

SENATE

Wednesday, April 11, 2018

The Senate met at 10.00 a.m.

PRAYERS

[MADAM PRESIDENT *in the Chair*]

**LEAVE OF ABSENCE**

Madam President: Hon. Senators, I have granted leave of absence to Sen. The Hon. Allyson West, Sen. The Hon. Dennis Moses and Sen. Foster Cummings, all of whom are out of the country.

SENATORS' APPOINTMENT

Madam President: Hon. Senators, I have received the following correspondence from Her Excellency the President Paula-Mae Weekes:

“THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO

By Her Excellency PAULA-MAE WEEKES,

President of the Republic of Trinidad and

Tobago and Commander-in-Chief of the

Armed Forces.

/s/ Paula-Mae Weekes

President.

TO: MS. ALISHA ROMANO

WHEREAS Senator Allyson West is incapable of performing her duties as a Senator by reason of her absence from Trinidad and Tobago:

NOW, THEREFORE, I, Paula-Mae Weekes, President as aforesaid, acting in accordance with the advice of the Prime Minister, in exercise of the power vested in me by section 44(1)(a) and section 44(4)(a) of the

Constitution of the Republic of Trinidad and Tobago, do hereby appoint you, ALISHA ROMANO, to be temporarily a member of the Senate, with effect from 11th April, 2018 and continuing during the absence from Trinidad and Tobago of the said Senator Allyson West.

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 10th day of April, 2018.”

“THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO

By Her Excellency PAULA-MAE WEEKES,

President of the Republic of Trinidad and Tobago and Commander-in-Chief of the Armed Forces.

/s/ Paula-Mae Weekes

President.

TO: MS. AYANNA LEEBA LEWIS

WHEREAS Senator Dennis Moses is incapable of performing his duties as a Senator by reason of his absence from Trinidad and Tobago:

NOW, THEREFORE, I, Paula-Mae Weekes, President as aforesaid, acting in accordance with the advice of the Prime Minister, 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, AYANNA LEEBA LEWIS, to be temporarily a member of the Senate, with effect from 11th April, 2018 and continuing during the absence from Trinidad and Tobago of the said Senator Dennis Moses.

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 10th day of April, 2018.”

“THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO

By Her Excellency PAULA-MAE WEEKES,

President of the Republic of Trinidad and Tobago and Commander-in-Chief of the Armed Forces.

/s/ Paula-Mae Weekes

President.

TO: MR. NDALE YOUNG

WHEREAS Senator Foster Cummings is incapable of performing his duties as a Senator by reason of his absence from Trinidad and Tobago:

NOW, THEREFORE, I, Paula-Mae Weekes, President as aforesaid, acting in accordance with the advice of the Prime Minister, 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, NDALE YOUNG, to be temporarily a member of the Senate with effect from 11th April, 2018 and continuing during the absence from Trinidad and Tobago of the said Senator Foster Cummings.

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 10th day of April, 2018.”

OATH OF ALLEGIANCE

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

Alisha Romano, Ayanna Leeba Lewis and Ndale Young.

JOINT SELECT COMMITTEES**(CHANGE OF MEMBERSHIP)**

Madam President: Hon. Senators, I have received the following correspondence from the Speaker of the House of Representatives, April the 9th, 2018:

“Dear President of the Senate,

Appointment to Joint Select Committees

At a sitting held on Monday April 09, 2018, the House of Representatives agreed to the following resolution:

Be it resolved that the House agree to the following appointments to Joint Select Committees:

- Mrs. Vidya Gayadeen-Gopeesingh in lieu of Mr. Prakash Ramadhar on the Joint Select Committee on Finance and Legal Affairs
- Mr. Barry Padarath in lieu of Mrs. Vidya Gayadeen-Gopeesingh on the Joint Select Committee on Human Rights, Equality and Diversity; and
- Dr. Roodal Moonilal in lieu of Mr. Prakash Ramadhar on the Joint Select Committee on National Security.

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

UNREVISED

Respectfully,

Hon. Bridgid Mary Annisette-George, MP

Speaker of the House.”

PAPERS LAID

1. Thirtieth Annual Report of the Integrity Commission of Trinidad and Tobago for the year 2017. [*The Vice-President (Sen. Nigel De Freitas)*]
2. Ministerial Response of the Ministry of Agriculture, Land and Fisheries to the Eleventh Report of the Public Accounts Committee, Second Session (2016/2017), Eleventh Parliament on the Examination of the Audited Financial Statements of the Land Settlement Agency for the Financial Years 2008 and 2009. [*The Minister of Agriculture, Land and Fisheries (Sen. The Hon. Clarence Rambharat)*]
3. Ministerial Response of the Ministry of the Attorney General and Legal Affairs to the Thirteenth 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 year 2016 with specific reference to the Ministry of Finance. [*The Attorney General (Hon. Faris Al-Rawi)*]
4. Statement of the Attorney General related to the activities in Trinidad and Tobago of Cambridge Analytica, AggregateIQ (AIQ) and the Strategic Communication Laboratories (SCL) Group and their affiliate companies, together with a compilation of relevant Documentation and Materials. [*Hon. F. Al-Rawi*]
5. Annual Report of the Criminal Injuries Compensation Board for the period October 01, 2013 to September 30, 2014. [*The Minister of Energy and Energy Industries (Sen. The Hon. Franklin Khan)*]

UNREVISED

6. Ministerial Response of the Ministry of Finance to the Twelfth 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 year 2016. [*Sen. The Hon. F. Khan*]
7. Ministerial Response of the Ministry of Finance to the Thirteenth 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 year 2016 with specific reference to the Ministry of Finance. [*Sen. The Hon. F. Khan*]
8. Report of the Auditor General of the Republic of Trinidad and Tobago on the Financial Statements of the Mayaro/Rio Claro Regional Corporation for the year ended September 30, 2005. [*Sen. The Hon. F. Khan*]
9. Report of the Auditor General of the Republic of Trinidad and Tobago on the Financial Statements of the Princes Town Regional Corporation for the year ended September 30, 2014. [*Sen. The Hon. F. Khan*]
10. One Hundred and Sixth Report of the Salaries Review Commission of the Republic of Trinidad and Tobago (Determination of the Salary and Other Conditions of Service for the Offices of Commissioner of Valuations and Assistant Commissioner of Valuations, Ministry of Finance). [*Sen. The Hon. F. Khan*]
11. Ministerial Response of the Ministry of Energy and Energy Industries to the Twelfth 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 year 2016. [*Sen. The Hon. F. Khan*]

12. Second Ministerial Response of the Ministry of Energy and Energy Industries to the Fourteenth 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 year 2016 with specific reference to the Ministry of Energy and Energy Industries. [*Sen. The Hon. F. Khan*]

URGENT QUESTIONS

Illegal Entry of Venezuelan Nationals

(Steps taken)

Sen. Wade Mark: To the Minister of National Security: Having regard to reports that approximately two hundred Venezuelan nationals enter our shores daily via illegal ports of entry, what role, if any, has law enforcement been playing in curbing this growing problem?

Madam President: Minister of National Security, you have two minutes. [*Desk thumping*]

The Minister of National Security (Hon. Maj. Gen. Edmund Dillon): Thank you, Madam President. Madam President, the Trinidad and Tobago Police Service, together with the Trinidad and Tobago Defence Force, have established land-based coastal patrols around Trinidad and Tobago in the southwestern area, from Icacos, Quinam, Los Iros, Moruga, Guayaguayare, Galeota. In the north eastern area, Toco, Matelot, Paria, Blanchisseuse, all the way down to Scotland Bay on the western side.

They have also established land-based coastal patrols along the western side of Trinidad and Tobago, in particular, around the area from Embacadere all the

way up to Point Lisas and beyond. So there are a number of land-based coastal patrols taking place by joint army and police patrols. Additionally, in the south western, in particular, we also include the Customs Preventative Branch, so there are three agencies involved in land-based patrols.

On the maritime side, the Trinidad and Tobago Coast Guard continues to patrol the waters around Trinidad and Tobago. In the Gulf, in particular, we have—based on our reestablishment of the bilateral cooperation with Venezuela, there is now direct contact between the Commanding Officer of the Trinidad and Tobago Coast Guard and the Commanding Officer, Guardia Nacional and the Guardia Costa, so that they are talking to one another in patrolling our Maritime waters. And those are all in an event to streamline, to prevent illegal entry through our waters and our borders in Trinidad and Tobago, Madam President.

Sen. Mark: Madam President, given the information released by the hon. Minister, as it concerns the number of land-based coastal patrols around the country, the invasion of refugees continues unabated. Could the hon. Minister therefore indicate to this honourable House, what further measures will be adopted to address this growing refugee crisis?

Hon. Maj. Gen. E. Dillon: Madam President, there are also discussions at the level of the Ministry of Foreign and Caricom Affairs and the counterpart in Venezuela to deal with issues of—especially people from Venezuela coming into Trinidad and Tobago. We have also established contact with the coastal villages, La Pedernales, Tucupita, Agraria and so on, on the ground, to get information as to people moving backward and forward. We also have done utilizing our coastal radius surveillance system and also our Fixed-Wing Aircraft in terms of surveillance. So there is a combination of events, a combination of initiatives to treat with that.

Additionally, Madam President, you would notice that from time to time there are raids between the immigration authorities and Trinidad and Tobago Police Service in known areas around Trinidad and Tobago where illegals tend to gather. And so several arrests have been made within recent times. As a matter of fact, Madam President, the Immigration Detention Centre right now has about almost, in the areas about 90-something illegal Venezuelans. And we are in the process of negotiating—we have negotiated with the Venezuelan Ambassador to move, to repatriate these people back to Venezuela as soon as possible. [*Desk thumping*]

Sen. Mark: Hon. President, the question I would like to pose to the hon. Minister of National Security, is simply this: Consistent with our international obligations and given the need for urgent legislation to address the refugee crisis, as well as the migrant crisis, can the hon. Minister indicate whether the Government intends to introduce legislation to address both, the refugee, as well as the migrant labour crisis?

Hon. Maj. Gen. E. Dillon: Madam President, the legislation with respect to refugees is, in fact, under review right now. The Government is in contact with UNHCR and discussions are taking place with respect to that legislation.

Nationals Detained by Venezuelan Guardia Nacional

(Update of)

Sen. Saddam Hosein: To the Minister of National Security: In light of recent developments where Trinidadian fishermen were arrested by the Venezuelan Guardia Nacional and have appeared in a Venezuelan Court, can the Minister give an update on the matter?

The Minister of National Security (Hon. Maj. Gen. Edmund Dillon): Thank you Madam President. Madam President, with respect to the Trinidad and Tobago

citizens, Mr. Nicholas Nandlal Hajarie, Mr. Awardnath Hajarie and Mr. Shami Seepersad, yesterday at the First Instance Criminal Court for State and Municipal Control Functions at Tucupita, Judge Romly Medina Ferrias at 2.56 p.m. released the nationals. So they have been released, they appeared before the court and they have been released. Arrangements are being made right now to return them to Trinidad and Tobago, in particular, to the Cedros port of entry.

Sen. S. Hosein: Thank you very much, Madam President. Madam President, in light of reports that there are issues regarding the legality of the arrest of these individuals, that they were actually captured in Trinidadian water, is the Minister launching any investigation into this issue?

Hon. Maj. Gen. E. Dillon: Madam President, at the level of the Ministry of Foreign and Caricom Affairs, investigation is taking place with the two foreign affairs counterparts. But, Madam President, one must also understand that the nationals were released from the court without any conviction. Well, we continue to investigate.

Sen. S. Hosein: Madam President, having regard to the growing concerns of the local fishermen in Cedros that the La Guardia Nacional are demanding US currency and food for releases of fishermen. Can the Minister indicate whether or not this problem is going to be dealt with so that this does not occur again?

Madam President: Sen. Hosein, I will not allow that question.

Revocation of Minister

(Details of New Information)

Sen. Saddam Hosein: To the Prime Minister: In light of recent developments where the appointment of the Minister in the Ministry of Housing and Urban Development was revoked based on new information, can the Prime Minister inform the Senate of such information?

Madam President: Minister in the Office of the Prime Minister, you have two minutes.

The Minister in the Office of the Prime Minister and Minister in the Office of the Attorney General and Legal Affairs (Sen. The Hon. Stuart Young): Thank you very much, Madam President. Madam President, as we are all aware, every Ministerial appointment is within the sole discretion of the hon. Prime Minister. As was announced yesterday, the hon. Prime Minister has appointed a very specially formulated committee with the right asset base to do a thorough investigation into the circumstances surrounding the facts with respect to this matter. And the hon. Prime Minister will await the outcome of that report, what is found in that report and we ask that the rest of the population also do so, because we will then release the necessary facts and what is found in that report to the public at the appropriate time.

Sen. S. Hosein: Thank you very much, Madam President. Madam President, in light of the dismissal of the Minister and also the announcement by the Prime Minister that he has confidence in this Minister, can the Minister in the Office of the Prime Minister confirm whether or not any misconduct has taken place by the former Minister in the Ministry of Housing and Urban Development?

Hon. S. Young: Madam President, as I just outlined, the way this Government operates is a full investigation is taking place. When the report coming out of that full investigation is presented to the hon. Prime Minister, he will then discuss the matters related and coming out of that report.

Sen. S. Hosein: Madam President, can the Minister give this Senate the terms of reference of that committee that was appointed to investigate this matter please?

Hon. S. Young: No.

Hon. Senators: So they have no terms of reference?

Sen. Obika: Madam President, Standing Order 46(1), the answer is not relevant to the question. [*Crosstalk*]

Madam President: Sen. Obika that Standing Order does not apply in these circumstances, okay. Next.

Sen. Obika: Standing Order 46(4), the Member just made some insulting inferences to my academic record. And let me correct the record. I have a—
[*Interruption*]

Madam President: Obika! [*Crosstalk*]

Sen. Obika:—I have a First Degree in Economics and a Master in Finance.
[*Crosstalk*] Know the record.

Hon. Senator: Correct. [*Desk thumping*]

Madam President: Hon. Senators and Sen. Obika, you are not permitted, listen to my words very carefully, you are not permitted to behave as you just did and I will not tolerate a recurrence of that. If you are seeking any sort of redress, look to me and do it in an appropriate manner. What you just did was inappropriate. Okay?

ANSWERS TO QUESTIONS

The Minister of Energy and Energy Industries (Sen. The Hon. Franklin Khan): Madam President, the Government is pleased to announce, it will be answering all the questions listed here, save and except, three, and we ask for a deferral of these three. Question No. 64, question No. 74 and question No. 92. With regard to Written Answers, we would like to have a deferral of question No. 78.

Sen. Mark: Madam President, could you advise us.

Madam President: Just a second. So questions Nos. 74, 92 and the Written Question No. 78 are deferred for two weeks. Sen. Mark, you wanted to raise something?

Sen. Mark: Yeah. Did I hear the hon. Leader of Government Business, Madam President, say, question 64? [*Crosstalk*] Oh, well, you are answering it?

Sen. The Hon. F. Khan: Yeah.

Sen. Mark: Okay. I just wanted to know.

Madam President: You are answering question No. 64?

Sen. The Hon. F. Khan: No, no, no. We are not in a position to answer question No. 64 and we seek the indulgence of the Senate to have it deferred a second time, if it so pleases this Senate.

Sen. Mark: Madam President, I am not inclined to accept that. You have already given him a two weeks arrangement. [*Desk thumping*] And I would ask you to invoke the appropriate Standing Order.

Madam President: Hon. Senators—[*Crosstalk*] Well, if you do not want me to make a pronouncement—

Sen. Mark: Sorry, sorry.

Madam President: Hon. Senators, Standing Order 27(15) will be invoked. Standing Order 27(16), I apologize.

ORAL ANSWERS TO QUESTIONS

The following questions stood on the Order Paper:

Galleons Passage

(Details of Dunn and Bradstreet Report)

- 64.** Having regard to the Dunn and Bradstreet Report on the *Galleons Passage*, can the hon. Minister of Finance indicate the following:
- i. the main elements contained in the report; and
 - ii. the cost of said report? [*Sen. W. Mark*]

Trinidad and Tobago Cancer Society

(Measures to Assist)

- 74.** Given the failure of the Ministry over the last three years to allocate funds to the Trinidad and Tobago Cancer Society, a non-profit institution, can the hon. Minister of Health indicate what measures are being taken to assist this important organization? [*Sen. W. Mark*]

Sargassum Seaweed

(Effects in Coastal Waters)

- 92.** Can the hon. Minister of Tourism indicate what steps are being taken to minimize the effects of the sargassum seaweed in the coastal waters of Trinidad and Tobago? [*Sen. S. Hosein*]

Questions, by leave, deferred.

Galleons Passage

(Details of Law Firm)

- 62. Sen. Wade Mark** asked the hon. Minister of Finance:

Can the Minister provide the following information:

- i. the name of the Law Firm(s) local and/or international involved in the acquisition and purchase of the *Galleons Passage*;
- ii. a detailed breakdown of all fees paid to the Law Firm(s) referred to in (i) above; and
- iii. the names of the Attorneys-at-Law involved in said acquisition and purchase?

The Minister of Finance (Hon. Colm Imbert): Thank you, Madam President. Answer to part i: The law firm used to provide legal services for the acquisition and purchase of the *Galleons Passage* was Haynes and Boone CDG. Haynes and Boone CDG is the product of a merger in 2016, between Haynes and Boone of the

United States, one of the largest and most highly regarded US law firms and CDG of the United Kingdom.

Haynes and Boone has offices in Texas, New York, California, Chicago, Denver, Washington, London, Mexico City and Shanghai. The firm provides a full spectrum of legal services in technology, financial services, energy and private equity. CDG or Curtis Davis Garrard of the United Kingdom has built a significant reputation over the last 20 years serving the shipbuilding and offshore oil and gas sectors globally. Its shipbuilding clients consist of ship owners, charterers and shipyards covering the entire spectrum of commercial shipping, including the international super-yachts sector.

10.30 a.m.

On the offshore side, its clients include major oil and gas companies with worldwide development interests, smaller independents, offshore contractors providing a range of exploration and production services. The merged firm, Haynes and Boone CDG, has 600 lawyers in its 15 offices and 40 major legal practices.

Answer to part (ii): The total legal fees paid to Haynes and Boone for (a) advising the National Infrastructure Development Company on the applicable law; (b) seeking NIDCO's interest in the purchase of the vessel; (c) negotiating and settling with the seller, the terms and conditions of the Purchase Agreement (modified Norwegian sales form) for the vessel; (d) attending and acting as agent for the National Infrastructure Development Company in the completion of the purchase; and (e) arranging for the registration of the vessel with the Vanuatu Ship Registry as the *Galleons Passage* in NIDCO's name, as the new owner, pending registration with the Trinidad and Tobago Ship Registry—total fees for all of that was £45,200.

Answer to part (iii): The names of the lawyers from Haynes and Boone CDG that represented NIDCO in the transaction were Mr. Andreas Nikolaus Silcher, a specialist in maritime and shipping law, and Ms. Chrysa Kitsou, who has experience of arranging the delivery of over 40 new-building vessels from a wide range of Asian shipyards.

Madam President: Sen. Mark?

Sen. Mark: Could the hon. Minister of Finance provide this Senate with a detailed breakdown of the 45,000—is it pounds you said, Sir? Could he provide this honourable Senate with a detailed breakdown of the £45,000 as requested by the question?

Madam President: Minister of Finance.

Hon. C. Imbert: Yes, Madam President. I will send to the hon. Senator every hour, every day, every place and everything that the two lawyers did for the £45,000.

Madam President: Sen. Mark?

Sen. Mark: Madam President, I think you need to rule on this matter. This is a question that you have approved and we would like the hon. Minister to adhere to the rules of this House. We have asked him for the detailed breakdown. I did not ask him to send it to me privately. I have asked him, with your approval, to provide this House—

Hon. C. Imbert: Move on to the next question.

Sen. Mark: Madam President, with your leave, I have asked him to provide a detailed breakdown of the £45,000, [*Desk thumping*] not to give it to me privately. It is to give you and the House. Madam President, could you help me on this matter?

Madam President: Minister of Finance?

Hon. C. Imbert: Madam President, I will provide the Senate with the date, the hour, the time and the things that the lawyers worked on. [*Desk thumping*]

Sen. Mark: Madam President, could I ask, through you, to the Minister, when would that information be provided to you and this honourable Senate?

Madam President: Minister?

Hon. C. Imbert: Before the next sitting of the Senate.

Madam President: Sen. Mark, this is your last supplementary.

Sen. Mark: Could the hon. Minister indicate whether any lawyers from Trinidad and Tobago were involved in this transaction?

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

Hon. C. Imbert: But the answer is no, anyway.

Madam President: Next question, Sen. Mark?

Sen. Mark: Am I asking—not 64, right?

Madam President: That is correct.

Sen. Mark: Okay. I do not know why they are hiding, but we will get to that shortly.

Galleons Passage

(Details of Valuation Reports)

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

Can the Minister inform the Senate of:

- i. the name of the companies that conducted the two independent valuation reports on the *Galleons Passage*; and
- ii. the costs of each valuation report?

The Minister of Finance (Hon. Colm Imbert): Thank you, Madam President. [*Desk thumping*] The companies that conducted valuation reports on the *Galleons Passage* in November 2017 and December 2017, respectively, were Oceanic

Design and Survey of Australia and Schulte Marine Concept of China.

For the benefit of hon. Senators, Madam President, Oceanic Design and Survey is an AMSA accredited marine design and survey firm located in Queensland, Australia. It is accredited in Marine Surveying of:

- New build and existing vessels of steel, aluminium and fiberglass construction;
- Propulsion systems;
- Stability;
- Load line; and
- MARPOL which is short for Marine Pollution.

Apart from being accredited by the Australian Maritime Safety Authority, which is AMSA, it is a member of:

- The Marine Surveyors Association;
- Marine Queensland;
- The Board of Professional Engineers of Queensland; and
- The Royal Institution of Naval Architects.

Schulte Marine Concept, the second valuer, is the new-building arm of Bernhard Schulte Ship Management, or BSM. Madam President, BSM is an integrated global maritime solutions leader, with more than 130 years' experience in the shipping industry. It manages a fleet of 600 vessels, with 20,000 employees through a network of 10 ship management and 26 crew service companies worldwide and five wholly-owned maritime training centres across the world.

SMC, a subsidiary of BSM, provides for BSM a comprehensive spectrum of project-tailored technical and management services and value-added end-to-end solutions for new-building conversion and retrofit project as well as for fleets in

service. SMC operates through permanent regional offices in Shanghai, China, its head office, and in Hong Kong and through dedicated site offices spread throughout the world's shipbuilding markets.

Answer to part (ii): There was no direct cost for the valuation conducted by Oceanic Design and Survey in November 2017, since this came with the package of documentation for the vessel, arising from the construction of the vessel for its previous Venezuelan client. It is to be noted that Oceanic Design and Survey valued the vessel at US \$19 million.

The cost of the valuation done by Schulte Marine Concept in December 2017 for the Government of Trinidad and Tobago was US \$4,500. It is to be noted that Schulte Marine Concept valued the vessel at US \$35 million.

Madam President: Sen. Mark?

Sen. Mark: Let us get a little more comprehensive now. Madam President, through you, this Senate would like the Minister to table forthwith the report—

Hon. C. Imbert: That is a question?

Sen. Mark: Yeah. Madam President—

Hon. C. Imbert: That is a supplementary question?

Sen. Mark:—through you, I am asking that the Minister—if the Minister, rather, based on his submission, can make available those two reports by Oceanic Design and Survey Limited and Schulte Marine, or Maritime, or whatever you call it—that organization's report? Can you make those two valuation reports available forthwith to this honourable House? [*Desk thumping*]

Madam President: Minister of Finance?

Hon. C. Imbert: Madam President, I would seek the approval of Cabinet and once Cabinet agrees, I would have no hesitation in tabling those two documents which will then confirm that the vessel was valued at \$19 million by one valuer

and at US \$35 million by the other firm which has the 20,000 employees and the 130 years of shipping experience. [*Desk thumping*]

Sen. Mark: Madam President, is the Minister aware that the Prime Minister is on record a short while ago indicating that the Government of this country has been fully transparent and accountable to this country on all fronts? So why, Madam President, through you, would the Minister require Cabinet's permission when the Prime Minister has said the Government is open and transparent? [*Desk thumping*]
So, therefore, can the Minister reconsider his position, given the Prime Minister's position, and table those reports forthwith in this Parliament? [*Desk thumping*]

Madam President: Sen. Mark, in response to your supplementary questions, two, three and four that you just raised, they are not allowed. Next question.

Sen. Dr. Mahabir: Madam President, on behalf of my colleague, Sen. Roach, question—

Madam President: Would you like me to stand down the questions and then come back to it, just in—he can ask it? All right.

Sen. Dr. Mahabir: Thank you, Madam President. Madam President, I am grateful to the Government for deferring the question last week, but unfortunately, Sen. Roach is not here so I think I can pose it on his behalf today, and the Government has indicated that they are prepared to answer. Do I read the question, Madam President?

Madam President: No, just the number.

**Hasely Crawford Stadium/Jean Pierre Complex
(Revenue Gained from Rental)**

70. Sen. Dr. Dhanayshar Mahabir on behalf of Sen. H.R. Ian Roach asked the hon. Minister of Sport and Youth Affairs:

Can the hon. Minister indicate what is the total revenue gained from the rental of the Hasely Crawford Stadium/Jean Pierre Complex over the 2018 Carnival season?

The Minister of Energy and Energy Industries (Sen. The Hon. Franklin Khan): Thank you very much, Madam President. Madam President, with regard to question 70, the total revenue earned was TT \$380,000, as detailed below. I will read out “Event” and then the rental earned.

The event is Breakfast Island; rental earned \$30,000. Event, Ladies Night Out, rental earned, \$60,000. Event, Last Jam, rental earned, \$30,000. Event, Punchy Punch, rental earned \$30,000. Event: Machel Monday, rental earned, \$200,000. Event, Yuma Vibes, rental earned, \$30,000.

Madam President, I want to further inform this Senate that fees for the Socadrome were waived by the Ministry of Sport and Youth Affairs in the interest of the Carnival.

**Hasely Crawford Stadium/Jean Pierre Complex
(Current State of Disrepair)**

71. Sen Dr. Dhanayshar Mahabir on behalf of Sen. H.R. Ian Roach asked the hon. Minister of Sport and Youth Affairs:

Can the hon. Minister inform the Senate of the measures taken to address the following:

- i. the current state of disrepair of both the Hasely Crawford Stadium and the Jean Pierre Complex;
- ii. the water leak to the eastern side of the Stadium, which has been leaking for a number of months; and
- iii. the adequacy of the outdoor track for the kind of preparation needed by athletes during the period before imminent sporting competitions?

The Minister of Energy and Energy Industries (Sen. The Hon. Franklin Khan): Thank you very much, Madam President. Madam President, with regard to part (i) of the question, routine repairs and maintenance work is done on an as-needed basis presently. Once funding becomes available the relevant personnel, such as engineers, will be sourced to have a proper assessment of the facility to determine a way forward. This is required due to the age of the facility, being approximately 35 years and 38 years, respectively, with no major upgrade being done in recent times.

With regard to part (ii) of the question: The Water and Sewerage Authority was contacted with regard to the leak on the eastern side of the Hasely Crawford Stadium. They indicated that the piping has dropped, thus causing the coupling to leak. Drawings are being sourced by the Sports Company of Trinidad and Tobago for the potable water system to create a scope of works for the contractor to be engaged to execute this job. Madam President, the drawings are a vital part of this task, since without these there is no possible way for SPORTT to know the exact details of what utility lines are located there, and the configuration of those lines.

With regard to part (iii) of the question, the outdoor track is built to international standard. This has been inspected and used by the National Association of Athletic Administration, the NAAA, since its inception. Both tracks have been upgraded within the past year and are available to all athletes for use.

NGC and CNC

(Resumption of Negotiations)

72. Sen. Wade Mark asked the hon. Minister of Energy and Energy Industries: In the light of the impasse involving the National Gas Company and Caribbean Nitrogen Company, can the Minister inform the Senate when

these parties will resume negotiations in respect of a new long-term supply contract?

The Minister of Energy and Energy Industries (Sen. The Hon. Franklin Khan): Thank you very much, Madam President. Madam President, the NGC and CNC resumed negotiations in February 2018 with the aim of arriving at mutually acceptable commercial terms to allow the resumption of gas supply to the CNC plant. Both parties worked assiduously to resolve all outstanding issues and agreement was finally reached on the key commercial terms to allow the signing of the long-term contract on April 01, 2018. Effective April 02, 2018, the gas supply to CNC resumed. All's well that ends well.

Madam President: Sen. Mark?

Sen. Mark: Madam President, could the hon. Minister indicate what is the duration of this new long-term contract agreement between the parties?

Sen. The Hon. F. Khan: I cannot recall off the cuff but I will get that information immediately to this Senate in the shortest order and, most definitely, before the next sitting of the House.

Madam President: Sen. Mark?

Sen. Mark: Madam President, can I ask the hon. Minister, in a period of transparency and openness and accountability, whether the Government is prepared to share with this House the final price of natural gas that was agreed upon between CNC and the National Gas Company of the Republic of Trinidad and Tobago?

Madam President: Minister?

Sen. The Hon. F. Khan: Madam President, someone of Sen. Mark's vast experience in this House and in the other place, should know by now that these commercial contracts are subject to strict confidentiality clauses. They have never

been made public by any administration that is in office and we do not plan to break that rule because these are commercial agreements that the economy of Trinidad and Tobago depends on.

Madam President: Sen. Mark?

Sen. Mark: Madam President, would the hon. Minister be prepared to provide this Senate with any elements of the agreement that you consider to be relevant for public consumption, having regard to the fact that natural gas resources constitute the property of the people of T&T, and there needs to be some accountability?

Madam President: Minister?

Sen. The Hon. F. Khan: Madam President, some of the routine clauses in the contract probably could be subject to public scrutiny, but even the quantities that are being made available is confidential because you have a situation where there is still a gas curtailment. There are other competitive companies in the Point Lisas Estate. So if you disclose the volume and the price and the—what they call the DCQ, the Daily Contract Quantity—it jeopardizes your whole business. So, unfortunately, I am not in a position to comply. [*Desk thumping*]

Madam President: Sen. Mark.

Sen. Mark: Madam President, would the Minister not agree with me that there is need to—well, let me put a question, Madam President. Would the Minister indicate whether the National Gas Company, acting on behalf of the taxpayers of Trinidad and Tobago, would have gotten a reasonably good deal in this long-term contract so that the country would have gained benefits from this arrangement in the long term? Could he share that with us?

Madam President: Minister?

Sen. The Hon. F. Khan: The answer to that is in the affirmative.

Immigration Division
(Details of Section Closures)

73.Sen. Wade Mark asked the hon. Minister of National Security:

What measures are being implemented to address the issue of the closure of the Permanent Residence and Citizenship Section of the Immigration Division on Frederick Street, Port of Spain and the resulting backlog of outstanding Permanent Residence and Citizenship Applications?

Madam President: Minister of National Security, you have five minutes.

The Minister of National Security (Hon. Maj. Gen. Edmund Dillon): Thank you, Madam President. Madam President, the Public Services Association led a shutdown of the immigration office located at 116 Frederick Street, Port of Spain, commonly referred to as the Moonan Building, on the 8th of April, 2014. This closure led to the suspension of permanent residence citizenship and extension services provided at that office. Subsequently, permanent residence and citizenship interviews were conducted at the administrative office located at 135 Henry Street, Port of Spain, and extension services were provided at the office located at number 67 Frederick Street, Port of Spain, on a limited basis.

The Immigration Division relocated at the Government Plaza over the period October to December 2016, where full permanent residence citizenship and extension services resumed. The Chief Immigration Officer assigned 10 Immigration Officers III to the permanent residence and citizenship section to interview applicants in Port of Spain, in treating the backlog that had been created between 2014 to 2015/2016. Previously, there were four immigration officers assigned to this section, so, in fact, there was an increase in human resource. Interviews for permanent residence and citizenship began in January 2017 at the new location. Approximately 255 scheduled appointments for interviews are made

per week at the immigration offices located at Port of Spain, San Fernando and Tobago.

Madam President, between 2014 to 2017, to 2018 there were roughly about 4,000 interviews conducted. In fact, we had set a timeline that between January 2017 to April 2018 we would have cleared up the backlog, and we are well on our way to doing so.

Madam President: Sen. Mark?

Sen. Mark: Could the hon. Minister, through you, Madam President, indicate to us, as we speak, what would be the number of applications that would have been approved both for permanent residence and for citizenship? And, Madam President, if he would pause and come to the next question.

Madam President: Minister?

Hon. Maj. Gen. E. Dillon: Madam President, I know that there were roughly about 4,000 interviews, but I cannot dissect them and say how many were approved and not approved, but that can certainly be provided.

Madam President: Sen. Mark?

Sen. Mark: Madam President, could the hon. Minister indicate at this material time what would be the number of outstanding applications for permanent citizenship and residence at the immigration department, as we speak? Can you share with us what is the backlog like at this material time?

Madam President: Minister?

Hon. Maj. Gen. E. Dillon: Madam President, as I mentioned a while ago, we are well on clearing the backlog right now; that we have set a target between January 2017 to April 2017, and we are well about clearing that backlog right now. As to the figures that are remaining, I certainly can provide that, but I do not have them right now.

Sen. Mark: Madam President, could I ask the hon. Minister, through you, if he can make that information available to this honourable House within the next five days? Is that possible he can give us a detailed breakdown of the backlog and how many have been processed and approved in the area of permanent residence and citizenship? Can you give us that undertaking?

Madam President: Minister?

Hon. Maj. Gen. E. Dillon: Madam President that can be provided at the next sitting.

Sen. Mark: Thank you, Madam President.

Madam President: Next question, Sen. Hosein?

Sen. Mark: Madam President, do not go so fast. You have missed me.

Madam President: Was that not deferred?

Sen. Mark: Sorry, sorry, Madam President. My apologies.

Madam President: I think you have missed me.

Sen. Mark: My apologies.

Agricultural Financial Support Programme (Grants Received)

91. Sen. Saddam Hosein asked the hon. Minister of Agriculture, Land and Fisheries:

Can the Minister indicate, as at February 28, 2018, how many persons have received grants from the Agricultural Financial Support Programme as announced in the Budget Presentation 2017/2018?

The Minister of Agriculture, Land and Fisheries (Sen. The Hon. Clarence Rambharat): Madam President, I thank the Senator for the timeliness of this question. Madam President, after an internal review of the priority areas for the application of the incentive in this the first year, the Ministry of Agriculture, Land

Sen. The Hon. C. Rambharat (cont'd)

and Fisheries proposes to invite applications for this incentive programme in May 2018. Accordingly, no grant or incentive can be approved before the application period is launched. I thank you.

Madam President: Sen. Hosein?

Sen. S. Hosein: Madam President, can the Minister indicate why such a delay in the implementation of this policy as it was announced in the last budget, 2017/2018?

Madam President: Minister?

Sen. The Hon. C. Rambharat: Madam President, having announced the policy, I have said several times in this place and elsewhere, it is very important that when you are implementing something that would receive the attention of a vast number of persons but a small amount will benefit, it is very important that you have the appropriate consultation, internal guidelines, audit processes, the criteria and evaluation panel, an application process, a communication process, and so on. The budget, having been approved at the end of October, the Ministry has done its work and, as I have said, we are in a position to launch in May 2018. And having done the proper groundwork, I would be able, in the future, Madam President, to stand in this House and explain to my colleagues on the other side why Mr. X or Mr. Y has not received an incentive and why Mrs. J has received an incentive. I thank you.

Madam President: Sen. Hosein?

Sen. S. Hosein: Madam President, in light of the answer given by the Minister that there would be a large amount of applicants and only a small amount will benefit, can the Minister please explain that?

Madam President: Minister?

Sen. The Hon. C. Rambharat: Madam President, it is simple mathematics. The

Sen. The Hon. C. Rambharat (cont'd)

figure stated by the Minister of Finance is \$20 million. The maximum amount is \$100,000. Twenty million divided by \$100,000 means that in the first instance if we use the maximum, we have 200 and if we use less than the maximum, at some point, Madam President, we will get to a finite number, which I can assure you will be far less than the number of applications we would have received.

Madam President: Sen. Hosein?

Sen. S. Hosein: Madam President, having regard to the length of time in establishing the committee in order to deal with the applications, can the Minister indicate how fast these applications will actually be processed from May 2018?

Madam President: Minister?

Sen. The Hon. C. Rambharat: Madam President, let me be very clear. The time has not been in establishing the committee, the time has been in establishing all the things I listed when I provided the answer. And, Madam President, I think I am also on record when I talk about efficiency and bureaucracy and so on, and I would not wish to risk giving a time frame for the approval, except to say that given the desire of the Government to have this in place and what I have said on record in support of it, I would, of course, do the best that I could do.

Madam President: Sen. Hosein?

Sen. S. Hosein: Madam President, could the Minister indicate who would be the members that would form this committee?

Madam President: Minister?

Sen. The Hon. C. Rambharat: Madam President, when the programme is launched in May 2018, the evaluation committee will be known.

Maracas Beach

(Availability of Vending Booths)

93. Sen. Saddam Hosein asked the hon. Minister of Works and Transport:

Can the Minister indicate when the vending booths at Maracas Beach will be available for use?

The Minister of Works and Transport (Sen. The Hon. Rohan Sinanan):

Thank you, Madam President. Madam President, NIDCO and the Ministry of Tourism are scheduled to meet on Friday 13 April, 2018, to conduct a walk-through of the vending booths at the Maracas beach facility with a view to finalizing the handover of the booths to the Ministry of Tourism. Once they are completely satisfied, thereafter the Ministry of Tourism will coordinate the allocation process for the distribution of the vending booths.

I thank you.

Madam President: Sen. Hosein?

Sen. S. Hosein: Madam President, can the Minister please explain the delay in delivering these booths to the vendors, having regard to the fact that an announcement was made that the booths would have been delivered for Carnival 2018?

Madam President: Minister of Works and Transport?

Sen. The Hon. R. Sinanan: Thank you, Madam President. Madam President, there have been several delays based on the weather pattern of the rainy season last year which would have pushed the project back a couple of months. There were some problems with the landslip in the Maracas area which would have delayed the project a bit, and I am happy to say that the project will be completed in time for the vendors for the summer holidays.

Thank you.

Madam President: Sen. Hosein?

Sen. S. Hosein: Madam President, from the answer given by the Minister, is the Minister saying that the booths will be handed over during the July/August

vacation period, having regard to the walk-through of the facilities on Friday?

Madam President: Minister of Works and Transport.

Sen. The Hon. R. Sinanan: Madam President, if the client, which is the Tourism Ministry, is satisfied Friday, the booths will be handed over by Friday.

Sen. S. Hosein: Madam President, has the Minister already allocated these booths to specific vendors?

Sen. The Hon. R. Sinanan: Madam President, the handing-over of the booths are not in the purview of the Ministry of Works and Transport or NIDCO. That is a matter that is handled by the Ministry of Tourism.

**JOINT SELECT COMMITTEE
(CHANGE OF MEMBERSHIP)**

The Minister of Energy and Energy Industries (Sen. The Hon. Franklin Khan): Madam President, I beg to move the following Motion:

Be it resolved that the Senate agree to the appointment of Mr. Gerald Ramdeen in lieu of Mr. Saddam Hosein on the Joint Select Committee on National Security.

Question put and agreed to.

11.00 a.m.

ANTI-GANG BILL, 2018

[Third Day]

Order read for resuming adjourned debate on question [March 20, 2018]:

That the Bill be now read a second time.

Question again proposed.

Madam President: Attorney General, you have 14 minutes of speaking time remaining.

Hon. F. Al Rawi: Thank you, Madam President. Madam President, it is good to

be back in the Senate, and I thank you for the opportunity to wrap up the debate on this most critical piece of law. Madam President, I think it perhaps best to do justice in the 14 minutes permitted to me to address some specific concerns. May I put it in the context of the reality that we have circulated to all Senators, several documents, the first of which is a list of amendments which the Government proposes be considered by hon. Senators. We have also included, specifically, a marked-up track-change version of what the Bill will look like in the context of those proposed amendments.

I should indicate that these amendments are specifically driven by the Government's consideration, firstly, of submissions given to us by the Law Association. It is, of course, now part of the public record that the Government received the Law Association's commentary some eight months after it requested it, but as the old saying goes, better late than never.

