why, Madam President, we would want to—in closing, I am appealing to the hon. Attorney General to let good sense prevail, withdraw this measure before us, and let us come back as a Parliament, as a Senate and let us work together and have better legislation that would seek to protect and promote not only justice, but the interest of the national community and the people of our country generally. I thank you, Madam President.

ADJOURNMENT

The Minister of Energy and Energy Industries (Sen. The Hon. Franklin Khan): Madam President, I beg to move that this Senate do now adjourn to Tuesday, 19th September, 2017 at 10.30 a.m. during which time the Attorney General will wrap up and we will enter into the committee stage.

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.

Resurgence in Kidnappings
(Government's Failure to Address)

Sen. Wade Mark: Madam President, I raise this matter of kidnapping, which, as you know, has now become—it is emerging as a serious scourge in our society once again. At one time, we all thought that it had passed, and we had eliminated that particular disease in our country but sad to say, what has happened is that over the last few weeks and last few months, we have witnessed a resurgence in kidnapping in our country. We have also witnessed not only kidnappings, but we have witnessed a lot of citizens missing—they have gone missing in our country—

and there appears to be little attempt to really locate those missing persons.

I think the hon. Minister of National Security, just a couple weeks ago or months ago, provided us with some startling statistics in which out of I think approximately 1,000 persons who have gone missing, I think we were able to discover the bulk of them, but there was still some 50 to 60 of them still unaccounted for. We do not know what the current status of those over-50 citizens who are missing is.

We know for a fact, Madam President, that the Government has not been successful in addressing the crime wave in our nation. We are now close to 338 murders I think thus far, and the pace that we are going, Madam President, we are going to really be inching closer to maybe 400 before the end of this year or by the end of this year. But what is of concern to many citizens today is their loved ones being kidnapped.

I think the police were very successful when they were able to locate a young lady who was washing, doing some household chores in Cumuto, and a gentleman just came and snatched her and took her into the forest. I think that the police were on the move, and they were able to discover that young lady and brought her back to safety. [*Desk thumping*] So that is something that we have to recognize in terms of the work of the police. But we also know that some of the persons who have been kidnapped, some have been killed, and I think that some of them are yet to be located. No trace of them.

Now, we know Madam President that our borders are open. They are very porous. I do not know when the agency that we spoke about in the budget of 2015/2016 when that is going to materialize, but we have open borders. We have the International Refugee Centre or agency saying that we have over 100,000 Venezuelans in this country and, of course, the Minister is saying it is less than

that. But we know that among those persons who are coming here, many of them are involved in very shady and sinister activities. We do not know, Madam President, if the invasion by all these foreigners without any kind of control at the borders is contributing to the level of kidnapping in our country or the amount of citizens who have gone missing.

I would like to ask the hon. Minister: what efforts are being made by the Government to stem this rising tide? I remember a gentleman from south Trinidad, just a couple months ago, maybe about three months ago, he was kidnapped and they demanded a ransom of some $270,000. My information is that the ransom was paid and the gentleman was released. But the fact of the matter, Madam President, is that you have a lot of persons who have become victims of that kind of aggression by those elements who are engaged in that particular kind of activity, kidnapping activity, and many citizens have gone missing.

There is a hairdresser called Ria Sookdeo, she has gone missing for almost I would say a year now, or maybe just under a year, and nobody could find any trace of this young lady. Where has Ria Sookdeo gone, Madam President? But we know that she was kidnapped and she was never located, and there are many others who have had a similar experience. Maybe as I said, Madam President, the Minister can deal with that issue by giving us up-to-date statistics.