That submission by the Law Association specifically addressed matters including the interpretation of the definition of "gang" and allegation of circularity in the definition. They requested insertion of the mens rea or mental intention as it relates to offences prescribed under the Act. They included certain tightening of standards of proof as it related to detention and search warranting provisions. They also included how information is recorded and proposed that there be a migration to the station diary and, that is, of course, with respect to the record of detention under the provisions of the Act.

The amendments circulated also include recommendations driven by hon. Senators: those on the Opposition Bench driven by Sen. Ramdeen, those on the Independent Bench driven by all Senators present who I wish to commend roundly for having given such deep consideration. It is the first time in the two and a half years that I have had the privilege of interacting with the Senate that I have seen

the type of drill-down—permit me for saying it quite boldly—by the Independent Bench. [*Desk thumping*] We received some very, very important fulminations, thinking outside of the box. In fact, it is the first time I have received written submissions come from the Independent Bench—the first time—and I wish to compliment them very warmly for the level of research and detail that went into these submissions.

May I indicate that the Government has, whilst it has set out the amendments that we proposed, some of them also overlap with some amendments that I have seen tabled this morning, in particular that by Sen. Shrikissoon who tabled certain amendments for consideration at the committee stage.

So permit me very quickly then, Madam President, to indicate that we propose that the definition of “law enforcement authority” at clause 4 of the Bill be amended to specifically include the linkage to the Supplemental Police Act, Chap. 15:02. We recognize that the concept of the estate police, and of the rural police as they are called under the Act, and also a third concept of limited liability entities, corporations, which conduct work within the parameters of the Supplemental Police Act, that they ought to be included. It was driven by a recommendation coming from Sen. Chote as to the tightening of language, where we deal with the criminalization of law enforcement authorities acting as gang members, or retaliatory action taken against law enforcement authorities. And so, we have proposed an amendment to take care of that, broadening the scope of law enforcement authorities on the one hand, and then simplifying the definition as we see it appear in the retaliatory clause and in the gang clause where law enforcement is involved.

Secondly, we have taken care of an amendment to clause 6(1) (c). Clause 6(1) (c) is in fact a clause which is driven to consider the—and let me read it in the

context of the point, it is the offence of gang membership. And in treating with 6(1) (c), which is where a person professes to be a gang leader or a gang member in order to gain a benefit, Sen. Chote had recommended that we fine-tune that reference to include “for himself or another person”, therefore driving home the particulars of the offence to be recorded and, therefore, we welcome that submission from Sen. Chote.

We have next considered clause 6(4). Again, this is in reference to what I just referred to at clause 4. We have deleted the named agencies because we have improved the definition, or propose to improve the definition of the law enforcement authority and, therefore, we will be simplifying the language of this particular clause and making it consistent with the redefinition in clause 4 that we propose.

In clause 6(5), Sen. Chote asked for us to consider, specifically, an improvement to clause 6(5). The inclusion of an intent was borne into the improved language that we have circulated. We propose the deletion of “unlawfully and maliciously” which is in clause 6(5). I must indicate that the language that we had originally proposed was borne from the Offences Against the Person Act, in particular section 12 of that Act, and we stayed, firstly, in keeping with the Offences Against the Person Act and, secondly, with the fact that it was in the 2011 Anti-Gang Act, that is Act No, 10 of 2011. Notwithstanding that, we have an opportunity now in the Senate to cause some better reflection and we have taken the recommendations that we modify the mental intention, narrow it down to intent, and that we disaggregate the provision by having wounding or causing grievous bodily harm separate to doing grievous bodily harm to a member of the law enforcement agencies, and that is reflected in the draft that we have circulated.

In clause 8(1), we proposed that we add in the mental intention into this

clause. Both the Law Association and several Members of the Senate, and Sen. Chote in particular, reflected upon the need to express the mens rea content, the mental intent element. And so, we have inserted for consideration the word “intentionally” into clause 8(1). We have in clause 8(1) added in—and 8(1) just to remind hon. Senators is the retaliatory action clause. Sen. Shrikissoon had raised the concept that retaliatory action could be taken in circumstances where people had stopped providing financing and they were being threatened by the gang element, and so we have included for consideration in 8(1) a new subclause (h) which takes care of the observation most commendably made by Sen. Shrikissoon and it is also in his circulated draft that he has sent out this morning.

We have next proposed that we reword clause 11(1), and in rewording 11(1), 11(1) dealt with the possession of a bullet-proof vest, firearm, ammunition or prohibited weapon for the benefit of a gang. It is material to note that the bullet-proof vest is because those elements were being actually used. It is not per se an accessory to a firearm, but a bullet-proof vest obviously is intended to protect yourself in the course of criminal conduct where criminals are using them. Firearm we have used within the meaning of section 2 of the Firearms Act, but offensive weapon as we know, prohibited weapon, was not included by way of lifting from the Firearms Act, so we have included it there.

In the disaggregation, Sen. Chote had pointed out that it was useful to separate the possession from the usage and, therefore, we have put usage as one aspect using a bullet-proof vest, firearm, ammunition, or prohibited weapon—

Madam President: Attorney General, you have five minutes.

Hon. F. Al-Rawi: Oh my. That 14 minutes went that quickly. Madam President, we have disaggregated the possession into that position, and thank you for the reminder. We have sought to treat with the harmonization of offences. We have

treated with the levels of offences. We have moved from five to 10 years, we have moved from 10 to 15 years, increasing penalties in clauses 12 and 13 to take care of the seriousness which Parliament ought to provide to those.

We have inserted a defence for improvement of proportionality into clause 11(2). Similarly, clause 14(1), (2) and (3), we have again sought to reflect the offences differently moving from 15 to 20 years, 20 to 25, 20 to 25 in those respectful clauses. We have inserted—thanks to Sen. Ramkissoon—the offence of tipping off, borrowing from section 51 of the Proceeds of Crime Act.

The Government had specifically intended to treat with this in stand-alone legislation because we did not want the tipping-off offence confined only to anti-gang or to Proceeds of Crime Act (POCA). We wanted it in stand-alone legislation for all protected services, but notwithstanding that specific intention which we will pursue and see to completion, we have taken avail of the short-term argument of including tipping-off and I thank Sen. Ramkissoon for raising it. We have gone broader than that suggested by Sen. Ramkissoon to add the legal professional element into it so that attorneys-at-law do not find themselves running afoul of the law for having dealt with their clients' business in a particular way.

We have sought to have consistency in the standard in clauses 16 and 17 in treating with the standard for the issuance of a warrant, or the standard for the consideration of further detention. We have sought to provide for the use of the station diary as opposed to a form, Sen. Shrikissoon, because the station diary is an immovable fixture, if you can call it that, from the particular usage by the Trinidad and Tobago Police Service at the positions.

We have sought to take care lastly, Madam President, with the forfeiture order. Sen. Prescott—and I wish compliment him for his contribution—reminded of the due process that one ought to have in considering the right to property. Even

though this is a three-fifths majority Bill, it must still be within the confines of a democracy such as Trinidad and Tobago within the context of section 13(2) of the Constitution, and in those circumstances we have provided for a prescriptive approach to provision of notice of forfeiture to persons who may be affected.

But we have gone a step further than that recommended by Sen. Prescott, and we have added in the fact that the court may, in its discretion, entertain anyone's application as an interested party into a property right, notwithstanding the fact that they had failed to take avail of the utilization and submission of forms to the Registrar of the Supreme Court in the manner which we suggest.

I therefore say, Madam President, that this law is not only long overdue; this law is proportional in its circumstances, this law is proportional in its intended application, this law is a far different law from its operational approach that existed in 2011. Under the UNC Government we had a very different approach of the denial of bail. We considered that the denial of bail was not one which should articulate this and, therefore, I ask hon. Senators for their support. I look forward to committee stage. I am seeing that anxious look as to time, on your face, Madam President, I beg to move. [*Desk thumping*]

Question put and agreed to.

Bill accordingly read a second time.

Bill committee to a committee of the whole Senate.

Senate in committee.

Madam Chairman: Hon. Senators, before we begin, may I just point out that the original Bill has, I think, 19 clauses, two schedules and a preamble. There are amendments circulated—I think there are four sets of amendments: there is the proposed list of amendments by the Attorney General, by Sen. Ramkissoon, by Sen. Shrikissoon and by Sen. Mark. So I am going to ask all Members to just sort

out your documents because I am also hearing Members asking for copies of different documents, and then having said that, this is an opportune time to suspend for 10 minutes. So that the committee is suspended for 10 minutes.

11.15 a.m.: *Committee suspended.*

11.26 a.m.: *Committee resumed.*

Clauses 1 to 3 ordered to stand part of the Bill.

Clause 4.

Question proposed: That clause 4 stand part of the Bill.

A. In the definition of “law enforcement authority”—

- (1) in paragraph (e), delete the word “and”; and
- (2) after (e), insert the following new paragraph:

“(f) a protective service agency as defined under the Supplemental Police Act; and”.

B. Renumber the paragraphs accordingly.

Sen. Mark: Madam Chair, I do not have an amendment here, but I just wanted to, with your indulgence to—oh, you have an amendment, AG?

Mr. Al-Rawi: Yes.

Sen. Mark: Okay. Sorry about that.

Madam Chairman: Hon. Senators, an amendment to clause 4 has been circulated by the Attorney General. Attorney General?

Mr. Al-Rawi: Madam Chairman, taking into account the submissions by my learned senior, Sen. Chote, we propose to insert into the definition of “law enforcement authority” appearing at page 3 of the Bill the following:

“a protective service agency as defined under the Supplemental Police Act.”

That will take account of three categories of police, if I could use that term. Firstly, estate police; secondly, the reserved police; and thirdly, the organizations

that operate under that Act as limited liability companies providing services under the legislation. That is bodies corporate that engage in law enforcement activity. That will definitely allow for us to capture the broader subset.

Madam Chair: Any comments?

Sen. Mark: Madam Chair, I just wanted to ask the hon. Attorney General: Where are we going to capture the role of the social services agencies? Because, as you have said, you are not just on a punitive cause. You want to have a holistic approach to this matter. So when we are coming to agencies, what is the role, or where would you suggest we really insert the social services agencies because there must be a rehabilitative and integrative element and component to the legislation. So I just wanted to know if, for instance, you would want to consider that aspect; and if you would, where you would want to suggest that that be inserted?

Madam Chairman: Before I call on the Attorney General, Sen. Ramdeen you had a comment?

Sen. Ramdeen: Madam Chair, thank you very much for recognizing me. To the hon. Attorney General, through you, Madam Chair: Attorney General, is it the—I have in front of me actually the definition of “protective service agency” under the Supplemental Police Act:

“...means a body corporate registered under the Companies Act whose principal object is the protection of persons and property by providing guards and escorts and approved for that purpose by the Minister;”

Now, save and except the approval by the Minister, am I correct? Because I know in some of the debates that we have had previously you had said that one of the aims of the Government is to regulate this particular industry. In raising my concern can I simply ask, through you, Madam Chair, is it not that this industry is

unregulated at present, and then I will continue? Can I?

Mr. Al-Rawi: With no disrespect to Sen. Mark in immediate answer, through you, to Sen. Ramdeen on a very, very important point he has raised. It is pseudo regulated. Those entities that have been performing functions for state enterprises, statutory authorities, go through this particular supplemental police legislation and have the approvals so that they can gain contracts. However, there is a whole other section, a very large section that is entirely unregulated, the private-protection services that many companies engage in, and we have had public consultations and we have a draft law for the regulation of that industry now which we intend to circulate very shortly.

So, Sen. Ramdeen has touched upon something which is very true. It is a pseudo regulation. I would say it is more 30 per cent regulated and 70 per cent unregulated, but for the purposes of the mischief which we hope to attach here, one, criminalizing law enforcement as we have defined it who are engaged in gang activity and, two, criminalizing people on a heavier standard who interfere with law enforcement in gang suppression. For those two purposes we have gone with the known law at present.

Sen. Ramdeen: That leads me to the concern, Attorney General. While one can readily understand the mischief that you seek to cure and the solution that one seeks to propose, I just think that the fact that the only component that one has to satisfy is that you have a registered company and you have approval by the Minister, it allows a very large unregulated number of persons to have very important powers that are given to them under the legislation, and I was wondering whether it would not be because of the unregulated nature and because of the extent of the powers that we propose to give by the proposal that is made to put this particular group of persons into the definition of protective services agency,

whether it would not be a better process to do this when the industry is actually regulated?

Because as you would know, from your consultation, the definition that you have which is (a), (b), (c), (d) and (e) are all public offices, they are all regulated. It includes the police service that has special powers under the Police Service Act and inherently special powers as constable. But to have this group of persons who are totally unregulated and then you have companies that are set up who take any and anyone, for want of a better word, and make them officers, it is quite a big jump and I would want to say a dangerous precedent, or a dangerous path to go down, to know that we are giving these powers to virtually, apart from your (a), (b), (c), (d) and (e), to persons virtually unknown.

Madam Chairman: Okay, before you answer Sen. Ramdeen, is there any other comment on the proposed amendment circulated on behalf of the Attorney General?

Sen. Mark: I will want to, before the Attorney General responds—

Madam Chairman: Sen. Mark, let me just—because you had raised a concern already, I am trying to do this systematically. So let me just ask: Is there anyone else who wishes to express—Sen. Chote.

Sen. Chote SC: Thank you, Madam Chairman. I agree with Sen. Ramdeen. I think the risk of having persons invested with this kind of draconian power is too great, and this amendment should be removed.

Mr. Al-Rawi: Madam Chair—

Madam Chairman: Just one second.

Mr. Al-Rawi: I do not want to lose the pulse of it.

Madam Chairman: No, no, I would not allow you to. It is fine. Sen. Obika.

Sen. Obika: Thank you, Madam Chair. I must express my total disdain for this

insertion because if it was intended for such a significant clause to be added, it should have formed part of the debate to be ventilated so the public opinion could—

Madam Chairman: Okay. Sen. Obika, we are in committee stage and let us— there is no need for the descriptions that you are using. Sen. Chote has said she does not agree with the amendment, perhaps you can also, you know, present your comments in that kind of context.

Sen. Obika: Well, I am giving the why.

Madam Chairman: Yes. Sen. Mark.

Sen. Mark: Madam Chair, in accordance with your statement, I just want to support Sen. Ramdeen's submission and Sen. Chote's submission.

Madam Chairman: Thank you. Attorney General.

Mr. Al-Rawi: Yes, thank you, Madam Chair. Perhaps hon. Senators could reflect upon my reply as follows: the definition as is set out here for “law enforcement authority” must be viewed in the context of where it is used. It is only used in two places. The two places are specifically where we treat with the retaliatory action in clause 8 and in clause 6(4). 6(4) says:

“Where a...member of a...law enforcement”—authority—“or a person involved in...intelligence gathering commits an offence under this”—Act—
“he is liable on conviction on indictment ...for twenty-five years.”

Secondly, subclause (5) of that:

“A gang leader or gang member who”—with intent:

“(a) wounds...causes grievous bodily harm to...”—a member of a law enforcement authority or person involved in intelligence—
“commits an offence...”

When we go to 8(1) (c):

“A person shall not”—intentionally—“take...retaliatory action against...—
(c) giving information to...law enforcement authority...”

There is no power given to anybody in the law enforcement authority position. There is no power, it can therefore not be draconian.

What we are saying is, if you are a member of a law enforcement agency because you have been precepted—let me put it that way, using a very inappropriate because it is not quite precise formula. Because you have been given this authority to be a law enforcement person, you are calling yourself a police under the Supplemental Police Act, you are acting on an estate, you are on the Petrotrin estate, you are in the rural development company estate, you are a company working there—because you have the powers of police given to you by the Police Commissioner and by the Minister if it is an organization, if you involved yourself in gang activity you are to be criminalized.

Secondly, if you find yourself the victim of gang activity because of what you were doing—you were in a squatter community for the Petrotrin estate which is treating with gang activity there, the man is properly there as a member of the supplemental police and somebody takes retaliatory action against him, well he too ought to be protected, but nowhere in this law is there a power given to these people.

Now, to address Sen. Ramdeen’s point, we wrestled with the concept of do it now or later, and as I said, in the debate—Sen. Obika, because I raised it in the debate on many occasions—in the debate, wrestling with this concept of, do we do it when we treat with the whole stand-alone piece of law?

Do we treat with it where we come up in a different perspective? Because it is not only the informal, unregulated agencies that we are treating with, we are treating with criminalizing certain conduct in law enforcement and other divisions—

Customs, Immigration, et cetera.

11.40 a.m.

We looked at it from a short-term perspective here and we said it is reasonable to consider that these people may very well be involved in applying suppression activity. But I must correct Senators. There is no power given to these people other than the power which comes from the parent law under which they act, which is the Supplemental Police Act, which is a power specifically given. So we thought, and we do have a firm view, that leaving them out may be a lacuna.

Madam Chairman: And, Attorney General, can you respond to Sen. Mark's first comment?

Mr. Al-Rawi: That is why I said I did not want to lose the pulse, Madam Chairman. I cannot even remember it.

Madam Chairman: No, I can.

Mr. Al-Rawi: Could you help me?

Madam Chairman: It was about the agencies and whether the provision should be made for social service agencies—

Mr. Al-Rawi: I see. Thank you for assisting me, Madam Chairman, so ably. This Bill does not propose to treat with the outside elements of recidivism or other support, et cetera; this Bill is intended to treat with the criminalization aspect. We have only treated with law enforcement from two perspectives: if you are a member of law enforcement and in gang activity or if there is action taken against you by gang members whilst you are engaged in the course of doing what you ought to do. The softer coordination which is very important, and I agree with Sen. Mark, is intended to be captured in operational procedures and in other pieces of law.

Madam Chairman: Sen. Ramdeen.

Sen. Ramdeen: Attorney General, while I understand the explanation given with respect to their being not given a direct power, for example, like a power of arrest or a power to go into someone's home, and while I accept that subclause (4) of clause 6 and subclause (5) of clause 6 simply creates the offences to which a law enforcement authority would apply. When one looks at the retaliatory action under this section 8 and then you go to (c), the concern that I have is that the way in which the clause is crafted, it still allows an offence to be committed by someone who is in the process of providing intelligence to a law enforcement person. So while it does not expressly give you a power, it casts—for want of a better word, it casts the net wider than it would normally be in relation to someone who is providing information to a law enforcement person.

The concern that I raised, while I understand the response of the Government and I understand the mischief that the Government is trying to achieve, the problem is that with these people so unregulated, that there is virtually no way of knowing who are the persons—let me cast it in another way. Anyone is entitled to know what they must do and regulate their behaviour not to be caught by the criminal law, and therefore, when one looks at the subclause in (c)—

Mr. Al-Rawi: I am sorry, Sen. Ramdeen and Madam Chair, I apologize for interrupting. Would it meet purpose if in the definition of “law enforcement agency” and in the incorporation of supplemental police that we were to extricate the concept of the organization which is supplemental police? In other words then, confine oneself only then to the estate police and the rural police.

Sen. Ramdeen: Of course, yes, yes.

Mr. Al-Rawi: Because that way, we would be capturing the regulated side and avoiding the “I do not know who you are under a corporate label”.

Sen. Ramdeen: Only because, not because there is any ill-intent towards it, you know.

Mr. Al-Rawi: I understand and welcome your concern.

Sen. Ramdeen: Only because people in these areas just set up a company, call it a security company, employ people and then that is it.

Mr. Al-Rawi: Under umbrella licensing.

Sen. Ramdeen: So I have absolutely no difficulty in applying the regulated part of the Supplemental Police Act to the provisions of the Act because you have some kind of—something to grab on to, something to hold accountable so I will be prepared to support that position.

Mr. Al-Rawi: Madam Chair, may I therefore ask for room for our team just to formulate what the exception to the supplement—subject, of course, I mean far be it for us to truncate any other Senator's point of view, but are there any other views on what I have just suggested, Madam Chair?

Madam Chairman: Members? So with your leave, hon. Senators, we will defer consideration of clause 4.

Sen. Mark: Before you defer—

Madam Chairman: Hon. Senators, yes, okay, I am going to give a little leeway just this time. We just discussed clause 4 and the Attorney General has agreed to some sort of amendment which he needs to now put together. Is there any other issue with clause 4?—I am inviting it now before I defer the consideration. Sen. Mark.

Sen. Mark: Madam Chair, I do not know if I could catch the attention of the Attorney General because, you know—

Madam Chairman: Well, you can catch mine and I will—

Sen. Mark: Yes, okay. Madam Chair, if we go to clause, I think it is new clause

16, Madam Chair, on page 9 of the AG's—the draft. No, I am trying to drive at something so that you will understand. If we go to—I am saying 16—I am seeing 16, I am seeing 15, so I assume it is new clause 16. Okay?

Madam Chairman: Yeah, okay.

Sen. Mark: If you go to sub (2), right, you will see where the magistrate has to issue a warrant for a police to enter a dwelling house, but when you go to subsection (3), no warrant is issued. We include now a dwelling house including a building, ship, vessel, carriage, box or receptacle but nowhere in the interpretation section do we have an understanding or a definition of what is a dwelling house, what is a place, what is a premise, what is a ship. In other words, we are talking about identifying gang members and if they are on a ship, if they are on a vessel, we need to identify in the interpretation section, these definitions because the law has to be clear and you cannot leave it discretionary.

Madam Chairman: Okay. Sen. Mahabir, you had a concern?

Sen. Dr. Mahabir: Yes, Madam Chair. The issue of circularity arose time and time in the debate and the definition of a “gang”, you see, means a combination of two or more persons, whether formally or informally organized, who engage in gang-related activity, so it appears twice. I put forward for the consideration of the hon. Attorney General, to avoid the circularity argument, whether we say:

“‘gang’ means a combination of two or more persons, whether formally or informally organized, who engage in crime-related activity or criminal activity;”

And then we change gang-related activity to mean crime-related activity or criminal activity. In that way, we eliminate the second gang and we avoid the circularity argument that has arisen time and time again.

Mr. Al-Rawi: Madam Chair, is not a rose by any other name yet as sweet as a

rose is? What, respectfully, is the difference between criminal activity and gang activity? We have looked at all of the definitions of what is a gang, a gang member, et cetera. Every jurisdiction, around the world, has an element of circularity attached to it. The construction and interpretation of a gang, a gang member, a gang leader, is correctly anchored in the concept of gang activity. Gang activity is scheduled in our particular law.

In Jamaica, they have gone a slightly more expansive route where their schedule actually lists every single law and the parts of the law which they consider to be including things like agricultural legislation. Our law is within the confines of how street gang and non-street gang legislation is comprised. So there is an element of circularity but it is not as circular as it appears to be on the first blush.

Sen. Dr. Mahabir: Okay, fine.

Madam Chairman: And with respect to Sen. Mark's—what Sen. Mark is saying is that there is a later clause in the Bill which speaks to dwelling house, ship, vessel, carriage, box or receptacle and that the definitions of dwelling house, ship, vessel, carriage, box or receptacle should fall within this clause 4 definitions.

Mr. Al-Rawi: Madam Chair, unless I am wrong, that is a standard formula, for instance, in the Firearms Act where they are not defined either, so this is—it can be dealt with under the ordinary meaning, literal interpretation rule. We have had firearms legislation which is robust legislation which has been well traversed by the courts and there is no definition for the very concepts that they use there. But fortunately for us, the common law recognizes the concepts and the rules of interpretation under the literal interpretation route could, perhaps, meet the concerns expressed by my learned colleague, Sen. Mark.

Sen. Mark: Madam Chair, we are dealing with a piece of legislation that requires

a three-fifths majority because we know it infringes sections 4 and 5. All I am saying, AG, you do not want to be imprecise and too narrow—or too broad, I should say, Madam Chair—and vague on matters like these, because remember the police will be administering this law, and if we do not give the police a clear appreciation of these definitions, then it is somewhat left discretionary to the police. And when the AG said that we talk about the Firearms Act and it is not defined there, this is a special piece of legislation with a sunset clause so we want this thing to work. We want it to work.

Madam Chairman: Okay. Sen Mark, I think the Attorney General has gotten the gist of your comment. Attorney General, you want to respond?

Mr. Al-Rawi: Yes, please. Perhaps, I can allay my learned colleague's well-expressed fears and I do understand the intention that he is driving at. Let us take a very, very old piece of law legislation, the Indictable Offences (Preliminary Enquiry) legislation, Chap. 12:01. Under the provisions for "Search Warrant" at section 5:

"Any Magistrate who is satisfied by proof on oath that there is reasonable ground for believing that there is in any building, ship, vessel, carriage, box, receptacle or place..."

—et cetera, and there is no definition either.

The danger in being too prescriptive in definition is that you may find yourselves giving fuel to the defence that "Well, I am without the definition, I am outside of the definition." And whilst I understand my learned colleague's desire and I compliment him for his concern, most respectfully, I think that the law is well settled on this area and then we could rely upon our common law and the literal interpretation.

Madam Chairman: Sen. Ramdeen.

Sen. Ramdeen: Attorney General, in this clause 4, you have a definition of “school” that:

“includes an orphanage, recreation ground or park, or an establishment for the conduct of technical or vocational training, or educational, sporting or social programmes, designed for children.”

And that bites from section 14(3), I think.

As you are very well aware, we passed legislation that you have operationalized in relation to rehabilitation centres which, I think, because of the fact that we have a defined—sorry, a specific piece of legislation that captures that type of institution, I would have thought that the way in which section 14 is crafted, having regard to the definition of “school” that you have in the interpretation section, that it may be very useful for us to take, to lift, what is there in the, I think, child rehabilitation centres Act, and lift it into that definition. Because what you have done is because you have licensed all of the rehabilitation centres pursuant to section 5 of that Act, it now creates a special institution that would be really specific, even perhaps more specific and would capture the mischief that you are seeking to derive out of this definition, which is you want to have institutions where children can be recruited.

Now, those institutions, for two reasons—one, they are child institutions but secondly, they are rehabilitation centres for those children who are there are perhaps the most vulnerable to be subject to be integrated into a gang and therefore, I would have thought that it would be very useful for us to insert—

Madam Chairman: Attorney General.

Mr. Al-Rawi: Madam Chair, I thank Sen. Ramdeen profusely for the observation that he has made. He is very correct. It is something that we flagged and looked at. The thought was that we would have taken it from the other end of the equation

but I accept and welcome Sen. Ramdeen's position. The definition that we ought to try and capture within the meaning of school, we will take on board the suggestion that we look to the both pieces of legislation, the Children's Community Residences, Foster Care and Nurseries legislation which creates the concept of child rehabilitation centre or rehabilitation centres which are both children's homes and CRC's children rehabilitation centres, meaning the punitive and non-punitive, the under-10ers and over-10ers perspectives.

So with your permission, Madam Chair, I will invite our team to consider a modification to the definition of "school" to include those specifically.

Madam Chairman: Sen. Hosein.

Sen. Hosein: Thank you very much. Madam Chair, through you to the Attorney General, I saw at clause 11 that the term "bullet-proof vest" was used. I know when we look at the former Act, the 2010 anti-gang legislation, it was defined and I saw it was removed in this version. Are we going to include the definition of "bullet-proof vest"?

Mr. Al-Rawi: Madam Chair, we had actually removed the definition of "bullet-proof vest". Specifically, yes it was there previously because we fell to the literal interpretation and there was no real need to define it prescriptively.

Madam Chairman: So, hon. Senators, unless anyone wishes to raise an issue with clause 4, I am now going to defer consideration of clause 4.

Clause 4 deferred.

Clause 5.

Question proposed: That clause 5 stand part of the Bill.

Sen. Mark: Madam Chair, does the AG have—

Madam Chairman: There is no amendment.

Sen. Mark: Yeah, but just for clarification.

Madam Chairman: Sure.

Sen. Mark: AG, when Sen. Prescott was here, he did raise this matter. That is clause 5(a), the evidence for a gang, a person who you could define as a gang member and (a) says:

“whether the person has admitted that he is a gang leader or gang member;”
And, I think what Elton Prescott, former acting Senator, was asking, admit to whom?

You know, in other words, this is very vague and very loose, and sometimes as you know, if I can give you a concrete example, you may have youths in depressed communities and they want to have a rank and they may tell somebody, “You know I belong to ah gang, I belong to ah gang”, but it does not mean to say that he is, in fact, a member of that gang. But suppose by way of circumstantial evidence, the police pounce upon that group and one member admits that this young man is a member of this gang because he told me.

So I am just asking, I am just hypothetically raising: Are we endangering, possibly, innocent people who can be taken down by the police and can be detained for 17 days and later charged? So how do we ensure that the scales of justice are balanced in a proper way? I just wanted to clarify that.

Madam Chairman: Okay. Attorney General.

Mr. Al-Rawi: Thank you. I thank my learned colleague for raising the point. Sen. Prescott had indeed taken a similar approach in terms of explanation. First of all, we come back to the mischief which this Bill seeks to address and that mischief is squarely on gang membership, gang activity, and yes, there are “pretenders” who walk the street and may unwittingly find themselves within the category of persons. But first of all, in relation to the admission-to-whom question, within the context of 5(a) we looked at a number of jurisdictions, in particular out of the

United States of America, where the street gang legislation as they call it was done and all of them, down to a number, have a similar formula. There is no admission to whom.

In fact, Sen. Prescott had suggested that there was an admission to a police officer if I recall. However, we felt that that would be prescribing us too narrowly because the circumstantial evidence is circumstantial. Now, there is, of course, in law, the concept of weight of evidence. First of all, you have admissibility issues: if it is hearsay, double hearsay, et cetera, and then you have the weight of evidence issues. How much weight ought a jury to consider or a judge ought to consider in these circumstances?

So it is not any and every pretender that may find himself bagged. Particularly when one looks to the proposed amendments by Sen. Chote, which I hope we have caught correctly, in what we propose to clause 6, where we say you profess to be a gang leader or gang member in order to gain a benefit for himself or another person. So we do catch the “pretender” who is seeking to gain a benefit.

One can easily recall what we saw in Trinidad and Tobago post-1990’s attempted coup. There was a large enforcement posse and debt-collector posse who all of a sudden wore Muslimeen garb and had “lihyah” who had beards as if you had gone to do Hajj. Right? You know that beard that you wear, “lihyah” beard. And that formed a category of persons to be frowned upon.

But this particular clause 5 really is an indicator of the type of evidence which a court can consider, it is not conclusive or categorical in any point. And we felt that it is important, particularly when we are going to be relying upon human intelligence and plants in gang activity, operatives who are there, undercover persons, as reflected upon by Mr. Justice Beraux, Justice of Appeal in the Kevin Stuart case where he said it is no slam dunk. Because of that, we felt that we did

not need to prescribe the admission-to- whom formula in this particular section.

Sen. Mark: Madam Chair, if I may just—this is my final submission. It is a caveat. If you go to the United States Supreme Court and you go to all the states, a lot of these anti-gang laws have been declared and struck down as unconstitutional, many of its provisions and one of the challenges that they have had in states, the prosecution is being able to properly prove these things, you know.

And I am just saying that we should not be getting into a minefield where they have made several errors with their legislation and we are now borrowing aspects of the very legislation that they have committed a lot of errors in prosecuting and pursuing. And many innocent people have had to be released because they have not been able to prove these things because everything was on suspicion and conjecture.

So all I am saying, AG, I want the law to work and one of the things I am trying to protect or we are trying to protect, I should say, is State be liable, because you know, when you lose a case, they go to the court and “they sue” the Attorney General and the State and we have to pay money. So all I am saying is that whatever we are doing, we want it to be tight so that when you take down somebody, you know you are going to prosecute that person. So, Madam Chair, that is my concern and I just want to advise the AG, it is not as easy as we are saying.

Mr. Al-Rawi: Madam Chair, if I could just quickly respond to that? First of all, we have not only repeated what was there for a full five years under the last Government but we have also borrowed, not only from the United States of America but many other jurisdictions, including Jamaica. The acknowledgement that one has to pay money is well known to me because, as the current Attorney General, I am paying damages on a continuous basis for matters under the last

operation of anti-gang laws. I am well familiar and we do join the issue with Sen. Mark that we all want the law to work but we feel that this is necessary as cast.

Madam Chairman: Sen. Mahabir.

Sen. Dr. Mahabir: Thank you, Madam Chair. Madam Chair, I, too, had concerns similar to Sen. Prescott and Sen. Mark on 5(a). I have heard the hon. Attorney General indicating that in the court of law, the procedure would be that they would assign different weights to different individuals. But I am just wondering whether, given the fact that the State had not been particularly successful in enforcing this piece of legislation in the past, we will not—for the AG to consider, that the person has to admit to a law enforcement officer as opposed to anybody and the law enforcement officer can be an undercover agent which will then put the onus on the police to start to infiltrate the gangs and place the necessary pressures on them. So that we are giving powers to the police to improve its undercover operations and where the admissibility in court, I think, may be a little bit better.

Madam Chairman: So what is your suggestion?

Sen. Dr. Mahabir: My suggestion is “to a law enforcement officer”, whether he is in uniform or not, and I will be more comfortable with that with respect to the enforceability. So whether a person has admitted to any law enforcement officer.

Mr. Al-Rawi: Madam Chair, we do not propose that because what happens with the circumstance of a whistle-blower who is complicit? John Brown was a member of a gang. He says I no longer want to be a gang person. He says Mr. X admitted to me on umpteen occasions. I have recorded it, I was there. I have first-hand testimony. The DPP says I will give you immunity. He is not a police officer in clothing or without and therefore, we would be cutting ourselves out of a very valuable pool of evidence which can cause a conviction.

Question put and agreed to.

Clause 5 ordered to stand part of the Bill.

Clause 6.

Question proposed: That clause 6 stand part of the Bill.

Madam Chairman: Hon. Senators, there are two proposed amendments to the clause 6. There is one amendment circulated by Sen. Shrikissoon and the Attorney General has also circulated certain amendments. I propose that we deal with the amendment circulated on behalf of Sen. Shrikissoon. Sen. Shrikissoon.

Insert new sub-clause (d):

“(d) performs a condition for membership,”

Sen. Shrikissoon: Thank you, Madam Chair. Madam Chair, through you to the hon. Attorney General. Hon. AG, in my contribution, I referred to the consideration for a person who has performed a condition for membership to be considered as a person who can be classified as a member of a gang because he would not be formalized into it or however. Would you consider that as—

Mr. Al-Rawi: Madam Chair, most definitely and I thank Sen. Shrikissoon for the very positive recommendation and improvement. However, we propose that instead of it being a new (d) in keeping with the architectural flow, that we insert the recommendation as (c) and then renumber (c) as (d) and that instead the wording read:

“performs an act as a condition for membership in a gang;”

And that way, we would capture it. I welcome the submission. I do not know if it is agreeable to the hon. Senator. If we reformulate it in the fashion that I have suggested?

Sen. Shrikissoon: Most certainly AG.

Madam Chairman: And can I have the reformulation?

Mr. Al-Rawi: Yes, Madam Chair. So in Sen. Shrikissoon's circulated

amendment to clause 6, we would propose insert a new—and thank you, Senator. [Laughter] Yes, the Senator is correct. Sen. Baptiste-Primus, thank you for the sharp eyes. We would propose, insert in subclause (1)—insert in 6(1), not 6, so that should be clause 6(1), insert new subclause (c) and it would read—instead of (d), it would read:

“performs an act as a condition for membership in a gang;”

The consequential renumbering would then flow automatically.

And, Madam Chair, there would be a further need, we would have to delete in 6(1)(b) the “; or”—sorry, just the “or” and then we would have to add in the new subclause (c) that we just read out: performs...et cetera, after the semicolon, we would have to put the word “or”. So in 6(1), delete the word “or” in 6(1)(b) and then insert new subclause (c) which would read:

“performs an act as a condition for membership in a gang; or”

And then the rest will follow, the sequential renumbering will follow.

Madam Chairman: Just one second, let me clarify first then we will get to it. Sen. Mahabir, you wanted to say something? No—Sen. Mark. Yeah.

Sen. Mark: Madam Chair, again, you know I spoke about the doctrine of vagueness and broadness and Madam Chair, if we do not define or narrow the legislation, when you say an act as a condition for membership into a gang, what do we mean by that? Can we not, for instance, narrow it down to some kind of precision? Because this thing is going to be abused, you know, and innocent people are going to go down the chute with this, and I am not here to be party to any legislation that could allow innocent people to be captured. The law has to be precise, it cannot be vague and this is vagueness to the heights, Madam Chair. So if the AG, who is the person who is going to deal with this legislation, at the end of the day, could explain to Trinidad and Tobago, at the committee stage, when we

say “performs an act as a condition for membership”, what do we mean, Madam Chair?

12.10p.m.

Sen. Mark: What does the AG mean by that? Could we give some examples, so that people who are involved in gang activity, and we who are looking on, will know what we are talking about? This is too broad. I am worried.

Madam Chairman: Before I call on the Attorney General, are there any other comments on the amendment to clause 6 as proposed by Sen. Shrikissoon and further amended? Attorney General.

A. In subclause (1), insert after the word “benefit”, the words “for himself or another person”.

B. Delete subclause (4) and substitute the following:

“(4) Where a member of a law enforcement authority or a person involved in intelligence gathering commits an offence under this section, he is liable on conviction on indictment to imprisonment for twenty-five years.”

C. Delete subclause (5) and substitute the following:

“(5) A gang leader or gang member who, with intent-

(a) wounds or causes grievous bodily harm to;

(b) to do some grievous bodily harm, shoots at,

a member of a law enforcement authority or a person involved in intelligence gathering, commits an offence and is liable on conviction on indictment to imprisonment for thirty years.”

Mr. Al-Rawi: Thank you Madam Chair, and I thank Sen. Ramdeen for flagging it for me. In clause 6(3), we would have to amend the references to 1(b) or (c). It will be 1(b), (c) or (d). May I, whenever you indicate, respond to Sen. Mark?

Madam Chairman: No, no, not just yet. Sen. Mahabir, you wanted to say something, specifically in respect of?

Sen. Dr. Mahabir: Yes.

Madam Chairman: Yes.

Sen. Dr. Mahabir: Madam Chair, I think we are simply missing two s', in:

6(1) A person who—

- (c) professes to be a gang leader or a gang member, in order to gain a benefit for himself or another person, intimidates other persons or promotes a gang,
commits an offence.

You see, it is one person. A person who professes to be a gang leader cannot intimidate. He intimidates and/or promotes a gang. So we could get the—
[*Interruption*] Okay.

Madam Chairman: Attorney General.

Mr. Al-Rawi: I thank Sen. Mahabir for bringing the spectre of Sen. Prescott back to life; the ubiquitous spelling police and subject and verb agreements. I thank the hon. Senator.

So, Madam Chair, in response to Sen. Mark, I do appreciate that in the last incarnation that he sat, he was not permitted to enter into debates and therefore his passion is now unfolding in the fashion that we see now. But I would remind Sen. Mark that this was a feature of the very law that he presided over as Speaker and as Chairman, when he could have policed the legislation. But in any event, my learned colleague now, unshackled as he is before us, waxing as he does before us.
[*Crosstalk*]

Madam Chairman: Okay, Members. Member, please, please. I do not want to hear about shackles or unshackles. I just want to get through these clauses, please.

So hon. Attorney General—

Mr. Al-Rawi: So, Madam Chair, what does it mean? Yes. What does it mean? It means the literal interpretation of what it means. An act includes an omission. An act is an act. An act as a condition for membership. It is a plain and literal interpretation of what it says.

Madam Chairman: So, I am now going to put, hon. Senators, the amendment proposed by Sen. Shrikissoon, and further amended, and the other consequential amendments. I am going to now put that to the vote and I hope that I have it right, but I am sure that Sen. Mark and Sen. Mahabir will correct me if I go astray. So hon. Senators—

[Madam Chairman confers with Clerk]

Mr. Al-Rawi: Madam Chair, my technocratic team is trying to convince me that the language as set out and as observed by Sen. Mahabir is correct in that it is meant to be read in a particular fashion. Sometimes the technocratic language may be different from that, so I am yet to be convinced by my team.

Sen. D. Mahabir: Hon. AG, I do not think lawyers should violate and mutilate the English language.

Mr. Al-Rawi: Madam Chair, in answer to something raised by my learned colleague, Sen. Mahabir, which I have responded to, the technocratic team is telling me that we ought to perhaps treat it in a slightly different way. But I would not want to indulge you too much with that, because we are still considering Sen. Shrikissoon's amendment, which was just for an insertion. It is now causing certain consequential amendments, but there is a formula that I would propose. So, perhaps, Madam Chair, it may be useful if we were to summarize what the proposed amendment should look like, so that we are literally all on the same page first. Is that convenient to you?

Madam Chairman: That is fine. We are dealing with, hon. Senators, clause 6(1), which is Sen. Shrikissoon's amendment. So hon. Senators, the question is, that clause 6(1) be amended as follows:

At 6(1) (b), delete the word "or". Insert a new 6(1) (c), which reads as follows:

performs an act as a condition for membership in a gang; or

Mr. Al-Rawi: Yes, Madam Chair.

Madam Chairman: And then the renumbering of the (c) would be (d).

Mr. Al-Rawi: Right, and now, to take care of the technocratic position, in subclause (c), we propose that it read as follows:

professes to be a gang leader or gang member in order to—

And now we drop to another line.

(i) gain a benefit for himself or another person.

Madam Chairman: No, hold on. We are dealing with—you are going into your amendments that you have proposed?

Mr. Al-Rawi: Well, much of what I have suggested is not in Sen. Shrikissoon's, but we have enveloped it in his. So, it would be convenient if we were to just treat with it in the proposed amendments that we are modifying now for him, as we have already done.

Madam Chairman: All right, then I would suggest, Attorney General, let us just go through. I will not, at this stage, take the vote. Let us just go through what are the amendments, all, and then I will put it to the vote. Okay?

Mr. Al-Rawi: Yes.

Madam Chairman: So we have gotten Sen. Shrikissoon's, which I just read out, and now we are going to do some subsequent modification. Yeah?

Mr. Al-Rawi: Well, you see we have done it already. I am just about to insert

something in between that, which we have done already, which you have recorded.

Madam Chairman: Well, I have recorded it, but we have not voted, so I am going to go it over. Let us just get exactly what you are saying, because I did not have those consequential amendments.

Mr. Al-Rawi: I am aware. I am now inserting it. So I am asking you to stick a pin on the point where you were, and record the following in the round which would then repeat. Is that convenient?

Madam Chairman: That is what I am proposing as well.

Mr. Al-Rawi: Thank you, Madam Chair. So may I? So in (c) the words, if we look to what is written there, it will be, “professes to be a gang member or gang leader”.

Sen. Dr. Mahabir: In (d)?

Mr. Al-Rawi: All right, in the new (d). I am going with what appears now. So in the new (d) it will be:

professes to be a gang leader or gang member, in order to—

We would now go:

(i) gain a benefit for himself or another person;

Then, before the word “intimidate”, insert a (ii), and it will go:

(ii) intimidate other persons; or

And then (iii) would be inserted:

(ii) promote a gang.

And then the chasseur continues exactly as it is:

commits an offence

There is further, Madam Chair. If we go over into subclause (3):

A person who commits an offence under subsections (1) (b) or (c)...

We will say instead:

1(b), (c) or (d)...

And then that continues and then that would be in the round, all of the submissions on clause 6.

And, forgive me for completeness, at (5). So, the (5) in section 6, we are inserting after the (a), which says:

“(a) wounds or causes grievous bodily harm to;”

We are inserting the word “or” after the semicolon.

Madam Chairman: “Or” is there.

Mr. Al-Rawi: Okay, sorry. In the draft I have, it was not there. I am not seeing it on my circulated amendments either.

Madam Chairman: It is in the original Bill.

Mr. Al-Rawi: Okay. Well then, that is being taken care of, under my amendments. So I will stop there.

Madam Chairman: Attorney General, may I ask you?

Mr. Al-Rawi: Yes, Ma'am.

Madam Chairman: In your proposed amendments to clause 6, you had A, B, C. Is it that you are not pursuing these anymore and we have just incorporated all your amendments into what we initially started and Sen. Shrikissoon's?

Mr. Al-Rawi: No. A, B and C, my amendments still all stand.

Madam Chairman: So we are going to pursue that separately?

Mr. Al-Rawi: Yes, Ma'am. Should it please you.

Madam Chairman: Sen. Ramdeen, you wanted to raise something in respect to what was just put by the Attorney General?

Sen. Ramdeen: Well, I thought that we were dealing with clause 6(1) alone, but the AG has expanded that to encompass all of the subsections so I do not want to—

Mr. Al-Rawi: I stopped. So I dealt with 6(1) and (3) only.

Sen. Ramdeen: Do you want to do them separately?

Mr. Al-Rawi: Yeah. Under Sen. Shrikissoon, clause 6(1), which caused the—

Sen. Ramdeen: So we are doing them separately?

Mr. Al-Rawi: Yes.

Sen. Ramdeen: Okay, good. I do not have anything else to say on clause 6(1).

Madam Chairman: So I am going—*[Interruption]* Yes, Sen. Mark.

Sen. Mark: I just wanted to ask, through you, the hon. Attorney General. Seeing that the bulk of the persons, from my research, involved in gang activities are young people, I was wondering, for instance, the rationale for these sentences, 10 years and subsequent conviction on indictment to 20 years. You want to share with us what is the rationale, the thinking behind these provisions, as it relates to these years that have been proposed in clause 6(3)?

And then as we go along, I would like to ask you to clarify even further. Because I find some of these a bit, you know, strong, in terms of sentencing. It is young people that would be involved. And as you know, AG, you have advised already that it takes \$20,000 to \$25,000 per person to take care of these people. And then you are talking about hundreds of millions that would have to be—

Madam Chairman: Sen. Mark, we have gotten the gist of your question. Sen. Ramdeen, you wanted to raise something?

Sen. Ramdeen: If the AG is going to respond to Sen. Mark, with respect to that particular—one of the things that I wanted to raise is in relation to that. So I do not know if you want, as a matter of efficiency, to deal with it one time.

Madam Chairman: Perhaps, yes.

Sen. Ramdeen: Okay. Attorney General, respectfully, there are three sets of sentences that I see here. You have one, 25 years under subsection (2), 20 years and 10 years under subsection (3), and you have 25 years and 30 years. Is there

some kind of rationale as to why we are differentiating it? And the reason why I say so is for the purpose of suggesting, first of all, under subsection (3), I do not know whether I am in error in reading it the way it is read literally. But the section reads:

“A person who commits an offence...”

With your amendment, it would be (b), (c) and (d)—

“is liable on summary conviction to imprisonment for ten years...”

So that takes care of a first offender under a summary conviction. AG, are you with me?

Mr. Al-Rawi: Twenty years.

Sen. Ramdeen: No, when you go to subsection (3), capturing for a person who commits an offence on summary conviction for a breach of (b), (c) and (d).

Mr. Al-Rawi: Yes, yes, yes. I am with you. I apologize. I was at the end.

Sen. Ramdeen: The imprisonment is 10 years.

Mr. Al-Rawi: Yes, yes.

Sen. Ramdeen: And then the section reads:

“and on a subsequent conviction on indictment to imprisonment for twenty years.”

Now, I do not know if that is really the intent of what the section is supposed to think. Because I think the section is really supposed to capture somebody who is convicted a second time. But the way it reads is that the second conviction, which is the 20-year sentence will only be if the second conviction is on indictment.

Mr. Al-Rawi: Yes.

Sen. Ramdeen: I do not know that that is we want to do. Well, I do not if that is what you want to do. But what I want to suggest is that, whether the second conviction be summary or indictable, what we should do is be capturing a second

conviction, either way, which is not what this section, as I read it, captures.

Mr. Al-Rawi: You are correct.

Sen. Ramdeen: Now, I want to suggest this as well. If we are going to be serious about this gang activity and this gang violence, we cannot be sentencing somebody on a second conviction for an offence under this Act for 20 years, Attorney General, respectfully.

You have section 68 that allows you to set a maximum. In all of these things, they are all maximums the way they are interpreted under 68 of the Interpretation Act and I want to suggest strongly that the Government considers that on a second conviction for somebody who commits an offence under this Act, let us set the sentence as natural life. Let the court determine less than that.

A natural-life offence has been, as you know, recently, given legal justification by the Privy Council in Bullock and all those cases, and let us set it as that. Because we cannot have somebody committing this kind of offence that we are saying is the scourge of society and you are giving them 20 years for a second conviction. I just think it is not strong enough. Let the courts determine whether, in the circumstances of each particular case on sentencing—having considered mitigating and aggravating factors—it can be less than that. But in the very extreme case, if you have a very extreme case of a gang leader committing an offence a second time, he could be responsible for the deaths and firearm for a lot of people. I do not suggest, that on a second conviction, that we set the maximum as 20 years. I just do not think it is serious enough.

Mr. Al-Rawi: Madam Chair, I genuinely want to thank Sen. Ramdeen for opening up this position. Permit me to explain. It is not that the Government has arrived here without a particular run-up. In getting this Bill to passage, we were constrained to have agreement in the House of Representatives. And the position

offered to us then, and I am not pouring any scorn on how we got there, I am glad we are here now; but in getting there the recommendation to us was keep the Bill as it was, as close to what it was before. And, therefore, we repeated in this clause what the 2011 law looked like. And that is what the JSC had done, et cetera.

I myself, and this is as an individual, I cannot speak for more than an individual, welcome Sen. Ramdeen's recommendation. I think we should treat with this thing in a very serious way. For that reason, in my own redrafting of the anti-gang laws, I had put in interim freezing orders for gang property. It is a whole host of other civil law remedies to actually grab at the money behind gang activity. So, on this particular purpose here, I welcome the fact that it can be done on summary conviction, the second offence. That is the first point. And I think that is a wonderful suggestion, subject to what other Senators have to say. I am particularly interested in the most experienced criminal practitioner here, which is Sen. Chote's view on this.

Secondly, the natural-life philosophy, again is something which I could easily welcome because it is a second offence. But again that has to be the will of a Senate. We were constrained in how the matter was dealt with in the House of Representatives by the arguments we met opposite. But we are in a different place now. So may I ask for views, Madam Chair?

Madam Chairman: Yes. Just before—Sen. Chote, you are going to comment on the sentencing as well?

Sen. Chote: I am, Madam Chairman.

Madam Chairman: All right. I have a suggestion though before we deal with the sentencing, let us deal with clause 6(1) and let us deal with that for housekeeping purposes, and then we move on to the other subclauses of clause 6. Okay?

Mr. Al-Rawi: Sure.

Madam Chairman: So, hon. Senators, the question is that clause 6(1) be amended a follows:

6(1) (b): delete the word “or”.

Insert a new 6(1) (c), which reads as follows:

performs an act as a condition for membership in a gang; or

6(1)(d) will now read:

professes to be a gang leader or a gang member in order to—

- (i) gain a benefit for himself or another person;
- (ii) intimidate other persons; or
- (iii) promote a gang,
commits an offence.

Yes?

Mr. Al-Rawi: Yes, Ma'am.

Question on amendment, [clause 6(1)] put and agreed to.

Madam Chairman: Clause 6(1) has been amended, as I have just read out. Okay?

We now move on to clause 6(2), and that is where Sen. Chote, I am going to invite your comments, because you are talking about the sentence. Sen. Obika.

Sen. Obika: I was trying to attract your attention before you put it to a vote, regarding clause 6(1). My hand was up.

Madam Chairman: Go ahead.

Sen. Obika: My concern, Madam Chair, is regarding the fact that someone could be sentenced to their natural life for simply being a gang member. I think, if— because that is 6(1) a person being—

Madam Chairman: Sen. Obika, we have not reached there as yet. That is why I stopped at clause 6(1), which ends with the offences that will result in committing

an offence. Okay? We have not dealt with the sentencing as yet.

Sen. Obika: Right, but what I am saying is that I think that that offence should not be captured. Permit my ignorance right, because I really—

Madam Chairman: No, no. Go ahead.

Sen. Obika: So, I am saying that if we say that we will deal with the offences and then after you decide what the sentences are.

Mr. Al-Rawi: Yes.

Sen. Obika: I am saying that being a gang member must not be an offence that will allow you to face natural-life imprisonment. Because you could be the last person in the gang.

Madam Chairman: So, what is your suggestion Sen. Obika?

Sen. Obika: I think that we should critically evaluate which offences would result in someone getting sentenced for life. Because really and truly, I cannot in good conscience agree.

Madam Chairman: I still think that you are mixing up issues.

Mr. Al-Rawi: It is a little premature; we will get there.

Madam Chairman: As we go down, we will then deal with the sentencing. But, I really want to, at this stage I really need to say something. I am painstakingly trying to incorporate all Members' view. And you notice the word "painstakingly"? Because it is not easy to record all the different amendments and we have numerous amendments. So that your point, Sen. Obika, is coming a little late, after all of the commentary that we were dealing with. And, therefore, I am not going to reopen clause 6(1). We have taken a vote on it. I ask all Members to please pay attention as we proceed. And I will always entertain comments, once you put your hand up and engage me at the relevant time. Okay? All right. So clause 6(1) has been amended.

We now go on to clauses 6(2), (3), (4), et cetera. Sen. Chote, you had a comment to make on the sentencing aspect.

Sen. Chote: Thank you, Madam Chairman. It is with respect to clause 6(3). I see the difficulty in the language because, as it is drafted there, it does not make sense. I do not think it is necessary to talk about what will happen on a subsequent conviction. Because, when you are first convicted, it is almost impossible for you to get the full sentence, the maximum sentence. But if you are convicted a second and a third time, then your sentence moves up. So, I do not see that it is necessary for us to deal with subsequent convictions in this particular piece of legislation.

But there is a more important reason for not supporting it, as it is worded, and that is because what you are saying is that if someone is a gang member and you are convicted and you receive a sentence, then you are charged a second time for being a gang member and you get a heavier sentence. But you may have actually performed minor criminal activity while you were a gang member. But you will be facing the same penalty, because it is not your activity that is being considered here. It is your membership of the gang.

So you may face the same heavy penalty as, let us say a gang member who is a hitman. So, it leads to an unfair application of the law, in my respectful view. It is disproportionate in that sense.

The other thing is, I think that what we can do to correct it is simply to say: “is liable on summary conviction to imprisonment for ten years and on conviction on indictment to imprisonment for twenty years” and simply remove the whole issue, the troublesome issue, of subsequent conviction. This whole thing about life imprisonment, you know, I disagree totally with that.

Let us be realistic. The easiest targets for this legislation, when it comes into effect, will be the street gangs. And they are the most vulnerable and the most

dispossessed in society. I do not imagine that the first charge will be a chairman of any corporation conducting an illegal activity. And I do think that the application of the law and the impact on any particular group in society must be considered, when we come to the creation of sentences such as these. Thank you, Madam Chairman.

Mr. Al-Rawi: Thank you Sen. Chote, through you, Madam Chair, for the reflection upon the proportionality. I do believe that Parliament in its wisdom ought to contemplate a second conviction. Because the phenomenon of street gang and—well, we are beyond street gang. We have gone into the economic zone by our own law. But the phenomenon of gangs is driving the vast amount of criminality that we are experiencing.

It is true that there may be rank and file from foot soldiers up to generals. So, not only should the intention be made clear that we wish gang activity to be suppressed and eradicated, and for that reason a recommendation that Parliament intended on a second bite that you be treated with, because the petty criminal who associates himself with the criminal gang hitman knows that he is a criminal gang hitman, and, therefore the gang flourishes because the base continues to associate itself with the top.

And therefore, that phenomenon drives a culture in and of itself. Society needs to be made aware, do not mess with this area of the law. Do not associate yourself with a gang. So, from that perspective, I think that they are two polar positions. I do understand the caution offered that persons who are most dispossessed in the society may find themselves caught into this web. But then again, they must be told otherwise.

Relative to the concept of natural life, it is appealing, but then the issue of excessive criminalization comes in. I accept Sen. Ramdeen's caution quite

properly put forward, that it is just a maximum sentence indicator, section 68 of the Interpretation Act and the Privy Council dicta in the Bullock case in particular. So, I am not sure if that addresses part of the concern, Madam Chair.

Sen. Chote: Madam Chairman, if I may. Hon. Attorney General, I urge you to consider this clause with some restraint. And I think I have good reason in my mind for urging you to do so, because we can always return and amend the sentencing aspect of this Act to deal with subsequent convictions.

12.40p.m.

I think we are looking at this thing the wrong way around. It is not the base pushing the head up, or the gang leader pushing the base forward.

Gang leaders report to people, and we are punishing part of a criminal organization because as I said, the first targets will be the street gangs. So, we are punishing part of a criminal organization and we are hitting it with the heaviest penalty that we can think about, we are taking away people's liberty and we are doing so for very long periods of time. And for that reason, I respectfully ask you to reconsider your position with respect to this.

Mr. Al-Rawi: Madam Chair, just to make it clear before Sen. Mark jumps in, or whomever else. I did not have a position at all, I wanted to encourage the Senate's fulmination on it. The only position that I would ask hon. Senators to consider, is the need for a second offence, a different treatment on second offence.

Why? And the square rationale is, because of the vagaries of judicial sentencing, notwithstanding the publication of a book by the Judicial Education Institute, notwithstanding the publication of judicial sentencing, the Magistracy and the High Court and judges within, officers within, have very widely varying approaches.

I do hear the hon. Senator, about hitting the full maximum point. In fact,

what we did in respect of kidnapping for ransom or firearms, et cetera, was a tiered approach in the history of our Parliaments, back to back Parliaments, and indeed Sen. Jennifer Baptiste-Primus is cautioning the same. So I have not formed a view on that, but I am welcoming the views of Senators before the Government expresses a particular view or not on a recommendation.

I understood what Sen. Ramdeen had put out, in the context that he did, and there is persuasion in the methodology he has put out and I do understand what the hon. Senator is saying, but I would like to hear the views of all.

Madam Chairman: Sen. Mark.

Sen. Mark: May I suggest, of course, subject to other persons who may have to speak, may I suggest that we come back to this particular clause—

Mr. Al-Rawi: We could settle it now.

Sen. Mark: No, no, no. Let us not rush to settle it now, and that is why I am suggesting, Madam Chair, that we come back to this, let us give it some thought, let us have some further discussions on it before we take a decision. Because, I do not want to—my position is very clear on these matters. I made it very clear in my contribution. So, as far as this clause is concerned, Madam Chair—[*Crosstalk*]—well no, I believe that this is a matter that we need to further prosecute and discuss.

Madam Chairman: Okay, let me just ask Sen. Chote. Your comments were directed at clause 6(3) correct?

Sen. Chote SC: Yes, Madam Chairman.

Madam Chairman: 6(3). Sen. Mark, your comments are directed at all of the clauses that deal with the—

Sen. Mark: Clause 6(3) is what I am dealing with right now, I am focusing on 6(3).

Madam Chairman: All right, so you are dealing with 6(3)? So may I ask if we

can deal with clause 6(2)? Because no one has raised an issue with respect to clause 6(2). Sen. Ramdeen.

Sen. Ramdeen: Thank you, Madam Chair. I want to express a similar concern about 6(2). If we are going to accept the position that it is disproportionate to consider long sentences for persons who are lower down in the ranks, then you have 25 years for the gang leader. Later on in the legislation in the same section you have 35 years for a gang leader who wounds or causes grievous bodily harm to a member of law enforcement and I just think Attorney General, if it is we accept the position that the persons lower down should be—we should be a little more lenient on them. I do not necessarily accept that view, but I am saying let us assume that that is the position, I do not see what is the rationale for the figure 25 years for a gang leader. This is the man at the top, this is the man leading the gang, and this is the man causing people to be killed in and outside of prison. Calling the shot on people, witnesses, right. You cannot be serious, if we are setting a gang leader's maximum of 25 years.

Let us give the courts the power to prescribe—all right, if we are setting the law like this, we have to consider that we will have people at one end of the scale, you will have people at the other end of the scale. You might have a gang leader in Laventille who have a gang that has five members in it, you might have a man who owns a whole neighbourhood, calling the shot on people, right.

Let us apply this law to somebody, who we have as an example of. If you have to apply this to Dole Chadee, you would give him 25 years, who running the biggest criminal organization perhaps in the Caribbean? Let us be serious, we will lose the opportunity, Attorney General, to put away people who we need to be putting away behind bars for very long periods of time if you set the maximum at 25 years. To be convicted under this you have to be convicted of being a gang

leader and that in and of itself should entitle you to your liberty being taken away for a very long time.

We are not saying that this is what you are going to get if you are convicted, necessarily. The court will take into consideration what are the facts before it, right, what kind of criminal organization you are running, how many members, whatever the evidence might be. But I cannot subscribe, to sit here and say let us put 25 years. What is the rationale for the 25 years? Somebody who is involved in this kind of thing that is responsible for the loss of lives of people should be entitled to lose their life as far as I am concerned.

Madam Chairman: All right, may I summarize what I am hearing Attorney General? Sen. Chote, you are expressing reservations about a “subsequent conviction on indictment” in clause 3. Am I correct?

Sen. Chote SC: That is so.

Madam Chairman: Sen. Mark, you are expressing concerns about all of the sentences which you find are too high?

Sen. Mark: Yes.

Madam Chairman: Yes. Sen. Ramdeen you are saying that some of the sentences are not high enough?

Sen. Ramdeen: For the time being to subclause (2).

Madam Chairman: Right, yes, but I am summarizing because we are dealing with (2) and (3) right now it seems. Sen. Small.

Sen. Small: Thank you, Madam Chair, for allowing me to—I want to support—Madam Chair, the view of the average citizen in this country who is under pain of understanding that their life and liberty is a threat almost at any moment in this country.

When you think about somebody being a gang leader, and the process to get

them convicted, I struggle to know that that person will face a maximum of 25 years. Perhaps, I read too many newspapers. I am looking at one now what a gang leader in Florida got 65 years in jail, which effectively means he will never, never threaten anybody again.

So that I think that—I agree with the fact that you have to probably look at tiers in terms of how you do the sentencing. But I think that a message needs to be sent to the persons at the top and I think that a limit of 25 years is difficult to support as it is. I think that it has to be another number.

On the issue raised—in 6(3) if you permit me, Madam Chair, I think that the issue of subsequent convictions is important from where I sit, because I think that a lot of times people—you could probably almost give people a pass for the first offence, but a subsequent offence, I think it needs to be captured. So I—how it is, I support the matter of the subsequent conviction as it is in the current provision. But I would urge that the AG and his team look at, for a gang leader 25 years seems almost a slap on the wrist. Thank you.

Madam Chairman: Sen. Obika.

Sen. Obika: If Sen. Ramdeen wants to go first, I can allow him.

Madam Chairman: No, I am calling on you Sen. Obika, yes.

Sen. Obika: Madam Chair, now that we have reached the point that actually I was speaking about without knowing it. Now that we are speaking of different sentences, I believe that for the gang leader that the maximum should be given. Unfortunately, I have been informed that we cannot prescribe the death penalty. But if you are a gang leader of a major gang. I think even 25 years—because you can commit your crimes even from prison. So it still becomes dangerous for the persons who would have witnessed against you on the outside. They will not be able to live in Trinidad whilst you are in prison.

So, I am only sad that we cannot prescribe the death penalty. But I think we should go to the maximum for the gang leaders.

Madam Chairman: Sen. Ramdeen.

Sen. Ramdeen: Just to bolster what I was saying Attorney General, and to just add to what Sen. Small is saying. I think we are all forgetting that when you are sentenced to 25 years, you are really not doing 25 eh. You are doing two-thirds of 25, so you are doing 16. So the idea—and that is how it works in prison; you will know that. When you apply the remission to the sentence, you are doing 15/16 years.

So, you are a gang leader who we here are sitting down and thinking doing 25 years when it is really 16 years you are doing.

Mr. Al-Rawi: If he gets that much. If he gets the maximum.

Sen. Ramdeen: I am talking about the maximum.

Mr. Al-Rawi: Understood.

Sen. Ramdeen: Right, so we must take into consideration and while we can argue that remission is discretionary, it does not operate like that in the prison system. You are entitled to one-third off and therefore as we speak you then take into consideration that this 25 that we are talking about is really 16.

So a man can literally commit this kind of offence being a gang leader and come back out and do it again. He might run the criminal enterprise and get bigger while in prison.

Mr. Al-Rawi: Particularly, pretrial custody is then counted into it as well.

Sen. Ramdeen: And Attorney General, under 69A by virtue of the Interpretation Act, right, let us give the court the power, put it there in life and let the court prescribe the minimum period he must stay.

Mr. Al-Rawi: Madam Chair, if I can say to Sen. Ramdeen, he and I often think

alike on certain points, but I do not make law for myself. I am very interested in the other views, in particular the Independent bench which is a little quite.

Madam Chairman: Sen. Chote, you wanted to say something?

Sen. Chote SC: Yes, please. And this will be the last comment I make on it. Listening to some of these comments and indeed listening to the debate, I realize that sometimes people in power operate within a vacuum and do not appreciate what the reality is for someone who might be considered a gang leader or a gang member.

What penalty is there, if I put it another way. What penalty is there for the businessman who pays the gang leader to carry out a hit on someone; whether it is his wife or his business rival? Where is that included and if the gang leader is getting life or more than 25 years, where is the punishment for such a person?

Mr. Al-Rawi: Clause 7.

Sen. Chote SC: Where is the punishment for the politician—

Mr. Al-Rawi: Clause 7.

Sen. Chote SC:—who pays a gang leader or a gang member to do something unlawful on his behalf?

Mr. Al-Rawi: Clauses 7 and 9 as well.

Sen. Chote SC: Twenty-five years?

Mr. Al-Rawi: Yes, but we have not come to that—

Sen. Chote SC: So it is the same?

Mr. Al-Rawi: I was dealing with the point of where is it? The springboard is at clauses 7 and 9. So there are two springboards in law in the Bill. As to the prescription of the penalty I am listening to you.

Sen. Chote SC: Yes. So, well I think it is kind of difficult to look at one without the other, so I will refer to it with the Chairman's leave. But clause 7 is where you

are encouraging—basically you are trying to drag somebody, you are drawing somebody into a gang, into gang membership. So clause 7 does not help us.

Mr. Al-Rawi: It aids or abets, coerces, encourages, entices. We are going to consider facilitation and then aids and abets, because Sen. Shrikissoon has proposed “facilitation” and clause 9:

“A person who knowingly—

(a) counsels;

(b) gives instruction or guidance to;...

a gang leader, gang member or gang in furtherance of its participation...”—et cetera.

So, clause 9 is rather specific in its purpose.

Sen. Chote SC: Yes, well we cannot read them as meaning the same thing.

Mr. Al-Rawi: Agreed.

Sen. Chote SC: Because obviously one is trying to drag somebody in and clause 9 is the one which comes closest to what I think you are talking about.

But, it is in furtherance of gang related activity. What about if you hire somebody to do something outside what you would consider to be that gang’s gang related activity?

Mr. Al-Rawi: There is always the complication of how one charges, what the police has in its bucket of evidence to offer a charge within the known law, statutory or common law. But the point is that there is certainly formula inside of this law for some of it. It may not be a perfect scenario for every aspect of it. But we do have the springboards.

What I am catching from Sen. Ramdeen and which I find quite persuasive is the discretion of the court is the ultimate arbiter, as to what a sentence is, both under the Interpretation Act and by the Privy Council’s ultimate ruling in the

Bullock case most recently.

From that purpose, therefore, and the average person listening on to this debate will not appreciate the discounting of sentencing. A year in prison, which the attorneys will know, is not a 12-month period and there is a discount factor that is applied. It may be nine months, there may even be time which is cut off of your sentence because of your pretrial incarceration in certain circumstances.

So it is true that a 25 years may in fact be 15 years or 16 years as it goes and there may be merit, depending upon the ultimate view of the Senate to providing a maximum from which the discretion can be applied. But again, I am waiting to hear, through you Madam Chair.

Madam Chairman: Sen. Chote, you have something to add?

Sen. Chote SC: I am sorry but you see the mandatory maximum that has already been declared unconstitutional. Remember it existed—

Mr. Al-Rawi: But we agree with that. We are saying that the mandatory maximum is not—we get that, we are saying the opposite of that. What we are saying in reference to Bullock and to discounting, Senators, is that mandatory maximum is not what you get. You get something under that.

Sen. Chote SC: Right, and the thing is, every person charged with a serious criminal offence, including the taking of human life, conspiracy to murder, and so on, every person gets that same remission for good behavior, if you are entitled to it in your prison sentence. So why are we isolating these offenders for these disproportionate punishments, first of all? And secondly, when someone has the time spent in custody taken into account when he comes up to be sentenced, it is not that he is avoiding his sentence. The court is admitting that he has served his sentence before he was even tried because of the incarceration and there is no remission on remand.

So you have in a sense started to serve your sentence before you even came to trial. So let us be clear about what we are talking about when we are talking about taking away people's liberties. Thank you, Madam Chairman.

Madam Chairman: Hon. Senators, I think that there has been sufficient discussion on these aspects of clause 6. Attorney General, I will take the break now which will allow you some time to—whether you are going to incorporate some of the suggestions that have been made and we will suspend the proceedings at this stage. I just want to say we are suspending for the Attorney General to determine how we are going to be proceeding and not reopening the substantive and substantial debate we have had on this clause. Okay, so we will suspend the proceedings of this Committee and return at ten minutes past two.

12.58 p.m.: *Sitting suspended.*

2.10 p.m.: *Sitting resumed.*

Madam Chairman: So, hon. Senators, the Committee will resume. Attorney General, we are at clause 6(2). Yes?

Mr. Al-Rawi: Thank you, Madam Chair. We had the opportunity over the lunch break to do some further drilling down. The advocacy on the part of several Senators led by Sen. Ramdeen is very welcomed. The opportunity to treat with a clear indication of heavy criminalization for a gang leader within the context of 6(2) is very welcomed. That is driven specifically by the fact that the discounting of sentences is an automatic event in certain circumstances. If there is an admission of guilt there is an one-third off immediately, so that 25 years becomes 15 years. And if there is time to be counted—

Sen. Mark: Just repeat that, Sir.

Mr. Al-Rawi: If you enter a plea of guilty immediately, the sentencing direction is that they cut off one-third of your sentence automatically. So if they say 30

years you are getting 20 years. If you then calculate what a prison year is versus a calendar year, a prison year is eight months. And, therefore you are not actually doing a full year. So when you apply the discount, even before we get to whether they ought to consider your pretrial incarceration in softening the amount you get, you may very well find that a 25-year sentence is actually five years. That is the reality.

The difficulty that we had is that this law provides for a sunset clause and therefore the arguments proposed by Sen. Chote come to life, whether one can argue that the law is disproportionate. Because Parliament intended to gauge the proportionality and efficacy of the law by the prescription of a sunset clause.

So whilst it is very persuasive to have the natural life indicator— and for the record, natural life does not mean that you get natural life on every occasion. It is merely a maximum sentence indication and the court has the discretion to apply anything under that, depending upon the circumstances. There is a further due process in that you can appeal the severity of sentencing, so therefore there is another safeguard on that basis.

Unfortunately, I do not have a position from the Cabinet with respect to this view and the recommendation that I got in the round was that we should improve the term of sentence, the highest that we have seen so far is 30 years. It does not take us much further from 25 but it is 30 years. And then, specifically with a view to amendment on a further occasion, we could either treat with it by way of a return to Parliament before the sunset period or at the sunset period, which is prescribed in this law and look at it again.

Sen. Mark: Before you put that—AG, given the submission made by Sen. Chote that we can always come back and revisit clause 6(2) and then with the changes she recommended to clause 6(3), may I respectfully suggest that we stick to what

we have in the legislation and to not add any numbers in terms of what you were proposing, 25—are you proposing in clause 6(2) we are going from 25 to 30?

Mr. Al-Rawi: Yes.

Sen. Mark: I am—I would like to respectfully ask you to leave what we have now as is, and in due course, within the course of the sunset clause we will come back during that time and revisit the number. Could I respectfully—

Mr. Al-Rawi: Madam Chair, I am desirous of achieving consensus so it was a proposal insofar as there were two very informed and persuasive points of view which I think, I have merit on both parts so in those circumstances if the consensus is for maintenance of the clause as it, then I am prepared to leave it there.

I do wish to put for the record, that is from a personal perspective, that I think there is a lot of persuasion to the argument that we move as far ahead. I do not think people have counted the discounting factor and in fact the Judiciary has published its sentencing guidelines so this is not a speculative thing. This is a well-established, published position from the Judiciary of Trinidad and Tobago. But, I will want to do a little bit more research on it, Madam Chair.

Madam Chairman: So that from my understanding therefore clause 6(2) will remain as is and we put to the vote as 6(2). But not just yet because we have further amendments to the other subclauses.

Clause 6(3), Attorney General, we had some consequential amendments to be made to clause 6(3)?

Mr. Al-Rawi: And we propose because of further submissions that there be a further tightening. Would it be convenient if I were to provide you with the suggested draft?

Madam Chairman: Yes, call it out.

Mr. Al-Rawi: We propose that the language in 6(3) be replaced by the following

words:

“a person who commits an offence under subsection 1(b), (c) or (d) is liable, in the case of a first offence,…”

Madam Chairman: Just one sec.

Mr. Al-Rawi:—“is liable, in the case of a first offence, on summary conviction to imprisonment for ten years and, in the case of a subsequent offence, to conviction on indictment,”—sorry Madam Chair—“on conviction on indictment to imprisonment for twenty years.”

Yes. So that will be

“on conviction on indictment to imprisonment for twenty years.”

Madam Chairman: May I read it now?

Mr. Al-Rawi: Yes, please, Madam Chair.

Madam Chairman: “A person who commits an offence under subsection 1(b), (c), or (d), is liable in the case of a first offence, on summary conviction to imprisonment for ten years and, in the case of a subsequent offence, on conviction on indictment to imprisonment for twenty years”.

Mr. Al-Rawi: Should it please you.

Madam Chairman: Yeah? Any comments please before I put this particular clause to the vote? Yes, Sen. Ramdeen.

Sen. Ramdeen: Madam Chair, through you to the Attorney General. Is it that—the same concern that I had at the outset Attorney General, it does not seem—

Mr. Al-Rawi: Is it migration to indictment on the second one?

Sen. Ramdeen: Uh-hm.

Mr. Al-Rawi: So, I was balancing the two perspectives. One, it was the old law and because it is more severe, the indictable route, and the concerns of excessive criminalization. And then my own position that nothing ought to encumber a

summary court from treating with this automatically.

So the views of the Senate are welcomed on that purpose. I think that if I were to narrow the issues squarely, correct me if I am wrong Sen. Ramdeen, it is removing indictment from the second occasion, correct?

2.20 p.m.

Sen. Ramdeen: Well, I would have thought that the intention of the Government would have been that—if you are pursuing the policy, that a second indictment is something that is deserving of more severe punishment; that whether it be on indictment or on summary, you will have the same policy apply to both as a matter of equality in terms of the application of policy. So I would have thought that where we are drafting, it seems as though you are accepting the policy position—correct me if I am wrong—that you are catering for someone who is convicted a second time.

Mr. Al-Rawi: Yes.

Sen. Ramdeen: And if that is the position of the Government, then I would want to suggest that we apply it equally across the board if it is a summary conviction or an indictable conviction.

Mr. Al-Rawi: So keep it as summary is the suggestion?

Sen. Ramdeen: No, no, no. I am saying if your policy is that you are accepting that—

Mr. Al-Rawi: I understand—

Sen. Ramdeen:—on a second offence.

Mr. Al-Rawi: If you start one way, continue the other way. So if you start indictment, go indictment. If you start summary, go summary or either way.

Sen. Ramdeen: Either way, yes. My position is across the board. Do not give a benefit to somebody who is convicted a second time. The way it seems here is that

somebody who is convicted a second time on a summary offence under this Bill is not attracting the same punishment as a person who is getting a second conviction on indictment. So all I am suggesting is, let us treat it equally, that whether you are going summarily or indictably, that a second conviction is one that warrants a higher degree of punishment.

Mr. Al-Rawi: Sure. Madam Chair, just to explain why the policy has come this way, because it was a consensual policy in the House between Opposition and Government, so I came with that policy which was agreed, because there was some difficulty in settling upon an agreed version. If the recommendation here is that we simply remove “conviction on indictment” to a subsequent conviction, we could take off “on indictment to imprisonment for twenty years”. I would personally welcome that, but I am guided by the consensual view of the House, this House.

Madam Chairman: Before I call on Sen. Ramdeen, Sen Roach.

Sen. Roach: What I would like to say, Attorney General, is that notwithstanding the consensus in the other place, if it makes better sense and it makes for the efficacy, why not do it? Sorry?

Mr. Al-Rawi: I am reminding that I do not make law for myself, and in this House I am hoping to hear the views expressed of hon. Senators. So far, I have had my view and Sen. Ramdeen’s view.

Sen. Roach: I agree with Sen. Ramdeen’s view.

Mr. Al-Rawi: Thank you, Sir. So there is agreement. Are there any—Madam Chair, you are the Chair, so let me not usurp your function.

Madam Chairman: Does anyone else have a comment? So, hon. Attorney General, is it that you are going to further amend?

Mr. Al-Rawi: Should it please you, Madam Chair, I would propose that we delete the words “on indictment”.

Madam Chairman: All right. So, hon. Senators, permit me to read clause 6(3), the amendment, and then I am going to please be allowed to put it to a vote. I see Sen. Ramdeen wants to make one further comment?

Sen. Ramdeen: It is just something small, Madam Chairman.

Madam Chairman: Yes.

Sen. Ramdeen: Having regard to the suggestion by the hon. Attorney General that we take out the words “on indictment”—and the clause is phrased, premised upon a summary conviction—whether it is enough, Attorney General, that when you take out the words “on indictment” that it will apply to someone who starts off on indictment and to a second conviction? I just want to make sure that we have it correct; if your drafters are satisfied with it. Madam Chairman, can I suggest, we may be able to achieve it, subject to what the drafters say, by actually taking out the word “summary”?

Mr. Al-Rawi: The mischief that you are pointing to is whether there may be an indictment matter which could cause non-equality of treatment—

Sen. Ramdeen: In the (a), (b), (c)?

Mr. Al-Rawi: Yeah, in the (a), (b), (c), but (b), (c) and (d): gang member, professing to be a gang member, the active initiation; those are offences which are summary.

Sen. Ramdeen: You do not want to consider splitting it and reformulating this clause by saying—you know, you draft sometimes in such a way that you say: “On summary conviction to X, on indictable to X” and then you provide for a second conviction separately. That might achieve a neater way of drafting it? But what you would have to do is, you would end up in the position of having to provide suitable punishment for the indictable on the first time up.

Mr. Al-Rawi: Subclause (3) was treating with the identification that if you are

going to be charged for an offence as being a gang member or initiate or pretender, that that trial would be summary. So subclause (3) treats with—the mischief that is intended by the drafter's language here, to be caught is to clarify the position as to the manner in which you proceed, summarily in this case.

Sen. Ramdeen: If that is the position, then you run into the problem of how do you get to a second conviction on indictment, if you cannot start off indictably in the first place?

Mr. Al-Rawi: So the drafter's view on this is that the second conviction, giving a 20-year jump, that that should have been heard indictably. This was the language of the old Act. So you are caught on the summary route for the first occasion, but when you get a second charge against you and you are convicted, then you go for indictment to suffer the larger and enlarged position. That was the drafter's structure from the old 2011 Act.

Sen. Ramdeen: But respectfully, AG, I understand that may have been the position—I do not want to be bound by what was there before—but could we not have to provide—*[An audio sound in the Chamber]*

Madam Chairman: Just one second, Sen. Ramdeen. Testing, testing, 1, 2, 3. Could you please test it and turn it off, please? Sen Ramdeen.

Mr. Al-Rawi: Yes, please.

Sen. Ramdeen: Because of the way in which the clause is actually drafted, being that we create the offence under 6(1), and what you are doing subsequently, is providing the sentences in different ranges for the different offences that are created, I think that it would be more prudent in relation to this (b), (c) and (d) that we provide for them separately and let the law take its course. So that if we have created the offences under 6(1), let us create a clause—it may require that you have an additional clause—that deals with summary conviction, create a clause

that deals with indictable and then do a clause that deals with the second offence.

The second offence will apply to whether it is summary or indictable, but what you will do, is having created the offence under 6(1), you will be able to provide the penalty separately. You will still achieve your summary, because you want to keep that, but you will still be able to charge someone. Why not allow the prosecuting authorities to decide whether they go summary or indictable? And you will still achieve your mischief, which is, that you will have a section that deals with a second offence that will give you a wider catchment of summary and indictable.

Mr. Al-Rawi: Just give me a moment, because the drafters are wrestling with the submissions at the same time, notwithstanding our views.