But I want to say in closing, Madam President, that the economic system, the economic condition in our nation, the decaying social fabric of this society, the growing inequality of income and wealth in this nation, the 1 per cent that controlled 70 per cent of the wealth, the Gini coefficient which is 44 per cent, as we speak today in terms of income inequality, these are real issues that are impacting negatively on the day-to-day lives of our citizenry. [*Desk thumping*] So the crime wave that we are witnessing has a social and economic foundation, and

until we are able to deal with the social and the economic conditions in our country and to work towards improving the equality of income and bring about greater justice and fair play, Madam President, we will continue to have these challenges that our nation is faced with. So I am calling on the hon. Minister of National Security to bring us up to speed with the current status of kidnapping and, more so, those persons who have been missing, and to tell us what steps and measures are being taken to address that issue in the coming period to allay and reduce that fear that exists in our society and amongst our people. I thank you, Madam President. [*Desk thumping*]

The Minister of National Security (Hon. Maj. Gen. Edmund Dillon): Thank you very much, Madam President, for allowing me the opportunity to join in this Motion raised by Sen. Mark. I just want to remind him of the Motion because he seems to have been straying quite away from his own Motion: the failure of the Government to adequately address the resurgence in kidnappings of defenseless citizens.

Madam President, I listened to Sen. Mark a while ago, and as I said, he seems to be not even aware of the issue that he has raised in terms of the failure of the Government and in respect to resurgence of kidnappings. Those are the key issues in the Motion that he has raised and yet, I want to use his own words. A while ago, he challenged the Attorney General: where is the evidence? Where is the empirical evidence? I want to ask him the same question, because even in his articulation not an iota of evidence to suggest that there has been a resurgence of kidnapping, nothing to show that the Government has failed and, therefore, I want to assure Sen. Mark and this august House that on those two occasions there are certain empirical evidence that can prove otherwise.

You see, Madam President, the Trinidad and Tobago Police Service

categorised kidnappings in two areas: one, kidnapping for ransom and kidnapping that is those without ransom. Madam President, if you allow me to look at the statistics and I use as my base here 2005 onwards. At 2005, the figures that represented kidnapping were 222 kidnappings; kidnapping for ransom at that time which was the highest over the last 17 years was, in fact, 58 kidnapping for ransom during that period.

If you look at 2006, you had 197 reported kidnappings and 17 kidnapping for ransom; 2007, 164 and 14 respectively; 2008, 138 and 17—I am showing that because, Madam President, you are seeing a reduction in figure as we go along between 2005 onwards—2009, 147 kidnappings and 8 kidnapping for ransom; 2010, you had 112 and 7. Madam President, I say that because during that period the Government at the time, based on the effort and the work that they were doing shows a reduction in kidnappings from 2005 to 2010.

What happened in 2010, Madam President? The Government changed and with that, during that period, the work of the Special Ant-Crime Unit and the Anti-Kidnapping Squad were, in fact, very effective in treating with the issues of kidnapping in Trinidad and Tobago where we saw a reduction from 2005 at its highest peak from 222 kidnappings and 58 kidnapping for ransom to 2010 when you saw 112 to seven. What happened at that time? The Government changed and another Government came into power—very irresponsible—disbanded the Special Anti-Crime Unit which was dealing with kidnapping at the time and very instrumental in reducing the kidnapping in Trinidad and Tobago—disbanded the Anti-Crime Unit because they did not understand the remit of the Special Anti-Crime Unit; they did not understand the question of security, Madam President, and so we have seen that reduction.

When you look at between 2010 and 2017, Madam President, again, I can

quote the figures. I use 2014, for instance. In 2014, you saw an increase in the amount of kidnappings—not 2014, my apology. In 2013, we saw an increase in the kidnappings. In 2012, there was also an increase in kidnappings from the 2010 figure, in both in kidnapping and kidnapping for ransom.

I take you now to recent times between 2015 and 2016 and I can quote, especially with the kidnapping for ransom which is a key area. Kidnapping for ransom in 2015, 4; kidnapping for ransom in 2016, 3; kidnapping for ransom to date in 2017, 4, Madam President. I can also quote, if you want to get the kidnapping, kidnapping itself in 2015 was 106; kidnapping in 2016 was 77; kidnapping to date in 2017 is 72, and those are the two categories that the police looked at, kidnapping and kidnapping for ransom.