Madam Chairman: Okay. Hon. Senators, I think that listening to the discussions, I think we should defer clause 6 and we will come back to it. Let the drafters and the Attorney General treat with it.

Mr. Al-Rawi: Madam Chair, I just want to ask one question so that I am certain, whilst I am drafting in the stand-down position. Through you, to Sen. Ramdeen, would it suffice if, sorry— Is the mischief only on the second limb, the second conviction? Would it be within consideration that we go either way? So we agree that gang member, initiate and pretender, those are summary offences, you go in. Your second round—liable on second conviction where we bump it up—would it be passing muster if we were to say that that is an offence which is triable either way?

Sen. Ramdeen: No, I think that what you want is, you want to start off either way and end either way. If respectfully, if we could couch it in those terms. You want to start either way, so that if you start on indictment—

Mr. Al-Rawi: Understood. I just wanted to be clear, so that we are formulating.

Madam Chairman: Hon. Senators, clause 6 is stood down. [*Crosstalk*] It is

deferred. [*Crosstalk*] The entire clause 6.

Sen. Ramdeen: Can I just suggest—if we are going to stand it down, could we just suggest to the Attorney General what might be the position with the other subclauses so all can be considered in the stood down?

Madam Chairman: Okay. So subclause (2), we have agreed to clause 6(2); subclause (3) has presented some difficulties. Clause 6(4), the Attorney General had submitted an amendment. Without going into too much detail on that amendment—because really we need to be a little more efficient with our time—is there an issue that you are seeing with the amendment? Sen. Ramdeen, just broadly.

Sen. Ramdeen: Attorney General, while we are creating a serious offence punishable with 25 years here for a member of law enforcement authority, the difficulty I have is the person who is involved in intelligence gathering, because that person is not a person that is defined under the Bill. And whilst you might say that we can use the literal interpretation of that, where you are creating an offence that is caught by someone involved in intelligence gathering, I think one, my first position is that it is too wide and, secondly, we need to define so people would know who are the potential group of persons who are going to be caught by this. The first part of it, law enforcement authority, we have cleared that up before, but the second part I think we have a little difficulty with.

Mr. Al-Rawi: Madam Chair, the rationale, the policy behind intelligence gathering, and the reason why we did not define it is that when we look to the structures of the security intelligence services, intelligence gathering involved secondment or contract positions in the SSA legislation for elements that would provide the human intelligence or interception evidence which would bring convictions forward. From those purposes, specifically because the SSA Act, as an

example—as a funnel, as a filter—provides for public officers and contract officers and secondment of customs, TTDF and immigration, we had a problem in formulating it. So we did rely upon the literal interpretation, “intelligence gathering”. They would have to satisfy the court that they were caught within that literal interpretation; be it persons who are planted into gangs to retrieve evidence, et cetera, persons who had turned and given evidence and were within the umbrella of assistance under the SSA formula, in particular. So, for those purposes, we could not define it too narrowly, because we did not know how the intelligence aspect would work its way out in term of protection. Again, because this is a penalization aspect, and also a benefit aspect when we come a little bit later down to retaliatory action, we felt that we could have relied upon the literal interpretation.

Sen. Ramdeen: Attorney General, I think that is very, very—I am one who is proposing that we be more stringent about these things, but I think it is very, very wide to catch a person who—you are saying this is like someone who works—a servant and/or agent of law enforcement.

Madam Chairman: Attorney General, I think you have heard the concerns of Sen. Ramdeen. Because we are going to come back to clause 6, I think we should move on.

Mr. Al-Rawi: Are there any other concerns on subclause (4), Madam Chair?

Madam Chairman: It does not seem so. I have given Members an opportunity, and let us just deal therefore, briefly, with the proposed amendment to subclause (5) circulated by the Attorney General.

Mr. Al-Rawi: So, Madam Chair, in subclause (5), that which has been circulated as “C” on the list of amendments, we are just adding on, after the words under “5(a)” the word “or” that is after the “;”, put in the word “or”, and we did this in

terms of recommendations coming from the Law Association that we have a separation out, and we did specifically so because of the recommendation of Sen. Chote, that we migrate away from the formula which was used before—that is the unlawfully and maliciously—and instead use “with intent”. So these amendments come from two sources, both Sen. Chote and the Law Association.

Madam Chairman: Does anyone want to flag an issue for the Attorney General before I move on to clause 7? Very well. So clause 6 is deferred.

Clause 6 deferred.

Clause 7.

Question proposed: That clause 7 stand part of the Bill.

Madam Chairman: Hon. Senators, an amendment has been circulated on behalf of Sen. Shrikissoon to clause 7. Sen. Shrikissoon I will, therefore, allow you first to indicate the reason and the purpose for the amendment.

Sen. Shrikissoon: Thank you, Madam Chair. Madam Chair, through you, to the Attorney General, clause 7 deals with membership as well, and the words used to describe—well, in the clause:

“A person who coerces, encourages, entices, aids or abets another person to be a gang leader or gang member...”

And my proposal is that if we can consider the word “facilitates” in addition, as that too can be a way in which members are recruited, where through one member, another member is admitted to the gang, and that is the purpose of using the word or suggesting that we use the word “facilitates”.

Mr. Al-Rawi: Madam Chair, we were relying upon the literal interpretation. One of the synonyms that pops up for “encourages” is “facilitates”. So if you look for a synonym for “facilitate” you will see “encourage”. So we feel that it may be superfluous, but we do understand the context in which the submission has come.

It is laudable, but we believe that it is caught here, in particular, because we have also used “aids or abets”.

There was some observation as well about the accessories law that we have, which allows us to get into aiding and abetting within the context of our known law. So there is standalone legislation to that effect, which also has some degree of assistance to this, as well as the Interpretation Act. So that is the Accessories and Abettors Act, Chap. 10:02 and the Interpretation Act as well.

Sen. Shrikissoon: Do you think that is sufficient?

Mr. Al-Rawi: We believe it is covered.

Madam Chairman: So, are you withdrawing your—

Sen. Shrikissoon: Sure.

Amendment, [Sen. Shrikissoon] withdrawn.

Madam Chairman: So, Sen. Shrikissoon has withdrawn his amendment to clause 7. Sen. Mahabir, you wanted to say something?

Sen. Dr. Mahabir: Yes. Thank you, Madam Chair. Through you, to the hon. Attorney General, I see one sentence, hon. Attorney General, 25 years, but I see what I consider to be two offences, and if you were to read, it says:

“A person who coerces...aids or abets another person to be a gang leader...” And I think that offence of coercing someone to be a gang leader is quite different from someone who coerces someone to become a gang member, because I see someone coercing someone or encouraging someone to be a gang leader as a “Mr. Big” as it were—someone who is far removed from the scene of gang activity—and is actually inducing individuals to become gang leaders—and he is outfitting them, he is financing them, equipping them, doing whatever is necessary—to lead a gang of a number of persons, and he is getting the same 25-year sentence as the leader then who goes about and recruits a 15-year-old to become a gang member.

And I am wondering whether it would not be in the public's interest to have a more severe sentence for the individual far removed from street-gang activity—taking up from Sen. Chote and, of course, from Sen. Ramdeen—someone far removed who is actually encouraging someone to become a gang leader or gang leaders to have maybe the natural life sentence, because I consider that to be a serious, or an offence more serious in nature than someone who is recruiting a 15-year-old only into the gang. So I get your views, but I would recommend a stronger sentence for the person who is recruiting gang leaders.

Madam Chairman: Attorney General, just hold on. Any other comments?

Sen. Ramdeen: Can I just be allowed to support Sen. Mahabir on the basis that in the previous clause, we made the distinction in terms of the gang leader and the gang member—the (b), (c) and (d) and, therefore, you may want to consider, in line with your policy with respect to 6(1)—remember we prescribed separately for the gang leader. Before Sen Mahabir raised that point, I just thought that it was very, very meritorious having regard to what you did in 6(1), and I think that not only on policy but, practicality, it must be a more serious thing to encourage somebody to be a gang leader, and the point that Sen. Chote had made earlier, that there are people who are lower down who will be the gang members. So I want to join Sen. Mahabir in asking for it to be distinguished.

Madam Chairman: May I invite any further comments on clause 7? Sen. Richards.

Sen. Richards: Thank you, Madam Chair. Just a question to the hon. Attorney General. If these phases inclusive of coerces, encourages, entices, aids or abets another person, following from what Sen. Chote's contribution was earlier on and I think Sen. Ramdeen, does this cover financial support?

Mr. Al-Rawi: Yes.

Sen. Richards: It does?

Mr. Al-Rawi: Yes.

Sen. Richards: Thank you.

Sen. Hosein: Thank you very much, Madam Chairman. AG, on a point of clarification, with respect to this clause that we are dealing with, clause 7. What would be the difference between, coerces, encourages, entices, aids or abets from recruiting a gang member? Because I see that recruiting is a separate offence.

Mr. Al-Rawi: One may be a softer shade of the other. Recruiting involves a more deliberate involvement, perhaps a more ritualistic and perfection sort of approach. The other one may be something a little bit further removed. So it was intended just to catch degrees of positions. We have also borrowed from a number of laws where the concept of aiding and abetting and facilitating is treated separately from recruiting, and so we have maintained with what other jurisdictions have as well as the previous law.

Sen. Hosein: The reason I asked is because I think it might be a blur for the police officers themselves—

Mr. Al-Rawi: It is certainly one.

Sen. Hosein:—to determine which section to charge under because they are so similar.

Mr. Al-Rawi: It is. I think it may very well be that you may be looking at multiple charges under the different sections. As you often hear in a scheme, somebody was hit with 354 charges because they get hit on anyone of them. So, you are correct that there may be quite a blur.

Sen. Hosein: Thank you.

Sen. Creese: I do not know if here is perfectly relevant, but what I was concerned about, and I think most citizens are, is the internecine gang warfare and whether

this could address it or whether it is addressed somewhere else because a lot of us are, in effect, innocent bystanders to rivalry between gangs.

Madam Chairman: Just one second.

Mr. Al-Rawi: It is difficult to be torn in three different directions.

Madam Chairman: Sure. Sen. Creese just raised the issue about gang warfare and does this clause address that issue. Sen. Mahabir and Sen. Ramdeen are both of like mind that it needs a larger sentence. Yes.

Mr. Al-Rawi: Two points, a disaggregation and a larger sentence.

Madam Chairman: Any further comments?

Sen. Ramdeen: Because of the way in which the clause is drafted, AG, you might want to take into consideration that there is a heavy deterrent element in the creation of this particular offence, because it is not only meant to deter persons who while the gang is already in existence. One of the main things about this particular offence is to deter people who are in the process of actually forming a gang before it is actually formed. So to that extent as well, if we assume that you must have a gang leader before you have a gang, then I think that the disaggregation of it in terms of separate offences is probably grounded in a public policy deterrent element as well.

Mr. Al-Rawi: Sure. Madam Chair, there are a few thoughts that make the circumscription suggested by my learned colleagues a little difficult to manage. First of all, is the word of caution with respect to that which we will agree upon as the maximum sentence for a gang leader to be treated in clause 6. The recommendation coming off of the Senate is in several places, one, let us go for a natural life; two, let us leave it as it is until we further reflect; three, let us see if we could bump it up a little bit more and there is, of course, the underlying caution that Sen. Chote has brought which says, you may find that you are treating the

most disadvantaged and disenfranchised people in a particular way and we, therefore, fall afoul of excessive criminalization. Those are the arguments.

But from that springboard in clause 7, in clause 10 and in clause 13, we find ourselves wrestling with the same point—if we accept or pull at the thread—and those points are two. It is a bifurcated point. The first limb of the point is, treat gang leader and gang member differently because one is more severe than the next, and the second point is, how heavy in terms of criminalization do you go? That is the clause 6 argument. If we accept the caution that Sen. Mark has put out, which is, look, leave the 25 years as your top penalty as is, then we are at the current version of natural life, if I can call it that. We are at the maximum end of where we are right now, and at sunset clause or prior we can treat with this otherwise.

So if I treat now with clause 7, with respect to the two limbs, disaggregate them—leader and member—and that point only, forgetting what the sentence should be—not 25 or life or otherwise—the disaggregation can work, but also to maintaining it the way it is because it is going to appear in other clauses can work as well. One, the maximum sentence of 25 years is a prescription which is just maximum sentence. So the gang member may get the lower amount, the gang leader may get a lower amount or they may get the same amount. Parliament would not have drawn a difference between the two.

But what I am having a difficulty with right now—and I genuinely appreciate the contributions of hon. Senators—is that in coming to this House and being circumscribed by the manner in which we came here—I, passing through the House of Representatives, et cetera—the difficulty in now disaggregating causes some complication. On the floor, on the trot, as we do now, it is going to erode the entire fabric of where we are—clause 7, clause 10 and clause 13, right through. What I fear may be the result is a little bit more confusion than we expected.

In those circumstances, I am minded to accept the caution of Sen. Mark, which is, let us take this with a little bit of caution. Let us look at this with some more reflection and let us come back, particularly as we are coming back in a very short while—30 months is not far away, whomever brings it back, if not prior—because I can tell you that the Government does intend to come and treat with criminalization and benefit for all of law enforcement in a Bill very shortly, where if you are a prison officer or a fire officer or a police officer and you are promoting criminal activity, heavy criminalization also heavy benefit, if somebody messes with you or your family in certain types. So, we have a potential consequential amendment that can come about.

2.50 p.m.

In the round, having listened to the very good submissions therefore, I am minded to ask hon. Senators to leave the clause as is because we are going to be pulling at the tapestry on threads that I do not quite yet know will unravel in a particular direction or not. And in those circumstances, taking on board the very good submissions by all, my learned colleague, Sen. Ramdeen, my learned colleague, Sen. Chote, all of the Senators so far, I would ask that we leave the clause as is.

Question put and agreed to.

Clause 7 ordered to stand part of the Bill.

Clause 8.

Question proposed: That clause 8 stand part of the Bill.

Madam Chairman: Sen. Shrikissoon, an amendment has been circulated by you in respect of clause 8, and Attorney General has also circulated an amendment for clause 8.

Mr. Al-Rawi: Madam Chair, we have adopted the submission of Sen. Shrikissoon

in the circulation of our amendments. I do not know if that would assuage the concerns of my learned colleague, such as to cause him to withdraw.

Sen. Shrikissoon: Yes, Madam Chair.

Madam Chairman: So you withdraw your clause?

Sen. Shrikissoon: In light of the AG's submission, yes.

Amendment, [Sen. Shrikissoon] withdrawn.

Sen. Mark: Madam Chair.

Madam Chairman: Yes?

Sen. Mark: Just a little clarification. Attorney General, in terms of clause 8(1), right, instead of saying that:

A person shall not intentionally—

Is that the language here?

Mr. Al-Rawi: Yes.

Sen. Mark: Right.

—take any retaliatory—

I was just trying to address this in another way, and it goes like this:

A person commits an offence who intentionally—right—take any retaliatory action—

Rather than how the language is currently stated. And just for your consideration, you may want to keep it as is or to just to tighten it.

Mr. Al-Rawi: Madam Chair.

Madam Chairman: Yes?

Mr. Al-Rawi: I welcome Sen. Mark's suggestion. The drafters prevailed on this particular position in terms of the current manner in which clauses are set out, and for those purposes I think that we would really be addressing it in the same way if we were to adopt the formula. I understand where you are coming from, but I

would recommend that we leave it as it is. I remind that the insertion of intentionality was to address the concern of the Law Association that it not be a strict liability offence as it appeared to be but which I did not necessarily agree with.

Sen. Mark: Okay.

Madam Chairman: Attorney General, do you wish to elaborate on the new sub (h)?

Mr. Al-Rawi: Sure, Madam Chair. The sub (h) as proposed to be amended in the fashion circulated is intended to take care of the intentionality insertion, that is to include an expressed reference to a mens rea or a mental intention for the crime, and, secondly, on the second limb, to take into gear that recommendation from Sen. Shrikissoon that we address the non-street version of the gang activity, which is the funding activity. So the language to be included is “refusing to provide funding or resources to a gang leader, gang member or gang”, and that constitutes the rationale.

Madam Chairman: Sen. Ramdeen, you wanted to say something?

Sen. Ramdeen: Yeah. AG, I was wondering whether it would not be necessary for us to define “relatives”.

Mr. Al-Rawi: We actually looked at that. We saw references to relatives being defined in other laws where we defined the degrees of consanguinity, et cetera, and then we took into account the Trinidad and Tobago context of “Da is meh family”, and what we went for here was the broad literal interpretation of relative. We found that trying to put in—we did it recently, Sen. Ramdeen, in other pieces of law in the Senate where we actually defined relative, but we found that it was in relation to victim impact statements when we were treating with the amendments that we did in Plea Bargaining. However, we found that it became a little untidy

here, so what we did was to leave it to the open broader perspective of relative and left it for judicial interpretation.

Sen. Ramdeen: You see, the difficulty with that is that it is a dangerous thing to leave it to judicial interpretation, because then you reach the point where you charge, somebody is brought before the court and has to face a prosecution.

Mr. Al-Rawi: So we have two formulae. I catch your point, eh. Through you, Madam Chair, we have two formulae. The consanguinity and cohabitational relationship narrow definition or the victim impact statement version as we did in Plea Bargaining, which is a much broader version. There were two ends of the spectrum, and, therefore, we felt that we should have gone on this route. We were comforted by the fact that Jamaica did not define relative, which is where this formula came from.

Sen. Ramdeen: Can I give for an example just to demonstrate it. Would we include a stepchild?

Mr. Al-Rawi: Sorry, Madam Chair, if I could, and permit me for jumping the gun.

Sen. Ramdeen: No, of course.

Mr. Al-Rawi: I am looking at the definition of relative in the Plea Bargaining legislation. We had:

“‘relative’ means—

(a) in relation to the victim—

parent, step-parent or guardian;

spouse, cohabitant or fiancé;

child, step-child or other dependent;

brother, sister, stepbrother or step-sister;

grandparent;

any appropriate person who the Court determines”—

Forgive me, I am unfortunately not using my own computer so it is a little bit messy.

“any appropriate person who the Court determines to be of sufficient proximate relationship (whether by blood or otherwise) to be considered a member of the victim’s immediate family; or

any other person responsible for the victim’s care and support;”

So that was the broadest form of definition we could have used.

Sen. Ramdeen: But, you see, the difficulty that arises is that comes ex post facto, so that the court is able to actually make that determination to capture what the definition says. In this case you have an offence that is being created. You have someone who is charged with the responsibility of capturing who is caught by that offence.

Mr. Al-Rawi: I am on the same page with you. Is the recommendation that we include a definition of relative?

Sen. Ramdeen: I think we should include and take out the omnibus clause. Include it as wide as you can in terms of a definition, because I am not sure, AG, the narrow definition in relation to blood relative is going to be too narrow. I am clear on that, but not sure that the actual literal interpretation of relative will catch all of the different catchment areas that you want to catch, that you might be able to catch with a definition instead of just leaving it open.

Mr. Al-Rawi: Would the Senate be comfortable, Madam Chair, with the definition that we used in the Plea Bargaining, as I have just read out?

Sen. Ramdeen: Save and except the omnibus, which is any other person that the court deems of sufficient proximity to the last line.

Mr. Al-Rawi: And that would be:

“any appropriate person who the Court determines 332 No. 12 Criminal Procedure (Plea Discussion 2017 and Plea Agreement) to be of sufficient proximate relationship (whether by blood or otherwise) to be considered a member of the victim’s...”

We could. May I invite views, through you, Madam Chair?

Madam Chairman: Hon. Members, anyone wishes to comment on what has been said by Sen. Ramdeen and the Attorney General in respect of clause 8? Attorney General.

Mr. Al-Rawi: Madam Chair, if I could propose then that we do an in-clause definition for relative, because this is the only place that we used the term “relative”.

Sen. Ramdeen: That is what I was going to ask you. You do not want to just put it in the definition clause? In any way, it does not matter, you know. It does not matter.

Mr. Al-Rawi: Well, we do not use it anywhere else. So we have two locations that we could insert this, one would be in the clause itself “A person who commits...subsection (1)...an offence, is liable on”, and “For the purposes of this section relative shall be”. Just give me a moment, through you, Madam Chair. So, Madam Chair, with your permission, subject to your guidance and the views of anyone else, may we stand down this particular clause to propose an amendment?

Madam Chairman: Well, we can do one of two things, we can stand it down, or clause 4 has already been deferred, and clause 4, I think, is the definition clause, and I understand that is the only difficulty with clause 8. So that we can proceed with clause 8 and put in the definition in clause 4.

Mr. Al-Rawi: Madam Chair, our drafters are suggesting that we put it in clause 8 because it does not come up anywhere else in the Act.

Madam Chairman: So is it that we are to stand down clause 8 as well?

Mr. Al-Rawi: Should it please you.

Madam Chairman: Yes. Clause 8 is therefore deferred.

Clause 8 deferred.

Clause 9.

Question proposed: That clause 9 stand part of the Bill.

Madam Chairman: No one has proposed any amendments to clause 9. Sen. Ramdeen, you have a comment?

Sen. Ramdeen: AG, I wish to raise the same issue that we had flagged earlier with respect to the gang leader and the gang member. We resolved that earlier by leaving it as is? Okay, well then I am fine.

Madam Chairman: Any other comments? Attorney General. Sen. Mahabir.

Sen. Dr. Mahabir: Thank you. Madam Chair, it is just that I am reading clause 9 together with clause 13 and I am seeing some inconsistency. I do not know if I could raise it now or whether I can raise it when we come to clause 13, maybe I could indicate what it is I am seeing. Hon. Attorney General, in clause 9 it states that:

“A person who knowingly—
counsels;
finances in any manner; or
otherwise provides support to, a gang leader”—can face a prison term of
some 25 years.

And that is on indictment, but when I look at clause 13 it says that:

“A person who conceals—
a gang leader or a gang member...”
And he—“commits an offence”—and he—“is liable on summary

conviction to imprisonment for ten years.”

But a person who conceals, in my mind, is providing the same type of service. If we going back to 9, as “otherwise provide support to”, because, you see, when I look at 9(c) I see we are making a specific statement on finances. So I do not know what “otherwise provides support to” means except harbouring and concealing and providing whatever provisioning he may need. Yeah.

Mr. Al-Rawi: You may get two charges, and we are proposing that the 10 go to 15 in another amendment. So you are quite correct, 9(d) may very well be wide enough to capture harbouring, concealing, et cetera, but we have specifically frowned upon those harbouring and concealing in two disaggregated manners, but nothing prevents the police from laying multiple charges against you, in which case you will have cumulative or concurrent sentencing.

Sen. Dr. Mahabir: Thank you very much.

Sen. Ramdeen: I was just wondering, when I looked at it at first glance, I thought that the omnibus clause in (d) was a bit narrow in terms of it being circumscribed only by the word “support”, and you already have a definition—not a definition but you have already prescribed a certain type of behavior that you seek to criminalize in section 7 which deals with the actual gang leader or gang member. So I was wondering if there was some kind of justification for limiting the omnibus provision which is the (d) to only support, when what I think that you are trying to do is to cast the net as wide as you can for persons who are furthering the participation of that activity, and I do not see that there is any reason why we have left out coerces, encourages, entice, aids or abets in relation to furthering the participation in gang activity.

Mr. Al-Rawi: Quite correct. What I found as a feature, through you, Madam Chair, of anti-gang laws across the board, it is like going back to finding as many

offences as possible of one activity. Again, I am coming back to the—you have got 243 charges, or indictments, as the Americans call it, or offences that you are put for. So there tended to be a lot of overlap and blur, and duplication in some senses, and on the one hand there was a breadth, and on the other hand there was not a breadth, meaning width of scope. So, regrettably, again it is to pull to the tapestry of that, which was not only the existing law but the examples of law elsewhere. What I am anxious to do in doing the full review, again, the manner of approaching this particular Bill in the Senate now is very different from how we got here. I am sorry to raise it again, but we were circumscribed in the draft that came here because of the approach that was compelled to bring the law here. So, again I am asking; I take note of the submissions, but I am asking that, for the benefit of passage and in light of the sunset provision that we actually allow it to stand as it is. I do understand the position volunteered, though.

Madam Chairman: Sen. Creese.

Sen. Creese: Yes. I thought that there were three sort of platforms of which the legislation was coming at, people who were in any way facilitating, you know, gang activity. I thought there was a recognition, and perhaps that is in 13 that Sen. Mahabir was referring to where there is possibly a lesser sentence, because, “leh we say”, a person who conceals we are thinking in terms of close family who have a conscience span, it is their blood and kin, you know, and the person comes running into the house, police somewhere around the block and you facilitate them, as opposed to somebody who is seeking out your services, you know, to become part of a gang. And then at the higher level those who were involved in criminal enterprise and are utilizing the services of a gang member to execute, you know, some activity for them. So I thought that there were three different levels and that the punishment would reflect those three different aspects of cooperation with

gangs. So it is in that context I was seeing there is need for different levels of punishment.

Mr. Al-Rawi: And we do have it, Madam Chair. So if we look at 9, which is a person knowingly counselling, et cetera, we treat with the punishment on indictment to 25 years which is so far our max. When we look to 13, a person who conceals, we have gone on summary conviction and we are proposing to move from 10 to 15 years. When we go to harbouring at clause 12, a person who harbours, again, we are going summary and we are proposing to move from five to 10. So we have sought to disaggregate them as the hon. Sen. has proposed, and to treat with them differently. But with respect to the submissions made my friend, Sen. Ramdeen, I do understand the origin of the submission but I am constrained in the circumstance that this law stands before us now to ask for patience in leaving it as it is as we review further.

Question put and agreed to.

Clause 9 ordered to stand part of the Bill.

Clause 10 ordered to stand part of the Bill.

Clause 11.

Question proposed: That clause 11 stand part of the Bill.

Madam Chairman: There are two amendments, one on behalf of Sen. Shrikissoon and the Attorney General. So two amendments have been circulated. Sen. Shrikissoon, may I ask you to discuss your proposed amendment?

Sen. Shrikissoon: Madam Chair, through you in the interest of time, the hon. Attorney General, in my mind, adequately addressed the issue in his presentation so I respectfully withdraw, please.

Madam Chairman: Withdraw?

Sen. Shrikissoon: Yes.

Amendment, [Sen. Shrikissoon] withdrawn.

Delete clause 11 and substitute the following clause:

“(11) (1) A person who –

(a) uses a bullet-proof vest, firearm, ammunition, or prohibited weapon; or

(b) has in his possession a bullet-proof vest, firearm, ammunition, or prohibited weapon which he ought reasonably to know would be used, in the commission of a gang-related activity, commits an offence and is liable on conviction on indictment to imprisonment for fifteen years.

(2) It is a defence for a person charged with an offence under subsection (1)(b) if he proves that he did not know or could not reasonably have known that the bullet-proof vest, firearm, ammunition, or prohibited weapon in his possession would be used in the commission of a gang-related activity.”

Madam Chairman: Hon. Attorney General, would you like to just go through your amendment?

Mr. Al-Rawi: Should it please you, yes, Madam Chair. Madam Chair, the amendments suggested and circulated in the draft on the part of the Government is borne as a result of the submissions on the floor and by the Law Association. In particular, Sen. Chote had recommended that we disaggregate the usage and the possession of the items which we captured in clause 11, and that we include the defence aspect in subclause (2) which we have circulated out. In (1) we are providing that using a bullet-proof vest, firearm, ammunition or prohibited weapon in the commission of a gang-related activity, one commits an offence, or if you have in your possession those items and you ought reasonably to know they would

be used in the commission of the offence, we feel that those are sufficiently tighter expressions as disaggregated. With respect to the defence we are putting it that, it is a defence for a person charged with an offence under 1(b), that is where you have in your possession and you ought reasonably to know, if you prove that you did not know or could not reasonably have known that those items in possession would be used. So we are reversing the burden as a means of proportionality—we are providing the defence as a means of proportionality, and, secondly, that reversal of burden is on a civil standard. It fits within section 5 of the Constitution which allows for it to be done, and once the burden is discharged it returns to the prosecution to proceed on a different threshold from balance of probabilities.

Madam Chairman: Any questions? Sen. Richards.

Sen. Richards: Thank you, Madam Chair, through you, this is for the hon. Attorney General, would it be prudent to include in this clause, firearm maintenance parts, because my understanding is that licensed firearm owners can import parts to maintain their devices, and because the clause has whether lawfully obtained or not, these parts may become part of the machinery used to facilitate gang activity.

Mr. Al-Rawi: Sure. They are caught by the definition in section 2 of the Firearms Act. A firearm includes all parts of a firearm, the barrel, the trigger, the pin, the spring, all of those are caught. Any part of a firearm which also interestingly includes the ammunition. Ammunition includes a whole bullet, a part of the bullet, the shell, et cetera. So they are respectfully caught by the definition.

Sen. Richards: Thank you.

Question put and agreed to.

Clause 11, as amended as circulated by the Attorney General, ordered to stand part of the Bill.

Clause 12.

Question proposed: That clause 12 stand part of the Bill.

Madam Chairman: Just one second, Sen. Roach. There are two amendments, Sen. Shrikissoon and the Attorney General. Sen. Shrikissoon.

Sen. Shrikissoon: Thank you, Madam Chair. I give way to the hon. Attorney General because both amendments are the same, so it is withdrawn.

Amendment, [Sen. Shrikissoon] withdrawn.

In subclause (1), delete the word “five” and substitute the word “ten”.

Madam Chairman: Thank you very much. Attorney General, if you could just state the purpose of the amendment and then I will invite Sen. Roach.

Mr. Al-Rawi: We took on board the suggestions of Sen. Shrikissoon that we needed to treat with the conviction in a different manner and specifically to improve the number of years upward from five to 10. This was specifically to treat with the difference between concealing, which comes up in clause 13, and harbouring, which comes up in this particular clause, and we welcome the suggestion and have obliged accordingly.

Madam Chairman: Sen. Roach.

Sen. Roach: Thank you, Madam Chair. Attorney General, this probably touches on a number of clauses that have gone by and probably to come still in terms of the sentencing. I am wondering if for tidiness and to put back the trust into the judicial officers why can you not have the offences dealt with—I mean, gangs and gang-related offences are quite significant and they seem to be a scourge in our society. We view it very dimly and we want to take very strong action and show a very low tolerance or a zero tolerance towards it. Why not have a range that is left up to the judicial officer to determine, rather than going through 15 for this, 10 for this. You have a range for any gang-related activity between, minimum five years

and 50 years, as the case may be, and leave it up to the judicial officers as has been done in many occasions to do something like that.

Mr. Al-Rawi: Madam Chair, Sen. Roach is quite correct. This touches almost all of the clauses where we create an offence, and the very persuasive advocacy which I share on Sen. Ramdeen's part is, let us go for the max and leave it to judicial discretion. On the other hand, however, the excessive criminalization argument comes in, and that argument may fit within a disproportional unconstitutional argument. And, importantly, because we have a sunset clause you may find yourself involved in civil litigation as to constitutionality which can be avoided. So, unfortunately, we have kept the old formula for now, and that old formula is where Parliament prescribe certain treatment in the fashion that we have now.

Sen. Roach: Attorney General, Madam Chair, with the greatest of deference, I understand what he is saying, right, but if it is you have a minimum and a maximum, and the Judiciary has a discretion in applying this, according to you, whatever would be their policy of sentencing, certainly because gang activity is a dynamic thing, and it will be unfolding. So you may have a suppression of one and a proliferation of one, and the proliferation of one might be the one that is carrying the maximum, it might be the one that is carrying a minimum of five years sentence, when the court could be able to see, based on reviewing the cases, the number of cases of alike, similar nature coming before them to be able to say, well, look, we need to; to me, it makes much more flexibility. It will encompass and facilitate any sunset clause.

Mr. Al-Rawi: Senator, I understand. The problem that I am battling is that traditionally this is the manner in which the drafting goes. So the breaking of that mould to—for instance, I personally prefer scheduling. I personally prefer that all offences are listed in one schedule at the back and you prescribe the range on the

other side. We managed to prevail in that formula in the securities legislation and other legislation, insurance, et cetera, but, unfortunately, we are not in that position yet, and in the meanwhile until we work ourselves there we have got a 30-month window potentially under this law and we are going to work towards formulation. In the meanwhile, the anxiety is to have the law out for its disruptive purpose as opposed to its conviction purpose. Disruption being the main idea to prevent these things, and then dealing with the conviction after. So I do share the concern passionately, but I am not in a position to change the structure just yet. It would mean having to redraft the entire law right now.

Madam Chairman: Sen. Ramkissoon.

Sen. Ramkissoon: Thank you, Madam Chair. Through you, Madam Chair, to the Attorney General, harbouring of a gang member, I saw you changed it to 10 under the recommendation of Sen. Shrikissoon, but this is quite similar to the offence of concealing a gang member, and I saw you raised it from 10 to 15, because in the second part we went down to say, if you are a family member or if you are a parent you would obviously have a lesser—I am thinking a lesser sentence, because it says in sentencing the person convicted shall take into consideration mitigating factors. So, I am not even sure how many years really will be reduced for the parent or the guardian of the child because of—that is in subsection (2) of 12. And then if we go to 12(3), if you did not even know you would not even be charged because, you know, that provision is made in the law. So that is why I was not sure why we even went, if you are increasing it for five, why did you not just increase it to 15, because you already put in subsection (2) and (3) to give way.

Mr. Al-Rawi: And the rationale is because the treatment of what is most severe in Parliament's view and what is least severe. There is a compellability to the argument of throw natural life in and let the Judiciary treat with the rest, but

because we have gone for 25 years as the max, you are now obliged to disaggregate between summary and indictable and then the categorizations, because harbouring and concealing are different in philosophy.

3.20 p.m.

Sen. Ramkissoon: All right. Well fine. So for subclause (2), what would be then the sentence?

“For the purposes of subsection (1), where—

(a) the gang...member is a child; and...”

The person convicted is not a parent not guardian, what then?

Mr. Al-Rawi: That would be the Judiciary’s discretion.

Sen. Ramkissoon: So that will be less than 10?—or—

Mr. Al-Rawi: It is entirely up to the Judiciary.

Sen. Ramkissoon: Okay.

Mr. Al-Rawi: What they are saying there is that the Judiciary should take a positive enquiry into the circumstances of the person who is acting in *loco parentis*, the person who is acting as the guardian of the child and has knowledge of that. Because our society is such that a parent may be trying to convince the child to turn himself over, et cetera, and may therefore, not be as culpable as may be seen. It comes about in a number of pieces of law where you put in what your mitigation factors can be.

Sen. Ramkissoon: Okay. Thank you.

Madam Chairman: Sen. Chote.

Sen. Chote SC: Thank you, Madam Chairman. AG, I support you in your response to Sen. Roach’s suggestion, because there used to be a minimum and a maximum sentence in the narcotics legislation—

Mr. Al-Rawi: Correct.

Sen. Chote SC:—which resulted in a slew of litigation, and at the end of the day it was found that that was unworkable. So, I do not think, just very briefly, I do not think that we should repeat that error here today by seeking to create minimums and maximums, creating tariffs and so on. It would permit the Judiciary to fluctuate wildly and widely in terms of sentencing.

Madam Chairman: Just one sec. Sen. Mahabir.

Sen. Dr. Mahabir: Thank you very much, Madam Chair. Hon. Attorney General, I really do not see too much of a difference between concealing and harbouring, because I asked myself, if someone harbours a gang member, he has to provide some measure of concealing. And so we have two different sentencing for harbouring and concealing, and I understand what you are trying to do in 12.

I think in 12 the law intends that if a person who is connected in some way with the gang member harbours, and I think you have the intention of a relative. Since we are going to have a definition of the relative in the definition section, I am wondering whether it will not make for better law to have in clause 12: a relative who conceals or who harbours a gang member or gang leader will face the 10 years; and in 13 then we can go with: anyone who conceals, other than a relative will get the 15-year sentence. Because unless there is a very clear difference in law between concealing and harbouring, I cannot see the difference in English. So I am just wondering for your consideration whether in 12 you will change “person” to “relative” and keep 13 as is.

Mr. Al-Rawi: May I? Person to relative would narrow the application of the law because relative would have to be considered either by way of an expressed definition, which we have now drafted for another clause, or by way of judicial interpretation, whereas a person is just a person. Everybody is now liable to the application of this law.

Sen. Dr. Mahabir: But, hon. AG, you see when we put person, we have two sentences, one for harbouring, and one for concealing. It is not clear to me, it may be clear to others, but it is not clear to me that you can harbour without concealing.

Mr. Al-Rawi: There is a term of art. Concealing takes it to a slightly different level where you actively take steps to hide that person. You did not put them up, and when the police arrives, you say well, “Yeah, look him in de back room.” You—police arrives and “No. No. No. He is not here. I have no idea who he is”, and he is hiding under the bed and you lock the door and you have covered him up, et cetera. So concealing is a very different thing from harbouring. Harbouring may involve, “Okay, he is in the back room.” That sort of approach.

Madam Chairman: Sen. Roach, you wanted to say something?

Sen. Roach: Thank you, Chair. Just to respond, just a bit of clarification between what Sen. Chote said in support of what you were saying based on what I had raised. I had deferred, of course, to what you had said in terms of dealing with it comprehensively later on. But the thing is, you have a judicial sentencing policy, is it in existence?

Mr. Al-Rawi: It is.

Sen. Roach: Would that have been in existence in the time that Sen. Chote is speaking about?

Mr. Al-Rawi: It was not a publication then, but it was in existence.

Sen. Roach: Right. Therefore, so if you have such a thing as a sentencing policy by the Judiciary, certainly that can answer and address what went amiss before.

Mr. Al-Rawi: So there are two mischiefs that Sen. Chote correctly referred to. Correct me if I am wrong. Was it Mr. Justice Rajkumar who geared the decision in that particular case?—that is the drug aspect. I do not remember offhand, but in any event, the point is avoiding a frontal litigation approach by people complaining

about the law itself before the law is even applied. The review of the law, the constitutionality of the law, do not apply the law to me. So one is to avoid the litigation on that end.

And then the second aspect is a slightly different one which is: how do we formulate this particular structure in the manner that we have right now? So the particular purpose right now is to try and keep it simple, to try and put it into effect. The overall rewording and restructuring of the law will come about with a deeper product.

What we are anxious to do is to get judicial interpretation on the books. It was not until recently that Jamaica had its first proper anti-gang conviction notwithstanding having the law before us. Similarly, we have 33 matters in the High Court and forty-something in the Magistracy that we are looking to see that can actually bring about some jurisprudential assistance locally. So, again, the advocacy is to leave it the way it is, at least, for now whilst we look deeper knowing that we have the sunset upon us.

Sen. Roach: And, Attorney General, I am quite satisfied with that approach. Right? But that was just to put on the record as such.

Mr. Al-Rawi: Understood. Appreciated, thank you.

Question put and agreed to.

Clause 12, as amended, ordered to stand part of the Bill.

Clause 13.

Question proposed: That clause 13 stand part of the Bill.

- A. In sub-clause (2), after the word “located”, insert the words “unless the police officer can provide evidence that the person has knowledge of the whereabouts of a gang leader or gang member at the time of the arrest”

- B. In sub-clause (3), after the words “about the offence”, insert the words “unless the police officer can provide evidence to show that the person has knowledge about the offence at the time of the arrest”
- C. In sub-clause (4), after the word “proves” insert the words “at the time of the arrest”

Madam Chairman: Now, hon. Senators, there are two separate amendments proposed, one is on behalf of Sen. Mark and the other is by the Attorney General. Sen. Mark, may I invite you to state the purposes of your amendment?

Sen. Mark: Yes. Thank you, Madam Chair. Madam Chair, this is one of the most contentious clauses among many, but one of the most, and it has to do with the concept of reasonable suspicions or reasonable belief. And we have a situation in clause 13 where you would see subclause (2) where the police officer instead of coming with reasonable grounds which would give the subject or which would preserve the subject’s liberty to some extent and rights, the police officer under this legislation is operating under reasonable belief or suspicion.

Now in those circumstances we are dealing with what is called conjecture, we are dealing with subjectivity and the inability to provide proof. So if you look at clause 13(2), Madam Chair, you will see where the police officer making an enquiry and seeking the whereabouts of a gang leader, and the police officer is indicating to the person who he is in contact with, that the person must reveal, and if the person does not reveal the whereabouts to the police officer, then that could be a charge.

Now, the police officer is assuming that this individual knows where the gang leader is or where the gang member is. And, Madam Chair, this is subjectivity at its worst, and this will be subject to abuse in the most serious way.

And, Madam Chair, I have proposed in my amendments, if the police is

coming to determine the whereabouts of the gang leader, it has to be assumed that the police officer has reasonable grounds to believe that the individual that he is interviewing knows of the whereabouts. But in this country police picks the information, they will pick you up, they will carry you for a drive, take you to the police station and then get evidence. The system cannot work that way, the system has to be working—especially, this is what is called unprecedented legislation.

So what I am suggesting for the consideration of the Attorney General is that the police officer is saying that you know where the leader is or where the gang member is. I am proposing the amendment to this clause 13(2), and I am adding that the words after “located”: ‘unless the police officer can provide evidence that the person has knowledge of the whereabouts of the gang leader or the gang member at the time of the arrest’. There has to be some evidence, this cannot be whimsical or arbitrary, Madam Chair, otherwise innocent people are going to go down the shoot in this situation.

So, Madam Chair, whether we come to clause 13(2), you come to clause 13(3) and you see, again, subjectivity invading the environment, where the police officer is investigating the commission of some offence, and if you do not reveal certain things to the officer, and he is assuming that you have knowledge.

And again, Madam Chair, you know, I understand in the United Kingdom in the 18th and 19th Centuries, this concept of reasonable suspicion was more in vogue because of the underdevelopment of the judicial system, the police system and even the police and the judicial system. But in the 21st Century nowhere are we seeing as in the Police Service Act, that a policeman is going on reasonable grounds to take action. In the legislation, Madam Chair, it is on suspicion. So again, in 13(2) the amendment is as follows—

Madam Chairman: Sen. Mark, I think you have laid out your case because the

amendments for 13(2), (3) and (4) are all similar. Yes?

Sen. Mark: But, Madam Chair, I am just making the point that we have to avoid, I want to emphasize this, we have to avoid the police using subjectivity in order to arrest and charge innocent people. And this is where I want the Attorney General to pay attention, because we are going to find ourselves in some expensive lawsuits, and this law that we all hope will work, will backfire.

So, Attorney General, these are some of my concerns, and I am saying let the police have the evidence, otherwise do not go and ask somebody things that they do not know.

Madam Chairman: May I have other comments on Sen. Mark's proposed amendments. Sen. Richards.

Sen. Richards: Thank you, Madam Chair. Just a question to Sen. Mark. In his submission, does he have a particular agency or person that this officer provides the knowledge of or to? Sorry.

Sen. Mark: I did not hear. Repeat that for me.

Sen. Richards: Do you have, in terms of your submission, do you have an intention of to whom this police officer provides the evidence that that person has knowledge of the whereabouts of a gang member or gang leader? Sorry.

Sen. Mark: When I say evidence, it is in the context of this. A police officer must have reasonable grounds to go to a person's home to maybe engage in the possibility of an arrest. There must be certain bases, there must be a test that he must exercise in going there to arrest someone, and therefore, the grounds for arresting that person must be based on some kind of evidence, some kind of information, some kind of surveillance, so he can say, "Well, look for the last three or four weeks I have collected surveillance evidence". And on that basis I am certain that this individual knows the leader—

Madam Chairman: Sen. Mark—

Sen. Mark:—because I have the evidence before me.

Sen. Richards: Understood, Sen. Mark.

Madam Chairman: Sen. Mark—

Sen. Richards: Just through you, Madam Chair.

Madam Chairman: Yes.

Sen. Richards: But to whom should the officer provide this evidence or knowledge?

Madam Chairman: I think, Sen. Mark, Sen. Richards is asking a very pointed question. Sen. Richards wants to know based on your proposed amendment, to whom should the police officer present this evidence?

Sen. Mark: Well, if the police officer is going to present the evidence obviously to the courts in the final analysis. That is where it is going. But I am saying, Madam Chair, that if you are going to arrest someone, you must be able to have reasonable grounds for arresting the person.

Madam Chairman: Yes. I think that is—Yes. Yes.

Sen. Mark: That is the point I am making.

Madam Chairman: Any further comments on Sen. Mark's proposed amendments? Sen. Ramdeen.

Sen. Ramdeen: Attorney General, these are very—

Madam Chairman: Sen. Ramdeen, if I could just say one thing. The Hansard reporters are having a little difficulty hearing.

Sen. Ramdeen: Oh, sorry.

Madam Chairman: So if we can all just speak up a little bit.

Sen. Ramdeen: Attorney General, this particular section and the offence that is created by subsections for which Sen. Mark has provided these amendments, are

very unique offences having regard to the ingredients of what needs to take place for someone to be liable: that a question has to be posed, there has to be a refusal to provide information, and there has to be some kind of evidential basis, which is what Sen. Mark is going at. My concern is a little bit different.

Madam Chairman: Sen. Ramdeen, let us not deal with your concern just yet. I am inviting comments on the amendment proposed by Sen. Mark. I will then ask the Attorney General to answer what Sen. Mark has presented. So if you are not in support of what Sen. Mark has, his amendment, we will deal with that separately, if you are not going to make your comment on that. Okay? So let me just invite the Attorney General therefore, to respond to Sen. Mark's proposed amendment.

Mr. Al-Rawi: Thank you, Madam Chair, I do understand Sen. Mark's fulminations. I will start off by saying that this is a replication of the previous law, and it has been in existence therefore, for a full five-year period without the need to be troubled. It did not form the basis of any concern at the Joint Select Committee of the last Parliament which considered that law and which put the very terms into effect.

That notwithstanding however, I wish to perhaps allay my learned colleague's fears by, first of all, speaking to the fact that subsections (2) and (3) both incorporate the specific words "knowing" and "knowledge" despite knowing where that person is located in subclause (2) and despite having knowledge about the offence.

This expressed reference to the terms "knowledge" and "knowing" requires that he who alleges must prove, and he who alleges and he who must prove in a criminal court is obliged to achieve the standard of proof beyond reasonable doubt.

The Privy Council has cleared up for us on umpteenth occasions for several hundreds of years post 1935 appeal cases where the golden thread of innocence

being paramount was redefined, and that one is innocent until proven guilty. Post that particular position, the courts have really had a careful time in analysing the sufficiency of knowledge. There is the literature that tells us that knowledge may be subjective or objective or, in fact, may be a cross between the two, depending upon the type of circumstances, but the burden upon the prosecution in proving knowledge is always there.

The remedies available to the accused who may, in fact, be a victim—Sen. Mark is looking at the proportionality of victims' rights—is to be found, these remedies, in malicious prosecution or in false imprisonment in particular and, again, there is a plethora of jurisprudence which speaks to the standards and proof which must be brought forward in these particular matters, malicious prosecution being slightly different from false imprisonment.

In the round therefore, it would be perhaps too limiting to adopt the amendments proposed by my learned friend mainly because of the question pointed so squarely by Sen. Richards in expressing the language at the tail end of both subsection (2) and subsection (3) as Sen. Mark proposes.

The issue of the knowledge of the prosecutor himself, of the policeman himself, falls into position, and regrettably I think that is to curtail the operability of the law unduly. I think that we should find comfort in the standard of proof, the burden of proof and in the jurisprudence which prevails in this arena.

Sen. Mark: Madam Chair, if I may. The concern remains. I am not convinced by what my learned colleague has said, and I will just indicate, that “the proof of the pudding is in the eating”, and you would find a lot of innocent people being taken down first for three days and then for 14 days, and then because of the vagueness of this arrangement, when they win their cases, Madam Chair, you are going to

have, we the taxpayers being called upon to foot those bills.

I just want to put on record that this particular provision in the law, the clause, is not sufficiently tight and it is too loose and it is going to bring about a lot of arbitrariness on the part of the police, and we will pay a heavy price. But that is my submission to the AG through you, Madam Chair.

Mr. Al-Rawi: Madam Chair, just one last point. The dicta of Mr. Justice of Appeal Berezuk in the Kevin Stuart case is squarely on point as to what must be reasonable in the mind of the arrestor. And therefore, Sen. Mark's concerns have, in fact, been addressed by our own local courts up to appellate level and therefore, I regrettably do not share the same concern as my friend.

Madam Chairman: Sen. Mark, your proposed amendment at C is a little different from A and B, so would you like to just elaborate on C?

Sen. Mark: That is (4) C.

Madam Chairman: Yes. Clause 13. Yes, but it will be subclause (4), your C is in respect of subclause (4).

Sen. Mark: Yes. But, again, Madam Chair, what I am saying is that, this is, again, subjective because they are assuming, this clause is assuming that the person ought to—the clause is saying in defence a person charged with an offence, if he proves that he did not know or could not reasonably have known that the person that he was concealing was a gang leader or a gang member.

Madam Chairman: Right. But, Sen. Mark, your proposed amendment—

Sen. Mark: Yes.

Madam Chairman:—really is adding the words at the time of the arrest after the word “proves” so it is a little different from what you said initially for the other subclauses. Do you want to add anything else?

Sen. Mark: No. I will leave it so.

Madam Chairman: All right. Who wants to—? Sen. Creese.

Sen. Creese: The problem that I am having with this—

Madam Chairman: Sen. Creese, could you just bend the mike forward so that we can hear.

Sen. Creese: Sure. Yes. Thank you. The problem that I having with this is, it does not reveal, which I find is a strange description of a crime as opposed to lying to a police officer, and I think the two are poles apart because—

Madam Chairman: Okay. But, Sen. Creese, if I may? That does not fall—we are dealing with the amendments proposed by Sen. Mark. So, may I deal with this and then I will invite further comments because there is an amendment proposed by the Attorney General as well.

Question, on amendment, [Sen. Mark] put and negatived.

Madam Chairman: Hon. Attorney General, would you like to discuss the amendment that has been put forward by you?

Mr. Al-Rawi: Should it please you.

In subclause (1), delete the word “ten” and substitute the word “fifteen”.

Madam Chairman: Clause 13.

Mr. Al-Rawi: Yes, please. Madam Chairman, we propose in clause 13 that we treat with the offence of concealing a gang member differently from that which we had proposed for harbouring and that, in fact, we improve the sentence from 10 years to 15 years to demonstrate the odium which we would have in that more positive step of concealing as opposed to harbouring. So it is to take it five years above the prescribed sentence for harbouring. So it is really a very simple demonstration of Parliament’s odium with respect to the concealing of a gang member, making it obviously different from concealing.

Madam Chairman: Sen. Creese, you can ask the Attorney General what you had

raised.

Sen. Creese: Right. Normally in most jurisdictions the crime is “to lie to law enforcement”, but here we are saying “does not reveal”, which I find not to be on the dead level, to be quite frank.

Mr. Al-Rawi: Madam Chair, if I catch what Sen. Creese is saying, he is looking at the use of the word “reveal”. “Reveal” not being a, I specifically lied or did not inform, but being something somewhere in-between an omission and a commission. If we were to reflect upon the Perjury Act, there is a positive statement. But the intention here, because we are treating with concealing a gang member, is placing a positive obligation upon the person who is alleged to have committed the offence of actually taking a step to inform and therefore, we fall upon the literal interpretation of “reveal” including both the passive and active context.

In those circumstances we felt that it would be open to the court to consider whether the prosecution had proved this beyond reasonable doubt as it is required to do. So, we were comfortable, we had repeated the very formula used in section 10 of 2011 Act, and we were proposing that it be maintained.

Madam Chairman: Sen. Ramdeen.

Sen. Ramdeen: Madam Chair, hon. Attorney General, through you, Madam Chair, when you look at the nature of the offences that are being created by subsection (2) and subsection (3), they are offences where the refusal to give information when confronted by a police officer is what forms the crux of the offence. And my concern in that in the environment that we exist in today, where an officer confronts someone in either of these situations, to borrow the words of Sen. Mark, there will be some degree whatever may be the quality, the officer has to have some degree of information to put the question and expect that an answer is

given, and it is the refusal to give the answer with knowledge of the information that creates the offence.

My concern is that, while I understand the offence, I think that we should provide some kind of safeguard to the person who is being the subject matter of the enquiry by requiring in the law itself that the officer puts into writing the enquiry that is made and the response at a contemporaneous time when that is done. Because what you will have or what I can foresee, let me do not say what you will have. What I can foresee is that, you will have an officer who will go on an enquiry and may not even confront the person, and then come and charge that person with the failure, because it happens every day. And we must cater in the legislation, you cannot cater for somebody acting with bad faith or with malice, but you can circumscribe the legislation in such a way that you provide a safeguard so that if you put a question to him: "Where is Mr. Ramdeen?" The person does not give you that information, it then turns out that he had the information for that person.

Where under the police standing orders, after Frankie Boodram, where a confession is given, an oral admission is given, the law is that he must put it down in writing whether it be in the station diary, the pocket diary or whatever.

But why can we not start prescribing these things in the law so that all it takes is that an officer who is going on an enquiry for this type of offence will have a standard form that he will put, this is the question and this is the response, and that will provide the contemporaneous evidence that will help the prosecution in proving the offence, and will also be a safeguard to the person who is accused, because that person will have to sign whatever it is. So if he stays silent, the officer will write it down.

3.50 p.m.

Madam Chairman: Sen. Ramdeen, I think the Attorney General understands what you are raising. Sen. Chote.

Sen. Chote SC: Thank you, Madam Chairman. I just wanted to support what Sen. Ramdeen is proposing, and I think it is because when police officers go out, let us say, on an exercise which includes a search, where they are looking for someone, the person who is arrested may not know who is the officer who is asking him any question, and as such, may not be able to properly, or he would not be given the opportunity to say: “Well no, I did not make such a statement to that particular officer, I do not even know who that particular officer is”. So I think that the safeguard of having a record made and kept, an official record made and kept of what transpires in such a situation is absolutely invaluable.

Madam Chairman: Attorney General.

Mr. Al-Rawi: Madam Chair, I welcome the submissions of my two learned colleagues. We are contemplating certain improvements to the Evidence Act. We are also insisting upon a redrafting of the Judges’ Rules, which is in fact a work product which the criminal justice advisory team from the UK is working on as we speak. My learned friends propose that we start something which is useful in this law, and continue in others, which is where we prescribe a formula for utilization.

Unfortunately however, Madam Chair, the current law operates, because this law is fairly similar to other laws, by articulating measures—Judges’ Rules, Practice Directions, et cetera. In those circumstances I am loath at present—without further consideration and without having a precise formula as to what ought to be the wording to capture the mischief in these circumstances—I am loath to move immediately on this. Again, I come back to the pulling of the thread on the tapestry, but remind that we are proposing that we have a sunset provision on this particular law. It would allow us from a policy perspective to look at where

we are in evidence, as we are right now. So, I am not quite sure if I am yet in a position to find the formula on this piece of law to be applied elsewhere.

Madam Chairman: Hon. Senators—

Sen. Ramkissoo: Madam Chair—

Madam Chairman: Sen. Ramkissoo.

Sen. Ramkissoo:—you can assist me with this. In the circulated amendments by the AG there is a small typo on the numbering of the clauses.

Mr. Al-Rawi: Yes, (3) and (3) would be corrected by consequential amendments.

Sen. Ramkissoo: Just for you all to just take note of it. Thank you.

Madam Chairman: Sen. Ramkissoo, forgive me, but—

Sen. Ramkissoo: In the circulated amendments, so the original Bill has (1), (2), (3) and (4), but in the circulated amendments there are two 3s.

Mr. Al-Rawi: In the Bill it is (4), but in the marked-up version it was 3(3).

Sen. Ramkissoo: Yes. So, I just want to make sure that going forward it is 13(4) and not 13(3).

Madam Chairman: So, hon. Senators, I will now put the amendment as proposed by the Attorney General. So, hon. Senators the question is that clause 13 be amended as circulated on behalf of the Attorney General.

Question put and agreed to.

Clause 13, as amended, ordered to stand part of the Bill.

Clause 14.

Question proposed: That clause 4 stand part of the Bill.

Sen. Mark: Madam Chair.

Madam Chairman: Just one second, Sen. Mark. There is one amendment circulated to clause 14 on behalf of the Attorney General. So, Attorney General, can you just—

Mr. Al-Rawi: Elucidate?

Madam Chairman: Can you tell us what the amendment is seeking to do?

- A. In subclause (1) (b), delete the word “fifteen” and substitute the word “twenty”.
- B. In subclause (2) (b), delete the word “twenty” and substitute the word “twenty-five”.
- C. In subclause (3), delete the word “twenty” and substitute the word “twenty-five”.
- D. Delete subclause (4).

Mr. Al-Rawi: Sure. Yes, Madam Chair. In clause 14, we propose in 14(1), 14(2) and 14(3) that we adjust the prescriptive terms for the offences, from 15 years to 20 years, from 20 years to 25 years, again taking care of earlier amendments proposed where we adjusted time frame prescriptions for offences. In the debate, Senators felt very strongly that there should be no offer of a defence for persons charged with an offence under (2) or (3), and I should remind that this is recruiting a gang member, and (2) and (3) dealt with where the gang member was recruiting a child. Hon. Senators felt that there should be a heavier expression of the odium that Parliament feels in relation to this, and offered the removal of the defence as to child being known to be a child or reasonably known to be a child, and those are the amendments in the round.

Madam Chairman: Sen. Mark.

Sen. Mark: Madam Chair, I was concerned about, the Attorney General is saying that the Senate proposed that these sentences be increased.

Mr. Al-Rawi: No, no, no. I said, we amended this. When we pulled at the tapestry earlier, 10 to 15, 15 to 20, et cetera, it caused us to have to adjust other formulae coming later down, because there is a matrix as to how you apply the

clauses. So, it was not the Senate. As a result of earlier submissions we had to treat with the rest of it this way.

Sen. Mark: All right. So, Madam Chair, I am asking again, the Attorney General, how did we arrive at these changes to the number of years? What is the rationale for these changes? And, may I also enquire, Madam Chair, through you, I noticed later on we have fines, but in the earlier sections of the law, this Bill, it is only sentences, sentences. Have we forgotten to include fines, or is it a deliberate policy on the part of the Government to leave out fines and just incarcerate people? I am just trying to find out.

Madam Chairman: Yes, Attorney General.

Mr. Al-Rawi: I am compelled to remind Sen. Mark that we arrived in the Senate as a result of a process which the Leader of the Opposition put into place. Where the Leader of the Opposition prescribed a policy which she said her party would support. So, it is not that the Government has come here with a free will per se. We have been circumscribed by the laws that previously stood, and by the expressed desire of the Leader of the Opposition.

So, I want to remind Sen. Mark that it is not that we came here with free will. Had it been free will, you would have seen a lot more. Standing in the Senate right now, as we do, the answer to, where do these offence prescriptions come from? Rising tides flow to all boats a little bit higher, and having raised the penalties from 10 years to 15 years, and 15 years to 20 years, there was a commensurate floating upward in these provisions as we have expressed them here.

As for the utilization of fines, I come back to where I first started. The expressed approved policy of the Leader of the Opposition on behalf of the United National Congress was and is what is contained in this Bill. We require a

three-fifths majority. The Opposition supported this Bill in the form that it has come in the House. So, therefore, I have not come here with the most liberty possible.

Madam Chairman: Hon. Senators—

Sen. Mark: So, you are saying that the whole question about the fines that were later on outlined in this legislation, the Leader of the Opposition agreed with fines in one section dealing with \$100,000 or/and to imprisonment for 20 years, but you are saying that the Leader of the Opposition's prescription for section 14 or clause 14 was to increase the number of years from 15 to 20, from 20 to 25, and from 25—so, that is what you are saying? You are putting on record—

Mr. Al-Rawi: No, that is not what I am saying.

Sen. Mark: So how does the Leader of the Opposition come into this?

Mr. Al-Rawi: Madam Chair, it is important to clarify, if you would permit me. The Bill, as it arrived from the House of Representatives to the Senate, came here for debate.

Sen. Mark: Yes.

Mr. Al-Rawi: That Bill arrived in the form that it did by unanimity. All persons in the House voted. It took us three attempts to get that vote right. Failed on the first two. On the third occasion it passed. When we had the debate in the Senate, this House standing apart from the House of Representatives, hon. Senators across the board requested certain improvements and amendments which we have reflected here. So yes, a clause came at 10 and we pushed it to 15, because Sen. Shrikissoon made the amendment. But the fact that it came with 10, without a fine, is the truth. From the House it came at 10 years without a fine. It came at 15 years without a fine.

The place where we have introduced the fine is in the new clause to treat

with tipping off, which is a specific recommendation coming from Sen. Ramkisson, and that is something which we find merit in, and that is where we proposed a replication of some of the formula used in the Proceeds of Crime Act. So, let us be careful to get it right. Certain aspects of the Bill arrived here with no fines attached to them, and that is preserved. What the value is, 10 versus 15 years is now subject to the Senate's consideration. But it is true to say that the Bill that arrived here, arrived with a unanimous position driven by the Opposition's insistence as to what the Bill should or should not contain.

Madam Chairman: Sen. Mahabir.

Sen. Dr. Mahabir: Thank you very much, Madam Chair. I am reading clause 14, and I am reading it together with clause 7. In clause 7 hon. AG, it says that:

“A person who...encourages...”—a member to join a gang—“is liable on conviction on indictment to twenty-five years.”

Clause 14 says that:

“A person who recruits...”

I think “encouraging” is a lesser stage from actually recruiting, and you are recommending in 14(1)(b) that the recruiter—so, the encourager, in 7 faces on indictment 25 years, and the recruiter on indictment faces 20 years. I see an inconsistency. Why do we not, in (b), also have a 25-year charge for the recruiter as well?

Mr. Al-Rawi: Good point. Because the maximum suggested so far has been 25. So, we kept 25 for the child, and we went five years lower for the recruiter. And it is because we are working with this false ceiling that arrived from the House of 25 years.

Sen. Dr. Mahabir: Okay.

Mr. Al-Rawi: So therefore, we had to disaggregate the treatment of child.

Because we could not take the child to 30. We kept it at 25.

Sen. Dr. Mahabir: But, AG, that is not my point. 14(1)(b)—

Mr. Al-Rawi: Comparison between 7 and 14(1) (b)—

Sen. Dr. Mahabir: And we are not talking—

Mr. Al-Rawi: So it is 25 versus 20.

Sen. Dr. Mahabir: But 14(1) (b) does not refer to the child. 14(1) (a) and (b) are not child specific.

Mr. Al-Rawi: We can reduce 7 to 20. If you are looking for harmony and you are saying that 7 is higher as it says 25 years, and 14(1)(b) says 20 years, well, then it is open to us to harmonize it to 20.

Sen. Dr. Mahabir: My point is, why harmonize to 20? And the reason is, you see 7 encourages, 14 recruits. Encouraging in my mind, unless I am way off the mark, is simply telling someone about the glories of gang life and how, in fact, it is. And he can get 25 on indictment.

Mr. Al-Rawi: It also includes facilitation of the “Mr. Big”.

Sen. Dr. Mahabir: Right.

Mr. Al-Rawi: So, because there were large people hidden behind the gang activity—as Sen. Chote put it, these gang leaders report to someone—the profiter. So because on the one hand it could be as low as you have just suggested. It can also be as high as the “Mr. Big”, who is funneling or paying for these activities. And because the law is not prescriptive for every single formula that one can find, we have therefore used a framework approach to the expression. So, if the sole mischief is 25 versus 20, and one wishes to have harmony, we can treat with that. The reason why we put 20 here in (1) (b) is because we treated with the maximum for the child, at 25.

Sen. Dr. Mahabir: Okay, but, you see—

Madam Chairman: Sen. Mahabir, perhaps—may I ask you, what are you proposing for clause 14?

Sen. Dr. Mahabir: I am proposing that what holds for clause 7, which is encouraging—

Madam Chairman: Which is 25 years.

Sen. Dr. Mahabir: Which is 25—also holds for the actual recruitment, which I consider to be equally pernicious to encouraging, and I cannot see the merit in 20 as opposed to 25. That is just my position.

Mr. Al-Rawi: Then the obstacle of something which is more pernicious, which is the treatment of a child, falls into debate. So, are you comfortable therefore with the entire thing being 25? No more special odium attached to the child?

Sen. Dr. Mahabir: No. When we come to 14—not 14(1)(a) and (b)—(2), I am very much on board with you, with respect to a person who recruits a child to a gang commits an offence and is liable to these particular charges—I mean fines you are laying. I think there should be a difference when you are dealing with the child. But 14 in my mind does not deal only with a child.

Madam Chairman: May I ask, specifically Sen. Mahabir, 14(1) (a), what is your proposal?

Sen. Dr. Mahabir: I would like 14(1)—you see, who recruits—to be consistent with 7:

“A person who recruits another person to a gang...”

You see—

Madam Chairman: Yes. Sorry, I am interrupting because 14(1) (a) talks about summary conviction and (b) talks about conviction on indictment.

Sen. Dr. Mahabir: Yes. Right.

Madam Chairman: Clause 7 dealt with a flat 25 years.

Sen. Dr. Mahabir: On indictment only.

Madam Chairman: On indictment. Is your proposal therefore that (b), on conviction and indictment, be for 25 years?

Sen. Dr. Mahabir: Yes. That is it.

Madam Chairman: Okay. Attorney General.

Mr. Al-Rawi: Then my difficulty is the treatment of the child, and I asked that question. I have not had an answer to it.

Madam Chairman: Well, I think at some stage we have to make our own answers, and at some stage we have to come to a determination. So, Attorney General you have circulated your amendments. Sen. Mahabir has not circulated an amendment, but is suggesting one. I would therefore ask you, are you—I mean, what do we do? Is it that we defer to this clause and come back to it, because you are considering Sen. Mahabir's proposal?

Mr. Al-Rawi: But, Madam Chairman, most respectfully, and I did not want to cause my learned friend any upset. I think that because we have treated this with the understanding that so far the maximum is at 25, I prefer to leave the clause as is.

Madam Chairman: And therefore, let us therefore now deal with the amendment as proposed by the Attorney General. So, hon. Senators, the question is that clause 14 be amended, as circulated on behalf of the Attorney General.

Question put and agreed to.

Clause 14, as amended, ordered to stand part of the Bill.

Clause 15.

Question proposed: That clause 15 stand part of the Bill.

Madam Chairman: There are three amendments proposed: Sen. Ramkissoon has circulated an amendment; Sen. Mark has circulated an amendment; and the hon.

Attorney General has circulated an amendment.

Sen. Mark: Sen. Ramkissoo circulates a new clause.

Madam Chairman: Oh, Sen. Ramkissoo, I am being told, actually is a new clause 15. So, that is not to be dealt with now. So, we are actually just dealing with Sen. Mark and the Attorney General. Sen. Mark.

Sen. Mark: Yes. Madam Chair, having regard to what we had discussed earlier in terms of dwelling house, where I would want to withdraw this amendment.

Madam Chairman: Hon. Attorney General.

A. Delete subclause (2) and substitute the following:

“(2) A Magistrate may issue a warrant to a police officer authorizing the police officer to enter and search a dwelling house where the Magistrate is satisfied by evidence on oath that there is reasonable ground for believing that there may be found in the dwelling house a gang leader, gang member or a person whom the Magistrate has reasonable cause to believe has committed an offence under this Act.”

B. In subclause (3), insert after the word “dwelling house,” the words “including a building, ship, vessel, carriage, box or receptacle,”.

Mr. Al-Rawi: Should it please you, Madam Chair. The proposal that we have circulated for clause 15 is to harmonize the standard that we are going to use here, and we are migrating to reasonable ground. The original version had put reasonable cause. The Law Association had expressed concern that there was a lack of harmony and an inequality of treatment as one reflected upon clause 15 and clause 16. And what we have sought to do is to treat with that in more consistent fashion.

We therefore propose in the first substantial amendment that we replace

subparagraph (2) in the manner of wording circulated, incorporating that there is satisfaction by the Magistrate of considering evidence on oath that there is a reasonable ground for believing. And then on the second amendment, which is in subparagraph (3), we propose to include, a building, ship, vessel, carriage, box, or receptacle, flowing from observations made by Sen. Chote in the course of her contribution.

Madam Chairman: Any comments on the—Sen. Chote?

Sen. Chote SC: I am sorry, Madam Chairman. But, are we dealing with the one—I am a little confused here—which includes the clause about searching a dwelling house with a warrant?

Madam Chairman: We are dealing with clause 15.

Sen. Chote SC: “Hm mm.”

Mr. Al-Rawi: Which is shown in the marked-up as the new 16. So you are looking at 16 in the marked-up.

Sen. Chote SC: Yes. With respect to 16(3) then in the marked-up.

Mr. Al-Rawi: So, 15. We are still calling it the old clause, because the insertions come after.

Sen. Chote SC: 15(3), could we put in a sort of qualification to this, because in a sense you are giving the police almost state of emergency powers to enter any premises which might not be a dwelling house simply because they believe that a gang member is there, and this is a very wide invasion of privacy. And I was wondering, I know that in my written suggestions I think I had suggested that a warrant should be required, but in the absence of that—because I see it has not been taken on—could I suggest then that we put in something, a qualification to say:

“A police officer may with reasonable cause or on reasonable grounds may

enter without a warrant and search a place or premises not used as a dwelling house.”

Mr. Al-Rawi: Would it satisfy you if I reflected upon the wording of the clause as proposed. “If he has reasonable cause to believe.”

Sen. Chote SC: Well, if he has reasonable cause to believe, really is just for the police officer to say, “I had reasonable cause to believe.” If you have reasonable grounds, then it suggests that reasonable grounds must satisfy some sort of objective test as to what reasonable is in the law, and that would constrain the police officer, I think, or encourage him to act lawfully.

Mr. Al-Rawi: Madam Chair, may I? This clause above all is the reason for the three-fifths majority. It really falls to the heart of the law that is before us. The scourge of criminality by gangs is one where there is the live argument as to where one puts the fetter. We used reasonable cause because it is what we found in several other pieces of law—criminal offences, offences against the person, a number of other pieces of law. I am therefore very cautious simply because of what the common law looks like, what judicial interpretation looks like on this ground, to disturb this clause. If we are really to get to the heart of disrupting gang activity, we do accept the sanctimony of the home. A man's home should not be invaded capriciously, and therefore we have provided for the warranting. But everywhere else which is not a home is likely to be subjected to the public's access, and in those circumstances I am very cautious to migrate to a different formula.

Sen. Chote SC: Hon. Attorney General, through you, Madam Chairman, you were sensitive to the need of someone who may be charged or may be a suspect under this legislation earlier on by providing for that person to be able to communicate with his attorney and so on. Now, by permitting this, you are essentially allowing a police officer to enter the chambers or law firm of anybody

seeking legal advice, persons presumed to be innocent. You are essentially allowing the police to enter, search those premises without a warrant, simply because such a person may be found on those premises?

Mr. Al-Rawi: Yes.

Sen. Chote SC: Well, I honestly do not see how that fits in with the rest of the legislation. Because if on the one hand you are saying we are prepared to ensure that your legal rights, up to an attorney-at-law—which you have under the Constitution of the Republic of Trinidad and Tobago—we are saying that that is necessary, and we are trying to protect that. Well, why not in this case? And what about the constitutional rights of the persons who happen to be in that same building at that time?

Mr. Al-Rawi: Well, they are mutually exclusive.

Sen. Chote SC: No. This section is endangering them. Because I am sure if police officers are of the view that a gang leader or a gang member is in a building, they are not going to go in there unarmed.

Mr. Al-Rawi: Sen. Chote, the submissions made are of course very poignant and sharp and reasonable. But this is the crux of the law. The fighting chance for the Trinidad and Tobago Police Service against criminal activity does involve tripping upon a few rights, which is why this is a three-fifths majority Bill. Not only was this a feature of the previous law, and it is a feature of other laws, but it is the crux of the matter. It is for this Senate to consider whether this Senate wishes to pass this law. The Opposition has already said that they are willing to do it, and I do accept that this is a tough point—to be warranted causes complication. I do not understand that you are saying to go as far as warrant. I understand you to be saying, migrate from reasonable cause to reasonable grounds. What I am saying in response to that, is that the reasonable grounds is a formula which is not something

which I have come across in this type of formula, as I am advised by my drafting team, that I have done the research on this particular point.

In the Criminal Law Act, in particular, the grounding is in cause, and therefore loath to disturb what the courts understand already. Lest there be a sojourn into what the Parliament really intended on grounds versus cause. And what I am very interested in doing is giving a fighting chance against criminality which is ridiculing our society at present.

Sen. Chote SC: Well, you know, hon. Attorney General, you are—through you, Madam Chairman. We are permitting somebody—a presumed gang leader or a gang member or somebody who may have committed an offence under this Act—while he is carrying out the lawful business of consulting his attorney-at-law, which is a right protected under our Constitution, we are saying that a police officer may enter and simply say, I have reason to believe that that person is in there.

Mr. Al-Rawi: Yes.

4.20 p.m.

Sen. Chote SC: We are giving the person the least amount of protection when he is acting lawfully, and we are affecting, possibly affecting the constitutional rights of privacy depending on what kind of building you are entering, and possibly many other constitutional rights of other persons who may also be in the same place. So I do not see that asking for an objective test is a very high ground that the Government is being called upon to jump to. I think in this situation all of us sitting here would hate to be in the situation where police officers come without a warrant, because a police officer, a police constable reasonably believes that a gang member or a gang leader happens to be in the restaurant where we are dining, for example.

Mr. Al-Rawi: Yes.

Sen. Chote SC: So I urge you to consider making the jump from what you have in the clause to reasonable grounds.

Mr. Al-Rawi: Madam Chair, section three of the Criminal Law Act, Chap. 10:04, reads as follows, and I refer you to 3(6):

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

And that is in the existing law.

So I do not find comfort only in the existing law. I recognize what Sen. Chote is saying, but most respectfully, I am asking the honourable Parliament to consider balancing the rights—I never thought I would have to say this—but in favor of law enforcement. There are remedies elsewhere when one is apprehended, when one is to be detained, this current law treats with the provisions of due process, of notification of a judicial officer being asked to intervene for continued detention. There are the other remedies which apply to malicious prosecution, false imprisonment, lack of reasonable cause, et cetera. So this law does not stand on its own, and this is the crux of the anti-gang law, most respectfully. So I do hear the passionate plea which I understand from my learned senior, Sen. Chote, but most respectfully, I must disagree.

Sen. Mark: I would like to support Sen. Chote on this. I was going to deal with clause 2, which is the one above, and demand a Magistrate issue a warrant. [Crosstalk] I am suggesting that if the AG does not want to go there, then at least let us raise the test to a more objective level. And I cannot see any difficulty in the Attorney General agreeing that if a police officer wishes to enter a building, and

Madam Chair, a building has not been defined. But a building is a place, could be a place or a premise outside of a dwelling house or a dwelling place, and therefore you open many buildings and offices to police invasion. We are not living in a police state.

Madam Chairman: Sen. Dr. Mahabir you wanted to raise something? No? Any other comments before I invite—yes, Sen. Hosein?

Sen. S. Hosein: Just for the record, I just want to endorse what Sen. Chote was saying and also what Sen. Mark is saying with regard to the definition for building. Because we see a lot of new establishments with respect to mixed commercial and dwelling premises. So now the police will have to make a distinction on whether or not they would need to obtain a warrant to go with respect to the commercial part of the property as compared to the dwellings of the property. So I think that we need some more clarity and definition with regard to building, Madam.

Sen. Chote SC: Madam Chairman, just one last plea so that this piece of legislation will not appear to be inflammatory, because I have supported you in this Senate with respect to the provisions of this legislation, and I can see how a spin can be put on this legislation which may take away from its effect by making people or police officers less willing to touch the legislation and to charge persons. This also means entering without a warrant because you think a gang leader may be there. This includes places of worship and that, of course, opens up another can of worms and if the protection of reasonable grounds, which suggests an objective test is used, the Criminal Law Act just talks generally about arrests, and arrests without warrant and that kind of thing. Not because there is a piece of legislation which uses a certain formula of words it means that that formula should be used in this kind of legislation which is draconian.

Madam Chairman: Any other comments on clause—Sen. Richards, Sen. Raffoul

after Sen. Richards.

Sen. Richards: Madam Chair, sorry. You know I want to put on record also my support for Sen. Chote's submissions in this particular clause, simply because, in addition to what she had said, I think we have been quite supportive of many of the submissions and ruminations of the hon. Attorney General. But because, as she said, this really affects every other possible building or enclosed location in the jurisdiction. I do not see the mischief in forcing law enforcement to have a higher benchmark for operation, because it actually adds credibility when they do execute or apply the law. And I really want that to be considered here.

Madam Chairman: I think—Sen. Raffoul.

Sen. Raffoul: Thank you, Madam Chair. I would also like to endorse Sen. Chote's point. I personally feel much more comfortable with reasonable grounds rather than just reasonable cause. And I do think it also protects law enforcement officers from the allegation of subjectivity, if they are forced to make an objective point in their searches.

Sen. Dr. Mahabir: Thank you, Madam Chair. Madam Chair, I understand the passionate plea of my colleagues with respect to clause 15. Clause 15 is really, as the hon. AG said, the crux of the matter. But my view is that there is a sunset clause. The sunset clause is a two and a half year sunset clause. And if it is that we are to provide the police with maximum flexibility it has to be in my mind that the police will have a two and a half year period in which to demonstrate that the abuse that is causing much concern to me and to others as well is going to be minimized.

So I think given the fact that there is a sunset clause here that this piece of legislation will be subjected to review in short order, two and a half years is not a long time. My inclination, and it is a contrary one, is that, I would like to see to

what extent, given the police these powers, will allow us to minimize gang activity in Trinidad and Tobago. And I would be supporting the AG here, although draconian as it is, but for a limited time only. Thank you.

Sen. Small: Thank you very much, Madam Chair. Permit me to just share a comment if I am permitted. My view on this, Madam Chair, is that I agree with everyone, that this puts in the hands of the police some serious powers. My position is, Madam Chair that we have some serious crime going on in this country. If perchance the police intercept a communication that a gang leader is going to X building and he is going to be there in the next hour, what are they to do? I would like the police to have the ability to go wherever that person is going and grab them.

So that, Madam that is just my approach to it. I understand, like everyone else, this puts serious—I do not want to diminish in any way the fact that this put serious powers in the hands of the police, but we have a serious crime problem in this country and I would like to give the police every tool, everything in the arsenal to give them, to allow them to find these guys and get them off the streets. So on that basis, Mr. Attorney General I think that while I share many of the concerns, I share all of the concerns. I have a view that I think these are tough times and it requires probably some tough measures.

Madam Chairman: Attorney General.

Mr. Al-Rawi: Thank you, Madam Chair. Permit me to first of all thank my learned colleagues for expressing as profoundly as they have their respective views, but let me dispel something. Reasonable cause is not subjective. It is not a purely subjective standard. That is a fact. There is umpteen dicta, ample jurisprudence to suggest that there is an objectivity to that position. The position of reasonable grounds versus reasonable cause, causes—the main cause for

concern in that migration is having officers second-guess themselves as to what this means or does not mean.

The last thing that I want to see in Trinidad and Tobago today is an officer loathe to apply the law, because he or she does not know what it means, the consequence will be in application to him. That is the first point—that is the second point.

The third point is, there is ample proportionality in the round when you look to detention, when you look to arrest, when you look to further detention because there is a judicial process that this law prescribes. So this does not stand on its own. That is also buttressed by the fact that the state stands liability in respect of an unreasonable cause or lack of genuine purpose behind the police action. And that stands in malicious prosecution, enforcing imprisonment, et cetera.

So this particular position is not a purely subjective clause. That is not the case. And I want to be very careful to expressly state that. We are facing a situation with 2,454 known gang members. We are watching blood on the streets of Trinidad and Tobago, rape, mayhem, people with their video camera showing cars that are arrested, tales of tragedy and as draconian as it may sound this clause has merit in a society such as Trinidad and Tobago with a runaway population. This law is not even going to have the benefit of the bail amendments which prevailed in 2010.

Under those bail amendments, you could have arrested someone, started the matter that is, read the charge out and 120 days ad infinitum you lock them up. That is not the case in this law right now. So we are far from what the 2011 aid to law looked like. And this is make or break. This is for this Senate to decide where we draw the line and I cannot say that as Attorney General I can have any other view than to support the law as cast right now, because of the situation that we are

in.

I welcomed Sen. Dr. Mahabir's reminder that we are with a prescription for a sunset clause and that this law must be reviewed. But further, I would add that that point of view is to be bolstered by the fact that there are 70 something plus cases between the Magistracy and between the High Court that are yet to be pronounced upon by the Judiciary of Trinidad and Tobago. Mr. Justice of Appeal, Nolan Beraux in the Kevin Stuart matter had to consider the concept of reasonableness in that very case which involved an arrest under the anti-gang law and that stands as dicta to the proof that this is not a subjective case. I ask in the round therefore that the clause stand as is.