So if you look at between 2015 to now, just the three years—you are looking at three, four—Madam President, those figures tell for themselves. Where is the resurgence that Sen. Mark is looking for? He seems to be alarming the population and want to panic the population. Where is the resurgence? The statistics are saying to us that there has not been a resurgence, an increase, over the last three years even to date.

But let me also say what we have been doing about it because the other part of his Motion: what has the Government been doing about it? The Government continues to support the state agencies, namely the Anti-Kidnapping Squad of the Trinidad and Tobago Police Service, the Cyber Crime Unit and the Strategic Services Agency, who are the key agencies that responds to kidnapping in Trinidad and Tobago.

Madam President, the successes for the year alone—and he mentioned some of them. I want to join him. I was glad that he learnt a lesson from my pronunciation earlier on today to compliment the Trinidad and Tobago Police

Service for doing an excellent job, because they have been doing a very excellent job, especially dealing with kidnappings in Trinidad and Tobago. One can look, for instance, beginning this year alone—and he mentioned it. Only yesterday there was a 16-year-old in Cumuto. In less than two hours the police were able to arrest someone and bring that girl to safety, Madam President, in less than three hours. That is the diligent, the hard work of the Trinidad and Tobago Police Service, the Anti-Kidnapping Squad, the Strategic Services Agency and the Cyber Crime Unit working together.

Madam President, in August of 2014, a 16-year-old boy, a 16-year-old male was kidnapped. He was rescued the following day, through again, the efforts of the Trinidad and Tobago Police Service, the Trinidad and Tobago Anti-Kidnapping Squad. Madam President, in July of 2017, a Member of the Chinese Embassy staff—and one could recall that episode—where he was kidnapped around the St. Clair area. In less than three hours they were able to rescue that individual and arrest someone in that incident. Again, the hard work and dedication of law enforcement. Madam President, it continues. The abduction of Mr. Gregory Lane earlier on this year in June 2017. Again, it is based on the coordinated effort of the law enforcement agencies and other agencies of national security that bring a quick resolution to those efforts.

The Government of Trinidad and Tobago continues to support the law enforcement, support them in terms of providing the necessary funding, the necessary equipment, the technology and the training to ensure that they can execute their job effectively and efficiently and that is why, Madam President, we have been able to keep and to respond almost immediately to any issue of kidnapping in Trinidad and Tobago. We are going to bring it to where it is and achieve the kind of successes we are able to achieve in the last couple of days,

because the Government continue to support and fund and provide the necessary tools and equipment for law enforcement and other agencies of national security to do their job effectively and efficiently.

Madam President, the Anti-Kidnapping Squad is the main unit that is charged to deal with kidnapping in Trinidad and Tobago and they have, in fact, based on again the support of the Government, established a National Operations Centre that deals with negotiation in the event of kidnapping. They have developed family liaison officers to treat with families who are involved with kidnapping in terms of counselling, in terms of dealing with issues pertinent to the families. The Victim Support Unit has also been developed and established. Again, whatever is required to ensure law enforcement has been provided and we continue to provide it by this Government of Trinidad and Tobago, Madam President.

So that the successes and the areas that have been mentioned by Sen. Mark in his Motion with respect to the failure, we have seen quite clearly that based on the support of the Government of Trinidad and Tobago, the law enforcement entities to treat with kidnapping in Trinidad and Tobago have been able to achieve a measure of success and in so doing have been able to act as a deterrent to those who are intent on committing crime and criminality in Trinidad and Tobago especially in the field of kidnapping.

Madam President, we continue—[*Interruption*]

Madam President: You have one more minute.

Hon. Maj. Gen. E. Dillon: Thank you, Madam President. So I would use that one minute, Madam President, to reach out to the citizens of Trinidad and Tobago. In any areas of law enforcement, in any areas where we have to look at crime and criminality in Trinidad and Tobago, we implore and we ask that the citizens and all those on the other side to join with us to treat with all the issues that confront us in

the area of national security. It is only together that we as a country can treat with the issues of crime and criminality in Trinidad and Tobago. Madam President, I thank you. [*Desk thumping*]

Question put and agreed to.

Senate adjourned accordingly.

Adjourned at 9.37 p.m.