Madam Chairman: Hon. Senators, I shall now put the clause to the vote. The question is that clause 15 be amended, as circulated by the Attorney General.

Question put and agreed to.

Clause 15, as amended, ordered to stand part of the Bill.

Clause 16.

Question proposed: That clause 16 stand part of the Bill.

Madam Chairman: There are some amendments, three sets of amendments: Sen. Shrikissoon, Sen. Mark and the Attorney General. Sen. Shrikissoon let us deal with your amendments first, please.

- A. In sub-clause 3, after the word "detained" insert the words "in form set out as Form 1 in the Second Schedule for a custody record".
- B. In sub-clause 4, delete the words "Form 1" and substitute the words "Form 2".
- C. Insert new sub-clause (6) and re-number accordingly:

”(6) Upon granting of a detention order under subsection (4), a copy of the order shall be made available to the person detained or to someone acting on his behalf.”

Sen. Shrikissoon: Thank you, Madam Chair. To the hon. Attorney General. This clause is very much linked to the clause just discussed and under this clause it allows the police officer to detain. The part that concerned me was in the initial Bill, that part of, I think it was clause 3, where the person detained, it would be recorded in a custody record. To my knowledge at that time there was nothing that really was defined as a custody record. So it is on that note that I thought and I presented the view that if you are going to—and as we are relaxing parts of the Constitution to detain someone, then there should be some form of formal record for detaining that person which cannot be easily displaced and cannot be changed. And one of the reasons why I recommended the form was that the police custody record is the police’s records that they keep. And so if we are going to keep a record for someone it should not be in the sole custody of the police, which would be the same person executing the action to detain. So it does not give any element of balance or recourse for the person. And that is why I am asking for consideration for a formal form in this case, especially, given the fact that the person’s rights are being relaxed in the law. It is a check and balance.

Mr. Al-Rawi: May I?

Madam Chairman: Yes, Attorney General.

Mr. Al-Rawi: Should it please you, Madam Chair, thank you Sen. Shrikissoon for clarifying the intention behind the suggested amendment. We saw merit in your observations in the debate and the joined issue with your observations of the Law Association as well, who felt that the concept of the type of record that we had suggested was not known and that it could fall into abuse. For those purposes we

adopted the submission of the Law Association in using what one can refer to as that immovable fixture of the station diary, because the station diary is a permanent fixture in the station.

We felt that it was more useful than a form because the forms have a process of learning attached to them, may or may not be found and were divisible records. Whereas the station diary is an indivisible record. The station diary is something which is not easy to tamper with and which hardly ever can be explained to have been lost. That is almost a rarity as far as I am aware. For those reasons we felt that the grounds had to be set out in the station diary.

One is permitted the extraction of the station diary, the extraction of the record and therefore that can be easily produced. So we felt that that allowed for a tamper proof, as best as it is possible, form of recording the positions and to avoid the need to learn up a process of forms which may or may not be found which can or cannot be produced—which some body has a form and the station says they cannot find the counterpart. We felt that the use of the counterpart technology was a little bit too fluid and we went for the more certain version of the station diary.

I do not know if that helps my learned friend to reconsider the recommendation for the utilization of a form, but our preference is that we use the station diary as per the recommendation of the Law Association.

Sen. Shrikissoon: Through you, Madam Chair. Madam Chair, I was in this Senate when former Sen. Wayne Sturge made a contribution and a station diary was entirely missing. So that a station diary being a large note book and being misplaced is not really a fact in terms that we should be considering it as being immovable. That is one. Two—[*Interruption*]

Mr. Al-Rawi: Remember I qualified it. I said as best as it is possible, right?

Sen. Shrikissoon: Right. The second point, with respect to that is that the court

system, usually, when someone is detained here, if they are charged, it will take a little while. So that station diary has to be lodged somewhere and it will be more easily to be misplaced. And then even presently, almost, even up to most recently as of yesterday, we are noticing that files are missing. And more again—
[*Interruption*]

Mr. Al-Rawi: Sorry, you are referring to?

Sen. Shrikissoon: A newspaper article where we saw—

Mr. Al-Rawi: Concerning the Attorney General's Office?

Sen. Shrikissoon: I do not really want—

Mr. Al-Rawi: No, it was and I can tell you that they were not missing.

Sen. Shrikissoon: Right. Okay. But it is just in the public domain. So I am saying that given that these files have the possibility of going missing, then what is the person who has been detained? What is his recourse of action? Then what if the reason for detention changes by the police officer or an additional charge is laid later on. That person who has been detained has no idea initially of what he or she is being held for.

Mr. Al-Rawi: But respectfully that is built upon a presumption that you do not have an extract of the station diary which you do that. So you get your duplicate from the police themselves. It is recorded in that near immovable fixture and you get an extract from it so you have a counterpart. But you are not, with a floating file of a form here and a form there. So there is still the remedy of obtaining the information from the station diary and you get an extract which is your counterpart.

Sen. Shrikissoon: Well, let me ask a question and those other hon. Senators can help me here. How easy is it to amend an entry into a station diary?

Mr. Al-Rawi: It is not. It would have to be a subsequent entry or a supervised

amendment. There would have to be senior officers participating, other factors, et cetera. It is not easy position. [*Crosstalk*]

I am hearing Sen. Ameen say, tearing out the page. Yes, a page could be torn out. What happens if you lose the whole file of forms and you say that is a fraud? What is the difference? Do you not have the opportunity right then and there to say, okay, it is in the station diary I want my extract, you wait for your extract, you still have your counterpart. Diary missing, well here is my extract, you stamped it. So form, diary, position, there is always mischief available in dark places, always.

Sen. Shrikissoon: And then my final question, Madam Chair, would be—and I do not know and that is why I am asking. How soon after one is detained that the extract of the police diary can be made available to—[*Interruption*]

Mr. Al-Rawi: You can apply for it immediately, stand up there and wait. Record it in hand yourself, contemporaneous evidence. It is a feature that works.

Sen. Shrikissoon: Okay.

Mr. Al-Rawi: Usually when somebody, for instance, in a domestic violence matter has to get information and you go into the court you go and get the extract from the diary. They certify it and give it to you, et cetera. The reason that the Law Association and it was member Persad, Rajiv Persad, in particular, who has had the benefit of serving as a judge and a prosecutor, et cetera. It was his recommendation that the station diary be used borne out of practice. I mean I took the advice rendered to me. I am not a member who practices in the criminal arena so I am advised by those that do. But I do know well enough in my years of practice that what I have just said is factual.

Sen. Shrikissoon: Okay, Madam Chair, with respect to the facts that a record would now be maintained, something more official than initially mentioned and

across record. I thank the hon. Attorney General for at least considering an improvement in the law and as you have given the assurance that a record is made available and almost immediately for the detained person, then I can respectfully withdraw the amendment.

Mr. Al-Rawi: Thank you.

Madam Chair: Sen. Mark, you also have some amendments to clause 16?

Sen. Mark: Yes, Madam Chair.

- A. In sub-clause 3 (a), after the word “detention” insert the words “and provide the person detained with a copy of the custody record”.
- B. In sub-clause 4, after the word “order” insert the words “and the application shall be supported by evidence on oath”.
- C. Insert new sub-clause (5)
“(5) A certified copy of the application for detention order Form 1 shall be provided to the person detained”.
- D. Insert new sub-clause (6)
“(6) A person detained in accordance with subsection (5) may make an application to a Judge showing cause why the detention order should be discharged in the form set out as Form 3 in the Second Schedule”.
- E. Renumber the sub-clauses accordingly.

Like Sen. Shrikissoon I am concerned about the rights of those who are detained. And may I ask the Attorney General, in beginning my response to this particular provision that I have advanced for his consideration, is there a distinction AG between detention and arrest? Or are we using it as our colleague from the Senate, Independent Elton Prescott SC said are we using it interchangeably or is it a new incursion into the law?

Mr. Al-Rawi: I am smiling because it is an excellent question and I think if you ask four lawyers you will get four different answers. Sen. Prescott SC expressed a particular view. Certainly the others that I have spoken with expressed different views. There is an apparent fluidity between detention and arrest. Which comes first, the chicken or the egg. I have had different answers for. Some people obviously assumed that an arrest is a precursor to detention.

Sen. Mark: Yeah, well, Madam Chair, what I would like to suggest for the hon. Attorney General's consideration is this. If someone is detained and later on arrested and charged, but we know under the current legislation—*[Interruption]*

Mr. Al-Rawi: Or arrested and then charged. Arrested, detained and then charged.

Sen. Mark: Arrested, detained and then charged. But the current Bill that we are debating and at this level, at the committee stage, you have this provision where when this person is detained under the law he or she can be detained for a maximum, in the first instance 72 hours without being charged. And then the same police officer can go behind him, ex parte, to high court and get an extension for 14 days.

Now the question here is that, the person is detained, he does not have any information during that period and that is why I made the recommendation that like Sen. Shrikissoon that we deal with some record that could be made available to the individual during that period. And when we go to the judge in the High Court for an ex parte injunction that person who is this being detained ought to be alerted and I have attached two forms for the consideration of the Attorney General that would give that person who is detained some degree of access to information because of the circumstances.

So, Madam Chair, this amendment is really designed to provide the person who has been arrested and detained with some degree of access, right, to

information and I am saying that two forms have been advanced for the AG's consideration that can be signed off by the police officers and make available to the detainee. So at least the detainee will have access to information and therefore he will not be in the dark. And that is why I have submitted these amendments with the accompanying forms for your consideration.

Mr. Al-Rawi: May I?

Madam Chair: Attorney General.

Mr. Al-Rawi: Thank you, Madam Chair. I wish to join issue with some of the positions offered by my learned colleagues, Sen. Mark and I do recognize the merit from which they spring. The position however is not so far off from that which we recommend when we come to the amendments proposed by the Government. First of all, we are proposing specifically in subclause (3) that:

“Where a person is detained under subsection (1)—that is the initial period—“the police officer who made the detention shall, without delay—

- (a) inform the person of the grounds for his detention; and.
- (b) record the grounds for his detention in the station diary.”

So the person is informed, it is in the station diary, the station diary can be extracted, the station diary has the reasons.

We have gone a little bit further. We agree with the recommendations that the application for further detention shall be supported by evidence on oath. So we agree with that position and we will propose that that be inserted in the amendments of the Government circulates. So we join issue and agree with your recommendation with similar purpose. But what we have also proposed, again, joining issue with you, is that the person detained in accordance with subsection (5). That is where the judge is satisfied on reasonable grounds that there is need for further detention. That that person may make an application to a judge showing

cause why the detention should be discharged. In allowing the person that purpose there is an express discovery that is committed, disclosure and the prosecution must always disclose evidence which is prejudicial to the case of the prosecution to the accused. That is, the standard disclosure formula.

In the round therefore, we agree with the substance of positions, but we have not gone so far as to give a particular prescribed form and notice. Instead, we have sought to take support from the other legs which operate at present. The diary, the extracting, the obligation to inform, you cannot change the grounds that you have informed him for because it is in the diary, so therefore it is corroborated. The disclosure of evidence that the prosecution must give to the witness, et cetera. And then the general understanding of the court, because the court is seized of the fact that the person may apply for a ground for discharge. So we have not gone so far as to adopt the utilization of a form. Again, because of the learning curve associated with that and the reluctance that that may be met with or, how should I say, or the coolness with which that may be felt—coldness I should say, that people may not be as effusive to do as their normal provisions are.

4.50 p.m.

So, respectfully, we have agreed to almost all of it but we have not gone as far as prescribing forms and we feel that that is to allow for the police to catch up to positions where we are. We do feel comforted that there will be a review of this position very shortly in a matter of two years and a half, and we therefore prefer not to use the forms.

Sen. Mark: Madam Chair, to the hon. Attorney General. You would agree with me that we may have to beef up, or allocate some more resources to Legal Aid and Advisory Services because, as you are aware, as the Act is operationalized and police do their work, a lot of persons would be needing access to legal services,

and that is an area that I would imagine that the Government would be looking at because—

Mr. Al-Rawi: Most definitely. We are actually taking a note to Cabinet next week for the creation of the public defender system, which is a significant broadening of the legal aid services provided by the State.

Sen. Mark: Is that taking the form of a legal legislative form?

Mr. Al-Rawi: It needs no legislation. It was something which could easily be done just by way of restructuring.

Sen. Mark: Okay.

Madam Chairman: Sen. Hosein.

Sen. Hosein: Thank you very much, Madam President. AG, with regard to the entry in the station diary, that is at 17(3)(b), at the end of the word “diary” can we just insert, just for checks and balances purposes, whether or not a senior officer present at the station could actually certify the entry that was made by the officer? Because I would imagine that there would be more of the junior officers carrying out the investigation and the arresting and detaining of these individuals, so whether or not the head of the station can actually certify the entries made in the station diary at that point. I want to go as far as legislating, since you are not prepared to accept the form to be served on the detainee or the arrestee, that we provide for some sort of authenticity with regards to the entries that were made by the officer.

Mr. Al-Rawi: Thank you. Madam Chair, may I?

Madam Chairman: Yes.

Mr. Al-Rawi: The TTPS has cautioned on numerous occasions that many a law which prescribed officers beyond a certain rank to perform a certain function caused for a non-functionality in the TTPS, because the senior officer was often in

charge of more than one station, or at a different location whilst the station was in operation and there was a delay. They pointed to the structure that the senior supervises the junior. And also, too, they pointed to the room for mischief in reformulating that which the junior officer had put down. So they felt that there was better chance for fairness to have the junior officer record exactly as the junior officer did, put it in the diary and not allow it “to be doctored” by a more senior officer.

And I will tell you where this has come about to be extremely relevant. In prosecuting the defence for the false imprisonment and malicious prosecution claims brought against the Government for the arrest which took place in 2012 and 2011 under the Anti-Gang Act, largely in the state of emergency applications, it was a near impossibility to get the junior officers to attend to give evidence, simply because the law provided for the senior officer to do it and, therefore, the first-hand evidence fell into jeopardy and the State had to end up paying significant damages.

So whilst the caution was along the very line that you are offering, Sen. Hosein, the mischief fell in that we could not get the first-hand positive evidence and compellability of evidence, because the junior officer just disappeared, because the senior officer now had the certification on call.

Sen. Hosein: But, AG, if the senior officer actually certifies the entry, then the evidence becomes more compellable because he would have been the one to actually certify it contemporaneously.

Mr. Al-Rawi: So the problem was capacity, timeliness, delay and then avoidance of junior officers after and also the potential modification, if I use that word, of the evidence.

Sen. Hosein: Respectfully, it is just a very simple certificate that he can just endorse at the end of the entry.

Mr. Al-Rawi: I have actually received full written submissions on the TTPS for this reason. And, in any event, the standing practice is that the senior officer supervises the diary on a constant basis.

Madam Chairman: Sen. Mahabir.

Sen. Dr. Mahabir: Thank you very much, Madam Chair. Madam Chair, I am of the view that an arrested individual, or someone who has been the subject of police action—he has not yet been arrested—should know from when the clock starts to tick with respect to this legislation. Clause 16(2) says:

“The time from which the period of detention is to be effective shall be the time at which the person is arrested and detained.”

I think it is really very vague, listening to my colleague, Sen. Prescott, on arrest and detention, and as the AG indicated, that there is some dispute with respect to what comes first. I am wondering whether it would not be fairer to say that, “the time from which the period of detention is to be effective shall be the time at which the person is apprehended”. So as soon as the police holds you, you know the clock starts to tick, and the police then must, once they have taken you in, come into the station at that point. You know “My clock is ticking. I have been detained at that point.”

Mr. Al-Rawi: Your apprehension is the arrest. The minute the police puts the hand on you and says, “Let us go”, you are arrested.

Sen. Dr. Mahabir: Okay. But I was under the impression, hon. AG, that a police officer has to indicate that you are under arrest. So that—

Mr. Al-Rawi: Well, yes, the circumstances of arrest are always communicated.

Sen. Dr. Mahabir: Right. So to clarify in my own mind and in the mind of the citizens, there are young men in a particular place, the police jeep comes up and says, “Gentlemen, I am acting under this particular Act, come”. At that particular

point the young men say the period of detention has started. Thank you very much. That clears it up.

Mr. Al-Rawi: The minute they say, “Get in the van”—

Sen. Dr. Mahabir: That clears it up for me.

Mr. Al-Rawi:—and somebody voluntarily steps in there because they fear that force may be used after, that is the arrest.

Sen. Dr. Mahabir: Very well. Thank you very much.

Madam Chairman: Hon. Senators, I am now going to put the amendments circulated by Sen. Mark. Sen. Mark, you are still pursuing the amendments? I will now put that to the vote.

Question, on amendment [Sen. W. Mark] put and negatived.

Madam Chairman: I will now put the amendment circulated on behalf of the Attorney General. The question is that clause 16 be amended, as circulated by the Attorney General.

A. In subclause (1), delete the words “a person whom he reasonably suspects of- (a) having committed; or (b) interfering with an investigation of,” and substitute the words “a person whom he has reasonable cause to believe- (a) has committed; or (b) has interfered with an investigation of,”.

B. In subclause (3)—

(1) in paragraph (a), insert after the word “;” the word “and”; and

(2) delete paragraphs (b) and (c) and substitute the following new paragraph:

“(b) record the grounds for his detention in the station diary.”

C. In subclause (4), insert after the words “detention order” the words “and the application shall be supported by evidence on oath”.

D. Insert after subclause (6) the following new subclause:

“(7) A person detained in accordance with subsection (5) may make an application to a Judge showing cause why the detention order should be discharged.”

Question put and agreed to.

Clause 16, as amended, ordered to stand part of the Bill.

Clause 17.

Question proposed, that clause 17 stand part of the Bill.

Madam Chairman: Hon. Senators, the Attorney General has caused to be circulated amendments in respect of clause 17, as follows:

Delete clause 17 and substitute the following clause:

- “(1) Where a person is convicted of an offence under this Act, the Court may order that any property –
- (a) used for, or in connection with; or
 - (b) obtained as a result of, or in connection with the commission of the offence, be forfeited to the State.
- (2) Before making an order under subsection (1), the Registrar of the Supreme Court of Judicature shall publish a notice identifying the property referred to under subsection (1) in two newspapers in daily circulation in Trinidad and Tobago.
- (3) A person who claims to be the owner of, or to have an interest in, the property shall file a notification of interest in the form set out as Form 2 in the Second Schedule, with the Registrar of the Supreme Court of Judicature within two weeks of the date of publication of the notice referred to under subsection (2).
- (4) Before making an order under subsection (1), the Court shall give an

opportunity to be heard to any person who has filed a notification of interest claiming to be the owner of, or to have an interest in, the property.

- (5) Notwithstanding subsections (3) and (4), the Court may give a person claiming to be the owner of, or to have an interest in, the property an opportunity to be heard, where the Court considers it is in the interest of justice to do so.
- (6) Where property is forfeited to the State under this section, the Court may give directions as to the storage, investment and disposal of the property.”

Mr. Al-Rawi: Thank you, Madam Chair. Madam Chair, the draft, as amended, I propose to have a small amendment which I had asked hon. Members to take note of before I explain. In subclause (2)—if you are with me, Madam Chair—just after the word “before” strike the word “making” and insert instead, “the court makes”, and the rest continues as is. And if you would permit me now to explain the rationale behind the amendment.

Madam Chair, Sen. Prescott, in particular, felt, in his contribution, and recommended that we have careful look at the forfeiture provision. He quite correctly pointed to the risk on an unconstitutionality claim within the meaning of section 13(2) of the Constitution, as it related to forfeiture, and that we should not comfort ourselves simply with the three-fifths majority which we are gaining here, potentially, if the Senate supports it. He recommended for consideration, and we agreed, that we would be more prescriptive with the notice. So that if property was going to be forfeited, that there be an actual dissemination of notice of the forfeiture; that a timeframe be permitted for persons to introduce a claim in respect of an interest to the property; that that timeframe involve a submission into

the relevant court which would be considering the matter. And we went further than that submission to add in, the ability of the court to allow any person to be heard notwithstanding their failure to enter their recognition of interest in property. And that is to be found in the new subclause (5) where we say:

“Notwithstanding subsections (3) and (4), the Court may give a person claiming to be the owner of, or have an interest in, the property, an opportunity to be heard where the court considers it in the interest of justice to do so.”

We felt that that was broad because one may run the risk of being excluded from the judicial consideration because you simply failed to submit the form in the requisite time, or you were not aware of it at all. In the round, therefore, we believe that the draft which is circulated significantly improves the forfeiture provision and allows us to rest a little bit more comfortably in the realm of proportionality.

Madam Chairman: Any questions, comments? Sen. Ramkissoon.

Sen. Ramkissoon: Thank you, Madam Chair. I did have a question in relation to subclause (4) about the property owner or if the owner comes forward to say that this property is now theirs. Is the State going to be giving any penalties to this owner for somewhat providing housing facilities, now, for these criminal activities, and if it would fall under the light of harbouring a gang member?

Mr. Al-Rawi: The answer to that, if I may, Madam Chair, is potentially one can expose oneself to harbouring or concealing if one is complicit in the act. But the innocent person who expresses interest in property, what we call the interpleader person, the interested third party person, the mortgagor or the mortgagee, depending upon what circumstance you are in, in that context they are not necessarily exposed unless they were complicit in gang activity of the type that we

frown upon in the clauses that deal with harbouring and concealing. So I could not say yes or no. It depends upon whether you, in fact, did it or not, or whether a charge was volunteered or not.

Sen. Ramkissoon: My final question, just for clarification. This particular clause deals with someone who has a property and it may have been abandoned and is being used by gang members.

Mr. Al-Rawi: Or it may not have been abandoned. It may have been—just take a typical Trinidad and Tobago example. Somebody has “migrated” or works abroad for extended periods of time somewhere else in the world—the United States or elsewhere—they have a relative who is staying at the home, who comes and goes. The relative allows someone to occupy the home. The yard is frequented by unsavory characters, or the person who is caretaking at the home is complicit in it. The property may find itself caught within the basket of forfeiture and that innocent person may roll up and say, “Well, hold on. That is my property, yes, but I wish you to hear I did not know; I was not involved; you have not offered a charge”, et cetera. And therefore the court will consider your circumstances and avoid the forfeiture.

There are other laws that articulate with forfeiture and they are related to the concepts of restitution under the Summary Courts Act and the Supreme Court of Judicature Act, where the concept of forfeiture and a minor point of restitution is considered, and those two also operate in tandem with this legislation.

Sen. Ramkissoon: And in the case where there is not forfeiture, so the courts will now say, after you say, “Hey, I am the owner, stop”, and they have decided they are not, so the court is now going to return the property to the owner who is not there—

Mr. Al-Rawi: That is exactly the case.

Sen. Ramkissoon: And the activities can continue as is?

Mr. Al-Rawi: Yes, and let us use the easiest example. A motor vehicle, a boat, some form of mobile device that was stolen. Police impound it, and they say, “Right, that is forfeited property now”. “Hold on. That is my property. It was stolen. I made a report”, et cetera. Yes, there is the restitution. And that is where the Supreme Court of Judicature Act for matters in the High Court come about, and where the Summary Courts Act for matters in the Magistracy come about as well.

Sen. Ramkissoon: But, hon. AG, you are not assisting in any kind of—

Madam Chairman: Senator, you did say two questions. That was your last question. I see Sen. Hosein has his—No, finish your question. Is this your last one?

Sen. Ramkissoon: Yes, it is just coming out of the response to that. Sorry, I did not catch your eye.

Madam Chairman: That is okay.

Sen. Ramkissoon: Now, I have to remember what—

Mr. Al-Rawi: “Hon. AG, you are not going”— Is it restitution that you had in mind?

Sen. Ramkissoon: It was in relation to the first point of the first clause which is the relation to the convicted offence now. You are continuing to allow them—the owner now has the property back. We are not putting any clause in place to say that—we want you to prevent you going forward in this way.

Mr. Al-Rawi: How can one prevent someone from doing that—

Sen. Ramkissoon: From allowing the home—

Mr. Al-Rawi:—other than the formulation of the law which we have?

Sen. Ramkissoon:—or the dwelling place to be used as a harbour for offences to be happening.

Mr. Al-Rawi: What happens if the person is genuinely intimidated? I will tell you, we are about to bring a draft of law forward for home invasion, where gang members have entered into premises, thrown people out. They are old and elderly people or afraid of the gang activity and they leave.

Sen. Ramkissoon: I want to protect them.

Mr. Al-Rawi: And so that secondary law which we have drafted is the type of law to do that.

Sen. Ramkissoon: Okay, thank you. Thank you, Madam Chair.

Madam Chairman: Sen. Hosein.

Sen. Hosein: Madam Chair, through you, it is just a very small suggestion in terms of tidying up the amendment. AG, we notice that you use the word, the “Court” throughout. I know the court can be made to be the High Court or the Magistrate Court, so I wonder if, instead of using the word, the “Court” we can use “a Judge”.

Sen. Ramkissoon: Madam Chair, while the Attorney General is—

Mr. Al-Rawi: The technocrat team—may I, Madam Chair? The technocrat team recommends that “court” will include the various functions of both the judge or magistrate because we may be dealing in two separate jurisdictions. I should indicate that—Yes, so the position is that “Court” would catch “Judge” or “Magistrate”. But interestingly, what Sen. Hosein has just caused me to observe is that we have only confined filing with the Registrar of the Supreme Court where it may be a summary matter and, therefore, I thank the hon. Senator for impliedly alerting me to something that we have just spotted. So, Madam Chair, we propose that we just cause a small modification into clause 17 and that with your leave, may I be permitted to address you on that?

Madam Chairman: At 17(3)?

Mr. Al-Rawi: We will start with 17(2). So:

“Before making an order under subsection (1)...”

Madam Chairman: It will be:

“Before the court makes an order...”

Those were your new words.

Mr. Al-Rawi: Yes, Madam Chair. Well, we had it in (1):

“The Court may order that any property”—used, commission, be forfeit.

(2) “Before making an order under subsection (1)...”

So we did not need to include “Court” there.

Madam Chairman: No. You had asked initially, AG, that—

Mr. Al-Rawi: Oh yes, I see. “They are making”. Forgive me. I am looking at the—

Madam Chairman: You deleted “making”—

Mr. Al-Rawi: Yes, “Before the Court”, yes.

Madam Chairman: “Before the Court makes an order under subsection (1)—

Mr. Al-Rawi: Correct. “Before the court makes an order under subsection (1)”. Thank you, Madam Chair. “The Registrar of the Supreme Court”—let us put the lesser functionality first. So we put in after the word “the” appearing in the first line there—so after “subsection (1), “the”, and we insert now the words, “Clerk of the Peace or the”, and it would read “Registrar of the Supreme Court of Judicature”, and then insert “as the case may be”. And then it continues. And then—if you are with me, Madam Chair, in subclause (3), again, just before the words “Registrar of the Supreme Court”, we insert “the Clerk of the Peace or”—sorry, it should not be “the” because just before Registrar “the” already appears.

So insert before “Registrar”, “Clerk of the Peace or the”. And it will read: “Registrar of the Supreme Court of Judicature as the case may be”, insert there.

And I think that is it, Madam Chair.

Question, on amendment, proposed.

Sen. Hosein: Madam Chairman, if you would just permit me, there is one issue I just want to raise. It will be very short—before we take the vote.

Madam Chairman: Did you just hear what I went through, Sen. Hosein?

Sen. Hosein: Everybody heard you.

Madam Chairman: Continue, yes.

Sen. Hosein: Thank you kindly. AG, with respect to making the distinction with the Magistrate Court and the High Court, do you want to include a prescription just like the Petty Civil Court where if the property is above the value of \$50,000, then you go to the Magistrates' Court, and if it is anything above that, then we deal with the High Court?

Mr. Al-Rawi: No. And I do understand why you are saying it. Because the value of property is tied to the manner in which we treat with the offence for anti-gang. So it may involve a very large property which is treated summarily in the Magistrates' Court. The magistrate is treating with the forfeiture provisions, but if you use the petty civil formula of above \$50,000, you are going to pitch the matter to the High Court. So it will cause transmission problems for the case. So in those circumstances, I would respectfully decline.

Sen. Hosein: So you are looking at the manner in which the charge is laid, whether it is an indictable or summary.

Mr. Al-Rawi: Yes. So John Brown is laid with a charge which is being treated with summarily, and it is a multi-million dollar mansion, which is going to be forfeited, but it is in the Summary Court. That magistrate is seized of the jurisdiction of treating with it. That forfeiture considered by the magistrate, is not something that we want to necessarily transfer. Of course, one may meet with the

position, well, the value of the property ought to be treated with by a more “serious court”. However, there is always the right of appeal which goes to the High Court and then to the Court of Appeal, and ultimately to the Privy Council. But I should tell you, this Friday we will be debating the Criminal Division, which is going to marry the two jurisdictions and take care of all of that.

Sen. Hosein: Okay, thank you, AG. Madam Chair, I do apologize.

Madam Chairman: That is okay. Sen. Ramkissoon—

Mr. Al-Rawi: He has most respect for you.

Madam Chairman: Sen. Ramkissoon, you want to—

Sen. Ramkissoon: Thank you, Madam Chair. In addition to the amendment I was hoping that we can consider further amending subclause (5) to include the words, after saying “where the Court considers it is in the interest of justice to do so”, “and determine a fine for maintenance of said property” to include what the AG has summarized, or gave the example of, where owners leave and really the Ministry of Rural Development will get some assistance in dealing with this as a State, and to deal specifically with criminal activities with gang members.

Mr. Al-Rawi: May I quickly answer? Under the Municipal Corporations Act, the local government authority has the right to take anybody to court with respect to the maintenance provisions of their property, and there is also subsidiary assistance to be found in the Environmental—the EMA legislation. If we were to prescribe it in that fashion, we would be limiting ourselves only to maintenance aspects and then intruding upon the concept of restitution and other aids to enforcement. I prefer to keep those separate in the restitution formulae that exist in the Supreme Court of Judicature Act and the Summary Courts Act, and in another formula which we are coming about very shortly on, which is in the civil asset forfeiture regime, where we treat specifically with what happens when you forfeit assets

coming out of matters such as this.

Sen. Ramkissoon: Thank you, AG. And just remember the fear factor is what you are trying to not ignore, because the fear of these things being reported is what I was trying to capture with the amendment.

Mr. Al-Rawi: Understood.

Sen. Ramkissoon: Thank you.

Madam Chairman: Okay, hon. Senators, may I please have your attention because I now have to re-read the purported amendments. So, hon. Senators, the question is that clause 17 be amended as circulated by the Attorney General and further amended as follows:

At subclause (2), by deleting the word “making” and including the words “report makes” and after the word “the” in line 1, including the words “Clerk of the Peace or the” and in line 2, after the word “Judicature”, including the words “as the case may be”.

In subclause (3), in line 3 after the word “the”, including the words “Clerk of the Peace or the” and after the word “Judicature”, including the words “as the case may be”.

Question, put and agreed to.

Clause 17, as amended, ordered to stand part of the Bill.

Clause 18.

Question proposed: That clause 18 stand part of the Bill.

After the word “Order”, insert the words “subject to affirmative resolution of Parliament,”

Madam Chairman: There is one amendment circulated and that is by you, Sen. Mark, and if you can just speak to your amendment.

Sen. Mark: Yes. Thank you very much, Madam Chair. Hon. Attorney General,

you know I follow closely in your footsteps, especially when you were here where I am now today. I know every time matters of the kind I am about to raise, the Attorney General was very strenuous and vociferous in ensuring that there was negative or affirmative resolution of the both Houses of Parliament. Although it is a 30-month cycle in terms of the sunset clause, I am suggesting, hon. Attorney General, that if you would agree with me that if there are going to be amendments to the Second Schedule through whatever orders that the Minister of National Security chooses to pursue, that that ought to be subject to some kind of arrangement at the level of the Parliament. I have submitted an affirmative, but with your leave, I am prepared to compromise with a negative, so at least we will have before us, you know, a negative resolution indicating what has taken place.

Mr. Al-Rawi: Madam Chair, I have no objection to my learned colleague's proposal for negative resolution. Affirmative may be a little bit taxing for parliamentary space, but if it is convenient to hon. Senators in the round view, I would happily agree to negative resolution.

Sen. Mark: Thank you.

Mr. Al-Rawi: So the Minister with responsibility for National Security may by Order—

Madam Chairman: Well—

Mr. Al-Rawi: Yes, Madam Chair.

Madam Chairman:—we have Sen. Mark's version which I will just further amend.

Mr. Al-Rawi: Yes, please.

Madam Chairman: Hon. Senators, the question is that clause 18 be amended as circulated by Sen. Mark and further amended by deleting the word “affirmative” and substituting the word “negative”.

Question put and agreed to.

Clause 18, as amended, ordered to stand part of the Bill.

5.20 p.m.

Clause 19.

Question proposed: That clause 19 stand part of the Bill.

Madam Chairman: Sen. Shrikissoon, there is an amendment on your behalf for clause 19.

Sen. Shrikissoon: Thank you, Madam Chair. [*Crosstalk*] I know this one is a contentious one, but my only reason for looking at this—

Mr. Al-Rawi: Prorogation of passing it.

Sen. Shrikissoon: Yes, the Eleventh Parliament, and given that there is a lot of work being done here and just to lose it, or the possibility of it being lost at that time is of concern to me because I think the Bill is a good one, and then we have had a lot of expressions from Senators, or contributions, indicating their willingness to support, but knowing that there is a sunset clause and we may be able to come back to it, and if it is lost at that time we may lose that opportunity, and that is my only reason.

Mr. Al-Rawi: I thank Sen. Shrikissoon for recognizing the difficulties. So difficult was the concept of a sunset clause in the House of Representatives that we went through as a nation, a significant amount of difficulty and time lost. The effect of having the two and a half-year period is that a Government will have to come long before the two and a half-year period to debate the continuation of the law, lest one walk with the albatross of having had it collapse in the middle of an election campaign. So in the circumstances, because the two leaders of the respective political parties, which the Opposition and Government fall under, have agreed to the time frame as done. In other words then, it is not within my pay

grade to move away from the formula prescribed by them. May I respectfully ask for it to stay as it is? I do well expect that we will have to be back here debating this long before the 30-month period has passed.

Sen. Shrikissoon: Thank you, hon. AG. So with the intent that we would be able to revisit it before the Eleventh Parliament has come to an end, I do respectfully withdraw as well.

Amendment [Sen. Shrikissoon] withdrawn.

Mr. Al-Rawi: Thank you.

Question put and agreed to.

Clause 19 ordered to stand part of the Bill.

New clause 15.

Madam Chairman: Hon. Senators, there are two new clauses proposed. Sen. Ramkissoon has circulated new clause 15, and Sen. Shrikissoon has circulated a new clause 16, and the Attorney General has a new clause 15.

Sen. Ramkissoon: Thank you, Madam Chair. Just explain or I have to read it?

Madam Chairman: Just explain.

Sen. Ramkissoon: Firstly, let me say thank you to the Attorney General for accepting my submission and expounding on it. My only reason for not totally withdrawing it is because I did not agree with his subclause (4) of clause 15. I did not understand why he would have inserted that subclause (4) because you can only be charged for tipping off if you know or suspect, and then the clause says if you provide “that he did not know”. So there is no need to say that because you have already said in (1), that you can only be charged for tipping off, if you “knows or suspects”. So, Madam Chair that is basically it.

Mr. Al-Rawi: Yes please, Madam Chair. I thank Sen. Ramkissoon for bringing forward a very important recommendation to this Bill. I think if the hon. Senator

were to look back many, many years from now when she is not a young lady, she will say that she has left her mark on the laws of Trinidad and Tobago and I compliment her for that. Madam Chair, the rationale for the inclusion of the subclause (4), even though we are not discussing the amendment by the Government, is because we kept within the parameters of the known law. So the concept of tipping off as a characteristic of our laws is to be found in the Proceeds of Crime Act. In the Proceeds of Crime Act we have in section 51 the tipping off phenomenon, and specifically that defence for a person charged with an offence to prove that he did not know or suspect that the disclosure was likely to be prejudicial to an investigation or proposed investigation it is known and, therefore, there has been experience in relation to it.

There was a significant amount of debate when we looked back—I looked back at some of the *Hansard* on the debate on the Proceeds of Crime Act and the qualifications for the functionalities of the attorneys at law, and the exceptions to disclosure which we have included in borrowing from section 51 had that particular point because parliamentarians felt that there could be mischief incorporated if that defence. Mind you, we are proposing that that is subjected to the defendant proving in a reversal of burden position on a balance of probabilities this particular point. So number one, it is known to the law in section 51 of the Proceeds of Crime Act; number two, there is jurisprudence which backs the operability of that clause, standing as law from the year 2009 to today's date; and number three, it is intended to provide some degree of proportionality to what could otherwise be exploited and abused as an offence.

Sen. Ramkissoon: Thank you, Attorney General. I did look at 51(6) that did say this, but in relation to the tipping off in your subclause (1), it says that:

“A person who—

- (a) knows or suspects that a police officer is acting...in connection with an investigation..."

In order to even use this charge, Madam Chair, through you, you had to have a suspicion, and then you want to—in subclause (4), it says:

“It is a defence for a person charged with an offence...subsection (1) if he proves that he did not...”

So you just would not be charged.

Mr. Al-Rawi: Yes, but the—

Sen. Ramkissoo: And I see your point with 51(6), but it also refers to (1), (2) and (3) in the Proceeds of Crime Act.

Mr. Al-Rawi: So the Proceeds of Crime Act was a little bit different because of what proceeds of crime dealt with. So that was a very narrow subset, that Proceeds of Crime Act. However, the defence for a person charged if he proves that he did not know or suspect that a disclosure was likely to be prejudicial to the investigation was to take care of the fact, “Well, okay, I knew. I thought that I could disclose it because it was non-prejudicial. I was a fellow policeman acting alongside that other policeman when it; I was reporting to a different unit. I did disclose it, but I did not know it would be prejudicial.” That sort of formula is meant to catch the innocent infringer, to provide an opportunity for the innocent infringer.

So there is merit in borrowing from 51(6) of the Proceeds of Crime Act to facilitate a defence for an innocent infringer, lest everyone in the station who was acting in joint operation, the TTPS acting with the defence force, or acting with the SSA, there may be disclosure inside of there that one may find oneself facing, and you may in fact find a wicked colleague who wishes to press a charge against you when circumstances could have otherwise exculpated you. So for all of those

reasons, providing the reversal burden proof that you did not know it would be prejudicial, you had a reason for disclosing it; I knew, but I had a reason for it, it provides for better proportionality.

Sen. Ramkissoon: Okay, Madam Chair, but I just do not understand a scenario.

Madam Chairman: Sen. Ramkissoon, I am not hearing you.

Sen. Ramkissoon: Oh, sorry. I cannot think of scenarios that you can be an innocent tipper off.

Mr. Al-Rawi: I just gave you an example.

Sen. Ramkissoon: I just cannot understand that, the example that you gave. That is all. So I would have said that I did not support subclause (4), but from the explanation and the—

Mr. Al-Rawi: Hold on. Madam Chair, I think it is perhaps important. A person who knows that a police officer is acting or proposing to act in connection with an investigation, which is about to be conducted for an offence in anti-gang, and discloses to any other person information, commits an offence. A cooperative, a policeman who tells another policeman something for a different purpose that is associated, will be tripped in this offence. So therefore, it is important to take care of the joint task force operation, and in those circumstances it is fairly important to paint out the fact that it is quite easy for coordinating teams to run afoul of this law, and that is the reason for the subclause (4) that we propose.

Madam Chairman: Sen. Ramkissoon, are you pursuing your amendment, your clause?

Sen. Ramkissoon: Madam Chair, it was absorbed in the Attorney General's submission.

Madam Chairman: So you are withdrawing?

Sen. Ramkissoon: Yes.

Amendment [Sen. Ramkissoo] withdrawn.

Madam Chairman: Hon. Senators, I just want to do this properly.

New clause 15 read a first time.

A. Insert after clause 14, the following new clause:

“Tipping- 15. (1) A person who—
 off (a) knows or suspects that a police officer is acting, or is proposing to act, in connection with an investigation which is being, or is about to be, conducted into an offence under this Act; and
 (b) discloses to any other person information or any other matter which is likely to prejudice that investigation, or proposed investigation,
 commits an offence and is liable on conviction on
 Indictment to a fine of one hundred thousand dollars and to imprisonment for twenty years.

(2) Nothing in subsection (1) makes it an offence for a professional legal adviser to disclose any information or other matter—

(a) to, or to a representative of, a client of his in connection with the giving by the adviser of legal advice to the client; or

(b) to any person—

- (i) in contemplation of, or in connection with, legal proceedings; and
- (ii) for the purpose of those proceedings

(3) Subsection (2) does not apply in relation to any information or other matter which is disclosed with a view to furthering any criminal purpose.

(4) It is a defence for a person charged with an offence under subsection (1) if he proves that he did not know or suspect that the disclosure was likely to be prejudicial to the investigation or proposed investigation.”.

B. Renumber the clauses accordingly.

Question proposed: That the new clause 15, as circulated by the Attorney General, be read a second time.

Madam Chairman: Sen. Hosein, you wanted to say something?

Sen. Hosein: Thank you very much, Madam Chair. To the Attorney General: AG, I do not know if it is in the drafting, but it is very difficult to understand subclause (2) of the new provision, can you just shed some light on this please?

Mr. Al-Rawi: Thank you. May I?

Madam Chairman: Yes?

Mr. Al-Rawi: Thank you, Sen. Hosein, and Madam Chair. We borrowed directly from the language of POCA in section 51. So 51(1), of course, the knowledge and

then there is the disclosure, commission of offence.

In (2):

“Nothing in...(1) makes it an offence for a professional legal adviser to disclose any information or other matter—

(a) to, or to a representative of, a client of his in connection with the giving by the adviser of legal advice to the client; or

(b) to any person—

(i) in contemplation of, or in connection with, legal proceedings; and

(ii) for the purpose of those proceedings.

(3) Subsection (2) does not apply...to any information or other matter which is disclosed with a view to furthering any criminal purpose.”

So what we are doing in (2), borrowing from POCA, is ensuring that where a legal adviser is seized of the information and discloses that information to his client, or to other persons involved with a different side of the investigation, as we will have shortly under, for instance, civil assets forfeiture which is a civil remedy, that we do not find that the legal adviser is caught under the disclosure provision. So we wanted to make sure that that privilege which attorneys have is maintained expressly in the law.

Sen. Hosein: So if an attorney has information regarding tipping off, they can freely share it with their client?

Mr. Al-Rawi: If the attorney is advising the client in relation to the matter. If the attorney is furthering a crime, then that is where subclause (3) comes in, where:

“Subsection (2) does not apply in relation to any information or other matter which is disclosed with a view to furthering any criminal purpose.”

Sen. Hosein: But would any communication between attorney and client not be

cloaked under confidentiality and privilege?

Mr. Al-Rawi: Yes, and LPP operates so that the attorney cannot reveal that which the client has told him or her unless the client expressly provides consent for the purpose. But that is a different end of the equation. We did not want to risk in form or fashion a wicked charge coming against a lawyer because a lawyer acted in-between the process. The rights of the advisory capacity of the lawyer, as Sen. Chote pointed out a little while ago, that constitutional right to have your attorney, that had to be protected and it is, of course, a feature in the Proceeds of Crime, section 51.

Sen. Hosein: Thank you.

Question put and agreed to.

Question proposed: That new clause 15 be added to the Bill.

Question put and agreed to.

New clause 15 added to the Bill.

New clause 16.

Sen. Shrikissoon: Thank you, Madam Chair. To the hon. Attorney General: I just considered the possibility of including DNA into this—

Mr. Al-Rawi: May I quickly respond? Having just have had the benefit of debating the DNA regs on Monday, it is now foremost in my mind. This provision is part of the existing law specifically under section 13 of the DNA Act, which actually is a little bit broader than that suggested in your draft, where any suspect, detainee, et cetera, there is an automatic provision of sample without consent and it is non-intimate. So it is a feature of the Administration of Justice (Deoxyribonucleic Acid) Act, 2012.

Sen. Shrikissoon: Thank you, hon. Attorney General. So once it could be considered here in terms of being—

Mr. Al-Rawi: So what I was saying is that there is no need to put it here because that law kicks in.

Sen. Shrikissoon: Okay. Excellent. So, Madam Chair, I can withdraw the amendment.

Madam Chairman: So you are withdrawing?

Sen. Shrikissoon: Yes.

Amendment [Sen. Shrikissoon] withdrawn.

First Schedule.

Insert after item 28, the following new items:

- “29. Offences under the Prevention of Corruption Act
30. Offences under the Trafficking in Persons Act
31. Misbehaviour in public office
32. Offences under the Gambling and Betting Act
33. Attempting to blow up a building with the intent to do any bodily injury to any person
34. Manslaughter
35. Hijacking
36. Hostage-taking
37. Causing or inciting prostitution
38. Controlling a child prostitute
39. Causing or inciting a child to engage in sexual activity
40. Offences relating to dangerous drugs under the Children Act
41. Offences relating to child pornography under the Children Act
42. The keeping or management of a brothel
43. Detention of a person in a brothel

44. Procuration for the purpose of prostitution
45. Living on the earnings of prostitution
46. Meeting a child following sexual grooming.”

Question proposed: That the First Schedule stand part of the Bill.

Madam Chairman: Sen. Mark.

Sen. Mark: No, I had raised these two Forms when I was dealing with my amendment and the AG had answered.

Madam Chairman: So these are withdraw?

Amendment (Second Schedule), [Sen. Mark] withdrawn.

Mr. Al-Rawi: I do have amendments to schedule one.

Sen. Mark: Did I withdraw them, Ma'am? Madam Chair, did I withdraw?

Madam Chairman: There was a vote on that.

Sen. Mark: There was a vote? Yes, I remember.

Mr. Al-Rawi: Madam Chair, may I address you on schedule one? Madam Chair, we have circulated some improvements to schedule one by adding the listed matters from Nos. 29 to 46, inclusive. This was specifically to take care of observations, in particular from Sen. Chote who put it very elegantly, that we should move away from what is referred to as street gang activity, criminal street gangs. We have added in the electronic/commercial side of it by including the Prevention of Corruption Act, the Trafficking in Persons Act, misbehaviour in public office, Gambling and Betting Act—

Sen. Mark: Before you move on, could you clarify for us why this particular law is here, “Misbehaviour in public office”, and could you show us the relationship between that and the Anti-Gang Bill; and you are referring to what?

Mr. Al-Rawi: Yes. For the misbehaviour by the police in particular, by the law enforcement authorities, in the event that they had acted in an improper fashion, or

where there was a linkage back to that abominable unknown person who actually held public office. Somebody in customs without being pejorative to them who was causing facilitation or other matters. Immigration running brothels and gang activity, trafficking in persons, et cetera, those were all persons in public life that we could probably catch from that end of it and then take it back.

Sen. Mark: Okay.

Mr. Al-Rawi: Madam Chair, we have also lifted out—well we have added in “Manslaughter”. Sen. Chote was kind enough to clarify the caution which I had, to address the caution which I had between voluntary and involuntary and we were grateful for that. We have added in “Hijacking”, “Hostage-taking”, prostitution, child prostitution, “Causing or inciting a child to engage in sex activity”, “Offences relating to dangerous drugs under the Children Act”, “Offences relating to child pornography under Children Act”, “keeping or management of a brothel”, “Detention of a person in a brothel”, “Procuration for the purposes of prostitution”, “Living on the earnings of prostitution”, “Meeting a child following sexual grooming”. So we lifted out of the parent laws these particular offences so that we could broaden the purview beyond the street gang activity as hon Senators had cautioned we should.

Sen. Mark: Attorney General, and I would also assume that what you have just said earlier would be related to item 29 “Offences under the Prevention of Corruption Act”?

Mr. Al-Rawi: Yes, Sir.

Sen. Mark: So whether it comes from these law enforcement agencies or whatever.

Mr. Al-Rawi: Yes.

Sen. Mark: Right, I follow.

Sen. Raffoul: Thank you. I want to ask about number 8 on the schedule, “Counselling a gang leader, gang member or gang”, would counselling include religious counselling or psychosocial counselling, or something that could be trying to support someone moving away from gang activity?

Mr. Al-Rawi: It is specifically from clause 9 of the Bill, which is counselling a gang. So what this refers to is the offences in the Act itself as included in the schedule. So counselling is directly in reference to clause 9 of the Bill.

Sen. Raffoul: Thank you.

Mr. Al-Rawi: And no, it does not. Counselling is defined as a person knowingly counsels a gang leader in furtherance of its participation in involvement. So if the religious counselling was yes, go forward and continue your gang activity, kill people, rape, murder, promote some obscene calls, well then, yes, if you happen to be a priest, or pundit, or an imam who is doing that, or a layman, well then you would be caught. But if you are doing something else, well then it is not within the definition of clause 9.

Sen. Raffoul: So it is in furtherance of criminal activity.

Mr. Al-Rawi: Yes.

Sen. Raffoul: Thank you.

Sen. Dr. Mahabir: Thank you very much, Madam Chair. I was just wondering, what is the reason for not including money laundering, which to my mind is a major gang-related activity that is not—

Mr. Al-Rawi: That is under the Proceeds of Crime Act. Sections 43, 44 and 45 of POCA.

Sen. Dr. Mahabir: Very well. Thank you very much, it is included. Hon. Attorney General, and through you, Madam Chairman, I looked at the law itself and a gang-related activity indicated that it must be directed by a gang leader—that

is under the definition section—and when I see say 13 listed in First Schedule, “Threatening to publish with intent to extort”, it has to be that in order for this particular crime to be prosecuted it has to be under the direction of a gang leader, and that in my mind “Threatening to publish with intent to extort” may be more of an individual activity. So that I cannot see the connection between a gang-related activity and “Threatening to publish with intent to extort”.

Mr. Al-Rawi: May I correct a misconception that you may have—

Sen. Dr. Mahabir: Yes.

Mr. Al-Rawi:—or may be operating under? Most respectfully, through you, Madam Chair:

“gang-related activity means—

- (a) an offence;
- (b) an attempt to commit an offence;
- (c) aiding, abetting” et cetera—“of an offence;
- (d) a conspiracy to commit an offence,”

Here is the chasseur:

“listed in the First Schedule, which a gang leader or gang member plans, directs, orders, authorizes, or requests;”

So it does not require the expressed operations solely of the gang leader. Any other gang member, this is, more than one, acting in purpose for the scheduled matters will suffice

Sen. Dr. Mahabir: Okay. So basically under 22 and 23, I had a concern with “Rape” and “Grievous sexual assault” entering into the Schedule, it has to be directed by a gang member or a gang leader.

Mr. Al-Rawi: So if they committed the offence of rape, in conjunction with a gang member, two or more of them, or through the counselling or procuring, et

cetera, then they would be caught.

Sen. Dr. Mahabir: Okay. Very well. You see I also had a concern with respect to misbehavior in public office. You see, hon. Attorney General, we are giving the police wide powers and powers to enter without warrants into any places other than a home in which persons who have been accused of these crimes may be found, and when I look at some of these items, the misbehavior in public office, immediately I thought well is the police going to be looking at public officials and elected officials, Members of Parliament who are—

Mr. Al-Rawi: If they are involved in gang activity, yes.

Sen. Dr. Mahabir: Okay. If there is an assumption that they are involved in gang activity.

Mr. Al-Rawi: If there is evidence.

Sen. Dr. Mahabir: Okay.

Mr. Al-Rawi: If I may remind you, hon. Senator, in 90 per cent of these matters you are going to have the supervision of the Director of Public Prosecutions who under section 90 of the Constitution has a sole discretion to even go so far as to enter a nolle prosequi. So let us assume that a matter was actually incepted, let say under a private indictable for some reason, the Director of Public Prosecutions has a supervisory function that still acts as a safeguard in these circumstances.

Sen. Dr. Mahabir: Okay, and the last one that concerned me was “Meeting a child following sexual grooming”. Again, I thought that this was more of an individual activity from an individual who is engaged in an anti-social behavior as opposed to a gang-related behavior. Could you indicate for my own edification why this particular offence is in the First Schedule?

Mr. Al-Rawi: So sexual grooming is a defined offence under the Children Act. We could not do a reference to any offence under the Children Act because that

could include children in need of care or supervision that could include parental neglect, et cetera. So we went instead for the severe offences appearing under the Children Act and sexual grooming was one of those offences which found itself within the definition of that Act, in the type of activity that we see on our streets.

In fact, Sen. Huggins was really the origin of this thought, where he referred to children, young ladies in particular, who find themselves inculcated into gang activity. As he put it, usually the 'most pretty' ones in the village or community, and they are most usually when you look to the circumstances the victims of sexual grooming, and it was to specifically cause focus upon that activity. If you look at the vast number of bad boy videos circulating in Trinidad and Tobago, gold and bling and flash, it is usually in the company of some rather attractive young women. How do we treat with separating that functionality? This is one of the measures.

Sen. Dr. Mahabir: Okay. Very well. Thanks.

Sen. Richards: Hon. Attorney General, through you, Madam Chair: AG do you see the listed provisions as including in any way gang initiation rituals inclusive of sex acts? Because in many jurisdictions we have seen that sort of scenario play out, and not necessary with minors, but—

Mr. Al-Rawi: Actually, Sen. Richards is referring, Madam Chair, to something which astounded me in the United Kingdom. There was a gang ritual activity which involved the rape of almost 1,000 young boys and girls in the United Kingdom. I was shocked to learn that that was in fact the case, and it was a gang ritual activity in a metropolis environment in a First World country. So Sen. Richards is referring to something which is serious.

Thankfully, Sen. Shrikissoon added in an act of initiation into clause 6 where we have added that. That is why I found it so persuasive, the

recommendation made by my learned friend and, therefore, I can say that now, conclusively, notwithstanding the fact that it is not scheduled, it is certainly caught by the new clause 6(1)(d) if I remember the numbering correctly. The new (c).

Sen. Richards: Okay, thank you.

Sen. Mark: Attorney General, what about the matter of trafficking in arms and ammunition? Apart from selling or being in possession of arms and ammunition and using it to commit crimes, you know you have a very brisk trade between Venezuela and Trinidad and Tobago, food for guns. So you could have gangs organizing food in exchange for arms and ammunition.

So I am not seeing it captured here.

5.50 p.m.

Mr. Al-Rawi: You are correct. I am not aware, maybe Sen. Chote can assist me. I am not aware of an actual common law or statutory offence of trafficking in arms and ammunition, I am aware of possession of arms and ammunition, but I am not aware of as a feature of law of that. I can be guided by that. I do not know it as a concept under our law per se.

Sen. Mark: Could anybody guide us on that?

Mr. Al-Rawi: Sen. Chote, through you, Madam Chair?

Sen. Chote SC: Through you, Madam Chairman, perhaps I should say to the best of my knowledge, without consulting the Firearms Act, I cannot say that I have ever seen a criminalization of trafficking in firearms as we have for narcotics, nor have I ever seen such a charge laid.

Sen. Mark: Now the only reason I am raising this, Madam Chair, is that we live in a dynamic environment, and Attorney General, you are aware of what is taking place right in this environment.

Mr. Al-Rawi: I am sorry to interrupt. May I just say Sen. Mark, through you,

Madam Chair, I undertake to look at that by way of proposed amendments to other law. I think that it is something that is very interesting and can perhaps be in our firearms legislation per se. I think it is a good thought.

Sen. Mark: Now the final thing I would like to raise—

Sen. Chote SC: Sorry. If I could just make one small contribution. I think that we may get some benefit by looking at the Customs Act, because maybe, that kind of operation would fall or be criminalized under that piece of legislation.

Mr. Al-Rawi: Thank you. Thank you, hon. Senators, I will look at it.

Sen. Mark: Attorney General, I just wanted to advise that seeing that this product that we are dealing with, although we are in the Senate, you kept emphasizing it was the effort of the Opposition and the Government and so on. I wanted to ask whether you had consultation with the Leader of the Opposition as it relates to item 29 to 46, or were these newly inserted provisions without the Leader of the Opposition's consultation. Because I do not want this legislation to go sour in the context of any untoward development. There are areas that I see here that may raise red flags, as I told you a short while ago. So I just wanted to know if you had consultation and I hope that you do or you did so that the Opposition Leader and the Opposition would have been able to see these things before.

Mr. Al-Rawi: Madam Chair, may I? I find the question rather interesting. I will be polite. It is for that very reason that I circulated the amendments days ago and provided track change versions, circulated amendments, et cetera. I understand the system of party politics to operate such that I will consult within my own ranks and not necessarily without my own ranks, and therefore I would hope that Sen. Mark can answer his own question, because I did provide Senators opposite with this material. I caucused on our team, I provided it to the entire Independent Bench days in advance, so this has not come as a surprise to anyone, this inclusion of

position. So I do hope there is some form of unanimity across the floor. So to answer your question, no, I have not consulted with the Leader of the Opposition nor would I dare to.

Madam Chairman: Okay, at this stage, hon. Senators, the question is that the First Schedule be amended as circulated by the Attorney General.

Question put and agreed to.

First Schedule, as amended, ordered to stand part of the Bill.

Second Schedule.

Question proposed: That the Second Schedule stand part of the Bill.

A. In Form 1-

- (1) delete the word “16” and substitute the word “17” in each place it occurs; and
- (2) in the Certificate of truth, delete the word “believe” and substitute the words “swear to the best of my knowledge, information and belief”.

B. Insert after Form 1, the following new form:

FORM 2 [Section 18(3)]

NOTIFICATION OF INTEREST

Take notice that I of, make oath and say that I am [the lawful owner of/ the person with an interest in] the following property hereinafter identified

.....
[state the nature and amount of, and type of interest in, the property]

Sworn by the above-named at on the day of, 20....

[In the case of a company, the corporate seal is to be affixed and attested to.]

Signed:.....”.

(The applicant)

Madam Chairman: Attorney General, you have circulated the amendments?

Mr. Al-Rawi: Madam Chair, if I may for the record, taking avail of the inclusion of evidence upon oath, we have caused an amendment for consideration to the Form 1 attached to the Second Schedule, which is the application for detention order, where we put in the “Certificate of Truth” at the footer of the Form, that:

I swear to the best of my knowledge, information and belief, the contents of this application are true.

Secondly, we have caused an amendment to Form 2—or sorry, we have caused an introduction of a new form to the Second Schedule where we set out the prescribed form for the expression of interest in property pursuant to clause 17 of the Act and this is to meet with the forfeiture of property provisions. Thank you.

Madam Chairman: Sen. Shrikissoon, you also have a—

Sen. Shrikissoon: Thank you, but the Form was addressed in the contribution of the Attorney General. I think it was clause 16 with the Detention Order on the entry into the station diary.

Madam Chairman: All right, sure. So having withdrawn that particular amendment—yes, okay. So it is formally withdrawn in anyway.

Amendment [Sen. T. Shrikissoon] withdrawn.

Mr. Al-Rawi: Madam Chair, may I just cause a small adjustment to the Form 1, as I look at it more carefully. In the Form 1, if we look at it together:

I...hereby apply under section so and so of the Anti-Gang Act for Detention Order

Please strike the words “in favour of” and insert “against” and that would be it.

Sen. Creese: Madam Chair, it opens with:

Republic of Trinidad and Tobago

In the County of

And I have a problem with “County”.

Mr. Al-Rawi: It is the magisterial jurisdiction formula. So the application goes to a magistrate. Magistrates are set up with divisions which are done by way of county. So the magisterial court is in the County of St. George West, in the County of X, in the County of Y, so that is the formula which must be operationalized here.

Sen. Creese: Trinidad has no counties.

Mr. Al-Rawi: No, we do have Counties, Sen. Creese.

Sen. Chote SC: I think counties had been changed to another word but what happens is that when the information and the complaints are filled out, they still say in the County of Victoria, County of St. George based on where—

Mr. Al-Rawi: Yes. Well there was a whole—in fact, it may come up in the debate which is next coming in that land and building taxes, municipal corporation, et cetera, et cetera, formula, this is an congruity which is about to be solved in a more holistic way. [*Crosstalk*] No, no, unfortunately, we have to leave it and then it will cascade back when the other changes come.

Sen. Ameen: Madam Chairman, I think because the laws with regards to these boundaries were changed way back in 1990, gradually you have to phase out the use of County, and even for instance of the EBC and so on, they now use “in the region of” instead of “in the County of” and then you fill in the blanks. So there is no—I do not know if the AG has a reason for wanting to stick to it.

Mr. Al-Rawi: Yes I do because in the Criminal Division Bill which is on the floor of the Parliament for debate this Friday, we will be treating with the whole merger of Magistracy and High Court and in fact, we will be reformulating how the Magistracy works entirely. So that all of that will be rearranged. So the Judiciary

is going to organize that particular aspect and then we will reformulate how we treat with these things.

Sen. Ameen: So is it that the Judiciary wishes to retain the non-existent county boundaries?

Mr. Al-Rawi: It is not non-existent. It is existent.

Sen. Ameen: Yes. Well, is it that they wish to retain the boundaries from the old municipal separation?

Mr. Al-Rawi: What is important to remember is that the 17 Magistrates' Courts, that is 14 of them and three out courts—14 and three, those structures are done by the Judiciary under the Supreme Court of Judicature Act and the Summary Courts Act and they have divided themselves actually into counties. That is the judicial set up of its position. Counties still apply and I say so because in conveyancing, you still work with ward reference and in some instances county reference for certain purposes as it relates to municipal corporation or land and building taxes or valuation of land formulae. So I agree, it is in a mess. Which law applies and how it is going to be done, it is going to be sorted out in the local government legislation, but from a jurisdictional court perspective, it will be treated with under the criminal division arrangements that we will do very shortly, as soon as this Friday.

Madam Chairman: Sen. Mark.

Sen. Mark: Attorney General. Madam Chair, I know that we have closed off on a particular matter here but I really do not want to cause any unnecessary delay, but I wanted to ask the Attorney General—well I want to ask the Chair—

Madam Chairman: Sen. Mark, are we dealing with the Second Schedule?

Sen. Mark: And this is what I wanted to ask you, if development has taken place and that has cause me to ask if I could seek you indulgence.

Madam Chairman: What exactly is the nature of the indulgence?

Sen. Mark: I would like to go back to First Schedule with your leave?

Madam Chairman: Does it impact the Second Schedule if you go back to First Schedule?

Sen. Mark: Yes. And it is a very serious matter and I wanted to ask you if you could let us spend for a 10 minutes—

Madam Chairman: No. I am trying to let us arrive at a certain point in this Bill and then we will come back, we will take a break, we will come back because there are two clauses that have been deferred. [*Interruption*] Three clauses that have been deferred and I am trying to manage this process.

Sen. Mark: And I know that you have been doing—I must tell you, hon. Chair, you have been doing an excellent job. [*Laughter and crosstalk*] I must tell that you have been doing an excellent job and I want to thank you. I want to thank you very much. [*Desk thumping*]

But, Madam Chair, I just want to engage, to seek your indulgence, and the Attorney General's approval, if we can just revisit First Schedule. I want to talk to the Attorney General when we break for a little while. A very serious matter has occurred.

Madam Chairman: All right. Here is what we will do. I will not announce a rescission just yet. Let the discussions take place when we take the break and subject to those discussions, I will then make a decision as to whether we go back. But I do think that we should finish the Second Schedule.

Sen. Mark: Thank you. I have no problem with the Second Schedule, Ma'am.

Madam Chairman: Okay. Are there any other comments with respect to the Second Schedule and the amendments proposed by the hon. Attorney General?

Sen. Mark: Yes.

Madam Chairman: You have a comment?

Sen. Mark: No, I am in total support of you, Madam Chair, on this matter.

Madam Chairman: So, hon. Senators, the question is that the Second Schedule be amended as circulated by the Attorney General and further amended by deleting the words “in favour of” after the word “order” and substituting the word “against”.

Question put and agreed to.

Second Schedule, as amended, ordered to stand part of the Bill.

Madam Chairman: Hon. Senators, at this stage, we will suspend the sitting of the Committee and because I am such a generous person and because we have done such good work, we will resume at 6.45 p.m.

6.05 p.m.: *Committee suspended.*

6.45 p.m.: *Committee resumed.*

Madam Chairman: Hon. Senators, welcome back. Attorney General, there was to be some discussions with you and Sen. Mark.

Mr. Al-Rawi: Yes, Madam Chair. I am awaiting instructions in relation to some of the proposals. May I humbly recommend that in the meanwhile, we still have a little time, that we consider, Madam Chair, we have had an opportunity on the Government's end to consider improving the language to the clauses which we stood down whenever we get to them, 4, 6 and 8, and we potentially have a solution to those.

Madam Chairman: So we will go in the chronological order.

Clause 4 reintroduced.

Mr. Al-Rawi: Yes, Madam Chair, should it please you, we had two recommendations in clause 4 to really look at. The first one was with respect to the definition of law enforcement, and in the proposal for the insertion of

paragraph (f) in law enforcement, what was originally circulated included:

a protective service agency as defined under the Supplemental Police Act;
Sen. Ramdeen, Sen. Chote expressed the view that because of the unregulated aspect of the corporations that may be involved there, that we limit ourselves instead to the constable aspects. So, in those circumstances, we are proposing that we use instead the following words. So (f) would read as follows.

Madam Chairman: Okay, so you are amended (f)?

Mr. Al-Rawi: Yes, Ma'am. That which was circulated and we are amending it by reading instead:

a constable

So we are striking the words "a protective service agency" and we are just inserting instead there "a constable" and the rest would continue "as defined under the Supplemental Police Act;" and which is circulated there.

Madam Chairman: Semicolon?

Mr. Al-Rawi: Forgive me, semicolon. So that removes the offending bit which was the companies which could have been brought to life under protective service agency.

We propose that in the definition of "school" that we delete the words "an orphanage" and substitute the words "a community residence, as defined under the Children's Community Residences, Foster Care and Nurseries Act". And what I could say, for the benefit of Members, is that a community residence as defined under that Act includes the two categories: a children's home and a child rehabilitation centre. So that takes care of the observation from my learned colleague, Sen. Ramdeen which I thank him for. Those would, therefore, be in the round of amendments that we propose to clause 4 subject to hon. Members' consideration.

Madam Chairman: Hon. Senators, any comments on the proposed amendments to clause 4? [*Crosstalk*] Okay. So, hon. Senators, the Attorney General had circulated an amendment to clause 4 and he is seeking a further amendment. So clause 4 will be amended, if we look at the Attorney General's amendment, further amended at sub (2) after paragraph (e) insert the following new paragraph (f):

Remove the words "a protective service agency" and substitute "a constable".

So it will now read:

a constable as defined under the Supplemental Police Act; and

And then, further amended at "school", which will now—if we go to the parent Act, the Bill, "school" includes delete the words "an orphanage" and substitute the following words:

"school" includes a community residence as defined under the Children's Community Residences, Foster Care and Nurseries Act

Mr. Al-Rawi: Yes, Ma'am.

Madam Chairman: Any questions or comments? Sen. Richards.

Sen. Richards: Thank you, Madam Chair, through you to the AG, do these amendments also cover, based on your knowledge, situations where authorized persons take children in their care out to locations which may not be covered in this, like field trips?

Mr. Al-Rawi: I see, so a school bus which goes to X place, you mean in that circumstance?

Sen. Richards: That sort of circumstance.

Mr. Al-Rawi: No, it does not. What the law seeks to capture is the traditional places. The gang members that may be predators hanging out and around schools at particular locations, and more particularly, with the improvements that we have

just added in for children's home and child rehabilitation centres. Those lads and lasses, as they used to be called under YODA, the Young Offenders Detention Act, those lads and lasses who are prone to be indoctrinated into gang activity, so it does not specifically include the field trips and other areas.

Sen. Richards: Do any of our existing pieces of legislation cover those? Given the fact that we have to understand that gang leaders are becoming increasingly creative and we want to be able to cover as much as possible—it will never be perfect as you rightly say on many occasions—situations where children constantly go to certain locations for field trips and may be vulnerable in those circumstances, although it may be for a limited time.

Mr. Al-Rawi: Regrettably no, because the occasion of school excursions is unpredictable and goes from school to school. One of the tenets of draft—I am sorry, Madam Chair, through you, of course. One of the tenets of drafting is that there must be certainty in the interpretation of the law. So it was a little bit difficult to chain that aim inside of wording which would catch that lest it be too broad a perspective.

Sen. Richards: Appreciate it.

Madam Chairman: Hon. Senators, the question is that clause 4 be amended as circulated by the Attorney General and further amended as follows at subclause (2) (f), delete the words “a protective service agency” and substitute the words “a constable” and under the definition of “school”, delete the words “an orphanage” and substitute “a community residence as defined under the Children's Community Residences, Foster Care and Nurseries Act”.

Question put and agreed to.

Clause 4, as amended, ordered to stand part of the Bill.

Clause 6 reintroduced.

Madam Speaker: Attorney General, just to remind you that 6(1) and 6(2)—no, 6(3) has already been approved.

Mr. Al-Rawi: Yes, Madam Chair. I was under the impression that 2 was approved but that (3) was not. So (2) is where we dealt with gang leader.

Madam Chairman: We made no change to (2).

Mr. Al-Rawi: Correct so I was under the view that it was accepted.

Madam Chairman: No.

Mr. Al-Rawi: It was not?

Madam Chairman: There were concerns raised about the sentence.

Mr. Al-Rawi: Right, and then Madam Chair, we went away to look at (3).

Madam Chairman: No, we actually approved (3). Yes, you remember? A person—*[Interruption]* All right, Members, please. I am sorry, this is quite difficult and it is hard to concentrate with the noise. Okay. At (3), we had amended (3) and approved it.

Mr. Al-Rawi: Would you mind reading what (3) was amended to, Madam Chair?

Madam Chairman: Sure. A person who commits an offence under subsection (1)(b), (c) or (d) is liable in the case of a first offence on summary conviction to imprisonment for 10 years and in the case of a subsequent offence on conviction to imprisonment for 20 years.

Mr. Al-Rawi: Okay, thank you, Madam Chair.

Madam Chairman: But I will say that if changes are to be made for the flow of clause 6, then let us deal with it.

Mr. Al-Rawi: No, Madam Chair, I am fine with that.

Madam Chairman: With (3)?

Mr. Al-Rawi: Yes.

Madam Chairman: Okay.

Mr. Al-Rawi: I was just under a mistaken view and I am corrected. Okay? So, Madam Chair, we only had subclause (2) then so far and then (4) and (5) would flow. Correct?

Madam Chairman: Yeah.

Mr. Al-Rawi: Yes, Ma'am. In respect of subclause (2), that is 6(2), Madam Chair, we looked at the debate, there were very good recommendations coming from my learned colleague, Sen. Ramdeen and Sen. Small and others, expressed as to putting a higher, more draconian maximum sentence and the recommendation was for natural life. Unfortunately, we also have to consider or rather I should say, we are obliged to consider the very cogent argument offered by my learned colleague, Sen. Chote, that it may be viewed to be an excessive criminalization, if we were to go to that particular standard, and there was very compelling advocacy on her part that we should take this thing in a graduated step.

7.00p.m.

Madam Chair, adding to that dynamic, whilst I may be, at first blush, happy to go to further extent of natural life, specifically because of a) the fact that there is a discounting of sentencing; b) because there is an application of time served; c) because prison years, eight months and not 12 months; d) because you may have discounts, which are up to two-thirds, in some instances, depending upon how an accused is treated, thereby rendering the 25 years quite minimal. Notwithstanding all of that, the fact that this has a sunset clause attached to the Bill, we would probably run into some difficulty.

I referred back to members of the caucus, which caused me to come here with a view, and the recommendation coming from us is to leave the structure as is. But I want to say that in the period whilst we analyze this law with the sunset coming upon us in 30 months' time, we will certainly be looking at this from a

graduated step. There is compelling argument on the part of Sen. Ramdeen, which I associate myself with. I understand the rationale, but I am not in a position to move to the higher marker just yet. So I will take Sen. Mark's caution that we leave the maximum sum as at 25 years. In those circumstances, Madam Chair, I propose that subclause 6(2) remain as is.

Madam Chairman: Okay, and let us now move on to the amendments circulated by you for subclause (4).

Mr. Al-Rawi: Yes, Madam Chair. Subclause (4), as circulated by me, was a reformulation of wording borne about because we had caused an amendment to the definition of law enforcement authority and that specifically was just addressed. The concern which came up in accepting subclause (4) was because of the inclusion of "protective services" under the Supplemental Police Act, which we have now modified in manner suggested by hon. Senators. In those circumstances, therefore, the simplified subclause is now in order, from my point of view, for acceptance by hon. Senators. So I propose that subclause (4), as circulated, be considered for acceptance by the honorable Senate.

Madam Chairman: Sen. Hosein.

Sen. S. Hosein: Thank you, Madam Chair. AG, I know Sen. Ramdeen would have raised concerns regarding the persons involved in the intelligence gathering part or this.

Mr. Al-Rawi: Yes, that is correct.

Sen. S. Hosein: So we are not moving any amendment with regard to that?

Mr. Al-Rawi: We tried to look at finding a definition for "intelligence gathering" and we could not, because of the structure of the SSA in particular, where they use contract officers or human intelligence operatives that are given associative cover by the DPP or under the Witness Protection Programme or as informants or as

undercover agents. So we found it hard to try and come up with the definition of what investigative personnel would look like.

Sen. S. Hosein: Having regard to Sen. Ramdeen's concern of how wide the wording of this can be and the amount of persons it could capture, would you be minded if we can remove that part regarding the intelligence-gathering persons, and just leave the law enforcement authority? Because it is very wide.

Mr. Al-Rawi: Coming out, if I may, Madam Chair, of the dicta of Mr. Justice of Appeal, Nolan Beraux in the Kevin Stuart matter, the learned judge reflected quite properly that anti-gang convictions are no slam dunk and certainly require investigative work, and it is a feature that investigative work is going to require witness evidence and witness evidence is best done by way of years of working through human intelligence. That is part of the dicta.

For those purposes, I ask hon. Senators to bear in mind that in subclause (4) we are seeking to penalize persons who are "clothed" with law enforcement cover from acting as gang members. And in those circumstances, we would want it to be such that they are not exculpated out of the matrix.

Where next this concept comes up is where we deal with retaliatory action, but it is not quite in the same formula. But we do believe that notwithstanding the breadth of the clause, the breadth of the phrase "intelligence-gathering personnel", that it should in fact be there.

Sen. S. Hosein: Okay.

Sen. Mark: You believe that is what we would be getting, AG?

Mr. Al-Rawi: Yes, Sir. Is there a contrary view?

Sen. Mark: Yes. I want to support my colleague, Sen. Saddam Hosein. Madam Chair, through you, the AG, there is no definition under the interpretation section of the intelligence-gathering agencies. So we do not know what agencies are

involved here. All we are getting is a broad definition of “intelligence gathering”. Unless the Attorney General is prepared to give us a definition for “intelligence-gathering agencies” or what that means, I am afraid that we would not be able to support this particular measure that the Attorney General is advancing.

Madam Chairman: Sen. Mark, may I point out it is not intelligence-gathering agency. It is a person or intelligence gathering; a person involved in law enforcement or intelligence gathering, which is different from intelligence-gathering agency.

Sen. Mark: Thank you for guiding me, but in any event we are including personnel engaged in intelligence gathering, and this is where I have to conclude, AG, through the Chair, that the SSA might be involved in this. Special Branch might be involved in this. The army and the police have their own intelligence agencies and bodies. They might be involved. So what I am saying is that, is it possible, AG, through the Chair, to give us an appreciation of these intelligence-gathering mechanisms that you would probably want us to consider in this exercise?

Mr. Al-Rawi: Yes. Madam Chair, the mischief that my learned friend is pointing to can be addressed by the literal interpretation of “person involved in intelligence gathering”. This subclause says:

“Where a member of a law enforcement authority”—and that is defined, effectively police, et cetera, as we define it in the definitions clause—“or a person involved in intelligence gathering commits an offence under this section, he is liable on conviction on indictment to”—the 25 years.

So we are seeking to treat with putting an offence upon somebody who will have to be demonstrated by the prosecution to be someone who was acting for the other side, someone who was there dealing with intelligence gathering in the normal

sense, human intelligence, as a plant, feeding information back to the police, et cetera. So that evidential burden upon the prosecutor to demonstrate that this person fits the category of the offence is the first point.

Secondly, intelligence gathering within that construct is something which must be proved; here was the contract, the person worked for so, we had this evidence, he was in the police. The person may well be a member of the SSA or hired by the SSA or the TTDF or the TTPS, as it may be.

So the need to actually move away from the comfort of the literal interpretation of “person involved in intelligence gathering” is not so difficult. Because we can reside in that comfort there. Because, really what we are doing is relying upon the prosecution having to prove that this person fits that category, it is proof beyond reasonable doubt, and then that person must be considered to have committed an offence under the Anti-Gang Act. And then that person must, on indictment, add a standard of proof beyond reasonable doubt in the High Court, be convicted by a jury in this circumstance. So, I do not think that the mischief is one which ought to trouble us.

Sen. Mark: I do have some reservations to this, Madam.

Question, on amendment, [clause 6] put.

Mr. Al-Rawi: Did we do subclause (5), Madam Chair?

Madam Chairman: Yes.

Mr. Al-Rawi: We did already. We deferred. We ought to have deferred it because it used “law enforcement authority”.

Madam Chairman: I apologize. We have to deal with subclause (5). Yes.

Mr. Al-Rawi: Should it please you, Madam Chair? This is the other side of the equation that I just spoke to. So in subclause (4), it is where that trusted person who was on law enforcement end, or the intelligence-gathering end, acted as a

gang member and we have thrown the book at that person by providing the maximum of 25 years, under the formulation for offences in this Bill.

In subclause (5), we are saying:

“A gang leader or gang member who, with intent-

(a) wounds or causes grievous bodily harm to;”

—or—

“(b) to do some grievous bodily harm, shoots at,

a member of a law enforcement authority or a person involved in intelligence gathering, commits an offence and is liable on...”

And therefore, what we are saying here, is that if gang members act against these law enforcement persons, we wish to provide them a fillip, with an extra tool, in their arsenal to allow for the application of a higher standard of penalty to be attracted to them. And in those circumstances, therefore, we just simply provide for the other side of the equation here.

Sen. S. Hosein: Thank you, very much Madam Chair. First, I believe there is an “or” missing in my version.

Mr. Al-Rawi: You are looking at the marked-up?

Sen. S. Hosein: Yes.

Mr. Al-Rawi: Okay, in the Bill, I believe, that there is an “or” that is there.

Sen. S. Hosein: The second thing, I am seeing that the sentence under this provision is 30 years, which is more than the maximum that we prescribed throughout the rest of the—

Mr. Al-Rawi: Yes. So, perhaps, we should shift that to 25.

Sen. S. Hosein: Just for harmonization purposes.

Mr. Al-Rawi: Yes please, I agree with you.

Sen. Dr. Mahabir: Madam Chair, you see I was just thinking that the injury to the

law enforcement officers of 30 years is fully justified. Because we are sending a signal that anytime you injure the law enforcement officers you have committed a separate and distinctive, more heinous crime.

Mr. Al-Rawi: I agree, but because we have completed every other clause, so far and we have operated under the belief that our maximum was set at 25 for children, for other areas which we wish to have for gang leaders, et cetera, I do agree with Sen. Hosein that for harmonization, on this occasion, that we should go to 25. We certainly really ought to look at the very philosophy of higher penalties, as proposed by Sen. Ramdeen and several other Senators, on a second occasion.

But, mind you, we will be coming quick apace on this because one expects that we will be back here before Parliament prorogues. So, Madam Chair, could I recommend that we go—

Madam Chairman: Twenty-five years instead of 30.

Mr. Al-Rawi: Okay. Let me not be too far off of it. If the Senate is okay with the 30-year prescription, subject to your involvement and guidance, Madam Chair, I am prepared to leave it as it is. It does throw a bit of the harmony a little bit askew, insofar as in other places we have worked with the 25.

Sen. Dr. Mahabir: Madam Chair, can I come in here? You see, I understand the need for harmonization, hence some of the comments I made earlier. But when I saw this 30 years, I thought the intent of the legislation was signalling—

Mr. Al-Rawi: It is. It is.

Sen. Dr. Mahabir:—that we were signalling to all the perpetrators in gangs that the moment you attack a law enforcement officer, there is a different penalty for you. And I was wondering whether you would not even raise that, because I think you need to send a clear signal to the gang leaders that law enforcement officers are in a separate category, and I that would not mind if the AG goes even higher

than the 30 years.

Mr. Al-Rawi: May I suggest, having just watched the flag coming from my learned colleague Sen. Hosein, who can correct me if I am wrong, that we maintain the 30 years?

Sen. S. Hosein: The reason I raised the issue is regarding the harmonization across the board with respect to the maximum. So if everyone is minded, 30 years, based on Sen. Mahabir's submission, I could agree with that.

Mr. Al-Rawi: So shall we leave it as is?

Sen. Dr. Mahabir: Yes.

Mr. Al-Rawi: Much obliged, Ma'am.

Madam Chairman: So, Senators, I am now going to put the question of clause 6 to the vote. I am going to ask that everyone pays attention, because I am now going to go through all the subclauses and read out the amendments.

Sen. S. Hosein: Madam Chair, are we taking them per subclause or are we going through?

Madam Chairman: No, I am now going through because we have finished. We have done all of the amendments as circulated to each of the subclauses and so I am now going to read it out. Are we ready?

Mr. Al-Rawi: Yes Ma'am.

Madam Chairman: Does anyone want to say anything before I embark on this? Thank you very much.

Hon. Senators, the question is that clause 6 be amended as circulated by the Attorney General and further amended as follows:

In subclause 6(1), by deleting at (b) the word "or".

At (c), it will be "professes to be a gang leader or a gang member in order to—

(1) gain a benefit for himself or another person;”

Mr. Al-Rawi: No, Madam Chair.

Sen. Dr. Mahabir: That is the new (d).

Mr. Al-Rawi: Yes, that is the new (d).

Madam Chairman: You see why I told you all? Okay, so here we go again. At 6(1), at (b), by deleting the word “or”—am I correct there? [*Assent indicated*]—insert a new subclause (c) which reads as follows:

performs an act as a condition for membership in a gang; or

(d) professes to be a gang leader or a gang member in order to—

(1) gain a benefit for himself or another person;

(2) intimidate other persons; or

(3) or promote a gang, commits an offence.

And then we go to subclause (3):

A person who commits an offence under subsection (1)(b),(c) or (d), is liable in the case of a first offence, on summary conviction to imprisonment for ten years and in the case of a subsequent offence, on conviction to imprisonment for twenty years.

At (4), it would be as was circulated by the Attorney General. And (5), as circulated by the Attorney General, and as I have just set out.

Question put and agreed to.

Clause 6, as amended, ordered to stand part of the Bill.

Clause 8 reintroduced.

Mr. Al-Rawi: Madam Chair, Sen. Ramdeen had recommended, and we agree, that we insert a definition for “relative”. In those circumstances, Madam Chair, after subclause (2), as it appears in the Bill, we propose the insertion of a new subclause (3). May I, with your leave read it out?

Madam Chairman: Yes, “Um-hmm”.

Mr. Al-Rawi: And it begins:

For the purposes of this section, “relative” means, in relation to a person—

- (a) his parent, step-parent or guardian;
- (b) his spouse, cohabitant or fiancée;
- (c) his child, stepchild or other dependant;
- (d) his brother, sister, stepbrother or stepsister;
- (e) his grandparent; or

—finally—

- (f) any other person responsible for the person’s care and support.

Madam Chairman: I will read it over in a little while. Let me read it now, just to confirm it. It will be subclause (3):

For the purposes of this section, “relative” means, in relation to a person—

- (a) his parent, step-parent or guardian;
- (b) his spouse, cohabitant or fiancée;
- (c) his child, stepchild or other dependant;
- (d) his brother, sister, stepbrother or stepsister;
- (e) his grandparents; or
- (f) any other person responsible for the person’s care and support.

Mr. Al-Rawi: His grandparent, yes.

Madam Chairman: His grandparent.

Mr. Al-Rawi: Yes, please.

Madam Chairman: Okay, singular, okay. Attorney General, you did circulate though—

Mr. Al-Rawi: Yes, Ma’am.

Madam Chairman:—some other amendments to clause 8.

Mr. Al-Rawi: Yes, Ma'am. Madam Chair, in terms of explanation, we had agreed that the first insertion of "intentionally" was to take care of observations by the Law Association and the need for an expressed statement of a mens rea, mental element to the offence.

Madam Chairman: Yes.

Mr. Al-Rawi: And specifically bringing to life the recommendations by my learned colleague, Sen. Shrikissoon, we had included the new subparagraph (h), that is (1) (h), which is the refusing to provide funding or resources to a gang leader, gang member or gang. And those in the round would be the full recommendations, with the insertion or the new subclause (3), which is for the definition of "relative".

Madam Chairman: So hon. Senators, the question is that clause 8 be amended as circulated by the Attorney General and further amended at subclause (3), by inserting subclause (3), which reads as follows:

For the purposes of this section "relative" means in relation to a person—

- (a) his parent, step-parent or guardian;
- (b) his spouse, cohabitant or fiancée;
- (c) his child, stepchild or other dependant;
- (d) his brother, sister, stepbrother or stepsister;
- (e) his grandparent; or
- (f) any other person responsible for the person's care and support.

Question put and agreed to.

Clause 8, as amended, ordered to stand part of the Bill.

Preamble.

Madam Chairman: Attorney General, before I put the question on the Preamble,

what is the decision with respect to the First Schedule?

Mr. Al-Rawi: I have just had a look at my instructions that have come in when I was sitting here. Madam Chair, Sen. Mark asked for the First Schedule to be revisited and my instructions are that we have completed the First Schedule already. I do not know if Sen. Mark wishes to put on to the record any concerns in relation to that. Far be it that the rationale is not understood.

Madam Chairman: Sen. Mark.

Sen. Mark: Madam Chair, we have been going very good for the evening. But if the Attorney General and his Government have decided to insert a number of new provisions that the House of Representatives never agreed to, and we have sought to ask him to revisit those, and he has taken the line that he has taken, then they will stand the consequences. Because we are not prepared to support this legislation in its current form.

We have made it very clear that we are prepared to cooperate and we are going along were nicely. A number of provisions were introduced under Schedule 1 that the House of Representatives knew nothing about. I drew it to his attention and I asked him if he could consider revisiting those areas that the House of Representatives did not consider. He indicated to me that he was prepared to look at them. Now, “he come with a new story” that the matter has been closed and he is not prepared to revisit it. Well, so be it. If he wants to go down that road, that is it.

Madam Chairman: Sen. Mark, let me just—Attorney General, Sen. Mark, Members, I will—we are almost close to concluding our deliberations in committee. I will suspend the committee for 10 minutes to allow for some dialogue.

Mr. Al-Rawi: Before you suspend, Madam Chair, respectfully. My learned

colleague, and this is a very quick one, asked that we specifically remove the economic crimes—money laundering, proceeds of crime, prevention of corruption. Those are the matters that concerned Sen. Mark, after we completed and entirely agreed to all of those. I undertook to seek instructions. I told Sen. Mark I would look at it. I am quite frankly shocked at the position because the argument by the entire Senate, including the Opposition, was that we move beyond street gangs.

We specifically include the opportunity to catch Mr. Big, that we allow the ability to get prevention of corruption, money laundering, proceeds of crime. Those are the matters that my learned friend now wishes to take off the floor and, Madam Chair that is the opposite of the three days of debate that we had.

Further, when we dealt with the committee stage at Schedule 1, everybody agreed, including the Opposition, to the inclusion of those things, for the reasons that we have all discussed.

Sen. Chote was very passionate—all Senators, Independent and Opposition Senators—that this law must be more than street gangs, and we asked for electronic crimes. We asked for proceeds of crime. We asked for corruption. We specifically spoke about gang leaders who are involved in other activities and the prosperity which they gained. So I had to put it clearly on to the record, that it was that sudden position.

I would love to facilitate my friend at all opportunities, but that runs against the grain of three days of work, and specifically the nine hours we have spent in committee stage where there was an adamant purpose that we go more than just street gang. And it is in those circumstances, Madam Chair, that we may perhaps take the break. I do not know if anybody on the rest of the benches' views wish to be heard on this point.

7.30 p.m.

Sen. Mark: Madam President, I do not want to engage my colleague at any length. The reality is this is very sensitive piece of legislation. The House of Representatives approved the legislation with 29 items under the Schedule. The Attorney General has introduced more, from 29 to 46. I have asked him, based on what I have looked at to reconsider these things, let the House of Representatives have their say on this matter.

Mr. Al-Rawi: No, we have to go back to the House. Madam Chair, if I just put it there. Two separate Houses, as my learned colleague, Sen. Mark reminded us all day long and over the last three days, this is the Senate. The House produced a purpose in our bicameral system. The House does its work, it comes to the Senate, the Senate does its fulminations.

If the philosophy is that this Senate must accept only that which the House brought—Sen. Mark asked me on the record whether I consulted with the Leader of the Opposition and I had to remind Sen. Mark that I provided the draft of this law and the amendments days in advance, not only in the confused state of what amendments look like on a small slip of paper but in the context of a marked up, track-change version of the Bill and I reminded Sen. Mark on the record that it is for each bench to do its own caucusing and that I could not dare caucus on with of the Opposition Members. So in those circumstances, there have been days of positioning. But I do not think that we need to go too much further. I do not know if there are other voices on this point.

Madam Chairman: Does anyone else wish to say anything? Sen. Mahabir?

Sen. Mahabir: Yes. Madam Chair, I personally think that the money crimes, money laundering and so on are very important crimes to include. The concern I had with item number 31, “Misbehavior in public office”, is that it was very broad and I did not wish at all to be party to any legislation which is going to be used to

harass Members of Parliament who are alleged to be misbehaving in public office and I just want to ask the Attorney General whether he would restrict misbehaviour in public office by State employees and leave it at that. So we look at custom officers, police officers as of this time, so that the potential for abuse and the concerns by others can be somehow mitigated at this time.

Madam Chairman: Sen. Small.

Sen. Small: Thank you, Madam Chair. I am of the view that gutting the provisions that deal with financial crime will go to the heart of this legislation.

Madam President, my record here during my few interactions here in this Parliament, I have demonstrated and provided data, the fact that we have a serious problem in this country with financial related crime. It is a serious problem, and I think that in any opportunity to allow the forces that are doing the investigations to have full access and to be able to charge people accordingly we should give them, because financial crime, as I have said, on the record here, white collar crime does not seem to exist in Trinidad and Tobago. We are still waiting on the first prosecutions and convictions and I want to be able to make sure that those who are doing the investigations and are doing the prosecutions have the fullest, all the tools available to them in the armoury.

Sen. Chote SC: I know I have made this point before, but one of basic things about the prosecution of crimes like these is that you follow the money. And I think it that was the lacuna in the Bill that was brought to the Upper House, because while—I believe the proceeds of crime Act had been referred to, the large majority of offences relating to financial crimes and possible misconduct by state agencies had not been taken into account and I think as a policy this hon. House seems to have agreed that we thought it best to follow the money and it is in that context that other offences were included. That is my understanding of the process

that we embarked upon and hopefully are close to the conclusion of.

Sen. Mark: May I indicate simply the following? We have no objection to one to 28 in Schedule 1. We are including them. We are including 30, we are including 34 to 46. Those are in. The rest that I did not mention are out and we ask the Attorney General to look at those.

Mr. Al-Rawi: So that is Offences under the Prevention of Corruption Act.

Sen. Mark: Those areas that I have not mentioned.

Madam Chairman: Now just for the record, we are not revisiting the Schedule thus far, but we are taking people's comments on board. For the information of the Attorney General, Sen. Mark, could you just run through which of these offences you wanted to have deleted.

Sen. Mark: Yes.

Madam Chairman: Okay, let me just say. Offences under the Prevention of Corruption Act. You felt that should not include?

Sen. Mark: I was going to exclude 29 to 46. The entire list?

Madam Chairman: The entire list?

Sen. Mark: Yes from 29 to 46, but in an effort to have a compromise I told the Attorney General that we are prepared to go, we are supporting one to 28. We ask him to leave out 29.

Mr. Al-Rawi: Which is Offences against Prevention of Corruption.

Sen. Mark: We are asking him to leave out 31.

Mr. Al-Rawi: Misbehavior in public office.

Sen. Mark: 32.

Mr. Al-Rawi: Gambling and Betting.

Sen. Mark: This one, 33 is captured under the anti—all of these things are captured under various pieces of legislation.

Madam Chairman: All right. Sen. Richards, you wanted to say something?

Sen. Richards: Yes thank you, Madam Chair. I do not see how we can in good conscience seek to put provisions in place in so many other areas as we have said before for what has been described—sorry let me get my grammar right—as low level criminals and seek to absolve the parts of this list that deals specifically with white collar crime that has been at the source of [*Desk thumping*] the bane of the existence of fueling gang activity in Trinidad and Tobago. So if we do that we might as well forget the whole process because we are going back to square one.

Madam Chairman: Sen. Creese.

Sen. Creese: Madam Chair, my concern coming into this process was that this legislation seemed to have a class bias, in that it was targeting crime on the street. And it was lending to the impression that that crime on the street operates in a vacuum that is not part of a wider criminal enterprise, good. So that much of the violence that we are afraid of emanates from the ideal time of those hoodlums who are part of a larger purpose and I felt that from 29 to 46 encapsulated that wider criminal enterprise [*Desk thumping*] and I am pleased with the work of the AG in this regard. [*Desk thumping*]

Madam Chairman: Senator, I will take one last comment from Sen. Ramkissoon.

Sen. Ramkissoon: Yes, a very quick comment, Madam Chair. I just wanted to say, I also share the view that one to 46 are all gang-related activities in Trinidad and Tobago. [*Desk thumping*]

Madam Chairman: All right. Hon. Senators, I am still going to suspend this committee for ten minutes and we will resume in ten minutes' time.

7.39 p.m.: *Committee suspended.*

7.49 p.m.: *Senate resumed.*

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 the completion of the business at hand.

Question put and agreed to.

ANTI-GANG BILL, 2018

Committee resumed.

Madam Chairman: Hon. Senators, the Committee stage will now resume. Attorney General.

Mr. Al-Rawi: Madam Chair, I thank you for allowing the Senate some room to settle itself. Really, having heard the views expressed by several Members, we are in a rather difficult position. The Government's position is that the essence of the contributions in broadening anti-gang activity into the realm of money, Mr. Big, follow the money, prevention of corruption, illegal casinos and gambling, which we know is a proliferation and cohort of gang activity. All of these things are critical to making sure this law is broad-based, as Sen. Creese put it, that we are not treating with just one end of an equation, we are not being imbalanced.

Madam Chair, in all of those circumstances the Government is hard pressed to refuse the invitation of my learned colleague Sen. Mark, to revisit the First Schedule which was agreed to unanimously, by all Members just a little while ago.

Madam Chairman: Hon. Senators, in light of all that I have heard, we will not be revisiting the First Schedule. Sen. Mark.

Sen. Mark: Madam Chair, I am very disappointed in the Attorney General, and his attempt to give what I would want to call, the wrong impression, to you and to this honourable Senate. Why would the Government not want to engage the Opposition, as it relates to addressing some of the concerns that I have brought to

his attention. One can only assume, Madam Chair that the Government has its own agenda and the Government is on some mischief making programme.

Madam President: Okay. Well Sen. Mark, I have to stop you here because you are imputing improper motives and the Standing Orders are still in operation, even though we are in Committee.

Sen. Mark: Let me withdraw that.

Madam Chairman: Thank you, and I do not think that any more time should be spent on this. We had gone through painstakingly, a process, and we have reached a certain point. You did ask for it to be revisited, but based on everything that I have heard, it seems that revisiting will not provide any different outcome from what we had painstakingly gone through before. Okay?

So it is my wish that we move on at this stage. Your comments have been noted and I think we should move on now. I think we just have to deal with the preamble.

Preamble approved.

Question put and agreed to: That the Bill, as amended, be reported to the Senate.

Senate resumed.

Bill reported, with amendment.

Question put: That the Bill be now read a third time.

Madam President: This Bill requires a special majority and therefore the Clerk will conduct a division. *The Senate voted: Ayes 29*

AYES

Khan, Hon. F.

Gopee-Scoon, Hon. P.

Baptiste-Primus, Hon. J.

Rambharat, Hon. C.

Sinanan, Hon. R.

Hosein, Hon. K.

Le Hunte, Hon. R.

Lester, Dr. H.

Singh, A.

De Freitas, N.

Dookie, D.

Huggins, R.

Romano, Ms. A.

Lewis, Ms. A.

Young, N.

Mark, W.

Haynes, Ms. A.

Ameen, Ms. K.

Hosein, S.

Obika, T.

Mahabir, Dr. D.

Roach, HRI

Small, D.

Shrikissoon, T.

Ramkissoon, Ms. M.

Chote SC, Ms. S.

Creese, S.

Raffoul, Ms. J.

Richards, P.

Question agreed to. [Desk thumping]

Bill accordingly read the third time and passed.

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 the 17th of April, 2018, at 10.00a.m. During that sitting we plan to take through all its stages the Valuation of Land Bill and hopefully to start and possibly complete the Property Tax Bill. I also want to put the Senate on notice that we will be meeting also on Thursday the 19th of April at 2.00p.m.

Madam President: Hon. Senators, before I put the question on the adjournment, leave has been granted for two matters to be raised on the motion for the adjournment of the Senate.

Economic Plan for Tourism

(Development of)

Sen. Taharqa Obika: *[Desk thumping]* Madam President, I thank you for acknowledging me as I rise to bring to light the failure of the Government to develop on any plan for the tourism sector as evidenced by the lamentations of the Trinidad Hotels, Restaurants and Tourism Association regarding the declining hotel occupancy during the Carnival season.

And before I continue, Madam President. I would like to put on record that all colleagues in this House are my colleagues, and I really believe the work we do here is important for the development of Trinidad and Tobago and every action that I engage in, is with that in mind. *[Desk thumping]* And my brother, you are my brother. *[Desk thumping]*

So now, Madam President, the tourism sector under this Government has failed. There can be no example of any plan if you take a cursory glance at

newspaper articles and press releases you realize the gravity of the tourism sector in Trinidad and Tobago.

I will just list the headlines now and go into them in detail at the end of the presentation. So, we have “\$700m loss for Tobago tourism”; one headline. “Unreliable travel blamed for low Tobago bookings”, another. Tobago hotels face massive cancellations, another one. T&T tourism on verge of collapse, that was by a St. Lucian newspaper and then, of course, a media release by the Chamber of Commerce.

The first one I want to point to is the Trinidad Hotels, Restaurant and Tourism Association’s review of the tourism industry. Madam President, they raised many issues, seven of which I would like to highlight in my presentation:

1. They pointed to the fact that the closure of the Tourism Development Company was a protracted exercise which brought many hardships among the practitioners and stakeholders in the domestic tourism industry.
2. The closure of TDC did not carry the support of private sector tourism stakeholders in Trinidad which provided extensive recommendations for restructuring of the TDC. They took pains to bring forward recommendations to develop the tourism industry and to keep TDC intact to TDC and the Ministry of Tourism and they stated none of which were considered or adopted by the Government. Total neglect.
3. An allocation of \$16 million dollars was provided to Tourism Trinidad Destination Management Company Limited but by February 2018 as of that date no announcement of any executive, any management or staff of the entity was made. I see the new Minister of Tourism is here, he is an old boy of my alma mater, Presentation College, I wish him all the best. But given the poor

record of his predecessor, I really am not sure what the hon. Minister can do in the remaining 28 months that he has, if he sits in the chair so long.

4. The cancellation of the contracts of the international advertising and public relations firms, the overseas marketing representatives in key tourist source markets of the US and Canada with no replacement firm being installed to focus on destination marketing for 16 months. Madam President, imagine 16 months, of at that time 28 months. So essentially, they have forsaken the marketing of Trinidad and Tobago paying lip service by giving Calypso Rose a diplomatic passport, when really and truly you are not putting the systems and structures in place to bring people to Trinidad and Tobago.
5. Allocation for the Ministry of Tourism shows a 57 per cent reduction and that is when you use the estimates of 2018. We all know that they do not spend as much. But when you look at the Revised Estimates for 2017, it is a 69 per cent reduction from 2015.

8.05 p.m.

This is not the UNC, Madam President, this is the Trinidad Hotels Restaurants and Tourism Association's review of the tourism industry, a data driven one, might I add. Now, what they pointed to is that the hotels, the stakeholders in the industry, pay much by way of taxes. In fact, the accommodation tax alone stood at \$56.81 million in 2017, which was only a 10.5 per cent decline from 2015. All right? So they have been paying a consistent level of taxes to the Government, but what did they receive? They received \$57.46 million in 2017, which was a significant reduction, as I pointed out before, a 69 per cent reduction.

Now, Madam President, this is a wholly unfair situation. So we have a

situation where the stakeholders in the industry are paying their way. They are bringing persons to the shores, they are paying taxes, and when those persons come they pay by virtue of bringing foreign exchange and they support the services of the domestic economy. The contribution of the hotel industry is more than the amount they pay in taxes, but this Government can find nothing to do but to reduce the allocation to them. [*Desk thumping*]

And they also pointed to a direct correlation of the downward trend in international arrivals from 2015 when the Partnership was in power under the leadership of Mrs. Kamla Persad-Bissessar to 2017, as a direct result of the reduction in the allocations to the Ministry of Tourism.

Now, the Chamber of Commerce even went further. They said that the deleterious impact on the failure to plan for the tourism industry is having a significant negative impact on Trinidad and Tobago's overall economy.

Madam President, going forward, this Government would do well to look at what happened from 2010 to 2015 as regards tourism. So let us look at what was left for them on a silver platter by the People's Partnership Government. We have, if you go to Couva you will see the Aquatic Centre, the Cycling Velodrome and the Cricket Academy, and as a result of that there is a hotel, which I am sure the Minister of Tourism will be very familiar with in south Trinidad on the Southern Main Road, in south-central Trinidad that is boasting a 100 per cent occupancy. It is located in St. Margaret's. If you ask the CEO of the hotel, he said that that is directly as a result of the sports tourists that are coming—the plant that was left by the People's Partnership Government in Couva. [*Desk thumping*] And they are lamenting that the Government, despite what was done by their predecessors, is doing nothing for sports tourism in this country.

Now, domestic tourism is an integral pillar of the tourism sector, and domestic tourism must be supported by an inter-island ferry that works, by a water-taxi system that has—[*Desk thumping*]*—*working water taxis, not the ones that go to Tobago and catch on fire, by PTSC having a proper fleet of buses and by tourist sites and attractions getting the resources they need, not by cutting the budget to the Ministry of Tourism by 69 per cent. Now, in the remaining—I believe I have one minute remaining.

Madam President: Two minutes.

Sen. T. Obika: Okay. Thank you. What I am going to do now is just delve into one article, “\$700m loss for Tobago tourism”. Now, the former Minister extolled the virtues of Tobago, but what the former Minister failed to do, was show that under her watch, the Ministry of Tourism—

Madam President: Sen. Obika, you now have one minute.

Sen. T. Obika: Thank you very much. The Ministry of Tourism has failed entirely. [*Desk thumping*] Madam President, I do not know what the new Minister can say, but all I will say is that he should look to 2010 to 2015 and, basically, copy and paste, and tourism will be in good hands. Thank you very much. [*Desk thumping*]

The Minister of Tourism (Hon. Randall Mitchell): [*Desk thumping*] Madam President, I want to thank you as recognizing me as the new Minister of Tourism. [*Desk thumping*] Madam President, let me take this opportunity to thank the hon. Prime Minister for his confidence that he has placed in me [*Desk thumping*] to take the tourism sector forward. [*Crosstalk and laughter*]

Madam President, as the Government embarks on a strategic plan of diversification, the tourism sector has been identified as critical to the achievement

of economic growth and sustainable development in Trinidad and Tobago. Tourism has the potential to rejuvenate other sectors of the economy as it is labour intensive: employs a multiplicity of skills, provides entrepreneurial opportunities and has linkages with agriculture, health manufacturing and education.

In 2017 it is estimated that 394,650 persons visited Trinidad and Tobago, and the associated visitor spend is estimated at TT \$1.8 billion. The economic value of the tourism sector is significantly linked to the generation of foreign exchange through the supply of quality tourism goods and services to visitors.

Trinidad and Tobago has also strengthened its efforts to foster closer links with cruise lines to encourage increased port calls to this destination. During the recently concluded 2017/2018 cruise season, 96,957 persons visited Trinidad and Tobago, representing a 98.85 per cent increase over the 2016/2017 period. [*Desk thumping*]

Hon. Senator: That is performance.

Hon. R. Mitchell: In 2017, the average visitor spend from cruise arrivals was estimated at TT \$4.5 million. Leading the charge for transforming the tourism sector and maximizing its benefits to the national economy is the Ministry of Tourism, which has developed its strategic plan 2018 to 2021. Both the plan and the work programme are developed within the context of Vision 2030 and, in particular, under the thematic area IV titled “Building Competitive Businesses”. The plan was developed on the basis of consultations with both internal and external stakeholders, and lays the foundation for successful partnerships among various stakeholders in the public and private sectors, and throughout communities across the country.

It conveys a clear understanding of the role and function of the Ministry of Tourism as a key arm of Government in contributing to economic transformation.

The plan outlines 10 goals:

- Goal 1: increase air arrivals to 500,000 persons by 2021;
- Goal 2: increase cruise arrivals by 100,000 persons by 2021;
- Goal 3: increase visitor revenues by 25 per cent;
- Goal 4: expand niche-based tourism, including meetings, incentives, conferences and exhibitions or business tourism, eco-tourism, sport tourism, community-based tourism and events tourism;
- Goal 5: increase tourism education and awareness;
- Goal 6: increase investment in tourism plant and infrastructure to improve the quality and quantity of room stock;
- Goal 7: strengthen and foster an enabling regulatory environment to support the tourism industry development and growth;
- Goal 8: improve mechanisms for data collection and analysis;
- Goal 9: improve opportunities for entrepreneurship and business development within the tourism sector; and
- Goal 10: use new media and technology in marketing and promotion.

Madam President, this Government clearly understood that the development of the tourism sector required a more strategic approach to long-term competitiveness of the destination. In this regard, after reviewing the intuitional arrangements for the regulation and management of the tourism sector which were in place, Cabinet agreed to the dissolution of the Tourism Development Company Limited to the establishment of a Tourism Destination Marketing and Product Development Company in Trinidad and a similar entity in Tobago; the establishment of a Trinidad and Tobago Tourism Regulatory and Licensing Authority.

In further assessing the sector, it was noted that Trinidad and Tobago has three distinct destination marketing brands, each with its own suite of product offerings. In Trinidad, it is meetings, incentives, conferences, exhibitions and it is product driven. In Tobago, it is leisure based and market driven. Destination Trinidad and Tobago is an opportunity to sell the unique experiences of both islands together.

The Ministry of Tourism would have oversight of the Trinidad entity while the Tobago House of Assembly would have oversight of the Tobago entity, and the joint marketing of destination Trinidad and Tobago will be coordinated through joint arrangements. To this end, we now have in place the Tobago Tourism Agency in Tobago and in Trinidad staffing arrangements are being finalized for the Tourism Trinidad Limited.

The Ministry of Tourism is also responsible for the implementation of all projects under the PSIP which includes the responsibility for the management and maintenance of the five sites which were previously vested in the HDC, mainly the La Brea Pitch Lake Visitor Facility and the beach facilities at Maracas, Manzanilla, Las Cuevas and Vessigny. Furthermore, Madam President, Government is cognizant of the fact that internationally tourism is a highly competitive business. It is seeking to develop mandatory regulations and standards based on industry best practice, which would assist in maintaining a high quality product in Trinidad and Tobago. Cabinet, therefore, agreed to the establishment of the Trinidad and Tobago Tourism Regulatory and Licensing Authority.

Consultations have been conducted both in Trinidad and Tobago to sensitize and seek feedback, suggestions and opinions from industry stakeholders and the public on the implementation of the TTURLA. Trinidad and Tobago can no longer afford to ignore the positive impact of a properly regulated tourism sector and what

it can have on our economic environment.

To meet the goals and targets developed for the sector, it is imperative that the country seeks new markets outside of our traditional source markets. At World Travel Market 2017, the Ministry of Tourism was approached by Europe's largest tour operator, DER Touristik, to be the launch pad for a German Mega Familiarization Tour in the Caribbean. This Mega Farm will see the island of Trinidad being included, for the first time, in the portfolio of DER Touristik, with 115 travel agents visiting the island, to be immersed in the destination's culture, sites and attractions. The entire industry will stand to benefit with pre-planning visits from the tour operator initiating contracts with some seven accommodation providers.

Madam President, one of the major incentives for the tourism sector, is the Trinidad and Tobago Tourism Accommodation Upgrade Project. It was developed to assist property owners of Trinidad and Tobago to upgrade their tourism accommodation to a first-class level. The TAUP comprises of the following two programmes: the Trinidad and Tobago Tourism Hotel and Guesthouse Room Stock Upgrade Programme and the Upgrade of Small Approved Tourism Properties in Trinidad and Tobago. TAUP was extended for a period of three years, commencing October 2017 to September 2020, and expanded as follows: for the Trinidad and Tobago Tourism Hotel and Guesthouse Room Stock Upgrade Programme, reimbursement of expenditure of costs of work per room increased from 25 per cent to 50 per cent—

Madam President: Minister, you have one more minute.

Hon. R. Mitchell: Thank you, Madam President. —increase of the limit from \$750,000 to \$1.5 million. For the upgrade of small approved tourism properties in Trinidad and Tobago, reimbursement of the expenditure of costs of work per room

increased from 20 per cent to 40 per cent; increase of the limit from \$75,000 to \$150,000. The Ministry of Tourism regularly consults with its stakeholders to share information and seek feedback on its impending policies and initiatives.

So, Madam President, in conclusion, the Ministry of Tourism is actively seeking to improve the contribution of the tourism sector to the gross domestic product, GDP. The Ministry believes that its plans, policies and programmes constitute a comprehensive and cogent economic plan for tourism and through its execution, it will continue to monetize the tourism industry and increase competitiveness of the destination. Madam President, the tourism sector is in good hands under this Government and this Minister, and I thank you. [*Desk thumping*]

Domestic Violence Status Report

(Update on)

Sen. Wade Mark: Thank you very much, Madam President. [*Desk thumping*] I am glad to see the Minister of National Security here. I thought he was not going to be here this evening, but I am glad to know that he is here. Please accept my sympathies. Madam President, may I say from the outset that the role of the police in our country is to protect and serve the citizens. They are the first line of defenders as it relates to the rule of law. They must therefore be sensitive and mindful of their role, particularly when women are making reports of domestic violence.

Madam President, you would have heard and the country has witnessed, where many women have perished, and they have perished because of the fact that they were involved in domestic disputes with their other or better half. And in so doing, many of them have gone to the police stations and they have lodged complaints, they have made reports, they have alerted the officers about the imminent dangers that they faced and yet still, Madam President, police officers

seem to treat domestic violence as a private matter, as a private affair, and they treat women and the reports that they submit, not with the seriousness and urgency that those reports deserve resulting, Madam President, in scores of women being murdered in this country.

So serious was this matter, Madam President that you remember the massacre that took place in La Brea some time ago, and the Police Commissioner had to suspend three police officers pending further enquiries and investigation. The truth is that the time has come for us to establish fresh protocols for the police service, to allow the police officers to understand that when women who are victims of domestic violence, report to them instances of violence, they ought to take quick and urgent action and measures to safeguard and to protect these women. [*Desk thumping*] And even though we know that we have been getting reports that the Minister of National Security will tell us that they are supposed to be trained and they are supposed to respond quickly and swiftly to reports, Madam President, we still find instances—and too many instances—of police lackadaisical reaction to serious reports made to them by women in our country.

So this evening, I have brought to the attention of your good self, hon. Madam President and, through you, to the hon. Minister of National Security—how long he will be with us, we do not know—but the fact of the matter he is here, and we would like him to explain to us what action, what new measures and what new initiatives are being taken by the police service, through new policies, in order to address what can only be described as an epidemic of violence facing our female population in this country.

Madam President, so far for 2018, close to 16 women have died at the hands of criminals, because I cannot describe them any other way than criminals, who

would slaughter and butcher and murder women in this country, because of whatever domestic differences they may have. We must never condone that kind of conduct and behaviour.

Women hold up half of this world. [*Desk thumping*] They are responsible for all of us who are here today. They are the mothers, the grandmothers, our sisters and there has to be almost like a national emergency that the Government must embark upon at the level of the police service to bring to the attention of police officers the need for them to take urgent and decisive action in defence of our womenfolk. When they come and submit reports and they tell you that their lives are in danger, you do not laugh it off Madam President, you do not dismiss these women and tell them go back home and make up with their husbands or their boyfriends. You have to get involved and get out there, and if the culprits who are involved are threatening these women, they must be arrested promptly and charged and the police must be there to protect our womenfolk, Madam President.

I am very disappointed in the reaction, the conduct and the behaviour of some of our police officers in Trinidad and Tobago, how they have treated reports after reports submitted by women in this country and their poor reaction to those reports. Many women would have been alive today, Madam President, if the police officers would have taken those reports seriously. Abigail Chapman, as an example, might have been alive today, if when she made the report to the police station they had taken action and arrested that particular individual who is now before the courts, and so many other women, Madam President, would have been alive.

So this evening, as I said, I call on the hon. Minister to tell this honourable Senate, what new measures, what new level of protocols are being established in

order to sensitize our police officers so that they can react more efficiently and swiftly to the plight of our womenfolk in Trinidad and Tobago.

I speak on behalf of the women of this country today. [*Desk thumping*] I come out in defence of the women of this country today, and I plead with the Minister of National security and the Government to take prompt action and measures to avoid, as far as is practically possible, particularly, Madam President, when they make reports to the police, the police must take action, and when they do not take action, then the Commissioner was right to take action against those police officers, and that is how it has to be, but we must save our women from this onslaught that they have been subjected to.

So, Madam President, as I said, I make this brief intervention so that the Minister of National Security can share with us what are the plans, programmes and new measures that are being taken by the Government to ensure that we mitigate, if not reduce, the amount of unfortunate situations that face our womenfolk that allow them to end up as dead persons in our country. We want them to live, we want them to thrive, we want them to grow and we want them to flourish in whatever area of endeavour that they focus on or they pay attention to.

So, Madam President, with these few words, I call on the hon. Minister to share with us, give us an up-to-date status report on measures and initiatives being taken to protect our womenfolk in our country so that we can reduce domestic violence and reduce the number of murders that we have had so far. Thank you very much, Madam President. [*Desk thumping*]

The Minister of National Security (Hon. Maj. Gen. Edmund Dillon): Thank you very much, Madam President. Madam President, let me say from the outset that there have been instances where follow-through complaints were not

adequately dealt with by the Trinidad and Tobago Police Service, and there have been cases such as that and the Commissioner of Police is well aware and has taken several measures to treat with those issues.

But let me first deal with the whole question of domestic violence, because domestic violence refers to the victimization of a person whom the abuser has or has had intimate, romantic or spousal relationship. Domestic violence encompasses violence against both men and women and, Madam President, these behaviours which can occur alone or in combination or continually, include physical violence, psychological abuse, stalking and non-consensual sexual behaviour. Madam President, when we look at the legislation, let me also say that the Government of Trinidad and Tobago recognizes that domestic violence is a major area of concern with regard to families' mental and physical health. The Government is also aware that if left unchecked, domestic violence can lead to further undesirable societal problems, so we are very conscious of that, Madam President.

When we look at the Domestic Violence Act of 1999 that aims to provide greater protection for victims of domestic violence in Trinidad and Tobago. The Act also seeks to reflect the population's repugnance to domestic violence in whatever form it may take, and further influence the population's attitude and support of social change in respect of this social ill.

The objectives of the Domestic Violence Act, 1999, as set out in section 2 are inter alia:

- “(a) provide immediate injunctive relief to victims of domestic violence;
and
- (b) ensure a prompt and just legal remedy for victims of domestic violence.”

Madam President, the Commissioner of Police has looked at the Act, and in terms of re-enforcing what the Act says, he has taken a very strong measure as shown by the example done with the situation in La Brea quite recently, and the Act says:

“(1) A police officer shall respond to every complaint or report alleging domestic violence whether or not the person making the complaint or the report is the victim.

(2) It shall be the duty of a police officer responding to a domestic violence complaint to complete a domestic violence report which shall form part of a National Domestic Violence Register to be maintained by the Commissioner of Police.”

And the Commissioner is looking very closely at this Act, and ensuring that there is some kind of follow through.

“(3) A domestic violence report shall be in the form prescribed as ‘Form 7’ of the Second Schedule and shall include but not be limited to—

- (a) the name of the parties;
- (b) the relationship and sex of the parties;
- (c) information relating to the history of domestic violence between the parties;
- (d) the date and time the complaint was received;
- (e) the type of the abuse and the weapon used, if any.”

Madam President, this is to ensure that there is a set procedure when such reports are made in any police station to any police officer, so that these rules must be followed through.

The Trinidad and Tobago Police Services categorizes domestic violence offences as follows: murders, sexual offences, assault, breach of protection order,

malicious damage, malicious wounding, psychological abuse, threats and verbal abuse. Over the last six years, Madam President, there have been a steady reduction on the overall total of number of reported cases of domestic violence. Notably, the most significant reduction during this period was a 30 per cent decrease from 1,632 in the year 2015 to 1,141 in the year 2016.

Madam President, when we look over a five-year period, there has been significant decrease in a number of areas, however, that is not to say that treatment of the questions of personnel is not properly well treated and, therefore, the Commissioner of Police has looked at certain areas in which he can improve the treatment of police officers when reports are made either to themselves or to the respective police stations.

A comprehensive manual was developed to assist police officers of all ranks—and this has been developed for some time now—to effectively and sensitively respond to reports of domestic violence and to take the appropriate criminal procedure measures to prosecute the suspect and thereby protect the victim of domestic violence.

8.35 p.m.

The key area which relates specifically to this Motion is receiving the complaint about domestic violence which goes to section 3(1) of the manual and outlines the mandatory duties of a police officer when treating with reports of violence.

The police officer to whom a report of domestic violence is made shall:

- (a) record the report in the station diary or his pocket diary if he is not at the station.
- (b) inform the Senior Second Division Officer at the station. This is according to police Standing Orders No. 53, Section 6.

So it is laid down step by step as to what the police officer must do, and the Police Commissioner has insisted that his divisional commanders throughout all nine divisions ensure that these are done, other than that the policeman will be held responsible. He also should respond to every complaint or report alleging domestic violence, whether or not the person making the complaint or the report is the victim. Also has to complete a domestic violence register as mentioned before, and complete the domestic violence report in the manner prescribed in the Form 7 of the Schedule.

In addition to that, Madam President, the Commissioner of Police believes that training is important, training and sensitization is important, and so he has embarked on training at the various levels, from the recruit training all the way to development training across the spectrum of divisional commanders. To that effect, Madam President, the Trinidad and Tobago Police Service offers domestic violence training to employees both in the faculty of basic law enforcement education and training, and advanced law enforcement education and training. The faculty of basic law enforcement education and training offers this training to new police recruits as part of their induction training, and also development training along the promotional courses as they go along. Domestic violence is offered as a module in the behavioural science course at the Police Academy. So that to the effect that for the period 2012 to 2017 a total of 1,640 trainees were exposed to domestic violence training as part of their training programmes. They also include a sort of mock trials and mock treatment when a sort of skit in during their training period to ensure that the police officers do the necessary thing following the procedure step by step.

In terms of training, you look at the training between 2012, there were 131 persons trained; 2013, 361; 2014, 457; 2015, 297; 2016, 234; 2017, 160, and

certainly it would go on to those who enter the training academy for 2018.

Madam President, there is obvious room for improvement in the actualization of existing policies in the Trinidad and Tobago Police Service for treating with domestic violence against women, and that is quite evident by the action that was taken recently when the Police Commissioner had to intervene with respect to reports that were made in La Brea in the murder of the family of four, and Mr. Scott himself. So that you will see it, Madam President, there is room for improvement in this regard, and I can assure this House and I can assure the citizens of Trinidad and Tobago that the Police Commissioner is working assiduously to do corrective measures to treat with this issue.

Madam President, it is an issue that is on the burner right now. It is one that concerns all of us. Domestic violence against women concerns every one of us as citizens of Trinidad and Tobago, and rest assured, Madam President, that the Police Commissioner, the Ministry of National Security and the Government of Trinidad and Tobago will continue to do what is required so that this matter can be treated with in an effective and efficient manner. Thank you very much, Madam President. [*Desk thumping*]

Question put and agreed to.

Senate adjourned accordingly.

Adjourned at 8.39 p.m.